

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
21 January 2013

Meeting time:
14:00

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

- 1. Introduction, apologies, substitutions and declarations of interest**
- 2. Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

CLA201 – The Education (Student Support) (Wales) Regulations 2012 (Pages 1 – 232)

Negative Procedure. Date made 12 December 2012. Date laid 14 December 2012. Coming into force date 4 January 2013

CLA(4)–03–13 Paper 1 – Report
CLA(4)–03–13 Paper 2 – Regulations
CLA(4)–03–13 Paper 3 – Explanatory Memorandum

Composite Negative Resolution Instruments

CLA205 – The Environmental Permitting (England and Wales) (Amendment) Regulations 2013 (Pages 233 – 278)

Composite Negative Procedure. Coming into force in accordance with regulation 2(1) to (4)

CLA(4)–03–13 Paper 4 – Report
CLA(4)–03–13 Paper 5 – Regulations

CLA(4)-03-13 Paper 6 - Explanatory Memorandum

Super Affirmative Resolution Instruments

CLA189 - The Natural Resources Body for Wales (Functions) Order 2012 (Pages 279 - 566)

Super Affirmative Procedure. Coming into force 1 April 2013

CLA(4)-03-13 Paper 7 - Report

CLA(4)-03-13 Paper 8 - Order

CLA(4)-03-13 Paper 9 - Explanatory Memorandum

CLA(4)-03-13 Paper 10 - Committee Report November 2012

CLA(4)-03-13 Paper 11 - CLA155 - The Natural Resources Body for Wales (Establishment) Order 2012

CLA(4)-03-13 Paper 12 - Evidence from RSPB Wales

CLA(4)-03-13 Paper 13 - Evidence from RSPB Wales

CLA(4)-03-13 Paper 14 - Evidence from Wales Environment Link

CLA(4)-03-13 Paper 15 - Evidence from Wildlife Trusts Wales

3. Paper to note

CLA(4)-02-13 - Report of the meeting on 14 January 2013

4. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

A Committee may resolve to exclude the public from a meeting or any part of a meeting where:

(ix) any matter relating to the internal business of the committee, or of the Assembly, is to be discussed.

Transcript

View the [meeting transcript](#).

CLA(4)-03-13 Paper 1

Constitutional and Legislative Affairs Committee Draft Report

Title: The Education (Student Support) (Wales) Regulations 2012

Procedure: Negative

These Regulations provide for financial support for students who are ordinarily resident in Wales taking designated higher education courses in respect of academic years beginning on or after 1 September 2013. They consolidate, with some changes, the Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 (“the 2011 (No. 2) Regulations”).

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

1. In the English text of regulation 10(2)(b) there is a reference to ‘a new fee loan under regulation 25’; the Welsh refers to ‘fenthyciad at ffioedd o dan reoliad 25’. The word ‘newydd’ (new) is therefore missing from the Welsh text.

Later in the same paragraph the English text contains a cross-reference to regulation 23(4), whilst the Welsh text refers to regulation 23(3). The context suggests that the English reference is correct

[Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.]

2. The English regulation 97(5)(a) has three sub-paragraphs; the Welsh has four. It appears that the final sub-paragraph in the Welsh text should be part of paragraph (a) rather than a further sub-paragraph.

[Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.]

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument .

Legal Advisers

Constitutional and Legislative Affairs Committee

January 2013

2012 No. 3097 (W. 313)

EDUCATION, WALES

**The Education (Student Support)
(Wales) Regulations 2012**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for financial support for students who are ordinarily resident in Wales taking designated higher education courses in respect of academic years beginning on or after 1 September 2013. They consolidate, with some changes, the Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 (“the 2011 (No. 2) Regulations”).

These Regulations revoke the 2011 (No. 2) Regulations subject to the provisions of regulation 3 explained below. The 2011 (No. 2) Regulations will continue to apply to the provision of support to students in relation to the academic year which begins on or after 1 September 2012 but before 1 September 2013. Regulation 3 sets out the extent of the revocation. Changes of substance made in these Regulations are highlighted below.

To qualify for financial support a student must be an “eligible student”. Broadly, a person is an eligible full-time student if that person falls within one of the categories listed in Part 2 of Schedule 1 and also satisfies the eligibility provisions in Part 2 of the Regulations (separate eligibility provisions apply to students undertaking distance learning, part-time and postgraduate courses and Parts 11 to 13 of the Regulations refer).

The Regulations apply to students ordinarily resident in Wales wherever they study on a designated course in the United Kingdom. For the purposes of these Regulations a person who is ordinarily resident in Wales, England, Scotland, Northern Ireland, the Channel Islands or the Isle of Man as a result of having moved from one of those areas for the purpose of undertaking a designated course is considered ordinarily resident in the place from which that person

moved (Schedule 1, paragraph 1(3)). An eligible student must also satisfy any requirements elsewhere in the Regulations; in particular the specific requirements applicable to each type of financial support.

Support is only available under the Regulations in respect of “designated” courses within the meaning of regulations 5, 78, 95, 121 and Schedule 2.

The distinction between old system eligible students and new system eligible students (introduced by the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2006) in relation to financial support to students for full-time courses is retained (regulation 2(1)).

Old system eligible students are eligible students attending courses that started before 1 September 2006, gap-year students starting courses before 1 September 2007 and certain other categories of student. The following grants and loans are available to old system eligible students subject to the conditions prescribed in the relevant regulations—

- Grant for fees (regulations 16 to 18);
- Fee contribution loan (regulation 22);
- Grant for disabled students’ living costs (regulation 29);
- Grants for dependants (regulations 30 to 35);
- Grant for travel (regulations 37 to 39);
- Higher education grant (regulation 40); and
- Loans for living costs (Part 6).

A new system eligible student is an eligible student who started their course on or after 1 September 2006 and is continuing on that course after 31 August 2013, or starts their present course on or after 1 September 2013, and is not an old system eligible student. The following grants and loans are available to new system eligible students subject to the conditions prescribed in the relevant regulations—

- Fee grant (regulation 19);
- New fee grant (regulation 20);
- Fee loan (regulations 23 and 24);
- New fee loan (regulation 25);
- New private institution fee loan (regulation 26);

- Accelerated graduate entry fee loan (regulation 27);
- Grant for disabled students' living costs (regulation 29);
- Grants for dependants (regulations 30 to 35);
- Grant for travel (regulations 37 to 39);
- Maintenance grant or special support grant (regulations 41 to 48);
- Loans for living costs (Part 6); and
- College fee loans (Schedule 4).

The Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2009 introduced two new sub-categories of new system eligible student, namely a "2010 cohort student" and a "2010 gap year student". The Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2011 introduced a further two new sub-categories of new system eligible student, namely a "2011 cohort student" and a "2011 gap year student". The 2011 (No. 2) Regulations then introduced one further new category of new system eligible student, namely a 2012 cohort student. A 2012 cohort student is a new system eligible student who begins the present course on or after 1 September 2012 and the relevant provisions will continue to apply to students who begin the present course on or after 1 September 2013. The definition of 2012 cohort student in regulation 2(1) also provides that certain categories of students are not classed as 2012 cohort students. The term "new cohort student" (*"myfyriwr carfan newydd"*) in regulation 2(1) also collectively describes 2010 cohort students, 2011 cohort students and 2012 cohort students.

Part 2 of these Regulations concerns eligibility.

Part 3 of these Regulations makes provision for applications for support (regulation 9), time limits for applications (regulation 10) and regulation 11 and Schedule 3 specify the information that must be provided by applicants.

Part 4 of these Regulations provides for fee support, in the form of grants for fees and fee loans. Regulation 13(5) provides that an eligible student will only qualify for fee support in relation to a full time distance learning course if they are undertaking the course in Wales on the first day of the first academic year. Regulation 13(6) also provides that an eligible student will no longer qualify for fee support in relation to a full time distance learning course if they are undertaking that course outside the United

Kingdom. Similar provision is made later in the Regulations in relation to eligibility for grants for disabled students' living costs (regulation 29), support for distance learning courses (regulation 80), grants for disabled distance learning students' living costs (regulation 83) and support for part-time courses (regulation 93).

Regulation 20 provides for the payment of a new fee grant to 2012 cohort students. Regulation 23 provides for the payment of fee loans to new system eligible students who do not qualify for a fee grant. A new cohort student (other than a 2012 cohort student) falls within that category. Regulation 24 provides for the payment of fee loans to students who qualify for a fee grant under regulation 19. The payment of fee loans under regulations 23 and 24 will only apply in relation to courses beginning before 1 September 2012.

The fee loans available in respect of courses beginning on or after 1 September 2012 are set out in regulations 25 to 27. Regulation 25 provides for the payment of a new fee loan to 2012 cohort students who undertake courses at publicly funded institutions. Regulation 26 provides for the payment of a new private institution fee loan to 2012 cohort students who undertake courses at private institutions. Finally, regulation 27 provides for the payment of an accelerated graduate entry fee loan to students who begin accelerated graduate entry courses on or after 1 September 2012.

Part 5 of these Regulations makes provision for grants for living costs which includes grants for travel for certain categories of eligible student.

It provides that the amount of maintenance grant or special support grant payable to a new system eligible student will differ according to whether the student is a new system eligible student who is not a new cohort student (regulations 42 and 46); a 2010 cohort student and a 2012 cohort student (regulations 43 and 47); or a 2011 cohort student (regulations 44 and 48). The maximum amount of maintenance grant or special support grant payable to a new system eligible student who is a 2010 cohort student or a 2012 cohort student is £5,161 and £5,780 to a 2011 cohort student.

Part 6 makes provision for loans for living costs. Such loans are payable to both old system eligible students and new system eligible students.

The amount of loan payable to a new system eligible student may differ according to whether the student is a new system eligible student who is not a new cohort student (regulation 52); a 2010 cohort student, a 2012 cohort student or a 2012 accelerated graduate entry student undertaking their first year of study (regulation 54); or a 2011 cohort student (regulation 55).

Part 7 sets out general provisions relating to loans made under the Regulations.

Part 8 and Schedule 4 make provision for “college fee loans”. These are loans in respect of the college fees payable by a qualifying student to a college or permanent private hall of the University of Oxford or to a college of the University of Cambridge in connection with attendance of a qualifying student on a qualifying course.

Part 9 and Schedule 5 continue to make provision for the means-testing of students taking designated full-time courses. A contribution from the student is calculated on the basis of household income. The contribution is to be applied to specified grants and loans until it is extinguished against the amount of the particular grants and loans for which the student qualifies.

Part 10 makes provision for payment of grants and loans.

Part 11 makes provision for support to students who are undertaking designated distance learning courses.

Part 12 and Schedule 6 make provision for support for part-time courses.

Part 13 makes provision for postgraduate students with disabilities.

Part 14 makes amendments to the 2011 (No. 2) Regulations.

2012 No. 3097(W. 313)

EDUCATION, WALES

**The Education (Student Support)
(Wales) Regulations 2012**

Made 12 December 2012

Laid before the National Assembly for Wales
14 December 2012

Coming into force 4 January 2013

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PART 1

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SCHEDULE 6 FINANCIAL ASSESSMENT
PART-TIME GRANTS FOR
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The Welsh Ministers, in exercise of the powers conferred upon the Secretary of State by sections 22 and 42(6) of the Teaching and Higher Education Act 1998(1), and now exercisable by them(2) make the following Regulations:

PART 1

GENERAL

Title, commencement and application

1.—(1) The title of these Regulations is the Education (Student Support) (Wales) Regulations 2012.

(2) These Regulations come into force on 4 January 2013 and apply in relation to Wales.

Interpretation

2.—(1) In these Regulations, except where the context otherwise requires—

“the 1962 Act” (“*Deddf 1962*”) means the Education Act 1962(3);

“the 1998 Act” (“*Deddf 1998*”) means the Teaching and Higher Education Act 1998;

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- (1) 1998 c.30; section 22 was amended by the Learning and Skills Act 2000 (c.21), section 146 and Schedule 11, the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6, the Finance Act 2003 (c.14), section 147, the Higher Education Act 2004 (c.8), sections 42 and 43 and Schedule 7 and the Apprenticeships, Skills, Children and Learning Act 2009 (c.22), section 257. See section 43(1) of the Teaching and Higher Education Act 1998 for the definition of “prescribed” and “regulations”.
- (2) The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 (except so far as they relate to the making of any provision authorised by subsection (2)(a), (c), (j) or (k), (3)(e) or (f) or (5) of section 22) were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004 and the Higher Education Act 2004 (Commencement No. 2 and Transitional Provision) (Wales) Order 2005 (S.I. 2005/1833 (W.149) (C.79)) as amended by the Higher Education Act 2004 (Commencement No. 2 and Transitional Provision) (Wales) (Amendment) Order 2006 (S.I. 2006/1660 (W.159) (C.56)). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraphs 30(1) and 30(2)(c) of Schedule 11 to the Government of Wales Act 2006 (c.32).
- (3) 1962 c. 12; sections 1 to 4 and Schedule 1 were substituted by the provisions set out in Schedule 5 to the Education Act 1980 (c. 20). Section 1(3)(d) was amended by the Education (Grants and Awards) Act 1984 (c. 11), section 4. Section 4 was amended by the Education Act 1994 (c. 30), Schedule 2, paragraph 2. The entire Act was repealed by the Teaching and Higher Education Act 1998 (c. 30), section 44(2) and Schedule 4, subject to the transitional provisions and savings set out in the Teaching and Higher Education Act 1998 (Commencement No. 4 and Transitional Provisions) Order 1998 (S.I. 1998/3237), article 3.

“the 1998 Regulations” (“*Rheoliadau 1998*”) means the Education (Student Support) Regulations 1998(1);

“the 1999 Regulations” (“*Rheoliadau 1999*”) means the Education (Student Support) Regulations 1999(2);

“the 2000 Regulations” (“*Rheoliadau 2000*”) means the Education (Student Support) Regulations 2000(3);

“the 2001 Regulations” (“*Rheoliadau 2001*”) means the Education (Student Support) Regulations 2001(4);

“the 2002 Regulations” (“*Rheoliadau 2002*”) means the Education (Student Support) Regulations 2002(5);

“the 2003 Regulations” (“*Rheoliadau 2003*”) means the Education (Student Support) (No. 2) Regulations 2002 as amended(6);

“the 2004 Regulations” (“*Rheoliadau 2004*”) means the 2003 Regulations as further amended(7);

“the 2005 Regulations” (“*Rheoliadau 2005*”) means the Education (Student Support) Regulations 2005(8);

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- (1) S.I. 1998/2003, revoked with savings by S.I. 1999/496.
 - (2) S.I. 1999/496, amended by S.I. 1999/2266 and S.I. 2000/1120. These instruments were revoked by S.I. 2000/1121, except in relation to the provision of support to students in respect of an academic year which begins before 1 September 2000.
 - (3) S.I. 2000/1121, amended by S.I. 2000/1490, S.I. 2000/2142 and S.I. 2000/2912. These instruments were revoked by S.I. 2001/951 except in relation to the provision of support to students in respect of an academic year which begins before 1 September 2001.
 - (4) S.I. 2001/951, amended by S.I. 2001/1730, S.I. 2001/2355 and S.I. 2002/174. These instruments were revoked by S.I. 2002/195 except in relation to the provision of support to students in respect of an academic year which begins before 1 September 2002.
 - (5) S.I. 2002/195, amended by S.I. 2002/1318, S.I. 2002/2088 and S.I. 2002/3059. S.I. 2002/195, S.I. 2002/1318 and S.I. 2002/2088 were revoked by S.I. 2002/3200 except in relation to the provision of support to students in respect of an academic year which begins before 1 September 2003. S.I. 2002/3059 was revoked by S.I. 2003/1065.
 - (6) S.I. 2002/3200, amended by S.I. 2003/1065 and S.I. 2003/3280. S.I. 2002/3200 and S.I. 2003/1065 were revoked by S.I. 2005/52 with savings.
 - (7) S.I. 2002/3200, amended by S.I. 2003/1065, S.I. 2003/3280, S.I. 2004/161, S.I. 2004/1602, S.I. 2004/2041, S.I. 2004/2598, S.I. 2005/1341 and S.I. 2005/2084. There are other amendments which are not relevant to these Regulations. Except for S.I. 2005/1341 and S.I. 2005/2084, these instruments were revoked with savings by S.I. 2005/52. S.I. 2005/1341 and S.I. 2005/2084 were revoked, with savings, in relation to Wales by S.I. 2006/126 (W.19).
 - (8) S.I. 2005/52, amended by S.I. 2005/1341, S.I. 2005/2084, S.I. 2005/3482 and S.I. 2006/955. Except for S.I. 2005/3482 and S.I. 2006/955, these instruments were revoked in relation to Wales, with savings, by S.I. 2006/126 (W.19).

“the 2006 Regulations” (“*Rheoliadau 2006*”) means the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2006(1);

“the 2007 Regulations” (“*Rheoliadau 2007*”) means the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2007(2);

“the 2008 Regulations” (“*Rheoliadau 2008*”) means the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2008(3);

“the 2008 (No. 2) Regulations” (“*Rheoliadau (Rhif 2) 2008*”) means the Assembly Learning Grants and Loans (Higher Education) (Wales) (No. 2) Regulations 2008(4);

“the 2009 Regulations” (“*Rheoliadau 2009*”) means the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2009(5);

“the 2011 Regulations” (“*Rheoliadau 2011*”) means the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2011(6);

“the 2011 (No. 2) Regulations” (“*Rheoliadau (Rhif 2) 2011*”) means the Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011(7);

“2006 gap year student” (“*myfyriwr blwyddyn i ffwrdd 2006*”) has the meaning given in paragraph (2);

“2010 cohort student” (“*myfyriwr carfan 2010*”) means an eligible student who begins the present course on or after 1 September 2010 and before 1 September 2011, other than—

- (a) a 2010 gap year student;
- (b) an eligible student who started the present course on or after 1 September 2010 and before 1 September 2011 where that course is an end-on course following on from a course that the student started before—

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- (1) S.I. 2006/126 (W.19), amended by S.I. 2006/1863 (W.196). These instruments were revoked by S.I. 2007/1045 (W.104) with savings in relation to the provision of support to students in respect of an academic year which begins on or after 1 September 2006 but before 1 September 2007.
 - (2) S.I. 2007/1045 (W.104), amended by S.I. 2007/2312 (W.183), S.I. 2007/2851 (W.248) and S.I. 2007/3230 (W.282). S.I. 2007/1045 (W.104) was revoked, with savings, by S.I. 2008/1273 (W.130).
 - (3) S.I. 2008/1273 (W.130), amended by S.I. 2008/2140 (W.189). These instruments were revoked, with savings, by S.I. 2008/3170 (W.283).
 - (4) S.I. 2008/3170 (W.283), amended by S.I. 2009/2156 (W.180). S.I. 2008/3170 (W.283) was revoked, with savings, by S.I. 2009/2737 (W.235).
 - (5) S.I. 2009/2737 (W.235). This instrument was revoked, with savings by S.I. 2011/148 (W.32)
 - (6) S.I. 2011/148 (W.32) as amended by S.I. 2011/1978 (W.218). This instrument was revoked, with savings by S.I. 2011/886 (W.130).
 - (7) S.I. 2011/886 (W.130) as amended by S.I. 2011/1978 (W.218), S.I. 2012/14 (W.5) and S.I. 2012/1156 (W.139).

- (i) 1 September 2010; or
- (ii) 1 September 2011 and in relation to which the student is a 2010 gap year student; or
- (c) an eligible student who started the present course on or after 1 September 2010 and before 1 September 2011 whose status as an eligible student transferred to that course as a result of one or more transfers of that status by the Welsh Ministers pursuant to regulations made under section 22 of the 1998 Act from a designated course which the student began before—

- (i) 1 September 2010; or

- (ii) 1 September 2011 and in relation to which the student is a 2010 gap year student;

“2010 gap year student” (“*myfyriwr blwyddyn i ffwrdd 2010*”) has the meaning given in paragraph (12);

“2011 cohort student” (“*myfyriwr carfan 2011*”) means an eligible student who begins the present course on or after 1 September 2011 but before 1 September 2012, other than—

- (a) a 2011 gap year student;
- (b) an eligible student who started the present course on or after 1 September 2011 but before 1 September 2012 where that course is an end-on course following on from a course that—
 - (i) the student started before 1 September 2011; or
 - (ii) the student started before 1 September 2012 and in relation to which the student is a 2011 gap year student; or
- (c) an eligible student who started the present course on or after 1 September 2011 and before 1 September 2012 and whose status as an eligible student transferred to that course as a result of one or more transfers of that status by the Welsh Ministers pursuant to regulations made under section 22 of the 1998 Act from a designated course which the student began—

- (i) before 1 September 2011; or

- (ii) before 1 September 2012 and in relation to which the student is a 2011 gap year student;

“2011 gap year student” (“*myfyriwr blwyddyn i ffwrdd 2011*”) has the meaning given in paragraph (16);

“2012 accelerated graduate entry student” (“*myfyriwr mynediad graddedig carlam 2012*”) means an eligible student who begins an

accelerated graduate entry course on or after 1 September 2012;

“2012 cohort student” (“*myfyriwr carfan 2012*”) means an eligible student who begins the present course on or after 1 September 2012, other than —

- (a) an eligible student who started the present course on or after 1 September 2012 where that course is an end-on course following on from a course that the student started before 1 September 2012; or
- (b) an eligible student who started the present course on or after 1 September 2012 whose status as an eligible student transferred to that course as a result of one or more transfers of that status by the Welsh Ministers pursuant to regulations made under section 22 of the 1998 Act from a designated course which the student began before 1 September 2012; or
- (c) a 2012 accelerated graduate entry student.

“academic authority” (“*awdurdod academaidd*”) means, in relation to an institution, the governing body or other body having the functions of a governing body and includes a person acting with the authority of that body;

“academic year” (“*blwyddyn academaidd*”) means the period of twelve months beginning on 1 January, 1 April, 1 July or 1 September of the calendar year in which the academic year of the course in question begins according to whether that academic year begins on or after 1 January and before 1 April, on or after 1 April and before 1 July, on or after 1 July and before 1 August or on or after 1 August and on or before 31 December, respectively;

“accelerated course” (“*cwrs carlam*”) means a course of two years’ duration which persons undertaking it are normally required by the institution providing it to attend (whether at premises of the institution or elsewhere) for a period of at least 40 weeks in the final year;

“accelerated graduate entry course” (“*cwrs mynediad graddedig carlam*”) means a course—

- (a) the standard of which is not higher than a first degree course and which leads to a qualification as a medical doctor or dentist;
- (b) where a first degree or equivalent qualification would normally be required for entry to the course;
- (c) which begins on or after 1 September 2012; and
- (d) which does not exceed 4 years in duration;

“accelerated graduate entry fee loan” (“*benthyciad at ffioedd mynediad graddedig carlam*”) means a

loan payable by the Welsh Ministers under regulation 27;

“adult dependants’ grant” (“*grant dibynyddion mewn oed*”) means the grant payable under regulation 31;

“applicant” (“*ceisydd*”) means, in relation to a person who applies for support payable under these Regulations to an eligible—

- (a) student, a person who makes an application under regulation 9;
- (b) distance learning student, a person who makes an application under regulation 84;
- (c) part-time student, a person who makes an application under regulation 109; and
- (d) postgraduate student, a person who makes an application under regulation 124;

“borrower” (“*benthyciwr*”) means a person to whom a loan has been made;

“bursary year” (“*blwyddyn bwrsari*”) means an academic year of a course in relation to which the student is eligible to apply for a healthcare bursary or a Scottish healthcare allowance, the amount of which is calculated by reference to that student’s income whether or not the calculation results in a nil amount;

“childcare grant” (“*grant gofal plant*”) means the grant payable under regulation 32;

“college fees” (“*ffioedd coleg*”) means the fees payable by a qualifying student to a college or permanent private hall of the University of Oxford or to a college of the University of Cambridge in connection with the qualifying student’s attendance on a qualifying course;

“college fee loan” (“*benthyciad at ffioedd coleg*”) means a loan for college fees payable to a qualifying student pursuant to regulations made by the Welsh Ministers under section 22 of the 1998 Act;

“compressed degree course” (“*cwrs gradd cywasgedig*”) means a course determined by the Secretary of State to be a compressed degree course;

“compressed degree student” (“*myfyriwr cwrs gradd cywasgedig*”) means an eligible student who—

- (a) is undertaking a compressed degree course in the United Kingdom (the “course”);
- (b) either—
 - (i) began the course on or after 1 September 2006 and is continuing on that course after 31 August 2013; or

- (ii) begins the course on or after 1 September 2013; and
- (c) either—
 - (i) is required to be in attendance on the course for part of the academic year for which the eligible student is applying for support under these Regulations; or
 - (ii) is a disabled eligible student who is not required to be in attendance on the course as that student is unable to attend because of a reason which relates to that student's disability;

“contribution” (*“cyfraniad”*) means in relation to—

- (a) an eligible student, the student's contribution calculated pursuant to regulation 66 and Schedule 5;
- (b) an eligible part-time student, the student's contribution calculated pursuant to regulation 106 and Schedule 6;

“course for the initial training of teachers” (*“cwrs ar gyfer hyfforddiant cychwynmol athrawon”*) includes such a course leading to a first degree unless otherwise indicated but excludes an employment-based teacher training scheme;

“designated course” (*“cwrs dynodedig”*) means a course designated by regulation 5 or by the Welsh Ministers under regulation 5;

“designated distance learning course” (*“cwrs dysgu o bell dynodedig”*) means a course designated by the Welsh Ministers under regulation 78;

“designated part-time course” (*“cwrs rhan-amser dynodedig”*) means a course designated by regulation 95 or by the Welsh Ministers under regulation 95;

“designated postgraduate course” (*“cwrs ôl-radd dynodedig”*) means a course designated by regulation 121 or by the Welsh Ministers under regulation 121;

“Directive 2004/38” (*“Cyfarwyddeb 2004/38”*) means Directive 2004/38/EC of the European Parliament and of the Council⁽¹⁾ on the right of citizens of the Union and their family members to move and reside freely in the territory of the Member States;

“distance learning course” (*“cwrs dysgu o bell”*) means a full-time course beginning on or after 1 September 2012 in relation to which a student undertaking the course is not required to be in

(1) OJ No L158, 30.04.2004, p.77-123.

attendance by the institution providing the course, other than to satisfy any requirement imposed by the institution to attend any institution—

- (a) for the purposes of registration, enrolment or any examination; or
- (b) on a weekend or during any vacation;

“electronic signature” (“*llofnod electronig*”) is so much of anything in electronic form as—

- (a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and
- (b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both;

“eligible distance learning student” (“*myfyriwr dysgu o bell cymwys*”) has the meaning given in regulation 76;

“eligible part-time student” (“*myfyriwr rhan-amser cymwys*”) has the meaning given in regulation 93;

“eligible prisoner” (“*carcharor cymwys*”) means a prisoner—

- (a) who begins the present course on or after 1 September 2012;
- (b) has been authorised by the prisoner Governor or Director or other appropriate authority to study the present course;
- (c) whose earliest release date is within 6 years of the first day of the first academic year of the present course;
- (d) who has not transferred to the present course under regulation 8 from a course beginning before 1 September 2012; and
- (e) is not beginning an end-on course on or after 1 September 2012;

“eligible postgraduate student” (“*myfyriwr ôl-raddedig cymwys*”) has the meaning given in regulation 119;

“eligible student” (“*myfyriwr cymwys*”) has the meaning given in regulation 4;

“employment-based teacher training scheme” (“*cynllun hyfforddi athrawon ar sail cyflogaeth*”) means—

- (a) a scheme established by the Welsh Ministers for the purpose of regulation 8 of the Education (School Teachers’ Qualifications) (Wales) Regulations 2004⁽¹⁾ whereby a

(1) S.I. 2004/1729 (W.173), as amended by S.I. 2007/2811 (W.238), S.I. 2008/215 (W.26) and S.I. 2010/1142 (W.101).

person may undertake initial teacher training in order to obtain qualified teacher status while being employed to teach at a maintained school, an independent school or other institution except a pupil referral unit; or

- (b) a scheme established by the Secretary of State whereby a person may undertake initial teacher training in order to obtain qualified teacher training status while being employed to teach at a school, city college, Academy, independent school or other institution except a pupil referral unit;

“end-on course” (“*cwrs penben*”) means—

- (a) a full-time first degree course (other than a first degree course for the initial training of teachers) which, disregarding any intervening vacation, a student begins to attend immediately after ceasing to attend a full-time course listed in paragraph 2 or 3 of Schedule 2 for which the student received or was entitled to receive a transitional award, a loan under the 1998 Regulations or support under the 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2008 (No. 2), 2009, 2011 or 2011 (No. 2) Regulations;
- (b) a full-time honours degree course beginning on or after 1 September 2006 which, disregarding any intervening vacation, a student starts to attend immediately after ceasing to attend a full-time foundation degree course for which the student received or was entitled to receive a transitional award, a loan under the 1998 Regulations or support under the 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2008 (No. 2), 2009, 2011 or 2011 (No. 2) Regulations;
- (c) a course for the initial training of teachers beginning before 1 September 2006 the duration of which does not exceed two years (the duration of a part-time course being expressed as its full-time equivalent) which, disregarding any intervening vacation, a student begins to attend immediately after ceasing to attend a first degree course for which the student received or was entitled to receive a transitional award, a loan under the 1998 Regulations or support under the 1999, 2000, 2001, 2002, 2003, 2004 or 2005 Regulations;

“Erasmus year” (“*blwyddyn Erasmus*”) means an academic year of a course during which a student is participating in the action scheme of the European Union for the mobility of university

students known as ERASMUS(1) and where the student's course is a course referred to in regulation 5(1)(e) and all the periods of—

- (a) study during the academic year are attended at an institution outside the United Kingdom; or
- (b) work placement during the academic year are attended at a workplace outside the United Kingdom;

“EU national” (“*gwladolyn o'r UE*”) means a national of a Member State of the European Union;

“European Union” (“*yr Undeb Ewropeaidd*”) means the territory comprised by the Member States of the European Union as constituted from time to time;

“fees” (“*ffioedd*”) has the meaning given in section 41(1) of the Higher Education 2004(2) except in references to college fees;

“fee contribution loan” (“*benthyciad cyfrannu at ffioedd*”) means a loan for fees payable to an old system eligible student pursuant to Part 4;

“fee grant” (“*grant at ffioedd*”) means a grant made by the Welsh Ministers under regulation 19;

“fee loan” (“*benthyciad at ffioedd*”) means a loan for fees payable to a new system eligible student pursuant to Part 4;

“fee support” (“*cymorth at ffioedd*”) means grants in relation to fees pursuant to regulations made by the Welsh Ministers under section 22 of the 1998 Act and includes fee contribution loans and fee loans in relation to fees under Part 4;

“flexible postgraduate ITT course” (“*cwrs HCA hyblyg i ôl-raddedigion*”) means a postgraduate course of initial teacher training, the length and pattern of which is determined by reference to the eligible student's experience and training requirements and which has been approved by the Training and Development Agency for Schools(3), the Secretary of State or the Higher Education Funding Council for Wales(4) where the course—

- (a) began before 1 September 2010;

(1) ERASMUS is part of the European Community action programme SOCRATES; OJ No L28, 3.2.2000, p.1.

(2) 2004 c.8. Section 41(1) has been amended but those amendments are not relevant to these Regulations.

(3) This body was originally established under section 1 of the Education Act 1994 (c. 30) as the Teacher Training Agency. By virtue of section 74 of the Education Act 2005 (c.18), it became known instead as the Training and Development Agency for Schools. The body was abolished by the Education Act 2011 (c.21) with effect from 1 April 2012.

(4) See sections 85 - 90 of the Education Act 2005 for HEFCW's function in relation to teacher training.

(b) begins on or after 1 September 2010 where the student transfers to the present course pursuant to regulation 8 from a course for the initial training of teachers which began before 1 September 2010; or

(c) begins on or after 1 September 2010 but before 1 September 2011 and in relation to which the student is a 2010 gap year student;

“former Metropolitan Police District” (“*cyn Ardal yr Heddlu Metropolitanaid*”) means—

(a) Greater London, excluding the city of London, the Inner Temple and the Middle Temple;

(b) in the county of Essex, in the district of Epping Forest—

the area of the former urban district of Chigwell,

the parish of Waltham Abbey;

(c) in the county of Hertfordshire—

in the borough of Broxbourne, the area of the former urban district of Cheshunt,

the district of Hertsmere,

in the district of Welwyn Hatfield, the parish of Northaw; and

(d) in the county of Surrey—

in the borough of Elmbridge, the area of the former urban district of Esher,

the boroughs of Epsom and Ewell and Spelthorne,

in the district of Reigate and Banstead, the area of the former urban district of Banstead;

“grant for disabled distance learning students’ living costs” (“*grant at gostau byw myfyrwyr dysgu o bell anabl*”) means the grant payable under regulation 83;

“grant for disabled part-time students’ living costs” (“*grant at gostau byw myfyrwyr rhan-amser anabl*”) means the grant payable under regulation 98;

“grant for disabled students’ living costs” (“*grant at gostau byw myfyrwyr anabl*”) means the grant payable under regulation 29;

“grant for fees” (“*grant ar gyfer ffioedd*”) means a grant for fees payable to an old system eligible student pursuant to Part 4 of these Regulations;

“grant for living costs” (“*grant at gostau byw*”) (without more) means a grant under any of the provisions of Part 5 of these Regulations;

“grants for dependants” (“*grantiau ar gyfer dibynyddion*”) means the grants and allowance listed in regulation 30(1);

“healthcare bursary” (“*bwrsari gofal iechyd*”) means a bursary or award of similar description under section 63 of the Health Services and Public Health Act 1968(1) or Article 44 of the Health and Personal Social Services (Northern Ireland) Order 1972(2);

“higher education course” (“*cwrs addysg uwch*”) means a course referred to in Schedule 2 or a postgraduate or other course the standard of which is higher than the standard of a first degree course;

“household income” (“*incwm yr aelwyd*”, “*incwm aelwyd*”, “*incwm sydd gan yr aelwyd*”) in relation to—

(a) an eligible student, has the meaning given in Schedule 5;

(b) an eligible part-time student, has the meaning given in Schedule 6;

“information” (“*gwybodaeth*”) includes documents;

“Institute” (“*yr Athrofa*”) means the University of London Institute in Paris(3);

“intensive course” (“*cwrs dwys*”) means an accelerated course or a compressed degree course;

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- (1) 1968 c. 46; section 63 was amended by the National Health Service (Scotland) Act 1972 (c. 58), Schedule 7, the National Health Service Reorganisation Act 1973 (c. 32), Schedules 4 and 5, the National Health Service Act 1977 (c. 49), Schedules 15 and 16, the National Health Service (Scotland) Act 1978 (c. 29), Schedules 16 and 17, the Local Government Act 1985 (c. 51), Schedule 17, the Health and Medicines Act 1988 (c. 49), section 20, section 25(2) and Schedule 3, the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, the Health Authorities Act 1995 (c. 17), Schedule 1, the Local Government Reorganisation (Wales) (Consequential Amendments No. 2) Order 1996 (S.I. 1996/1008), the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, the Health Act 1999 (c. 8), Schedule 4, the Health and Social Care Act 2001 (c. 15), Schedule 5, the National Health Service Reform and Health Care Professions Act 2002 (c. 17), Schedules 2, 5 and 9, S.I. 2002/2202, article 4(a) and (b), the National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc Provisions) Regulations 2002 (S.I. 2002/2469), Schedule 1, the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), Schedules 4, 11 and 14, the Health and Social Care (Community Health and Standards) Act 2003 Commencement (No. 2) Order 2004 (S.I. 2004/288), article 7, the Health and Social Care (Community Health and Standards) Act 2003 (Commencement No. 1) (Wales) Order 2004 (S.I. 2004/480); the Children Act 2004 (c. 31), section 55; S.I. 2004/957, the Schedule; the National Health Service (Consequential Provisions) Act 2006 (c. 43), Schedule 1, S.I. 2007/961, the Schedule and the Health Act 2009, Schedule 1 S.I. 1972/1265 (N.I. 14).
- (2) The University of London Institute in Paris was formerly known as the British Institute in Paris. The British Institute in Paris formally changed its name on 1 January 2005.
- (3)

“Islands” (“*Ynysoedd*”) means the Channel Islands and the Isle of Man;

“loan” (“*benthyciad*”), except where otherwise indicated, means a loan pursuant to any regulations made by the Welsh Ministers under section 22 of the 1998 Act, including the interest accrued on the loan and any penalties or charges incurred in connection with it;

“loan for living costs” (“*benthyciad at gostau byw*”) means a loan for living costs pursuant to regulations made by the Welsh Ministers under section 22 of the 1998 Act;

“maintained school” (“*ysgol a gynhelir*”) means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school;

“new cohort student” (“*myfyriwr carfan newydd*”) means a 2010 cohort student, a 2011 cohort student and a 2012 cohort student;

“new fee grant” (“*grant newydd at ffioedd*”) means a grant made by the Welsh Ministers under regulation 20;

“new fee loan” (“*benthyciad newydd at ffioedd*”) means a loan payable by the Welsh Ministers under regulation 25;

“new private institution fee loan” (“*benthyciad newydd at ffioedd sefydliad preifat*”) means a loan payable by the Welsh Ministers under regulation 26;

“new system eligible student” (“*myfyriwr cymwys o dan y drefn newydd*”) means an eligible student who—

(a) is not an old system eligible student; and

(b) either—

(i) started the present course on or after 1 September 2006 and is continuing on that course after 31 August 2013; or

(ii) starts the present course on or after 1 September 2013;

“old award” (“*hen ddyfarniad*”) is an award within the meaning of the Education (Mandatory Awards) Regulations 2003⁽¹⁾;

“old flexible postgraduate course for the initial training of teachers” (“*hen gwrs ôl-radd hyblyg ar gyfer hyfforddiant cychwynnol i athrawon*”) means a flexible postgraduate ITT course which a student started to attend before 1 September 2008;

(1) S.I. 2003/1994, amended by S.I. 2004/1038, S.I. 2004/1792, S.I. 2005/2083, S.I. 2005/3137, S.I. 2005/3482, S.I. 2006/930, S.I. 2007/1629, S.I. 2008/1477 and the Education Act 2005, section 74.

“old system eligible student” (“*myfyriwr cymwys o dan yr hen drefn*”) means an eligible student who—

- (a) started the present course before 1 September 2006 and who is continuing on that course after 31 August 2012;
- (b) is a 2006 gap year student in relation to the present course;
- (c) started the present course on or after 1 September 2006 where that course is an end-on course (other than one of the kind referred to in paragraph (c) of the definition of “end-on course” in this regulation) following on from a course that—
 - (i) the eligible student started before 1 September 2006; or
 - (ii) the eligible student started before 1 September 2007 and in relation to which the eligible student was a 2006 gap year student; or
- (d) started the present course on or after 1 September 2006 and whose status as an eligible student transferred to that course as a result of one or more transfers of that status by the Welsh Ministers pursuant to regulations made under section 22 of the 1998 Act from a designated course which the eligible student began—
 - (i) before 1 September 2006; or
 - (ii) before 1 September 2007 and in relation to which the eligible student was a 2006 gap year student;

“ordinary duration” (“*cyfnod arferol*”) means, in relation to a designated course, the number of academic years that a standard student would take to complete the designated course;

“parents’ learning allowance” (“*twfans dysgu ar gyfer rhieni*”) means the allowance payable under regulation 33;

“part-time adult dependants’ grant” (“*grant rhan-amser ar gyfer dibynyddion mewn oed*”) means the grant payable under regulation 101;

“part-time childcare grant” (“*grant rhan-amser ar gyfer gofal plant*”) means the grant payable under regulation 102;

“part-time distance learning course” (“*cwrs dysgu o bell rhan-amser*”) means a designated part-time course in relation to which a student undertaking the course is not required to be in attendance by the institution providing the course, other than to satisfy any requirement imposed by the institution to attend any institution—

(a) for the purposes of registration, enrolment or any examination; or

(b) on a weekend or during any vacation;

“part-time grants for dependants” (“*grantiau rhan-amser ar gyfer dibynyddion*”) means the grants and allowance listed in regulation 100(1);

“part-time parents’ learning allowance” (“*lwfans dysgu rhan-amser ar gyfer rhieni*”) means the allowance payable under regulation 103;

“periods of work experience” (“*cyfnodau o brofiad gwaith*”) means—

(a) periods of industrial, professional or commercial experience associated with full-time study at an institution but at a place outside that institution;

(b) periods during which a student is employed and residing in a country whose language is one that the student is studying for the student’s course (provided that the period of residence in that country is a requirement of the student’s course and the study of one or more modern languages accounts for not less than one half of the total time spent studying on the course);

“person with leave to enter or remain” (“*person sydd a chaniatâd i ddod i mewn neu i aros*”) means a person (“A” in this definition)—

(a) who has been informed by a person acting under the authority of the Secretary of State for the Home Department that, although A is considered not to qualify for recognition as a refugee, it is thought right to allow A to enter or remain in the United Kingdom;

(b) who has been granted leave to enter or to remain accordingly;

(c) whose period of leave to enter or remain has not expired or has been renewed and the period for which it was renewed has not expired or in respect of whose leave to enter or remain an appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002⁽¹⁾); and

(d) who has been ordinarily resident in the United Kingdom and Islands throughout the period since A was granted leave to enter or remain;

“preliminary course” (“*cwrs rhagarweiniol*”) means a course listed in paragraph 2 or 3 of Schedule 2 that is taken before a full-time degree

(1) 2002 c.41. Section 104 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c.19), Schedules 2 and 4, the Immigration, Asylum and Nationality Act 2006 (c.13), section 9 and S.I. 2010/21.

course (other than a first degree course for the initial training of teachers) or a foundation degree course that is taken before a full-time honours degree course, as the case may be;

“prescribed childcare charges” (*“costau rhagnodedig ar gyfer gofal plant”*) means childcare charges of a description prescribed for the purposes of section 12 of the Tax Credits Act 2002⁽¹⁾;

“present course” (*“cwrs presennol”*) means the designated course in respect of which a person is applying for support under regulation 9;

“present distance learning course” (*“cwrs dysgu o bell presennol”*) means the designated distance learning course in respect of which a person is applying for support under regulation 84;

“present part-time course” (*“cwrs rhan-amser presennol”*) means the designated part-time course in respect of which a person is applying for support under regulation 109;

“present postgraduate course” (*“cwrs ôl-radd presennol”*) means the designated postgraduate course in respect of which a person is applying for support under regulation 124;

“prisoner” (*“carchator”*) means a person who is serving a sentence of imprisonment in the United Kingdom including a person who is detained in a young offender institution;

“private institution” (*“sefydliad preifat”*) means an institution which is not publicly funded;

“public funds” (*“cronfeydd cyhoeddus”*) means moneys provided by Parliament including funds provided by the Welsh Ministers;

“publicly funded” (*“a ariennir yn gyhoeddus”, “a ariannwyd yn gyhoeddus”*) means maintained or assisted by recurrent grants out of public funds, and related expressions are to be interpreted accordingly;

“qualified teacher” (*“athro cymwysedig neu athrawes gymwysedig”, “athro cymwysedig neu’n athrawes gymwysedig”*) has the meaning given in section 132(1) of the Education Act 2002⁽²⁾;

“qualifying course” (*“cwrs cymhwysol”*) means a full-time designated course which is provided by

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- (1) Regulation 14 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005) as amended by S.I. 2003/701, S.I. 2003/2815, S.I. 2004/762, S.I. 2004/1276, S.I. 2004/2663, S.I. 2005/769, S.I. 2005/2919, S.I. 2006/766, S.I. 2007/824, S.I. 2007/2479, S.I. 2008/604, S.I. 2008/2169, S.I. 2009/697, S.I. 2009/2887 and S.I. 2010/751 sets out the charges that are prescribed, and thus relevant childcare charges, for the purposes of section 12 of the Tax Credits Act 2002.
- (2) 2002 c. 32.

the University of Oxford or the University of Cambridge and—

- (a) leads to qualification as a social worker, medical doctor, dentist, veterinary surgeon or architect;
- (b) where it began before 1 September 2009, leads to qualification as a landscape architect, landscape designer, landscape manager, town planner or town and country planner; or
- (c) consists of at least one academic year which is a bursary year;

“qualifying student” (*“myfyriwr cymhwysol”*) means a person who meets the conditions set out in paragraph 2 of Schedule 4;

“quarter” (*“chwarter”*) in relation to an academic year means a period in that year—

- (a) beginning on 1 January and ending on 31 March;
- (b) beginning on 1 April and ending on 30 June;
- (c) beginning on 1 July and ending on 31 August; or
- (d) beginning on 1 September and ending on 31 December;

“refugee” (*“ffoadur”*) means a person who is recognised by Her Majesty’s government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28 July 1951⁽¹⁾ as extended by the Protocol thereto which entered into force on 4 October 1967⁽²⁾;

“Research Council” (*“Cyngor Ymchwil”*) means any of the following research councils—

- (a) Arts and Humanities Research Council,
- (b) Biotechnology and Biological Sciences Research Council,
- (c) Economic and Social Research Council,
- (d) Engineering and Physical Sciences Research Council,
- (e) Medical Research Council,
- (f) Natural Environment Research Council,
- (g) Science and Technology Facilities Council;

“right of permanent residence” (*“hawl i breswyllo’n barhaol”*) means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

(1) Cmnd. 9171.
(2) Cmnd. 3906 (out of print; photocopies are available, free of charge, from the Student Support Division, Department for Business, Innovation and Skills, Mowden Hall, Staindrop Road, Darlington DL3 9BG).

“sandwich course” (“*cwrs rhyngosod*”) has the meaning given in paragraph (6);

“Scottish healthcare allowance” (“*lwfans gofal iechyd yr Alban*”) means any allowance under sections 73(f) and 74(1) of the Education (Scotland) Act 1980⁽¹⁾ granted in respect of a person attending a course leading to a qualification in a healthcare profession other than as a medical doctor or dentist;

“specified designated course” (“*cwrs dynodedig a bennir*”) has the meaning given in paragraph (7);

“standard student” (“*myfyriwr safonol*”) is a student who is to be taken—

- (a) to have begun the designated course on the same date as the eligible student in question;
- (b) not to be excused any part of the course;
- (c) not to repeat any part of the course; and
- (d) not to be absent from the course other than during vacations;

“statutory award” (“*dyfarniad statudol*”) means any award bestowed, grant paid or other support provided by virtue of the 1998 Act or the 1962 Act, or any comparable award, grant or other support in respect of undertaking a course which is paid out of public funds;

“student loans legislation” (“*y ddeddfwriaeth ar fenthyciadau i fyfyrwyr*”) means the Education (Student Loans) Act 1990⁽²⁾, the Education (Student Loans) (Northern Ireland) Order 1990⁽³⁾, the Education (Scotland) Act 1980 and regulations made under those Acts or that Order, the Education (Student Support) (Northern Ireland) Order 1998⁽⁴⁾ and regulations made under that Order or the 1998 Act and regulations made under the 1998 Act;

“support” (“*cymorth*”), except where otherwise indicated, means financial support by way of grant

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- (1) 1980 c. 44; section 73(f) was amended by the Teaching and Higher Education Act 1998 (c. 30), section 29(1) and the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), section 3(2) and section 74 was amended by the Self Governing Schools etc. (Scotland) Act 1989 (c. 39), Schedule 10, paragraph 8(17). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
 - (2) 1990 c. 6; repealed by the Teaching and Higher Education Act 1998 (c. 30), Schedule 4, with savings *see* the Teaching and Higher Education Act 1998 (Commencement No.2 and Transitional Provisions) Order 1998 (S.I. 1998/2004) (C.46).
 - (3) S.I. 1990/1506 (N.I. 11), amended by S.I. 1996/1274 (N.I. 1), Article 43 and Schedule 5 Part II, S.I. 1996/1918 (N.I. 15), Article 3 and the Schedule and S.I. 1998/258 (N.I. 1), Articles 3 to 6 and revoked, with savings, by SR (NI) 1998 No 306.
 - (4) S.I.1998/1760 (N.I. 14) to which there have been amendments not relevant to these Regulations.

or loan made by the Welsh Ministers pursuant to regulations made by them under section 22 of the 1998 Act;

“transitional award” (“*dyfarniad trosiannol*”) means an award made under the Education (Mandatory Awards) Regulations 1998(1) other than an old award;

“Turkish worker” (“*gweithiwr Twrcaidd*”) means a Turkish national who—

- (a) is ordinarily resident in the United Kingdom and Islands; and
- (b) is, or has been, lawfully employed in the United Kingdom;

“type 1 teacher training student” (“*myfyriwr math 1 ar gwrs hyfforddi athrawon*”) means a new system eligible student on a course for the initial training of teachers (other than a course for a first degree) whose periods of full-time attendance (including attendance for the purpose of teaching practice) in the academic year in respect of which the student is applying for support under these Regulations are in aggregate at least 6 weeks but less than 10 weeks where the course—

- (a) began before 1 September 2010;
- (b) began on or after 1 September 2010 where the student transfers to the present course pursuant to regulation 8 from a course for the initial training of teachers which began before 1 September 2010; or
- (c) began on or after 1 September 2010 but before 1 September 2011 and in relation to which the student is a 2010 gap year student;

“type 2 teacher training student” (“*myfyriwr math 2 ar gwrs hyfforddi athrawon*”) means a new system eligible student on a course for the initial training of teachers (other than a course for a first degree) whose periods of full-time attendance (including attendance for the purpose of teaching practice) in the academic year in respect of which the student is applying for support under these Regulations are in aggregate 10 weeks or more where the course—

- (a) began before 1 September 2010;
- (b) began on or after 1 September 2010 where the student transfers to the present course pursuant to regulation 8 from a course for the initial training of teachers which began before 1 September 2010; or

(1) S.I. 1998/1166, amended by S.I.1998/1972 and revoked with savings by S.I. 1999/1494.

- (c) began on or after 1 September 2010 but before 1 September 2011 and in relation to which the student is a 2010 gap year student;

“type 3 teacher training student” (“*myfyriwr math 3 ar gwrs hyfforddi athrawon*”) means a new system eligible student on a course for a first degree for the initial training of teachers whose periods of full-time attendance (including attendance for the purpose of teaching practice) in the academic year in respect of which the student is applying for support under these Regulations are in aggregate at least 6 weeks but less than 10 weeks where the course—

- (a) began before 1 September 2010;
- (b) began on or after 1 September 2010 where the student transfers to the present course pursuant to regulation 8 from a course for the initial training of teachers which began before 1 September 2010; or
- (c) began on or after 1 September 2010 but before 1 September 2011 and in relation to which the student is a 2010 gap year student.

“universal healthcare bursary” (“*bwrsari gofal iechyd cyffredinol*”) means a healthcare bursary of £1,000 which is—

- (a) payable to a 2012 cohort student or a 2012 accelerated graduate entry student; and
- (b) in relation to a 2012 cohort student is not calculated by reference to that student’s income; or
- (c) in relation to a 2012 accelerated graduate entry student is not calculated by reference to that student’s income.

(2) In these Regulations a person is a “2006 gap year student” (“*myfyriwr blwyddyn i ffwrdd 2006*”) in relation to a course provided by or on behalf of an institution that was publicly funded as at 1 August 2005 if the person meets the conditions in paragraphs (3) or (5).

- (3) The conditions referred to in paragraph (2) are—
 - (a) the person had on or before 1 August 2005 received an offer, whether conditional on obtaining specified qualifications or not, of a place on the present course or a similar course; and
 - (b) the first academic year of the present course started on or after 1 September 2006 but before 1 September 2007.

(4) In paragraph (3), a course (“the original course”) is similar to the present course if—

- (a) it appears to the academic authority of the institution providing the present course that the subject-matter of the course is in whole or

- in part the same as the subject-matter of the original course; and
- (b) except where the original course is no longer being provided, the present course is provided by the institution which was to have provided the original course.
- (5) The conditions referred to in paragraph (2) are—
- (a) the person had received an offer of a place on a designated course (whether or not at the same institution as the present course) the first academic year of which began before 1 September 2006;
- (b) the person was unable to take up the offer because a specified qualification or grade was not awarded to the person;
- (c) the person appealed against the decision not to award the person the qualification or grade;
- (d) the appeal was allowed after the last date on which the person could have taken up the offer;
- (e) as a result, the person was offered a place on the present course; and
- (f) the first academic year of the present course began on or after 1 September 2006 but before 1 September 2007.
- (6) In these Regulations—
- (a) a course is a “sandwich course” (“*cwrs rhyngosod*”) if—
- (i) it is not a course for the initial training of teachers or an academic year of a designated course that is an Erasmus year;
- (ii) it consists of alternate periods of full-time study in an institution and periods of work experience; and
- (iii) taking the course as a whole, the student attends the periods of full-time study for an average of not less than 18 weeks in each year;
- (b) in calculating the student’s attendance for the purposes of sub-paragraph (a), the course is to be treated as beginning with the first period of full-time study and ending with the last such period;
- (c) for the purposes of sub-paragraph (a), where periods of full-time study and work experience alternate within any week of the course, the days of full-time study are aggregated with each other and with any weeks of full-time study in determining the number of weeks of full-time study in each year.

(7) In these Regulations, the “specified designated course” (“*cwrs dynodedig a bennir*”) means the present course, subject to paragraphs (8) and (9).

(8) Where the student’s status as an eligible student has been transferred to the present course as a result of one or more transfers of that status by the Welsh Ministers from a course (the “initial course”) in connection with which the Welsh Ministers determined the student to be an eligible student pursuant to regulations made by them under section 22 of the 1998 Act, the specified designated course is the initial course.

(9) Where the present course is an end-on course, the specified designated course is the course in relation to which the present course is an end-on course (the “preceding course”). Where the preceding course is itself an end-on course, the specified designated course is the course in relation to which the preceding course is an end-on course.

(10) In these Regulations, the expression “student who qualifies for a fee grant” (“*myfyriwr sydd â hawl i gael grant at ffioedd*”), in relation to a qualifying designated course, and any reference to a student who does not qualify for a fee grant are to be construed in accordance with regulation 19.

(11) In these Regulations, the expression “qualifying designated course” (“*cwrs dynodedig cymhwysol*”), in relation to a student who qualifies for a fee grant, has the meaning given to it by regulation 19.

(12) In these Regulations, a person is a “2010 gap year student” (“*myfyriwr blwyddyn i ffwrdd 2010*”) in relation to a course provided by or on behalf of an institution that was publicly funded as at 1 August 2009 if the person meets the conditions in paragraphs (13) or (15).

(13) The conditions referred to in paragraph (12) are—

- (a) the person had on or before 1 August 2009 received an offer, whether conditional or not, of a place on the present course or a similar course; and
- (b) the first academic year of the present course started on or after 1 September 2010 but before 1 September 2011.

(14) In paragraph (13), a course (“the original course”) is similar to the present course if—

- (a) it appears to the academic authority of the institution providing the present course that the subject-matter of the course is in whole or in part the same as the subject-matter of the original course; and
- (b) except where the original course is no longer being provided, the present course is provided

by the institution which was to have provided the original course.

(15) The conditions referred to in paragraph (12) are—

- (a) the person had received an offer of a place on a designated course (whether or not at the same institution as the present course) the first academic year of which began before 1 September 2010;
- (b) the person was unable to take up the offer because a specified qualification or grade was not awarded to the person;
- (c) the person appealed against the decision not to award the person the qualification or grade;
- (d) the appeal was allowed after the last date on which the person could have taken up the offer;
- (e) as a result, the person was offered a place on the present course; and
- (f) the first academic year of the present course began on or after 1 September 2010 but before 1 September 2011.

(16) In these Regulations, a person is a “2011 gap year student” (“*myfyriwr blwyddyn i ffwrdd 2011*”) in relation to a course provided by or on behalf of an institution that was publicly funded as at 1 August 2010 if that person meets the conditions in paragraphs (17) or (19).

(17) The conditions referred to in paragraph (16) are—

- (a) the person had on or before 1 August 2010 received an offer, whether conditional or not, of a place on the present course or a similar course; and
- (b) the first academic year of the present course started on or after 1 September 2011 but before 1 September 2012.

(18) In paragraph (17), a course (“the original course”) is similar to the present course if—

- (a) it appears to the academic authority of the institution providing the present course that the subject-matter of the course is in whole or in part the same as the subject-matter of the original course; and
- (b) except where the original course is no longer being provided, the present course is provided by the institution which was to have provided the original course.

(19) The conditions referred to in paragraph (16) are—

- (a) the person had received an offer of a place on a designated course (whether or not at the

same institution as the present course) the first academic year of which began before 1 September 2011;

- (b) the person was unable to take up the offer because a specified qualification or grade was not awarded to the person;
- (c) the person appealed against the decision not to award the person the qualification or grade;
- (d) the appeal was allowed after the last date on which the person could have taken up the offer;
- (e) as a result, the person was offered a place on the present course; and
- (f) the first academic year of the present course began on or after 1 September 2011 but before 1 September 2012.

(20) For the purposes of these Regulations—

- (a) a 2011 gap year student is to be treated as a 2010 cohort student;
- (b) subject to paragraph (21), where an eligible student starts the present course on or after 1 September 2011 and that course is an end-on course following on from a designated course (“the earlier course”) which the student started on or after 1 September 2010 and before 1 September 2011, the student is to be treated as a 2010 cohort student;
- (c) where an eligible student starts the present course on or after 1 September 2011 and whose status as an eligible student transferred to that course as a result of one or more transfers of that status by the Welsh Ministers pursuant to regulations made under section 22 of the 1998 Act from a designated course (“the earlier course”) which the student started on or after 1 September 2010 and before 1 September 2011, the student is to be treated as a 2010 cohort student;
- (d) subject to paragraph (22), where an eligible student starts the present course on or after 1 September 2012 and that course is an end-on course following on from a designated course (“the earlier course”) which the student started on or after 1 September 2011 and before 1 September 2012, the student is to be treated as a 2011 cohort student;
- (e) subject to paragraph (22), where an eligible student starts the present course on or after 1 September 2012 and whose status as an eligible student transferred to that course as a result of one or more transfers of that status by the Welsh Ministers pursuant to regulations made under section 22 of the 1998 Act from a designated course (“the earlier

course”) which the student started on or after 1 September 2011 and before 1 September 2012, the student is to be treated as a 2011 cohort student.

(21) The eligible student referred to in subparagraphs (b) and (c) of paragraph (20) is not to be treated as a 2010 cohort student if, in relation to the earlier course, the student is a 2010 gap year student.

(22) The eligible student referred to in subparagraphs (d) and (e) of paragraph (20) is not to be treated as a 2011 cohort student, if in relation to the earlier course, the student is a 2011 gap year student.

Revocation, savings and transitional provisions

3.—(1) Subject to paragraph (11), the 2011 (No. 2) Regulations are revoked in relation to Wales on 1 September 2013.

(2) The 2003 Regulations continue to apply to the provision of support to students in relation to an academic year which began on or after 1 September 2003 but before 1 September 2004.

(3) The 2004 Regulations continue to apply to the provision of support to students in relation to an academic year which began on or after 1 September 2004 but before 1 September 2005.

(4) The 2005 Regulations continue to apply to the provision of support to students in relation to an academic year which began on or after 1 September 2005 but before 1 September 2006.

(5) The 2006 Regulations continue to apply to the provision of support to students in relation to an academic year which began on or after 1 September 2006 but before 1 September 2007.

(6) The 2007 Regulations continue to apply to the provision of support to students in relation to an academic year which began on or after 1 September 2007 but before 1 September 2008.

(7) The 2008 Regulations continue to apply to the provision of support to students in relation to an academic year which began on or after 1 September 2008 but before 1 September 2009.

(8) The 2008 (No. 2) Regulations continue to apply to the provision of support to students in relation to an academic year which began on or after 1 September 2009 but before 1 September 2010.

(9) The 2009 Regulations continue to apply to the provision of support to students in relation to an academic year which began on or after 1 September 2010 but before 1 September 2011.

(10) The 2011 Regulations continue to apply to the provision of support to students in relation to an academic year which begins on or after 1 September 2011 but before 1 September 2012.

(11) The 2011 (No. 2) Regulations continue to apply to the provision of support to students in relation to an academic year which begins on or after 1 September 2012 but before 1 September 2013.

(12) For the purposes of paragraphs (2) to (4), any reference to the Secretary of State in relation to any function conferred on the Secretary of State by the Regulations referred to in those paragraphs, is to be read in relation to Wales as a reference to—

- (a) the Welsh Ministers, in the case of a function referred to in section 44(1) of the Higher Education Act 2004⁽¹⁾; or
- (b) the Welsh Ministers or the Secretary of State, in the case of a function referred to in section 44(2) of the Higher Education Act 2004.

(13) These Regulations apply in relation to the provision of support to students in respect of an academic year which begins on or after 1 September 2013 whether anything done under these Regulations is done before, on or after 1 September 2013.

(14) Where a person—

- (a) attends a course in respect of which a transitional award was made; or
- (b) received no award under the 1962 Act in respect of that person's attendance on a course but a transitional award would have been made had the person applied for an award under the 1962 Act and the person's resources had not exceeded the person's requirements,

that person is to be treated as an old system eligible student for the purposes of Parts 4 and 5 of these Regulations in connection with that course or in connection with any subsequent course to which the award (either made or which would have been made) would have transferred if transitional awards provided for payments after the first year of the course, despite any other provision in these Regulations.

(15) Unless paragraph (16) applies to the person referred to in paragraph (14), that person qualifies for support by way of loan for living costs under Part 6 of these Regulations if that person—

- (a) is an eligible student under these Regulations; and
- (b) satisfies the qualifying conditions for support under that Part.

(16) Where a person received or was eligible to receive a loan in relation to an academic year of a course under the 1998 Regulations, that person is to be treated as an old system eligible student for the purposes of Part 6 of these Regulations in connection with—

(1) 2004 c.8.

- (a) that course; or
- (b) any subsequent designated course which (disregarding any intervening vacation) the person begins immediately after ceasing that course,

despite any other provisions in these Regulations.

(17) Unless paragraph (14) applies to the person referred to in paragraph (16), that person qualifies for support under Parts 4 and 5 of these Regulations if that person—

- (a) is an eligible student under these Regulations; and
- (b) satisfies the relevant qualifying conditions under those Parts.

PART 2

ELIGIBILITY

Eligible students

4.—(1) An eligible student qualifies for support in connection with a designated course subject to and in accordance with these Regulations.

(2) Subject to paragraph (7), a person is an eligible student in connection with a designated course if—

- (a) in assessing the person's application for support under regulation 9 the Welsh Ministers determine that the person falls within one of the categories set out in Part 2 of Schedule 1; and
- (b) the person is not excluded by paragraph (3).

(3) Subject to paragraph (7), a person ("A" in this paragraph) is not an eligible student if—

- (a) an old award has been bestowed on A in respect of A's attendance on the course;
- (b) A is eligible for a loan in relation to an academic year of the course under the Education (Student Loans) Act 1990 or the Education (Student Loans) (Northern Ireland) Order 1990;
- (c) there has been bestowed on, or paid to, A in relation to A's attendance on the course—
 - (i) a healthcare bursary, other than a universal healthcare bursary, the amount of which is not calculated by reference to A's income; or

(ii) any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007(1);

(d) A is in breach of any obligation to repay any loan;

(e) A has reached the age of 18 and has not ratified any agreement for a loan made with A when A was under the age of 18; or

(f) A has, in the opinion of the Welsh Ministers, shown by A's conduct that A is unfitted to receive support under these Regulations.

(4) For the purposes of paragraphs (3)(d) and (3)(e), "loan" ("*benthyciad*") means a loan made under the student loans legislation.

(5) In a case where the agreement for a loan is subject to the law of Scotland, paragraph (3)(e) only applies if the agreement was made—

(a) before 25 September 1991, and

(b) with the concurrence of the borrower's curator or at a time when the borrower had no curator.

(6) An eligible student in respect of whom the first academic year of the specified designated course begins on or after 1 September 2000 does not, at any one time, qualify for support under these Regulations for—

(a) more than one designated course;

(b) a designated course and a designated part-time course;

(c) a designated course and a designated postgraduate course;

(d) a designated course and a designated distance learning course.

(7) Subject to paragraphs (9) to (11), if a person satisfies the conditions in paragraph (8)(a),(b) or (c)—

(a) paragraphs (2) and (3) do not apply to the person; and

(b) the person is an eligible student for the purposes of these Regulations.

(8) The conditions referred to in paragraph (7) are—

(a) the—

(i) person qualified as an eligible student in connection with an earlier academic year of the present course pursuant to regulations made by the Welsh Ministers under section 22 of the 1998 Act;

(1) S.S.I. 2007/151, as amended by S.S.I. 2007/503, S.S.I. 2008/206, S.S.I. 2009/188 and S.S.I. 2009/309.

- (ii) person was ordinarily resident in Wales on the first day of the first academic year of the present course; and
 - (iii) person's status as an eligible student has not terminated;
- (b) the—
- (i) present course is an end-on course (other than one of the kind referred to in paragraph (c) of the definition of "end-on course" in regulation 2) which the person is starting on or after 1 September 2006;
 - (ii) person qualified as an eligible student in connection with the course in relation to which the present course is an end-on course;
 - (iii) period of eligibility in respect of the course in sub-paragraph (b)(ii) only ceased on the grounds that the student had completed the course; and
 - (iv) person was ordinarily resident in Wales on the first day of the first academic year of the course in sub-paragraph (b)(ii);
- (c) the—
- (i) Welsh Ministers have previously determined that the person is an eligible—
 - (aa) part-time student in connection with a designated part-time course;
 - (bb) student in connection with a designated course other than the present course; or
 - (cc) distance learning student in connection with a designated distance learning course;
 - (ii) person's status as an eligible part-time student, an eligible distance learning student or as an eligible student in connection with the course in sub-paragraph (c)(i) has been converted or transferred from that course to the present course as a result of one or more conversions or transfers in accordance with regulations made by the Welsh Ministers under section 22 of the 1998 Act;
 - (iii) person was ordinarily resident in Wales on the first day of the first academic year of the course referred to in sub-paragraph (c)(i); and
 - (iv) person's status as an eligible student has not terminated.

(9) Where—

- (a) the Welsh Ministers have determined that, by virtue of being a refugee or the spouse, civil partner, child or step-child of a refugee, a person (“A” in this paragraph) was—
 - (i) an eligible student in connection with an application for support for an earlier year of the present course, an application for support for a course in relation to which the present course is an end-on course or an application for support in connection with a designated part-time course, a designated distance learning course or other designated course from which A’s status as an eligible part-time student, an eligible distance learning student or an eligible student has been transferred to the present course; or
 - (ii) a qualifying student in connection with an application for support for an earlier year of the qualifying course or other qualifying course from which A’s status as a qualifying student has been transferred to the qualifying course in respect of which the student is applying for support; and
- (b) as at the day before the academic year in respect of which A is applying for support starts, the refugee status of A or of A’s spouse, civil partner, parent (as defined in Part 1 of Schedule 1) or step-parent, as the case may be, has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002)

A’s status as an eligible or qualifying student terminates immediately before the first day of the academic year in respect of which A is applying for support.

(10) Where—

- (a) the Welsh Ministers have determined that, by virtue of being a person with leave to enter or remain or the spouse, civil partner, child or step-child of such a person, a person (“A” in this paragraph) was—
 - (i) an eligible student in connection with an application for support for an earlier year of the present course, an application for support for a course in relation to which the present course is an end-on course or an application for support in connection with a designated part-time course, designated distance learning course or other designated course from which A’s status as an eligible part-time student, eligible distance learning student or eligible student has been transferred to the present course; or

- (ii) a qualifying student in connection with an application for support for an earlier year of the qualifying course or other qualifying course from which A's status as a qualifying student has been transferred to the qualifying course in respect of which the student is applying for support; and
- (b) as at the day before the academic year in respect of which A is applying for support starts, the period for which the person with leave to enter or remain is allowed to stay in the United Kingdom has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002),

A's status as an eligible or qualifying student terminates immediately before the first day of the academic year in respect of which A is applying for support.

(11) Paragraphs (9) and (10) do not apply where the student began the course in connection with which the Welsh Ministers determined that A was an eligible part-time student, an eligible student or a qualifying student, as the case may be, before 1 September 2007.

(12) Subject to paragraph (13), a prisoner who begins the present course on or after 1 September 2012 will not be an eligible student unless—

- (a) they are an eligible prisoner;
- (b) they are an eligible student who has transferred to the present course on or after 1 September 2012 under regulation 8 from a course beginning before 1 September 2012; or
- (c) the present course is an end-on course.

(13) Paragraph (12) does not apply in respect of an academic year during which the student enters or is released from prison.

Designated courses

5.—(1) Subject to paragraphs (2), (3) and (4), a course is a designated course for the purposes of section 22(1) of the 1998 Act and regulation 4 if it is—

- (a) listed in Schedule 2;
- (b) one of the following—
 - (i) a full-time course;
 - (ii) a sandwich course;
 - (iii) a course for the initial training of teachers which—
 - (aa) began before 1 September 2010;

- (bb) begins on or after 1 September 2010 where the student transfers to the present course pursuant to regulation 8 from a course for the initial training of teachers which began before 1 September 2010; or
- (cc) began on or after 1 September 2010 but before 1 September 2011 and in relation to which the student was a 2010 gap year student; or
- (iv) a distance learning course other than a course to which regulation 78(5) applies;
- (c) not a designated distance learning course;
- (d) of at least—
 - (i) one academic year's duration; or
 - (ii) six weeks' duration in the case of a flexible postgraduate ITT course;
- (e) wholly provided by a publicly funded educational institution in the United Kingdom or provided by such an institution in conjunction with an institution outside the United Kingdom; and
- (f) for a course beginning on or after 1 September 2012 which falls within paragraphs 1, 2, 4, 6, 7 or 8 of Schedule 2, a course leading to an award granted or to be granted by a body falling within section 214(2)(a) or (b) of the Education Reform Act 1988⁽¹⁾.

(2) A course falling within paragraph 7 or 8 of Schedule 2 is not a designated course where the governing body of a maintained school has arranged for the provision of such a course to a pupil of the school.

(3) A course that is taken as part of an employment-based teacher training scheme is not a designated course.

(4) Paragraph (1)(c) does not apply where the person applying for support under regulation 9 in connection with the course is—

- (a) a disabled eligible student; and
- (b) undertaking that course in the United Kingdom but not in attendance because the person is unable to attend for a reason which relates to the person's disability.

(5) For the purposes of paragraph (1)—

(1) 1988 c.40; section 214(2) was amended by the Further and Higher Education Act 1992 (c.13), section 93 and Schedule 8.

- (a) a course is provided by an institution if it provides the teaching and supervision which comprise the course, whether or not the institution has entered into an agreement with the student to provide the course;
- (b) a university and any constituent college or institution in the nature of a college of a university is regarded as publicly funded if either the university or the constituent college or institution is publicly funded; and
- (c) an institution is not regarded as publicly funded by reason only that it receives public funds from the governing body of a higher education institution in accordance with section 65(3A) of the Further and Higher Education Act 1992(1).

(6) A course to which this paragraph applies is considered to be a single course for a first degree or for an equivalent qualification even if—

- (a) the course leads to another degree or qualification being conferred before the degree or equivalent qualification; and
- (b) part of the course is optional.

(7) Paragraph (6) applies to a course the standard of which is not higher than a first degree which leads to a qualification as a medical doctor, dentist, veterinary surgeon, architect, landscape architect, landscape designer, landscape manager, town planner or town and country planner.

(8) For the purposes of section 22 of the 1998 Act and regulation 4(1) the Welsh Ministers may designate courses of higher education which are not designated under paragraph (1).

Period of eligibility

6.—(1) A student's status as an eligible student is retained in connection with a designated course until that status terminates in accordance with this regulation or regulation 4.

(2) The period for which an eligible student retains the status referred to in paragraph (1) is the "period of eligibility" (*"cyfnod cymhwysra"*).

(3) Subject to the following paragraphs and regulation 4, the "period of eligibility" terminates at the end of the academic year in which the student completes the designated course.

(4) The period of eligibility terminates when the eligible student—

(1) 1992 c. 13; section 65(3A) was inserted by the Teaching and Higher Education Act 1998 (c. 30), section 27.

- (a) withdraws from the eligible student's designated course in circumstances where the Welsh Ministers have not transferred or converted or will not transfer or convert the eligible student's status as an eligible student under regulation 8, regulation 88 or regulation 113; or
- (b) abandons or is expelled from the eligible student's designated course.

(5) The Welsh Ministers may terminate the period of eligibility where the eligible student has shown by the eligible student's conduct that the eligible student is unfitted to receive support.

(6) If the Welsh Ministers are satisfied that an eligible student has failed to comply with any requirement to provide information under these Regulations or has provided information which is inaccurate in a material particular, the Welsh Ministers may take such of the following actions as they consider appropriate in the circumstances—

- (a) terminate the period of eligibility;
- (b) determine that the student no longer qualifies for any particular support or particular amount of support under these Regulations;
- (c) treat any support paid to the student under these Regulations as an overpayment which may be recovered under regulations 74, 92, 118, 128 and paragraph 15 of Schedule 4.

(7) Where the period of eligibility terminates before the end of the academic year in which the student completes the designated course, the Welsh Ministers may, at any time, renew the period of eligibility for such period as they determine.

(8) Despite paragraph (1), a new system eligible student or 2006 gap year student who has not attended a previous course is only eligible for a grant for fees, fee grant, new fee grant, fee contribution loan, fee loan or a grant for living costs in respect of the present course for the number of academic years equal to **OD+R+1**.

(9) Despite paragraph (1) and subject to paragraph (11), a new system eligible student or 2006 gap year student who has attended a previous course is only eligible for a grant for fees, fee grant, new fee grant, fee contribution loan, fee loan or a grant for living costs in respect of the present course for the number of academic years equal to **(OD+R+1) - PC**, except that—

- (a) no deduction equivalent to **PC** applies in the case of a teacher training student or a 2012 accelerated graduate entry student; and
- (b) in the case of an eligible student who did not successfully complete the latest previous

course because of compelling personal reasons—

- (i) one additional year is added; and
- (ii) a further additional year may be added if the Welsh Ministers consider it appropriate to do so having regard to those reasons.

(10) Paragraph (11) applies to—

- (a) a new system eligible student who is on an end-on course of the kind described in paragraph (a) or (b) of the definition of “end-on course” in regulation 2;
- (b) a new system eligible student who—
 - (i) has completed a full-time course listed in paragraph 2 or 3 of Schedule 2;
 - (ii) is on a full-time first degree course (other than a first degree course for the initial training of teachers) that the student did not begin immediately after the course referred to in paragraph (i); and
 - (iii) has not taken a full-time first degree course after the course referred to in paragraph (i) and before the present course;
- (c) a new system eligible student who—
 - (i) has completed a full-time foundation degree course;
 - (ii) is on a full-time honours degree course that the student did not begin immediately after the course referred to in paragraph (i) and before the present course; and
 - (iii) has not taken a full-time first degree course after the course referred to in paragraph (i) and before the present course; and
- (d) an old system eligible student who is a student on an end-on course of the kind described in paragraphs (a) and (b) of the definition of “end-on course” in regulation 2.

(11) Despite paragraph (1), an eligible student to whom this paragraph applies is only eligible for a grant for fees, fee grant, new fee grant, fee contribution loan, fee loan or a grant for living costs in respect of the present course for the number of academic years equal to $(D + X) - PrC$.

(12) Despite paragraph (1), a continuing student is only eligible for a grant for fees, a fee contribution loan or a grant for living costs in respect of the present course for the number of academic years equal to $(A+R+1) - Y$.

(13) Despite paragraph (1) and subject to paragraph (14), a transferring student is only eligible for a grant for fees, fee grant, new fee grant, fee contribution loan, fee loan or a grant for living costs in respect of the

present course for the number of academic years equal to $(A+R+1) - Y$.

(14) A transferring student starting the first full academic year of a further course to which the student transfers under regulation 8 on or after 1 September 2011 is only eligible for a grant for fees, fee grant, new fee grant, fee contribution loan, fee loan or a grant for living costs in respect of the further course for the number of years equal to $(A+R+1) - Y - Z$.

(15) In any case where the number of academic years for which a grant for fees, fee grant, new fee grant, fee contribution loan, fee loan or a grant for living costs is available in accordance with this regulation is less than the number of academic years that make up the period ordinarily required for the completion of the present course, the academic years in which the student is eligible for such a grant or loan for fees or a grant for living costs are the latest years of the present course.

(16) In this regulation—

- (a) **A** is the number of academic years from 31 August 2006 that make up the period ordinarily required for the completion of the present course or, in the case of a transferring student, the previous course;
- (b) **D** is the greater of 3 and the number of academic years that make up the ordinary duration of the course;
- (c) **OD** is the number of academic years that make up the period ordinarily required for the completion of the present course;
- (d) **PC** is the number of years of attendance by the eligible student on a previous course;
- (e) **X** is 1 where the ordinary duration of the preliminary course was less than three years and 2 where the ordinary duration of the preliminary course was three years;
- (f) **R** is the number of repeated academic years on the present course starting on or after 1 September 2006 that are repeats of preceding academic years that the eligible student was unable to complete successfully because of compelling personal reasons;
- (g) **PrC** is the number of academic years that the student spent on the preliminary course excluding any years of repeat study for compelling personal reasons;
- (h) **Y** is the number of years of the present course, or the previous course in the case of a transferring student, in respect of which it has been determined before 1 September 2006 under regulations made under section 22 of the 1998 Act that support was not available;

- (i) **Z** is the number of academic years spent on a previous course beginning on or after 1 September 2006;
- (j) “continuing student” (*“myfyriwr sy’n parhau”*) is an old system eligible student who started the present course before 1 September 2006 and is continuing on that course after 31 August 2012;
- (k) “teacher training student” (*“myfyriwr ar gwrs hyfforddi athrawon”*) means a student who is not a qualified teacher attending a course for the initial training of teachers where the duration of the course does not exceed 2 years and where the course is—
 - (i) a full-time course; or
 - (ii) a part-time course (the duration of which being expressed as its full-time equivalent) and either the course—
 - (aa) began before 1 September 2010;
 - (bb) begins on or after 1 September 2010 where the student transfers to the course pursuant to regulation 8 from a course for the initial training of teachers beginning before 1 September 2010; or
 - (cc) began on or after 1 September 2010 but before 1 September 2011 and in relation to which the student is a 2010 gap year student;
- (l) “transferring student” (*“myfyriwr sy’n trosglwyddo”*) means an old system eligible student who—
 - (i) began a designated course on or after 1 September 2006 and is continuing on that course after 31 August 2012; or
 - (ii) begins a designated course on or after 1 September 2012 and whose status as an eligible student transferred to the course as a result of one or more transfers of that status by the Welsh Ministers pursuant to regulations made under section 22 of the 1998 Act from a designated course that the eligible student began before 1 September 2006.

(17) In calculating the number of years for the purpose of this regulation, attendance for part of an academic year is treated as a whole academic year.

(18) The Welsh Ministers may, at any time, renew or extend the period of eligibility for such further period as they determine.

(19) The Welsh Ministers may confer eligibility to a grant for fees, fee grant, new fee grant, fee contribution loan, fee loan or a grant for living costs otherwise than in accordance with paragraphs (8) to (16).

(20) For the purposes of this regulation and subject to the exceptions in paragraphs (22), (23) and (24) a “previous course” is any full-time higher education course or any part-time course for the initial training of teachers which the student began to attend or, in the case of a compressed degree course or a designated distance learning course, undertaken before the present course and which meets one or both of the conditions in paragraph (21).

(21) The conditions referred to in paragraph (20) are—

- (a) the course is provided by an institution in the United Kingdom which was publicly funded for some or all of the academic years during which the student took the course; or
- (b) any scholarship, exhibition, bursary, grant, allowance or award of any description which was paid in respect of the student’s attending or, in the case of a compressed degree course or a designated distance learning course, undertaking the course to defray fees was from public funds or funds attributable to public funds.

(22) A course which would otherwise be a previous course will not be treated as such if—

- (a) the present course is a course for the initial training of teachers;
- (b) the duration of the present course does not exceed two years where the present course is—
 - (i) a full-time course; or
 - (ii) a part-time course (the duration of which being expressed as its full-time equivalent) and either the present course—
 - (aa) began before 1 September 2010;
 - (bb) begins on or after 1 September 2010 where the student transfers to the present course pursuant to regulation 8 from a course for the initial training of teachers beginning before 1 September 2010; or
 - (cc) began on or after 1 September 2010 but before 1 September 2011 and in relation to which the student is a 2010 gap year student; and

(c) the student is not a qualified teacher.

(23) A course for the Certificate in Education which would otherwise be a previous course will not be treated as such if—

- (a) the present course is a course for the degree (including an honours degree) of Bachelor of Education;
- (b) the student transferred to the present course from the course for the Certificate in Education before the completion of that course or began the present course on completion of the course for the Certificate in Education.

(24) A course for the degree (other than an honours degree) of Bachelor of Education will not be treated as a previous course if—

- (a) the present course is a course for the honours degree of Bachelor of Education;
- (b) the student transferred to the present course from the course for the degree (other than an honours degree) of Bachelor of Education before the completion of that course or began the present course on completion of the course for the degree (other than an honours degree) of Bachelor of Education.

Previous study

7.—(1) Subject to paragraphs (3), (4) and (6), an eligible student who has attained an honours degree from an institution in the United Kingdom does not qualify for a grant for fees, fee grant, new fee grant, fee contribution loan or a fee loan.

(2) Subject to paragraphs (4) and (5), an eligible student (“A” in this paragraph) who starts A’s designated course on or after 1 September 2006 does not qualify for a loan for living costs if A has attained an honours degree from an institution in the United Kingdom.

(3) Paragraph (1) does not apply to an eligible student attending a designated course where—

- (a) the course is a course for the initial training of teachers;
- (b) the duration of the course does not exceed two years where the course is—
 - (i) a full-time course; or
 - (ii) a part-time course (the duration of which being expressed as its full-time equivalent) and either the course—
 - (aa) began before 1 September 2010;
 - (bb) begins on or after 1 September 2010 where the student

transfers to the course pursuant to regulation 8 from a course for the initial training of teachers beginning before 1 September 2010; or

- (cc) began on or after 1 September 2010 but before 1 September 2011 and in relation to which the student is a 2010 gap year student; and

- (c) the eligible student is not a qualified teacher.

(4) Where the present course is considered to be a single course because of regulations 5(6) and 5(7) and it leads to an honours degree from an institution in the United Kingdom being conferred on the eligible student before the final degree or equivalent qualifications, the eligible student is not prevented from qualifying for support under these Regulations by virtue of paragraph (1) or (2) in respect of any part of the single course by virtue of having that honours degree.

(5) Paragraph (2) does not apply where—

- (a) the present course leads to qualification as a social worker, medical doctor, dentist, veterinary surgeon or architect;
- (b) the eligible student is to receive any payment under a—
 - (i) healthcare bursary the amount of which is calculated by reference to the student's income; or
 - (ii) Scottish healthcare allowance the amount of which is calculated by reference to the student's income in respect of any academic year of the present course; or
- (c) the present course is a course for the initial training of teachers which is—
 - (i) a full-time course; or
 - (ii) a part-time course which—
 - (aa) began before 1 September 2010;
 - (bb) begins on or after 1 September 2010 where the student transfers to the present course pursuant to regulation 8 from a course for the initial training of teachers beginning before 1 September 2010; or
 - (cc) began on or after 1 September 2010 but before 1 September 2011 and in relation to which the student is a 2010 gap year student.

(6) Paragraph (1) does not apply to an eligible student attending a designated course which is an accelerated graduate entry course.

Transfer of status

8.—(1) Where an eligible student transfers from a designated course to another designated course, the Welsh Ministers must transfer the student's status as an eligible student to that other course where—

- (a) they receive a request from the eligible student to do so;
- (b) they are satisfied that one or more of the grounds of transfer in paragraph (2) applies; and
- (c) the period of eligibility has not terminated.

(2) The grounds of transfer are—

- (a) on the recommendation of the academic authority the eligible student ceases one designated course and starts to—
 - (i) attend another designated course at the same institution;
 - (ii) undertake another compressed degree course at the same institution; or
 - (iii) undertake a compressed degree course at the same institution;
- (b) the eligible student starts to—
 - (i) attend a designated course at another institution; or
 - (ii) undertake a compressed degree course at another institution;
- (c) after commencing a course for the Certificate in Education, the eligible student is, on or before the completion of that course, admitted to a designated course for the degree (including an honours degree) of Bachelor of Education either at the same institution or at another institution;
- (d) after commencing a course for the degree (other than an honours degree) of Bachelor of Education, the eligible student is, on or before completion of that course, admitted to a designated course for the honours degree of Bachelor of Education either at the same institution or at another institution; or
- (e) after commencing a course for a first degree (other than an honours degree) the eligible student is, before the completion of that course, admitted to a designated course for an honours degree in the same subject at the institution.

(3) Subject to paragraph (4), an eligible student who transfers under paragraph (1) is entitled to receive in connection with the academic year of the course to which the student transfers the remainder of the support assessed by the Welsh Ministers under these Regulations in respect of the academic year of the course from which the student transfers.

(4) The Welsh Ministers may re-assess the amount of support payable under these Regulations after the transfer.

(5) An eligible student who transfers under paragraph (1) after the Welsh Ministers have assessed the eligible student's support in connection with the academic year of the course from which the eligible student is transferring but before the eligible student completes that year may not, in connection with the academic year of the course to which the eligible student transfers, apply for another grant or loan of a kind that the eligible student has already applied for under these Regulations in connection with the academic year of the course from which the eligible student is transferring unless otherwise provided.

PART 3

APPLYING FOR SUPPORT AND PROVISION OF INFORMATION

Applications for support

9.—(1) A person must apply for support in connection with each academic year of a designated course by completing and submitting to the Welsh Ministers an application in such form and accompanied by such documentation as the Welsh Ministers may require.

(2) The Welsh Ministers may take such steps and make such inquiries as they consider necessary to determine whether the applicant is an eligible student, whether the applicant qualifies for support under these Regulations and the amount of support payable, if any.

(3) The Welsh Ministers must notify the applicant of whether or not the applicant qualifies for support under these Regulations and, if the applicant does qualify, the amount of support payable in respect of the academic year, if any.

Time limits

10.—(1) Subject to paragraph (2), the application must reach the Welsh Ministers no later than the end of the ninth month of the academic year in respect of which it is submitted.

(2) Paragraph (1) does not apply where—

- (a) one of the events listed in regulation 15 occurs after the first day of the academic year in respect of which the applicant is applying for support under these Regulations, in which case the application must reach the Welsh Ministers within a period of nine months beginning with the day on which the relevant event occurs;
- (b) the applicant is making a separate application for a fee loan under regulation 23 or regulation 24 or a new fee loan under regulation 25 or a fee contribution loan under regulation 22 or a loan for living costs under regulation 49 or a college fee loan under Schedule 4 or is applying for an additional amount of fee loan under regulation 23(4), an additional amount of new fee loan under regulation 25(4), an additional amount of fee contribution loan under regulation 22(6) or an additional amount of fee loan under regulation 24(3) or an additional amount of loan for living costs under regulation 64(3) or an additional amount of college fee loan under paragraph 10(2) of Schedule 4 in which case the application must reach the Welsh Ministers not later than one month before the end of the academic year to which the application relates;
- (c) the applicant is applying to borrow an additional amount of fee contribution loan under regulation 22(4) or an additional amount of loan for living costs under regulation 64(1), in which case the application must reach the Welsh Ministers not later than one month before the end of the academic year to which the application relates or within a period of one month beginning with the day on which the applicant receives notice of the increased maximum amount, whichever is the later;
- (d) the applicant is applying for a grant under regulation 29, in which case the application must reach the Welsh Ministers as soon as is reasonably practicable;
- (e) the applicant is making a separate application for a new private institution fee loan or an accelerated graduate entry fee loan, or an additional amount of a new private institution fee loan under regulation 26(4), or an additional amount of an accelerated graduate entry fee loan under regulation 27(4), in which case the application must reach the Welsh Ministers not later than one month before the end of the academic year to which the application relates;

- (f) the Welsh Ministers consider that having regard to the circumstances of the particular case the time limit should be relaxed, in which case the application must reach the Welsh Ministers not later than such date as they specify in writing.

Information

11. Schedule 3 applies in respect of the provision of information by an applicant and an eligible student.

Requirement to enter into a contract for a loan

12. To receive a loan under these Regulations an eligible student must enter into a contract with the Welsh Ministers on terms to be decided by the Welsh Ministers.

PART 4

GRANTS AND LOANS FOR FEES

CHAPTER 1

GENERAL PROVISION

Fee Support Generally

13.—(1) Fee support under this Part in respect of an academic year may not exceed the fees payable by the eligible student in respect of that academic year.

(2) For the purposes of calculating the amount of fee support under this Part, an institution that provides courses designated by regulation 4 of the Education (Student Support) (Dance and Drama) Regulations 1999⁽¹⁾ is not to be regarded as publicly funded by reason only that it receives public funds from the governing body of a higher education institution in accordance with section 65(3A) of the Further and Higher Education Act 1992⁽²⁾.

(3) An eligible student to whom paragraph (4) applies is treated as if the eligible student were in attendance on the designated course for the purpose of qualifying for fee support.

(4) This paragraph applies to—

- (a) a compressed degree student;
- (b) a disabled eligible student who—
 - (i) is not a compressed degree student; and
 - (ii) is undertaking a designated course in the United Kingdom but is not in attendance

⁽¹⁾ S.I. 1999/2263, amended by S.I. 2001/2893.

⁽²⁾ 1992 c. 13; section 65(3A) was inserted by the Teaching and Higher Education Act 1998 (c. 30), section 27.

because the eligible student is unable to attend for a reason which relates to the eligible student's disability.

(5) An eligible student who is undertaking a distance learning course does not qualify for any fee support under this Part in respect of that course unless the Welsh Ministers consider that the student is undertaking the course in Wales on the first day of the first academic year.

(6) An eligible student who is undertaking a distance learning course will no longer qualify for any fee support under this Part in respect of that course if the Welsh Ministers consider that the student is undertaking the course outside the United Kingdom.

Students becoming eligible during the course of an academic year

14. Where any of the events listed in regulation 15 occurs in the course of an academic year—

- (a) a student may qualify for grants and loans under this Part in respect of that academic year provided that the relevant event occurred within the first three months of the academic year; and
- (b) such grants and loans are not available to the student in respect of any academic year beginning before the academic year in which the relevant event occurred.

Events

15. The events are—

- (a) the student's course becomes a designated course;
- (b) the student or the student's spouse, civil partner or parent (as defined in Part 1 of Schedule 1) is recognised as a refugee or becomes a person with leave to enter or remain;
- (c) a state accedes to the European Union where the student is a national of that state or a family member (as defined in Part 1 of Schedule 1) of a national of that state;
- (d) the student becomes a family member (as defined in Part 1 of Schedule 1) of an EU national;
- (e) the student acquires the right of permanent residence;
- (f) the student becomes the child of a Turkish worker;
- (g) the student becomes a person described in paragraph 6(1)(a) of Schedule 1; or

- (h) the student becomes the child of a Swiss national.

CHAPTER 2

GRANTS FOR FEES

Grants for fees: qualifying conditions for old system eligible students

16.—(1) Subject to regulations 6 and 7, an old system eligible student qualifies in accordance with this regulation for a grant in respect of the fees for an academic year payable by the student in respect of, or otherwise in connection with, the student's attendance on a designated course.

(2) The amount of the grant for fees in respect of an academic year is determined in accordance with regulation 17 or 18.

(3) An old system eligible student does not qualify for a grant for fees in respect of an academic year of a designated course if—

- (a) that year is a bursary year or an Erasmus year; or
- (b) the designated course is a flexible postgraduate ITT course.

Amount of grants for fees at a publicly funded institution and at a private institution on behalf of a publicly funded institution: old system eligible students

17.—(1) Unless one of the circumstances set out in paragraph (4) applies, the basic amount of the grant for fees for an old system eligible student in respect of an academic year of a designated course at a publicly funded institution is the lesser of—

- (a) £1,380 where the course is provided by an institution in Wales, England or Scotland; or
- (b) £1,425 where the course is provided by an institution in Northern Ireland; and
- (c) the fees payable by the old system eligible student in connection with that year.

(2) The basic amount of the grant for fees for an old system eligible student in respect of an academic year of a designated course at a publicly funded institution where one of the circumstances in paragraph (4) applies is the lesser of—

- (a) £680 where the course is provided by an institution in Wales, England or Scotland; or
- (b) £700 where the course is provided by an institution in Northern Ireland; and
- (c) the fees payable by the old system eligible student in connection with that year.

(3) Where a contribution exceeding nil is calculated under Schedule 5, a deduction will be made from the grant for fees determined under paragraph (1) or (2) in accordance with regulation 67.

(4) The circumstances are—

- (a) the final academic year of the designated course where that year is ordinarily required to be completed after less than 15 weeks' attendance;
- (b) in respect of a sandwich course, an academic year—
 - (i) during which any periods of full-time study are in aggregate less than 10 weeks; or
 - (ii) if in respect of that academic year and any previous academic years of the course the aggregate of any one or more periods of attendance which are not periods of full-time study at the institution (disregarding intervening vacations) exceeds 30 weeks;
- (c) in respect of a course for the initial training of teachers (including a course leading to a first degree) which—
 - (i) began before 1 September 2010;
 - (ii) begins on or after 1 September 2010 where the student transfers to the present course pursuant to regulation 8 from a course for the initial training of teachers beginning before 1 September 2010; or
 - (iii) began on or after 1 September 2010 but before 1 September 2011 and in relation to which the student is a 2010 gap year student,

an academic year during which any periods of full-time study are in aggregate less than 10 weeks;
- (d) in respect of a course provided in conjunction with an overseas institution, an academic year—
 - (i) during which the periods of full-time study at the institution in the United Kingdom are in aggregate less than 10 weeks; or
 - (ii) if in respect of that academic year and any previous academic years of the course the aggregate of any one or more periods of attendance which are not periods of full-time study at the institution in the United Kingdom (disregarding intervening vacations) exceeds 30 weeks.

(5) In the case of a designated course at Heythrop College, the amount of the grant for fees in respect of an academic year is £2,465.

(6) In the case of a designated course at Guildhall School of Music and Drama, the amount of the grant for fees in respect of an academic year is £5,030.

(7) The basic amount of the grant for fees in respect of an academic year at a private institution providing a designated course on behalf of a publicly funded institution is the lesser of £1,285 and the fees payable by the student in connection with that year if—

- (a) the designated course began on or after 1 September 2001;
- (b) the designated course is provided on behalf of a publicly funded institution; and
- (c) none of the circumstances in paragraph (4) apply.

(8) The basic amount of the grant for fees in respect of an academic year at a private institution providing a designated course on behalf of a publicly funded institution is the lesser of £680 and the fees payable by the old system eligible student in connection with that year if—

- (a) the designated course began on or after 1 September 2001;
- (b) the designated course is provided on behalf of a publicly funded institution; and
- (c) one or more of the circumstances in paragraph (4) applies.

(9) Where a contribution exceeding nil is calculated under Schedule 5, a deduction will be made from the amount of the grant for fees determined under paragraph (7) or (8) in accordance with regulation 67.

Amount of the grant for fees at a private institution (not on behalf of a publicly funded institution): old system eligible students

18.—(1) Subject to paragraph (2), the amount of the grant for fees in respect of an academic year of a designated course at a private institution is the lesser of—

- (a) £1,285; and
- (b) the fees payable by the student in connection with that year.

(2) In the case of a designated course at the University of Buckingham, the amount of the grant for fees in respect of an academic year is £3,275.

Fee grant

19.—(1) Subject to paragraph (2), an eligible student who qualifies for a fee grant may apply for a fee grant of an amount not exceeding the maximum available (in accordance with paragraph (3) or (4), as the case may be) in respect of, or otherwise in connection with, the

eligible student's attendance on a qualifying designated course.

(2) A fee grant is not available in respect of an academic year if—

- (a) that year is a bursary year or an Erasmus year; or
- (b) the designated course is an old flexible postgraduate course for the initial training of teachers.

(3) The maximum amount of grant available under this regulation to an applicant in respect of an academic year of a qualifying designated course where none of the circumstances in regulation 17(4) apply is £2,085 or the amount by which the fees payable by the applicant exceed £1,380, whichever is the lesser.

(4) The maximum amount of grant available in respect of such an academic year under this regulation to an applicant where one of the circumstances in regulation 17(4) applies is £1,045 or the amount by which the fees payable by the applicant exceed £680, whichever is the lesser.

(5) In these Regulations and subject to paragraph (6), “eligible student who qualifies for a fee grant” (*“myfyriwr cymwys sydd â hawl i gael grant at ffioedd”*), in relation to a qualifying designated course, means a new system eligible student who is a person whom the Welsh Ministers have determined in connection with the designated course falls within one of the categories set out in Part 2 of Schedule 1.

(6) A new cohort student or a 2012 accelerated graduate entry student is not an eligible student who qualifies for a fee grant.

(7) In these Regulations, “qualifying designated course” (*“cwrs dynodedig cymhwysol”*), in relation to a student who qualifies for a fee grant, means a designated course provided by a publicly funded institution in Wales.

New fee grant

20.—(1) Subject to paragraph (2), a new system eligible student who is a 2012 cohort student qualifies in accordance with this regulation for a new fee grant in respect of, or otherwise in connection with, the 2012 cohort student's attendance on a designated course provided by a publicly funded institution.

(2) A new fee grant is not available in respect of an academic year if that year is a bursary year or an Erasmus year.

(3) The maximum amount of new fee grant available under this regulation to a 2012 cohort student in respect of an academic year of a designated course where none of the circumstances in regulation 17(4) applies is the lesser of—

- (a) £5,425; or
- (b) the amount by which the fees payable by the applicant exceed £3,575.

(4) The maximum amount of new fee grant available in respect of such an academic year under this regulation to a 2012 cohort student where one of the circumstances in regulation 17(4) applies is the lesser of—

- (a) £2,720; or
- (b) the amount by which the fees payable by the application exceed £1,780.

CHAPTER 3

FEE CONTRIBUTION LOANS AND FEE LOANS

General qualifying conditions for fee contribution loans and fee loans

21.—(1) An eligible student qualifies for a fee contribution loan or a fee loan in connection with the student's attendance on a designated course in accordance with this Part provided that the student is not excluded from qualification by the following paragraph, regulation 6 or regulation 7.

(2) An eligible student does not qualify for a fee contribution loan or a fee loan in respect of an academic year if—

- (a) that year is a bursary year or an Erasmus year; or
- (b) the designated course is an old flexible postgraduate course for the initial training of teachers.

(3) Paragraph (2) does not apply in relation to an accelerated graduate entry course.

Fee contribution loans (for old system eligible students)

22.—(1) An old system eligible student qualifies for a fee contribution loan in respect of an academic year of a designated course if—

- (a) the old system eligible student qualifies for a grant for fees in respect of that year or would have qualified if the old system eligible student had applied for the grant (even if the amount would have been nil); and
- (b) the designated course is provided by or on behalf of an institution that was publicly funded as at 1 August 2005.

(2) Where an old system eligible student applies for a grant for fees and a fee contribution loan, the amount of the fee contribution loan in respect of an academic

year of the designated course is the amount for which the old system eligible student applies not exceeding the amount deducted from the old system eligible student's grant for fees in accordance with regulation 67.

(3) Where the only fee support for which an old system eligible student applies is a fee contribution loan, the amount of that loan in respect of an academic year of a designated course is—

- (a) the amount for which the old system eligible student applies not exceeding £1,380 or, if any of the circumstances in regulation 17(4) apply, £680, where the course is provided by an institution in Wales, England or Scotland; or
- (b) the amount for which the old system eligible student applies not exceeding £1,425 or, if any of the circumstances in regulation 17(4) apply, £700, where the course is provided by an institution in Northern Ireland.

(4) An old system eligible student may apply to borrow an additional amount of fee contribution loan where—

- (a) the Welsh Ministers determine that the maximum amount of fee contribution loan which has been notified to the old system eligible student in relation to an academic year should be increased (including an increase from nil) as a result of a reassessment of the old system eligible student's contribution or otherwise; and
- (b) the Welsh Ministers consider that the increase in the maximum amount does not result from the old system eligible student —
 - (i) failing to provide information promptly which might affect the old system eligible student's ability to qualify for a fee contribution loan for which the old system eligible student qualifies; or
 - (ii) providing information which is inaccurate in any material particular.

(5) The additional amount in paragraph (4) is an amount which when added to the amount already applied for does not exceed the increased maximum.

(6) Where an old system eligible student has applied for a fee contribution loan of less than the maximum amount to which the old system eligible student is entitled in relation to the academic year, the old system eligible student may apply to borrow an additional amount which, when added to the amount already applied for, does not exceed the relevant maximum applicable in the old system eligible student's case.

Fee loans in respect of courses beginning before 1 September 2012: new system eligible students not qualifying for a fee grant

23.—(1) A new system eligible student qualifies in accordance with this regulation for a loan in respect of the fees payable by the new system eligible student in respect of, or otherwise in connection with the new system eligible student's attendance on a designated course which began before 1 September 2012.

(2) Unless paragraph (3) applies, the amount of a fee loan in respect of an academic year of a designated course must not exceed the lesser of—

- (a) £3,465 or, where one of the circumstances in regulation 17(4) applies, £1,725; and
- (b) the fees payable by the student in respect of, or otherwise in connection with, that year.

(3) Where a new system eligible student qualifies for a fee loan under this regulation in respect of a designated course provided by an institution in Northern Ireland, the amount of fee loan in respect of an academic year of the designated course must not exceed the lesser of—

- (a) £3,575 or, where one of the circumstances in regulation 17(4) applies, £1,780; and
- (b) the fees payable by the student in respect of, or otherwise in connection with, that year.

(4) Where a new system eligible student has applied for a fee loan of less than the maximum amount available in relation to an academic year, the new system eligible student may apply to borrow an additional amount which when added to the amount already applied for does not exceed the relevant maximum applicable in the new system eligible student's case.

(5) This regulation does not apply in relation to a student if the student qualifies for a fee grant and the course is a qualifying designated course.

(6) This regulation does not apply to a new system eligible student who is a 2012 cohort student.

(7) This regulation does not apply to a new system eligible student who is a 2012 accelerated graduate entry student.

Fee loans in respect of courses beginning before 1 September 2012: new system eligible students qualifying for a fee grant

24.—(1) A new system eligible student who qualifies for a fee grant may apply under this regulation for a fee loan in respect of the new system eligible student's attendance on the qualifying designated course.

(2) The maximum amount of fee loan available under this regulation is the lesser of—

- (a) £1,380 or, where any of the circumstances in regulation 17(4) apply, £680; and
- (b) the remainder of the fees payable by the new system eligible student less an amount equal to the fee grant in respect of or otherwise in connection with that year.

(3) Where the new system eligible student has applied for a fee loan of less than the maximum amount available in relation to an academic year, the new system eligible student may apply to borrow an additional amount which, when added to the amount already applied for, does not exceed that maximum.

New fee loan in respect of courses beginning on or after 1 September 2012

25.—(1) A new system eligible student who is a 2012 cohort student qualifies in accordance with this regulation for a new fee loan in respect of, or otherwise in connection with, the 2012 cohort student's attendance on a designated course provided by a publicly funded institution.

(2) A new fee loan is not available in respect of an academic year if that year is a bursary year or an Erasmus year.

(3) The amount of new fee loan in respect of an academic year of a designated course provided by a publicly funded institution must not exceed the lesser of—

- (a) £3,575 or, where one of the circumstances in regulation 17(4) applies, £1,780; and
- (b) the fees payable by the student in respect of, or otherwise in connection with, that year.

(4) Where a 2012 cohort student has applied for a new fee loan of less than the maximum amount available in relation to an academic year, the 2012 cohort student may apply to borrow an additional amount which, when added to the amount already applied for, does not exceed that maximum.

(5) This regulation does not apply to a 2012 cohort student who qualifies for a new private institution fee loan.

New private institution fee loan

26.—(1) A new system eligible student who is a 2012 cohort student qualifies in accordance with this regulation for a new private institution fee loan in respect of, or otherwise in connection with, the 2012 cohort student's attendance on a designated course provided by a private institution.

(2) A new private institution fee loan is not available in respect of an academic year if that year is a bursary year or an Erasmus year.

(3) The amount of a new private institution fee loan in respect of an academic year of a designated course provided by a private institution must not exceed the lesser of—

- (a) £6,000 or, where any of the circumstances in regulation 17(4) apply, £3000; and
- (b) the fees payable by the student in respect of, or otherwise in connection with, that year.

(4) Where a new system eligible student has applied for a new private institution fee loan of less than the maximum amount available in relation to an academic year, the new system eligible student may apply to borrow an additional amount which, when added to the amount already applied for, does not exceed that maximum.

Accelerated graduate entry fee loan

27.—(1) A 2012 accelerated graduate entry student qualifies in accordance with this regulation for an accelerated graduate entry fee loan in respect of, or otherwise in connection with, the 2012 accelerated graduate entry student's attendance on a designated course which is an accelerated graduate entry course.

(2) An accelerated graduate entry fee loan is not available in respect of an academic year which is an Erasmus year.

(3) The amount of an accelerated graduate entry fee loan in respect of an academic year of a designated course which is an accelerated graduate entry course must not exceed the lesser of—

- (a) £5,535; or
- (b) the amount by which the fees payable by the 2012 accelerated graduate entry student exceed £3,465.

(4) Where a 2012 accelerated graduate entry student has applied for an accelerated graduate entry fee loan of less than the maximum amount available in relation to an academic year, the 2012 accelerated graduate entry student may apply to borrow an additional amount which, when added to the amount already applied for, does not exceed that maximum.

PART 5
GRANTS FOR LIVING COSTS

General qualifying conditions for grants for living costs

28.—(1) An eligible student qualifies for a grant under this Part provided that—

- (a) the eligible student is not excluded from qualification by any of the following paragraphs, regulation 6 or regulation 7; and
- (b) the eligible student satisfies the qualifying conditions for the particular grant for which the eligible student is applying.

(2) An eligible student does not qualify for a grant under this Part if the only paragraph in Part 2 of Schedule 1 into which the eligible student falls is paragraph 9.

(3) An eligible student does not qualify for a grant under this Part in respect of—

- (a) an academic year which is a bursary year;
- (b) an academic year of a course for the initial training of teachers which—
 - (i) began before 1 September 2010;
 - (ii) begins on or after 1 September 2010 where the eligible student transfers to the present course pursuant to regulation 8 from a course for the initial training of teachers beginning before 1 September 2010; or
 - (iii) began on or after 1 September 2010 but before 1 September 2011 and in relation to which the student was a 2010 gap year student,

during which the periods of full-time attendance, including attendance for the purpose of teaching practice, are in aggregate less than 6 weeks;

- (c) a flexible postgraduate ITT course which is of less than one academic year's duration.

(4) Paragraph (3)(b) does not apply for the purposes of qualification for a grant for disabled students' living costs under regulation 29.

(5) Subject to paragraph (6), a 2012 accelerated graduate entry student does not qualify for a grant under this Part.

(6) Paragraph (5) does not apply for the purposes of regulations 29 to 35, to a 2012 accelerated graduate entry student who is undertaking their first year of study on an accelerated graduate entry course.

(7) An eligible student does not qualify for a grant under this Part in respect of any academic year of a

sandwich course where the periods of full-time study are in aggregate less than 10 weeks unless the periods of work experience constitute unpaid service.

(8) For the purposes of paragraph (7), “unpaid service” (“*gwasanaeth di-dâl*”) means—

- (a) unpaid service in a hospital or in a public health service laboratory or with a primary care trust in the United Kingdom;
- (b) unpaid service with a local authority in the United Kingdom acting in the exercise of their functions relating to the care of children and young persons, health or welfare or with a voluntary organisation providing facilities or carrying out activities of a like nature in the United Kingdom;
- (c) unpaid service in the prison or probation and aftercare service in the United Kingdom;
- (d) unpaid research in an institution in the United Kingdom or, in the case of an eligible student attending an overseas institution as part of the eligible student’s course, in an overseas institution; or
- (e) unpaid service with—
 - (i) a Strategic Health Authority established pursuant to section 13 of the National Health Service Act 2006 or a Special Health Authority established pursuant to section 28 of that Act⁽¹⁾;
 - (ii) a Local Health Board established pursuant to section 11 of the National Health Service (Wales) Act 2006 or a Special Health Authority established pursuant to section 22 of that Act⁽²⁾;
 - (iii) a Health Board or a Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978⁽³⁾;
 - (iv) the Regional Health and Social Care Board or the Regional Agency for Public Health and Social Well-being established under sections 7 and 12 of the Health and Social Care (Reform) Act (Northern Ireland) 2009⁽⁴⁾;
 - (v) the National Health Service Commissioning Board established under section 1H of the National Health Service Act 2006 or a Clinical Commissioning

(1) 2006 c.41.

(2) 2006 c.42.

(3) 1978 c.29 to which there have been amendments not relevant to these Regulations.

(4) 2009 c.1 (N.I.).

Group established under section 11 of that Act(1); or

- (vi) the National Institute for Health and Care Excellence established under section 232 of the Health and Social Care Act 2012 or the Health and Social Care Information Centre established under section 252 of that Act(2).

(9) Subject to paragraph (10), an eligible student does not qualify for a grant under regulations 40 to 48 in respect of an academic year of a designated course if the student does not qualify for relevant support in respect of that academic year.

(10) Paragraph (9) does not apply if the reason that the student does not qualify for relevant support in respect of an academic year of a designated course is because—

- (a) that academic year is an Erasmus year; or
- (b) the designated course is an old flexible postgraduate course for the initial training of teachers.

(11) In paragraph (9) “relevant support” (“*cymorth perthnasol*”) means, in the case of a grant under regulation 40, a grant for fees, or, in the case of a grant under regulations 41 to 48, a fee loan.

(12) Where one of the events listed in paragraph (13) occurs in the course of an academic year, a student may qualify for a particular grant in accordance with this Part in respect of all or part of that academic year but that student does not qualify for a grant in respect of any academic year beginning before the academic year in which the relevant event occurred.

(13) The events are—

- (a) the student’s course becomes a designated course;
- (b) the student, the student’s spouse, civil partner or parent (as defined in Part 1 of Schedule 1) is recognised as a refugee or becomes a person with leave to enter or remain;
- (c) the state of which the student is a national accedes to the European Union where the student has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course;
- (d) the student acquires the right of permanent residence;

(1) 2006 c.41; sections 1H and 1I were inserted by the Health and Social Care Act 2012 (c. 7), sections 9 and 10.
(2) 2012 c.7.

- (e) the student becomes the child of a Turkish worker;
- (f) the student becomes a person described in paragraph 6(1)(a) of Schedule 1; or
- (g) the student becomes the child of a Swiss national.

(14) Subject to paragraph (15), an eligible student does not qualify for a grant under this Part if the eligible student is a prisoner.

(15) Paragraph (14) does not apply in respect of a grant for disabled students' living costs which is payable in connection with a designated course beginning before 1 September 2012.

(16) A student to whom this paragraph applies is treated as being in attendance on the designated course for the purpose of qualifying for the following grants—

- (a) grants for dependants;
- (b) grant for disabled students' living costs;
- (c) maintenance grant or special support grant;
- (d) higher education grant.

(17) Paragraph (16) applies to—

- (a) a compressed degree student;
- (b) a disabled eligible student who—
 - (i) is not a compressed degree student; and
 - (ii) is undertaking a designated course in the United Kingdom but is not in attendance because the eligible student is unable to attend for a reason which relates to the eligible student's disability; and
- (c) an eligible student on a period of study or a period of work placement in an Erasmus year.

(18) An eligible student who is undertaking a distance learning course does not qualify for any grant under this Part other than (where appropriate) a grant for disabled students' living costs pursuant to regulation 29.

Grants for disabled students' living costs

29.—(1) An eligible student qualifies in accordance with this regulation for a grant for disabled students' living costs to assist with the additional expenditure which the Welsh Ministers are satisfied the eligible student is obliged to incur by reason of a disability to which the student is subject in connection with the eligible student's attendance on, or undertaking of a designated course.

(2) Subject to the following paragraphs, the amount of grant for disabled students' living costs under this regulation is the amount that the Welsh Ministers

consider appropriate in accordance with the eligible student's circumstances.

(3) Except where paragraph (5) applies, the amount of the grant for disabled students' living costs must not exceed—

- (a) £21,181 in respect of an academic year for expenditure on a non-medical personal helper;
- (b) £5,332 in respect of all the academic years during the period of eligibility for expenditure on major items of specialist equipment;
- (c) the additional expenditure incurred—
 - (i) within the United Kingdom for the purpose of attending the institution;
 - (ii) within or outside the United Kingdom for the purpose of attending, as a part of the eligible student's course, any period of study at an overseas institution or for the purpose of attending the Institute;
- (d) £1,785 in respect of an academic year for any other expenditure including expenditure incurred for the purposes referred to in subparagraph (a) or (b) which exceeds the maxima specified in those paragraphs.

(4) Where the eligible student has received payments to assist with expenditure on major items of specialist equipment in connection with the course by virtue of holding a transitional award, the maximum amount of grant under paragraph (3)(b) is reduced by the amount of those payments.

(5) The maximum amount of grant under paragraphs (3)(a) and (3)(d) is £15,885 and £1,338, respectively where—

- (a) an eligible student attends a course for the initial training of teachers which—
 - (i) began before 1 September 2010;
 - (ii) begins on or after 1 September 2010 where the student transfers to the present course pursuant to regulation 8 from a course for the initial training of teachers beginning before 1 September 2010; or
 - (iii) began on or after 1 September 2010 but before 1 September 2011 and in relation to which the student is a 2010 gap year student; and
- (b) in any academic year of that course, the periods of full-time study and full-time teaching practice are in aggregate less than 6 weeks.

(6) An eligible student does not qualify for a grant for disabled students' living costs under this regulation in respect of a distance learning course unless the Welsh Ministers consider that the student is

undertaking the course in Wales on the first day of the first academic year.

(7) An eligible student who is undertaking a distance learning course will no longer qualify for a grant for disabled students' living costs under this regulation in respect of that course if the Welsh Ministers consider that the student is undertaking the course outside the United Kingdom.

Grants for dependants - general

30.—(1) The grants for dependants consist of the following elements—

- (a) adult dependants' grant;
- (b) childcare grant;
- (c) parents' learning allowance.

(2) The qualifying conditions for each element and the amounts payable are set out in regulations 31 to 34.

(3) A deduction may be made from any element of the grants for dependants in accordance with regulation 67.

Grants for dependants - adult dependants' grant

31.—(1) An eligible student qualifies for an adult dependants' grant in connection with the eligible student's attendance on a designated course in accordance with this regulation.

(2) The adult dependants' grant is available in respect of one dependant of an eligible student who is either—

- (a) the eligible student's partner; or
- (b) an adult dependant of the eligible student whose net income does not exceed £3,923.

(3) The amount of adult dependants' grant payable in respect of an academic year is calculated in accordance with regulation 34, the basic amount being—

- (a) £2,732; or
- (b) where the person in respect of whom the eligible student is applying for adult dependants' grant is ordinarily resident outside the United Kingdom, such amount not exceeding £2,732 as the Welsh Ministers consider reasonable in the circumstances.

Grants for dependants - childcare grant

32.—(1) An eligible student qualifies, in connection with the eligible student's attendance on a designated course, for a childcare grant in accordance with this regulation.

(2) Subject to paragraphs (3) and (4), the childcare grant is available in respect of an academic year in which the eligible student incurs prescribed childcare charges for—

- (a) a dependent child who is under the age of 15 immediately before the beginning of the academic year; or
- (b) a dependent child who has special educational needs within the meaning of section 312 of the Education Act 1996⁽¹⁾ and is under the age of 17 immediately before the beginning of the academic year.

(3) An eligible student does not qualify for a grant under this regulation if the eligible student or the eligible student's partner has elected to receive the childcare element of the working tax credit under Part I of the Tax Credits Act 2002⁽²⁾.

(4) An eligible student does not qualify for a grant under this regulation if the prescribed childcare charges that the eligible student incurs are paid or to be paid by the student to the eligible student's partner.

(5) Subject to paragraph (6), the basic amount of childcare grant for each week is—

- (a) for one dependent child, 85 per cent of the prescribed childcare charges, subject to a maximum amount of £161.50 per week; or
- (b) for two or more dependent children, 85 per cent of the prescribed childcare charges, subject to a maximum amount of £ 274.55 per week,

except that the eligible student does not qualify for any such grant in respect of each week falling within the period between the end of the course and the end of the academic year in which the course ends.

(6) For the purposes of calculating the basic amount of childcare grant—

- (a) a week runs from Monday to Sunday; and
- (b) where a week in respect of which prescribed childcare charges are incurred falls partly within and partly outside the academic year in respect of which childcare grant is payable under this regulation, the maximum weekly amount of grant is calculated by multiplying

(1) 1996 c. 56; section 312 was amended by the Education Act 1997 (c. 44), Schedule 7, paragraph 23 and Schedule 8, the Schools Standards and Framework Act 1998 (c. 31), section 140, Schedule 30, paragraph 71 and Schedule 31, the Learning and Skills Act 2000 (c. 21), Schedule 9, paragraph 56, the Education and Inspections Act 2006 (c. 40), Schedule 1, paragraph 3, the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 59 and Schedule 2 and S.I. 2010/1158.

(2) 2002 c. 21 to which there are amendments not relevant to these Regulations.

the relevant maximum weekly amount in paragraph (5) by the number of days of that week falling within the academic year and dividing the product by seven.

Grants for dependants - parents' learning allowance

33.—(1) An eligible student qualifies in connection with the student's attendance on a designated course for the parents' learning allowance if the student has one or more dependants who are dependent children.

(2) The amount of parents' learning allowance payable in respect of an academic year is calculated in accordance with regulation 34, the basic amount being £1,557.

Grants for dependants - calculations

34.—(1) Subject to the following paragraphs, the amount payable in respect of a particular element of the grants for dependants for which the eligible student qualifies under regulations 31 to 33 is the amount of that element remaining after applying, until it is extinguished, an amount equal to (**A** - **B**) as follows and in the following order—

- (a) to reduce the basic amount of the adult dependants' grant where the eligible student qualifies for that element under regulation 31;
- (b) to reduce the basic amount of the childcare grant for the academic year where the eligible student qualifies for that element under regulation 32; and
- (c) to reduce the basic amount of the parents' learning allowance where the eligible student qualifies for that element under regulation 33.

(2) In this regulation and subject to paragraph (8)—

A is the aggregate of the net income of each of the eligible student's dependants; and

B is—

- (a) £1,159 where the eligible student has no dependent child;
- (b) £3,473 where the eligible student is not a lone parent and has one dependent child;
- (c) £4,632 where the eligible student—
 - (i) is not a lone parent and has more than one dependent child; or
 - (ii) is a lone parent and has one dependent child;
- (d) £5,797 where the eligible student is a lone parent and has more than one dependent child.

(3) Subject to paragraphs (5), (6) and (13), where **B** is greater than or equal to **A**, the basic amount of each

element of the grants for dependants for which the eligible student qualifies is payable.

(4) Where $(A - B)$ is equal to or exceeds the aggregate of the basic amounts of the elements of the grants for dependants for which the eligible student qualifies, the amount payable in respect of each element is nil.

(5) The amount of the adult dependants' grant calculated under paragraph (1) in respect of an adult dependant is reduced by one half where—

- (a) the eligible student's partner—
 - (i) is an eligible student; or
 - (ii) holds a statutory award; and
- (b) account is taken of that partner's dependants in calculating the amount of support for which that partner qualifies or the payment to which that partner is entitled under the statutory award.

(6) The amount of the childcare grant calculated under paragraph (1) is reduced by one half where—

- (a) the eligible student's partner—
 - (i) is an eligible student; or
 - (ii) holds a statutory award; and
- (b) account is taken of that partner's dependants in calculating the amount of support for which that partner qualifies or the payment to which that partner is entitled under the statutory award.

(7) Where the amount of the parents' learning allowance calculated under paragraph (1) is £0.01 or more but less than £50, the amount of parents' learning allowance payable is £50.

(8) Paragraphs (9) to (12) apply where, in the course of the academic year, any of the following occurs—

- (a) there is a change in the number of the eligible student's dependants;
- (b) a person becomes or ceases to be a dependant of the eligible student;
- (c) the eligible student becomes or ceases to be a lone parent;
- (d) a student becomes an eligible student as a result of an event referred to in regulation 28(13).

(9) For the purposes of determining the respective values of **A** and **B** and whether adult dependants' grant or parents' learning allowance is payable, the Welsh Ministers must determine the following in relation to each relevant quarter by reference to the eligible student's circumstances in the relevant quarter—

- (a) how many dependants the eligible student is to be treated as having;

- (b) who those dependants are;
- (c) whether the student is to be treated as a lone parent.

(10) The amount of grants for dependants for the academic year is the aggregate of the amounts of adult dependants' grant and parents' learning allowance calculated in respect of each relevant quarter under paragraph (11) and the amount of any childcare grant for the academic year.

(11) The amount of adult dependants' grant and parents' learning allowance in respect of a relevant quarter is one third of what that grant or allowance would be for the academic year if the student's circumstances in the relevant quarter as determined under paragraph (9) applied for the duration of the academic year.

(12) In this regulation, a "relevant quarter" (*"chwarter perthnasol"*) means—

- (a) in the case of an eligible student referred to in paragraph (8)(d), a quarter which begins after the relevant event occurs other than a quarter during which, in the opinion of the Welsh Ministers, the longest of any vacation occurs;
- (b) otherwise, a quarter other than the one quarter during which, in the opinion of the Welsh Ministers, the longest of any vacation occurs.

(13) A deduction may be made in accordance with Part 9 from the amount payable in respect of a particular element of the grants for dependants calculated under this Part.

Grants for dependants - interpretation

35.—(1) In regulations 31 to 34—

- (a) subject to paragraph (4), "adult dependant" (*"dibynnydd mewn oed"*) means, in relation to an eligible student, an adult person dependent on the eligible student other than the eligible student's child, the eligible student's partner (including a spouse or civil partner from whom the Welsh Ministers consider the eligible student is separated) or the eligible student's former partner;
- (b) "child" (*"plentyn"*) in relation to an eligible student includes any child of the eligible student's partner who is dependent on the eligible student and any child for whom the eligible student has parental responsibility who is dependent on the eligible student;
- (c) "dependant" (*"dibynnydd"*) means, in relation to an eligible student, the eligible student's partner, the eligible student's dependent child or an adult dependant, who in each case is not

- an eligible student and does not hold a statutory award;
- (d) “dependent” (“*dibynnol*”) means wholly or mainly financially dependent;
 - (e) “dependent child” (“*plentyn dibynnol*”) means, in relation to an eligible student, a child dependent on the eligible student;
 - (f) “lone parent” (“*rhiant unigol*”) means an eligible student who does not have a partner and who has a dependent child;
 - (g) “net income” (“*incwm net*”) has the meaning given in paragraph (6);
 - (h) subject to sub-paragraphs (i), (j), (k) and paragraphs (2) and (3), “partner” (“*partner*”) means any of the following—
 - (i) the spouse of an eligible student;
 - (ii) the civil partner of an eligible student;
 - (iii) a person ordinarily living with an eligible student as if the person were the eligible student’s spouse where an eligible student falls within paragraph 2(1)(a) of Schedule 5 and began the designated course on or after 1 September 2000;
 - (iv) a person ordinarily living with an eligible student as if the person were the eligible student’s civil partner where an eligible student falls within paragraph 2(1)(a) of Schedule 5 and began the designated course on or after 1 September 2005;
 - (i) unless otherwise indicated, a person who would otherwise be a partner under sub-paragraph (h) is not treated as a partner if—
 - (i) in the opinion of the Welsh Ministers, that person and the eligible student are separated; or
 - (ii) the person is ordinarily living outside the United Kingdom and is not maintained by the eligible student;
 - (j) for the purposes of the definition of “adult dependant” (“*dibynnydd mewn oed*”), a person is to be treated as a partner if the person would be a partner under sub-paragraph (h) but for the fact that the eligible student with whom the person is ordinarily living does not fall within paragraph 2(1)(a) of Schedule 5;
 - (k) for the purposes of the definitions of “child” (“*plentyn*”) and “lone parent” (“*rhiant unigol*”), a person is to be treated as a partner if the person would be a partner under sub-paragraph (h) but for the date on which the eligible student began the specified designated course or the fact that the eligible student with

whom the person is ordinarily living does not fall within paragraph 2(1)(a) of Schedule 5.

(2) For the purposes of regulation 33—

- (a) paragraph (1)(i) does not apply; and
- (b) a person is to be treated as a partner if the person would be a partner under paragraph (1)(h) but for the fact that the eligible student with whom the person is ordinarily living does not fall within paragraph 2(1)(a) of Schedule 5.

(3) For the purposes of determining whether a person is the former partner of an eligible student's partner, "partner" (*"partner"*) in relation to an eligible student's partner means—

- (a) the spouse of an eligible student's partner;
- (b) the civil partner of an eligible student's partner;
- (c) where the eligible student began the specified designated course on or after 1 September 2000, a person ("A") ordinarily living with an eligible student's partner ("B") as if A were B's spouse;
- (d) where the eligible student began the specified designated course on or after 1 September 2005, a person ("A") ordinarily living with an eligible student's partner ("B") as if A were B's civil partner.

(4) Subject to paragraph (5), for the purposes of the definitions of "adult dependant" (*"dibynnydd mewn oed"*) and "dependent child" (*"plentyn dibynnol"*), the Welsh Ministers may treat an adult person or child as dependent on an eligible student if they are satisfied that the adult person or child—

- (a) is not dependent on only—
 - (i) the eligible student; or
 - (ii) the eligible student's partner; but
- (b) is dependent on the eligible student and the eligible student's partner together.

(5) The Welsh Ministers must not treat an adult person ("A") as dependent on an eligible student in accordance with paragraph (4), if A is—

- (a) the spouse or civil partner of the eligible student's partner (including a spouse or civil partner from whom the Welsh Ministers consider the eligible student's partner is separated); or
- (b) the former partner of the eligible student's partner.

(6) Subject to paragraph (7), a dependant's net income is the dependant's income from all sources for the academic year in question reduced by the amount

of income tax and social security contributions payable in respect of it but disregarding—

- (a) any pension, allowance or other benefit paid by reason of a disability or incapacity to which the dependant is subject;
- (b) child benefit payable under Part IX of the Social Security Contributions and Benefits Act 1992⁽¹⁾;
- (c) any financial support payable to the dependant by a local authority in accordance with regulations made under sections 2, 3 and 4 of the Adoption and Children Act 2002⁽²⁾;
- (d) any guardian's allowance to which the dependant is entitled under section 77 of the Social Security Contributions and Benefits Act 1992;
- (e) in the case of a dependant with whom a child being looked after by a local authority is boarded out, any payment made to that dependant in pursuance of section 23 of the Children Act 1989⁽³⁾;
- (f) any payment made to the dependant under section 23C(5A) of the Children Act 1989⁽⁴⁾;
- (g) any payments made to the dependant under section 15 of and Schedule 1 to the Children Act 1989 in respect of a person who is not the dependant's child or any assistance given by a local authority pursuant to section 24 of that Act⁽⁵⁾; and
- (h) any child tax credit to which the dependant is entitled under Part I of the Tax Credits Act 2002⁽⁶⁾.

(7) Where an eligible student or the eligible student's partner makes any recurrent payments which were previously made by the eligible student in pursuance of an obligation incurred before the first academic year of the eligible student's course, the

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- (1) 1992 c. 4 to which there are amendments not relevant to these Regulations.
 - (2) 2002 c. 38.
 - (3) 1989 c. 41. Section 23 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 16, paragraph 12, the Care Standards Act 2000 (c.14), Schedule 4, paragraph 14, the Children Act 2004 (c.31), section 49(3) and the Children and Young Persons Act 2008 (c. 23), section 39 and Schedule 3, paragraphs 1 and 7.
 - (4) Subsections (5A) to (5C) of section 23C of the Children Act 1989 were inserted, in relation to England, by section 21 of the Children and Young Persons Act 2008 and S.I. 2009/268 and S.I. 2009/ 2273 refer. Subsections (5A) to (5C)) were inserted into section 23C in relation to Wales and S.I. 2010/1329 (W. 112) (C.81) and S.I. 2011/824 (W. 123) (C. 32) refer.
 - (5) There are amendments to sections 15 and 24 and Schedule 1 which are not relevant to these Regulations.
 - (6) 2002 c. 21 to which there are amendments not relevant to these Regulations.

eligible student's partner's net income is the net income calculated in accordance with paragraph (6) reduced by—

- (a) an amount equal to the payments in question for the academic year, if in the opinion of the Welsh Ministers, the obligation had been reasonably incurred; or
- (b) such lesser amount, if any, as the Welsh Ministers consider appropriate if, in their opinion, a lesser obligation could reasonably have been incurred.

(8) For the purposes of paragraph (6), where the dependant is a dependent child and payments are made to the eligible student towards the dependent child's maintenance, those payments are to be treated as the dependent child's income.

Interpretation of regulations 37 to 39

36. For the purposes of regulations 37 to 39—

- (a) any reference to expenditure incurred for the purpose of attending an institution or period of study or period of overseas work placement in an Erasmus year—
 - (i) includes expenditure both before and after so attending; and
 - (ii) does not include any expenditure in respect of which a grant is payable under regulation 29,
- (b) “qualifying quarter” (“*chwarter cymhwysol*”) means a quarter during which the eligible student attends as part of the eligible student's course an overseas institution, the Institute or overseas work placement in an Erasmus year for at least half the period covered by that quarter.

Qualifying conditions for the grant for travel

37.—(1) A grant is available to an eligible student attending a course in medicine or dentistry (a necessary part of which is a period of study by way of clinical training) in respect of the reasonable expenditure which the eligible student is obliged to incur in an academic year for the purpose of attending in connection with the eligible student's course any hospital or other premises in the United Kingdom (not comprised in the institution) at which facilities for clinical training are provided other than expenditure incurred for the purpose of residential study away from the institution.

(2) A grant is available to an eligible student in respect of the reasonable expenditure which the eligible student is obliged to incur in each qualifying quarter within or outside the United Kingdom for the

purpose of attending as part of the eligible student's course an overseas institution, the Institute or overseas work placement in an Erasmus year.

Amount of the grant for travel

38.—(1) The amount of grant payable under regulation 37(1) in respect of an academic year is equal to the reasonable expenditure that the Welsh Ministers determine the eligible student is obliged to incur for the purposes set out in that regulation less £303.

(2) The amount of grant payable under regulation 37(2) in respect of an academic year is calculated as follows—

$(X - £303) + Y$ where—

X is the aggregate of the reasonable travel costs that the eligible student is obliged to incur in each qualifying quarter for the purposes set out in regulation 37.

Y is the aggregate of the expenditure incurred in each qualifying quarter specified in paragraph (3).

(3) The expenditure specified in paragraph (2) is—

- (a) expenditure that the eligible student reasonably incurs in insuring against liability for the cost of medical treatment provided outside the United Kingdom for any illness or personal injury contracted or suffered during the period the eligible student is attending the overseas institution, the Institute or overseas work placement in an Erasmus year (“the placement” in this paragraph);
- (b) the cost of a visa or visas that the eligible student is obliged to obtain in order to attend the overseas institution, the Institute or placement; and
- (c) medical costs that the eligible student reasonably incurs in order to fulfil a mandatory condition of entry into the territory, country or state in which the overseas institution, the Institute or placement is situated.

Deductions from the grant for travel

39. A deduction may be made from a grant under regulations 37 and 38 in accordance with Part 9.

Higher education grants

40.—(1) An old system eligible student qualifies in accordance with this regulation for a higher education grant in connection with the old system eligible student's attendance on a designated course to defray

the cost of books, equipment, travel or childcare incurred for the purpose of attending that course.

(2) An old system eligible student does not qualify for a higher education grant unless the old system eligible student began the specified designated course on or after 1 September 2004.

(3) The maximum amount of higher education grant available in respect of an academic year is £1,000.

(4) An old system eligible student who qualifies for a higher education grant is entitled to receive an amount as follows—

- (a) in any case where the household income is £16,765 or less, the old system eligible student is entitled to receive the maximum amount of grant available;
- (b) in any case where the household income exceeds £16,765 and does not exceed £22,750, the old system eligible student receives an amount equal to $M - A$, where M is £1,000 and A is £1 for every £6.30 by which the household income exceeds £16,765; and
- (c) in any case where the household income exceeds £22,750, no grant is payable under this regulation.

Maintenance grant

41.—(1) A new system eligible student who is not a new cohort student qualifies in accordance with regulation 42 for a maintenance grant for living costs in connection with that eligible student's attendance on a designated course.

(2) A new system eligible student who is a 2010 cohort student or a 2012 cohort student qualifies in accordance with regulation 43 for a maintenance grant for living costs in connection with that eligible student's attendance on a designated course.

(3) A new system eligible student who is a 2011 cohort student qualifies in accordance with regulation 44 for a maintenance grant for living costs in connection with that eligible student's attendance on a designated course.

(4) A new system eligible student does not qualify for a maintenance grant if that eligible student qualifies for a special support grant.

Maintenance grant – new system eligible students who are not new cohort students

42.—(1) The maximum amount of maintenance grant available to a new system eligible student who is not a new cohort student in respect of an academic year is—

- (a) in the case of a type 1 teacher training student, £1,500;
- (b) in the case of a type 2 teacher training student, £3,000;
- (c) in the case of a type 3 teacher training student, £1,500; and
- (d) in the case of a new system eligible student other than a type 1, type 2 or type 3 teacher training student, £3,000.

(2) A type 1 teacher training student who qualifies for a maintenance grant in respect of an academic year receives an amount as follows in respect of that year—

- (a) where the household income is £18,370 or less, the eligible student receives £1,500;
- (b) where household income exceeds £18,370 but does not exceed £27,852, the eligible student receives an amount equal to $M - (A/2)$ where M is £1,500 and A is £1 for every £5.674 by which the household income exceeds £18,370; and
- (c) where the household income exceeds £27,852, or the eligible student opts when applying for the grant not to provide the information needed to calculate the household income, the eligible student receives £664.

(3) A type 2 teacher training student who qualifies for a maintenance grant in respect of an academic year receives an amount as follows in respect of that year—

- (a) where the household income is £18,370 or less, the eligible student receives £3,000; ;
- (b) where the household income exceeds £18,370 but does not exceed £27,852, the eligible student receives an amount equal to $M - A$ where M is £3,000 and A is £1 for every £5.674 by which the household income exceeds £18,370; and
- (c) where the household income exceeds £27,852, or the eligible student opts when applying for grant not to provide the information needed to calculate the household income, the eligible student receives £1,329.

(4) A type 3 teacher training student who qualifies for a maintenance grant in respect of an academic year receives an amount as follows in respect of that year—

- (a) where the household income is £18,370 or less, the eligible student receives £1,500;
- (b) where the household income exceeds £18,370 but does not exceed £27,852, the eligible student receives an amount equal to $M - (A/2)$, where M is £1,500 and A is £1 for every £5.674 by which the household income exceeds £18,370;

- (c) where the household income exceeds £27,852 but does not exceed £39,329 the eligible student receives an amount equal to $\mathbf{RM} - (\mathbf{A}/2)$, where \mathbf{RM} is £664 and \mathbf{A} is £1 for every £8.97 by which the household income exceeds £27,852;
- (d) where the household income exceeds £39,329, no maintenance grant is payable.

(5) A new system eligible student other than a type 1, type 2 or type 3 teacher training student who qualifies for a maintenance grant in respect of an academic year receives an amount as follows in respect of that year—

- (a) where the household income is £18,370 or less, the eligible student receives £3,000;
- (b) where the household income exceeds £18,370 but does not exceed £27,852, the eligible student receives an amount equal to $\mathbf{M} - \mathbf{A}$ where \mathbf{M} is £3,000 and \mathbf{A} is £1 for every £5.674 by which the household income exceeds £18,370;
- (c) where the household income exceeds £27,852 but does not exceed £39,329, the eligible student receives an amount equal to $\mathbf{RM} - \mathbf{A}$, where \mathbf{RM} is £1,329 and \mathbf{A} is £1 for every £8.97 by which the household income exceeds £27,852;
- (d) where the household income exceeds £39,329, no maintenance grant is payable.

Maintenance grant – new system eligible students who are 2010 cohort students or 2012 cohort students

43.—(1) The maximum amount of maintenance grant available to a new system eligible student who is a 2010 cohort student or a 2012 cohort student in respect of an academic year is £5,161.

(2) A new system eligible student who is a 2010 cohort student or a 2012 cohort student and who qualifies for a maintenance grant in respect of an academic year receives an amount as follows in respect of that year—

- (a) where the household income is £18,370 or less, the eligible student receives £5,161;
- (b) where the household income exceeds £18,370 but does not exceed £26,500, the eligible student receives an amount equal to $\mathbf{M} - \mathbf{A}$, where \mathbf{M} is £5,161 and \mathbf{A} is £1 for every £3.653 by which the household income exceeds £18,370;
- (c) where the household income exceeds £26,500 but does not exceed £34,000, the eligible student receives an amount equal to $\mathbf{RM} - \mathbf{A}$,

where **RM** is £2,936 and **A** is £1 for every £4.18 by which the household income exceeds £26,500;

- (d) where the household income exceeds £34,000 but does not exceed £50,020, the eligible student receives an amount equal to **SM - A**, where **SM** is £1,142 and **A** is £1 for every £14.67 by which the household income exceeds £34,000;
- (e) where the household income is £50,020, the eligible student receives £50; and
- (f) where the household income exceeds £50,020, no maintenance grant is payable.

Maintenance grant – new system eligible students who are 2011 cohort students

44.—(1) The maximum amount of maintenance grant available to a new system eligible student who is a 2011 cohort student in respect of an academic year is £5,780.

(2) A new system eligible student who is a 2011 cohort student and who qualifies for a maintenance grant in respect of an academic year receives an amount as follows in respect of that year—

- (a) where the household income is £18,370 or less, the eligible student receives £5,780;
- (b) where the household income exceeds £18,370 but does not exceed £26,500, the eligible student receives an amount equal to **M - A**, where **M** is £5,780 and **A** is £1 for every £3.653 by which the household income exceeds £18,370;
- (c) where the household income exceeds £26,500 but does not exceed £34,000, the eligible student receives an amount equal to **RM - A**, where **RM** is £3,555 and **A** is £1 for every £4.18 by which the household income exceeds £26,500;
- (d) where the household income exceeds £34,000 but does not exceed £50,020, the eligible student receives an amount equal to **SM - A**, where **SM** is £1,761 and **A** is £1 for every £9.36 by which the household income exceeds £34,000;
- (e) where the household income is £50,020, the eligible student receives £50;
- (f) where the household income exceeds £50,020, no maintenance grant is payable.

Special support grant

45.—(1) A new system eligible student who is not a new cohort student qualifies in accordance with

regulation 46 for a special support grant in connection with that eligible student's attendance on a designated course to defray the cost of books, equipment, travel or childcare incurred for the purpose of attending that course.

(2) A new system eligible student who is a 2010 cohort student or a 2012 cohort student qualifies in accordance with regulation 47 for a special support grant in connection with that eligible student's attendance on a designated course to defray the cost of books, equipment, travel or childcare incurred for the purpose of attending that course.

(3) A new system eligible student who is a 2011 cohort student qualifies in accordance with regulation 48 for a special support grant in connection with that student's attendance on a designated course to defray the cost of books, equipment, travel or childcare incurred for the purpose of attending that course.

(4) A new system eligible student qualifies for a special support grant if that eligible student falls within a prescribed category of person for the purposes of section 124(1)(e) of the Social Security Contributions and Benefits Act 1992(1), or if that eligible student is treated as being liable to make payments in respect of a dwelling prescribed by regulations made under section 130(2) of that Act(2).

Special support grant – new system eligible students who are not new cohort students

46.—(1) The maximum amount of special support grant available to a new system eligible student who is not a new cohort student in respect of an academic year is—

- (a) in the case of a type 1 teacher training student, £1,500;
- (b) in the case of a type 2 teacher training student, £3,000;
- (c) in the case of a type 3 teacher training student, £1,500; and
- (d) in the case of a new system eligible student other than a type 1, type 2 or type 3 teacher training student, £3,000.

(1) 1992 c.4. There are amendments to section 124 which are not relevant to these Regulations. Categories under section 124(1)(e) are prescribed by regulations. The relevant regulation is regulation 4ZA of the Income Support (General) Regulations 1987 (S.I. 1987/1967). Regulation 4ZA was inserted by S.I. 1996/206, amended by S.I. 1997/2197, S.I. 2000/636, S.I. 2000/1981, S.I. 2001/3070, S.I. 2006/2144, S.I. 2008/1826, S.I. 2009/583, S.I. 2009/2655, and S.I. 2009/3152.

(2) There are amendments to section 130 which are not relevant to these Regulations. The relevant regulation is regulation 56 of the Housing Benefit Regulations 2006 (S.I. 2006/213 as amended by S.I. 2006/718, S.I. 2008/1042, S.I. 2008/1082, S.I. 2009/583, and S.I. 2010/641).

(2) A type 1 teacher training student who qualifies for special support grant in respect of an academic year receives an amount as follows in respect of that year—

- (a) where the household income is £18,370 or less, the eligible student receives £1,500;
- (b) where the household income exceeds £18,370 but does not exceed £27,852, the eligible student receives an amount equal to $M - (A/2)$ where M is £1,500 and A is £1 for every £5.674 by which the household income exceeds £18,370; and
- (c) where the household income exceeds £27,852, or the student opts when applying for grant not to provide the information needed to calculate the household income, the eligible student receives £664.

(3) A type 2 teacher training student who qualifies for special support grant in respect of an academic year receives an amount as follows in respect of that year—

- (a) where the household income is £18,370 or less, the eligible student receives £3,000;
- (b) where the household income exceeds £18,370 but does not exceed £27,852, the eligible student receives an amount equal to $M - A$ where M is £3,000 and A is £1 for every £5.674 by which the household income exceeds £18,370; and
- (c) where the household income exceeds £27,852, or the student opts when applying for the grant not to provide the information needed to calculate the household income the eligible student receives £1,329.

(4) A type 3 teacher training student who qualifies for special support grant in respect of an academic year receives an amount as follows in respect of that year—

- (a) where the household income is £18,370 or less, the eligible student receives £1,500;
- (b) where the household income exceeds £18,370 but does not exceed £27,852, the eligible student receives an amount equal to $M - (A/2)$ where M is £1,500 and A is £1 for every £5.674 by which the household income exceeds £18,370;
- (c) where the household income exceeds £27,852 but does not exceed £39,329, the eligible student receives an amount equal to $RM - (A/2)$, where RM is £664 and A is £1 for every £8.97 by which the household income exceeds £27,852; and
- (d) where the household income exceeds £39,329, no special support grant is payable.

(5) A new system eligible student other than a type 1, type 2 or type 3 teacher training student who

qualifies for a special support grant in respect of an academic year receives an amount as follows in respect of that year—

- (a) where the household income is £18,370 or less, the eligible student receives £3,000;
- (b) where the household income exceeds £18,370 but does not exceed £27,852, the eligible student receives an amount equal to $M - A$ where M is £3,000 and A is £1 for every £5.674 by which the household income exceeds £18,370;
- (c) where the household income exceeds £27,852 but does not exceed £39,329, the eligible student receives an amount equal to $RM - A$, where RM is £1,329 and A is £1 for every £8.97 by which the household income exceeds £27,852;
- (d) where the household income exceeds £39,329, no special support grant is payable.

Special support grant – new system eligible students who are 2010 cohort students or 2012 cohort students

47.—(1) The maximum amount of special support grant available to a new system eligible student who is a 2010 cohort student or a 2012 cohort student in respect of an academic year is £5,161.

(2) A new system eligible student who is a 2010 cohort student or a 2012 cohort student who qualifies for a special support grant in respect of an academic year receives an amount as follows in respect of that year—

- (a) where the household income is £18,370 or less, the eligible student receives £5,161;
- (b) where the household income exceeds £18,370 but does not exceed £26,500, the eligible student receives an amount equal to $M - A$, where M is £5,161 and A is £1 for every £3.653 by which the household income exceeds £18,370;
- (c) where the household income exceeds £26,500 but does not exceed £34,000, the eligible student receives an amount equal to $RM - A$, where RM is £2,936 and A is £1 for every £4.18 by which the household income exceeds £26,500;
- (d) where the household income exceeds £34,000 but does not exceed £50,020, the eligible student receives an amount equal to $SM - A$, where SM is £1,142 and A is £1 for every £14.67 by which the household income exceeds £34,000;

- (e) where the household income is £50,020, the eligible student receives £50; and
- (f) where the household income exceeds £50,020, no special support grant is payable.

Special support grant – new system eligible students who are 2011 cohort students

48.—(1) The maximum amount of special support grant available to a new system eligible student who is a 2011 cohort student in respect of an academic year is £5,780.

(2) A new system eligible student who is a 2011 cohort student who qualifies for a special support grant in respect of an academic year receives an amount as follows in respect of that year—

- (a) where the household income is £18,370 or less, the eligible student receives £5,780;
- (b) where the household income exceeds £18,370 but does not exceed £26,500, the eligible student receives an amount equal to **M - A**, where **M** is £5,780 and **A** is £1 for every £3.653 by which the household income exceeds £18,370;
- (c) where the household income exceeds £26,500 but does not exceed £34,000, the eligible student receives an amount equal to **RM - A**, where **RM** is £3,555 and **A** is £1 for every £4.18 by which the household income exceeds £26,500;
- (d) where the household income exceeds £34,000 but does not exceed £50,020, the eligible student receives an amount equal to **SM - A**, where **SM** is £1,761 and **A** is £1 for every £9.36 by which the household income exceeds £34,000;
- (e) where the household income is £50,020, the eligible student receives £50; and
- (f) where the household income exceeds £50,020, no special support grant is payable.

PART 6

LOANS FOR LIVING COSTS

Qualifying conditions for loans for living costs

49.—(1) An eligible student qualifies for a loan for living costs in connection with the eligible student's attendance on a designated course if the eligible student satisfies the condition in paragraph (2) and is not excluded by paragraph (3) or regulation 7.

(2) The condition is that the eligible student is under the age of 60 on the relevant date.

(3) An eligible student does not qualify for a loan for living costs if the only paragraph in Part 2 of Schedule 1 into which the student falls is paragraph 9.

(4) An eligible student does not qualify for a loan for living costs in connection with the eligible student's attendance on a designated course if that course is a flexible postgraduate ITT course which is of less than one academic year's duration.

(5) An eligible student does not qualify for a loan for living costs in connection with the eligible student's attendance on a designated course if that course—

- (a) begins on or after 1 September 2009; and
- (b) leads to qualification as a landscape architect, landscape designer, landscape manager, town planner or town and country planner.

(6) An old system eligible student who falls within paragraph (a) or (d)(i) of the definition of "old system eligible student" in regulation 2 qualifies for a loan for living costs in connection with the old system eligible student's attendance on a designated course if the old system eligible student satisfies the condition in paragraph (2) and is not excluded by paragraph (3).

(7) An eligible student to whom this paragraph applies is treated as being in attendance on the designated course for the purpose of qualifying for a loan for living costs.

(8) Paragraph (7) applies to—

- (a) a compressed degree student;
- (b) a disabled eligible student who—
 - (i) is not a compressed degree student; and
 - (ii) is undertaking a designated course in the United Kingdom but is not in attendance because the eligible student is unable to attend for a reason which relates to the eligible student's disability; and
- (c) an eligible student on a period of study or a period of work placement in an Erasmus year.

(9) An eligible student does not qualify for a loan for living costs under this Part if the eligible student is a prisoner.

(10) An eligible student does not qualify for a loan for living costs under this Part if the eligible student is undertaking a distance learning course.

General

50. The maximum amount of loan for living costs in respect of an academic year is calculated as follows—

- (a) where the eligible student is an old system eligible student with full entitlement, in accordance with regulation 51;
- (b) where the eligible student is a new system eligible student with full entitlement who is not a new cohort student, in accordance with regulations 52 and 53;
- (c) where the eligible student is a new system eligible student with full entitlement who is a 2010 cohort student, a 2012 cohort student or a 2012 accelerated graduate entry student who is undertaking their first year of study, in accordance with regulation 54;
- (d) where the eligible student is a new system eligible student with full entitlement who is a 2011 cohort student, in accordance with regulation 55;
- (e) where the eligible student is a student with reduced entitlement, in accordance with regulation 56.

Maximum amount of loans for old system eligible students with full entitlement

51.—(1) Subject to regulations 57 to 62, the maximum amount of loan for living costs for which an old system eligible student with full entitlement qualifies in respect of an academic year other than the final year of a course that is not an intensive course is, for such a student in—

- (a) category 1, £3,987;
- (b) category 2, £7,215;
- (c) category 3, £6,140;
- (d) category 4, £6,140;
- (e) category 5, £5,150.

(2) Subject to regulations 57 to 62, the maximum amount of loan for living costs for which an old system eligible student with full entitlement qualifies in respect of an academic year which is the final year of a course that is not an intensive course is, for such a student in—

- (a) category 1, £3,608;
- (b) category 2, £6,570;
- (c) category 3, £5,340;
- (d) category 4, £5,340;
- (e) category 5, £4,771.

Maximum amount of loans for new system eligible students with full entitlement who are not new cohort students

52.—(1) This regulation applies to a new system eligible student with full entitlement who is not a new cohort student (other than a type 1 or type 2 teacher training student whose contribution exceeds nil).

(2) Subject to regulations 57 to 62, the maximum amount of loan for living costs for which a student to whom this regulation applies qualifies in respect of an academic year other than a final year of a course that is not an intensive course is equal to (X-Y) where—

X is, for such a student in—

- (i) category 1, £3,987;
- (ii) category 2, £7,215;
- (iii) category 3, £6,140;
- (iv) category 4, £6,140;
- (v) category 5, £5,150;

Y is the maintenance grant amount.

(3) Subject to regulations 57 to 62, the maximum amount of loan for living costs for which a student to whom this regulation applies qualifies in respect of an academic year that is the final year of a course that is not an intensive course is equal to (X-Y) where—

X is, for such a student in—

- (i) category 1, £3,608;
- (ii) category 2, £6,570;
- (iii) category 3, £5,340;
- (iv) category 4, £5,340;
- (v) category 5, £4,771;

Y is the maintenance grant amount.

(4) In this regulation, “the maintenance grant amount” (“*swm y grant cynhaliaeth*”) is—

- (a) where the new system eligible student referred to in paragraph (1) qualifies under regulation 42 for an amount of maintenance grant not exceeding £1,329, the amount of maintenance grant payable;
- (b) where the new system eligible student referred to in paragraph (1) qualifies under regulation 42 for an amount of maintenance grant exceeding £1,329, £1,329; and
- (c) where no maintenance grant is payable, nil.

53.—(1) This regulation applies to a type 1 or type 2 teacher training student whose contribution exceeds nil.

(2) Subject to regulations 57 to 62, the maximum amount of loan for living costs for which a student to

whom this regulation applies qualifies in respect of an academic year other than the final year of a course that is not an accelerated course is, for such student in—

- (a) category 1, £3,987;
- (b) category 2, £7,215;
- (c) category 3, £6,140;
- (d) category 4, £6,140;
- (e) category 5, £5,150.

(3) Subject to regulations 57 to 62, the maximum amount of loan for living costs for which a student to whom this regulation applies qualifies in respect of an academic year of a course that is the final year of a course that is not an accelerated course is, for such a student in—

- (a) category 1, £3,608;
- (b) category 2, £6,570;
- (c) category 3, £5,340;
- (d) category 4, £5,340;
- (e) category 5, £4,771.

Maximum amount of loans for new system eligible students with full entitlement who are 2010 cohort students, 2012 cohort students or 2012 accelerated graduate entry students undertaking their first year of study

54.—(1) This regulation applies to a new system eligible student with full entitlement who is a 2010 cohort student, a 2012 cohort student or a 2012 accelerated graduate entry student who is undertaking their first year of study.

(2) Subject to regulations 57 to 62, the maximum amount of loan for living costs for which a student to whom this regulation applies qualifies in respect of an academic year other than a final year of a course that is not an intensive course is equal to **(X-Y)** where—

X is, for such a student in—

- (i) category 1, £3,987;
- (ii) category 2, £7,215;
- (iii) category 3, £6,140;
- (iv) category 4, £6,140;
- (v) category 5, £5,150;

Y is the maintenance grant amount.

(3) Subject to regulations 57 to 62, the maximum amount of loan for living costs for which a student to whom this regulation applies qualifies in respect of an academic year that is the final year of a course that is not an intensive course is equal to **(X-Y)** where—

X is, for such a student in—

- (i) category 1, £3,608;
- (ii) category 2, £6,570;
- (iii) category 3, £5,340;
- (iv) category 4, £5,340;
- (v) category 5, £4,771;

Y is the maintenance grant amount.

(4) In this regulation, “the maintenance grant amount” (“*swm y grant cynhaliath*”) is—

- (a) where the new system eligible student referred to in paragraph (1) qualifies under regulation 43 for an amount of maintenance grant, the amount that is equal to £0.50 for every £1 of maintenance grant for which that student qualifies, up to a maximum value for **Y** of £2,575;
- (b) where no maintenance grant is payable under regulation 43, nil.

Maximum amount of loans for new system eligible students with full entitlement who are 2011 cohort students

55.—(1) This regulation applies to a new system eligible student with full entitlement who is a 2011 cohort student.

(2) Subject to regulations 57 to 62, the maximum amount of loan for living costs for which a student to whom this regulation applies qualifies in respect of an academic year other than a final year of a course that is not an intensive course is equal to (**X-Y**) where—

X is, for such a student in—

- (i) category 1, £3,987;
- (ii) category 2, £7,215;
- (iii) category 3, £6,140;
- (iv) category 4, £6,140;
- (v) category 5, £5,150;

Y is the maintenance grant amount.

(3) Subject to regulations 57 to 62, the maximum amount of loan for living costs for which a student to whom this regulation applies qualifies in respect of an academic year that is the final year of a course that is not an intensive course is equal to (**X-Y**) where—

X is, for such a student in—

- (i) category 1, £3,608;
- (ii) category 2, £6,570;
- (iii) category 3, £5,340;
- (iv) category 4, £5,340;
- (v) category 5, £4,771;

Y is the maintenance grant amount.

(4) In this regulation, “the maintenance grant amount” (“*swm y grant cynhaliath*”) is—

- (a) where the new system eligible student referred to in paragraph (1) qualifies under regulation 44 for an amount of maintenance grant, the amount that is equal to £0.50 for every £1 of maintenance grant for which that student qualifies, up to a maximum value for **Y** of £2,575;
- (b) where no maintenance grant is payable under regulation 44, nil.

Students with reduced entitlement

56.—(1) Subject to regulations 57 to 62, the maximum amount of loan for living costs for which a student with reduced entitlement qualifies in respect of an academic year of a course other than the final year of a course that is not an intensive course is—

- (a) where the student falls within regulation 28(3)(a), for such a student in—
 - (i) category 1, £1,893;
 - (ii) category 2, £3,547;
 - (iii) category 3, £2,522;
 - (iv) category 4, £2,522;
 - (v) category 5, £2,522.
- (b) where the student falls within regulation 28(3)(b) or 28(5), for such a student in—
 - (i) category 1, £1,893;
 - (ii) category 2, £3,547;
 - (iii) category 3, £3,017;
 - (iv) category 4, £3,017;
 - (v) category 5, £2,522.
- (c) where the student applies for a loan for living costs and opts not to provide the information needed to calculate the household income, an amount equal to (**X**-**Y**) where—
 - X** is, for such a student in—
 - (i) category 1, £2,990;
 - (ii) category 2, £5,412;
 - (iii) category 3, £4,606;
 - (iv) category 4, £4,606;
 - (v) category 5, £3,863;
 - Y** is the amount specified in paragraph (d).
- (d) the specified amount is—
 - (i) £664 where the student is a type 1 teacher training student who opts not to provide the information needed to calculate the

household income when applying for a maintenance grant and who qualifies for a maintenance grant of £664;

- (ii) £1,329 where the student is a type 2 teacher training student who opts not to provide the information needed to calculate the household income when applying for a maintenance grant and who qualifies for a maintenance grant of £1,329;
- (iii) nil where the student is not a type 1 or type 2 teacher training student.

(2) Subject to regulations 57 to 62, the maximum amount of loan for living costs for which a student with reduced entitlement qualifies in respect of an academic year that is the final year of a course that is not an intensive course is—

- (a) where the student falls within regulation 28(3)(a), for such a student in—
 - (i) category 1, £1,437;
 - (ii) category 2, £2,711;
 - (iii) category 3, £1,966;
 - (iv) category 4, £1,966;
 - (v) category 5, £1,966.
- (b) where the student falls within regulation 28(3)(b) or 28(5), for such a student in—
 - (i) category 1, £1,437;
 - (ii) category 2, £2,711;
 - (iii) category 3, £2,204;
 - (iv) category 4, £2,204;
 - (v) category 5, £1,966.
- (c) where the student applies for a loan for living costs and opts not to provide the information needed to calculate the household income an amount equal to $(X-Y)$ where—
 - X is, for such a student in—
 - (i) category 1, £2,706;
 - (ii) category 2, £4,928;
 - (iii) category 3, £4,005;
 - (iv) category 4, £4,005;
 - (v) category 5, £3,578;
 - Y is the amount specified in paragraph (d).
- (d) the specified amount is—
 - (i) £664 where the student is a type 1 teacher training student who opts not to provide the information needed to calculate the household income when applying for a maintenance grant and who qualifies for a maintenance grant of £664;

- (ii) £1,329 where the student is a type 2 teacher training student who opts not to provide the information needed to calculate the household income when applying for a maintenance grant and who qualifies for a maintenance grant of £1,329;
- (iii) nil where the student is not a type 1 or type 2 teacher training student.

Students residing with parents

57.—(1) Subject to paragraph (2), where an eligible student (“A” in this paragraph) resides at A’s parents’ home and the Welsh Ministers are satisfied that in all the circumstances A’s parents by reason of age, incapacity or otherwise cannot reasonably be expected to support A and that it would be appropriate for the amount of loan payable to a student in a category other than category 1 to apply in A’s case, A must be treated as if A were not residing at A’s parents’ home.

(2) Paragraph (1) does not apply to an eligible student who begins a course on or after 1 September 2004.

Loans for living costs payable in respect of three quarters of the academic year

58.—(1) Subject to regulation 60, the loan for living costs is payable in respect of three quarters of the academic year.

(2) The loan for living costs is not payable—

- (a) in the case of a compressed degree student, in respect of the quarter nominated by the Welsh Ministers;
- (b) in any other case, in respect of the quarter in which, in the opinion of the Welsh Ministers, the longest of any vacation occurs.

Students falling into more than one category

59. Where an eligible student falls into more than one of the categories in regulation 63 in the course of the academic year—

- (a) the maximum amount of loan for living costs for the academic year is the aggregate of the maximum amount of loan for living costs for each quarter in respect of which the loan is payable;
- (b) the maximum amount of loan for living costs for each such quarter is one third of the maximum amount of loan for living costs which would apply for the academic year if the eligible student fell into the category which applies to the relevant quarter for the duration of the academic year; and

- (c) the category which applies to a quarter is—
 - (i) the category into which the eligible student falls for the longer or longest period in that quarter; or
 - (ii) if the eligible student falls into more than one category for an equal period in that quarter, the category with the higher or highest rate of loan for living costs for the academic year.

Students becoming eligible during the course of an academic year

60.—(1) Where a student becomes an eligible student during the course of an academic year as a result of one of the events listed in paragraph (2), the student may qualify for a loan for living costs in respect of such quarters of that academic year in respect of which a loan for living costs is payable as begin after the relevant event in paragraph (2) occurs.

(2) The events are—

- (a) the student's course becomes a designated course;
- (b) the student, the student's spouse, civil partner or parent (as defined in Part 1 of Schedule 1) is recognised as a refugee or becomes a person with leave to enter or remain;
- (c) the state of which the student is a national accedes to the European Union where the student has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course;
- (d) the student acquires the right of permanent residence;
- (e) the student becomes the child of a Turkish worker;
- (f) the student becomes a person described in paragraph 6(1)(a) of Schedule 1; or
- (g) the student becomes the child of a Swiss national.

(3) An eligible student to whom paragraph (1) applies does not qualify for a loan for living costs in respect of any academic year beginning before the academic year in which the relevant event occurred.

(4) The maximum amount of loan for living costs payable is the aggregate of the maximum amount of loan for each quarter in respect of which the student qualifies for support under this regulation.

(5) The maximum amount of loan for living costs for each such quarter is one third of the maximum amount of loan for living costs which would apply for the

academic year if the student fell into the category which applies to the relevant quarter for the duration of the academic year.

Increases in maximum amount

61.—(1) Where an eligible student is required to attend the eligible student's course for a period exceeding 30 weeks and 3 days in an academic year, the maximum amount of loan for living costs specified in regulations 51 to 55 must be increased for each week or part week of attendance in that academic year beyond 30 weeks and 3 days by, for such a student in—

- (a) category 1, £60;
- (b) category 2, £115;
- (c) category 3, £125;
- (d) category 4, £125;
- (e) category 5, £90.

(2) Where an eligible student attends the eligible student's course for a period of not less than 45 weeks in any continuous period of 52 weeks the amount of loan for living costs specified in regulations 51 to 55 is increased for each week in the 52 week period during which the eligible student did not attend by the amounts referred to in paragraph (1).

(3) This regulation does not apply in the case of a student with reduced entitlement.

Deductions from loans for living costs

62.—(1) A deduction from the amount of loan for living costs calculated under this Part in respect of an old system eligible student with full entitlement or a new system eligible student with full entitlement may be made in accordance with regulation 67.

(2) A deduction from the amount of loan for living costs calculated under this Part in respect of a student with reduced entitlement may not be made under regulation 67.

Interpretation of Part 6

63. In this Part—

- (a) a student is in category 1 if—
 - (i) subject to regulation 57, the student resides at the student's parents' home while attending the course; or
 - (ii) the student began the present course before 1 September 2009 and is a member of a religious order who resides in a house of that order;

- (b) a student is in category 2 if the student is not in category 1 and the student attends one or more of the following—
 - (i) a course at the University of London;
 - (ii) a course at an institution which requires attendance for at least half the time in aggregate of any quarter of the course in the academic year at a site wholly or partly within the area comprising the City of London and the former Metropolitan Police District; or
 - (iii) a sandwich course at an institution which requires the student to undertake work experience or a combination of work experience and study provided that the student undertakes such work experience or combination of work experience and study for at least half the time in aggregate of any quarter of the course in the academic year at a site or sites wholly or partly within the area comprising the City of London and the former Metropolitan Police District;
- (c) a student is in category 3 if the student is not in category 1 and the student attends an overseas institution as part of the student's course or attends an overseas work placement in an Erasmus year;
- (d) a student is in category 4 if the student is not in category 1 and attends the Institute;
- (e) a student is in category 5 if the student is not in categories 1 to 4;
- (f) a “new system eligible student with full entitlement” (“*myfyriwr cymwys o dan y drefn newydd sydd â hawlogaeth lawn*”) is a new system eligible student other than a student with reduced entitlement;
- (g) an “old system eligible student with full entitlement” (“*myfyriwr cymwys o dan yr hen drefn sydd â hawlogaeth lawn*”) is an old system eligible student other than a student with reduced entitlement;
- (h) “parent” (“*rhiant*”), except where otherwise indicated, is to be construed in accordance with paragraph 1(1)(f) of Schedule 5;
- (i) the “relevant date” (“*dyddiad perthnasol*”) means the first day of the first academic year of the specified designated course;
- (j) a “student with reduced entitlement” (“*myfyriwr sydd â hawlogaeth ostyngol*”) is an eligible student who—
 - (i) is not eligible for a grant for living costs in respect of the academic year by virtue of

regulation 28(3)(a) or (b) or regulation 28(5); or

- (ii) opts when applying for a loan for living costs not to provide the information needed to calculate the household income;
- (k) where the duration of a graduate-entry or postgraduate-level course for the initial training of teachers is only one academic year, that year is not to be treated as the final year.

PART 7

GENERAL LOAN PROVISIONS

Additional amount of loans

64.—(1) An eligible student may apply to borrow an additional amount of loan for living costs where—

- (a) the Welsh Ministers determine that the maximum amount of loan for living costs which has been notified to the eligible student in relation to an academic year should be increased (including an increase from nil) as a result of a reassessment of the eligible student's contribution or otherwise; and
- (b) the Welsh Ministers consider that the increase in the maximum amount does not result from the eligible student—
 - (i) failing to provide information promptly which might affect the eligible student's ability to qualify for a loan or the amount of loan for which the eligible student qualifies; or
 - (ii) providing information which is inaccurate in any material particular.

(2) The additional amount under paragraph (1) is an amount which when added to the amount already applied for does not exceed the increased maximum.

(3) Where an eligible student has applied for a loan of less than the maximum amount to which the eligible student is entitled in relation to the academic year, the eligible student may apply to borrow an additional amount which, when added to the amount already applied for, does not exceed the relevant maximum applicable in the eligible student's case.

PART 8

COLLEGE FEE LOANS

College fee loans

65. A college fee loan is available to an eligible student in accordance with Schedule 4.

PART 9

FINANCIAL ASSESSMENT

Calculation of contribution

66.—(1) An eligible student's contribution in respect of an academic year is the amount, if any, calculated under Schedule 5.

(2) The Welsh Ministers may require an eligible student to provide from time to time such information as they consider necessary as to the income of any person whose means are relevant to the assessment of the eligible student's contribution.

Application of contribution

67.—(1) Subject to paragraphs (2) to (7), an amount equal to the contribution or the remainder of the contribution, as the case may be, calculated under Schedule 5, is to be applied until it is extinguished against the amount of the particular grants and loans for which the eligible student qualifies as follows—

- (a) first, to reduce **GFF**;
- (b) second, to reduce **ADG**;
- (c) third, to reduce **CCG**;
- (d) fourth, to reduce **PLA**;
- (e) fifth, to reduce **LLC** to no less than the minimum level for the academic year;
- (f) sixth, to reduce **GFT**.

(2) In the case of an old system eligible student, subject to paragraph (4), where the basic amount of the grant for fees has been calculated in accordance with regulation 17(1) or 17(7), to determine the actual amount of grant for fees that is payable, the Welsh Ministers must apply the contribution in accordance with paragraph (1).

(3) In the case of an old system eligible student where the basic amount of the grant for fees has been calculated in accordance with regulation 17(2) or 17(8) and one of the circumstances set out in regulation 17(4)(b) or (d) applies, to determine the actual amount of grant for fees payable the Welsh Ministers must—

- (a) first, apply the contribution to reduce the basic amount of the grant for fees;
- (b) second, if the contribution is not extinguished, deduct an amount equal to the basic amount of the grant for fees from what is left of the contribution reducing the remainder of the contribution to no less than nil; and
- (c) third, if the contribution is still not extinguished, apply the remainder first to reduce **ADG** and paragraph (1) is modified accordingly.

(4) Where the course is a course for the initial training of teachers (other than a course for a first degree), there is no contribution applied against the basic amount of the grant for fees and the contribution is first applied to reduce **ADG** and paragraph (1) is modified accordingly.

(5) In the case of an Erasmus year, the Welsh Ministers must apply the amount by which the contribution exceeds £1,380 first to reduce **ADG** and paragraph (1) is modified accordingly.

(6) Where the student does not qualify for a grant for fees for any other reason, **GFF** is nil and the contribution is applied first to reduce **ADG** and paragraph (1) is modified accordingly.

(7) In the case of a new system eligible student, **GFF** is to be treated as nil and the contribution is applied first to reduce **ADG** and paragraph (1) is modified accordingly.

(8) In this regulation—

- (a) **ADG** is the amount, if any, of the adult dependants' grant calculated in accordance with regulation 34;
- (b) **CCG** is the amount, if any, of the childcare grant calculated in accordance with regulation 34;
- (c) **GFF** is the amount, if any, of grant for fees for which the eligible student qualifies under Part 4;
- (d) **GFT** is the amount of the grant for travel for which the eligible student qualifies under regulation 37, if any;
- (e) **LLC** is the amount of loan for living costs, if any, for which the eligible student (other than a student with reduced entitlement) qualifies under Part 6 to no less than the minimum level for the academic year specified in paragraph (9);
- (f) **PLA** is the amount, if any, of the parents' learning allowance calculated under regulation 34 (except the first £50 of the allowance).

(9) Subject to paragraphs (10) and (11), the “minimum level for the academic year” (“*lefel isaf am y flwyddyn academaidd*”) in regulation 67(1)(e) is, in the case of a student in—

- (a) category 1, £2,990;
- (b) category 2, £5,412;
- (c) category 3, £4,606;
- (d) category 4, £4,606;
- (e) category 5, £3,863.

(10) Subject to paragraph (11), where the academic year in question is the final year of a course other than an intensive course, the “minimum level for the academic year” (“*lefel isaf am y flwyddyn academaidd*”) is, in the case of a student in—

- (a) category 1, £2,706;
- (b) category 2, £4,928;
- (c) category 3, £4,005;
- (d) category 4, £4,005;
- (e) category 5, £3,578.

(11) Where different categories apply to an eligible student for different quarters of the academic year, the minimum levels in paragraphs (9) and (10) are the aggregate of the amounts determined under paragraph (11) for each of the three quarters in respect of which a loan is payable.

(12) The amount determined for each quarter is one third of the amount in paragraph (9) or (10) which corresponds to the rate applicable for the quarter.

(13) This paragraph applies to type 1 and type 2 teacher training students who qualify for a maintenance grant and whose contribution exceeds nil.

(14) The loan for living costs payable in respect of an academic year to a student to whom paragraph (13) applies is calculated as follows—

$$A - B$$

where

A is the amount of loan for living costs left after applying the contribution in accordance with this Part; and

B is the amount of maintenance grant payable to the eligible student.

(15) Categories 1 to 5 have the meaning given in regulation 63.

PART 10
PAYMENTS

Payment of grants or loans for fees for old system eligible students

68.—(1) The Welsh Ministers must pay the grant for fees or fee contribution loan for which an old system eligible student qualifies to an academic authority to which the old system eligible student is liable to make payment.

(2) The Welsh Ministers may pay the grant for fees or fee contribution loan in such instalments (if any) and at such times as they consider appropriate.

(3) The Welsh Ministers must not pay the grant for fees or fee contribution loan—

- (a) unless they have received a request for payment from the relevant academic authority; and
- (b) a period of three months beginning with the first day of the academic year has expired.

(4) The Welsh Ministers must pay the grant for fees not later than 10 weeks after the expiry of the period in paragraph (3)(b), or promptly after a request for payment has been received which the Welsh Ministers consider to be a valid request, if that is later.

(5) Where assessment of an old system eligible student's contribution or other matters have delayed the final calculation of the amount of the grant for fees or fee contribution loan for which the old system eligible student qualifies, the Welsh Ministers may make a provisional assessment and payment.

(6) No payment of the grant for fees or fee contribution loan may be made in respect of a designated course if—

- (a) before the expiry of a period of three months beginning with the first day of the academic year, the old system eligible student ceases to attend or, in the case of a student who is treated as in attendance under regulation 13(3) and 13(4), ceases to undertake the course; and
- (b) the academic authority has determined or agreed that the student will not commence attending, or as the case may be undertaking, the course again in the United Kingdom during the academic year in respect of which the fees are payable, or at all.

(7) Where an old system eligible student ceases to attend or undertake a designated course during the academic year and the academic authority has determined or agreed that the student will not return during that academic year, the academic authority must inform the Welsh Ministers as soon as is

practicable of the old system eligible student's departure from the designated course.

Payment of grants or loans for fees for new system eligible students

69.—(1) The Welsh Ministers must pay the fee grant, new fee grant or fee loan for which a new system eligible student qualifies to an academic authority to which the new system eligible student is liable to make payment.

(2) The Welsh Ministers may pay the fee grant, new fee grant or fee loan in such instalments (if any) and at such times as they consider appropriate.

(3) The Welsh Ministers must not pay the fee grant, new fee grant or fee loan, or any instalment of the fee grant, new fee grant or fee loan for which a new system eligible student qualifies unless they have received from the relevant academic authority—

- (a) a request for payment; and
- (b) confirmation of the new system eligible student's attendance on the designated course.

(4) In this regulation "confirmation of the new system eligible student's attendance on the designated course" (*"cadarnhad o bresenoldeb y myfyriwr cymwys o dan y drefn newydd ar y cwrs dynodedig"*) means confirmation from the relevant academic authority that the new system eligible student—

- (a) has enrolled on and started attending the designated course, or in the case of a student who is treated as being in attendance under regulation 13(3) and 13(4), started to undertake the designated course, where the confirmation relates to full payment or a first instalment of the fee grant, new fee grant or fee loan; or
- (b) remains enrolled and continues to attend the designated course at the date of confirmation, or in the case of a student who is treated as being in attendance under regulation 13(3) and 13(4), continues to undertake the designated course at the date of confirmation, where the confirmation relates to an instalment of the fee grant, new fee grant or fee loan other than the first instalment.

(5) Where assessment of a new system eligible student's application or other matters have delayed the final calculation of the amount of fee grant, new fee grant or fee loan for which the new system eligible student qualifies, the Welsh Ministers may make a provisional assessment and payment.

(6) Where a new system eligible student ceases to attend or undertake a designated course during the academic year and the academic authority has

determined or agreed that the student will not return during that academic year, the academic authority must inform the Welsh Ministers as soon as is practicable of the new system eligible student's departure from the designated course.

Payment of grants for living costs

70.—(1) Subject to the following paragraphs, the Welsh Ministers may pay support under Part 5 in such instalments (if any) and at such times as they consider appropriate.

(2) An academic authority is required to send an attendance confirmation to the Welsh Ministers.

(3) The Welsh Ministers must not pay the first instalment or, where it has been determined not to pay support under Part 5 by instalments, make any payment of support under that Part to an eligible student before they have received an attendance confirmation unless an exception referred to in paragraph (4) applies.

(4) For the purposes of paragraph (3), an exception applies if—

- (a) a grant for disabled students' living costs is payable in which case that particular grant may be paid before the Welsh Ministers have received an attendance confirmation; or
- (b) the Welsh Ministers have determined that owing to exceptional circumstances it would be appropriate to make a payment without receiving an attendance confirmation.

(5) Where a final assessment cannot be made on the basis of the information provided by the eligible student, the Welsh Ministers may make a provisional assessment and payment of support under Part 5.

(6) Payments of support under Part 5 are to be made in such manner as the Welsh Ministers consider appropriate and they may make it a condition of entitlement to payment that the eligible student must provide them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

(7) Subject to paragraph (8), no support under Part 5 is payable in respect of any day of an academic year on which the eligible student is a prisoner, unless in the opinion of the Welsh Ministers it would be appropriate in all the circumstances for support to be paid in respect of that day.

(8) Paragraph (7) does not apply in respect of grants for disabled students' living costs.

(9) In deciding whether support is payable under paragraph (7) the circumstances to which the Welsh Ministers must have regard include the financial hardship not paying the support would cause and

whether not paying the support would affect the eligible student's ability to continue the course.

(10) No support under Part 5 is payable in respect of any payment period beginning after an eligible student's period of eligibility terminates.

(11) Where an eligible student's period of eligibility terminates on or after the relevant date, the Welsh Ministers must determine—

- (a) the amount of each grant for living costs for which that student qualifies that would be payable in respect of the relevant payment period if that student's period of eligibility had not terminated (the "full amount"); and
- (b) how much of the full amount is payable in respect of the period which runs from the first day of the relevant payment period up to and including the day on which the eligible student's period of eligibility terminated (the "partial amount").

(12) In this regulation, the "relevant date" ("*y dyddiad perthnasol*") is the date on which the first term of the academic year in question actually begins.

(13) If the Welsh Ministers have made a payment of grant for living costs in respect of the relevant payment period before the point in that period at which the eligible student's period of eligibility terminated and that payment exceeds the partial amount of that grant—

- (a) they may treat the excess as an overpayment of that grant; or
- (b) if they consider that it is appropriate to do so they may extend that student's period of eligibility in respect of that grant until the end of the relevant payment period and determine that the full amount of the grant is payable in respect of that payment period.

(14) Subject to paragraph (15), if a payment of a grant for living costs in respect of the relevant payment period is due to be made or is made after the eligible student's period of eligibility has terminated, the amount of that grant payable is the partial amount unless the Welsh Ministers consider it appropriate to extend the period of eligibility in respect of that grant until the end of the relevant payment period and to determine that the full amount of that grant is payable in respect of that payment period.

(15) Paragraph (14) does not apply to a payment of grant for disabled students' living costs in respect of specialist equipment.

(16) No support under Part 5 is payable in respect of a payment period during any part of which an eligible student is absent from the eligible student's course, unless in the opinion of the Welsh Ministers it would

be appropriate in all the circumstances for support to be paid in respect of the period of absence.

(17) In deciding whether it would be appropriate for support to be payable under paragraph (16) the circumstances to which the Welsh Ministers must have regard include the reason for the student's absence, the length of the absence and the financial hardship which not paying the support would cause.

(18) An eligible student is not to be considered absent from the eligible student's course if the eligible student is unable to attend due to illness and the eligible student's absence has not exceeded 60 days.

(19) Where, after the Welsh Ministers have made any payment of support under Part 5 or Part 6, they make a determination of the amount of a grant for living costs for which the eligible student qualifies either for the first time or by way of revision of a provisional or other determination of that amount—

- (a) if the determination increases the amount of that grant for which the eligible student qualifies they must pay the additional amount and may do so in such instalments (if any) and at such times as they consider appropriate;
- (b) if the determination decreases the amount of that grant for which the eligible student qualifies they must subtract the amount of the decrease from the amount of that grant which remains to be paid;
- (c) if the amount of the decrease is greater than the amount of that grant remaining to be paid the latter amount is reduced to nil and the balance subtracted from any other grant for living costs for which the student qualifies in respect of the academic year;
- (d) any remaining overpayment is recoverable in accordance with regulation 74.

Provision of United Kingdom national insurance number

71.—(1) The Welsh Ministers may make it a condition of entitlement to payment of any loan that an eligible student must provide them with the eligible student's United Kingdom national insurance number.

(2) Subject to paragraph (3), where the Welsh Ministers have imposed a condition under paragraph (1), they must not make any payment of the loan to the eligible student before they are satisfied that the eligible student has complied with that condition.

(3) Despite paragraph (2), the Welsh Ministers may make a payment of loan to an eligible student if they are satisfied that owing to exceptional circumstances it would be appropriate to make such a payment without

the eligible student having complied with the condition imposed under paragraph (1).

Information requirements

72.—(1) The Welsh Ministers may at any time request from an applicant or an eligible student information that they consider is required to recover a loan.

(2) The Welsh Ministers may at any time request from an applicant or an eligible student sight of their valid national identity card, valid passport issued by the state of which they are a national or their birth certificate.

(3) Where the Welsh Ministers have requested information under this regulation, they may withhold any payment of a loan until the applicant or eligible student provides what has been requested or provides a satisfactory explanation for not complying with the request.

(4) The Welsh Ministers may at any time require an applicant or an eligible student to enter into an agreement to repay a loan by a particular method.

(5) Where the Welsh Ministers have requested an agreement as to the method of repayment under this regulation, the Welsh Ministers may withhold any payment of a loan until the applicant or eligible student provides what has been requested.

Payment of loans for living costs

73.—(1) The Welsh Ministers may pay support under Part 6 in instalments or in a single lump sum.

(2) Subject to paragraph (4), the Welsh Ministers may pay support under Part 6 at such times as they consider appropriate.

(3) An academic authority is required to send an attendance confirmation to the Welsh Ministers.

(4) The Welsh Ministers must not pay the first instalment, or where they have determined not to pay support under Part 6 by instalments, make any payment of support under Part 6 to the eligible student before they have received an attendance confirmation from the relevant academic authority unless the exception referred to in paragraph (5) applies.

(5) For the purposes of paragraph (4) the exception applies if the Welsh Ministers have determined that owing to exceptional circumstances it would be appropriate to make a payment without receiving an attendance confirmation.

(6) Where a final assessment cannot be made on the basis of the information provided by the eligible student, the Welsh Ministers may make a provisional assessment and payment of support under Part 6.

(7) Payments of support under Part 6 are to be made in such manner as the Welsh Ministers consider appropriate and they may make it a condition of entitlement to payment that the eligible student must provide them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

(8) Where the Welsh Ministers have made any payment of support under Part 5 or Part 6 and an eligible student who qualifies for a loan for living costs under Part 6 applies for such a loan or applies for an additional amount of loan for living costs in respect of an academic year, the Welsh Ministers may pay that loan or that additional amount of loan in such instalments (if any) and at such times as they consider appropriate as soon as is reasonably practicable after a satisfactory application has been received.

(9) Subject to paragraph (10), no support under Part 6 is payable in respect of any day of an academic year on which the eligible student is a prisoner, unless in the opinion of the Welsh Ministers it would be appropriate in all the circumstances for support to be paid in respect of that day.

(10) In deciding whether support is payable under paragraph (9) the circumstances to which the Welsh Ministers must have regard include the financial hardship which not paying the support would cause and whether not paying the support would affect the eligible student's ability to continue the course.

(11) No support under Part 6 is payable in respect of any payment period beginning after an eligible student's period of eligibility terminates.

(12) No support under Part 6 is payable in respect of a payment period during part of which an eligible student is absent from the eligible student's course, unless in the opinion of the Welsh Ministers it would be appropriate in all the circumstances for support to be paid in respect of the period of absence.

(13) In deciding whether support is payable under paragraph (12) the circumstances to which the Welsh Ministers must have regard include the reasons for the eligible student's absence, the length of absence and the financial hardship which not paying the eligible student would cause.

(14) An eligible student is not to be considered absent from the eligible student's course if the eligible student is unable to attend due to illness and the eligible student's absence has not exceeded 60 days.

(15) Where, after the Welsh Ministers have made any payment of loan for living costs for which an eligible student qualifies in respect of an academic year under Part 6, they make a determination that the amount of loan for living costs for which the eligible student qualifies is less than the amount previously

determined either by way of a revision of a provisional assessment or otherwise—

- (a) they must subtract such amount as is necessary to ensure that the eligible student does not borrow an amount of loan for living costs which is greater than that for which the eligible student qualifies from any amount of loan for living costs which remains to be paid;
- (b) if the amount to be subtracted is greater than the amount of loan for living costs remaining to be paid, the latter is reduced to nil;
- (c) any remaining overpayment is recoverable in accordance with regulation 74.

Overpayments

74.—(1) Any overpayment of a grant for fees, fee grant, new fee grant, fee contribution loan or fee loan is recoverable by the Welsh Ministers from the academic authority.

(2) An eligible student must, if so required by the Welsh Ministers, repay any amount paid to the eligible student under Part 5 or 6 which for whatever reason exceeds the amount of support to which the student is entitled under Part 5 or 6.

(3) The Welsh Ministers must recover an overpayment of any grant for living costs unless they consider it is not appropriate to do so.

(4) A payment of any grant for living costs made before the relevant date is an overpayment if the eligible student withdraws from the course before the relevant date unless the Welsh Ministers decide otherwise.

(5) In the circumstances in paragraph (6) or (7), there is an overpayment of the grant for disabled students' living costs unless the Welsh Ministers decide otherwise.

(6) The circumstances referred to in paragraph (5) are—

- (a) the Welsh Ministers apply all or part of the grant for disabled students' living costs to the purchase of specialist equipment on behalf of the eligible student;
- (b) the eligible student's period of eligibility terminates after the relevant date; and
- (c) the equipment has not been delivered to the student before the student's period of eligibility terminates.

(7) The circumstances referred to in paragraph (5) are—

- (a) the eligible student's period of eligibility terminates after the relevant date; and

- (b) a payment of the grant for disabled students' living costs in respect of specialist equipment is made to the student after the eligible student's period of eligibility terminated.

(8) Where there is an overpayment of the grant for disabled students' living costs, the Welsh Ministers may accept the return of specialist equipment purchased with the grant by way of recovery of all or part of the overpayment if they consider it is appropriate to do so.

(9) Any overpayment of any grant under Part 5 may be recovered in whichever one or more of the following ways the Welsh Ministers consider appropriate in all the circumstances—

- (a) by subtracting the overpayment from any kind of grant payable to the eligible student from time to time pursuant to regulations made by the Welsh Ministers under section 22 of the 1998 Act;
- (b) by taking such other action for the recovery of an overpayment as is available to them.

(10) Any overpayment of a loan for living costs in respect of any academic year may be recovered if in the opinion of the Welsh Ministers—

- (a) the overpayment is a result of a failure of the student to provide promptly information which might affect whether the student qualifies for a loan or the amount of loan for which the student qualifies;
- (b) any information which the student has provided is inaccurate in a material particular; or
- (c) the student has failed to provide information which the Welsh Ministers consider to be material in the context of the recovery of the loan.

(11) Where an overpayment of a loan for living costs is recoverable in accordance with paragraph (10), it may be recovered in whichever one or more of the following ways the Welsh Ministers consider appropriate in all the circumstances—

- (a) by subtracting the overpayment from the amount of any loan payable to the student from time to time pursuant to regulations made by the Welsh Ministers under section 22 of the 1998 Act;
- (b) by taking such other action for the recovery of an overpayment as is available to them.

(12) Where there has been an overpayment of a loan for living costs which is not recoverable under paragraph (10), the Welsh Ministers may subtract the overpayment from the amount of any loan payable to the student from time to time pursuant to regulations

made by the Welsh Ministers under section 22 of the 1998 Act.

(13) In this regulation “the relevant date” (“*dyddiad perthnasol*”) is the date on which the first term of the academic year in question actually begins.

Payments - interpretation

75. In this Part—

- (a) “attendance confirmation” (“*cadarnhad o bresenoldeb*”) means confirmation in writing from the academic authority—
 - (i) that the eligible student has enrolled for the academic year where the eligible student—
 - (aa) is applying for support under these Regulations in connection with a designated course for the first time;
 - (bb) has a disability; and
 - (cc) is undertaking the course but not attending (regardless of whether the reason for not attending relates to the eligible student’s disability);
 - (ii) that the eligible student has been present at the institution and begun to attend the course where—
 - (aa) the student is applying for support under these Regulations in connection with a designated course for the first time;
 - (bb) the student’s status as an eligible student has not been transferred to the course from another designated course at the same institution; and
 - (cc) sub-paragraph (i)(cc) does not apply;
 - (iii) that the eligible student has enrolled for the academic year where the eligible student is applying for support in connection with a designated course—
 - (aa) other than for the first time; or
 - (bb) for the first time after the student’s status as an eligible student has been transferred to that course from another course at the same institution;
- (b) “payment period” (“*cyfnod talu*”) means a period in respect of which the Welsh Ministers pay the relevant support under Part 5 or Part 6 or would have paid such support if

the eligible student's period of eligibility had not terminated.

PART 11

SUPPORT FOR FULL-TIME DISTANCE LEARNING COURSES

Eligible distance learning students

76.—(1) An eligible distance learning student qualifies for support in connection with the eligible distance learning student undertaking a designated distance learning course subject to and in accordance with this Part.

(2) Subject to paragraphs (3) and (8), a person is an eligible distance learning student in connection with a designated distance learning course if in assessing the person's application for support under regulation 84 the Welsh Ministers determine that the person falls within one of the categories set out in Part 2 of Schedule 1.

(3) Subject to paragraph (8), a person ("A" in this paragraph) is not an eligible distance learning student if—

- (a) subject to paragraph (4), there has been bestowed on A or paid to A in connection with the distance learning course—
 - (i) a healthcare bursary whether or not the amount of such bursary is calculated by reference to A's income;
 - (ii) any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007(1); or
 - (iii) a Scottish healthcare allowance whether or not the amount of such allowance is calculated by reference to A's income;
- (b) A is in breach of any obligation to repay any loan;
- (c) A has reached the age of 18 and has not ratified any agreement for a loan made with A when A was under the age of 18;
- (d) A has, in the opinion of the Welsh Ministers, shown by A's conduct that A is unfitted to receive support under this Part; or
- (e) subject to paragraph (5), A is a prisoner.

(4) Paragraph (3)(a) does not apply if—

- (a) the person applying for support under this Part is a disabled student; and

(1) S.S.I. 2007/151, amended by S.S.I. 2007/503, S.S.I. 2008/206, S.S.I. 2009/188 and S.S.I. 2009/309.

- (b) there has been bestowed on or paid to the person in connection with the distance learning course—
 - (i) a healthcare bursary the amount of which is calculated by reference to the person's income; or
 - (ii) a Scottish Healthcare Allowance whether or not the amount of such allowance is calculated by reference to the person's income.

(5) Paragraph (3)(e) does not apply in respect of an academic year during which the eligible distance learning student enters prison to serve a custodial sentence or is released from prison having served such a sentence.

(6) For the purposes of paragraphs (3)(b) and (3)(c), "loan" ("*benthyciad*") means a loan made under the student loans legislation.

(7) In a case where the agreement for a loan is subject to the law of Scotland, paragraph (3)(c) only applies if the agreement was made—

- (a) before 25 September 1991; and
- (b) with the concurrence of the borrower's curator or at a time when the borrower had no curator.

(8) Subject to paragraphs (10) to (12), a person is an eligible distance learning student for the purposes of this Part if the person satisfies the conditions in paragraph (9)(a) or (b).

(9) The conditions referred to in paragraph (8) are—

- (a) the—
 - (i) person qualified as an eligible distance learning student in connection with an earlier academic year of the present distance learning course pursuant to regulations made by the Welsh Ministers under section 22 of the 1998 Act;
 - (ii) person was ordinarily resident in Wales on the first day of the present distance learning course; and
 - (iii) person's status as an eligible distance learning student has not terminated;
- (b) the—
 - (i) Welsh Ministers have previously determined that the person is an eligible—
 - (aa) student in connection with a designated course;
 - (bb) distance learning student in connection with a designated distance learning course other than the present distance learning course; or

- (cc) part-time student in connection with a designated part-time course;
- (ii) person's status as an eligible student, eligible distance learning student or as an eligible part-time student in connection with the course referred to in sub-paragraph (b)(i) has been converted or transferred from that course to the present distance learning course as a result of one or more conversions or transfers in accordance with regulations made by the Welsh Ministers under section 22 of the 1998 Act;
- (iii) person was ordinarily resident in Wales on the first day of the first academic year of the course referred to in sub-paragraph (b)(i); and
- (iv) person's status as an eligible distance learning student has not terminated.

(10) Where—

- (a) the Welsh Ministers determined that, by virtue of being a refugee or the spouse, civil partner, child or step-child of a refugee, a person ("A" in this paragraph) was an eligible distance learning student in connection with an application for support for an earlier year of the present distance learning course or an application for support in connection with a designated course, designated part-time course or other designated distance learning course from which A's status as an eligible student, eligible part-time student or eligible distance learning student has been transferred to the present distance learning course; and
- (b) as at the day before the academic year in respect of which A is applying for support begins, the refugee status of A or of A's spouse, civil partner, parent (as defined in Part 1 of Schedule 1) or step-parent, as the case may be, has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002⁽¹⁾),

A's status as an eligible distance learning student terminates immediately before the first day of the academic year in respect of which A is applying for support.

(11) Where—

(1) 2002 c.41. Section 104 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), Schedules 2 and 4, the Immigration, Asylum and Nationality Act 2006 (c. 13), section 9 and S.I. 2010/21.

- (a) the Welsh Ministers determined that, by virtue of being a person with leave to enter or remain or the spouse, civil partner, child or step-child of such a person, a person (“A” in this paragraph) was an eligible distance learning student in connection with an application for support for an earlier year of the present distance learning course or an application for support in connection with a designated course, designated part-time course or other designated distance learning course from which A’s status as an eligible student, eligible part-time student or eligible distance learning student has been transferred to the present distance learning course; and
- (b) as at the day before the academic year in respect of which A is applying for support begins, the period for which the person with leave to enter or remain is allowed to stay in the United Kingdom has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002),

A’s status as an eligible distance learning student terminates immediately before the first day of the academic year in respect of which A is applying for support.

(12) Paragraphs (10) and (11) do not apply where the student began the course in connection with which the Welsh Ministers determined that the student was an eligible student or eligible part-time student, as the case may be, before 1 September 2007.

(13) An eligible distance learning student may not, at any one time, qualify for support under these Regulations for—

- (a) more than one designated distance learning course;
- (b) a designated distance learning course and a designated course;
- (c) a designated distance learning course and a designated part-time course;
- (d) a designated distance learning course and a designated postgraduate course.

Students becoming eligible during the course of the academic year

77.—(1) Where one of the events listed in paragraph (4) occurs in the course of an academic year—

- (a) a student may qualify for a grant in respect of fees in respect of that academic year in accordance with this Part provided that the

relevant event occurred within the first three months of the academic year; and

- (b) a grant in respect of fees is not available in respect of any academic year beginning before the academic year in which the relevant event occurred.

(2) Where one of the events listed in sub-paragraphs (a), (b), (e), (f), (g), (h) or (i) of paragraph (4) occurs in the course of an academic year—

- (a) a student may qualify for a grant for books, travel and other expenditure in respect of that academic year in accordance with this Part; and
- (b) a grant for books, travel and other expenditure is not available in respect of any academic year beginning before the academic year in which the relevant event occurred.

(3) Where one of the events listed in sub-paragraphs (a), (b), (e), (f), (g), (h) or (i) of paragraph (4) occurs in the course of an academic year—

- (a) a student may qualify for a grant for disabled distance learning students' living costs in respect of that academic year in accordance with this Part; and
- (b) a grant for disabled distance learning students' living costs is not available in respect of any academic year beginning before the academic year in which the relevant event occurred.

(4) The events are—

- (a) the student's course becomes a designated distance learning course;
- (b) the student, the student's spouse, civil partner or parent (as defined in Part 1 of Schedule 1) is recognised as a refugee or becomes a person with leave to enter or remain;
- (c) a state accedes to the European Union and the student is a national of that state or a family member (as defined in Part 1 of Schedule 1) of a national of that state;
- (d) the student becomes a family member (as defined in Part 1 of Schedule 1) of an EU national;
- (e) the state of which the student is a national accedes to the European Union where the student has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course;
- (f) the student acquires the right of permanent residence;

- (g) the student becomes a person described in paragraph 6(1)(a) of Schedule 1;
- (h) the student becomes the child of a Swiss national; or
- (i) the student becomes the child of a Turkish worker.

Designated distance learning courses

78.—(1) A course is designated for the purposes of section 22(1) of the 1998 Act and regulation 76 if it is designated by the Welsh Ministers under this regulation.

(2) Subject to paragraph (4), the Welsh Ministers may designate a course under this regulation if in their opinion—

- (a) the course is listed in Schedule 2 other than a course for the initial training of teachers;
- (b) the course is a full-time course;
- (c) the course is of at least one academic year's duration;
- (d) students undertaking the course in the United Kingdom are not required to be in attendance on it by the institution providing the course; and
- (e) subject to paragraph (5), the course began before 1 September 2012.

(3) For the purposes of determining whether the requirement in paragraph (2)(d) is satisfied the Welsh Ministers may disregard—

- (a) any requirement imposed by the institution providing the course to attend any institution for the purposes of—
 - (i) registration or enrolment;
 - (ii) an examination;
- (b) any requirement imposed by the institution providing the course to attend any institution on a weekend or during any vacation;
- (c) any period of attendance at the institution providing the course which a student may but is not required to complete by that institution.

(4) The Welsh Ministers may not designate a course as a designated distance learning course if—

- (a) it falls within paragraph 7 or 8 of Schedule 2; and
- (b) the governing body of a maintained school has arranged for the provision of the course to a pupil of the school.

(5) A course which begins on or after 1 September 2012 is a designated distance learning course where—

- (a) a student transfers to that course pursuant to regulation 87 from a previous designated distance learning course which began before 1 September 2012; and
- (b) that course would otherwise be a designated course for the purposes of regulation 5.

Period of eligibility

79.—(1) A student’s status as an eligible distance learning student is retained in connection with a designated distance learning course until that status terminates in accordance with this regulation or regulation 76.

(2) The period for which an eligible distance learning student retains the status referred to in paragraph (1) is the “period of eligibility” (*“cyfnod cymhwysra”*).

(3) Subject to the following paragraphs and regulation 76, the period of eligibility terminates at the end of the academic year in which the eligible distance learning student completes the designated distance learning course.

(4) The period of eligibility terminates when the eligible distance learning student (“A” in this paragraph and in paragraph (5))—

- (a) withdraws from A’s designated distance learning course in circumstances where the Welsh Ministers have not transferred or converted or will not transfer or convert A’s status under regulation 87, 88, 89, or 113; or
- (b) abandons or is expelled from A’s designated distance learning course.

(5) The Welsh Ministers may terminate the period of eligibility where in their opinion A has shown by A’s conduct that A is unfitted to receive support under these Regulations.

(6) If the Welsh Ministers are satisfied that an eligible distance learning student has failed to comply with any requirement to provide information under this Part or has provided information which is inaccurate in a material particular, the Welsh Ministers may take such of the following actions as they consider appropriate in the circumstances—

- (a) terminate the period of eligibility;
- (b) determine that the student no longer qualifies for any particular support or particular amount of support under these Regulations;
- (c) treat any support paid to the student under these Regulations as an overpayment which may be recovered under regulation 92.

(7) Where the period of eligibility terminates before the end of the academic year in which the eligible

distance learning student completes the designated distance learning course the Welsh Ministers may, at any time, renew or extend the period of eligibility for such period as they determine.

Support for distance learning courses

80.—(1) For the purposes of this regulation, the support available is—

- (a) a grant in respect of fees not exceeding the lesser of the following amounts—
 - (i) £1,025; or
 - (ii) the actual fees, being the amount of fees charged to the eligible distance learning student in respect of an academic year of the designated distance learning course; and
- (b) a grant not exceeding £1,155 for books, travel and other expenditure in connection with the designated distance learning course.

(2) An eligible distance learning student does not qualify for support under paragraph (1)(b) if the only paragraph in Part 2 of Schedule 1 into which the eligible distance learning student falls is paragraph 9.

(3) An eligible distance learning student does not qualify for support under this regulation if—

- (a) the eligible distance learning student is a disabled student; and
- (b) there has been bestowed on or paid to the eligible distance learning student in connection with the designated distance learning course—
 - (i) a healthcare bursary the amount of which is calculated by reference to the eligible distance learning student's income; or
 - (ii) a Scottish healthcare allowance whether or not the amount of such allowance is calculated by reference to the eligible distance learning student's income.

(4) An eligible distance learning student does not qualify for support under this regulation unless the Welsh Ministers consider that the eligible distance learning student is undertaking the designated distance learning course in Wales on the first day of the first academic year.

(5) An eligible distance learning student will no longer qualify for support under this regulation if the Welsh Ministers consider that the eligible distance learning student is undertaking the designated distance learning course outside the United Kingdom.

(6) An eligible distance learning student does not qualify for support under this regulation if the eligible distance learning student has undertaken one or more

distance learning courses for eight academic years in aggregate and the eligible distance learning student has received in respect of each of those academic years a loan or a grant of the kind described in paragraph (7).

(7) The loans and grants are—

- (a) a loan, a grant in respect of fees or a grant for books, travel and other expenditure each made in respect of an academic year of a distance learning course pursuant to regulations made under section 22 of the 1998 Act;
- (b) a loan, a grant in respect of fees or a grant for books, travel and other expenditure each made in respect of an academic year of a distance learning course by the Department for Employment and Learning (Northern Ireland) pursuant to regulations made under Articles 3 and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998⁽¹⁾; or
- (c) a loan in respect of an academic year of a distance learning course made pursuant to regulations made under sections 73(f), 73B and 74(1) of the Education (Scotland) Act 1980⁽²⁾.

(8) An eligible distance learning student does not qualify for support under this regulation if the eligible distance learning student holds a first degree from an educational institution in the United Kingdom.

(9) For the purposes of paragraph (7), a degree is not to be treated as a first degree where—

- (a) it is a degree (other than an honours degree) that has been awarded to the eligible distance learning student who has completed the required modules, examinations or other forms of assessment for the eligible distance learning student's first degree course; and
- (b) that student is undertaking the present distance learning course so as to obtain an honours degree on completion of the required modules, examinations or other forms of assessment (whether or not that student

(1) S.I. 1998/1760 (N.I. 14), to which there are amendments not relevant to these Regulations.

(2) 1980 c.44; section 73(f) was amended by the Teaching and Higher Education Act 1998 (c. 30), section 29(1) and the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), section 3(2). Section 73B was inserted by section 29(2) of the Teaching and Higher Education Act 1998 and was amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001, Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1) and section 34(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3). Section 74 was amended by section 82 of and Schedule 10 to the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

continues the course at the same educational institution after the award of the degree referred to in sub-paragraph (a)).

(10) No support is payable to an eligible distance learning student under these Regulations in connection with that student undertaking a distance learning course that is not a designated distance learning course.

Amount of support

81.—(1) Subject to paragraph (2) and regulation 87(6), the amount of support payable under regulation 80 in respect of an academic year is as follows—

- (a) if at the date of the eligible distance learner student's application the eligible distance learning student or the eligible distance learning student's partner is entitled—
 - (i) under Part VII of the Social Security Contributions and Benefits Act 1992⁽¹⁾ to income support, housing benefit or council tax benefit;
 - (ii) under Part 1 of the Jobseekers Act 1995⁽²⁾ to income-based jobseeker's allowance or under section 2 of the Employment and Training Act 1973⁽³⁾ to an allowance under the arrangements known as the New Deal; or

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- (1) 1992 c. 4; Part VII was amended by the Local Government Finance Act 1992 (c. 14), Schedule 9 and Schedule 14; the Social Security (Incapacity for Work) Act 1994, Schedules 1 and 2; the Jobseekers Act 1995 (c. 18), Schedule 2 and Schedule 3; the Housing Act 1996 (c. 52), Schedule 19 Part 6; the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 8; the Health and Social Care Act 2001 (c. 15), Schedule 6 Part 3; the State Pension Credit Act 2002 (c. 16), Schedule 2 and Schedule 3, the Tax Credits Act 2002 (c. 21), Schedule 6; S.I. 2002/1397; the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 6, paragraphs 169 and 179, the Civil Partnership Act 2004 (c. 33), Schedule 24 and Schedule 30; the Welfare Reform Act 2007 (c. 5), sections 30(2) and 31(1), Schedule 3, Schedule 5 and Schedule 8; S.I. 2008/632, S.I. 2008/787; S.I. 2009/497 and S.I. 2010/793.
 - (2) 1995 c. 18; Part I was amended by the Employment Rights Act 1996 (c. 18), Schedule 1; the Social Security Act 1998 (c. 14), Schedules 7 and 8; the Welfare Reform and Pensions Act 1999 (c. 30), Schedules 1, 7, 8 and 13; the State Pension Credit Act 2002 (c. 16), Schedule 2; the National Insurance Contributions Act 2002 (c. 19), Schedule 1; the Income Tax (Earnings and Pensions) Act 2003 (c. 18), Schedule 6; the Civil Partnership Act 2004 (c. 33), Schedule 24 and S.I. 2006/343; the Welfare Reform Act 2007 (c.5), Schedule 3 and the Welfare Reform Act 2009 (c.24), section 33.
 - (3) 1973 c. 50; section 2 as substituted by the Employment Act 1988 (c. 19) was amended by the Employment Act 1989 (c. 38), Schedule 7. Subsections (3A) and (3B) were inserted by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 47 in relation to Scotland only.

(iii) under Part 1 of the Welfare Reform Act 2007(1) to an income-related employment and support allowance,

the maximum amount of support available under regulation 80(1) is payable;

- (b) where the relevant income is less than £16,865, the maximum amount of support available under regulation 80(1) is payable;
- (c) where the relevant income is £16,865, the maximum amount of support available under regulation 80(1)(b) is payable together with £50 less than the maximum amount of support available under regulation 80(1)(a);
- (d) where the relevant income exceeds £16,865 but is less than £25,435, the maximum amount of support available under regulation 80(1)(b) is payable and the amount of support payable under regulation 80(1)(a) is the amount determined in accordance with paragraph (2);
- (e) where the relevant income is £25,435, the maximum amount of support available under regulation 80(1)(b) is payable and the amount of support payable under regulation 80(1)(a) is £50;
- (f) where the relevant income exceeds £25,435 but is less than £26,095, the maximum amount of support available under regulation 80(1)(b) is payable and no support is payable under regulation 80(1)(a);
- (g) where the relevant income is £26,095 or more but less than £28,180 no support is available under regulation 80(1)(a) and the amount of support payable under regulation 80(1)(b) is the amount left after deducting from the maximum amount of support available under regulation 80(1)(b) £1 for every £1.886 by which the relevant income exceeds £26,095;
- (h) where the relevant income is £28,180, no support is payable under regulation 80(1)(a) and the amount of support payable under regulation 80(1)(b) is £50;
- (i) where the relevant income exceeds £28,180 no support is payable under regulation 80(1).

(2) Where paragraph (1)(d) applies, the amount of support payable under regulation 80(1)(a) is determined by deducting from the maximum amount of support available under regulation 80(1)(a) one of the following amounts—

(1) 2007 c.5, amended by the Welfare Reform Act 2009 (c. 24), sections 10, 11, 28 and Schedule 3.

- (a) £50 plus a further £1 for each complete £9.26 by which the relevant income exceeds £16,865; or
- (b) where the actual fees are less than £1,025, an amount equal to that left after deducting from the amount calculated under sub-paragraph (a) the difference between £1,025 and the actual fees (unless the amount is a negative number in which case the maximum amount of support available under regulation 80(1)(a) is payable).

Interpretation of regulation 81

82.—(1) For the purposes of regulation 81 and this regulation—

- (a) subject to sub-paragraph (b), “partner” (“*partner*”) means any of the following—
 - (i) the spouse of an eligible distance learning student;
 - (ii) the civil partner of an eligible distance learning student;
 - (iii) a person ordinarily living with an eligible distance learning student as if the person were the eligible distance learning student’s spouse where an eligible distance learning student is aged 25 or over on the first day of the academic year in respect of which the eligible distance learning student is being assessed for support and where the eligible distance learning student began the specified designated distance learning course before 1 September 2005;
 - (iv) a person ordinarily living with an eligible distance learning student as if the person were the eligible distance learning student’s spouse or civil partner where an eligible distance learning student began the specified designated distance learning course on or after 1 September 2005;
- (b) a person who would otherwise be a partner under sub-paragraph (a) is not to be treated as a partner if—
 - (i) in the opinion of the Welsh Ministers, that person and the eligible distance learning student are separated; or
 - (ii) the person is ordinarily living outside the United Kingdom and is not maintained by the eligible distance learning student;
- (c) “relevant income” (“*incwm perthnasol*”) has the meaning given in paragraph (2).

(2) Subject to paragraph (3), an eligible distance learning student’s relevant income is equal to the

eligible distance learning student's financial resources in the preceding financial year less—

- (a) £2,000 in respect of the eligible distance learning student's partner;
- (b) £2,000 in respect of the only or eldest child who is dependent on the eligible distance learning student or the eligible distance learning student's partner; and
- (c) £1,000 in respect of each other child who is dependent on the eligible distance learning student or the eligible distance learning student's partner.

(3) Where the Welsh Ministers are satisfied that an eligible distance learning student's financial resources in the preceding financial year are greater than the eligible distance learning student's financial resources in the current financial year and that the difference between the two amounts is £1,000 or more, they must assess that student's financial resources by reference to those resources in the current financial year.

(4) In this regulation, an eligible distance learning student's financial resources in a financial year means the aggregate of the eligible distance learning student's income for that year together with the aggregate of the income for that year of any person who at the date of the application for support under this Part is the eligible distance learning student's partner.

(5) In this regulation—

- (a) "child" ("*plentyn*") in relation to an eligible distance learning student includes any child of the student's partner and any child for whom the student has parental responsibility;
- (b) "current financial year" ("*blwyddyn ariannol gyfredol*") means the financial year which includes the first day of the academic year in respect of which a person is being assessed for support under this Part;
- (c) "dependent" ("*dibynnol*") means wholly or mainly financially dependent;
- (d) "financial year" ("*blwyddyn ariannol*") means the period of twelve months for which the income of the eligible distance learning student is computed for the purposes of the income tax legislation which applies to it;
- (e) "income" ("*incwm*") means gross income from all sources excluding—
 - (i) any payment made under section 23C(5A) of the Children Act 1989; and

- (ii) any tax credits awarded pursuant to any claims under section 3 of the Tax Credits Act 2002⁽¹⁾;
- (f) “preceding financial year” (*“blwyddyn ariannol flaenorol”*) means the financial year immediately preceding the current financial year;
- (g) “specified designated distance learning course” (*“cwrw dysgu o bell dynodedig a bennir”*) means the course in respect of which the person is applying for support under this Part or, where the student’s status as an eligible distance learning student has been transferred to the present distance learning course as a result of one or more transfers of that status by the Welsh Ministers from a distance learning course (the “initial course”) (*“cwrw cychwynmol”*) in connection with which the Welsh Ministers determined the student to be an eligible distance learning student pursuant to regulations made under section 22 of the 1998 Act, the specified designated distance learning course is the initial course.

Grant for disabled distance learning students’ living costs

83.—(1) An eligible distance learning student qualifies in accordance with this Part for a grant to assist with the additional expenditure which the Welsh Ministers are satisfied the eligible distance learning student is obliged to incur by reason of a disability to which the eligible distance learning student is subject in respect of the eligible distance learning student undertaking a designated distance learning course.

(2) An eligible distance learning student does not qualify for the grant under this regulation if the only paragraph in Part 2 of Schedule 1 into which the eligible distance learning student falls is paragraph 9.

(3) An eligible distance learning student does not qualify for the grant under this regulation in respect of any academic year that is a bursary year.

(4) An eligible distance learning student does not qualify for the grant under this regulation unless the Welsh Ministers consider that the eligible distance learning student is undertaking the designated distance learning course in Wales on the first day of the first academic year.

(5) An eligible distance learning student will no longer qualify for the grant under this regulation if the Welsh Ministers consider that the eligible distance

(1) 2002 c.21, section 3 was amended by the Civil Partnership Act 2004 (c. 33), section 254 and Schedule 24.

learning student is undertaking the designated distance learning course outside the United Kingdom.

(6) Subject to the following paragraphs, the amount of grant under this regulation is the amount that the Welsh Ministers consider appropriate in accordance with the student's circumstances.

(7) The amount of the grant under this regulation must not exceed—

- (a) £21,181 in respect of an academic year for expenditure on a non-medical personal helper;
- (b) £5,332 in respect of all the academic years during the period of eligibility for expenditure on major items of specialist equipment;
- (c) the additional expenditure incurred—
 - (i) within the United Kingdom for the purpose of attending the institution;
 - (ii) within or outside the United Kingdom for the purpose of attending, as a part of the eligible distance learning student's course, any period of study at an overseas institution or for the purpose of attending the Institute;
- (d) £1,785 in respect of an academic year for any other expenditure including expenditure incurred for the purposes referred to in subparagraph (a) or (b) which exceeds the specified maxima.

Applications for support

84.—(1) A person must apply for support in connection with each academic year of a designated distance learning course by completing and submitting to the Welsh Ministers an application in such form as the Welsh Ministers may require.

(2) The application must be accompanied by—

- (a) a declaration completed by the academic authority; and
- (b) such additional documentation as the Welsh Ministers may require.

(3) The Welsh Ministers may take such steps and make such inquiries as they consider necessary to determine whether the applicant is an eligible distance learning student, whether the applicant qualifies for support under this Part and the amount of support payable, if any.

(4) The Welsh Ministers must notify the applicant of whether the applicant qualifies for support under this Part and, if the applicant does qualify, the amount of support payable in respect of the academic year, if any.

(5) Subject to paragraph (6), the application must reach the Welsh Ministers within a period of six months beginning with the first day of the academic

year of the designated distance learning course in respect of which it is submitted.

(6) Paragraph (5) does not apply where—

- (a) one of the events listed in paragraph (4) of regulation 77 occurs after the first day of the academic year in respect of which the applicant is applying for support under this Part, in which case the application must reach the Welsh Ministers within a period of six months beginning with the day on which the relevant event occurred;
- (b) the applicant is applying for the grant for disabled distance learning students' living costs, in which case the application must reach the Welsh Ministers as soon as is reasonably practicable; or
- (c) the Welsh Ministers consider that having regard to the circumstances of the particular case the time limit should be relaxed, in which case the application must reach the Welsh Ministers not later than such date as they specify.

Declarations provided by academic authorities

85.—(1) Subject to paragraph (2), the academic authority must, on the request of the applicant, complete a declaration in such form as may be required by the Welsh Ministers to accompany the application for support under regulation 84.

(2) An academic authority is not required to complete a declaration if it is unable to give the confirmation required by sub-paragraph 3(a)(ii) or 3(b)(ii).

(3) In this Part, “declaration” (“*datganiad*”) means—

- (a) where the applicant is applying for support in connection with the designated distance learning course for the first time, a statement that—
 - (i) provides the course information; and
 - (ii) confirms that the applicant has undertaken at least two weeks of the designated distance learning course;
- (b) in any other case, a statement that—
 - (i) provides the course information; and
 - (ii) confirms that the applicant has enrolled to undertake the academic year of the designated distance learning course in respect of which the applicant is applying for support.

(4) In this regulation, “course information” (“*gwybodaeth am y cwrs*”) means—

- (a) the amount of fees being charged in respect of the academic year in respect of which the applicant is applying for support under this Part;
- (b) certification by the academic authority that it considers the applicant is undertaking the designated distance learning course in Wales; and
- (c) in any case where the applicant is a disabled student, certification by the academic authority that it considers the applicant has chosen to undertake the designated distance learning course for a reason other than that the applicant is unable to attend a designated course for a reason which relates to the applicant's disability.

Information

86. Schedule 3 applies in respect of the provision of information by an applicant or an eligible distance learning student.

Transfer of status

87.—(1) Where an eligible distance learning student transfers from a designated distance learning course to another designated distance learning course, the Welsh Ministers must transfer the student's status as an eligible distance learning student to that other course where—

- (a) they receive a request from the eligible distance learning student to do so;
- (b) they are satisfied that one or more of the grounds for transfer in paragraph (2) applies; and
- (c) the period of eligibility has not terminated.

(2) The grounds for transfer are—

- (a) the eligible distance learning student starts to undertake another designated distance learning course at the same institution;
- (b) the eligible distance learning student starts to undertake a designated distance learning course at another institution; or
- (c) after commencing a designated distance learning course for a first degree (other than an honours degree) the eligible distance learning student is, before the completion of that course, admitted to a designated distance learning course for an honours degree in the same subject at the same institution.

(3) Subject to paragraph (4), an eligible distance learning student who transfers under paragraph (1) is to receive in connection with the academic year of the

course to which the eligible distance learning student transfers the remainder of the support under this Part for which the Welsh Ministers have determined the eligible distance learning student qualifies in respect of the academic year of the course from which the eligible distance learning student transfers.

(4) The Welsh Ministers may re-assess the amount of support payable after the transfer in accordance with this Part.

(5) An eligible student who transfers under paragraph (1) after the Welsh Ministers have determined the eligible distance learning student's support under this Part in connection with the academic year of the course from which the eligible distance learning student is transferring but before the eligible distance learning student completes that year, may not apply for another grant under regulation 80(1)(b) or regulation 83 in connection with the academic year of the course to which the eligible distance learning student transfers.

(6) Where a student transfers under paragraph (1), the maximum amount of support under regulation 80(1)(a) in respect of the academic years to and from which the eligible distance learning student transfers is the amount of support available in connection with the course with the highest actual fees as defined in regulation 80.

Conversion of status – eligible students transferring to designated distance learning courses

88.—(1) Where an eligible student ceases to undertake a designated course and transfers to a designated distance learning course at the same or at another institution, the Welsh Ministers must convert the student's status as an eligible student to that of an eligible distance learning student in connection with the course to which the eligible student is transferring where—

- (a) they receive a request from the eligible student to do so; and
- (b) the period of eligibility has not terminated.

(2) The following applies to an eligible student who transfers under paragraph (1)—

- (a) where the Welsh Ministers have determined to pay an amount of grant for disabled students' living costs to that student under Part 5 in periodic instalments, no payment in respect of that amount of grant must be made in respect of any instalment period beginning after the date on which that student becomes an eligible distance learning student;
- (b) the maximum amount of grant for disabled distance learning students' living costs to which that student would, apart from this

regulation, be entitled in connection with that student undertaking a designated distance learning course in respect of that academic year is reduced by one third where that student became an eligible distance learning student in the second quarter of the academic year and by two thirds where that student became an eligible distance learning student in a later quarter of that year;

- (c) where an amount of grant for disabled students' living costs for any purpose has been paid to the student under Part 5 in a single instalment, the maximum amount of grant for disabled distance learning students' living costs payable to that student for that purpose is reduced (or where sub-paragraph (b) applies, further reduced) by the amount of grant paid to that student for that purpose pursuant to Part 5, and where the resulting amount is nil or a negative amount that amount is nil; and
- (d) where immediately before that student became an eligible distance learning student that student was eligible to apply, but had not applied for a loan for living costs in respect of that year, or had not applied for the maximum amount or increased maximum to which that student was entitled, that student may apply for such a loan or such additional amount as if that student had continued to be an eligible student and in the circumstances mentioned in paragraph (3) the maximum amount or increased maximum amount of such loan for the academic year is reduced in accordance with that paragraph.

(3) Where the request under paragraph (1) is made during the first quarter of the academic year in respect of which the loan for living costs is payable the maximum amount or increased maximum amount of loan (as the case may be) is reduced by two thirds and where the request is made during the second quarter of that year that amount is reduced by one third.

Conversion of status – eligible distance learning students transferring to designated courses

89.—(1) Where an eligible distance learning student ceases to undertake a designated distance learning course and transfers to a designated course at the same or at another institution, the Welsh Ministers must convert the student's status as an eligible distance learning student to that of an eligible student in connection with the course to which the eligible distance learning student is transferring where—

- (a) they receive a request from the eligible distance learning student to do so; and

(b) the period of eligibility has not terminated.

(2) The following applies to an eligible distance learning student who transfers under paragraph (1)—

- (a) where the Welsh Ministers have determined to pay an amount of grant for disabled distance learning students' living costs to that student in periodic instalments no payment in respect of that amount of grant must be made in respect of any instalment period beginning after the date on which that student becomes an eligible student;
- (b) any support to which that student is entitled under this Part in respect of the academic year in which that student transfers is ignored in determining the amount of support to which that student may be entitled in respect of that year under Parts 4 to 6;
- (c) the maximum amount of any support under Part 5 or 6 to which that student would, apart from this regulation, be entitled in connection with a designated course in respect of the academic year is reduced by one third where that student became an eligible student during the second quarter of that academic year and by two thirds where that student became an eligible student in a later quarter of that year; and
- (d) where an amount of grant for disabled distance learning students' living costs for any purpose has been paid to that student in a single instalment, the maximum amount of grant for disabled students' living costs payable to that student under Part 5 for that purpose is reduced (or, where sub-paragraph (c) applies, further reduced) by the amount of grant for disabled distance learning students' living costs paid to that student for that purpose and where the resulting amount is nil or a negative amount that amount is nil.

Payment of grants for fees

90.—(1) Subject to paragraphs (2) and (3), the Welsh Ministers must pay the grant in respect of fees for which the eligible distance learning student qualifies once they have received from the relevant academic authority—

- (a) a request for payment; and
- (b) confirmation of the eligible distance learning student's attendance on the designated distance learning course.

(2) The Welsh Ministers may make payments under paragraph (1) at such times and in such instalments (if any) as they see fit.

(3) The Welsh Ministers may make provisional payments under paragraph (1) in such cases as they deem appropriate.

(4) In this regulation “confirmation of the eligible distance learning student’s attendance on the designated distance learning course” (“*cadarnhad o bresenoldeb y myfyriwr dysgu o bell cymwys ar y cwrs dysgu o bell dynodedig*”) means confirmation from the relevant academic authority that the eligible distance learning student—

- (a) has enrolled on and started undertaking the designated distance learning course, where the confirmation relates to a payment of the entire grant in respect of fees or the first instalment of the grant in respect of fees; or
- (b) remains enrolled and continues to undertake the designated distance learning course at the date of the confirmation, where the confirmation relates to an instalment of the grant in respect of fees other than the first instalment.

(5) Where an eligible distance learning student ceases to undertake a designated distance learning course during the academic year and the academic authority has determined or agreed that the student will not return during that academic year, the academic authority must inform the Welsh Ministers as soon as is practicable of the eligible distance learning student’s departure from the designated distance learning course.

Payment of grants for books, travel and other expenditure and grants for disabled distance learning students’ living costs

91.—(1) Payments of the grant for books, travel and other expenditure and the grant for disabled distance learning students’ living costs may be made in such manner as the Welsh Ministers consider appropriate and they may make it a condition of entitlement to payment that the eligible distance learning student must provide them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

(2) Where the Welsh Ministers cannot make a final assessment on the basis of the information provided by the eligible distance learning student, they may make a provisional assessment and payment of the grant for books, travel and other expenditure and the grant for disabled distance learning students’ living costs.

(3) The Welsh Ministers may pay the grant for books, travel and other expenditure and the grant for disabled distance learning students’ living costs in instalments or in a single lump sum.

(4) Subject to paragraph (5), the Welsh Ministers may pay the grant for books, travel and other

expenditure and the grant for disabled distance learning students' living costs at such times as they consider appropriate.

(5) The Welsh Ministers must not pay the first instalment or, where it has been determined not to pay support in instalments, make any payment of the grant for books, travel and other expenditure or the grant for disabled distance learning students' living costs before they have received a declaration under regulation 85 unless an exception referred to in paragraph (6) applies.

(6) For the purposes of paragraph (5) an exception applies if—

- (a) a grant for disabled distance learning students' living costs is payable in which case that particular grant may be paid before the Welsh Ministers have received a declaration;
- (b) the Welsh Ministers have determined that owing to exceptional circumstances it would be appropriate to make a payment without receiving a declaration.

Overpayments

92.—(1) Any overpayment of a grant in respect of fees is recoverable by the Welsh Ministers from the academic authority.

(2) An eligible distance learning student must, if so required by the Welsh Ministers, repay any amount paid to the eligible distance learning student under this Part which for whatever reason exceeds the amount of grant to which the eligible distance learning student is entitled under this Part.

(3) The Welsh Ministers must recover an overpayment of grant for books, travel and other expenditure and grant for disabled distance learning students' living costs unless they consider that it is not appropriate to do so.

(4) The methods of recovery are—

- (a) subtracting the overpayment from any kind of grant payable to the eligible distance learning student from time to time pursuant to regulations made by the Welsh Ministers under section 22 of the 1998 Act;
- (b) taking such other action for the recovery of an overpayment as is available to the Welsh Ministers.

(5) A payment of the grant for disabled distance learning students' living costs made before the relevant date is an overpayment if the eligible distance learning student withdraws from the course before the relevant date unless the Welsh Ministers decide otherwise.

(6) In this regulation, the “relevant date” (“*dyddiad perthnasol*”) is the date on which the first term of the academic year in question actually begins.

(7) In the circumstances set out in paragraph (8) or (9), there is an overpayment of the grant for disabled distance learning students’ living costs unless the Welsh Ministers decide otherwise.

(8) The circumstances referred to in paragraph (7) are—

- (a) the Welsh Ministers apply all or part of the grant for disabled distance learning students’ living costs to the purchase of specialist equipment on behalf of the eligible distance learning student;
- (b) the eligible distance learning student’s period of eligibility terminates after the relevant date; and
- (c) the equipment has not been delivered to the eligible distance learning student before the period of eligibility terminates.

(9) The circumstances referred to in paragraph (7) are—

- (a) the eligible distance learning student’s period of eligibility terminates after the relevant date; and
- (b) a payment of the grant for disabled part-time students’ living costs in respect of specialist equipment is made to the student after the period of eligibility terminated.

(10) Where there is an overpayment of the grant for disabled distance learning students’ living costs, the Welsh Ministers may accept the return of specialist equipment purchased with the grant by way of recovery of all or part of the overpayment if they consider it is appropriate to do so.

PART 12

SUPPORT FOR PART-TIME COURSES

Eligible part-time students

93.—(1) An eligible part-time student qualifies for support in connection with the student undertaking a designated part-time course subject to and in accordance with this Part.

(2) A person is an eligible part-time student in connection with a designated part-time course if—

- (a) in assessing the person’s application for support under regulation 109 the Welsh Ministers determine that the person falls within one of the categories set out in Part 2 of Schedule 1; and

(b) the person is not excluded by paragraph (3).

(3) Subject to paragraph (7), a person (“A” in this paragraph) is not an eligible part-time student if—

- (a) there has been bestowed on or paid to A in relation to A undertaking the part-time course—
 - (i) a healthcare bursary whether or not the amount of such bursary is calculated by reference to A’s income;
 - (ii) any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007; or
 - (iii) a Scottish healthcare allowance whether or not the amount of such allowance is calculated by reference to A’s income;
- (b) A is in breach of any obligation to repay any loan;
- (c) A has reached the age of 18 and has not ratified any agreement for a loan made with A when A was under the age of 18;
- (d) A has, in the opinion of the Welsh Ministers, shown by A’s conduct that A is unfitted to receive support under this Part; or
- (e) subject to paragraph (4), A is a prisoner.

(4) Paragraph (3)(e) does not apply in respect of an academic year during which the student enters prison or is released from prison.

(5) For the purposes of paragraphs (3)(b) and (3)(c), “loan” (“*benthyciad*”) means a loan made under the student loans legislation.

(6) In a case where the agreement for a loan is subject to the law of Scotland, paragraph (3)(c) only applies if the agreement was made—

- (a) before 25 September 1991; and
- (b) with the concurrence of the borrower’s curator or at a time when the borrower had no curator.

(7) Subject to paragraphs (9) to (11), a person is an eligible part-time student for the purposes of this Part if the person satisfies the conditions in paragraphs (8)(a) or (b).

(8) The conditions referred to in paragraph (7) are—

- (a) the—
 - (i) person qualified as an eligible part-time student in connection with an earlier academic year of the present part-time course pursuant to regulations made by the Welsh Ministers under section 22 of the 1998 Act;

- (ii) person was ordinarily resident in Wales on the first day of the present part-time course; and
 - (iii) person's status as an eligible part-time student has not terminated;
- (b) the—
- (i) Welsh Ministers have previously determined that the person is an eligible—
 - (aa) student in connection with a designated course;
 - (bb) part-time student in connection with a designated part-time course other than the present part-time course; or
 - (cc) distance learning student in connection with a designated distance learning course;
 - (ii) person's status as an eligible student, an eligible distance learning student or as an eligible part-time student in connection with the course referred to in sub-paragraph (b)(i) has been converted or transferred from that course to the present part-time course as a result of one or more conversions or transfers in accordance with regulations made by the Welsh Ministers under section 22 of the 1998 Act;
 - (iii) person was ordinarily resident in Wales on the first day of the first academic year of the course referred to in sub-paragraph (b)(i); and
 - (iv) person's status as an eligible part-time student has not terminated.

(9) Where—

- (a) the Welsh Ministers determined that, by virtue of being a refugee or the spouse, civil partner, child or step-child of a refugee, a person ("A" in this paragraph) was an eligible part-time student in connection with an application for support for an earlier year of the present part-time course or an application for support in connection with a designated course, designated distance learning course or other designated part-time course from which A's status as an eligible part-time student, eligible student or eligible distance learning student has been transferred to the present part-time course; and
- (b) as at the day before the academic year in respect of which A is applying for support begins, the refugee status of A or of A's spouse, civil partner, parent (as defined in Part 1 of Schedule 1) or step-parent, as the case

may be, has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002),

A's status as an eligible part-time student terminates immediately before the first day of the academic year in respect of which A is applying for support.

(10) Where—

- (a) the Welsh Ministers determined that, by virtue of being a person with leave to enter or remain or the spouse, civil partner, child or step-child of such a person, a person ("A" in this paragraph) was an eligible part-time student in connection with an application for support for an earlier year of the present part-time course or an application for support in connection with a designated course, designated distance learning course or other designated part-time course from which A's status as an eligible part-time student, eligible student or eligible distance learning student has been transferred to the present part-time course; and
- (b) as at the day before the academic year in respect of which A is applying for support begins, the period for which the person with leave to enter or remain is allowed to stay in the United Kingdom has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002),

A's status as an eligible part-time student terminates immediately before the first day of the academic year in respect of which A is applying for support.

(11) Paragraphs (9) and (10) do not apply where the student started the course in connection with which the Welsh Ministers determined that the student was an eligible part-time student or eligible student, as the case may be, before 1 September 2007.

(12) An eligible part-time student does not qualify for support under regulation 97(1)(b), regulation 98 or regulations 99 to 108 if the only paragraph in Part 2 of Schedule 1 into which the eligible part-time student falls is paragraph 9.

(13) Subject to paragraphs (14) and (15), an eligible part-time student qualifies for support—

- (a) under regulation 97(1)(a) if the Welsh Ministers consider that the eligible part-time student is undertaking the designated part-time course in Wales; or

- (b) under regulations 97(1)(b), 98 or 99 to 108 if the Welsh Ministers consider that the eligible part-time student is undertaking the designated part-time course in the United Kingdom.

(14) An eligible part-time student does not qualify for support under regulations 97, 98 or 99 to 108 in respect of a part-time distance learning course, unless the Welsh Ministers consider that the student is undertaking the course in Wales on the first day of the first academic year.

(15) An eligible part-time student will no longer qualify for support under regulations 97, 98 or 99 to 108 in respect of a part-time distance learning course if the Welsh Ministers consider that the student is undertaking the course outside the United Kingdom.

(16) An eligible part-time student does not qualify for support under regulation 97 or regulations 99 to 108 if the eligible part-time student has undertaken one or more part-time courses for eight academic years in aggregate and the eligible part-time student has received in respect of each of those academic years a loan or a grant of the kind described in paragraph (17).

(17) The loans and grants referred to in paragraph (16) are—

- (a) a loan, a grant in respect of fees or a grant for books, travel and other expenditure each made in respect of an academic year of a part-time course pursuant to regulations made under section 22 of the 1998 Act;
- (b) a loan, a grant in respect of fees or a grant for books, travel and other expenditure each made in respect of an academic year of a part-time course by the Department for Employment and Learning (Northern Ireland) pursuant to regulations made under Articles 3 and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998; or
- (c) a loan in respect of an academic year of a part-time course made pursuant to regulations made under sections 73(f), 73B and 74(1) of the Education (Scotland) Act 1980.

(18) Subject to paragraphs (19) and (20), an eligible part-time student does not qualify for support under regulation 97 or regulations 99 to 108 if the student holds a first degree from an educational institution in the United Kingdom.

(19) For the purposes of paragraph (18), a degree is not to be treated as a first degree where—

- (a) it is a degree (other than an honours degree) that has been awarded to the eligible part-time student who has completed the required modules, examinations or other forms of

assessment for the eligible part-time student's first degree course; and

- (b) that student is undertaking the present part-time course so as to obtain an honours degree on completion of the required modules, examinations or other forms of assessment (whether or not that student continues the course at the same institution after the award of the degree referred to in sub-paragraph (a)).

(20) Paragraph (18) does not prevent an eligible part-time student from qualifying for support under regulation 97 or regulations 99 to 108 if—

- (a) the present part-time course is a course for the initial training of teachers which started on or after 1 September 2010;
- (b) the duration of that course does not exceed four years; and
- (c) the eligible part-time student is not a qualified teacher.

(21) An eligible part-time student may not, at any one time, qualify for support for—

- (a) more than one designated part-time course;
- (b) a designated part-time course and a designated course;
- (c) a designated part-time course and a designated distance learning course;
- (d) a designated part-time course and a designated postgraduate course.

Students becoming eligible during the course of the academic year

94.—(1) Where one of the events listed in paragraph (4) occurs in the course of an academic year—

- (a) a student may qualify for a grant in respect of fees in respect of that academic year in accordance with this Part provided that the relevant event occurred within the first three months of the academic year; and
- (b) a grant in respect of fees is not available in respect of any academic year beginning before the academic year in which the relevant event occurred.

(2) Where one of the events listed in sub-paragraphs (a), (b), (e), (f), (g), (h) or (i) of paragraph (4) occurs in the course of an academic year, a student may qualify for part-time grants for dependants in accordance with this Part in respect of all or part of that academic year but the student does not qualify for a grant in respect of any academic year beginning before the academic year in which the relevant event occurred.

(3) Where one of the events listed in sub-paragraphs (a), (b), (e), (f), (g) (h) or (i) of paragraph (4) occurs in the course of an academic year—

- (a) a student may qualify for a grant for books, travel and other expenditure or for a grant for disabled part-time students' living costs (or both) in respect of that academic year in accordance with this Part; and
- (b) neither a grant for books, travel and other expenditure nor a grant for disabled part-time students' living costs is available in respect of any academic year beginning before the academic year in which the relevant event occurred.

(4) The events are—

- (a) the student's course becomes a designated part-time course;
- (b) the student or the student's spouse, civil partner or parent (as defined in Part 1 of Schedule 1) is recognised as a refugee or becomes a person with leave to enter or remain;
- (c) a state accedes to the European Union where the student is a national of that state or a family member (as defined in Part 1 of Schedule 1) of a national of that state;
- (d) the student becomes a family member (as defined in Part 1 of Schedule 1) of an EU national;
- (e) the state of which the student is a national accedes to the European Union where the student has been ordinarily resident in the United Kingdom and Islands throughout the three year-period immediately preceding the first day of the first academic year of the course;
- (f) the student acquires the right of permanent residence;
- (g) the student becomes the child of a Turkish worker;
- (h) the student becomes a person described in paragraph 6(1)(a) of Schedule 1; or
- (i) the student becomes the child of a Swiss national.

Designated part-time courses

95.—(1) Subject to paragraphs (2) and (3), a part-time course is designated for the purposes of section 22(1) of the 1998 Act and regulation 93 if—

- (a) it is a course listed in Schedule 2 other than a course for the initial training of teachers which—

- (i) began before 1 September 2010;
- (ii) begins on or after 1 September 2010 where the student transfers to the present course pursuant to regulation 8 from a course for the initial training of teachers which began before 1 September 2010; or
- (iii) began on or after 1 September 2010 but before 1 September 2011 and in relation to which the student is a 2010 gap year student;
- (b) it is of at least one academic year's duration;
- (c) it is ordinarily possible to complete the course in not more than twice the period ordinarily required to complete the full-time equivalent;
- (d) it is wholly provided by a publicly funded educational institution in the United Kingdom or is provided by such institution in conjunction with an institution outside the United Kingdom;
- (e) it is not designated by or under regulation 5; and
- (f) it is not designated by or under regulation 78.

(2) A course falling within paragraph 7 or 8 of Schedule 2 is not a designated part-time course where the governing body of a maintained school has arranged for the provision of such a course to a pupil of the school.

(3) A course that is taken as part of an employment – based teacher training scheme is not a designated part-time course.

(4) For the purposes of paragraph (1)—

- (a) a course is provided by an institution if it provides the teaching and supervision which comprise the course, whether or not the institution has entered into an agreement with the student to provide the course;
- (b) a university and any constituent college or institution in the nature of a college of a university is regarded as publicly funded if either the university or the constituent college or institution is publicly funded; and
- (c) an institution is not regarded as publicly funded by reason only that it receives public funds from the governing body of a higher education institution in accordance with section 65(3A) of the Further and Higher Education Act 1992⁽¹⁾.

(5) For the purposes of paragraph (1)(c)—

(1) 1992 c. 13; section 65(3A) was inserted by the Teaching and Higher Education Act 1998 (c. 30), section 27.

- (a) “full-time equivalent” (“*cwrs llawnamser cyfatebol*”) means a full-time course leading to the same qualification as the part-time course in question;
- (b) the “period ordinarily required to complete the full-time equivalent” (“*cyfnod y mae ei angen fel arfer i gwblhau'r cwrs llawnamser cyfatebol*”) means—
 - (i) where the course is provided by or on behalf of the Open University, the period that a standard full-time student would require to complete the full-time equivalent if that student were awarded 120 credit points in each academic year;
 - (ii) where the course is provided by or on behalf of any other institution, the period in which a standard full-time student would complete the full-time equivalent;
- (c) “standard full-time student” (“*myfyriwr llawnamser safonol*”) is a student who is to be taken—
 - (i) to have started the full-time equivalent on the same date as the eligible part-time student started the part-time course in question;
 - (ii) not to have been excused any part of the full-time equivalent;
 - (iii) not to have repeated any part of the full-time equivalent; and
 - (iv) not to have been absent from the full-time equivalent other than during vacations.

(6) For the purposes of section 22 of the 1998 Act and regulation 93(1) the Welsh Ministers may designate courses of higher education which are not designated under paragraph (1).

Period of eligibility

96.—(1) A student’s status as an eligible part-time student is retained in connection with a designated part-time course until that status terminates in accordance with this regulation or regulation 93.

(2) The period for which an eligible part-time student retains the status referred to in paragraph (1) is the “period of eligibility” (“*cyfnod cymhwysra*”).

(3) Subject to the following paragraphs and regulation 93, the period of eligibility terminates at the end of the academic year in which the eligible part-time student completes the eligible part-time student’s designated part-time course.

(4) The period of eligibility terminates when the eligible part-time student (“A” in this paragraph)—

(a) withdraws from A's designated part-time course in circumstances where the Welsh Ministers have not transferred or converted or will not transfer or convert A's status under regulation 112 or 113; or

(b) abandons or is expelled from A's designated part-time course.

(5) The period of eligibility terminates at the end of the academic year during or at the end of which it becomes impossible for the eligible part-time student to complete the designated part-time course within the period specified in regulation 95(1)(c) even if the eligible part-time student increases the eligible part-time student's intensity of study.

(6) The Welsh Ministers may terminate the period of eligibility where the eligible part-time student ("A" in this paragraph) has in the opinion of the Welsh Ministers shown by A's conduct that A is unfitted to receive support under this Part.

(7) If the Welsh Ministers are satisfied that an eligible part-time student has failed to comply with any requirement to provide information under this Part or has provided information which is inaccurate in a material particular, the Welsh Ministers may take such of the following actions as they consider appropriate in the circumstances—

(a) terminate the period of eligibility;

(b) determine that the student no longer qualifies for any particular support or particular amount of support under this Part;

(c) treat any support paid to the student as an overpayment which may be recovered under regulation 118.

(8) Where the period of eligibility terminates—

(a) before the end of the academic year in which the eligible part-time student completes the designated part-time course; and

(b) otherwise than under paragraph (5),

the Welsh Ministers may, at any time, renew, or extend the period of eligibility for such period as they determine.

Support for part-time courses (fee grant and grant for books, travel and other expenditure)

97.—(1) For the purposes of this regulation, the support available is—

(a) a grant in respect of fees not exceeding the lesser of the following amounts—

(i) the amount of basic fee grant (calculated in accordance with the following paragraphs), or

(ii) the “actual fees” (*“ffioedd gwirioneddol”*), being the amount of fees charged in respect of an academic year of the designated part-time course; and

(b) a grant not exceeding £1,155 for books, travel and other expenditure in connection with the designated part-time course.

(2) The basic fee grant varies according to the intensity of study.

The intensity of study is calculated as follows and

$$\text{expressed as a percentage } \frac{PT}{FT} \times 100$$

where

PT is the number of modules, credits, credit points, points or other units to be awarded to the eligible part-time student by the academic authority if the eligible part-time student successfully completes the academic year in connection with which the eligible part-time student is applying for support under regulation 109;

FT is—

(a) where the course is provided by or on behalf of the Open University, 120;

(b) where the course is provided by or on behalf of any other institution, the number of modules, credits, credit points, points or other units that a standard full-time student would be required to obtain in each academic year in order to complete the full-time equivalent within the period ordinarily required to complete that course.

(3) For the purposes of paragraph (2)—

(a) “full-time equivalent” (*“cwrw llawnamser cyfatebol”*) and “standard full-time student” (*“myfyriwr llawnamser safonol”*) are to be interpreted in accordance with regulation 95; and

(b) “the period ordinarily required to complete the full-time equivalent” (*“cyfnod y mae ei angen fel arfer i gwblhau'r cwrw llawnamser cyfatebol”*) is to be calculated in accordance with regulation 95.

(4) The “basic fee grant” (*“grant ffioedd sylfaenol”*) is—

(a) £690 where the intensity of study is less than 60 per cent (“level 1”);

(b) £820 where the intensity of study is 60 per cent or more but less than 75 per cent (“level 2”);

(c) £1,025 where the intensity of study is 75 per cent or more (“level 3”).

(5) Subject to paragraph (6) and regulation 112(6), the amount of support payable under this regulation in respect of an academic year is as follows—

- (a) if at the date of the application the eligible part-time student or the eligible part-time student's partner is entitled—
 - (i) under Part VII of the Social Security Contributions and Benefits Act 1992 to income support, housing benefit or council tax benefit;
 - (ii) under Part 1 of the Jobseekers Act 1995 to income-based jobseekers allowance or under section 2 of the Employment and Training Act 1973 to an allowance under the arrangements known as the New Deal; or
 - (iii) under Part 1 of the Welfare Reform Act 2007 to an income-related employment and support allowance;the maximum amount of support available under paragraph (1) is payable;
- (b) where the relevant income is less than £16,865, the maximum amount of support available under paragraph (1) is payable;
- (c) where the relevant income is £16,865, the maximum amount of support available under paragraph (1)(b) is payable together with £50 less than the maximum amount of support available under paragraph (1)(a);
- (d) where the relevant income exceeds £16,865 but is less than £25,435, the maximum amount of support available under paragraph (1)(b) is payable and the amount of support payable under paragraph (1)(a) is the amount determined in accordance with paragraph (6);
- (e) where the relevant income is £25,435, the maximum amount of support available under paragraph (1)(b) is payable and the amount of support payable under paragraph (1)(a) is £50;
- (f) where the relevant income exceeds £25,435 but is less than £26,095 the maximum amount of support available under paragraph (1)(b) is payable and no support is payable under paragraph (1)(a);
- (g) where the relevant income is £26,095 or more but less than £28,180 no support is available under paragraph (1)(a) and the amount of support payable under paragraph (1)(b) is the amount left after deducting from the maximum amount of support available under paragraph (1)(b) £1 for every £1,886 by which the relevant income exceeds £26,095;

- (h) where the relevant income is £28,180 no support is payable under paragraph (1)(a) and the amount of support payable under paragraph (1)(b) is £50;
- (i) where the relevant income exceeds £28,180 no support is payable under paragraph (1).

(6) Where paragraph (5)(d) applies, the amount of support payable under paragraph (1)(a) is determined by deducting from the maximum amount of support available under paragraph (1)(a) one of the following amounts—

- (a) £50 plus a further £1 for each complete £14.52, £11.90 or £9.26 by which the relevant income exceeds £16,865 according to whether the intensity of study is level 1, 2 or 3, respectively; or
- (b) where the basic fee grant is greater than the actual fees, an amount equal to that left after deducting from the amount calculated under sub-paragraph (a) the difference between the basic fee grant and the actual fees (unless the amount is a negative number in which case the maximum amount of support available under paragraph (1)(a) is payable).

(7) For the purposes of this regulation—

- (a) “child” (“*plentyn*”) in relation to an eligible part-time student includes any child of the eligible part-time student’s partner and any child for whom the eligible part-time student has parental responsibility;
- (b) “current financial year” (“*y flwyddyn ariannol gyfredol*”) means the financial year which includes the first day of the academic year in respect of which a person is being assessed for support under this Part;
- (c) “dependent” (“*dibynnol*”) means wholly or mainly financially dependent;
- (d) “financial year” (“*blwyddyn ariannol*”) means the period of twelve months for which the income of the eligible part-time student is computed for the purposes of the income tax legislation which applies to it;
- (e) “income” (“*incwm*”) means gross income from all sources excluding—
 - (i) any payment made under section 23C(5A) of the Children Act 1989; and
 - (ii) any tax credits awarded pursuant to any claims under section 3 of the Tax Credits Act 2002;
- (f) subject to sub-paragraph (g), “partner” (“*partner*”) means any of the following—
 - (i) the spouse of an eligible part-time student;

- (ii) the civil partner of an eligible part-time student;
- (iii) a person ordinarily living with an eligible part-time student as if the person were the eligible part-time student's spouse where an eligible part-time student is aged 25 or over on the first day of the academic year in respect of which the eligible part-time student is being assessed for support under this Part and where the eligible part-time student began the specified designated part-time course before 1 September 2005;
- (iv) a person ordinarily living with an eligible part-time student as if the person were the eligible part-time student's spouse or civil partner where an eligible part-time student begins the specified designated part-time course on or after 1 September 2005;
- (g) a person who would otherwise be a partner under sub-paragraph (f) is not treated as a partner if—
 - (i) in the opinion of the Welsh Ministers, that person and the eligible part-time student are separated; or
 - (ii) the person is ordinarily living outside the United Kingdom and is not maintained by the eligible part-time student;
- (h) “preceding financial year” (*“blwyddyn ariannol flaenorol”*) means the financial year immediately preceding the current financial year;
- (i) “relevant income” (*“incwm perthnasol”*) has the meaning given in paragraph (8).

(8) Subject to paragraph (9), an eligible part-time student's relevant income is equal to the eligible part-time student's financial resources in the preceding financial year less—

- (i) £2,000 in respect of the eligible part-time student's partner;
- (ii) £2,000 in respect of the only or eldest child who is dependent on the eligible part-time student or the eligible part-time student's partner; and
- (iii) £1,000 in respect of each other child who is dependent on the eligible part-time student or the eligible part-time student's partner.

(9) Where the Welsh Ministers are satisfied that an eligible part-time student's financial resources in the preceding financial year are greater than the eligible part-time student's financial resources in the current financial year and that the difference between the two amounts is £1,000 or more, they must assess that

student's financial resources by reference to those resources in the current financial year.

(10) In this regulation, an eligible part-time student's financial resources in a financial year means the aggregate of the eligible part-time student's income for that year together with the aggregate of the income for that year of any person who at the date of the application for support under this Part is the eligible part-time student's partner.

(11) In this regulation "specified designated part-time course" ("*cwrs rhan-amser dynodedig a bennir*") means the course in respect of which the person is applying for support under this Part or, where the student's status as an eligible part-time student has been transferred to the present part-time course as a result of one or more transfers of that status by the Welsh Ministers from a part-time course (the "initial course") in connection with which the Welsh Ministers determined the student to be an eligible part-time student pursuant to regulations made under section 22 of the 1998 Act, the specified designated part-time course is the initial course.

Grants for disabled part-time students' living costs

98.—(1) An eligible part-time student qualifies in accordance with this regulation for a grant for disabled part-time students' living costs to assist with the additional expenditure which the Welsh Ministers are satisfied the student is obliged to incur in connection with the eligible part-time student undertaking a designated part-time course by reason of a disability to which the eligible part-time student is subject.

(2) Subject to paragraph (3), the amount of grant for which an eligible part-time student qualifies under this regulation is the amount that the Welsh Ministers consider appropriate.

(3) The amount of the grant must not exceed—

- (a) £15,885 in respect of an academic year for expenditure on a non-medical personal helper;
- (b) £5,332 in respect of all the academic years during the period of eligibility for expenditure on major items of specialist equipment;
- (c) the additional expenditure incurred—
 - (i) within the United Kingdom for the purpose of attending the institution;
 - (ii) within or outside the United Kingdom for the purpose of attending, as a part of the eligible part-time student's course, any period of study at an overseas institution or for the purpose of attending the Institute;
- (d) £1,338 in respect of an academic year for any other expenditure including expenditure incurred for the purposes referred to in sub-

paragraph (a) or (b) which exceeds the specified maxima.

Part-time grants for dependants – general

99.—(1) An eligible part-time student qualifies for part-time grants for dependants provided that—

- (a) the part-time student is not excluded from qualification by any of the following paragraphs, regulation 93 or regulation 96; and
- (b) the part-time student satisfies the qualifying conditions for the particular grant for which the student is applying.

(2) An eligible part-time student does not qualify for part-time grants for dependants if the eligible part-time student is a prisoner.

100.—(1) The part-time grants for dependants consist of the following elements—

- (a) part-time adult dependants' grant;
- (b) part-time childcare grant;
- (c) part-time parents' learning allowance.

(2) The qualifying conditions for each element are set out in regulations 101 to 108 and the amounts payable in respect of each element are determined in accordance with those regulations.

(3) A deduction may be made from any element of the part-time grants for dependants in accordance with regulations 106 and 107.

Part-time adult dependants' grant

101.—(1) An eligible part-time student qualifies for a part-time adult dependants' grant in connection with the eligible part-time student's attendance on a designated part-time course in accordance with this regulation.

(2) The part-time adult dependants' grant is available in respect of one dependant of an eligible part-time student who is either—

- (a) the eligible part-time student's partner; or
- (b) an adult dependant of the eligible part-time student whose net income does not exceed £3,923.

(3) The amount of part-time adult dependants' grant payable in respect of an academic year is calculated in accordance with regulations 104 and 106 to 108, the basic amount being—

- (a) £2,732; or
- (b) where the person in respect of whom the eligible part-time student is applying for part-time adult dependants' grant is ordinarily

resident outside the United Kingdom, such amount not exceeding £2,732 as the Welsh Ministers consider reasonable in the circumstances.

Part-time childcare grant

102.—(1) An eligible part-time student qualifies, in connection with the eligible part-time student's attendance on a designated part-time course, for a part-time childcare grant in accordance with this regulation.

(2) Subject to paragraphs (3) and (4), the part-time childcare grant is available in respect of an academic year in which the eligible part-time student incurs prescribed childcare charges for—

- (a) a dependent child who is under the age of 15 immediately before the beginning of the academic year; or
- (b) a dependent child who has special educational needs within the meaning of section 312 of the Education Act 1996⁽¹⁾ and is under the age of 17 immediately before the beginning of the academic year.

(3) An eligible part-time student does not qualify for a grant under this regulation if the eligible part-time student or the eligible part-time student's partner has elected to receive the childcare element of the working tax credit under Part I of the Tax Credits Act 2002⁽²⁾.

(4) An eligible part-time student does not qualify for a grant under this regulation if the prescribed childcare charges that the eligible part-time student incurs are paid or to be paid by the student to the eligible part-time student's partner.

(5) Subject to paragraph (6), regulation 104 and regulations 106 to 108, the basic amount of childcare grant for each week is—

- (a) for one dependent child, 85 per cent of the prescribed childcare charges, subject to a maximum amount of £161.50 per week; or
- (b) for two or more dependent children, 85 per cent of the prescribed childcare charges, subject to a maximum amount of £ 274.55 per week,

(1) 1996 c. 56; section 312 was amended by the Education Act 1997 (c. 44), Schedule 7, paragraph 23, the School Standards and Framework Act 1998 (c. 31), section 140, paragraph 71 of Schedule 30 and Schedule 31, the Learning and Skills Act 2000 (c. 21), Schedule 9, paragraph 56 and the Education and Inspections Act 2006 (c.40), Schedule 1, paragraph 3, the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 59 and Schedule 2 and S.I. 2010/1158.

(2) 2002 c.21 to which there are amendments not relevant to these Regulations.

except that the eligible part-time student does not qualify for any such grant in respect of each week falling within the period between the end of the course and the end of the academic year in which the course ends.

(6) For the purposes of calculating the basic amount of part-time childcare grant—

- (a) a week runs from Monday to Sunday; and
- (b) where a week in respect of which prescribed childcare charges are incurred falls partly within and partly outside the academic year in respect of which part-time childcare grant is payable under this regulation, the maximum weekly amount of grant is calculated by multiplying the relevant maximum weekly amount in paragraph (5) by the number of days of that week falling within the academic year and dividing the product by seven.

Part-time parents' learning allowance

103.—(1) An eligible part-time student qualifies in connection with the student's attendance on a designated part-time course for the part-time parents' learning allowance if the student has one or more dependants who are dependent children.

(2) The amount of part-time parents' learning allowance payable in respect of an academic year is calculated in accordance with regulations 104 and 106 to 108, the basic amount being £1,557.

Part-time grants for dependants – initial calculations

104.—(1) Subject to the following paragraphs and regulations 106 to 108, the amount payable in respect of a particular element of the part-time grants for dependants for which the eligible part-time student qualifies is the amount of that element remaining after applying, until it is extinguished, an amount equal to **(A - B)** as follows and in the following order—

- (a) to reduce the basic amount of the part-time adult dependants' grant where the eligible part-time student qualifies for that element under regulation 101;
- (b) to reduce the basic amount of the part-time childcare grant for the academic year where the eligible part-time student qualifies for that element under regulation 102; and
- (c) to reduce the basic amount of the part-time parents' learning allowance where the eligible part-time student qualifies for that element under regulation 103.

(2) In this regulation and subject to paragraph (8)—

A is the aggregate of the net income of each of the eligible part-time student's dependants; and

B is—

- (a) £1,159 where the eligible part-time student has no dependent child;
- (b) £3,473 where the eligible part-time student is not a lone parent and has one dependent child;
- (c) £4,632 where the eligible part-time student—
 - (i) is not a lone parent and has more than one dependent child; or
 - (ii) is a lone parent and has one dependent child;
- (d) £5,797 where the eligible part-time student is a lone parent and has more than one dependent child.

(3) Subject to paragraphs (5), (6) and (13), where **B** is greater than or equal to **A**, the basic amount of each element of the part-time grants for dependants for which the eligible part-time student qualifies is payable.

(4) Where (**A** - **B**) is equal to or exceeds the aggregate of the basic amounts of the elements of the part-time grants for dependants for which the eligible part-time student qualifies, the amount payable in respect of each element is nil.

(5) The amount of the part-time adult dependants' grant calculated under paragraph (1) in respect of an adult dependant is reduced by one half where—

- (a) the eligible part-time student's partner—
 - (i) is an eligible part-time student; or
 - (ii) holds a statutory award; and
- (b) account is taken of that partner's dependants in calculating the amount of support for which that partner qualifies or the payment to which that partner is entitled under the statutory award.

(6) The amount of the part-time childcare grant calculated under paragraph (1) is reduced by one half where—

- (a) the eligible part-time student's partner—
 - (i) is an eligible part-time student; or
 - (ii) holds a statutory award; and
- (b) account is taken of that partner's dependants in calculating the amount of support for which that partner qualifies or the payment to which that partner is entitled under the statutory award.

(7) Where the amount of the part-time parents' learning allowance calculated under paragraph (1) is £0.01 or more but less than £50, the amount of part-time parents' learning allowance payable is £50.

(8) Paragraphs (9) to (12) apply where, in the course of the academic year, any of the following occurs—

- (a) there is a change in the number of the eligible part-time student's dependants;
- (b) a person becomes or ceases to be a dependant of the eligible part-time student;
- (c) the eligible part-time student becomes or ceases to be a lone parent;
- (d) a student becomes an eligible part-time student as a result of an event referred to in regulation 94(4)(a), (b), (e), (f), (g), (h) or (i).

(9) For the purposes of determining the respective values of **A** and **B** and whether part-time adult dependants' grant or part-time parents' learning allowance is payable, the Welsh Ministers must determine the following in relation to each relevant quarter by reference to the eligible part-time student's circumstances in the relevant quarter—

- (a) how many dependants the eligible part-time student is to be treated as having;
- (b) who those dependants are;
- (c) whether the eligible part-time student is to be treated as a lone parent.

(10) The amount of part-time grants for dependants for the academic year is the aggregate of the amounts of part-time adult dependants' grant and part-time parents' learning allowance calculated in respect of each relevant quarter under paragraph (11) and the amount of any part-time childcare grant for the academic year.

(11) The amount of part-time adult dependants' grant and part-time parents' learning allowance in respect of a relevant quarter is one third of what that grant or allowance would be for the academic year if the eligible part-time student's circumstances in the relevant quarter as determined under paragraph (9) applied for the duration of the academic year.

(12) In this regulation, a "relevant quarter" ("*chwarter perthnasol*") means—

- (a) in the case of a person referred to in paragraph (8)(d), a quarter which begins after the relevant event occurs other than a quarter during which, in the opinion of the Welsh Ministers, the longest of any vacation occurs;
- (b) otherwise, a quarter other than the one quarter during which, in the opinion of the Welsh Ministers, the longest of any vacation occurs.

(13) A deduction may be made in accordance with regulations 106 and 107 from the amount payable in respect of a particular element of the part-time grants for dependants calculated under this Part.

Part-time grants for dependants - interpretation

105.—(1) In regulations 99 to 104—

- (a) subject to paragraph (4), “adult dependant” (“*dibynnydd mewn oed*”) means, in relation to an eligible part-time student, an adult person dependent on the eligible part-time student other than the eligible part-time student’s child, the eligible part-time student’s partner (including a spouse or civil partner from whom the Welsh Ministers consider the eligible part-time student is separated) or the eligible part-time student’s former partner;
- (b) “child” (“*plentyn*”) in relation to an eligible part-time student includes any child of the eligible part-time student’s partner who is dependent on the eligible part-time student and any child for whom the eligible part-time student has parental responsibility who is dependent on the eligible part-time student;
- (c) “dependant” (“*dibynnydd*”) means, in relation to an eligible part-time student, the eligible part-time student’s partner, the eligible part-time student’s dependent child or an adult dependant, who in each case is not an eligible student and does not hold a statutory award;
- (d) “dependent” (“*dibynnol*”) means wholly or mainly financially dependent;
- (e) “dependent child” (“*plentyn dibynnol*”) means, in relation to an eligible part-time student, a child dependent on the eligible part-time student;
- (f) “lone parent” (“*rhiant unigol*”) means an eligible part-time student who does not have a partner and who has a dependent child;
- (g) “net income” (“*incwm net*”) has the meaning given in paragraph (6);
- (h) subject to sub-paragraphs (i), (j), (k) and paragraphs (2) and (3) “partner” (“*partner*”) means any of the following—
 - (i) the spouse of an eligible part-time student;
 - (ii) the civil partner of an eligible part-time student;
 - (iii) a person ordinarily living with an eligible part-time student as if the person were the eligible part-time student’s spouse where an eligible part-time student is aged 25 or over on the first day of the academic year in respect of which household income falls to be assessed for the purposes of Schedule 6 and began the designated part-time course on or after 1 September 2000;
 - (iv) a person ordinarily living with an eligible part-time student as if the person were the

eligible part-time student's civil partner where an eligible part-time student is aged 25 or over on the first day of the academic year in respect of which household income falls to be assessed for the purposes of Schedule 6 and began the designated part-time course on or after 1 September 2005;

- (i) unless otherwise indicated, a person who would otherwise be a partner under subparagraph (h) is not treated as a partner if—
 - (i) in the opinion of the Welsh Ministers, that person and the eligible part-time student are separated; or
 - (ii) the person is ordinarily living outside the United Kingdom and is not maintained by the eligible part-time student;
- (j) for the purposes of the definition of “adult dependant” (“*dibynnydd mewn oed*”), a person is to be treated as a partner if the person would be a partner under subparagraph (h) but for the fact that the eligible part-time student with whom the person is ordinarily living is not aged 25 or over on the first day of the academic year in respect of which household income falls to be assessed for the purposes of Schedule 6;
- (k) for the purposes of the definitions of “child” (“*plentyn*”) and “lone parent” (“*rhiant unigol*”), a person is to be treated as a partner if the person would be a partner under subparagraph (h) but for the date on which the eligible part-time student began the specified designated part-time course or the fact that the eligible part-time student with whom the person is ordinarily living is not aged 25 or over on the first day of the academic year in respect of which household income falls to be assessed for the purposes of Schedule 6.

(2) For the purposes of regulation 102—

- (a) paragraph (1)(i) does not apply; and
- (b) a person is to be treated as a partner if the person would be a partner under paragraph (1)(h) but for the fact that the eligible part-time student with whom the person is ordinarily living is not aged 25 or over on the first day of the academic year in respect of which household income falls to be assessed for the purposes of Schedule 6.

(3) For the purposes of determining whether a person is the former partner of an eligible part-time student's partner, “partner” (“*partner*”) in relation to an eligible part-time student's partner means—

- (a) the spouse of an eligible part-time student's partner;

- (b) the civil partner of an eligible part-time student's partner;
- (c) where the eligible part-time student began the specified designated part-time course on or after 1 September 2000, a person ("A") ordinarily living with an eligible part-time student's partner ("B") as if A were B's spouse;
- (d) where the eligible part-time student began the specified designated part-time course on or after 1 September 2005, a person ("A") ordinarily living with an eligible part-time student's partner ("B") as if A were B's civil partner.

(4) Subject to paragraph (5), for the purposes of the definitions of "adult dependant" (*"dibynnydd mewn oed"*) and "dependent child" (*"plentyn dibynnol"*), the Welsh Ministers may treat an adult person or child as dependent on an eligible part-time student if they are satisfied that the adult person or child—

- (a) is not dependent on only—
 - (i) the eligible part-time student; or
 - (ii) the eligible part-time student's partner; but
- (b) is dependent on the eligible part-time student and the eligible part-time student's partner together.

(5) The Welsh Ministers must not treat an adult person ("A") as dependent on an eligible part-time student in accordance with paragraph (4), if A is—

- (a) the spouse or civil partner of the eligible part-time student's partner (including a spouse or civil partner from whom the Welsh Ministers consider the eligible part-time student's partner is separated); or
- (b) the former partner of the eligible part-time student's partner.

(6) Subject to paragraph (7), a dependant's net income is the dependant's income from all sources for the academic year in question reduced by the amount of income tax and social security contributions payable in respect of it but disregarding—

- (a) any pension, allowance or other benefit paid by reason of a disability or incapacity to which the dependant is subject;
- (b) child benefit payable under Part IX of the Social Security Contributions and Benefits Act 1992⁽¹⁾;
- (c) any financial support payable to the dependant by a local authority in accordance

(1) 1992 c.4 to which there are amendments not relevant to these Regulations.

with regulations made under sections 2, 3 and 4 of the Adoption and Children Act 2002⁽¹⁾;

- (d) any guardian's allowance to which the dependant is entitled under section 77 of the Social Security Contributions and Benefits Act 1992;
- (e) in the case of a dependant with whom a child being looked after by a local authority is boarded out, any payment made to that dependant in pursuance of section 23 of the Children Act 1989⁽²⁾;
- (f) any payment made to the dependant under section 23C(5A) of the Children Act 1989;
- (g) any payments made to the dependant under section 15 of and Schedule 1 to the Children Act 1989 in respect of a person who is not the dependant's child or any assistance given by a local authority pursuant to section 24 of that Act⁽³⁾; and
- (h) any child tax credit to which the dependant is entitled under Part I of the Tax Credits Act 2002⁽⁴⁾.

(7) Where an eligible part-time student or the eligible part-time student's partner makes any recurrent payments which were previously made by the eligible part-time student in pursuance of an obligation incurred before the first academic year of the eligible part-time student's course, the eligible part-time student's partner's net income is the net income calculated in accordance with paragraph (2) reduced by—

- (a) an amount equal to the payments in question for the academic year, if in the opinion of the Welsh Ministers, the obligation had been reasonably incurred; or
- (b) such lesser amount, if any, as the Welsh Ministers consider appropriate if, in their opinion, a lesser obligation could reasonably have been incurred.

(8) For the purposes of paragraph (6), where the dependant is a dependent child and payments are made to the eligible part-time student towards the dependent child's maintenance, those payments are to be treated as the dependent child's income.

(1) 2002 c. 38.

(2) 1989 c. 41. Section 23 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 16, paragraph 12, the Care Standards Act 2000 (c. 14), Schedule 4, paragraph 14, the Children Act 2004 (c. 31), section 49(3) and the Children and Young Persons Act 2008 (c. 23), section 39 and Schedule 3, paragraphs 1 and 7.

(3) There are amendments to sections 15 and 24 and Schedule 1 which are not relevant to these Regulations.

(4) 2002 c. 21 to which there are amendments not relevant to these Regulations.

Part-time grants for dependants - calculation of contribution

106.—(1) An eligible part-time student's contribution in respect of an academic year and part-time dependants' grants payable in respect of that year is the amount, if any, calculated under Schedule 6.

(2) The Welsh Ministers may require an eligible part-time student to provide from time to time such information as they consider necessary as to the income of any person whose means are relevant to the assessment of the student's contribution.

Part-time grants for dependants - application of contribution

107.—(1) An amount equal to the contribution or the remainder of the contribution, as the case may be, calculated under Schedule 6, is to be applied until it is extinguished against the amount of the particular element of part-time grants for dependants for which the eligible part-time student qualifies as follows—

- (a) first, to reduce **PTADG**;
- (b) second, to reduce **PTCCG**;
- (c) third, to reduce **PTPLA**.

(2) In this regulation—

- (a) **PTADG** is the amount, if any, of the part-time adult dependants' grant calculated in accordance with regulation 104;
- (b) **PTCCG** is the amount, if any, of the part-time childcare grant calculated in accordance with regulation 104;
- (c) **PTPLA** is the amount, if any, of the part-time parents' learning allowance calculated in accordance with regulation 104 (except the first £50 of the allowance).

Part-time grants for dependants – final calculation

108.—(1) The amount payable in respect of a particular element of the part-time grants for dependants is determined in accordance with this regulation.

(2) The amount payable varies according to the intensity of study.

The intensity of study is calculated as follows and expressed as a percentage

$$\frac{PT}{FT} \times 100$$

where PT and FT have the meanings given by regulation 97(2) and (3).

(3) In the case of part-time adult dependants' grant, where the intensity of study is—

- (a) 50 per cent or more but less than 60 per cent, the amount payable is equal to 50 per cent of the resulting amount;
- (b) 60 per cent or more but less than 75 per cent, the amount payable is equal to 60 per cent of the resulting amount;
- (c) 75 per cent or more, the amount payable is equal to 75 per cent of the resulting amount.

(4) For the purposes of paragraph (3), “the resulting amount” (“*y swm sy'n deillio o hyn*”) means the amount of part-time adult dependants’ grant determined in accordance with regulation 104 with deductions (if any) having been applied in accordance with regulation 107.

(5) In the case of part-time childcare grant, where the intensity of study is—

- (a) 50 per cent or more but less than 60 per cent, the amount payable is equal to 50 per cent of the resulting amount;
- (b) 60 per cent or more but less than 75 per cent, the amount payable is equal to 60 per cent of the resulting amount;
- (c) 75 per cent or more, the amount payable is equal to 75 per cent of the resulting amount.

(6) For the purposes of paragraph (5), “the resulting amount” (“*y swm sy'n deillio o hyn*”) means the amount of part-time childcare grant determined in accordance with regulation 104 with deductions (if any) having been applied in accordance with regulation 107.

(7) In the case of part-time parents’ learning allowance, where the intensity of study is—

- (a) 50 per cent or more, but less than 60 per cent, the amount payable is equal to 50 per cent of the resulting amount;
- (b) 60 per cent or more but less than 75 per cent, the amount payable is equal to 60 per cent of the resulting amount;
- (c) 75 per cent or more, the amount payable is equal to 75 per cent of the resulting amount.

(8) For the purposes of paragraph (7), “the resulting amount” (“*y swm sy'n deillio o hyn*”) means the amount of part-time parents’ learning allowance determined in accordance with regulation 104 with deductions (if any) having been applied in accordance with regulation 107.

(9) No element of part-time grants for dependants is payable where the intensity of study is less than 50 per cent.

Applications for support

109.—(1) A person must apply for support in connection with each academic year of a designated part-time course by completing and submitting to the Welsh Ministers an application in such form as the Welsh Ministers may require.

(2) The application must be accompanied by—

- (a) a declaration under regulation 111(2) to (6) completed by the academic authority; and
- (b) such additional documentation as the Welsh Ministers may require.

(3) Subject to paragraph (4), the application must reach the Welsh Ministers within a period of nine months beginning with the first day of the academic year of the course in respect of which it is submitted.

(4) Paragraph (3) does not apply where—

- (a) one of the events listed in regulation 94(4) occurs after the first day of the academic year in respect of which the applicant is applying for support under this Part, in which case the application must reach the Welsh Ministers within a period of nine months beginning with the day on which the event occurred;
- (b) the applicant is applying for a grant for disabled part-time students' living costs, in which case the application must reach the Welsh Ministers as soon as is reasonably practicable; or
- (c) the Welsh Ministers consider that having regard to the circumstances of the particular case the time limit should be relaxed, in which case the application must reach the Welsh Ministers not later than such date as they specify.

(5) The Welsh Ministers may take such steps and make such inquiries as they consider necessary to determine whether the applicant is an eligible part-time student, whether the applicant qualifies for support under this Part and the amount of support payable, if any.

(6) The Welsh Ministers must notify the applicant in writing of whether or not the applicant qualifies for support under this Part and, if the applicant does qualify, the amount of support payable in respect of the academic year, if any.

Assistance with fees in respect of attendance on a course in England, Northern Ireland or Scotland

110.—(1) The Welsh Ministers may pay support under this Part to assist with fees to an eligible part-time student in connection with the eligible part-time

student's attendance on a designated part-time course in England, Northern Ireland or Scotland.

(2) The support paid under paragraph (1) must not exceed the lesser of—

- (a) the maximum amount of support that would have been payable to the eligible part-time student under regulation 97(1)(a) had the eligible part-time student been undertaking the course in Wales; and
- (b) the maximum amount of support to assist with fees that in the opinion of the Welsh Ministers would have been payable to the eligible part-time student according to whether the eligible part-time student attends the designated part-time course in England, Northern Ireland or Scotland—
 - (i) pursuant to regulations made by the Secretary of State under section 22 of the 1998 Act had the eligible part-time student been ordinarily resident in England and undertaking the part-time course in England;
 - (ii) pursuant to regulations made under Articles 3 and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998 had the eligible part-time student been ordinarily resident in Northern Ireland and undertaking the part-time course in Northern Ireland; or
 - (iii) from funds of the Scottish Further and Higher Education Funding Council⁽¹⁾ had the eligible part-time student been ordinarily resident in Scotland and undertaking the part-time course in Scotland.

Information and other matters

111.—(1) Schedule 3 applies in respect of the provision of information by an applicant and an eligible part-time student.

(2) Subject to paragraph (3), the appropriate academic authority must, on the request of the applicant, complete a declaration in such form as may be required by the Welsh Ministers to accompany the application for support under regulation 109.

(3) An academic authority is not required to complete a declaration if it is unable to give the confirmation required by sub-paragraphs (4)(a)(ii), or 4(b)(ii).

(4) In this Part, “declaration” (“*datganiad*”) means—

(1) This body was established under section 1 of the Further and Higher Education (Scotland) Act 2005 (asp 6).

- (a) where the applicant is applying for support in connection with the designated part-time course for the first time, a statement that—
 - (i) provides the course information; and
 - (ii) confirms that the applicant has undertaken at least two weeks of the designated part-time course;
- (b) in any other case, a statement that—
 - (i) provides the course information; and
 - (ii) confirms that the applicant has enrolled to undertake the academic year of the designated part-time course in respect of which the applicant is applying for support under this Part.

(5) In this regulation, “course information” (“*gwbodaeth am y cwrs*”) means—

- (a) the amount of fees being charged in respect of the academic year in respect of which the applicant is applying for support under this Part;
- (b) the intensity of study;
- (c) certification by the academic authority that it considers—
 - (i) the course to be a designated part-time course;
 - (ii) that it will be possible for the applicant to complete the course within the period specified in regulation 95(1)(c).

(6) For the purposes of paragraph (5)(c)(ii) the academic authority must have regard to—

- (a) any increase in intensity of study that would be required for the applicant to complete the course within the period specified in regulation 95(1)(c);
- (b) any parts of the course which the applicant has been required to repeat.

(7) An academic authority must notify the Welsh Ministers as soon as is reasonably practicable when any one of the following events occurs—

- (a) an eligible part-time student ceases to attend or undertake a designated part-time course during the academic year in respect of which the student is claiming support under this Part and the academic authority has determined or agreed that the student will not return during that academic year;
- (b) changes are made or occur to any of the course information submitted as part of a declaration under paragraphs (2) to (6).

(8) Where an academic authority gives notice to the Welsh Ministers under paragraph (7), the academic

authority must also provide the Welsh Ministers with such further information as the Welsh Ministers may require in relation to the relevant event in paragraph (7).

(9) For the purposes of paragraph (8) “relevant event” (“*digwyddiad perthnasol*”) means the event or events under paragraph (7) which form the subject of the notice given under paragraph (7).

Transfer of status

112.—(1) Where an eligible part-time student transfers from a designated part-time course to another designated part-time course, the Welsh Ministers must transfer the student’s status as an eligible part-time student to that other course where—

- (a) they receive a request from the eligible part-time student to do so;
- (b) they are satisfied that one or more of the grounds for transfer in paragraph (2) applies; and
- (c) the period of eligibility has not terminated.

(2) The grounds for transfer are—

- (a) the eligible part-time student starts to undertake another designated part-time course at the same institution;
- (b) the eligible part-time student starts to undertake a designated part-time course at another institution; or
- (c) after commencing a designated part-time course for a first degree (other than an honours degree) the eligible part-time student is, before the completion of that course, admitted to a designated part-time course for an honours degree in the same subject at the same institution.

(3) Subject to paragraph (4), an eligible part-time student who transfers under paragraph (1) is entitled, for the remainder of the academic year in which the eligible part-time student transfers, to continue to receive in connection with the course to which the eligible part-time student transfers the support under this Part for which the Welsh Ministers have determined the eligible part-time student qualifies in respect of the course from which the eligible part-time student transfers.

(4) The Welsh Ministers may re-assess the amount of support payable after the transfer in accordance with this Part.

(5) An eligible part-time student who transfers under paragraph (1) after the Welsh Ministers have determined the eligible part-time student’s support under this Part in connection with the academic year of the course from which the eligible part-time student is

transferring but before the eligible part-time student completes that year may not apply for another grant under regulation 97(1)(b), regulation 98 or regulations 99 to 108 in connection with the academic year of the course to which the eligible part-time student transfers.

(6) Where an eligible part-time student transfers under paragraph (1), the maximum amount of support under regulation 97(1)(a) in respect of the academic year to and from which the eligible part-time student transfers is the amount of support with fees available in connection with the course which has the highest intensity of study as defined in regulation 97.

Conversion of status

113.—(1) Where an eligible student ceases to undertake a designated course and transfers to a designated part-time course at the same or at another institution, the Welsh Ministers must convert the student's status as an eligible student to that of an eligible part-time student in connection with the course to which the eligible student is transferring where—

- (a) they receive a request from the eligible student to do so; and
- (b) the period of eligibility has not terminated.

(2) Where, before completing the designated course, the eligible student transfers to a part-time course in the same subject leading to the same qualification at the same institution, the part-time course is treated as satisfying regulation 95(1)(b) and (c) if the period of part-time study to be undertaken by that student is of at least one academic year's duration and does not exceed twice the period normally required to complete the remainder of the designated course from which that student transfers.

(3) The following applies to an eligible student who transfers under paragraph (1)—

- (a) where the Welsh Ministers have determined to pay an amount of grant to that student under regulation 29 in periodic instalments, no payment in respect of that amount of grant may be made in respect of any instalment period beginning after the date on which that student became an eligible part-time student;
- (b) the maximum amount of grant to which that student would, apart from this regulation, be entitled pursuant to regulation 98 in connection with that student undertaking a designated part-time course in respect of that academic year is reduced by one third where that student became an eligible part-time student during the second quarter of the academic year and by two thirds where that student became an eligible part-time student in a later quarter of that year;

- (c) where an amount of grant for any purpose has been paid to the student under regulation 29 in a single instalment, the maximum amount of grant payable to that student pursuant to regulation 98 for that purpose is reduced (or, where sub-paragraph (b) applies, further reduced) by the amount of grant paid to that student for that purpose pursuant to regulation 29, and where the resulting amount is nil or a negative amount that amount is nil;
- (d) where immediately before that student became an eligible part-time student that student was eligible to apply, but had not applied, for a loan for living costs in respect of that year, or had not applied for the maximum amount or increased maximum for which that student was entitled, that student may apply for such a loan or such additional amount of loan as if that student had continued to be an eligible student and in the circumstances mentioned in paragraph (4) the maximum or increased maximum amount of such loan for the academic year is reduced in accordance with that paragraph;
- (e) where the Welsh Ministers have determined to pay an amount of grant or allowance to that student under regulations 31 to 34 in periodic instalments, no payment in respect of that amount may be made in respect of any instalment period beginning after the date on which that student becomes an eligible part-time student;
- (f) the maximum amount of part-time grants for dependants to which that student would, apart from this regulation, be entitled pursuant to regulations 99 to 108 in connection with that student undertaking a designated part-time course in respect of that academic year is reduced by one third where that student became an eligible part-time student during the second quarter of the academic year and by two thirds where that student became an eligible part-time student in a later quarter of that year; and
- (g) where an amount of grant or allowance has been paid to that student under regulations 31 to 34 in a single instalment, the maximum amount of grant or allowance payable to that student pursuant to regulations 99 to 108 is reduced (or where sub-paragraph (f) applies, further reduced) by the amount of analogous grant or allowance paid to that student pursuant to regulations 31 to 34, and where the resulting amount is nil or a negative amount that amount is nil.

(4) Where the request under paragraph (1) is made during the first quarter of the academic year in respect of which the loan is payable the maximum amount or increased maximum amount of loan (as the case may be) is reduced by two thirds and where the request is made during the second quarter of that year that amount is reduced by one third.

(5) Where an eligible distance learning student ceases to undertake a designated distance learning course and transfers to a designated part-time course at the same or at another institution, the Welsh Ministers must convert that student's status as an eligible distance learning student to that of an eligible part-time student in connection with the course to which the eligible distance learning student is transferring where—

- (a) they receive a request from the eligible distance learning student to do so; and
- (b) the period of eligibility has not terminated.

(6) Where, before completing the designated distance learning course the eligible distance learning student transfers to a part-time course in the same subject leading to the same qualification at the same institution, the part-time course is to be treated as satisfying regulation 95(1)(b) and (c) if the period of part-time study to be undertaken by that student is of at least one academic year's duration and does not exceed twice the period ordinarily required to complete the remainder of the designated distance learning course from which that student transfers.

(7) Subject to paragraph (8), an eligible distance learning student who transfers under paragraph (5) is entitled to receive in connection with the academic year of the course to which that student transfers the remainder of the support for which the Welsh Ministers have determined that student qualifies under Part 11 in respect of the academic year of the designated distance learning course from which that student transfers.

(8) The Welsh Ministers may re-assess the amount of support payable after the transfer in accordance with this Part.

(9) A student who transfers under paragraph (5) after the Welsh Ministers have determined that student's support under Part 11 in connection with the academic year of the distance learning course from which that student is transferring but before that student completes that year—

- (a) may not apply for a grant under regulation 97(1)(b) if that student has already applied for a grant under regulation 80(1)(b);
- (b) may not apply for a grant under regulation 98 if that student has already applied for a grant under regulation 83.

(10) Where a student transfers under paragraph (5), the total amount of support paid to that student under regulation 80(1)(a) and 97(1)(a) in respect of—

- (a) the academic year from which that student transfers; and
- (b) the academic year to which that student transfers;

must not exceed the amount of support determined to be payable to that student under regulation 80(1)(a).

(11) Where a student transfers under paragraph (5), the maximum amount of part-time grants for dependants to which that student would, apart from this regulation, be entitled pursuant to regulations 99 to 108 in connection with that student undertaking a designated part-time course in respect of that academic year is reduced by one third where that student became an eligible part-time student during the second quarter of the academic year and by two thirds where that student became an eligible part-time student in a later quarter of that year.

(12) Where an eligible part-time student ceases to undertake a designated part-time course and transfers to a designated course at the same or at another institution, the Welsh Ministers must convert that student's status as an eligible part-time student to that of an eligible student in connection with the course to which the eligible part-time student is transferring where—

- (a) they receive a request from the eligible part-time student to do so; and
- (b) the period of eligibility has not terminated.

(13) The following applies to a student who transfers under paragraph (12)—

- (a) where the Welsh Ministers have determined to pay an amount of grant to that student pursuant to regulation 98 in periodic instalments no payment in respect of that amount of grant may be made in respect of any instalment period beginning after the date on which that student became an eligible student;
- (b) subject to sub-paragraphs (c) and (f), any support to which that student is entitled under this Part in respect of the academic year in which that student transfers is ignored in determining the amount of support to which that student may be entitled in respect of that year under Parts 4 to 6;
- (c) where the Welsh Ministers have determined to pay an amount of any grant or allowance to that student pursuant to regulations 99 to 108 in periodic instalments, no payment in respect of that amount may be made in respect of any

instalment period beginning after the date on which that student becomes an eligible student;

- (d) the maximum amount of any support under Parts 5 or 6 to which that student would, apart from this regulation, be entitled in connection with a designated course in respect of that academic year is reduced by one third where that student became an eligible student during the second quarter of that academic year and by two thirds where that student became an eligible student in a later quarter of that year;
- (e) where an amount of grant for any purpose has been paid to that student pursuant to regulation 98 in a single instalment, the maximum amount of grant payable to that student under regulation 29 for that purpose is reduced (or, where sub-paragraph (d) applies, further reduced) by the amount of grant paid to that student for that purpose pursuant to regulation 98 and where the resulting amount is nil or a negative amount that amount is nil; and
- (f) where an amount of grant or allowance has been paid to that student pursuant to regulations 99 to 108 in a single instalment the maximum amount of the analogous grant or allowance payable to that student pursuant to regulations 31 to 34 is reduced (or where sub-paragraph (d) applies, further reduced) by the amount of grant or allowance paid to that student pursuant to regulations 99 to 108 and where the resulting amount is nil or a negative amount that amount is nil.

(14) Where an eligible part-time student ceases to undertake a designated part-time course and transfers to a designated distance learning course at the same or at another institution, the Welsh Ministers must convert that student's status as an eligible part-time student to that of an eligible distance learning student in connection with the course to which the eligible part-time student is transferring where—

- (a) they receive a request from the eligible part-time student to do so; and
- (b) the period of eligibility has not terminated.

(15) Subject to paragraph (16), a student who transfers under paragraph (14) is entitled to receive in connection with the academic year of the course to which the student transfers the remainder of the support for which the Welsh Ministers have determined the student qualifies under this Part in respect of the academic year of the designated part-time course from which the student transfers.

(16) The Welsh Ministers may re-assess the amount of support payable after the transfer in accordance with Part 11.

(17) An eligible part-time student who transfers under paragraph (14) after the Welsh Ministers have determined that student's support in connection with the academic year of the part-time course from which that student is transferring but before that student completes that year—

- (a) may not apply for a grant under regulation 80(1)(b) if that student has already applied for a grant under regulation 97(1)(b);
- (b) may not apply for a grant under regulation 83 if that student has already applied for a grant under regulation 98.

(18) Where a student transfers under paragraph (14), the total amount of support paid to that student under regulations 80(1)(a) and 97(1)(a) in respect of—

- (a) the academic year from which that student transfers; and
- (b) the academic year to which that student transfers;

must not exceed the maximum amount of support determined to be payable to that student under regulation 97(1)(a).

Payment of support to eligible part-time students

114.—(1) Payments of the grant for books, travel and other expenditure and the grant for disabled part-time students' living costs may be made in such manner as the Welsh Ministers consider appropriate and they may make it a condition of entitlement to payment that the eligible part-time student must provide them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

(2) Where the Welsh Ministers cannot make a final assessment on the basis of the information provided by the student, they may make a provisional assessment and payment of the grant for books, travel and other expenditure and the grant for disabled part-time students' living costs.

(3) The Welsh Ministers may pay the grant for books, travel and other expenditure and the grant for disabled part-time students' living costs in instalments or in a single lump sum.

(4) Subject to paragraph (5), the Welsh Ministers may pay the grant for books, travel and other expenditure and the grant for disabled part-time students' living costs at such times as they consider appropriate.

(5) The Welsh Ministers must not pay the first instalment or, where it has been determined not to pay

support in instalments, make any payment of the grant for books, travel and other expenditure or the grant for disabled part-time students' living costs under regulation 98 before they have received the declaration under regulation 111(2) to (6) unless an exception referred to in paragraph (6) applies.

(6) For the purposes of paragraph (5), an exception applies if—

- (a) a grant for disabled part-time students' living costs under regulation 98 is payable in which case that particular grant may be paid before the Welsh Ministers have received a declaration;
- (b) the Welsh Ministers have determined that owing to exceptional circumstances it would be appropriate to make a payment without receiving a declaration.

115.—(1) Subject to the following paragraphs, the Welsh Ministers may pay part-time grants for dependants in such instalments (if any) and at such times as they consider appropriate.

(2) An academic authority is required to send an attendance confirmation to the Welsh Ministers.

(3) The Welsh Ministers must not pay the first instalment or, where it has been determined not to pay a part-time grant for dependants by instalments, make any payment of such a grant to an eligible part-time student before they have received an attendance confirmation unless the exception in paragraph (4) applies.

(4) The exception referred to in paragraph (3) applies if the Welsh Ministers have determined that owing to exceptional circumstances it would be appropriate to make a payment without receiving an attendance confirmation.

(5) Where a final assessment cannot be made on the basis of the information provided by the eligible part-time student, the Welsh Ministers may make a provisional assessment and payment of part-time grants for dependants.

(6) Payments of a part-time grant for dependants are to be made in such manner as the Welsh Ministers consider appropriate and they may make it a condition of entitlement to payment that the eligible part-time student must provide them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

(7) No support by way of part-time grants for dependants is payable in respect of any payment period beginning after an eligible part-time student's period of eligibility terminates.

(8) Where an eligible part-time student's period of eligibility terminates on or after the relevant date, the Welsh Ministers must determine—

- (a) the amount of each part-time grant for dependants for which that student qualifies that would be payable in respect of the relevant payment period if the eligible part-time student's period of eligibility had not terminated (the "full amount"); and
- (b) how much of the full amount is payable in respect of the period which runs from the first day of the relevant payment period up to and including the day on which the eligible part-time student's period of eligibility terminated (the "partial amount").

(9) In this regulation, the "relevant date" ("*y dyddiad perthnasol*") is the date on which the first term of the academic year in question actually begins.

(10) If the Welsh Ministers have made a payment of a part-time grant for dependants in respect of the relevant payment period before the point in that period at which the eligible part-time student's period of eligibility terminated and that payment exceeds the partial amount of that grant—

- (a) they may treat the excess as an overpayment of that grant; or
- (b) if they consider that it is appropriate to do so they may extend that student's period of eligibility in respect of that part-time grant for dependants until the end of the relevant payment period and determine that the full amount of the grant is payable in respect of that payment period.

(11) If a payment of a part-time grant for dependants in respect of the relevant payment period is due to be made or is made after the eligible part-time student's period of eligibility has terminated, the amount of that part-time grant for dependants payable is the partial amount unless the Welsh Ministers consider it appropriate to extend the period of eligibility in respect of that grant until the end of the relevant payment period and to determine that the full amount of that grant is payable in respect of that relevant payment period.

(12) No support by way of part-time grants for dependants is payable in respect of a payment period during any part of which an eligible part-time student is absent from that student's course, unless in the opinion of the Welsh Ministers it would be appropriate in all the circumstances for support to be paid in respect of the period of absence.

(13) In deciding whether support is payable under paragraph (12) the circumstances to which the Welsh Ministers must have regard include the reason for the

student's absence, the length of the absence and the financial hardship which not paying the support would cause.

(14) An eligible part-time student is not to be considered absent from the eligible part-time student's course if the eligible part-time student is unable to attend due to illness and the eligible part-time student's absence has not exceeded 60 days.

(15) Where, after the Welsh Ministers have made any payment of support by way of a part-time grant for dependants, they make a determination of the amount of such a grant for which the eligible part-time student qualifies either for the first time or by way of a revision of a provisional or other determination of that amount—

- (a) if the determination increases the amount of that grant for which the eligible part-time student qualifies they must pay the additional amount and may do so in such instalments (if any) and at such times as they consider appropriate;
- (b) if the determination decreases the amount of that grant for which the eligible part-time student qualifies they must subtract the amount of the decrease from the amount of that grant which remains to be paid;
- (c) if the amount of the decrease is greater than the amount of that grant remaining to be paid the latter amount is reduced to nil and the balance subtracted from any other element of part-time grants for dependants for which the eligible part-time student qualifies in respect of the academic year;
- (d) any remaining overpayment is recoverable in accordance with regulation 118.

Interpretation of regulation 115

116. In regulation 115—

- (a) “attendance confirmation” (“*cadarnhad o bresenoldeb*”) means confirmation in writing from the academic authority—
 - (i) that the eligible part-time student has enrolled for the academic year where the eligible part-time student—
 - (aa) is applying for one or more elements of the part-time grants for dependants (“part-time support” in this regulation) in connection with a designated part-time course for the first time;
 - (bb) has a disability; and

- (cc) is undertaking the course but not attending (regardless of whether the reason for not attending relates to the student's disability);
- (ii) that the eligible part-time student has been present at the institution and begun to attend the course where—
 - (aa) the student is applying for part-time support in connection with a designated part-time course for the first time;
 - (bb) the student's status as an eligible part-time student has not been transferred to the designated part-time course from another course at the same institution; and
 - (cc) sub-paragraph (i)(cc) does not apply;
- (iii) that the eligible part-time student has enrolled for the academic year where the eligible part-time student is applying for part-time support in connection with a designated part-time course—
 - (aa) other than for the first time; or
 - (bb) for the first time after the student's status as an eligible part-time student has been transferred to that course from another course at the same institution;
- (b) "payment period" ("*cyfnod talu*") means a period in respect of which the Welsh Ministers pay the support under regulations 99 to 108 or would have paid such support if the eligible part-time student's period of eligibility had not terminated.

Payment of grants for fees

117.—(1) Subject to paragraphs (2) and (3), the Welsh Ministers must pay the grant in respect of fees for which the eligible part-time student qualifies to the appropriate academic authority after a written request for payment has been received which the Welsh Ministers consider to be a valid request.

(2) The Welsh Ministers may make payments under paragraph (1) at such times and in such instalments (if any) as they see fit.

(3) The Welsh Ministers may make provisional payments under paragraph (1) in such cases as they deem appropriate.

Overpayments

118.—(1) Any overpayment of a grant in respect of fees is recoverable by the Welsh Ministers from the academic authority.

(2) An eligible part-time student must, if so required by the Welsh Ministers, repay any amount paid to the eligible part-time student under this Part which for whatever reason exceeds the amount of grant to which the eligible part-time student is entitled under this Part.

(3) The Welsh Ministers must recover an overpayment of a grant for books, travel and other expenditure, a grant for disabled part-time students' living costs and a part-time grant for dependants unless they consider that it is not appropriate to do so.

(4) The methods of recovery are—

- (a) subtracting the overpayment from any kind of grant payable to the eligible part-time student from time to time pursuant to regulations made by the Welsh Ministers under section 22 of the 1998 Act;
- (b) taking such other action for the recovery of an overpayment as is available to them.

(5) A payment of the grant for disabled part-time students' living costs or a part-time grant for dependants made before the relevant date is an overpayment if the eligible part-time student withdraws from the course before the relevant date unless the Welsh Ministers decide otherwise.

(6) In this regulation, the “relevant date” (“*dyddiad perthnasol*”) is the date on which the first term of the academic year in question actually begins.

(7) In either of the circumstances in paragraph (8) or (9), there is an overpayment of the grant for disabled part-time students' living costs unless the Welsh Ministers decide otherwise.

(8) The circumstances referred to in paragraph (7) are—

- (a) the Welsh Ministers apply all or part of the grant for disabled part-time students' living costs to the purchase of specialist equipment on behalf of the eligible part-time student;
- (b) the student's period of eligibility terminates after the relevant date; and
- (c) the equipment has not been delivered to the student before the student's period of eligibility terminates.

(9) The circumstances referred to in paragraph (7) are—

- (a) the eligible part-time student's period of eligibility terminates after the relevant date; and

- (b) a payment of the grant for disabled part-time students' living costs in respect of specialist equipment is made to the student after the eligible part-time student's period of eligibility terminates.

(10) Where there is an overpayment of the grant for disabled part-time students' living costs, the Welsh Ministers may accept the return of specialist equipment purchased with the grant by way of recovery of all or part of the overpayment if they consider it is appropriate to do so.

PART 13

SUPPORT FOR POSTGRADUATE STUDENTS WITH DISABILITIES

Eligible postgraduate students

119.—(1) An eligible postgraduate student qualifies, subject to and in accordance with this Part, for a grant to assist with the additional expenditure which the Welsh Ministers are satisfied the eligible postgraduate student is obliged to incur by reason of a disability to which the eligible postgraduate student is subject in respect of the eligible postgraduate student undertaking a designated postgraduate course.

(2) A person is an eligible postgraduate student in connection with a designated postgraduate course if that person satisfies the conditions in paragraph (3) and is not excluded by paragraph (4).

(3) The conditions referred to in paragraph (2) are—

- (a) the Welsh Ministers, in assessing a person's application for support under regulation 124, have determined in connection with the designated postgraduate course that the person falls within one of the categories set out in Part 2 of Schedule 1; and
- (b) the Welsh Ministers are satisfied that, by reason of a disability to which the person is subject, the person will be obliged to incur additional expenditure in respect of undertaking the course.

(4) Subject to paragraph (9), a person ("A" in this paragraph) is not an eligible postgraduate student if—

- (a) there has been bestowed on or paid to A in relation to A undertaking the course—
 - (i) a healthcare bursary;
 - (ii) any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007;
 - (iii) any allowance, bursary or award of similar description made by a Research Council;

(iv) any allowance, bursary or award of similar description made by A's institution which includes any payment for the purpose of meeting additional expenditure incurred by A by reason of A's disability; or

(v) any allowance, bursary or award of similar description made under section 67(4)(a) of the Care Standards Act 2000⁽¹⁾ which includes payment for meeting additional expenditure incurred by A by reason of A's disability; or

(b) A is in breach of an obligation to repay any loan;

(c) A has reached the age of 18 and has not ratified any agreement for a loan made with A when A was under the age of 18;

(d) A has, in the opinion of the Welsh Ministers, shown by A's conduct that A is unfitted to receive support under this Part.

(5) For the purposes of paragraphs (4)(b) and (4)(c), "loan" ("*benthyciad*") means a loan made under the student loans legislation.

(6) In a case where the agreement for a loan is subject to the law of Scotland, paragraph (4)(c) only applies if the agreement was made—

(a) before the 25 September 1991; and

(b) with the concurrence of the borrower's curator or at a time when the borrower had no curator.

(7) An eligible postgraduate student does not qualify for a grant under this Part if the only paragraph in Part 2 of Schedule 1 into which the eligible postgraduate student falls is paragraph 9.

(8) Save where the circumstances described in regulation 126(3)(c)(ii) apply such that an eligible postgraduate student undertakes part of that student's course overseas, an eligible postgraduate student does not qualify for a grant under this Part unless the eligible postgraduate student is undertaking the course in the United Kingdom.

(9) Subject to paragraphs (11) to (13) and despite paragraphs (3)(a) and (4), a person is an eligible postgraduate student for the purposes of this Part if the person satisfies the conditions in paragraph (3)(b) and paragraph (10)(a) or (b).

(10) The conditions referred to in paragraph (9) are—

(a) the—

(i) person qualified as an eligible postgraduate student in connection with an earlier

(1) 2000 c.14.

academic year of the present postgraduate course pursuant to regulations made by the Welsh Ministers under section 22 of the 1998 Act;

- (ii) person was ordinarily resident in Wales on the first day of the first academic year of the present postgraduate course; and
- (iii) person's status as an eligible postgraduate student has not terminated;

(b) the—

- (i) Welsh Ministers have previously determined that the person is an eligible postgraduate student in connection with a designated postgraduate course other than the present postgraduate course;
- (ii) person's status as an eligible postgraduate student in connection with the course in sub-paragraph (b)(i) has been transferred from that course to the present course as a result of one or more transfers in accordance with regulations made by the Welsh Ministers under section 22 of the 1998 Act;
- (iii) person was ordinarily resident in Wales on the first day of the first academic year of the course referred to in sub-paragraph (b)(i); and
- (iv) person's status as an eligible postgraduate student has not terminated.

(11) Where—

- (a) the Welsh Ministers have determined that, by virtue of being a refugee or the spouse, civil partner, child or step-child of a refugee, a person ("A" in this paragraph) was an eligible postgraduate student in connection with an application for support for an earlier year of the present postgraduate course or an application in connection with another designated postgraduate course from which A's status as an eligible postgraduate student has been transferred to the present postgraduate course; and
- (b) as at the day before the academic year in respect of which A is applying for support starts, the refugee status of A or of A's spouse, civil partner, parent (as defined in Part 1 of Schedule 1) or step-parent has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002),

A's status as an eligible postgraduate student terminates immediately before the first day of the

academic year in respect of which A is applying for support.

(12) Where—

- (a) the Welsh Ministers have determined that, by virtue of being a refugee or the spouse, civil partner, child or step-child of a refugee, a person (“A” in this paragraph) was an eligible postgraduate student in connection with an application for support for an earlier year of the present postgraduate course or an application in connection with another designated postgraduate course from which A’s status as an eligible postgraduate student has been transferred to the present postgraduate course; and
- (b) as at the day before the academic year in respect of which A is applying for support, the period for which the person with leave to enter or remain is allowed to stay in the United Kingdom has expired and no further leave to remain has been granted and no appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002),

A’s status as an eligible postgraduate student terminates immediately before the first day of the academic year in respect of which A is applying for support.

(13) Paragraphs (11) and (12) do not apply where the student began the course in connection with which the Welsh Ministers determined that the student was an eligible postgraduate student before 1 September 2007.

(14) An eligible postgraduate student does not, at any one time, qualify for support for—

- (a) more than one designated postgraduate course;
- (b) a designated postgraduate course and a designated distance learning course;
- (c) a designated postgraduate course and a designated course;
- (d) a designated postgraduate course and a designated part-time course.

Students becoming eligible during the course of the academic year

120.—(1) Where one of the events listed in paragraph (2) occurs in the course of an academic year—

- (a) a student may qualify for a grant under this Part in respect of that academic year in accordance with this Part; and

- (b) a grant of the kind available under this Part is not available in respect of any academic year beginning before the academic year in which the relevant event occurred.

(2) The events are—

- (a) the student's course becomes a designated postgraduate course;
- (b) the student, or the student's spouse, civil partner or parent (as defined in Part 1 of Schedule 1) is recognised as a refugee or becomes a person with leave to enter or remain;
- (c) the state of which the student is a national accedes to the European Union where the student has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course;
- (d) the student acquires the right of permanent residence;
- (e) the student becomes a child of a Turkish worker;
- (f) the student becomes a person described in paragraph 6(1)(a) of Part 2 of Schedule 1; or
- (g) the student becomes the child of a Swiss national.

Designated postgraduate courses

121.—(1) A postgraduate course is designated for the purposes of section 22(1) of the 1998 Act and regulation 119 if—

- (a) it is a course entry for which a first degree (or equivalent qualification) or higher is normally required;
- (b) it is a course—
 - (i) of at least one academic year's duration; and
 - (ii) in the case of a part-time course, it is ordinarily possible to complete the course in not more than twice the period ordinarily required to complete the full time equivalent;
- (c) it is wholly provided by a publicly funded educational institution in the United Kingdom or is provided by such an institution in conjunction with an institution outside the United Kingdom; and
- (d) it is not a course for the initial training of teachers or a course taken as part of an employment based teacher training scheme.

- (2) For the purposes of paragraph (1)—
- (a) a course is provided by an institution if it provides the teaching and supervision which comprise the course, whether or not it has entered an agreement with the student to provide the course;
 - (b) a university and any constituent college or institution in the nature of a college of a university is regarded as publicly funded if either the university or the constituent college or institution is publicly funded; and
 - (c) an institution is not regarded as publicly funded by reason only that it receives public funds from the governing body of a higher education institution in accordance with section 65(3A) of the Further and Higher Education Act 1992⁽¹⁾.
- (3) For the purposes of paragraph (1)(b)(ii)—
- (a) “full-time equivalent” (“*cwrs llawnamser cyfatebol*”) means a full-time course leading to the same qualification as the part-time course in question;
 - (b) “period ordinarily required to complete the full-time equivalent” (“*cyfnod y mae ei angen fel arfer i gwblhau’r cwrs llawnamser cyfatebol*”) means the period in which a standard full-time student would complete the full-time equivalent;
 - (c) “standard full-time student” (“*myfyriwr llawnamser safonol*”) means a student who is to be taken—
 - (i) to have started the full-time equivalent on the same date as the eligible part-time student started the part-time course in question;
 - (ii) not to have been excused any part of the full-time equivalent;
 - (iii) not to have repeated any part of the full-time equivalent; and
 - (iv) not to have been absent from the full-time equivalent other than during vacations.
- (4) For the purposes of section 22 of the 1998 Act and regulation 119, the Welsh Ministers may designate courses of higher education which are not designated under paragraph (1).

Period of eligibility

122.—(1) A student’s status as an eligible postgraduate student is retained in connection with a

(1) 1992 c.13; section 65(3A) was inserted by the Teaching and Higher Education Act 1998 (c.30), section 27.

designated postgraduate course until that status is terminated in accordance with this regulation or regulation 119.

(2) The period for which an eligible postgraduate student retains the status referred to in paragraph (1) is the “period of eligibility” (“*cyfnod cymhwysra*”).

(3) Subject to the following paragraphs and regulation 119, the period of eligibility terminates at the end of the period ordinarily required for completion of the designated postgraduate course.

(4) The period of eligibility terminates when the eligible postgraduate student (“A” in this paragraph and paragraph (5))—

- (a) withdraws from A’s designated postgraduate course in circumstances where the Welsh Ministers have not transferred or will not transfer A’s status as an eligible postgraduate student to another course under regulation 123; or
- (b) abandons or is expelled from A’s designated postgraduate course.

(5) The Welsh Ministers may terminate the period of eligibility where A has shown by A’s conduct that A is unfitted to receive support under this Part.

(6) Where the eligible postgraduate student is undertaking a designated postgraduate course that is a part-time course, the period of eligibility terminates at the end of the academic year during or at the end of which it becomes impossible for the eligible postgraduate student to complete the course within the period specified in regulation 121(1)(b)(ii).

(7) If the Welsh Ministers are satisfied that an eligible postgraduate student has failed to comply with any requirement to provide information under this Part or has provided information which is inaccurate in a material particular, the Welsh Ministers may take such of the following actions as they consider appropriate in the circumstances—

- (a) terminate the period of eligibility;
- (b) determine that the student no longer qualifies for a grant or any particular amount of grant under this Part;
- (c) treat any support paid to the student as an overpayment which may be recovered under regulation 128.

(8) Where the period of eligibility terminates on or before the expiry of the period ordinarily required for the completion of the designated postgraduate course, the Welsh Ministers may, at any time, renew the period of eligibility for such periods as they determine.

Transfer of status

123.—(1) Where an eligible postgraduate student transfers from a designated postgraduate course to another designated postgraduate course, the Welsh Ministers must transfer the student's status as an eligible postgraduate student to that other course where—

- (a) they receive a request from the eligible postgraduate student to do so;
- (b) they are satisfied that one or more of the grounds for transfer in paragraph (2) applies; and
- (c) the period of eligibility has not terminated.

(2) The grounds for transfer are—

- (a) on the recommendation of the academic authority the eligible postgraduate student starts to undertake another designated postgraduate course at the same institution; or
- (b) the eligible postgraduate student starts to undertake a designated postgraduate course at another institution.

(3) Subject to paragraph (4), an eligible postgraduate student who transfers under paragraph (1) is entitled to receive in connection with the academic year of the course to which the eligible postgraduate student transfers the remainder of the support under this Part for which the Welsh Ministers have determined the eligible postgraduate student qualifies in respect of the academic year of the course from which the eligible postgraduate student transfers.

(4) The Welsh Ministers may re-assess the support after the transfer in accordance with this Part.

(5) An eligible postgraduate student who transfers under paragraph (1) after the Welsh Ministers have determined the eligible postgraduate student's support under this Part in connection with the academic year of the course from which the eligible postgraduate student is transferring but before the eligible postgraduate student completes that year may not apply for another grant under this Part in connection with the academic year of the course to which the eligible postgraduate student transfers.

Applications for support

124.—(1) A person must apply for a grant under this Part in connection with each academic year of a designated postgraduate course by completing and submitting to the Welsh Ministers an application in such form and accompanied by such documentation as the Welsh Ministers may require.

(2) The application must reach the Welsh Ministers as soon as is reasonably practicable.

(3) The Welsh Ministers may take such steps and make such inquiries as they consider necessary to determine whether the applicant is an eligible postgraduate student, whether the applicant qualifies for a grant and the amount of grant payable, if any.

- (4) The Welsh Ministers must notify the applicant—
- (a) whether the applicant qualifies for a grant;
 - (b) if the applicant does qualify, the amount payable in respect of the academic year, if any; and
 - (c) how that amount is allocated between the types of eligible expenditure.

Information

125. Schedule 3 applies in respect of the provision of information by an applicant and an eligible postgraduate student.

Amount of grant

126.—(1) Subject to paragraph (2), the grant payable to an eligible postgraduate student under this Part is such amount as the Welsh Ministers consider appropriate to assist with one or more types of eligible expenditure.

(2) The grant must not exceed £10,590 in respect of an academic year.

(3) For the purposes of this Part, the “types of eligible expenditure” are—

- (a) expenditure on a non-medical helper;
- (b) expenditure on major items of specialist equipment; and
- (c) additional expenditure incurred—
 - (i) within the United Kingdom for the purpose of attending the institution;
 - (ii) within or outside the United Kingdom for the purpose of attending, as part of the course, any period of study at an overseas institution or for the purposes of attending the Institute.

Payment of grant

127.—(1) The Welsh Ministers may pay a grant for which an eligible postgraduate student qualifies under this Part in such instalments (if any) and at such times as they consider appropriate and in the exercise of their functions under this Part they may make provisional payments pending the final calculation of the amount of grant for which the student qualifies.

(2) Payments may be made in such manner as the Welsh Ministers consider appropriate and they may

make it a condition of entitlement to payment that the eligible postgraduate student must provide them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

Overpayments

128.—(1) An eligible postgraduate student must, if so required by the Welsh Ministers, repay any amount paid to the eligible postgraduate student under this Part which for whatever reason exceeds the amount of grant to which the eligible postgraduate student is entitled under this Part.

(2) The Welsh Ministers must recover an overpayment of grant under this Part unless they consider it is not appropriate to do so.

(3) The methods of recovery are—

- (a) subtracting the overpayment from any kind of grant payable to the eligible postgraduate student from time to time pursuant to regulations made by the Welsh Ministers under section 22 of the 1998 Act;
- (b) taking such other action for the recovery of an overpayment as is available to them.

(4) A payment of grant under this Part made before the relevant date is an overpayment if the eligible postgraduate student withdraws from the course before the relevant date unless the Welsh Ministers decide otherwise.

(5) In this regulation, the “relevant date” (“*dyddiad perthnasol*”) is the date on which the first term of the academic year in question actually begins.

(6) In either of the circumstances in paragraphs (7) and (8), there is an overpayment of grant under this Part unless the Welsh Ministers decide otherwise.

(7) The circumstances referred to in paragraph (6) are—

- (a) the Welsh Ministers apply all or part of the grant under this Part to the purchase of specialist equipment on behalf of the eligible postgraduate student;
- (b) the student’s period of eligibility terminates after the relevant date; and
- (c) the equipment has not been delivered to the student before the student’s period of eligibility terminates.

(8) The circumstances referred to in paragraph (6) are—

- (a) the eligible postgraduate student’s period of eligibility terminates; and
- (b) a payment of grant under this Part in respect of specialist equipment is made to the student

after the student's period of eligibility terminated.

(9) Where there is an overpayment of the grant under this Part, the Welsh Ministers may accept the return of specialist equipment purchased with the grant by way of recovery of all or part of the overpayment if they consider it is appropriate to do so.

PART 14

AMENDMENT OF THE 2011 (No. 2) REGULATIONS

Amendment of the 2011 (No. 2) Regulations

129.—(1) The 2011 (No. 2) Regulations are amended in accordance with the following paragraph.

(2) In regulation 25(6)—

- (a) at the end of sub-paragraph (e)(iii) omit “or”;
- (b) at the end of sub-paragraph (e)(iv) for “.” substitute “;”;
- (c) after sub-paragraph (e)(iv) insert—
 - “(v) the National Health Service Commissioning Board established under section 1H of the National Health Service Act 2006 or a Clinical Commissioning Group established under section 1I of that Act⁽¹⁾; or
 - (vi) the National Institute for Health and Care Excellence established under section 232 of the Health and Social Care Act 2012 or the Health and Social Care Information Centre established under section 252 of that Act⁽²⁾.”

Leighton Andrews

Minister for Education and Skills, one of the Welsh Ministers

12 December 2012

(1) 2006 c.41; sections 1H and 1I were inserted by the Health and Social Care Act 2012 (c.7), sections 9 and 10.
(2) 2012 c.7.

SCHEDULE 1

Regulations 4, 76, 93 and 119

Eligible Students

PART 1

Interpretation

1.—(1) For the purposes of this Schedule—

“EEA frontier self-employed person” (*“person hunangyflogedig ffin yr AEE”*) means an EEA national who —

- (a) is a self-employed person in Wales; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to the national’s residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA frontier worker” (*“gweithiwr ffin yr AEE”*) means an EEA national who—

- (a) is a worker in Wales; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to the national’s residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA migrant worker” (*“gweithiwr mudol o’r AEE”*) means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;

“EEA national” (*“gwladolyn o’r AEE”*) means a national of an EEA State other than the United Kingdom;

“EEA self-employed person” (*“person hunangyflogedig o’r AEE”*) means an EEA national who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;

“EEA State” (*“gwladwriaeth AEE”*) means a Member State of the European Economic Area;

“employed person” (*“person cyflogedig”*) means an employed person within the meaning of Annex 1 to the Swiss Agreement;

“European Economic Area” (*“Ardal Economaidd Ewropeaidd”*) means the area comprised by the EEA States;

“family member” (“*aelod o deulu*”) means (unless otherwise indicated)—

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person or an EEA self-employed person—
 - (i) the person’s spouse or civil partner;
 - (ii) direct descendants of the person or of the person’s spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of the person or the person’s spouse or civil partner; or
 - (iii) dependent direct relatives in the ascending line of the person or that of the person’s spouse or civil partner;
- (b) in relation to a Swiss employed person, a Swiss frontier employed person, a Swiss frontier self-employed person or a Swiss self-employed person—
 - (i) the person’s spouse or civil partner; or
 - (ii) the person’s child or the child of the person’s spouse or civil partner;
- (c) in relation to an EU national who falls within Article 7(1)(c) of Directive 2004/38—
 - (i) the national’s spouse or civil partner; or
 - (ii) direct descendants of the national or of the national’s spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of the national or of the national’s spouse or civil partner;
- (d) in relation to an EU national who falls within Article 7(1)(b) of Directive 2004/38—
 - (i) the national’s spouse or civil partner;
 - (ii) direct descendants of the national or of the national’s spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of the national or of the national’s spouse or civil partner; or
 - (iii) dependent direct relatives in the national’s ascending line or that of the national’s spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 9—
 - (i) the national’s spouse or civil partner; or
 - (ii) direct descendants of the national or of the national’s spouse or civil partner who are—

- (aa) under the age of 21; or
- (bb) dependants of the national or of the national's spouse or civil partner;

“self-employed person” (*“person hunangyflogedig”*) means—

- (a) in relation to an EEA national, a person who is self-employed within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be; or
- (b) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Swiss Agreement;

“settled” (*“wedi setlo”*) has the meaning given by section 33(2A) of the Immigration Act 1971⁽¹⁾;

“Swiss Agreement” (*“Cytundeb y Swistir”*) means the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation of the other, on the Free Movement of Persons signed at Luxembourg on 21 June 1999⁽²⁾ and which came into force on 1 June 2002;

“Swiss employed person” (*“person cyflogedig Swisaidd”*) means a Swiss national who is an employed person, other than a Swiss frontier employed person, in the United Kingdom;

“Swiss frontier employed person” (*“person cyflogedig ffin y Swistir”*) means a Swiss national who—

- (a) is an employed person in Wales; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the national's residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“Swiss frontier self-employed person” (*“person hunangyflogedig ffin y Swistir”*) means a Swiss national who—

- (a) is a self-employed person in Wales; and
- (b) resides in Switzerland or in the territory of an EEA State, other than the United Kingdom, and returns to the national's residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“Swiss self-employed person” (*“person hunangyflogedig Swisaidd”*) means a Swiss national who is a self-employed person, other than

(1) 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).
 (2) Cm. 4904 and OJ No L114, 30.04.02, p.6 .

a Swiss frontier self-employed person, in the United Kingdom;

“worker” (“*gweithiwr*”) means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be;

(2) For the purposes of this Schedule, “parent” (“*rhiant*”) includes a guardian, any other person having parental responsibility for a child and any person having care of a child and “child” (“*plentyn*”) is to be construed accordingly.

(3) For the purposes of this Schedule, a person who is ordinarily resident in Wales, England, Scotland, Northern Ireland or the Islands, as a result of having moved from another of those areas for the purpose of undertaking—

- (a) the present course, the present distance learning course, the present part-time course or the present postgraduate course; or
- (b) a course which, disregarding any intervening vacation, the student undertook immediately before undertaking the course referred to in sub-paragraph (a),

is to be considered to be ordinarily resident in the place from which the person moved.

(4) For the purposes of this Schedule, a person (“A” in this sub-paragraph) is to be treated as ordinarily resident in Wales, the United Kingdom and Islands or in the territory comprising the European Economic Area, Switzerland and Turkey if A would have been so resident but for the fact that—

- (a) A;
- (b) A’s spouse or civil partner;
- (c) A’s parent; or
- (d) in the case of a dependent direct relative in the ascending line, A’s child or child’s spouse or civil partner,

is or was temporarily employed outside Wales, the United Kingdom and Islands or the territory comprising the European Economic Area, Switzerland and Turkey.

(5) For the purposes of sub-paragraph (4), temporary employment outside Wales, the United Kingdom and Islands or the territory comprising the European Economic Area, Switzerland and Turkey includes—

- (a) in the case of members of the regular naval, military or air forces of the Crown, any period which they serve outside the United Kingdom as members of such forces; and
- (b) in the case of members of the regular armed forces of an EEA State or Switzerland, any period which they serve outside the territory

comprising the European Economic Area and Switzerland as members of such forces; and

- (c) in the case of members of the regular armed forces of Turkey, any period which they serve outside of the territory comprising the European Economic Area, Switzerland and Turkey as members of such forces.

(6) For the purposes of this Schedule an area which—

- (a) was previously not part of the European Union or the European Economic Area; but
- (b) at any time before or after these Regulations come into force has become part of one or other or both of these areas,

is to be considered to have always been a part of the European Economic Area.

(7) For the purposes of this Schedule an eligible prisoner is to be considered ordinarily resident in the part of the United Kingdom where the prisoner resided prior to sentencing.

PART 2

Categories

Persons who are settled in the United Kingdom

2.—(1) A person who on the first day of the first academic year of the course—

- (a) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence;
- (b) is ordinarily resident in Wales;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (2), whose residence in the United Kingdom and Islands has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 1(4).

3. A person who—

- (a) is settled in the United Kingdom by virtue of having acquired the right of permanent residence;

- (b) is ordinarily resident in Wales on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where the person's ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

Refugees and their family members

4.—(1) A person who—

- (a) is a refugee;
- (b) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since the person was recognised as a refugee; and
- (c) is ordinarily resident in Wales on the first day of the first academic year of the course.

(2) A person who—

- (a) is the spouse or civil partner of a refugee;
- (b) was the spouse or civil partner of the refugee on the date on which the refugee made the application for asylum;
- (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom; and
- (d) is ordinarily resident in Wales on the first day of the first academic year of the course.

(3) A person who—

- (a) is the child of a refugee or the child of the spouse or civil partner of a refugee;
- (b) on the date on which the refugee made the application for asylum, was the child of the refugee or the child of a person who was the spouse or civil partner of the refugee on that date;
- (c) was under 18 on the date on which the refugee made the application for asylum;
- (d) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom; and
- (e) is ordinarily resident in Wales on the first day of the first academic year of the course.

Persons with leave to enter or remain and their family members

5.—(1) A person—

- (a) with leave to enter or remain;
- (b) who is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (c) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

(2) A person—

- (a) who is the spouse or civil partner of a person with leave to enter or remain;
- (b) who was the spouse or civil partner of the person with leave to enter or remain on the date on which that person made the application for asylum;
- (c) who is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

(3) A person—

- (a) who is the child of a person with leave to enter or remain or the child of the spouse or civil partner of a person with leave to enter or remain;
- (b) who, on the date on which the person with leave to enter or remain made the application for asylum, was the child of that person or the child of a person who was the spouse or civil partner of the person with leave to enter or remain on that date;
- (c) who was under 18 on the date on which the person with leave to enter or remain made the application for asylum;
- (d) who is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (e) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

Workers, employed persons, self-employed persons and their family members

6.—(1) A person who—

- (a) is—

- (i) an EEA migrant worker or an EEA self-employed person;
 - (ii) a Swiss employed person or a Swiss self-employed person;
 - (iii) a family member of a person mentioned in paragraph (i) or (ii);
 - (iv) an EEA frontier worker or an EEA frontier self-employed person;
 - (v) a Swiss frontier employed person or a Swiss frontier self-employed person; or
 - (vi) a family member of a person mentioned in paragraph (iv) or (v);
- (b) subject to sub-paragraph (2), is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.

(2) Paragraph (b) of sub-paragraph (1) does not apply where the person applying for support under these Regulations falls within paragraph (a)(iv), (v) or (vi) of sub-paragraph (1).

7. A person who—

- (a) is ordinarily resident in Wales on the first day of the first academic year of the course;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (c) is entitled to support by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers⁽¹⁾, as extended by the EEA Agreement

Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere

8.—(1) A person who—

- (a) is settled in the United Kingdom;
- (b) was ordinarily resident in Wales and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence;
- (c) is ordinarily resident in the United Kingdom on the day on which the first term of the first academic year actually begins;

(1) OJ No L257, 19.10.1968, p2 (OJ/SE 1968 (II) p.475).

- (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (e) in a case where the person's ordinary residence referred to in paragraph (d) was wholly or mainly for the purposes of receiving full time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (d).

(2) For the purposes of this paragraph, a person has exercised a right of residence if that person is a United Kingdom national, a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement) or a person who has a right of permanent residence who in each case has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom or, in the case of a person who is settled in the United Kingdom and has a right of permanent residence, if that person goes to the state within the territory comprising the European Economic Area and Switzerland of which that person is a national or of which the person in relation to whom that person is a family member is a national.

EU nationals

9.—(1) A person who—

- (a) is either—
 - (i) an EU national on the first day of the first academic year of the course, other than a person who is a United Kingdom national who has not exercised a right of residence; or
 - (ii) a family member of such a person;
- (b) is—
 - (i) attending or undertaking a designated course in Wales; or
 - (ii) undertaking a designated distance learning course, a designated part-time course or designated postgraduate course in Wales;
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the

European Economic Area and Switzerland has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the European Economic Area and Switzerland in accordance with paragraph 1(4).

(3) Where a state accedes to the European Union after the first day of the first academic year of the course and a person is a national of that state or the family member of a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EU national on the first day of the first academic year of the course is treated as being satisfied.

(4) For the purposes of this paragraph, a United Kingdom national has exercised a right of residence if that person has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom.

10.—(1) A person who—

- (a) is an EU national other than a United Kingdom national on the first day of the first academic year of the course;
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course; and
- (d) in a case where the person's ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

(2) Where a state accedes to the European Union after the first day of the first academic year of the course and a person is a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EU national other than a United Kingdom national on the first day of the first academic year of the course is treated as being satisfied.

Children of Swiss nationals

11. A person who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of

Article 3(6) of Annex 1 to the Swiss Agreement;

- (b) is ordinarily resident in Wales on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where the person's ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in paragraph (c).

Children of Turkish workers

12. A person who—

- (a) is the child of a Turkish worker;
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the three-year period preceding the first day of the first academic year of the course.

SCHEDULE 2

Regulations 5, 78 and 95

DESIGNATED COURSES

- 1.** A first degree course.
- 2.** A course for the Diploma of Higher Education.
- 3.** A course for the Higher National Diploma or Higher National Certificate of—
 - (a) the Business & Technician Education Council; or
 - (b) the Scottish Qualification Authority.
- 4.** A course for the certificate of Higher Education.
- 5.** A course for the initial training of teachers.
- 6.** A course for the further training of youth and community workers.
- 7.** A course in preparation for a professional examination of a standard higher than that of—

- (a) examination at advanced level for the General Certificate of Education or the examination at higher level for the Scottish Certificate of Education; or
- (b) the examination for the National Certificate or the National Diploma of either of the bodies mentioned in paragraph 3,

not being a course for entry to which a first degree (or equivalent qualification) is normally required.

8. A course—

- (a) providing education (whether or not in preparation for an examination) the standard of which is higher than that of courses providing education in preparation for any of the examinations mentioned in paragraph 7(a) or (b) but not higher than that of a first degree course; and
- (b) for entry to which a first degree (or equivalent qualification) is not normally required.

SCHEDULE 3

Regulations 11, 86, 111 and 125

INFORMATION

1. Every applicant, eligible student, eligible distance learning student, eligible part-time student and eligible postgraduate student must, as soon as reasonably practicable after being requested to do so, provide the Welsh Ministers with such information as the Welsh Ministers consider they require for the purposes of these Regulations.

2. Every applicant, eligible student, eligible distance learning student, eligible part-time student and eligible postgraduate student must forthwith inform the Welsh Ministers and provide them with particulars if any of the following occurs—

- (a) the applicant or student withdraws from, abandons or is expelled from their course;
- (b) the applicant or student transfers to any other course at the same or at a different institution;
- (c) the applicant or student ceases to undertake their course and does not intend to or is not permitted to continue it for the remainder of the academic year;
- (d) the applicant or student is absent from their course for more than 60 days due to illness or for any period for any other reason;
- (e) the month for the start or completion of the course changes;

- (f) the applicant's or student's home or term-time address or telephone number changes.

3. Information provided to the Welsh Ministers under these Regulations must be in the format that the Welsh Ministers require and, if they require the information to be signed by the person providing it, an electronic signature in such form as the Welsh Ministers may specify satisfies such a requirement.

SCHEDULE 4

Regulation 65

COLLEGE FEE LOANS

Availability of college fee loans

1. A person qualifies for a college fee loan in connection with the person's attendance on a qualifying course in accordance with this Schedule.

2. A person qualifies for a college fee loan if the person meets the following conditions—

- (a) the person is an eligible student who is not excluded from qualifying by paragraph 3;
- (b) the person has an honours degree from an institution in the United Kingdom;
- (c) the person is taking a qualifying course which the person—
 - (i) starts on or after 1 September 2006 and on which the person is continuing after 31 August 2011; or
 - (ii) starts on or after 1 September 2011;
- (d) the person is a member of a college or a permanent private hall of the University of Oxford or a member of a college of the University of Cambridge;
- (e) the person is under the age of 60 on the first day of the first academic year of the qualifying course; and
- (f) none of the circumstances in regulation 4(3) apply to the person.

3. An eligible student who falls within paragraph 9 of Part 2 of Schedule 1 does not qualify for a college fee loan under these Regulations if the eligible student is ordinarily resident in England, Scotland or Northern Ireland.

Disabled students

4. A disabled eligible student who is undertaking a qualifying course in the United Kingdom but who is not in attendance because the disabled eligible student is not able to attend for a reason which relates to the disabled eligible student's disability is treated as if the disabled eligible student were in attendance on the qualifying course for the purpose of qualifying for the college fee loan.

Students becoming eligible during the course of an academic year

5. Where one of the events listed in paragraph 6 occurs in the course of an academic year—

- (a) a student may qualify for a college fee loan in accordance with this Schedule in respect of that academic year provided that the relevant event occurred within the first three months of the academic year; and
- (b) a college fee loan is not available in respect of any academic year beginning before the academic year in which the relevant event occurred.

6. The events are—

- (a) the student, the student's spouse, civil partner or parent (as defined in paragraph 1 of Schedule 1) is recognised as a refugee or becomes a person with leave to enter or remain;
- (b) a state accedes to the European Union where the student is a national of that state or is the family member (as defined in Part 1 of Schedule 1) of a national of that state;
- (c) the student becomes a family member (as defined in Part 1 of Schedule 1) of an EU national;
- (d) the student acquires a right of permanent residence;
- (e) the student becomes the child of a Turkish worker;
- (f) the student becomes a person described in paragraph 6(1)(a) of Schedule 1;
- (g) the student becomes the child of a Swiss national.

7. A college fee loan is available in respect of each standard academic year of the qualifying course and in respect of one academic year of the qualifying course that is not a standard academic year.

8. Where a qualifying student is allowed to study the content of one standard academic year of the qualifying course over two or more academic years, for the purpose of determining whether the student qualifies for a college fee loan for those years, the first of such years of study is to be treated as a standard academic year and the following years of that kind are to be treated as academic years that are not standard academic years.

9. In this Schedule “standard academic year” (*“blwyddyn academaidd safonol”*) means an academic year of the qualifying course that would be taken by a

person who does not repeat any part of the course and who enters the course at the same point as the qualifying student.

Amount of the college fee loan

10.—(1) The amount of the college fee loan in respect of an academic year of a qualifying course must not exceed the amount equal to the college fees payable by the qualifying student to the qualifying student's college or permanent private hall in connection with that year.

(2) Where a qualifying student has applied for a college fee loan of less than the maximum amount available in relation to the academic year, the qualifying student may apply to borrow an additional amount which, when added to the amount already applied for, does not exceed the maximum amount available.

Transfers

11. Despite regulation 8, where a qualifying student transfers from one qualifying course to another qualifying course—

- (a) the Welsh Ministers must transfer the student's status as a qualifying student to the other course on the request of the qualifying student unless the period of eligibility has terminated;
- (b) subject to paragraph (c) if the qualifying student transfers before the end of the academic year after applying for a college fee loan, the amount applied for is paid to the relevant college or permanent private hall in respect of the qualifying course to which the qualifying student transfers provided that the conditions in paragraph 12 are met and the qualifying student cannot qualify for another college fee loan in respect of that academic year;
- (c) if the qualifying student transfers after the college fee loan is paid and before the end of the academic year, the qualifying student cannot apply for another college fee loan in connection with the academic year of the qualifying course to which the qualifying student transfers.

Payment

12.—(1) The Welsh Ministers must pay the college fee loan for which a qualifying student qualifies to the college or permanent private hall to which the student is liable to make payment.

(2) The Welsh Ministers must pay the college fee loan in a single lump sum.

(3) The Welsh Ministers must not pay the college fee loan before—

- (a) they have received a request for payment in writing from the college or permanent private hall which the Welsh Ministers consider to be a valid request; and
- (b) a period of three months beginning with the first day of the academic year has expired.

(4) A college or permanent private hall is required to send an attendance confirmation to the Welsh Ministers in such form as the Welsh Ministers may require.

(5) The Welsh Ministers must not pay the college fee loan in respect of the academic year until they have received an attendance confirmation from the relevant college or private hall unless they determine that owing to exceptional circumstances it would be appropriate to make a payment without receiving that confirmation.

(6) In this paragraph “attendance confirmation” has the same meaning as in regulation 75.

(7) The Welsh Ministers must not make a payment of college fee loan in respect of a qualifying course if—

- (a) before the expiry of a period of three months beginning with the first day of the academic year the qualifying student ceases to attend or in the case of a student who is treated as in attendance under paragraph 4, undertake the course; and
- (b) the college or permanent private hall has determined or agreed that the student will not commence attending or, as the case may be, undertaking the course in the United Kingdom again during the academic year in respect of which the college fees are payable or at all.

Conditions of entitlement to payment of college fee loan

13.—(1) The Welsh Ministers may make it a condition of entitlement to payment of a college fee loan that a qualifying student must provide them with that qualifying student’s United Kingdom national insurance number.

(2) Where the Welsh Ministers have imposed a condition under sub-paragraph (1), they must not make any payment of the loan to the qualifying student before they are satisfied that the qualifying student has complied with that condition.

(3) Despite sub-paragraph (2), the Welsh Ministers may make a payment of loan to a qualifying student if

they are satisfied that owing to exceptional circumstances it would be appropriate to make such a payment without the qualifying student having complied with the condition imposed under subparagraph (1).

Information requirements

14.—(1) The Welsh Ministers may at any time request from a qualifying student information that they consider is required to recover a loan.

(2) The Welsh Ministers may at any time require a qualifying student to enter into an agreement to repay a loan by a particular method.

(3) The Welsh Ministers may at any time request from a qualifying student sight of that qualifying student's valid national identity card, that qualifying student's valid passport issued by the state of which that qualifying student is a national or that qualifying student's birth certificate.

(4) Where the Welsh Ministers have requested information under this regulation, they may withhold any payment of a loan until the person provides what has been requested or provides a satisfactory explanation for not complying with the request.

(5) Where the Welsh Ministers have requested an agreement as to the method of repayment under this paragraph, they may withhold any payment of a college fee loan until the person provides what has been requested.

Overpayment

15. Any overpayment of college fee loan is recoverable by the Welsh Ministers from the college or permanent private hall.

SCHEDULE 5

Regulation 66

FINANCIAL ASSESSMENT

Definitions

1.—(1) In this Schedule—

- (a) “financial year” (*“blwyddyn ariannol”*) means the period of twelve months in respect of which the income of a person, whose residual income is calculated under the provisions of this Schedule, is computed for the purposes of the income tax legislation which applies to it;

- (b) “household income” (*“incwm aelwyd”, “incwm yr aelwyd”, “incwm sydd gan yr aelwyd”*) has the meaning given in paragraph 3;
- (c) “independent eligible student” (*“myfyriwr cymwys annibynnol”*) has the meaning given in paragraph 2;
- (d) “Member State” (*“Aelod-wladwriaeth”*) means a Member State of the European Union;
- (e) “new eligible student” (*“myfyriwr cymwys newydd”*) means an eligible student who begins a designated course on or after 1 September 2004;
- (f) “parent” (*“rhiant”*) means a natural or adoptive parent and “child” (*“plentyn”*) is construed accordingly;
- (g) “parent student” (*“myfyriwr sy’n rhiant”*) means an eligible student who is the parent of an eligible student;
- (h) “partner” (*“partner”*) in relation to an eligible student means any of the following—
 - (i) the spouse of an eligible student;
 - (ii) the civil partner of an eligible student;
 - (iii) a person ordinarily living with an eligible student as if the person were the eligible student’s spouse where an eligible student falls within paragraph 2(1)(a) and the eligible student begins the designated course on or after 1 September 2000;
 - (iv) a person ordinarily living with an eligible student as if the person were the eligible student’s civil partner where an eligible student falls within paragraph 2(1)(a) and the eligible student begins the designated course on or after 1 September 2005;
- (i) “partner” (*“partner”*) in relation to the parent of an eligible student means any of the following other than another parent of the eligible student—
 - (i) the spouse of an eligible student’s parent;
 - (ii) the civil partner of an eligible student’s parent;
 - (iii) a person ordinarily living with the parent of an eligible student as if the person were the parent’s spouse;
 - (iv) a person ordinarily living with the parent of an eligible student as if the person were the parent’s civil partner;
- (j) “preceding financial year” (*“blwyddyn ariannol flaenorol”*) means the financial year immediately preceding the relevant year;

- (k) “prior financial year” (“*blwyddyn ariannol gynharach*”) means the financial year immediately preceding the preceding financial year;
- (l) “relevant year” (“*blwyddyn berthnasol*”) means the academic year in respect of which the household income falls to be assessed;
- (m) “residual income” (“*incwm gweddilliol*”) means taxable income after the application of paragraph 4 (in the case of an eligible student), paragraph 5 (in the case of an eligible student’s parent), paragraph 6 (in the case of an eligible student’s partner) or paragraph 7 (in the case of the partner of a new eligible student’s parent) and income referred to in sub-paragraph (2) received net of income tax; and
- (n) “taxable income” (“*incwm trethadwy*”) means, in relation to paragraph 4, in respect of the academic year for which an application has been made under regulation 9 and, in relation to paragraph 5, in respect (subject to sub-paragraphs (3) to (6) of paragraph 5) of the prior financial year, a person’s taxable income from all sources computed as for the purposes of—
 - (i) the Income Tax Acts;
 - (ii) the income tax legislation of another Member State which applies to the person’s income; or
 - (iii) where the legislation of more than one Member State applies to the period, the legislation under which the Welsh Ministers consider the person will pay the largest amount of tax in that period (except as otherwise provided in paragraph 5),
 except that no account is taken of income referred to in sub-paragraph (2) paid to another party.

(2) The income referred in this sub-paragraph is any benefits under a pension arrangement pursuant to an order made under section 23 of the Matrimonial Causes Act 1973⁽¹⁾ which includes provision made by virtue of sections 25B(4) and 25E(3) of that Act⁽²⁾ or pension benefits under Part 1 of Schedule 5 to the Civil Partnership Act 2004⁽³⁾ which includes provision made by virtue of Parts 6 and 7 of that Schedule.

Independent eligible student

2.—(1) An eligible student is an independent eligible student in every case where—

- (a) the eligible student is aged 25 or over on the first day of the relevant year;
- (b) the eligible student is married or is in a civil partnership before the beginning of the relevant year, whether or not the marriage or civil partnership is still subsisting;
- (c) the eligible student has no parent living;
- (d) the Welsh Ministers are satisfied that neither of the eligible student's parents can be found or that it is not reasonably practicable to get in touch with either of them;
- (e) the eligible student has communicated with neither of the eligible student's parents for the period of one year before the beginning of the relevant year or, in the opinion of the Welsh Ministers, the eligible student can demonstrate on other grounds that the eligible student is irreconcilably estranged from the eligible student's parents;
- (f) the eligible student was looked after by a local authority within the meaning of section 22 of the Children Act 1989⁽⁴⁾ throughout any three-month period ending on or after the date on which the eligible student attained the age of 16 and before the first day of the first academic year of the course ("the relevant period") provided that the eligible student has not in fact at any time during the relevant

(1) 1973 c.18; section 23 was amended by the Administration of Justice Act 1982 (c.53), section 16.

(2) Section 25B was inserted by the Pensions Act 1995 (c.26), section 166(1) and was amended by the Welfare Reform and Pensions Act 1999 (c.30), Schedule 4. Section 25E was inserted by the Pensions Act 2004 (c.35), section 319(1), Schedule 12, paragraph 3.

(3) 2004 c.33; paragraph 25 of Schedule 5 was modified by S.I. 2006/1934.

(4) 1989 c. 41; section 22 has been amended by the Children (Leaving Care) Act 2000 (c. 35), section 2, Local Government Act 2000 (c. 22), Schedule 5, paragraph 19, the Adoption and Children Act 2002 (c. 38), section 116(2), the Children Act 2004 (c. 31), section 52 and the Children and Young Persons Act 2008 (c. 23), section 39 and Schedule 3.

- period been under the charge or control of the eligible student's parents;
- (g) the eligible student's parents are residing outside the European Union and the Welsh Ministers are satisfied that either—
 - (i) the assessment of the household income by reference to their residual income would place those parents in jeopardy; or
 - (ii) it would not be reasonably practicable for those parents as a result of the calculation of any contribution under paragraph 8 or 9 to send any relevant funds to the United Kingdom;
 - (h) paragraph 5(10) applies and the parent whom the Welsh Ministers considered the more appropriate for the purposes of that paragraph has died (irrespective of whether the parent in question had a partner);
 - (i) the eligible student began the present course before 1 September 2009 and is a member of a religious order who resides in a house of that order;
 - (j) the eligible student has the care of a person under the age of 18 as at the first day of the relevant year; or
 - (k) the eligible student ("A" in this subparagraph) has supported A out of A's earnings for any period or periods ending before the first academic year of the course which together aggregate not less than three years, and for the purposes of this subparagraph A is to be treated as supporting A out of A's earnings during any period in which—
 - (i) A was participating in arrangements for training for the unemployed under any scheme operated by, sponsored or funded by any state authority or agency, whether national, regional or local ("a relevant authority");
 - (ii) A was in receipt of benefit payable by any relevant authority in respect of a person who is available for employment but who is unemployed;
 - (iii) A was available for employment and had complied with any requirement of registration imposed by a relevant authority as a condition of entitlement for participation in arrangements for training or receipt of benefit;

- (iv) A held a state studentship⁽¹⁾ or comparable award; or
- (v) A received any pension, allowance or other benefit paid by any person by reason of a disability to which A is subject, or by reason of confinement, injury or sickness.

(2) An eligible student who qualifies as an independent eligible student under paragraph 2(1)(j) in respect of an academic year of a designated course retains that status for the duration of the period of eligibility.

Household income

3.—(1) The amount of an eligible student's contribution depends on the household income.

(2) The household income is—

- (a) in the case of an eligible student who is not an independent eligible student, the residual income of the eligible student aggregated with the residual income of the eligible student's parents (subject to paragraph 5(10)) and—
 - (i) in the case of a new eligible student who began the specified designated course before 1 September 2005, the residual income of the partner (other than a partner within the meaning of paragraph 1(i)(iv)) of the new eligible student's parent (provided that the Welsh Ministers have selected that parent under paragraph 5(10)); or
 - (ii) in the case of a new eligible student who began the specified designated course on or after 1 September 2005, the residual income of the partner of the new eligible student's parent (provided that the Welsh Ministers have selected that parent under paragraph 5(10));
- (b) in the case of an independent eligible student who has a partner, the residual income of the independent eligible student aggregated with the residual income of the independent eligible student's partner (subject to subparagraph (4)); or
- (c) in the case of an independent eligible student who does not have a partner, the residual income of the independent eligible student.

(3) In determining the household income under subparagraph (2), the sum of £1,130 is deducted—

(1) Funding provided by the Research Councils in respect of full time post graduate study.

- (a) for each child wholly or mainly financially dependent on the eligible student or the eligible student's partner; or
- (b) for each child other than the eligible student wholly or mainly financially dependent on the eligible student's parent or the eligible student's parent's partner whose residual income is being taken into account.

(4) For the purpose of calculating the contribution payable in respect of a parent student, the residual income of the parent student's partner must not be aggregated under paragraph (b) of sub-paragraph (2) in the case of a parent student whose child or whose partner's child holds an award in respect of which the household income is calculated with reference to the residual income of the parent student or of the parent student's partner or of both.

Calculation of eligible student's residual income

4.—(1) For the purpose of determining the residual income of an eligible student, there is deducted from the eligible student's taxable income (unless already deducted in determining taxable income) the aggregate of any amounts falling within any of the following sub-paragraphs—

- (a) any remuneration for work done during any academic year of the eligible student's course, provided that such remuneration does not include any sums paid in respect of any period for which the eligible student has leave of absence or is relieved of the eligible student's normal duties for the purpose of attending that course;
- (b) the gross amount of any premium or other sum paid by the eligible student in relation to a pension (not being a pension payable under a policy of life insurance) in respect of which relief is given under section 188 of the Finance Act 2004⁽¹⁾, or where the eligible student's income is computed for the purposes of the income tax legislation of another Member State, the gross amount of any such premium or sum in respect of which relief would be given if that legislation made provision equivalent to the Income Tax Acts.

(2) Where the only paragraph in Part 2 of Schedule 1 into which an eligible student falls is paragraph 9 and the eligible student's income arises from sources or under legislation different from sources or legislation normally relevant to a person referred to in paragraph

(1) 2004 c.12; section 188 was amended by the Finance Act 2007 (c.11), sections 68, 69 and 114 and Schedules 18, 19 and 27.

9 of Part 2 of Schedule 1, the eligible student's income is not disregarded in accordance with sub-paragraph (1) but is instead disregarded to the extent necessary to ensure that the eligible student is treated no less favourably than a person who is referred to in any paragraph of Part 2 of Schedule 1 would be treated if in similar circumstances and in receipt of similar income.

(3) Where the eligible student receives income in a currency other than sterling, the value of that income for the purpose of this paragraph is—

- (a) if the eligible student purchases sterling with the income, the amount of sterling the eligible student so receives;
- (b) otherwise, the value of the sterling which the income would purchase using the rate for the month in which it is received published by the Office for National Statistics⁽¹⁾.

Calculation of parent's residual income

5.—(1) For the purposes of determining the taxable income of an eligible student's parent ("A" in this paragraph), any deductions which fall to be made or exemptions which are permitted—

- (a) by way of personal reliefs provided for in Chapter 1 of Part VII of the Income and Corporation Taxes Act 1988⁽²⁾ or, where the income is computed for the purposes of the income tax legislation of another Member State, any comparable personal reliefs;
- (b) pursuant to any enactment or rule of law under which payments which would otherwise under United Kingdom law form part of a person's income are not treated as such; or
- (c) under sub-paragraph (2),

must not be made or permitted.

(2) For the purposes of determining the residual income of A, there is deducted from the taxable income determined under sub-paragraph (1) the aggregate of any amounts falling within any of the following sub-paragraphs—

- (a) the gross amount of any premium or sum relating to a pension (not being a premium payable under a policy of life assurance) in respect of which relief is given under section 188 of the Finance Act 2004, or where the income is computed for the purposes of the income tax legislation of another Member

(1) "Financial Statistics" (ISSN 0015-203X).
(2) 1988 c. 1 to which there are amendments not relevant to these Regulations.

State, the gross amount of any such premium in respect of which relief would be given if that legislation made provision equivalent to the Income Tax Acts;

(b) in any case where income is computed for the purposes of the Income Tax Acts by virtue of sub-paragraph (7) any sums equivalent to the deduction mentioned in sub-paragraph (a) of this sub-paragraph, provided that any sums so deducted do not exceed the deductions which would be made if the whole of A's income were in fact income for the purposes of the Income Tax Acts;

(c) where A is a parent student or A holds a statutory award, £1,130.

(3) Subject to sub-paragraph (4) where the Welsh Ministers are satisfied that the residual income of A in the financial year beginning immediately before the relevant year ("the current financial year" in this paragraph) is likely to be not more than 85 per cent of the sterling value of A's residual income in the prior financial year they must, for the purpose of enabling the eligible student to attend the course without hardship, ascertain A's residual income for the current financial year.

(4) In the event that sub-paragraph (3) or this sub-paragraph is applied in respect of the previous academic year of the present course and the Welsh Ministers are satisfied that the residual income of A in the current financial year is likely to be not more than 85 per cent of the sterling value of A's residual income in the preceding financial year the Welsh Ministers must, for the purpose of enabling the eligible student to attend the course without hardship, assess A's residual income for the current financial year.

(5) In an academic year immediately following one in which the Welsh Ministers have ascertained the residual income of A under sub-paragraph (3) or where applicable under sub-paragraph (4) and the Welsh Ministers are satisfied that the residual income of A in the current financial year is likely to be more than 85 per cent of the sterling value of A's residual income in the preceding financial year, the Welsh Ministers must ascertain A's residual income for the preceding financial year.

(6) Where A satisfies the Welsh Ministers that A's income is wholly or mainly derived from the profits of a business or profession carried on by A, then any reference in this Schedule to a prior financial year means the earliest period of twelve months which ends after the start of the prior financial year and in respect of which accounts are kept relating to that business or profession.

(7) Where A is in receipt of any income which does not form part of A's income for the purposes of the

Income Tax Acts or the income tax legislation of another Member State by reason only that—

- (a) A is not resident, ordinarily resident or domiciled in the United Kingdom, or where A's income is computed as for the purposes of the income tax legislation of another Member State, not so resident, ordinarily resident or domiciled in that Member State;
- (b) the income does not arise in the United Kingdom, or where A's income is computed as for the purposes of the income tax legislation of another Member State, does not arise in that Member State; or
- (c) the income arises from an office, service or employment, income from which is exempt from tax in pursuance of any legislation,

A's taxable income for the purposes of this Schedule is computed as though the income under this subparagraph were part of A's income for the purposes of the Income Tax Acts or the income tax legislation of another Member State, as the case may be.

(8) Where A's income is computed as for the purposes of the income tax legislation of another Member State, it is computed under the provisions of this Schedule in the currency of that Member State and A's income for the purposes of this Schedule is the sterling value of that income determined in accordance with the rate for the month in which the last day of the financial year in question falls, as published by the Office for National Statistics.

(9) Where one of the eligible student's parents dies either before or during the relevant year and that parent's income has been or would be taken into account for the purpose of determining the household income, the household income is—

- (a) where the parent dies before the relevant year, determined by reference to the income of the surviving parent; or
- (b) where the parent dies during the relevant year, the aggregate of—
 - (i) the appropriate proportion of the household income determined by reference to the income of both parents, being the proportion in respect of that part of the relevant year during which both parents were alive; and
 - (ii) the appropriate proportion of the household income determined by reference to the income of the surviving parent, being the proportion in respect of that part of the relevant year remaining after the death of the other parent.

(10) Where the Welsh Ministers determine that the parents are separated for the duration of the relevant year, the household income is determined by reference to the income of whichever parent the Welsh Ministers consider the more appropriate under the circumstances.

(11) Where the Welsh Ministers determine that the parents have separated in the course of the relevant year, the household income is determined by reference to the aggregate of—

- (a) the appropriate proportion of the household income determined in accordance with sub-paragraph (10), being the proportion in respect of that part of the relevant year during which the parents are separated; and
- (b) the appropriate proportion of the household income determined otherwise in respect of the remainder of the relevant year.

Calculation of eligible student's partner's residual income

6.—(1) Subject to sub-paragraphs (2), (3) and (4) of this paragraph, an eligible student's partner's income is determined in accordance with paragraph 5 (other than sub-paragraphs (9), (10) and (11) of paragraph 5), references to the parent being construed as references to the eligible student's partner.

(2) Where the Welsh Ministers determine that the eligible student and the eligible student's partner are separated for the duration of the relevant year, the partner's income is not taken into account in determining the household income.

(3) Where the Welsh Ministers determine that the eligible student and the eligible student's partner have separated in the course of the relevant year, the partner's income is determined by reference to the partner's income under sub-paragraph (1) divided by fifty-two and multiplied by the number of complete weeks in the relevant year for which the Welsh Ministers determine that the eligible student and the eligible student's partner are not separated.

(4) Where an eligible student has more than one partner in any one academic year, the provisions of this paragraph apply in relation to each.

Calculation of parent's partner's residual income

7. The income of a new eligible student's parent's partner whose income is part of the household income by virtue of paragraph 3(2)(a) is determined in accordance with paragraph 6, references to the eligible student's partner being construed as references to the new eligible student's parent's partner, and references to the eligible student being construed as references to the new eligible student's parent.

Calculation of contribution – old system eligible students

8.—(1) The contribution payable in relation to an old system eligible student who is not an independent eligible student or an old system eligible student who is an independent eligible student with a partner is—

- (a) in any case where the household income is £23,680 or more, £45 with the addition of £1 for every £8.78 by which the household income exceeds £23,680; and
- (b) in any case where the household income is less than £23,680, nil.

(2) The contribution payable in relation to an old system eligible student who is an independent eligible student without a partner is—

- (a) in any case where the household income is £11,025 or more, £45 with the addition of £1 for every £8.61 by which the household income exceeds £11,025; and
- (b) in any case where the household income is less than £11,025, nil.

(3) The amount of the contribution payable under sub-paragraph (1) or (2) must in no case exceed £7,992.

(4) The contribution may be adjusted in accordance with paragraph 10.

(5) Where sub-paragraph (6) applies, the aggregate contributions must not exceed £7,992.

(6) This sub-paragraph applies where—

- (a) a contribution is payable in relation to two or more eligible students (other than new system eligible students) in respect of the same income under paragraph 5 or, where the relevant parent's partner's residual income is taken into account, under paragraphs 5 and 7; or
- (b) the household income consists of the residual income of an independent eligible student and the independent eligible student's partner where both hold a statutory award.

Calculation of contribution – new system eligible students

9.—(1) Where the eligible student is a new system eligible student who is not a new cohort student, the contribution payable is—

- (a) in any case where the household income exceeds £39,793, £1 for every £9.27 by which the household income exceeds £39,793; and
- (b) in any case where the household income is £39,793 or less, nil.

(2) Where the eligible student is a new system eligible student who is a 2010 cohort student or a 2012 cohort student, the contribution payable is—

- (a) in any case where the household income exceeds £50,778, £1 for every £5 by which the household income exceeds £50,778; and
- (b) in any case where the household income is £50,778 or less, nil.

(3) Where the eligible student is a new system eligible student who is a 2011 cohort student, the contribution payable is—

- (a) in any case where the household income exceeds £50,503, £1 for every £5 by which the household income exceeds £50,503; and
- (b) in any case where the household income is £50,503 or less, nil.

(4) The contribution must not in any case exceed £6,208.

(5) The contribution may be adjusted in accordance with paragraph 10.

(6) Where sub-paragraph (7) applies, the aggregate contributions must not exceed £6,208.

(7) This sub-paragraph applies where—

- (a) a contribution is payable in relation to two or more eligible students (other than old system eligible students) in respect of the same income under paragraph 5 or, where the relevant parent's partner's residual income is taken into account, under paragraphs 5 and 7; or
- (b) the household income consists of the residual income of an independent eligible student and the independent eligible student's partner where both hold a statutory award.

Split contributions

10. Where the same household income is used to assess the amount of a statutory award for which two or more persons qualify, the contribution payable in respect of the eligible student is divided by the number of such persons.

SCHEDULE 6

Regulation 106

FINANCIAL ASSESSMENT – PART-TIME GRANTS FOR DEPENDANTS

Definitions

1.—(1) In this Schedule—

- (a) “financial year” (“*blwyddyn ariannol*”) means the period of twelve months in respect of which the income of a person, whose residual income is calculated under the provisions of this Schedule, is computed for the purposes of the income tax legislation which applies to it;
- (b) “household income” (“*incwm aelwyd, incwm yr aelwyd, incwm sydd gan yr aelwyd*”) has the meaning given in paragraph 2;
- (c) “Member State” (“*Aelod-wladwriaeth*”) means a Member State of the European Union;
- (d) “parent” (“*rhiant*”) means a natural or adoptive parent and “child” (“*plentyn*”) is construed accordingly;
- (e) “parent student” (“*myfyriwr sy’n rhiant*”) means an eligible part-time student who is the parent of an eligible student;
- (f) “partner” (“*partner*”) in relation to an eligible part-time student means any of the following—
 - (i) the spouse of an eligible part-time student;
 - (ii) the civil partner of an eligible part-time student;
 - (iii) a person ordinarily living with an eligible part-time student as if the person were the eligible part-time student’s spouse where an eligible part-time student is aged 25 or over on the first day of the relevant year and the eligible part-time student begins the designated part-time course on or after 1 September 2000;
 - (iv) a person ordinarily living with an eligible part-time student as if the person were the eligible part-time student’s civil partner where an eligible part-time student is aged 25 or over on the first day of the relevant year and the eligible part-time student begins the designated part-time course on or after 1 September 2005;

- (g) “preceding financial year” (“*blwyddyn ariannol flaenorol*”) means the financial year immediately preceding the relevant year;
- (h) “relevant year” (“*blwyddyn berthnasol*”) means the academic year in respect of which the household income falls to be assessed;
- (i) “residual income” (“*incwm gweddilliol*”) means taxable income after the application of paragraph 3 (in the case of an eligible part-time student) or paragraph 4 (in the case of an eligible part-time student’s partner) and income referred to in sub-paragraph (2) received net of income tax; and
- (j) “taxable income” (“*incwm trethadwy*”) means, in relation to paragraph 3, in respect of the academic year for which an application has been made under regulation 109 and, in relation to paragraph 4, in respect (subject to sub-paragraphs (3), (4) and (5) of paragraph 4) of the preceding financial year, a person’s taxable income from all sources computed as for the purposes of—
 - (i) the Income Tax Acts;
 - (ii) the income tax legislation of another Member State which applies to the person’s income; or
 - (iii) where the legislation of more than one Member State applies to the period, the legislation under which the Welsh Ministers consider the person will pay the largest amount of tax in that period (except as otherwise provided in paragraph 4),
 except that no account is taken of income referred to in sub-paragraph (2) paid to another party.

(2) The income referred to in this sub-paragraph is any benefits under a pension arrangement pursuant to an order made under section 23 of the Matrimonial Causes Act 1973 which includes provision made by virtue of sections 25B(4) and 25E(3) of that Act or pension benefits under Part 1 of Schedule 5 to the Civil Partnership Act 2004 which includes provision made by virtue of Parts 6 and 7 of that Schedule.

Household income

2.—(1) The amount of an eligible part-time student’s contribution depends on the household income.

(2) The household income is—

- (a) in the case of an eligible part-time student who has a partner, the residual income of the eligible part-time student aggregated with the residual income of the eligible part-time

student's partner (subject to sub-paragraph (4)); or

(b) in the case of an eligible part-time student who does not have a partner, the residual income of the eligible part-time student.

(3) In determining the household income under sub-paragraph (2), the sum of £1,130 is deducted for each child wholly or mainly financially dependent on the eligible part-time student or that student's partner.

(4) For the purpose of calculating the contribution payable in respect of a parent student, the residual income of the parent student's partner must not be aggregated under paragraph (a) of sub-paragraph (2) in the case of a parent student whose child or whose partner's child who is an eligible student holds an award in respect of which the household income is calculated with reference to the residual income of the parent student or of the parent student's partner or of both.

Calculation of eligible part-time student's residual income

3.—(1) For the purpose of determining the residual income of an eligible part-time student, there is deducted from the eligible part-time student's taxable income (unless already deducted in determining taxable income) the gross amount of any premium or other sum paid by the eligible part-time student in relation to a pension (not being a pension payable under a policy of life insurance) in respect of which relief is given under section 188 of the Finance Act 2004⁽¹⁾, or where the eligible part-time student's income is computed for the purposes of the income tax legislation of another Member State, the gross amount of any such premium or sum in respect of which relief would be given if that legislation made provision equivalent to the Income Tax Acts.

(2) Where the only paragraph in Part 2 of Schedule 1 into which an eligible part-time student falls is paragraph 9 and the eligible part-time student's income arises from sources or under legislation different from sources or legislation normally relevant to a person referred to in paragraph 9 of Part 2 of Schedule 1, the eligible part-time student's income is not disregarded in accordance with sub-paragraph (1) but is instead disregarded to the extent necessary to ensure that the eligible part-time student is treated no less favourably than a person who is referred to in any paragraph of Part 2 of Schedule 1 would be treated if in similar circumstances and in receipt of similar income.

(1) 2004 c.12; section 188 was amended by the Finance Act 2007 (c.11), sections 68, 69 and 114 and Schedules 18, 19 and 27.

(3) Where the eligible part-time student receives income in a currency other than sterling, the value of that income for the purpose of this paragraph is—

- (a) if the eligible part-time student purchases sterling with the income, the amount of sterling the eligible part-time student so receives;
- (b) otherwise, the value of the sterling which the income would purchase using the rate for the month in which it is received published by the Office for National Statistics⁽¹⁾.

Calculation of eligible part-time student’s partner’s residual income

4.—(1) For the purposes of determining the taxable income of an eligible part-time student’s partner (“A” in this paragraph), any deductions which fall to be made or exemptions which are permitted—

- (a) by way of personal reliefs provided for in Chapter 1 of Part VII of the Income and Corporation Taxes Act 1988 or, where the income is computed for the purposes of the income tax legislation of another Member State, any comparable personal reliefs;
- (b) pursuant to any enactment or rule of law under which payments which would otherwise under United Kingdom law form part of a person’s income are not treated as such; or
- (c) under sub-paragraph (2),

must not be made or permitted.

(2) For the purposes of determining the residual income of A, there is deducted from the taxable income determined under sub-paragraph (1) the aggregate of any amounts falling within any of the following sub-paragraphs—

- (a) the gross amount of any premium or sum relating to a pension (not being a premium payable under a policy of life assurance) in respect of which relief is given under section 188 of the Finance Act 2004, or where the income is computed for the purposes of the income tax legislation of another Member State, the gross amount of any such premium in respect of which relief would be given if that legislation made provision equivalent to the Income Tax Acts;
- (b) in any case where income is computed for the purposes of the Income Tax Acts by virtue of sub-paragraph (6) any sums equivalent to the

(1) “Financial Statistics” (ISSN 0015-203X).

deduction mentioned in sub-paragraph (a) of this sub-paragraph, provided that any sums so deducted do not exceed the deductions which would be made if the whole of A's income were in fact income for the purposes of the Income Tax Acts.

(3) Where the Welsh Ministers are satisfied that the residual income of A in the financial year beginning immediately before the relevant year ("the current financial year") is likely to be not more than 85 per cent of the sterling value of A's residual income in the preceding financial year they must, for the purpose of enabling the eligible part-time student to attend the course without hardship, ascertain A's residual income for the current financial year.

(4) Where the Welsh Ministers are satisfied that the residual income of A in any financial year is, as a result of any event, likely to be and to continue after that year to be not more than 85 per cent of the sterling value of A's residual income in the previous financial year they must, for the purpose of enabling the eligible part-time student to attend the course without hardship, ascertain the household income for the academic year of the eligible part-time student's course in which that event occurred by taking as the residual income of A the average of A's residual income for each of the financial years in which that academic year falls.

(5) Where A satisfies the Welsh Ministers that A's income is wholly or mainly derived from the profits of a business or profession carried on by A, then any reference in this Schedule to a preceding financial year means the earliest period of twelve months which ends after the start of the preceding financial year and in respect of which accounts are kept relating to that business or profession.

(6) Where A is in receipt of any income which does not form part of A's income for the purposes of the Income Tax Acts or the income tax legislation of another Member State by reason only that—

- (a) A is not resident, ordinarily resident or domiciled in the United Kingdom, or where A's income is computed as for the purposes of the income tax legislation of another Member State, not so resident, ordinarily resident or domiciled in that Member State;
- (b) the income does not arise in the United Kingdom, or where A's income is computed as for the purposes of the income tax legislation of another Member State, does not arise in that Member State; or
- (c) the income arises from an office, service or employment, income from which is exempt from tax in pursuance of any legislation,

A's taxable income for the purposes of this Schedule is computed as though the income under this sub-paragraph were part of A's income for the purposes of the Income Tax Acts or the income tax legislation of another Member State, as the case may be.

(7) Where A's income is computed as for the purposes of the income tax legislation of another Member State, it is computed under the provisions of this Schedule in the currency of that Member State and A's income for the purposes of this Schedule is the sterling value of that income determined in accordance with the rate for the month in which the last day of the financial year in question falls, as published by the Office for National Statistics.

(8) Where the Welsh Ministers determine that the eligible part-time student and the eligible part-time student's partner are separated for the duration of the relevant year, the partner's income is not taken into account in determining the household income.

(9) Where the Welsh Ministers determine that the eligible part-time student and the eligible part-time student's partner have separated in the course of the relevant year, the partner's income is determined by reference to the partner's income under sub-paragraph (1) divided by fifty-two and multiplied by the number of complete weeks in the relevant year for which the Welsh Ministers determine that the eligible part-time student and the eligible part-time student's partner are not separated.

(10) Where an eligible part-time student has more than one partner in any one academic year, the provisions of this paragraph apply in relation to each.

Calculation of contribution

5.—(1) The contribution payable in relation to an eligible part-time student is—

- (a) in any case where the household income exceeds £39,793, £1 for every £9.27 by which the household income exceeds £39,793; and
- (b) in any case where the household income is £39,793 or less, nil.

(2) The contribution must not in any case exceed £6,208.

(3) The contribution may be adjusted in accordance with paragraph 6.

(4) Where sub-paragraph (5) applies, the aggregate contributions must not exceed £6,208.

(5) This sub-paragraph applies where the household income consists of the residual income of an eligible part-time student and the eligible part-time student's partner where both hold a statutory award.

Split contributions

6. Where the same household income is used to assess the amount of a statutory award for which two or more persons qualify the contribution payable in respect of the eligible part-time student is divided by the number of such persons.

EXPLANATORY MEMORANDUM TO THE EDUCATION (STUDENT SUPPORT) (WALES) REGULATIONS 2012

The Explanatory Memorandum has been prepared by the Higher Education Division of the Department for Education and Skills and is laid before the National Assembly for Wales under Standing Order 27.1.

Minister's Declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Student Support) (Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

Leighton Andrews
Minister for Education and Skills

12 December 2012

Description

1. These Regulations are required in order to underpin the higher education student support system for students who are ordinarily resident in Wales (fee grants, fee loans, maintenance grants and maintenance loans) and are taking designated higher education courses in respect of academic years beginning on or after 1 September 2013. These regulations consolidate (with some changes) and replace the existing *Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 No.886 (W.130)* as amended. The main student support regulations are made on an annual basis.

Matters of special interest to the Constitutional and Legislative Affairs Committee

2. These Regulations were previously known as *Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations*. The name has been changed to reflect the fact that the awards of student support are made by the Welsh Government, and not by the National Assembly for Wales.

Legislative Background

3. Section 22 of the Teaching and Higher Education Act 1998 (“the 1998 Act”) provides the Welsh Ministers with the power to make regulations on the payment of financial support to students studying courses of higher or further education designated by the Welsh Ministers. In particular, this power enables the Welsh Ministers to prescribe different categories of student, financial support (grant or loan) and categories of attendance on higher education courses. This provision, together with section 42(6) of the 1998 Act provide the Welsh Ministers with the power to make the Education (Student Support) (Wales) Regulations 2012. Each year, a number of functions of the Welsh Ministers in regulations made under section 22 of the 1998 Act are transferred and delegated to Welsh local authorities and the Student Loans Company under section 23 of the 1998 Act.
4. This instrument follows the Negative Resolution procedure.

Purpose and intended effect of the legislation

5. The Welsh Ministers make annual regulations governing the higher education student support system. Generally, each set of regulations relates to a particular academic year. These Regulations will consolidate, amend and eventually replace the existing legislation governing academic year (AY) 2012/13 which sets out the student support arrangements for students ordinarily resident in Wales and EU students attending Welsh higher education institutions who are undertaking designated higher education courses. These regulations will govern the 2013/14 academic year and will enable the Welsh Ministers to make awards of grants and loans to eligible students. In amending and replacing the existing

legislation, these Regulations will introduce a number of policy changes together with some technical drafting amendments.

6. The specific policy changes incorporated within the regulations are set out below:

a. Changes in the amounts of tuition fee loans and grants

Students who commenced their studies on or after 1 September 2012 will be entitled to tuition fee support to cover the cost of their course or of up to £9,000 per annum, whichever is smaller. The maximum fee chargeable will be frozen at £9,000. This will consist of an entitlement to a non-means tested tuition fee loan of £3575 and a non-means tested tuition fee grant of £5425. Eligible new system students who are continuing a designated course provided by an institution in Northern Ireland, and who began that course before 1 September 2012, will be able to claim an increased non-means tested tuition fee loan of up to £3575 to reflect the increase in the maximum fees applicable there. For other continuing students the fee support package will remain unchanged.

b. Increases in the amounts of loans and grants for living costs

The grants and loans for living costs will be increased by at least the level of inflation for AY 2013/14. Students who started their studies on or after the 1 September 2012 will be eligible for:

- a maximum means tested maintenance grant of £5,161,
- a maximum maintenance loan of £5,150 (depending on household income) or £7,215 if the student studies in London.

c. Continued entitlement to support for distance learners moving outside Wales during their course

Since academic year 2012/13 full-time distance learner students have been entitled to apply for tuition fee support mirroring that available to other full-time students: that is a tuition fee grant and loan. The regulations have been amended to confirm that if a distance learning student moves outside Wales after the first day of their course, they will continue to be funded by Student Finance Wales. The Secretary of State, through the Department for Business, Innovation and Skills in England has reciprocated, meaning that students ordinarily resident in England who move to Wales during their course will continue to be dealt with by Student Finance England (SFE) for the duration of that course.

d. Change in the title of the NHS bodies at which students can undertake work placements

As a result of the UK Government's reforms to the NHS in England (via the Health and Social Care Act 2012), the NHS Commissioning Board and Clinical Commissioning Groups, the Health and Social Care Information Centre and the National Institute for Health and Care

Excellence have been added to the list of employers/bodies included in the Regulations which take students on for 'unpaid service'. This will enable the students to access support whilst on unpaid service in the new NHS bodies. The Commissioning Boards and CCGs will replace the Strategic Health Authorities and Primary Care Trusts in England, but initially both types of organisations may co-exist.

Implementation

7. This legislation updates the current student support system for academic year 2013/14 and by putting it in place now, it will enable the Welsh Government's delivery partners (the Student Loans Company and Local Authorities in Wales) to implement the system changes in time for the affected students to be paid under the revised system and for the application cycle for academic year 2013/14 to commence early in 2013.

Consultation

8. There is no statutory requirement to consult on these Regulations. However, details of the results of the stakeholder engagement exercise are included in the Regulatory Impact Assessment below.

Regulatory Impact Assessment

9. Options

- **Do nothing** – by not amending the existing Regulations several student groups would be affected.
 - If the fee support were to remain unaltered there would be implications for students attending courses in Northern Ireland where the fees are increasing by £110 per year.
 - In terms of the rises in grants and loans for living costs – if these changes were not made then students would be worse off in real terms as inflation would erode their ability to meet their expenses.
 - If the changes to the administrative provisions surrounding distance learning students were not made then potentially students who moved during their course would not have access to student support.
 - If the changes to the names of bodies within the NHS were not made then Welsh students studying on courses within England undertaking placements within these organisations would not be able to access support, meaning that they may not be able to pursue their course.
- **Make the Legislation** – implementing these Regulations will ensure that the legislative framework is in place for academic year 2013/14.

They will also bring benefits to the categories of students outlined above.

Benefits

11. By making the Regulations the Welsh Ministers are ensuring that the Welsh student support system has a proper underpinning legal framework. The delivery partners will also benefit from the knowledge that they are acting within the requirements of the Welsh legislation. The groups of students directly affected by this amendment will benefit as explained above.

Costs

12. The costs to the Welsh Government will be met from existing budgets.

Competition Assessment

14. The making of these Regulations has no impact on business, charities or the voluntary sector.

Consultation

15. There is no statutory requirement to consult on these Regulations. However, a Student Finance Wales Information Notice relating to the changes outlined above, was issued to all stakeholders and interested parties on 29 September and was open for four weeks. Key stakeholders consulted include:

- HEIs in Wales
- Higher Education Wales
- Further education colleges in Wales
- NUS Wales
- Student unions
- Local authorities in Wales
- Student Loans Company
- Higher Education Funding Council for Wales
- UCAS
- Children in Wales
- National Association of Student Money Advisers
- Student Finance Officers in local authorities, HEIs and further education colleges.

16. The consultation period lasted four weeks. 3 written responses were received – a summary of the consultation responses is at **Annex B**.

Post Implementation Review

17. The main regulations governing the student support system are made annually and are continually subject to detailed review, both by policy officials and by the delivery partners in their practical implementation of the Regulations.

Summary

18. The making of these Regulations is necessary to establish the basis for, and update aspects of, the higher education student support system for students ordinarily resident in Wales and EU students studying in Wales for the 2013/14 academic year.

Constitutional and Legislative Affairs Committee Draft Report CLA(4)-03-13 Paper 4

CLA205 – Environmental Permitting (England and Wales) (Amendment) Regulations 2013

These composite Regulations amend the Environmental Permitting (England and Wales) Regulations 2010 in order to transpose Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control). The Directive is a recast, streamlining seven existing Directives into one. As a consequence of transposition, there will be stricter limits for air pollution, although there will be some flexibility to extend deadlines for power plants or to waive the rules for other installations in special cases, subject to certain conditions being met. The Regulations aim to improve health and environmental protection, while making the rules clearer and easier to implement.

Procedure: Affirmative

Technical Scrutiny

Under Standing Order 21.2 the Assembly is invited to pay special attention to the following instrument:-

1. These Regulations have not been made bilingually.

[21.2(ix) – that it is not made or to be made in both English and Welsh].

The Welsh Government state in paragraph 2 of the explanatory memorandum that “this is a composite statutory instrument which applies to Wales and England only and is subject to the affirmative procedure in the National Assembly for Wales and in both Houses of Parliament. As with the 2010 Regulations, it is not considered practicable for this statutory instrument to be made bilingually.”

Merits Scrutiny

Under Standing Order 21.3 the Assembly is invited to pay special attention to the following instrument:-

1. The transposition deadline for implementing Directive 2010/75/EU for Member States is 7th January 2013. These Regulations are not due to go to Plenary until 29th January 2013. By the time these Regulations are debated and possibly approved (these Regulations come into force on the seventh day after the day on which they are made) they would have missed the transposition deadline.

Legal Advisers

Constitutional and Legislative Affairs Committee

January 2012

Government response to follow

Draft Regulations laid before Parliament and the National Assembly for Wales under section 2(8) and (9)(d) of the Pollution Prevention and Control Act 1999 for approval by resolution of each House of Parliament and of the Assembly.

DRAFT STATUTORY INSTRUMENTS

2013 No.

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

**The Environmental Permitting (England and Wales)
(Amendment) Regulations 2013**

Made - - - - *****

Coming into force in accordance with regulation 2(1) to (4)

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These Regulations are made in exercise of the powers conferred by sections 2 and 7(9) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999^(a).

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, have in accordance with section 2(4) of the Pollution Prevention and Control Act 1999 consulted^(b)—

- (a) the Environment Agency;
- (b) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses as they consider appropriate; and
- (c) such other bodies or persons as they consider appropriate.

A draft of this instrument has been approved by a resolution of each House of Parliament and by the National Assembly for Wales pursuant to section 2(8) and (9)(d)(c) of that Act.

The Secretary of State in relation to England, and the Welsh Ministers in relation to Wales, make the following Regulations.

PART 1

General

Citation

1. These Regulations may be cited as the Environmental Permitting (England and Wales) (Amendment) Regulations 2013.

Commencement and application

- 2.—(1) Save as provided in paragraphs (2), (3) and (4), these Regulations come into force on the day after the day on which they are made.
 - (2) Regulation 58(2) comes into force on 7th January 2014.
 - (3) Regulation 58(3) comes into force on 1st January 2016.
 - (4) Regulation 4(6), (8), (12) and (15) and regulation 5 come into force in relation to existing installations on 7th January 2014.
 - (5) In these Regulations—
 - (a) “existing installation” means an installation where a Part A activity is carried on—
 - (i) which is in operation on or before 7th January 2013, or
 - (ii) in respect of which a duly made application for an environmental permit is submitted before 7th January 2013 and which commences operation on or before 7th January 2014,
- provided that an environmental permit has been granted in respect of such operation;

(a) 1999 c. 24. Paragraph 25 of Schedule 1 was amended by section 105(1)(a) and (b) of the Clean Neighbourhoods and Environment Act 2005 (c. 16). There are other amendments to Schedule 1, none of which is relevant to these Regulations. Functions of the Secretary of State under section 2 (except in relation to offshore oil and gas exploration and exploitation), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 3 of S.I. 2005/1958. Those functions were then transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(b) The requirement in that section to consult the bodies and persons mentioned was transferred from the National Assembly for Wales to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

(c) The reference in section 2(8) to each House of Parliament has effect in relation to the exercise of functions by the Welsh Ministers as if it included a reference to the National Assembly for Wales, by virtue of section 162 of, and paragraph 33 of Schedule 11 to, the Government of Wales Act 2006.

- (b) “environmental permit” and “installation” have the same definition as in the principal Regulations;
- (c) “Part A activity” has the same definition as in the principal Regulations and does not include small waste incineration plants.

Interpretation

3. In these Regulations, “the principal Regulations” means the Environmental Permitting (England and Wales) Regulations 2010(a).

PART 2

Amendments of the principal Regulations

Regulation 2 (interpretation: general)

4.—(1) Regulation 2(1) of the principal Regulations is amended in accordance with paragraphs (2) to (14).

- (2) Omit the definition of “directly associated activity”.
- (3) In the definition of “emission”—
 - (a) for paragraph (c) substitute—
 - “(c) in relation to a solvent emission activity, the direct or indirect release of substances from individual or diffuse sources in the regulated facility into the air;”;
 - (b) omit “and” immediately preceding paragraph (g) and at the end add—
 - “;
 - (h) in relation to a small waste incineration plant, the direct or indirect release of substances from individual or diffuse sources in the regulated facility to air or water;”.
- (4) In the definition of “excluded waste operation”(b) omit “Part A mobile plant or”.
- (5) After the definition of “exemption registration authority”, insert—
 - ““existing installation” means an installation carrying on a Part A activity—
 - (i) which is in operation on or before 7th January 2013, or
 - (ii) in respect of which a duly made application for an environmental permit is submitted before 7th January 2013 and which commences operation on or before 7th January 2014,
 provided that an environmental permit has been granted in respect of such operation;”.
- (6) In the definition of “hazardous waste” for “except in Section 5.1 of Part 2 of Schedule 1” substitute “subject to paragraph (6)”.
- (7) In the definition of “mobile plant” omit paragraph (a).
- (8) In the definition of “non-hazardous waste” for “except in Section 5.1 of Part 2 of Schedule 1” substitute “subject to paragraph (6)”.
- (9) For the definition of “Part A mobile plant”, “Part A(1) mobile plant”, “Part A(2) mobile plant” and “Part B mobile plant” substitute—
 - ““Part B mobile plant” has the meaning given in paragraph 1 of Part 1 of Schedule 1;”.
- (10) Omit the definitions “SED activity” and “SED installation”.

(a) S.I. 2010/675 as amended by S.I. 2010/2933, S.I. 2011/988, 2043 and 881 in England and S.I. 2011/2377 in Wales and S.I. 2012/630.

(b) As amended by S.I. 2011/811.

- (11) After the definition of “sewer” insert—
- ““small waste incineration plant” means a waste incineration plant or waste co-incineration plant with a capacity less than or equal to 10 tonnes per day for hazardous waste or 3 tonnes per hour for non-hazardous waste;
- “solvent emission activity” means an activity to which Chapter V of the Industrial Emissions Directive applies;”.
- (12) For the definition of “waste”(a) substitute—
- ““waste”, subject to paragraph (5) where it applies, and except where otherwise defined—
- (a) in relation to Chapter 5 of Part 2 of Schedule 1, Schedule 13 or 13A, Schedule 14, Schedule 15 or 15A, or Schedule 17 or 17A, means anything that—
- (i) is waste within the meaning of Article 3(1) of the Waste Framework Directive; and
- (ii) is not excluded from the scope of that Directive by Article 2(1)(d) of that Directive;
- (b) in any other case means anything that—
- (i) is waste within the meaning of Article 3(1) of the Waste Framework Directive; and
- (ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;”.
- (13) After the definition of “waste battery or accumulator” insert—
- ““waste co-incineration plant” means a stationary or mobile technical unit whose main purpose is the generation of energy or production of material products and which uses waste as a regular or additional fuel or in which waste is thermally treated for the purpose of disposal through the incineration by oxidation of waste as well as other thermal treatment processes, such as pyrolysis, gasification or plasma process, if the substances resulting from the treatment are subsequently incinerated;
- “waste incineration plant” means a stationary or mobile technical unit and equipment dedicated to the thermal treatment of waste, with or without recovery of the combustion heat generated, through the incineration by oxidation of waste as well as other thermal treatment processes, such as pyrolysis, gasification or plasma process, if the substances resulting from the treatment are subsequently incinerated;”.
- (14) In the definition of “waste mobile plant”, in paragraph (c) omit “, Part A mobile plant”.
- (15) After paragraph (5) insert—
- “(6) In relation to an activity that falls within Chapter 5 of Part 2 of Schedule 1 or Schedule 13 or 13A, hazardous waste means waste which displays any of the characteristics listed in Annex III to the Waste Framework Directive.”.

Regulation 3 (interpretation: Directives)

5. In regulation 3 of the principal Regulations—

- (a) for the definition of “the IPPC Directive” substitute—
- ““the Industrial Emissions Directive” means Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast)(b);”;
- (b) omit the definition of “the Waste Incineration Directive”.

(a) As amended by S.I. 2011/988.

(b) OJ No L 334, 17.12.2010, p 17 as amended by corrigendum OJ L 158, 19.6.2012, p 25.

Regulation 5 (interpretation: exempt facilities)

6. In regulation 5(1) of the principal Regulations, in the definition of “exempt waste operation”, for paragraph (a) substitute—

“(a) that is not carried on at an installation, and”.

Regulation 6 (interpretation: local authority)

7. In regulation 6(2) of the principal Regulations, after “Part B installation” insert “, a small waste incineration plant or a solvent emission activity”.

Regulation 7 (interpretation: operate a regulated facility and operator)

8. In regulation 7 of the principal Regulations, in the definition of “operate a regulated facility”, for “or groundwater activity” substitute “, groundwater activity, small waste incineration plant or solvent emission activity”.

Regulation 8 (interpretation: regulated facility and class of regulated facility)

9.—(1) At the end of regulation 8(1) of the principal Regulations, add—

“;

(h) a small waste incineration plant;

(i) a solvent emission activity”.

(2) At the end of regulation 8(4) of the principal Regulations, add—

“;

(e) small waste incineration plant;

(f) solvent emission activity”.

Regulation 12 (requirement for an environmental permit)

10. In regulation 12 of the principal Regulations, after paragraph (5)(a) insert—

“(6) Paragraph (1)(a) does not apply until 15th July 2015 in relation to the Part A activities to which paragraph (7) applies, provided that—

(a) the installation at which the activity is carried on is in operation before 7th January 2013, and

(b) the activity is not a Part A activity before that date.

(7) The Part A activities to which this paragraph applies are those falling within—

(a) paragraph (d) of Section 1.2 (in relation to the gasification or liquefaction of fuels other than coal);

(b) Chapter 4 (in relation to the biological processing of chemicals);

(c) Section 5.3 (in relation to the recovery of hazardous waste in an installation with a capacity over 10 tonnes per day by biological or physico-chemical treatment, blending, mixing or repackaging, or surface impoundment);

(d) paragraph (a) of Section 5.4 (in relation to the disposal of non-hazardous waste by biological or physico-chemical treatment, pre-treatment for incineration or co-incineration, treatment of slags and ashes or treatment in shredders of metal waste);

(e) paragraph (b) of Section 5.4 (in relation to the recovery or a mix of recovery and disposal of non-hazardous waste by biological treatment, pre-treatment for

(a) Substituted by S.I. 2011/2043.

incineration or co-incineration, treatment of slags and ashes or treatment in shredders of metal waste);

- (f) Section 5.6 (temporary or underground storage of hazardous waste);
- (g) Section 5.7 (independently operated treatment of waste water);
- (h) Section 6.6 (preservation of wood and wood based products with chemicals);
- (i) paragraph (d) of Section 6.8 (treatment and processing of animal and vegetable raw materials for food and feed).”.

Regulation 17 (single site permits)

11. In regulation 17(2)(b) of the principal Regulations, omit “(other than a standard facility to which the IPPC Directive applies)”.

Regulation 18 (consolidation of an environmental permit)

12. In regulation 18(1)(b) of the principal Regulations, omit “, not being a standard facility to which the IPPC Directive applies”.

Regulation 32 (discharge of functions)

- 13.**—(1) In regulation 32(2) of the principal Regulations—
- (a) in sub-paragraph (a) omit “or Part A(2) mobile plant”;
 - (b) at the end add—
“;
 - (c) a small waste incineration plant;
 - (d) a solvent emission activity”.
- (2) In regulation 32(3) and (4) omit “Part A(2) mobile plant or”.

Regulation 35 (specific provisions applying to environmental permits)

- 14.**—(1) In regulation 35(2) of the principal Regulations—
- (a) in sub-paragraph (a) omit “and Part A mobile plant” and after “installations)” insert “and Schedule 7A (Part A installations: industrial emissions directive)”;
 - (b) in sub-paragraph (b) after “mobile plant” insert “etc.”;
 - (c) in sub-paragraph (g) after “(waste incineration)” insert “and Schedule 13A (waste incineration: industrial emissions directive)”;
 - (d) in sub-paragraph (h) for “SED installations” substitute “solvent emission activities”;
 - (e) in sub-paragraph (i), after “(large combustion plants)” insert “and Schedule 15A (large combustion plants: industrial emissions directive)”;
 - (f) in sub-paragraph (k), after “(titanium dioxide)” insert “and Schedule 17A (titanium dioxide: industrial emissions directive)”.

Regulation 36 (enforcement notices)

- 15.** In regulation 36 of the principal Regulations—
- (a) in paragraph (1) omit “(an enforcement notice)”;
 - (b) in paragraph (2) for “An enforcement notice” substitute “The notice”;
 - (c) in paragraph (3) for “an enforcement” substitute “the”;
 - (d) for paragraph (4) substitute—

“(4) In the case of a regulated facility to which Schedule 7A, 13A or 14 applies, if the regulator considers that an incident or accident significantly affecting the environment has occurred as the result of the operation of that regulated facility, the regulator may serve a notice on the operator of that facility.

(5) A notice served under paragraph (4) must—

(a) specify the measures necessary to limit the environmental consequences of the incident or accident, and

(b) specify the measures necessary to prevent further incidents or accidents.

(6) The regulator may withdraw the notice at any time by further notice served on the operator.”.

Regulation 40 (defences)

16. In regulation 40 of the principal Regulations, after paragraph (3) insert—

“(4) Subject to paragraph (5), it is a defence for a person charged with an offence under regulation 38(1) in relation to an activity listed in regulation 12(7), to prove that a duly-made application for a permit was submitted to the regulator by—

(a) 30th September 2014 where the activity is listed in sub-paragraph (a), (b) or (e) of regulation 12(7);

(b) 31st December 2014 where the activity is listed in sub-paragraph (c),(d) or (h) of regulation 12(7);

(c) 31st March 2015 where the activity is listed in sub-paragraph (f), (g) or (i) of regulation 12(7).

(5) Where a permit has been refused, paragraph (4) does not apply—

(a) if the applicant appeals against the refusal, after the date the appeal is determined or withdrawn, or

(b) if the applicant does not appeal, after the day after the last day on which an appeal could have been brought under these Regulations.”.

Regulation 58 (Environment Agency: notices in relation to emissions to water)

17. In regulation 58(1) of the principal Regulations, omit “and Part A mobile plant”.

Regulation 63 (directions to the Agency: installations outside the United Kingdom)

18.—(1) In regulation 63(1) of the principal Regulations for “Article 18(1) of the IPPC Directive” substitute “Article 26(1) of the Industrial Emissions Directive”.

(2) In regulation 63(2) of the principal Regulations, for “Article 18(2) of the IPPC Directive” substitute “Article 26(2) of the Industrial Emissions Directive”.

Part 1 of Schedule 1 (activities, installations and mobile plant—interpretation and application: general)

19.—(1) Part 1 of Schedule 1 to the principal Regulations is amended as follows.

(2) In paragraph 1 (interpretation)—

(a) in the definition of “directly associated activity”, omit “, in relation to an activity other than a SED activity,”;

(b) in the definition of “installation”, omit “(except where used in the definition of “excluded plant” in Section 5.1 of Part 2 of this Schedule)”;

(c) for the definition of “Part A(1) installation” substitute—

“Part A(1) installation means an installation where a Part A(1) activity is carried on either alone or in combination with any or all of the following—

- (a) an A(2) activity;
- (b) a Part B activity;
- (c) a small waste incineration plant;
- (d) a solvent emission activity;”;
- (d) for the definition of “Part A(2) installation” substitute—
 - “Part A(2) installation” means an installation where a Part A(2) activity is carried on either alone or in combination with any or all of the following—
 - (a) a Part B activity;
 - (b) a small waste incineration plant;
 - (c) a solvent emission activity;”;
- (e) omit the definitions of “Part A mobile plant”, “Part A(1) mobile plant” and “Part A(2) mobile plant”;
- (f) in the definition of “Part B installation”, after “is carried on” insert—
 - “either alone or in combination with either or both of the following—
 - (a) a small waste incineration plant;
 - (b) a solvent emission activity;”;
- (g) in the definition of “Part B mobile plant” omit “, not being Part A mobile plant.”.
- (3) In paragraph 2(2) and (3) (activities falling within more than one Part description) omit “(other than a description in Section 7)”.
- (4) In paragraph 3 (application of activities falling within Sections 1.1 to 6.9 of Part 2)—
 - (a) in the heading and first line of the paragraph, omit “Sections 1.1 to 6.9 of”;
 - (b) for sub-paragraph (c) substitute—
 - “(c) carried on at an installation other than a waste incineration plant or a waste co-incineration plant or by means of Part B mobile plant, solely used for research, development and testing of new products or processes;”;
 - (c) omit “or” immediately preceding sub-paragraph (f) and at the end add—
 - “; or
 - (g) carried on at a waste incineration plant or a waste co-incineration plant in an experimental plant used for research, development and testing in order to improve the incineration process and which treats less than 50 tonnes of waste per year”.
- (5) For paragraph 4 substitute—

“Application of thresholds in Part 2

4. For the purposes of assessing whether an activity is above any of the thresholds given in Part 2 of this Schedule, where several activities falling under the same description of activity containing a threshold are operated in the same installation, the capacities of those activities must be added together.”.

- (6) In paragraph 6 (application of Part B activities: releases into the air) omit sub-paragraph (2)(a).

Part 2 of Schedule 1 (activities)

20. Part 2 of Schedule 1 to the principal Regulations is amended in accordance with regulations 21 to 45.

Combustion activities

- 21.** In Section 1.1 (combustion activities)—

- (a) in Part A(1) omit paragraph (b);
- (b) in *interpretation and application of Part A(1)*, omit paragraph 5;
- (c) in paragraph (a) of Part B, omit “(other than a fuel mentioned in Part A(1)(b))”.

Gasification, liquefaction and refining activities

- 22.**—(1) In Section 1.2 (gasification, liquefaction and refining activities), in Part A(1)—
- (a) omit paragraph (b);
 - (b) for paragraph (d) substitute—
 - “(d) Gasification or liquefaction of coal or other fuels in installations with a total rated thermal input of 20 megawatts or more”;
 - (c) omit paragraphs (e) and (f);
 - (d) in paragraph (h), omit sub-paragraphs (iii) to (v);
 - (e) omit paragraph (i);
 - (f) omit paragraph (k);
 - (g) in *interpretation and application*—
 - (i) in paragraph 1(b), after “incineration” insert “in a waste incineration plant or waste co-incineration plant”;
 - (ii) in paragraph 1(d) for “none of which is waste; or” substitute “whether or not containing or comprising waste.”;
 - (iii) omit paragraph 1(e)(a).
- (2) In Section 1.2, in Part B—
- (a) in paragraph (d), after “any 12 month period is” insert “or is likely to be”;
 - (b) in paragraph (f), for “is likely to be” substitute “is intended to be”;
 - (c) in *interpretation of Part B*—
 - (i) in the definition of “existing service station” for “31st December 2009” substitute “1st January 2010”;
 - (ii) in the definition of “new service station”, after “1st January 2012” insert “but does not include an existing service station”.

Non-ferrous metals

- 23.** In Section 2.2 (non-ferrous metals)—
- (a) in *interpretation and application*, in paragraph 2 for “Part A(1)(c) to (h) substitute “Part A(1) (a), (b) and (f).”;
 - (b) in Part A(1)—
 - (i) in paragraph (b), for “(such as refining or foundry casting)” substitute “and the operation of non-ferrous metal foundries”;
 - (ii) omit paragraphs (c) to (e);
 - (iii) omit paragraphs (g) to (i);
 - (c) omit the paragraph headed *Interpretation of Part A(1)*;
 - (d) in Part A(2), in paragraph (a), for “(such as refining or foundry casting)” substitute “and operating of non-ferrous metal foundries”.

(a) Substituted by S.I. 2012/630.

Production of cement and lime

24. In Section 3.1 (production of cement and lime)—

- (a) in Part A(1)—
 - (i) in paragraph (a) for “or producing and grinding cement clinker” substitute “in rotary kilns with a production capacity exceeding 500 tonnes per day or in other kilns with a production capacity exceeding 50 tonnes per day”;
 - (ii) for paragraph (b) substitute—

“(b) Producing lime or magnesium oxide in kilns with a production capacity of more than 50 tonnes per day.”.
- (b) in Part A(2)—
 - (i) for paragraph (a) substitute—

“(a) Grinding cement clinker”;
 - (ii) omit paragraph (b);
- (c) in Part B, for paragraph (d) substitute—

“(d) Producing lime or magnesium oxide where the activity does not involve the heating of more than 50 tonnes per day of calcium carbonate or calcium magnesium carbonate or both in aggregate.”

Activities involving asbestos

25. In Section 3.2 (activities involving asbestos), in Part A(1), omit paragraph (c).

Manufacturing glass and glass fibre

26. In Section 3.3 (manufacturing glass and glass fibre), in Part A(1)—

- (a) in paragraph (a), after “glass fibre” add “with a melting capacity exceeding 20 tonnes per day”;
- (b) omit paragraph (b).

Production of other mineral fibres

27. In Section 3.4 (production of other mineral fibres), in Part A(1)—

- (a) for paragraph (a) substitute—

“(a) Melting mineral substances including the production of mineral fibres in plants with a melting capacity exceeding 20 tonnes per day.”;
- (b) omit paragraph (b).

The chemical industry

28. In Chapter 4 (the chemical industry), in paragraph 1 (interpretation of Chapter 4), for “producing in a chemical plant by chemical processing for commercial purposes substances or groups of substances” substitute “producing on an industrial scale by chemical or biological processing of substances or groups of substances”.

Organic chemicals

29. In Section 4.1 (organic chemicals)—

- (a) in Part A(1) omit paragraphs (b) to (g);
- (b) for paragraph (b) of Part B, substitute—

“(b) The flame bonding or cutting with heated wires of polyurethane foams or polyurethane elastomers.”.

Inorganic chemicals

30. In Section 4.2 (inorganic chemicals), in Part A(1) omit paragraphs (c), (g), (i) and (j).

Chemical fertiliser production

31. In Section 4.3 (chemical fertiliser production), in Part A(1) omit paragraph (b).

Plant health products and biocides

32. In Section 4.4 (plant health products and biocides), in Part A(1) omit paragraph (b).

Pharmaceutical production

33. In Section 4.5 (pharmaceutical production), in Part A(1)—

- (a) in paragraph (a), omit “using a chemical or biological process”;
- (b) omit paragraph (b).

Manufacturing activities involving carbon disulphide or ammonia

34. In Section 4.7 (manufacturing activities involving carbon disulphide or ammonia), in Part A(1) omit paragraph (a).

Incineration and co-incineration of waste

35. In Section 5.1 (incineration and co-incineration of waste)—

- (a) omit the paragraph headed “Interpretation of Section 5.1”;
- (b) for Part A(1) substitute—

“Part A(1)

- (a) The incineration of hazardous waste in a waste incineration plant or waste co-incineration plant with a capacity exceeding 10 tonnes per day.
- (b) The incineration of non-hazardous waste in a waste incineration plant or waste co-incineration plant with a capacity exceeding 3 tonnes per hour.
- (c) The incineration, other than incidentally in the course of burning landfill gas or solid or liquid waste, of any gaseous compound containing halogens.”;
- (c) omit Part A(2);
- (d) in Part B, for paragraph (a) substitute—
 - “(a) The incineration in a small waste incineration plant with an aggregate capacity of 50 kilogrammes or more per hour of the following waste—
 - (i) vegetable waste from agriculture and forestry;
 - (ii) vegetable waste from the food processing industry, if the heat generated is recovered;
 - (iii) fibrous vegetable waste from virgin pulp production and from production of paper from pulp, if it is co-incinerated at the place of production and the heat generated is recovered;
 - (iv) cork waste;
 - (v) wood waste with the exception of wood waste which may contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coatings;
 - (vi) animal carcasses.”.

New section 5.3 (disposal or recovery of hazardous waste)

36. For Section 5.3 (disposal of waste other than by incineration or landfill), substitute—

“SECTION 5.3

Disposal or recovery of hazardous waste

Part A(1)

- (a) Disposal or recovery of hazardous waste with a capacity exceeding 10 tonnes per day involving one or more of the following activities—
 - (i) biological treatment;
 - (ii) physico-chemical treatment;
 - (iii) blending or mixing prior to submission to any of the other activities listed in this Section or in Section 5.1;
 - (iv) repackaging prior to submission to any of the other activities listed in this Section or in Section 5.1;
 - (v) solvent reclamation or regeneration;
 - (vi) recycling or reclamation of inorganic materials other than metals or metal compounds;
 - (vii) regeneration of acids or bases;
 - (viii) recovery of components used for pollution abatement;
 - (ix) recovery of components from catalysts;
 - (x) oil re-refining or other reuses of oil;
 - (xi) surface impoundment.”.

New section 5.4 (disposal, recovery or a mix of disposal and recovery of non-hazardous waste)

37. For Section 5.4 (recovery of waste), substitute—

“SECTION 5.4

Disposal, recovery or a mix of disposal and recovery of non-hazardous waste

Part A(1)

- (a) Disposal of non-hazardous waste with a capacity exceeding 50 tonnes per day (or 100 tonnes per day if the only waste treatment activity is anaerobic digestion) involving one or more of the following activities, and excluding activities covered by Council Directive 91/271/EEC concerning urban waste-water treatment—
 - (i) biological treatment;
 - (ii) physico-chemical treatment;
 - (iii) pre-treatment waste for incineration or co-incineration;
 - (iv) treatment of slags and ashes;
 - (v) treatment in shredders of metal waste, including waste electrical and electronic equipment and end-of-life vehicles and their components.
- (b) Recovery or a mix of recovery and disposal of non-hazardous waste with a capacity exceeding 75 tonnes per day (or 100 tonnes per day if the only waste treatment activity is anaerobic digestion) involving one or more of the following activities, and excluding activities covered by Council Directive 91/271/EEC—
 - (i) biological treatment;
 - (ii) pre-treatment of waste for incineration or co-incineration;

- (iii) treatment of slags and ashes;
- (iv) treatment in shredders of metal waste, including waste electrical and electronic equipment and end-of-life vehicles and their components.”.

New section 5.6 (temporary or underground storage of hazardous waste)

38. After Section 5.5 (the production of fuel from waste), insert—

“SECTION 5.6

Temporary or underground storage of hazardous waste

Part A(1)

- (a) Temporary storage of hazardous waste with a total capacity exceeding 50 tonnes pending any of the activities listed in Sections 5.1, 5.2, 5.3 and paragraph (b) of this Section, except—
 - (i) temporary storage, pending collection, on the site where the waste is generated, or
 - (ii) activities falling within Section 5.2.
- (b) Underground storage of hazardous waste with a total capacity exceeding 50 tonnes.”.

New section 5.7 (treatment of waste water)

39. After Section 5.6 (temporary or underground storage of hazardous waste), insert—

“SECTION 5.7

Treatment of waste water

Part A(1)

- (a) Independently operated treatment of waste water not covered by Directive 91/271/EEC and discharged by an installation carrying out any other Part A(1) or A(2) activity.”.

Paper, pulp and board manufacturing activities

40. In Section 6.1 (paper, pulp and board manufacturing activities)—

- (a) in Part A(1)—
 - (i) omit paragraph (c)
 - (ii) omit the paragraph headed *Interpretation of Part A(1)*;
- (b) in Part A(2), for paragraph (a) substitute—
 - “(a) Producing, in an industrial plant, one or more of the following wood-based panels with a production capacity exceeding 600m³ per day: oriented strand board, particleboard or fibreboard.”

Coating activities, printing and textile treatments

41. In Section 6.4 (coating activities, printing and textile treatments)—

- (a) in Part A(1), omit paragraphs (a) and (c);
- (b) in *Interpretation and application of Part B*, in paragraph 3, for “a SED installation” substitute “a regulated facility at which a solvent emission activity is carried out”.

Timber activities

42. In Section 6.6 (timber activities), for Part A(1) substitute—

“Part A(2)

- (a) Preservation of wood and wood products with chemicals with a production capacity exceeding 75 m³ per day other than exclusively treating against sapstain.”.

Treatment of animal and vegetable matter and food industries

43. In Section 6.8 (treatment of animal and vegetable matter and food industries), in Part A(1)—

(a) for paragraph (d) substitute—

“(d) Treatment and processing, other than exclusively packaging, of the following raw materials, whether previously processed or unprocessed, intended for the production of food or feed (where the weight of the finished product excludes packaging)—

- (i) only animal raw materials (other than milk only) with a finished product production capacity greater than 75 tonnes per day;
- (ii) only vegetable raw materials with a finished product production capacity greater than 300 tonnes per day or 600 tonnes per day where the installation operates for a period of no more than 90 consecutive days in any year;
- (iii) animal and vegetable raw materials (other than milk only), both in combined and separate products, with a finished product production capacity in tonnes per day greater than—
 - (aa) 75 if A is equal to 10 or more, or
 - (bb) 300-(22.5 x A) in any other case,

where ‘A’ is the portion of animal material in percent of weight of the finished product production capacity;

(b) omit paragraph (f).

SED activities

44. Omit Section 7 (SED activities).

Schedule 3 (exempt facilities: descriptions and conditions)

45. In Schedule 3 to the principal Regulations—

(a) in paragraph 3 of Section 1 of Chapter 2 of Part 1 (general conditions), after sub-paragraph (c), insert—

“;

(d) the operation is not an activity that falls within Chapter 5 of Part 2 of Schedule 1 (waste management)”;

(b) in paragraph 6 of Section 2 of Chapter 4 of Part 1 (disposal by incineration)—

(i) in sub-paragraph (1) for “an incinerator” substitute “a small waste incineration plant”;

(ii) for sub-paragraph (2) substitute—

“(2) The waste described in this paragraph is the waste mentioned in Article 42(2)(a)(i) and (iii) of the Industrial Emissions Directive.”;

(iii) in sub-paragraph (4)(a) for “incinerator” substitute “small waste incineration plant”;

- (iv) in sub-paragraph (4)(b) for “incinerators” wherever it occurs, substitute “small waste incineration plants”.

Schedule 5 (environmental permits)

- 46.**—(1) Part 1 of Schedule 5 to the principal Regulations is amended as follows.
- (2) In paragraph 5(1)(c) omit “, unless the facility is a Part A installation”.
 - (3) In paragraph 5(4)(d) for “paragraph (d) or (e)” substitute “paragraphs (d) to (g)”.
 - (4) In paragraph 5(5)—
 - (a) for the definition of “dry cleaning” substitute—

““dry cleaning” means an industrial or commercial activity using volatile organic compounds to clean garments, furnishing and similar consumer goods excluding the manual removal of stains and spots in the textile or clothing industry;”
 - (b) omit the definitions of “co-incineration plant” and “incineration plant”;
 - (c) in the definition of “substantial change”, in paragraph (b) for “incineration plant or co-incineration plant” substitute “waste incineration plant or waste co-incineration plant”.
 - (5) In paragraph 10 (consultation with other member States)—
 - (a) in sub-paragraph (4)—
 - (i) in the definition of “member State”, for “the IPPC Directive” substitute “Annex I to the Industrial Emissions Directive”;
 - (ii) in the definition of “relevant Article”, for “Article 18 of the IPPC Directive” substitute “Article 26 of the Industrial Emissions Directive”;
 - (iii) in the definition of “relevant information”, for “Annex V to the IPPC Directive” substitute “Annex IV to the Industrial Emissions Directive”;
 - (b) in sub-paragraph (5) for “IPPC Directive” substitute “Industrial Emissions Directive”.
 - (6) In paragraph 16(3)(d) for “IPPC Directive” substitute “Industrial Emissions Directive”.
 - (7) After paragraph 19 insert—

“Incidents and accidents: deemed condition of a permit

20. Every environmental permit in relation to a regulated facility to which Schedule 7A, 13A or 14 applies is deemed to contain the following conditions, unless such conditions are included in the permit—

- (a) in the event that the operation of a regulated facility gives rise to an incident or accident which significantly affects the environment, the operator of that regulated facility must immediately—
 - (i) inform the regulator,
 - (ii) take the measures necessary to limit the environmental consequences of such an incident or accident, and
 - (iii) take the measures necessary to prevent further possible incidents or accidents;
- (b) in the event of a breach of any permit condition, the operator of a regulated facility must immediately—
 - (i) inform the regulator, and
 - (ii) take the measures necessary to ensure that compliance is restored within the shortest possible time;
- (c) in the event of a breach of permit condition which poses an immediate danger to human health or threatens to cause an immediate significant adverse effect on the environment, the operator of a regulated facility must immediately suspend the operation of the regulated facility or the relevant part of it until compliance with the permit conditions has been restored.”.

Amendment to Schedule 7 (Part A installations)

47.—(1) In Schedule 7 of the principal Regulations—

- (a) in the heading omit “and Part A Mobile Plant”;
- (b) for paragraph 1 substitute—

“**1.**—(1) This Schedule applies until 7th January 2014 in relation to every existing installation.

(2) This Schedule ceases to apply on 7th January 2014.”;

- (c) in paragraph 2(b) omit “or Part A mobile plant”;
- (d) omit paragraph 4 (b);
- (e) omit paragraph 5(2)(b) and (e);
- (f) in paragraph 7 omit “or Part A mobile plant”.

(2) After Schedule 7 to the principal Regulations, insert—

“SCHEDULE 7A

Regulation 35(2)(a)

Part A installations: Industrial Emissions Directive

Application

1.—(1) This Schedule applies—

- (a) in relation to every new installation;
- (b) from 7th January 2014 in relation to every existing installation.

Interpretation

2.—(1) In this Schedule, “new installation” means a Part A installation which is not an existing installation.

(2) When interpreting the Industrial Emissions Directive for the purposes of this Schedule—

- (a) except where defined in this paragraph, an expression that is defined in Part 1 of these Regulations has the meaning given in that Part;
- (b) “installation” means Part A installation;
- (c) “permit” means environmental permit;
- (d) the competent authority is the regulator;
- (e) “substance” is to be read as including, after the words “its compounds” in Article 3(1) of the Industrial Emissions Directive, the words “and any biological entity or micro-organism”;
- (f) “general binding rule” means a standard rule published under regulation 26.

Exercise of regulator’s functions: general

3. The regulator must exercise its functions under these Regulations for the purpose of achieving a high level of protection of the environment taken as a whole by, in particular, preventing or, where that is not practicable, reducing emissions into the air, water and land.

Applications for the grant of an environmental permit

4. The regulator must ensure that every application for the grant of an environmental permit includes the information specified in Article 12 of the Industrial Emissions Directive.

Exercise of relevant functions

5. The regulator must exercise its relevant functions so as to ensure compliance with the following provisions of the Industrial Emissions Directive—

- (a) Article 5(1) and (3);
- (b) Article 7;
- (c) Article 8(2);
- (d) Article 9;
- (e) Article 11;
- (f) Article 13(7);
- (g) Article 14;
- (h) Article 15 (excluding the penultimate sub-paragraph of Article 15(4));
- (i) Article 16;
- (j) Article 17;
- (k) Article 18;
- (l) Article 20(1) and (2);
- (m) Article 22 (excluding the last sub-paragraph of Article 22(2));
- (n) Article 26(4).

Developments in best available techniques

6.—(1) The regulator must ensure that it is informed of developments in best available techniques and of the publication of any new or updated BAT conclusions and where appropriate must exercise its functions so as to encourage the application of emerging techniques, in particular those identified in BAT reference documents.

(2) In this paragraph—

- (a) “BAT conclusions” has the meaning given in Article 3(12) of the Industrial Emissions Directive;
- (b) “BAT reference document” has the meaning given in Article 3(11) of the Industrial Emissions Directive;
- (c) “best available techniques” has the meaning given in Article 3(10) of the Industrial Emissions Directive;
- (d) “emerging technique” has the meaning given in Article 3(14) of the Industrial Emissions Directive.

Review of environmental permits

7. The regulator must review an environmental permit in accordance with Article 21 of the Industrial Emissions Directive if any of the circumstances in that Article applies in relation to the Part A installation whose operation the permit authorises.

Public participation

8. The regulator must exercise its functions so as to meet the requirements of Article 24 of the Industrial Emissions Directive.

Inspections

9. When inspecting a regulated facility in accordance with regulation 34(2) the regulator must comply with Article 23 of the Industrial Emissions Directive.”.

Schedule 8 (part B installations and part B mobile plant)

48. For Schedule 8 to the principal Regulations substitute—

“SCHEDULE 8

Regulation 35(2)(b)

Part B installations and Part B mobile plant etc.

Application

1.—(1) In England and Wales, this Schedule applies in relation to every Part B installation.

(2) In Wales only this Schedule also applies in relation to every small waste incineration plant (in addition to the provisions in Schedule 13 or 13A) and in relation to every solvent emission activity (in addition to the provisions in Schedule 14).

Interpretation

2. For the purposes of this Schedule—

- (a) “best available techniques” means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing in principle the basis for emission limit values relevant to air pollution designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole; where—
 - (i) “techniques” includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned;
 - (ii) “available techniques” means those techniques developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, and which are reasonably accessible to the operator;
 - (iii) “best” means most effective in achieving a high general level of protection of the environment as a whole;
- (b) “installation” means a Part B installation, Part B mobile plant, small waste incineration plant or solvent emission activity.

Exercise of regulator’s functions: general

3. The regulator must exercise its functions under these Regulations for the purpose of preventing or, where that is not practicable, reducing emissions into the air.

Applications for the grant of an environmental permit

4.—(1) The regulator must ensure that every application for the grant of an environmental permit includes the following information—

- (a) the installation and its activities;
- (b) the sources of emissions to air from the installation;

- (c) the nature and quantities of foreseeable emissions into the air from the installation as well as identification of significant effects of those emissions on the environment;
- (d) the proposed technology or other techniques for preventing, or where that is not possible, reducing emissions to air from the installation;
- (e) further measures planned to ensure that the installation is operated in such a way that—
 - (i) all appropriate preventive measures are taken against pollution, in particular through the application of best available techniques; and
 - (ii) no significant pollution is caused;
- (f) measures planned to monitor emissions into the air;
- (g) the main alternatives, if any, to the techniques or measures required in paragraphs (d) to (f);
- (h) a non-technical summary of the details referred to in paragraphs (a) to (g).

(2) Paragraph (1)(d) does not apply to the extent that the application relates to the burning of waste oil in an appliance with a net rated thermal input of less than 0.4 megawatts at a Part B installation.

(3) In the case of a new installation or a substantial change where Article 4 of Directive 85/337/EEC^(a) applies, any relevant information obtained or conclusion arrived at pursuant to Articles 5, 6 or 7 of that Directive shall be taken into consideration by the regulator for the purposes of granting the environmental permit.

Exercise of relevant functions

5. The regulator must, for the purpose of preventing or, where that is not practicable, reducing emissions into the air, exercise its relevant functions in relation to the installations to which this Schedule applies—

- (a) so as to ensure that they are operated in such a way that—
 - (i) appropriate preventive measures are taken against air pollution, in particular through the application of best available techniques;
 - (ii) no significant air pollution is caused;
- (b) where an environmental quality standard requires stricter conditions than those achievable by the use of best available techniques, additional measures are required by the permit, without prejudice to other measures which might be taken to comply with environmental quality standards;
- (c) permits include emission limit values, which may if appropriate be supplemented or replaced by equivalent parameters or technical measures, for polluting substances likely to be emitted into the air from the installation concerned in significant quantities;
- (d) where emissions of a greenhouse gas from an installation are specified in Annex 1 to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the European Union^(b) in relation to an activity carried out in that installation, the permit does not include an emission limit value for direct emissions of that gas unless it is necessary to ensure that no significant local pollution is caused.

(2) The regulator must ensure that emission limit values or equivalent parameters or technical measures are based on best available techniques without prescribing the use of any technique or specific technology, but taking into account the technical characteristics of

^(a) OJ No L 175, 5.7.85, p 40

^(b) OJ No L 275, 25.10.03, p 32.

the installation, including (except in the case of mobile plant) its geographical location and the local environmental conditions.

(3) In this paragraph “substance” means any chemical element and its compounds and any biological entity or micro-organism, with the exception of the following substances—

- (a) radioactive substances as defined in Article 1 of Council Directive 96/29/Euratom laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation(a);
- (b) genetically modified micro-organisms as defined in Article 2(b) of Directive 2009/41/EC of the European Parliament and of the Council on the contained use of genetically modified micro-organisms(b);
- (c) genetically modified organisms as defined in point 2 of Article 2 of Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms(c).

Change in operation

6.—(1) Operators holding environmental permits for installations to which this Schedule applies must notify the regulator of any substantial change in the operation of that installation.

(2) Where there is a substantial change in the operation of an installation, the regulator must ensure that the environmental permit is reviewed and, if necessary, updated.

Review of permits

7. The regulator must review an environmental permit where—

- (a) the air pollution caused by the installation is of such significance that the existing emission limit values of the permit need to be revised or new values need to be included in the permit;
- (b) substantial changes in best available techniques make it possible to reduce emissions significantly without imposing excessive costs;
- (c) the operational safety of the process or activity requires other techniques to be used; or
- (d) new legislation necessitates a review.

Developments in best available techniques

8. The regulator must ensure that it is informed of developments in best available techniques.”.

Schedule 9 (waste operations)

49.—(1) Schedule 9 to the principal Regulations is amended as follows.

(2) In paragraph 3(2), in the definition of “relevant waste operation” in paragraph (a) omit “Part A mobile plant or”.

(3) For sub-paragraph 3(3)(b) and (c) substitute—

“(b) the disposal of hazardous waste (other than by incineration or landfill) in a facility with a capacity of more than 10 tonnes per day;

(a) OJ No L 159, 29.6.1996, p 1.

(b) OJ No L 125, 21.5.2009, p 75.

(c) OJ No L 106, 17.4.2001, p 1.

- (c) the recovery of hazardous waste falling within sub-paragraph (i) to (v), (viii) or (x) of paragraph (a) of Part A(1) of Section 5.3 of Part 2 of Schedule 1;
 - (d) the disposal of non-hazardous waste falling within paragraph (a) of Part A(1) of Section 5.4 of Part 2 of Schedule 1;
 - (e) the recovery or a mix of recovery and disposal of non-hazardous waste falling within paragraph (b) of Part A(1) of Section 5.4 of Part 2 of Schedule 1;
 - (f) temporary or underground storage of hazardous waste falling within Part A(1) of Section 5.6 of Part 2 of Schedule 1.”.
- (4) In paragraph 3(4), after paragraph (a) omit “and” and at the end add—
 “, or
 (c) is an exempt waste operation”.

Schedule 13 (waste incineration)

50.—(1) In Schedule 13 to the principal Regulations—

(a) for paragraph 1 substitute—

“**1.**—(1) This Schedule applies until 7th January 2014 in relation to every existing installation that is a waste incineration plant or waste co-incineration plant except those treating only the waste mentioned in Article 42(2)(a)(i) and (iii) of the Industrial Emissions Directive.

(2) This Schedule ceases to apply on 7th January 2014.”;

(b) omit paragraph 2(1) and (2)(a) and (b).

(2) After Schedule 13 to the principal Regulations, insert—

“SCHEDULE 13A

Regulation 35(2)(g)

Waste Incineration: Industrial Emissions Directive

Application

1.—(1) This Schedule applies in relation to—

- (a) every small waste incineration plant, and
- (b) every new waste incineration plant or new waste co-incineration plant,

to which Chapter IV of the Industrial Emissions Directive applies, except those which are operated as a domestic activity in connection with a private dwelling.

(2) It applies from 7th January 2014 in relation to every existing installation that is a waste incineration plant or waste co-incineration plant and to which Chapter IV of the Industrial Emissions Directive applies, except those which are operated as a domestic activity in connection with a private dwelling.

Interpretation

2.—(1) In this Schedule “new waste incineration plant” or “new waste co-incineration plant” means a waste incineration plant or co-incineration plant which is not an existing installation.

(2) When interpreting Chapter IV of the Industrial Emissions Directive for the purposes of this Schedule—

- (a) an expression that is defined in Part 1 of these Regulations has the meaning given in that Part;
- (b) the competent authority is the regulator;

- (c) “permit” means environmental permit;
- (d) “general binding rule” means a standard rule published under regulation 26.

Applications for the grant of an environmental permit

3. The regulator must ensure that every application for the grant of an environmental permit includes the information specified in Article 44 of the Industrial Emissions Directive.

Exercise of relevant functions

4. The regulator must exercise its relevant functions so as to ensure compliance with the following provisions of the Industrial Emissions Directive—

- (a) Article 5(1) and (3);
- (b) Article 7;
- (c) Article 8(2);
- (d) Article 9;
- (e) Article 42(1)
- (f) Article 43;
- (g) Article 45(1), (2) and (4);
- (h) Article 46;
- (i) Article 47;
- (j) Article 48(1) to (4);
- (k) Article 49;
- (l) Article 50;
- (m) Article 51(1) to (3);
- (n) Article 52;
- (o) Article 53;
- (p) Article 54;
- (q) Article 55;
- (r) Article 82(5) and (6).

(2) But when interpreting the Industrial Emissions Directive for the purposes of this Schedule—

- (a) in Article 51(1) ignore the words “Member states may lay down rules governing these authorisations”;
- (b) paragraph 2.1(c) of Part 6 of Annex VI is to be read as if the words “and dioxin-like polychlorinated biphenyls and polycyclic aromatic hydrocarbons” appeared after the word “furans”, but only in the case of particular plants where the regulator can demonstrate that emissions of those additional substances are, or are likely to be, significant.”.

Schedule 14 (solvent emission activities)

51. For Schedule 14 to the principal Regulations substitute—

“SCHEDULE 14

Regulation 35(2)(h)

Solvent Emission Activities

Application

1. This Schedule applies in relation to every solvent emission activity.

Interpretation

2. When interpreting Chapter V of the Industrial Emissions Directive for the purposes of this Schedule—

- (a) except where defined in this paragraph, an expression that is defined in Part 1 of these Regulations has the meaning given in that Part;
- (b) the competent authority is the regulator;
- (c) “installation” means a stationary technical unit within which a solvent emission activity is carried out, and any other directly associated activities on the same site which have a technical connection with the solvent emission activity and which could have an effect on emission of volatile organic compounds;
- (d) “permit” means environmental permit;
- (e) “general binding rule” means a standard rule published under regulation 26.

Exercise of relevant functions

3. The regulator must exercise its relevant functions so as to ensure compliance with the following provisions of the Industrial Emissions Directive—

- (a) Article 5(1) and (3);
- (b) Article 7;
- (c) Article 8(2);
- (d) Article 9;
- (e) Article 57;
- (f) Article 58;
- (g) Article 59 (except article 59(4));
- (h) Article 60;
- (i) Article 61;
- (j) Article 62;
- (k) Article 63;
- (l) Article 65;
- (m) Article 82(7), (8) and (9).”.

Schedule 15 (large combustion plants)

52.—(1) In Schedule 15 of the principal Regulations, for paragraph 1 substitute—

“1.—(1) This Schedule applies until 1st January 2016 in relation to every existing installation that is a combustion plant to which the Large Combustion Plants Directive applies by virtue of Article 1 of that Directive.

(2) This Schedule ceases to apply on 1st January 2016.”

(2) After Schedule 15 to the principal Regulations, insert—

Large Combustion Plants: Industrial Emissions Directive

Application

1. This Schedule applies—
 - (a) in relation to every new large combustion plant;
 - (b) from 1st January 2016 in relation to every existing installation that is a large combustion plant.

Interpretation

- 2.—(1) In this Schedule—
 - “combustion plant” has the meaning given in Article 3(25) of the Industrial Emissions Directive;
 - “large combustion plant” means a combustion plant with a total rated thermal input of 50 megawatts or more to which chapter III of the Industrial Emissions Directive applies;
 - “new large combustion plant” means a large combustion plant which is not an existing installation.
- (2) When interpreting the Industrial Emissions Directive for the purposes of this Schedule—
 - (a) except where defined in this paragraph, an expression that is defined in Part 1 of these Regulations has the meaning given in that Part;
 - (b) the competent authority is—
 - (i) for the purposes of exercising a judgement as to whether there is an overriding need to maintain energy supplies under Articles 30(6) and 37 the Industrial Emissions Directive, the appropriate authority;
 - (ii) otherwise, the regulator;
 - (c) “permit” means environmental permit.

Exercise of relevant functions

3. The regulator must exercise its relevant functions so as to ensure compliance with the following provisions of the Industrial Emissions Directive—
 - (a) Article 29;
 - (b) Articles 30(1) and 30(3) to (8), except the second sub-paragraph of 30(5) and the last sub-paragraph of 30(6);
 - (c) Article 31(1) and (2);
 - (d) Article 32(2) and (3);
 - (e) Article 33 except 33(2);
 - (f) Article 34(1) and (2);
 - (g) Article 35(1);
 - (h) Article 37;
 - (i) Article 38;
 - (j) Article 39;
 - (k) Article 40.

Interruption in supply of fuel

4. The regulator must—
 - (a) immediately inform the appropriate authority of any derogation under Article 30(5) of the Industrial Emissions Directive;
 - (b) immediately inform the appropriate authority if it considers that a derogation in accordance with Articles 30(6) or 37(2) of the Industrial Emissions Directive is or might be appropriate.”.

Schedule 17 (titanium dioxide)

- 53.—(1) In Schedule 17 of the principal Regulations, for paragraph 1 substitute—
- “1.—(1) This Schedule applies until 7th January 2014 in relation to every existing installation where the chlorine process or the sulphate process is carried on.
- (2) This Schedule ceases to apply on 7th January 2014.”
- (2) After Schedule 17 to the principal Regulations, insert—

“SCHEDULE 17A Regulation 35(2)(k)

Titanium Dioxide: Industrial Emissions Directive

Application

1. This Schedule applies—
 - (a) in relation to every new installation in which titanium dioxide is produced; and
 - (b) from 7th January 2014 in relation to every existing installation in which titanium dioxide is produced.

Interpretation

- 2.—(1) In this Schedule “new installation” means a Part A installation which is not an existing installation.
- (2) When interpreting Chapter VI of the Industrial Emissions Directive for the purposes of this Schedule—
 - (a) an expression that is defined in Part 1 of these Regulations has the meaning given in that Part;
 - (b) the competent authority is the regulator;
 - (c) “permit” means environmental permit.

Exercise of relevant functions

3. The regulator must exercise its relevant functions so as to ensure compliance with the following provisions of the Industrial Emissions Directive—
 - (a) Article 67;
 - (b) Article 68;
 - (c) Article 69;
 - (d) Article 70.”.

Schedule 20 (mining waste operations)

54. In paragraph 12(2) of Schedule 20 to the principal Regulations, for “Article 2(12) of the IPPC Directive” substitute “Article 3(10) of the Industrial Emissions Directive”.

PART 3

Transitional provisions and revocations

Activities no longer requiring permits

55.—(1) Where the activity to which an environmental permit relates falls only within a description in Part 2 of Schedule 1 to the principal Regulations which by virtue of these Regulations is no longer included in that Schedule, that permit ceases to have effect.

(2) Where an environmental permit contains any condition which relates solely to a description of an activity which was included in Part 2 of Schedule 1 to the principal Regulations but which by virtue of these Regulations is no longer included in that Schedule, that condition ceases to have effect.

Former Part A(1) activities

56.—(1) With effect from 1st April 2013, where any Part A activity which, immediately before the day after the day on which these Regulations are made, was included in Part 2 of Schedule 1 to the Principal Regulations becomes by virtue of these Regulations a Part B activity or other regulated facility, the environmental permit for that activity—

- (a) is deemed to be granted under the principal Regulations as amended by these Regulations; and
- (b) any conditions of that permit which are applicable only to Part A installations cease to have effect.

(2) In this regulation, “Part A activity”, “Part B activity” and “regulated facility” have the same definition as in the principal Regulations.

Consequential amendment

57.—(1) The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012^(a) are amended as follows.

(2) In regulation 3(3) for “an SED (Solvent Emission Directive) activity” substitute “a solvent emission activity”.

(3) In regulation 3(4)—

- (a) for “SED (Solvent Emission Directive) Activity” substitute “solvent emission activity”;
- (b) for sub-paragraph (a) substitute—

“(a) Schedule 14 to the Environmental Permitting (England and Wales) Regulations 2010.”.

Revocations

58.—(1) The following Regulations are revoked—

- (a) the Clean Air Enactments (Repeals and Modifications) Regulations 1974^(b);

^(a) S.I. 2012/1715

^(b) S.I. 1974/2170

(b) the Control of Industrial Air Pollution (Transfer of Powers of Enforcement) Regulations 1987^(a);

(c) the Control of Asbestos in the Air Regulations 1990^(b).

(2) Schedules 7, 13 and 17 to the principal Regulations are revoked.

(3) Schedule 15 to the principal Regulations is revoked.

Date *Name*
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

Date *Name*
Minister for Environment and Sustainable Development
one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010/675) (“the principal Regulations”), to transpose Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) (Recast) (“Industrial Emissions Directive”)^(c).

Regulations 4 to 9 amend various definitions in accordance with the Industrial Emissions Directive. Regulation 10 inserts a new provision into regulation 12 of the principal Regulations whereby the requirement for an environmental permit will not apply to certain activities until 15th July 2015. Regulation 15 makes provision for incidents and accidents in accordance with articles 7 and 8 of the Industrial Emissions Directive.

Regulation 16 provides for a new defence in relation to the requirement in regulation 12 of the principal Regulations to hold a permit where an application for a permit is made by the specified date.

Regulations 20 to 44 make amendments to Part 2 of Schedule 1 to the principal Regulations. Amendments to some of the Sections in that Part implement changes introduced by Annex 1 to the Industrial Emissions Directive. Amendments also delete some of the activities in Schedule 1 which are not included in that Directive and change the description of existing activities from Part A(1) to A(2) or from A(2) to Part B.

Regulation 46 provides for the insertion into permits of a deemed provision in relation to incidents and accidents.

Regulation 47 amends Schedule 7 and inserts a new Schedule 7A which applies to new Part A activities from the date the Regulations come into force and to existing Part A activities from 7th January 2014.

Regulation 48 substitutes a new Schedule 8 which applies to Part B activities in England and Wales. In Wales, Schedule 8 applies to solvent emission activities and small waste incineration plants in addition to the provisions of Schedules 13 and 14.

Regulation 50 amends Schedule 13 and inserts a new Schedule 13A which applies to new waste incineration and co-incineration plants from the date the regulations come into force and to

(a) S.I. 1987/180

(b) S.I. 1990/556

(c) OJ No L 334, 17.12.2010, p 17.

existing waste incineration plants and waste co-incineration plants from 7th January 2014. Under the principal Regulations as amended, waste incineration plants and waste co-incineration plants which have a capacity below 10 tonnes per day of hazardous waste or below 3 tonnes per hour of non-hazardous waste are small waste incineration plants. These will no longer be subject to Schedule 7 or 7A but will be subject to Schedule 13A.

Regulation 51 substitutes a new Schedule 14 relating to solvent emission activities. These supersede SED activities under the principal Regulations.

Regulation 52 amends Schedule 15 and inserts a new Schedule 15A which applies to new large combustion plants from the date the Regulations come into force and to existing large combustion plants from 1st January 2016.

Regulation 53 amends Schedule 17 and inserts a new Schedule 17A which applies to new installations producing waste titanium dioxide from the date the regulations come into force and to new installations producing waste titanium dioxide from 7th January 2014.

Regulations 55 and 56 make provision for changes to the classification of activities in Schedule 1 and for those which cease to be covered by these Regulations.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Better Regulation Programme, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London SW1P 2AL and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

Explanatory Memorandum to the Environmental Permitting (England & Wales) (Amendment) Regulations 2013

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Environmental Permitting (England & Wales) (Amendment) Regulations 2013. I am satisfied that the benefits outweigh any costs.

John Griffiths AM

Minister for Environment and Sustainable Development

10 December 2012

1. Description

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2010 in order to transpose Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control). The Directive is a recast, streamlining seven existing Directives into one. As a consequence of transposition, there will be stricter limits for air pollution, although there will be some flexibility to extend deadlines for power plants or to waive the rules for other installations in special cases, subject to certain conditions being met. The Regulations aim to improve health and environmental protection, while making the rules clearer and easier to implement.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2010. This is a composite statutory instrument which applies to England and Wales only and is subject to affirmative procedure in the National Assembly for Wales and in both Houses of Parliament. As with the 2010 Regulations, it is not considered practicable for this statutory instrument to be made bilingually.

3. Legislative Background

These Regulations apply to England and Wales only. The power to make these Regulations is contained in section 2 of the Pollution Prevention and Control Act 1999. That power was transferred to the National Assembly for Wales, except in relation to offshore oil and gas exploration and exploitation, in accordance with the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The administrations in Scotland, Northern Ireland and Gibraltar are bringing forward separate secondary legislation to transpose the industrial emissions Directive by the 7 January 2013 deadline. The Department for Energy and Climate Change is doing so in respect of United Kingdom offshore oil and gas installations to the extent that they are subject to the Directive.

4. Purpose & intended effect of the legislation

The primary purpose of the instrument is to amend the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010 No. 675) (as already amended) so as to transpose Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast). That Directive recasts seven current Directives into a single one about regulating emissions from various industrial activities, ranging from power stations to pig farms and waste incinerators to dry cleaners. Much of the material in the component

Directives is substantively unchanged, but there are some tightened or clarified requirements.

The purpose of the Directive on industrial emissions (integrated pollution prevention and control) (recast) – 2010/75/EU, the “Industrial Emissions Directive (IED)” or simply “the Directive” hereinafter - is “to achieve a high level of protection for the environment taken as a whole” from harmful effects of industrial activities. It does so for many activities by requiring each of the industrial installations concerned to have a permit from the competent authority (in England and Wales, the Environment Agency or, for smaller installations, the relevant local authority). Permit conditions and pollutant emission limit values (ELVs) therein have to be set on the basis of the application of best available techniques (BAT). Post April 2013, the activities attributed to the Environment Agency Wales will be carried out by the Natural Resources Body for Wales.

The Directive also sets out requirements for the monitoring and inspection of permitted activities and for the periodic reconsideration of permits. It contains reporting obligations upon Member States which will contribute to the European Commission’s own obligatory triennial reports to the European Parliament and Council on the implementation of the Directive.

The Directive is a recast, streamlining seven existing Directives into one; these concern integrated pollution prevention and control (IPPC) (2008/1/EC), large combustion plants (2001/80/EC), waste incineration (2000/76/EC), solvent emissions (1999/13/EC) and three concerning waste from the titanium dioxide industry. These are referred to as the “component Directives”.

Between them, these component Directives apply to some 10,200 industrial installations in England and Wales, ranging from power stations to intensive poultry farms and from waste incinerators to dry cleaners. All of these diverse enterprises have in common the fact that they present, individually and collectively, a significant risk to human health and the environment from polluting activities.

For example, 34 installations, mainly in the chemicals, power, metals and cement sectors, emitted between them in 2009 some 2.8 tonnes of mercury. A total of some 18 tonnes of cyanides was emitted to surface water from 37 facilities in the UK in 2009. Direct emissions from chemicals installations were the largest, but with contributions also from sewage works which treat effluent from industrial processes. The installations in these examples had permits with emission limits based on the application of BAT and there is no suggestion that those limits were breached, but these figures highlight the need for vigilance.

Like the component Directives, the IED aims to provide a high level of protection for the environment taken as a whole. It therefore follows that the substantively changed requirements should help address social, wellbeing and health inequalities, although the precise way in which they do so will depend upon the technical characteristics and location of installations affected

by the substantive changes and upon the quality of the environment in the locality.

Given that IPPC requirements address the need to prevent accidental discharges and to restore the site to a satisfactory state after the industrial activity has ceased, the substantive changes will also contribute to the health and safety of the workforce and of the community around the installation.

It follows that there will be no clear distinction between impacts in rural and urban areas: local criteria alone will determine impacts of the Directive and more particularly the impacts of the substantive changes that it makes to the existing Directives. Similarly, there will be no distinction between regions except to the extent that there happens to be a concentration in particular areas or regions of installations affected by the significant substantive changes. By providing a high level of protection for the environment taken as a whole, the Directive's transposition in Wales and England will help ensure that people and environments in deprived areas are afforded the same level of protection as those in more affluent areas.

In addition to the protection of human health and the environment, the component Directives and hence the IED also impact on other areas. For example, the energy efficiency requirements that form part of IPPC are significant in respect of climate change mitigation policies. The IED also influences carbon capture and storage, both by requiring new large combustion plants to be "capture ready" and also by applying IPPC to carbon capture activities. The IED also impacts on waste policy as it continues IPPC requirements in respect of waste minimisation. In bringing more waste treatment activities into IPPC, the intention of the Directive is to provide a consistent, BAT-based approach to the regulation of waste management techniques, which can be used for both disposal and recovery and which have the potential to cause environmental damage if not appropriately controlled.

5. Consultation

A joint England and Wales consultation run by Defra and Welsh Government was held from 12th March to 6th June 2012. The consultation was aimed predominantly at operators of industrial installations which are subject to the Directive, but anybody with an interest in how such installations are regulated was also invited to respond. However, generally, as this is a highly technical area, with largely specialist interests, responses tended to come from operators, regulators and government agencies.

The consultation pointed out that much of material in the component Directives and so the corresponding provisions in the Regulations to be amended remained unchanged, but that views were sought on 18 detailed points concerning proposed changes. The consultation also sought views on removing 49 industrial activity descriptions from the Regulations on the grounds that they were no longer carried on or that they were in any case covered by other descriptions. Responses were received from 86 organisations, 31 of which were from individual or groupings of local authorities in England and Wales.

The responses largely endorsed the transposition proposals. However, there was virtually no support for the proposed provision – in line with an option in a component Directive that had not previously been transposed – of a registration procedure, rather than full permitting, for activities using solvents. The instrument therefore omits that provision.

Although the responses to the consultation were generally very much in favour of the proposed changes to the Regulations as a consequence of transposing the IED, however, there were some clear differences in approach demonstrated between various groups. This is demonstrated in particular by the suggestion that BAT be removed in respect of incinerators and co-incinerators not subject to IPPC and solvent activities.

The Defra view of these activities, given the UK Government drive to reduce or eliminate what it sees as gold-plating, is that BAT should be deregulated. However, the majority of consultees, including all Welsh local authorities and the Health Protection Agency, indicated that BAT plays a significant role in protecting both human health and the environment. Following extensive policy discussions, it has been decided that BAT in respect of these activities will be retained in Wales, but not in England. These differences between regimes in England and Wales are fully reflected in the amended Regulations.

A detailed Government response to the points raised in the consultation is being prepared by Defra and will be made available on their website as soon as it is completed.

REGULATORY IMPACT ASSESSMENT

6. Options

The only option available is to fully transpose Directive 2010/75/EU (the Industrial Emissions Directive) by way of these Regulations. Delayed or incomplete transposition will precipitate infraction proceedings with the potential for substantial fines from the EU.

7. Costs and benefits

The financial implications of the transposition of the Industrial Emissions Directive via the Regulations will vary tremendously from sector to sector and from installation to installation. Each installation operating under the IED (which includes power stations, steel mills, factories, dry cleaners and large poultry units) will need a permit awarded by the Environment Agency or, in the case of smaller businesses, the local authority, in order to operate legally. They will then need to comply with whatever environmental requirements are set by the permit. The costs of this will vary tremendously as some installations will already be more modern and efficient whilst others may be older, dirtier and less environmentally friendly. For this reason it is impossible

to put an absolute total figure on what the costs of the IED will be to business. However, further detail is presented in subsequent paragraphs.

The contribution of industrial activities to environmental problems is significant and varies widely according to the sectors or the impacts concerned. The European Commission's impact assessment of its draft Industrial Emissions Directive at the end of 2007 found that industrial activities covered by the integrated pollution prevention and control (IPPC) Directive emitted about 55% of the EU's anthropogenic carbon dioxide, 83% of sulphur dioxide, 34% of nitrogen oxides, 43% of particulate matter and 55% of volatile organic compound emissions. About 38% of ammonia emissions were found to be emitted by livestock rearing installations covered by IPPC. IPPC installations were also found to contribute to about 23% and 25% of mercury and dioxin emissions to air respectively. Emissions to water from IPPC installations are also significant, notably of phosphorus, nitrogen and heavy metals. In addition, many priority substances and priority hazardous substances listed in the Water Framework Directive are exclusively or predominantly emitted by industrial installations falling under the IPPC Directive.

A report by the European Environment Agency estimated cost in 2009 of damage caused by emissions from industrial facilities in the EU as being between €102–169 billion. This provides a particular example of the significance of the industrial pollution that is addressed by the EU legislation to be transposed. Industrial emissions affect ambient air quality, which in turn has a significant impact on human health and the natural environment. Current levels of air pollution are estimated to reduce the life expectancy of every person in the UK by around six months. In addition over half of UK habitats are estimated to be exposed to levels of pollution that could lead to significant harmful effects on the local environment.

The costs of implementing the significant substantively changed components of the Directive fall into three main categories:

- administrative costs arising from the need for new or varied environmental permits which those changes bring;
- costs – operating and, in some cases, capital - to operators of complying with those permit requirements; and
- Emissions Trading Scheme cost savings, associated with switching to fuels with lower CO₂ emissions. These are included as a cost-saving, as they offset other cost increases to operators associated with changing the fuel mix for generation.

Administrative costs are subdivided into those incurred by the regulator and those incurred by the operator. The regulator's costs arise from the task of considering applications for new or varied permits and in reviewing existing permits. These costs will be recovered from operators through permit application charges and annual "subsistence" charges. These charges are made through schemes approved by Ministers that reflect the varying complexity of the regulator's task according to the industry sector involved;

they are intended to recover the regulator's costs fully. Combined, the transitional costs for new or amended permits come to around £3,300 per regulated facility.

The **costs** of complying with permit requirements vary considerably, even within industry sectors, according to the particular characteristics of each installation. Abatement measures for Large Combustion Plants include:

For SO₂

- ESI: Wet flue gas desulphurisation (FGD-wet) and low sulphur coal.
- Petroleum refineries: fuel switching to natural gas, amine treating units (scrubbers), low sulphur oil.
- Iron and steel: coke oven gas (COG) desulphurisation.
- Other: FGD-wet and low sulphur oil.

For NO_x

- ESI: selective catalytic reduction (SCR), combustion modification and additionally for gas turbines, closure and reopen new combined cycle gas turbine (CCGT).
- Petroleum refineries: low NO_x burners, selective non-catalytic reduction (SNCR) and SCR.
- Iron and steel: SCR.
- Other: combustion modification, SNCR, SCR; and

For dust

- ESI: (dust abatement included in FGD-wet).
- Petroleum refineries: (dust abatement included in fuel switching to natural gas).
- Iron and steel: High efficiency de-duster.
- Other: (dust abatement included in FGD-wet).

Operating costs arise from the operation of pollution control techniques and of monitoring equipment. Capital expenditure may be required in order to reconfigure the installation so as to meet new permit requirements. The compliance cost estimates have been made after consultation with the regulatory agencies and the relevant industry and trade organisations.

The **benefit** of the substantively changed requirements made by the Directive is improved control of polluting activities, such that pollutant emissions are prevented or reduced. For the changes in respect of large combustion plants, the extent of pollutant reduction can be estimated. This is because the

Directive requires that emission limit values (ELVs) for sulphur dioxide, nitrogen oxides and dust must, from 1 January 2016, be at least as stringent as those set out in the Directive's Annex V. As described in Annex A of this RIA, a comparison has been made between these minimum requirements and those that currently apply.

Benefits are calculated from the calculated reduction in air pollution using the damage cost values agreed by the Inter-departmental Group on Costs and Benefits. The majority of these values are estimates of the cost of the health impacts of marginal changes in emissions, but some other impacts are included, e.g. building soiling. The sensitivity range presented uses the range of high, low and best-estimate damage costs. The high damage cost scenario assumes no lag between exposure to pollution and health impacts, whilst the low damage cost scenario assumes a 40 year lag. Other major impacts, such as those on ecosystems, are not included when using the damage cost approach, which therefore understates the likely benefits associated with reduction of these pollutants.

For the other substantively changed requirements, it is not possible to monetise any of the benefits, as evidence is not developed to place monetary value on the emissions of these pollutants. Amongst the 90 or more pollutants of air, water, and/or land, potentially involved, only 4 can potentially be monetised. Moreover, even if damage costs were available, monetising the benefits of pollutant reductions would require estimates of the amount of each pollutant potentially abated as a direct result of compliance with permit conditions embodying the substantively changed requirements. This would be impractical.

It has therefore not been possible, other than in the specific cases of the three key air pollutants emitted by large combustion plants, to quantify and monetise the benefits of the substantively changed requirements.

The costs and benefits of the substantial changes concerning large combustion plants are summarised in Annex A, drawn from a report commissioned by Defra entitled "Updated Impact Assessment of the Industrial Emissions Directive (IED) – Large Combustion Plants" by Amec Environment and Infrastructure UK Ltd (July 2012). The Present Value Cost for these plants over the years 2016 – 2030 is estimated to lie in the range £1,648 million to £3,060 million.

The transitional and average annual costs for technology in large combustion plants, disaggregated by industry and by year, are shown below. Table 2 shows the costs as they are incurred – i.e. showing that investment needs to take place in the years leading up to 2020 – these costs are not spread over the investment lifetime as they are in the remainder of this assessment.

Table 1 – Distribution of costs by sector

£millions	Transitional	Average value
Change in electricity generation costs	-	66

Electricity generation industry	499	27
Refineries	128	21
Iron and steel	56	5
Other	373	15
Permit variation (All)	1	-33
CO2 cost saving	-	66
Total	1287	64

Table 2 – Distribution of transitional and ongoing costs through time

	Transitional	Annual
2012	32	-
2013	32	-
2014	32	-
2015	32	-
2016	33	345
2017	228	223
2018	228	102
2019	228	81
2020	240	146
2021	0	99
2022	0	63
2023	0	66
2024	0	62
2025	0	59
2026	0	56
2027	0	50
2028	0	47
2029	0	42
2030	0	12

The costs of the substantial changes which draw additional activities into IPPC are shown in Table 3. Annex A also summarises in qualitative terms the benefits which may accrue, also drawn from the consultants' report. The estimated transitional costs range from £2-14m, with annual costs in the range £18m to £93m over the appraisal period. In comparison with the benefits accruing from the changes in respect of large combustion plants, these costs are minor, although they of course fall upon different industrial sectors.

Table 3 - Distribution of costs for plants other than Large Combustion Plants

Cost (£millions)	Total annualised transitional costs (£m)		Total annual recurring costs: (£m per annum)	
	Low	High	Low	High
5.3(b) water sector biological treatment	0.0	3.3	0.0	5.7
5.3(b) treatment of slags	0.0	0.4	0.4	5.7

and ashes				
5.3(b) treatment of scrap metal with shredders	0.3	1.4	12.2	27.3
5.3(b) waste sector biological treatment	0.3	4.0	2.2	43.5
6.4(b) mixed animal and vegetable processing	0.6	3.0	1.0	5.7
6.10 preservation of wood and wood products	0.6	1.9	1.7	2.8
6.11 independently operated treatment of waste water not covered by the Urban Waste Water Treatment Directive	0.0	0.2	0.2	1.9
Total – all sectors	2.1	14.1	17.7	92.5

The annual net cost to business of £132m has been calculated by averaging the total transitional and annually recurring costs over the 15-year appraisal period. This total has been adjusted to 2009 prices using the GDP deflator, and has not been discounted.

The legislation provides useful simplification of certain regulatory requirements for particular industrial activities:

- The removal from the EPR of 43 descriptions of industrial activities – largely in the energy, metals and chemicals sectors - which have no foundation in the industrial emissions Directive and which are considered to be superfluous in that either (i) they are already incorporated in Directive-founded descriptions, or (ii) describe activities which are not carried out and are considered unlikely to be in the future. There will consequently be no impact upon current costs or benefits from their removal. The change will however somewhat simplify the Regulations.
- The removal from IPPC of six activities currently described in Part 2 of Schedule 1 to the EPR which are not covered by the Directive. Annual savings in permit charges of some £132,000 are estimated. These are set out in Annex B. Annex B also sets out another 13 activity descriptions, covering 137 installations with total annual permit charges of £1.3 million, for which IPPC controls would be retained even though the activities are not listed in the industrial emissions Directive. Retention is considered by the Environment Agency to be justified by the environmental protection it provides.
- The removal of the requirement to monitor for polycyclic aromatic hydrocarbons and polychlorinated biphenyls from most waste incinerators. Annex D shows estimated annual cost savings of up to some £290,000.

The average annual monetised benefits total £188m. Of these: around £86m from reductions in SO₂; £65m from reduced NO_x; and £38m from reduced particulate matter. Note that the monetised benefits are estimated based only on changes in emissions from large combustion plants.

Table 4 - Summary of Costs and Benefits

Year	Costs (£m)			Benefits (£m)			Net Benefit (£m)		
	Low	High	Best Estimate	Low	High	Best Estimate	Low	High	Best Estimate
2016	265	547	405	135	194	171	-130	-353	-234
2017	166	319	242	130	188	165	-36	-131	-77
2018	84	164	123	139	200	176	55	36	53
2019	73	145	108	161	231	204	88	86	96
2020	126	245	184	178	254	224	52	9	40
2021	94	182	137	180	258	227	86	76	90
2022	70	135	102	163	233	205	93	98	103
2023	73	138	105	172	246	216	99	108	111
2024	72	132	101	173	248	218	101	116	117
2025	71	129	100	136	195	171	65	66	71
2026	64	114	88	139	198	175	75	84	87
2027	59	101	80	137	196	172	78	95	92
2028	58	96	77	136	195	171	78	99	94
2029	55	86	70	135	193	170	80	107	100
2030	35	37	36	123	175	154	88	138	118
PV:	1,120	2,131	1,617	1,725	2,472	2,175	606	342	558

The average costs reported in Table 4 are annualised costs, and do not match the sum of the transitional and annually recurring costs reported above. This is because the appraisal period and the lifetime of the investments are not consistent. The approach taken has been to annualise the cost of investments over their lifetime. A proportion of the transitional costs are implicitly allocated to years beyond 2030 on the basis that investment lifetimes typically can be expected to be 20 years from 2020.

Costs and benefits will both continue to accrue post 2030, so this approach could be considered to represent a reasonable view of the balance of costs and benefits. Readers interested in the distribution of costs through time should refer to tables 2 and 3.

Wider impacts

Large combustion plants

The substantive changes in respect of large combustion plants will have an impact upon existing operators when they take effect from 1 January 2016. Those operators will need to decide whether to use the compliance flexibilities offered by the “limited life derogation” the transitional national plan, and operation for less than an average of 1,500 hours per year. Or they may

decide to close a large combustion plant they operate by the end of 2015. These flexibilities, promoted by the UK during negotiation, were well received by operators at various discussions held with them.

The impact upon operators of plants which receive their permit after 7 January 2013 will be by comparison much less since the design of such plants which are already under construction should have taken account of the tightened minimum requirements (which have been in prospect at least since December 2007). The costs for new entrants to sectors requiring a new large combustion plant are in any case very high (not least because of the need for construction labour resources) and it is unlikely that the changed requirements will significantly affect their entrance.

For all large combustion plant operators in the electricity supply industry, changed compliance costs may feed through into electricity prices for domestic and business users, but only under the supervision of Ofgem. Operators in other sectors may elect to reflect compliance cost changes in their prices to consumers, according to the dictates of the world-wide markets in which they operate. But the European Commission, in its impact assessment of its December 2007 proposal, considered that the changes “will lead to a much more level playing field for [all] the sectors concerned by narrowing the range over which emission limit values can be set. In the context of the liberalisation of the energy market, this option would also avoid unacceptable distortion of competition linked to very different levels of environmental standards currently applied in the electricity generation sector”.

Waste treatment activities

The substantive changes in respect of waste treatment activities will expose existing operators to additional compliance costs that will vary according to the quality of their existing operation in terms of environmental protection. However, ultimately all will already have permits giving effect to the requirements of the Directive on waste which include the use of “measures to ensure that waste management is carried out without endangering human health and without harming the environment”. The additional impact of IPPC controls should therefore prove limited, with additional costs possibly being passed on to consumers (although regulators will need to ensure that any additional requirements are minimised and notified well in advance).

From 7th January 2013, new entrant operators will need a permit incorporating IPPC, but should be able to configure their operation beforehand to meet the requirements at least cost. Nevertheless, there is a risk that the extension of IPPC to more waste treatment activities might adversely affect, in particular, waste recovery activities in ways which cannot be quantifiably predicted. It was on the basis of this concern that several Member States, including UK, argued successfully for a threshold of 75 tonnes/day for recovery activities rather than the 50 tonnes/day proposed by the European Commission and that UK secured a threshold of 100 tonnes/day for anaerobic digestion.

Wood preservation activities

The subjection of existing wood preservation activities to the IPPC permit regime from 7th July 2015 is considered unlikely to present operators with additional compliance costs other than those associated with permit application and maintenance. Operators may reflect those limited costs in their charges to customers, here also subject to the discipline of the market place. New entrants would be expected to adhere to the high environmental standards promoted by the industry's Code of Practice.

Applying BAT to installations newly subject to IPPC

All operators of installations newly subject to IPPC under the Directive will be affected in the same way in that each will need to apply for and retain a permit containing BAT-based conditions. No distinction according to business size is available in that regard. However, the industrial activities newly covered are defined with a clear capacity threshold. Whilst there is not necessarily a direct relationship between the capacity of an installation and the business size of its operator, the existence of those thresholds very probably means that micro business is scarcely affected, and small business to a very limited extent. But any small or micro businesses will be affected as a result of this EU legislation only to the extent of the permit conditions which the regulator considers it necessary to impose. That in turn will affect the attendant charges for permit application and annual subsistence thereafter. Regulators already have established criteria – irrespective of business size - for identifying “low impact” installations and regulating them accordingly within the general requirements of IPPC. It must also be borne in mind that existing installations newly subject to IPPC have until 7 July 2015 to be operating in accordance with a permit incorporating IPPC requirements.

Green economy and carbon emissions

The extension of installations falling within IPPC will provide an opportunity for prospective suppliers of the necessary goods and services to compete for operators' business. This should encourage innovatory approaches on both the part of operators in specifying their needs and suppliers in responding to them. The Directive as a whole carries on the need for suitably skilled operating and regulatory staff.

The compliance flexibilities available to operators of large combustion plants were included in the Directive in order to ease the transition to low carbon power generation by the early 2020s. Those flexibilities have both a direct and beneficial effect upon emissions of carbon dioxide over that period and link to the UK's efforts to encourage the demonstration and take up of low carbon alternatives.

The subjection of additional activities to IPPC also provides an additional means of bearing down upon emissions of greenhouse gases from them, both through specific permit conditions for installations where direct emissions are likely to be significant and through energy efficiency requirements. However,

for the reasons described above, it is not practically possible to estimate the extent of the reductions which might accrue.

9. Competition Assessment

The competition filter has been applied and the outcomes listed in the table below:

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Y
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	Y
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	Y
Q4: Would the costs of the regulation affect some firms substantially more than others?	Y
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	N
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	N
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	N
Q8: Is the sector characterised by rapid technological change?	N
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	N

The legislation will impact on all operators of all of the sectors covered in that it sets out the conditions stipulated by the European Commission that they need to adhere to in order to operate their businesses and installations legally in England and Wales. These standards are the same across Europe and will not impact directly on competition.

10. Post Implementation Review

As explained previously, the preferred option will be delivered through amendment of the Environmental Permitting (England and Wales) Regulations 2010. As already amended, these Regulations will be subject to a review and a report published by 6 April 2017. This review will therefore provide a means of post-implementation review.

Article 72 of the Directive itself requires Member States to report to the European Commission on its implementation. These reports will be made according to a questionnaire which is to be agreed by Member States under the regulatory procedure. The Commission currently envisages a report covering the period to the end of 2013 and to be received by the Commission by September 2014, covering transposition and other initial implementation arrangements, with a more detailed report covering the three calendar years 2014 – 2016 due in September 2017. Member State voting on these proposals under the regulatory procedure is expected to take place at the end of 2012. The preparation of these reports will provide a further means of post implementation review.

Furthermore, there is a long established “Sounding Board” arrangement which is run by Defra, but in which Welsh Government also participates, through which representatives of industry organisation, environmental regulators, environmental NGOs, the devolved administrations and other Government Departments meet regularly to discuss issues arising from the component Directives. This arrangement will continue to provide an effective means of reviewing the implementation of the IED.

Financial Implications

Assuming we transpose this Directive by the required date (7th Jan 2013) there are no financial implications for the Welsh Government. Any work associated with transposition will be accommodated within existing administration costs budgets.

There will be inspection and permitting costs for the Environment Agency and its successor in Wales the Natural Environment Body for Wales (funded by Welsh Government), but the organisation runs these activities on a cost recovery basis which will be cost-neutral.

In the unlikely event that we fail to transpose on time, we (or more properly UK as Member State) run the risk of fines as a consequence of EU infraction proceedings. In those unlikely circumstances, there could be a call for some of the costs to be met from ESD budgets.

Constitutional and Legislative Affairs Committee Draft Report CLA(4)-03-13 Paper 7

Title: The Natural Resources Body for Wales (Functions) Order 2012

The Natural Resources Body for Wales (Establishment) Order 2012 established a new statutory body, the Natural Resources Body for Wales and provided for its purpose, membership, procedure, financial governance and initial functions. This Order makes further provision about the Body, including provision about the modification and transfer of environmental functions to the Body.

Procedure: Enhanced Affirmative

The enhanced affirmative procedure:-

- Extends the period from the date on which a draft order was laid from 40 to 60 days
- Requires the Welsh Ministers to have regard to any representations, and resolution of the National Assembly for Wales and any recommendations of a committee charged with reporting on the draft Order made during the 60 day period
- Requires the draft Order to be re-laid before the Assembly with a statement summarising the changes, in the event that any material changes are made.

The revised draft order once laid will be subject to the normal affirmative procedure.

Technical Scrutiny

Under Standing Order 21.2 the Assembly is invited to pay special attention to the following instrument:

21.2 (i) - that there appears to be doubt as to whether it is intra vires

Preamble

The consent of the Secretary of State and Minister which is required under Section 17 of the Public Bodies Act 2011 has not yet been obtained¹.

Section 17 provides that:-

(1) The Secretary of State's consent is required for an order under section 13 or 14 which transfers a function to, or confers a function on—

(a) the Environment Agency,

(b) the Forestry Commissioners, or

(c) any other cross-border operator.

(2) The Secretary of State's consent is required for an order under section 13 or 14 made by virtue of section 15 which in any other way modifies the non-devolved functions of a person referred to in subsection (1).

(3) A Minister's consent is required for an order under section 13 or 14 which transfers a function to, or modifies the functions of, the Minister.

21.2 (v) That for any particular reason its form or meaning needs further explanation

Articles 5, 6 & 7

“local enactment” is not defined which could lead to uncertainty as these Articles in effect tidy up other legislation that is not specifically referred to in any of the Schedules.

Schedule 3

Welsh Language (Wales) Measure 2011

¹ Page 3 of the Explanatory Memorandum states that the Order will not be made without obtaining the necessary consent.

Paragraph 4 (2) – As the Environment Agency still exercise functions in relation to Wales it should still be subject to the Welsh Language (Wales) Measure 2011. The effect of the amendment would be to remove the EA from the requirement to comply with welsh language standards.

Schedule 4

General Drainage Charges (Relevant Quotient) Regulations 1993

Paragraph 31 (3) –The reference to the Flood and Coastal Erosion Risk Management (Levies) (England and Wales) Regulations 2011 refers to the Environment Agency (Levies) (England and Wales) Regulations 2011 which are renamed later in the Order. This is confusing to the reader who would be assisted by a suitable footnote.

21.2 (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements

Schedule 2

Forestry Act 1967

Paragraph 42 (3) – The reference to subsection 4 (a) is incorrect and should refer to subsection (4).

Highways Act 1980

Paragraph 102 (3) – It is not clear whether the reference to “organisation” is in respect of the first or second occasion where it occurs.

Water Resources Act 1991

Paragraph 198 (2) – There is no reference to the Environment Agency in section 118(b).

Clean Air Act 1993

Paragraph 256 – The reference to ‘appropriate authority’ should refer to ‘appropriate agency’.

Schedule 3

Control of Pesticides Regulations 1986

Paragraph 20 (2)

This should refer to (if the area in which the intended aerial application is to take place in Wales).

Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004

Paragraph 158 (3) (b) and (5) - the date cannot just be substituted as the 2005 Order refers to Plant Health (Forestry) Order 2005, rather than the Plant Health (Forestry) **(Great Britain)** Order 1993.

Welsh Language Schemes (Public Bodies) Order 1996

Paragraph 72 - Because the Environment Agency still exercise functions in relation to Wales they should still be subject to the Order. The effect of the amendment is to remove the EA from the requirement to prepare a Welsh language scheme under the Welsh Language Act 1993.

Bathing Water Regulations 2008

Paragraph 232 - Paragraph 231 changes all references to Agency without excepting regulation 2, there is no definition to omit and the definition does not then make sense.

Paragraph 233 - The reference is to 'Agency' rather than 'Environment Agency'

Infrastructure Planning (National Policy Statement Consultation) Regulations 2009

Paragraph 260 (2) (a) - the entry should refer to 'forests and woodlands' rather than 'forests or woodlands'.

Regional Flood and Coastal Committees (England and Wales) Regulations 2011

Paragraph 317 (2) - The reference to 'opening words' in this paragraph does not make sense.

Waste (England and Wales) Regulations 2011

Paragraph 325 – There is no reference to the Environment Agency or the Agency in regulation 3.

Greenhouse Gas Emissions Trading Scheme Regulations 2012

Paragraph 334 – the reference to regulation 21 is incorrect and should refer to regulation 20.

Paragraph 335 – the reference to regulation 28 is incorrect and should refer to regulation 27.

Paragraph 336 – the reference to regulation 48 (5) is incorrect and should refer to regulation 45 (5).

Paragraph 337 – the reference to regulation 87 is incorrect and should refer to regulation 86.

Paragraph 338 – the reference to regulation 89 is incorrect and should refer to regulation 87.

Paragraph 339 – the reference does not make sense.

Schedule 5

Wildlife and Countryside (Sites of Special Scientific Interest, Appeals) (Wales) Regulations 2002

Paragraph 6 – “the Countryside Council for Wales” only appears on one occasion.

Merits Scrutiny

Under Standing Order 21.3 the Assembly is invited to pay special attention to the following instrument:–

This Order is being brought forward under the powers contained in Sections 13 to 15 of the Public Bodies Act 2011.

The Legal Briefing note dated November 2012 (at Annex A) provides further background information to the Order.

The Committee has received correspondence which amongst other matters highlights issues as to whether various provisions of the Order introduced by Schedule 1 are ultra vires, because they do not meet the test under Section 16 of the Public Bodies Act 2011 in that they remove necessary protections.

The test under the Act is whether **the Welsh Ministers consider** that:

- (a) the Order does not remove any necessary protection, and
- (b) the Order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably be expected to continue to exercise.

Within the preamble to the Order, the Welsh Ministers state that they consider that the Order

does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise

At page 11 of the Explanatory Memorandum, it states:-

In drafting this Order we have followed the general principle that we are transferring the existing functions of the three bodies in a manner which retains all existing protections and does not add any new restrictions on individual rights or freedoms.

It would be difficult for the Committee to anticipate the practical effect of particular provisions within the Order; however should the Committee wish, evidence could be taken from the Minister for Environment and Sustainable Development as to the statement made within the preamble, prior to the final Order being laid.

Legal Advisers

Constitutional and Legislative Affairs Committee
January 2013

Draft Order laid before the National Assembly for Wales under section 19 of the Public Bodies Act 2011, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2012 No. (W.)

PUBLIC BODIES

**ENVIRONMENTAL
PROTECTION**

FORESTRY

COUNTRYSIDE

The Natural Resources Body for
Wales (Functions) Order 2012

EXPLANATORY NOTE

(This note is not part of the Order)

The Natural Resources Body for Wales (Establishment) Order 2012 (“the Establishment Order”) established a new statutory body, the Natural Resources Body for Wales (“the Body”) and provided for its purpose, membership, procedure, financial governance and initial functions. This Order makes further provision about the Body, including provision about the modification and transfer of environmental functions to the Body.

Article 3 introduces Schedule 1, which contains amendments to the Establishment Order relating to the general functions of the Body. The amendments made by paragraphs 4 and 7 place duties on the Body relating to nature conservation, access and recreation and cooperation. The amendments made by paragraphs 9 to 11 confer on the Body powers to enter into agreements with local authorities and public bodies, provide advice or assistance (including financial assistance) to others, undertake or commission research and institute criminal proceedings in England and Wales.

Paragraphs 12 and 13 of Schedule 1 amend the provisions of the Establishment Order relating to directions to the Body by the Welsh Ministers or the Secretary of State. Paragraphs 14 to 17 amend the financial provisions of the Establishment Order and give the Body a power to charge for work. Paragraph 18 inserts a new Part 4 of the Establishment Order which requires the Body to adopt a scheme for the publication of information about permitting decisions, and to notify the Welsh Ministers of certain permit applications.

Article 4(1) introduces Schedules 2 and 3, which amend specified primary legislation, by omitting references to the Countryside Council for Wales (“the CCW”), substituting references to the Body for existing references to the Forestry Commissioners, the CCW, the Environment Agency or the Welsh Ministers, and substituting references to the Welsh Ministers for certain references to the Forestry Commissioners. Article 4(2) introduces Schedules 4, 5 and 6, which amend specified subordinate legislation in the same manner. Schedules 2 to 6 also contain consequential, supplementary and incidental provisions.

The general effect of these amendments is that Welsh devolved functions of the Environment Agency and the Forestry Commissioners, and all the functions of the CCW, are modified and transferred to the Body. Certain licensing functions of the Welsh Ministers relating to the environment are also transferred to the Body. Powers of the Forestry Commissioners to make subordinate legislation in relation to Wales are transferred to the Welsh Ministers.

Articles 5 to 7 provide that certain references in local enactments to the CCW, the Forestry Commissioners and the Environment Agency are to be read as references to the Body.

Article 8 abolishes the CCW and makes related repeals. Article 9 abolishes the Environment Protection Advisory Committee established for Wales pursuant to section 12(6) of the Environment Act 1995 and the regional and local fisheries advisory committee established for Wales pursuant to section 13(5) of that Act, and makes related repeals.

Article 10 introduces Schedule 7, which contains transitional and savings provisions.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this instrument. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this instrument.

Draft Order laid before the National Assembly for Wales under section 19 of the Public Bodies Act 2011, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2012 No. (W.)

PUBLIC BODIES

**ENVIRONMENTAL
PROTECTION**

FORESTRY

COUNTRYSIDE

The Natural Resources Body for
Wales (Functions) Order 2012

Made

Coming into force

1 April 2013

The Welsh Ministers make this Order in exercise of the powers conferred by sections 13, 14, 15 and 35 of the Public Bodies Act 2011(1) (“the Act”).

In accordance with section 16 of the Act, the Welsh Ministers consider that this Order—

- (a) serves the purpose of improving the exercise of public functions, having had regard to the factors set out in section 16 of the Act; and
- (b) does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

(1) 2011 c. 24.

The consent of the Secretary of State and the Minister has been obtained in accordance with section 17 of the Act.

The Welsh Ministers have carried out consultation in accordance with section 18 of the Act.

A draft of this Order, and an explanatory document containing the information required by section 19(2) of the Act, have been laid before the National Assembly for Wales in accordance with section 19(1) after the end of the period of twelve weeks mentioned in section 19(3).

In accordance with section 19(4) of the Act, the draft of this Order has been approved by a resolution of the National Assembly for Wales after the expiry of the 40-day period referred to in that provision.

Title, commencement and extent

1.—(1) The title of this Order is the Natural Resources Body for Wales (Functions) Order 2012.

(2) This Order comes into force on 1 April 2013.

(3) An amendment, repeal or revocation made by this Order has the same extent as the provision to which it relates.

Interpretation

2. In this Order—

“the 1990 Act” (“*Deddf 1990*”) means the Environmental Protection Act 1990⁽¹⁾;

“the 1995 Act” (“*Deddf 1995*”) means the Environment Act 1995⁽²⁾;

“the Body” (“*y Corff*”) means the Natural Resources Body for Wales;

“the Establishment Order” (“*y Gorchymyn Sefydlu*”) means the Natural Resources Body for Wales (Establishment) Order 2012⁽³⁾.

General functions of the Natural Resources Body for Wales

3. Schedule 1 contains amendments to the Establishment Order.

(1) 1990 c. 43.

(2) 1995 c. 25.

(3) S.I. 2012/1903 (W. 230).

Modification and transfer of functions, consequential and other provisions

4.—(1) Schedules 2 and 3 contain amendments to primary legislation which—

- (a) modify and transfer to the Body Welsh devolved functions of the Environment Agency;
- (b) modify and transfer to the Body and the Welsh Ministers Welsh devolved functions of the Forestry Commissioners;
- (c) modify and transfer to the Body functions of the CCW;
- (d) transfer to the Body functions of the Welsh Ministers relating to the environment; and
- (e) make consequential, supplementary and incidental provision.

(2) Schedules 4, 5 and 6 contain amendments to subordinate legislation which—

- (a) modify and transfer to the Body Welsh devolved functions of the Environment Agency;
- (b) modify and transfer to the Body and the Welsh Ministers Welsh devolved functions of the Forestry Commissioners;
- (c) modify and transfer to the Body functions of the CCW;
- (d) transfer to the Body functions of the Welsh Ministers relating to the environment;
- (e) make consequential, supplementary and incidental provision.

Other modifications of enactments

5. In any local enactment which is not amended by any other provision of this Order, any reference to the CCW (however expressed), and any reference which is to be read as a reference to the CCW, is to be treated as a reference to the Body.

6. In any local enactment which is not amended by any other provision of this Order, any reference to the Forestry Commissioners (however expressed), and any reference which is to be read as a reference to the Forestry Commissioners, is to be treated in relation to Wales as a reference to the Body.

7. In any local enactment which is not amended by any other provision of this Order, other than an enactment relating to navigation, any reference to the Environment Agency (however expressed), and any reference which is to be read as a reference to the Environment Agency, is to be treated in relation to Wales as a reference to the Body.

Abolition of Countryside Council for Wales

- 8.**—(1) The CCW is abolished.
- (2) Accordingly, the following are repealed—
- (a) sections 128 to 134 of the 1990 Act(1);
 - (b) Schedules 6, 8 and 9 to the 1990 Act(2);
 - (c) Part 1 of the National Parks and Access to the Countryside Act 1949(3).

Abolition of advisory committees

- 9.**—(1) The following are abolished—
- (a) the Environment Protection Advisory Committee established pursuant to section 12(6) of the 1995 Act;
 - (b) the regional and local fisheries advisory committee established pursuant to section 13(5) of the 1995 Act.
- (2) Accordingly, the following provisions of the 1995 Act are repealed—
- (a) section 12(4);
 - (b) section 13(5);
 - (c) Schedule 3;
 - (d) paragraph 3 of Schedule 23.

Transitional provisions and savings

10. Schedule 7 contains transitional provisions and savings.

-
- (1) 1990 c. 43. Section 130 was amended by the Countryside and Rights of Way Act 2000 (c. 37), Schedule 15, paragraph 11. Sections 128 and 129 were substituted, sections 130, 131, 132 and 134 were amended, and section 133 was repealed by the Natural Environment and Rural Communities Act 2006 (c. 16), Schedule 11, paragraphs 117 to 123. Further amendments were made to sections 128, 132 and 134 by the Marine and Coastal Access Act 2009 (c. 23), section 313.
 - (2) There have been numerous amendments to Schedules 6, 8 and 9. Those Schedules were amended, and Schedule 7 was repealed, by the Natural Environment and Rural Communities Act 2006 (c. 16), Schedule 11, paragraphs 126 and 127, and Schedule 12. For transitional and saving provisions in connection with the repeal of Schedules 6, 8 and 9 to the 1990 Act, *see* Schedule 7 to this Order.
 - (3) 1949 c. 97. Section 1 was substituted by the 1990 Act, Schedule 8, paragraph 1(2). Sections 1 and 3 were amended by the Natural Environment and Rural Communities Act 2006, Schedule 11, paragraphs 7 and 8. Sections 2 and 4 were repealed by the Wildlife and Countryside Act 1981 (c. 69), Schedule 17, Part 2.
 - (4) The other committees established under section 12 of the 1995 Act were abolished by the Public Bodies (Abolition of Environment Protection Advisory Committees) Order 2012 (S.I. 2012/2407).
 - (5) The other committees established under section 13 were abolished by the Public Bodies (Abolition of Regional and Local Fisheries Advisory Committees) Order 2012 (S.I. 2012/2406).

Name
Minister for Environment and Sustainable
Development, one of the Welsh Ministers
Date

FUNCTIONS OF THE NATURAL RESOURCES BODY FOR WALES

1. The Establishment Order is amended as follows.

2. For article 2 substitute—

“2. In this Order—

“the Body” (“*y Corff*”) has the meaning given by article 3(1);

“nature conservation” (“*cadwraeth natur*”) means the conservation of flora, fauna or geological or physiographical features;

“pollution control functions” (“*swyddogaethau rheoli llygredd*”) has the meaning given by section 5(5) of the Environment Act 1995(1);

“the Welsh zone” (“*parth Cymru*”) has the meaning given by section 158(1) of the Government of Wales Act 2006(2).”

3. In article 4(3), omit “(as defined in section 158(1) of the Government of Wales Act 2006)”.

4. After article 5 insert—

“Nature conservation duties

5A.—(1) The Body must exercise its functions so as to promote nature conservation and the conservation and enhancement of natural beauty and amenity.

(2) The duty in paragraph (1)—

(a) does not apply to the Body’s pollution control functions or its functions under the Forestry Act 1967;

(b) applies to any other function only to the extent that it is consistent with the provisions of any enactment relating to the function.

(3) In exercising its pollution control functions, the Body must have regard to the

(1) 1995 c. 25. The definition of “pollution control functions” in section 5(5) was amended by the Pollution Prevention and Control Act 1999 (c. 24), Schedule 2, paragraphs 14 and 15; and by the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), Schedule 26, paragraph 13(1) and (2).

(2) 2006 c. 32. The definition of the “Welsh zone” was inserted by section 43(2) of the Marine and Coastal Access Act 2009 (c. 23). See also the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760).

desirability of nature conservation and of conserving and enhancing natural beauty and amenity.

(4) Section 1(3A) of the Forestry Act 1967⁽¹⁾ makes provision about the balance between nature conservation and other matters which the Body must endeavour to achieve in exercising its functions under that Act.

5B. In exercising any function relating to nature conservation, the Body must have regard to actual or possible ecological changes.

Access and recreation duties

5C.—(1) The Body must exercise its functions so as to promote the provision and improvement of opportunities for—

- (a) access to, and enjoyment of, the countryside and open spaces;
- (b) open-air recreation; and
- (c) the study, understanding and enjoyment of the natural environment.

(2) The duty in paragraph (1)—

- (a) does not apply to the Body's pollution control functions;
- (b) applies to any other function only to the extent that it is consistent with the provisions of any enactment relating to the function.

(3) In exercising its pollution control functions, the Body must have regard to the desirability of maintaining the availability to the public of existing opportunities of the kinds mentioned in paragraph (1).

(4) Section 2 of the Countryside Act 1968⁽²⁾ makes further provision about the Body's duties relating to facilities for the enjoyment of the countryside, the conservation and enhancement of the natural beauty and amenity of the countryside, and public access to the countryside for recreation.

Duties relating to historic sites

5D. In exercising its functions, the Body must have regard to—

(1) 1967 c. 10. Section 1(3A) was inserted by section 4 of the Wildlife and Countryside (Amendment) Act 1985 (c. 31).

(2) 1968 c. 41. There have been numerous amendments to section 2, including those made by the Natural Environment and Rural Communities Act 2006 (c. 16), Schedule 11, paragraph 43. Schedule 2 to this Order makes further amendments to section 2.

- (a) the desirability of protecting and conserving buildings, structures, sites and objects of archaeological, architectural, engineering or historic interest;
- (b) the desirability of maintaining the availability to the public of any facility for visiting or inspecting any such building, structure, site or object, so far as consistent with sub-paragraph (a) and article 5A.

Duties relating to well-being

5E. In exercising its functions, the Body must have regard to—

- (a) the health and social well-being of individuals and communities;
- (b) the economic well-being of individuals, businesses and communities.

Duties of Welsh Ministers in relation to proposals relating to Body’s functions

5F.—(1) The duties in articles 5A to 5E apply to the Welsh Ministers when formulating or considering any proposals relating to the Body’s functions, as they apply to the Body in exercising those functions.

(2) But the duty in article 5A(1) applies to the Welsh Ministers when formulating or considering such proposals only to the extent that the duty is consistent with—

- (a) the objective of achieving sustainable development; and
- (b) the Welsh Ministers’ duties under section 2 of the Water Industry Act 1991⁽¹⁾.

Recreation in relation to water and associated land

5G.—(1) This article applies where the Body has rights to the use of water or land associated with water.

(2) The Body must take appropriate steps to secure that, so long as it has those rights, they are exercised so as to ensure that—

- (a) the water or land is made available for recreational purposes; and

(1) 1991 c. 56. There have been amendments to section 2, including in particular those made by the Water Act 2003 (c. 37), section 39.

(b) is so made available in the best manner.

(3) In paragraph (2), “appropriate steps” (“*camau priodol*”) means steps which are—

(a) reasonably practicable; and

(b) consistent with the provisions of any enactment relating to the Body’s functions.

(4) The Body must obtain the consent of any navigation authority, harbour authority or conservancy authority before doing anything under paragraph (1) which causes obstruction of, or other interference with, navigation which is subject to the control of that authority.

(5) Section 6 of the Environment Act 1995⁽¹⁾ makes further general provision about the Body’s functions with respect to water.

Provision of facilities for recreation and other purposes

5H.—(1) The Body may provide, or make arrangements for the provision of, facilities for the purposes specified in paragraph (2) on any land belonging to it, which it uses or manages, or which is placed at its disposal by the Welsh Ministers.

(2) The purposes referred to in paragraph (1) are—

(a) tourism and the enjoyment of the countryside and open spaces;

(b) recreation and sport;

(c) the study, understanding and enjoyment of the natural environment.

(3) In paragraph (1), “facilities” (“*cyfleusterau*”) includes, without limitation—

(a) accommodation for visitors, camping sites and caravan sites;

(b) picnic sites and places for meals and refreshments;

(c) places for enjoying views and parking places;

(d) routes for walking, cycling or study of the natural environment;

(1) 1995 c. 25. Amendments to section 6 which are relevant to this Order have been made by the Water Act 2003 (c. 37), section 72; the Aquatic Animal Health (England and Wales) Regulations 2009 (S.I. 2009/463), Schedule 2, paragraph 9(b); the Marine and Coastal Access Act 2009 (c. 23), section 230; and the Flood and Water Management Act 2010 (c. 29), Schedule 2, paragraphs 51 and 52. Schedule 2 to this Order makes further amendments to section 6.

- (e) education centres, display centres and information;
- (f) shops in connection with any of the facilities mentioned in paragraphs (a) to (e);
- (g) public conveniences.

5I. The power of the Welsh Ministers under section 39 of the Forestry Act 1967⁽¹⁾ to acquire land includes power to acquire land in proximity to land placed by them at the disposal of the Body pursuant to section 3 of that Act where it appears to the Welsh Ministers that the land which it is proposed to acquire is reasonably required for the provision of the facilities mentioned in article 5H.

5J. The power of the Welsh Ministers to make byelaws under section 46 of the Forestry Act 1967 includes power to make byelaws—

- (a) for regulating the reasonable use of facilities provided under article 5H, and
- (b) in relation to any matter described in section 41(3) of the Countryside Act 1968⁽²⁾.”

5. Omit articles 6 and 7.

6.—(1) Article 8 is amended as follows.

(2) In paragraph (3), for “apply unless” substitute “do not apply if”.

(3) After paragraph (4), insert—

“(5) For the purposes of this article, costs include costs—

- (a) to any person; and
- (b) to the environment.”

7. After article 8 insert—

“Cooperation with the Environment Agency

8A. The Body must cooperate and coordinate with the Environment Agency as may be appropriate in the circumstances.”

8.—(1) Article 9(2) is amended as follows.

(2) In sub-paragraph (c), after “form” insert “or participate in the forming of”.

(1) 1967 c. 10. Amendments to section 39 which are relevant to this Order were made by the Scotland Act (Cross-Border Public Authorities) (Adaptation of Functions etc.) Order 1999 (S.I. 1999/1747), Schedule 12, paragraph 4(1) and (28) to (31).

(2) 1968 c 41. There have been amendments to other provisions of section 41.

(3) After sub-paragraph (d), insert—

“(da) act, or appoint a person to act, as an officer of a body corporate or as a trustee of a charitable trust;”.

(4) In sub-paragraph (e), after “gifts” insert “or contributions”.

9. After article 9 insert—

“Power to enter into agreements with local authorities and public bodies

9A.—(1) Without prejudice to the generality of the powers conferred by article 9, the Body is to be treated as both a local authority and a public body for the purposes of the provisions of the Local Authorities (Goods and Services) Act 1970⁽¹⁾, other than section 2(2).

(2) But the Body may not, under section 1 of that Act, make arrangements which could be made under section 28(1) of the Public Bodies Act 2011⁽²⁾.”

10.—(1) Article 10 is amended as follows.

(2) The existing provision becomes paragraph (1).

(3) After paragraph (1) insert—

“(2) The Body may advise the Welsh Ministers on the development and implementation of policies for or in relation to any matter in respect of which the Body exercises functions, whether or not it has been requested to do so.”

11. After article 10 insert—

“Advice and assistance to others

10A.—(1) The Body may provide advice or assistance, including training facilities, to any person on any matter in which the Body has knowledge, skill or experience.

(2) The power conferred by paragraph (1) must not be exercised where the person to whom the advice or assistance is provided is outside Wales, except—

(a) in accordance with a power or duty conferred or imposed by this or any other enactment;

(b) with the consent in writing of the Welsh Ministers; or

(1) 1970 c. 39. There have been amendments to the Act which are not material for the purposes of this Order.

(2) 2011 c. 24.

(c) in accordance with arrangements approved by the Welsh Ministers.

(3) The Welsh Ministers may impose conditions when giving consent or approving arrangements under paragraph (2).

Financial assistance

10B.—(1) The Body may give financial assistance to any person in respect of any expenditure incurred or to be incurred by that person in doing anything which the Body considers conducive to the attainment of any objective which the Body seeks to attain in the exercise of its functions.

(2) The Body may give financial assistance under this article by way of grant or loan (or partly in one way and partly in the other).

(3) The Body may attach conditions to financial assistance under this article, which may include (without limitation) conditions requiring the repayment of the whole or part of any grant in specified circumstances.

(4) The Body must exercise the power in paragraph (3) so as to ensure that any person receiving financial assistance in respect of premises to which the public are to be admitted (on payment or otherwise) makes appropriate provision for the needs of members of the public with disabilities.

(5) In paragraph (4), “appropriate provision” (“*darpariaeth briodol*”) means such provision with respect to—

- (a) means of access to or within the premises; and
- (b) the parking facilities and sanitary conveniences to be available (if any),

as is practicable and reasonable in the circumstances.

(6) The Body may give financial assistance under this article only with the consent of the Welsh Ministers (which may be specific or general) or in accordance with arrangements approved by them.

Research

10C.—(1) The Body must make arrangements for the carrying out of research activities in respect of matters relevant to any of its functions.

(2) The Body may—

- (a) carry out research activities on its own account or jointly with other persons;

- (b) commission or support research activities (whether by financial means or otherwise).

(3) In exercising its functions under this article in relation to research into nature conservation, the Body must have regard to any common standards established under section 34(2)(c) of the Natural Environment and Rural Communities Act 2006⁽¹⁾.

(4) In this article—

- (a) “research activities” (“*gweithgareddau ymchwil*”) means research and related activities;
- (b) “related activities” (“*gweithgareddau cysylltiedig*”) includes, without limitation, the making of experiments and inquiries and the collection of statistics and information.

Further provision about advice, assistance and research

10D. The functions conferred by articles 10 to 10C are exercisable in relation to Wales and the Welsh zone.

Criminal proceedings

10E.—(1) The Body may institute criminal proceedings in England and Wales.

(2) The Body may authorise persons to prosecute on its behalf in proceedings before magistrates’ courts in England and Wales.

(3) A person so authorised is entitled to prosecute in such proceedings even though that person is not a barrister or solicitor.”

12. In article 11, for paragraphs (2) to (4) substitute—

“(2) In the case of a direction under paragraph (1)—

- (a) which would have any effect in England; or
- (b) which relates to water resources management, water supply, rivers or other watercourses, control of pollution of water resources, sewerage or land drainage, and which would have any effect in the catchment areas of the rivers Dee, Wye and Severn,

⁽¹⁾ 2006 c. 16.

the power in paragraph (1) may also be exercised by the Secretary of State.

(3) The Welsh Ministers or the Secretary of State may give the Body general or specific directions for the implementation of any EU obligation or international obligation of the United Kingdom.

(4) Except in an emergency, the power to give a direction under this article may be exercised only after consultation with the Body.

(5) The Welsh Ministers may give a direction falling within paragraph (2) only after consulting the Secretary of State.

(6) The Secretary of State may give a direction—

- (a) under this article for the purpose of implementing any EU obligation or international obligation of the United Kingdom only after consulting the Welsh Ministers;
- (b) under paragraph (1) for any other purpose only with the consent of the Welsh Ministers.

(7) Any power of the Welsh Ministers or Secretary of State to give directions to the Body under any other enactment is without prejudice to their powers to give directions under this article.”

13. After article 11 insert—

“Further provisions about directions

11A.—(1) A direction under article 11 must be in writing.

(2) The Welsh Ministers or the Secretary of State (as the case may be) must publish any direction given to the Body—

- (a) under article 11;
- (b) under any other enactment for the purpose of implementing any EU obligation or international obligation of the United Kingdom,

as soon as reasonably practicable after giving the direction, and must make copies available on request.

(3) The power to give directions under article 11 includes power to vary or revoke the directions.

(4) If the Welsh Ministers or the Secretary of State vary or revoke any direction given to the Body for the purpose of implementing any EU obligation of the United Kingdom (whether

under article 11 or under any other enactment), they must—

- (a) publish the variation or revocation as soon as reasonably practicable;
- (b) make copies of the variation or revocation available on request.

(5) The Body and any person exercising functions of the Body must comply with any direction given to the Body under article 11 or any other enactment.

(6) In determining—

- (a) any appeal against, or reference or review of, a decision of the Body, or
- (b) any application transmitted from the Body,

the person making the determination is bound by any direction given to the Body under article 11 or any other enactment to the same extent as the Body.”

14. Before article 12 insert—

“Power to charge

11B.—(1) The Body may—

- (a) charge for work that it carries out and for goods, services and facilities that it provides;
- (b) allow another person to make charges, on such terms as the Body thinks fit, for facilities which that person provides under arrangements made under article 5H.

(2) Any arrangement between the Body and another person entered into pursuant to paragraph (1) may, with the consent of the Welsh Ministers, include provision for the sharing of profits.

(3) The powers conferred by this article are subject to any specific restriction on charging by the Body in particular cases or categories of case contained in this or any other enactment.”

15. At the end of article 12 insert—

“(3) The conditions which may be imposed include, without limitation, conditions as to the use of the money for the purposes of the Joint Nature Conservation Committee.”

16. At the end of article 13 insert—

“(8) This article is subject to section 118 of the Water Resources Act 1991(1).”

17. After article 13 insert—

“Forestry income

13A.—(1) The Body must spend all sums which it receives in respect of the sale or other disposal of timber or other forest products on the exercise of its functions relating to forestry, forests, woods and woodland industries.

(2) This article is subject to any determination or direction made by the Welsh Ministers under article 13.”

18. After article 15 insert—

**“PART 4 – INFORMATION
ABOUT PERMITTING
DECISIONS**

Interpretation

16. In this Part—

“permit” (*“hawlen”*) means any registration, exemption, approval, permission, licence, consent, assent or other authorisation, however described;

“permitting decision” (*“penderfyniad ynghylch hawlenni”*) means any decision to—

- (a) grant or refuse an application for a permit;
- (b) suspend, vary or revoke a permit.

Information publication schemes

17.—(1) The Body must—

- (a) develop, adopt and maintain a scheme (in this article referred to as a “publication scheme”) in relation to the publication of information about—
 - (i) applications for permits made to the Body; and
 - (ii) permitting decisions made by the Body;

(1) 1991 c. 57. Section 118 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraphs 128 and 150; and the Flood and Water Management Act 2010 (c. 29), Schedule 2, paragraphs 40 and 43. Schedule 2 to this Order makes further amendments to section 118.

- (b) publish information in accordance with its publication scheme;
 - (c) from time to time review its publication scheme.
- (2) A publication scheme must—
- (a) specify classes of information which the Body publishes or intends to publish, which must include information about all applications for permits made by the Body in cases where the Body is responsible for determining the application;
 - (b) specify the manner in which, and the time within which, information of each class is, or is intended to be, published;
 - (c) specify whether the material is, or is intended to be, available to the public free of charge.
- (3) In developing, adopting, or reviewing a publication scheme, the Body must—
- (a) consult such persons as it considers appropriate;
 - (b) have regard to the public interest in—
 - (i) allowing public access to information held by the Body; and
 - (ii) the publication of information about application for permits made to the Body and permitting decisions made by the Body.
- (4) A publication scheme must be approved by the Welsh Ministers.
- (5) If the Welsh Ministers refuse to approve a proposed publication scheme they must give the Body a statement of their reasons for doing so.
- (6) The Body must publish its publication scheme on its website and make copies of the scheme available on request.
- (7) This article is without prejudice to any other power or duty of the Body to publish or disclose information.

Notification to Welsh Ministers in relation to self permitting

- 18.**—(1) This article applies to any application for a permit in respect of which all of the following conditions are met—
- (a) the Body is the applicant;
 - (b) the Body is responsible for determining the application;

(c) the Welsh Ministers may make a direction that the application be referred to them for determination.

(2) The Body must notify the Welsh Ministers of the application at the time that it makes the application.”

19.—(1) The Schedule is amended as follows.

(2) Before paragraph 1 insert—

“Interpretation

A1. In this Schedule, references to employees of the Body include persons seconded to the Body.”

(3) In paragraph 1(2), for “Property” substitute “Subject to paragraph 1A, property”.

(4) After paragraph 1 insert—

“Status in relation to nature reserves

1A.—(1) This paragraph applies to land in which the Body has an interest and which is managed as a nature reserve.

(2) For the purposes of the application of any enactment or rule of law to the land, the Body is to be treated as a government department.

(3) An interest in land includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an interest in land or by virtue of a licence or agreement.”

(5) In paragraph 2(1)(d), omit “fewer than 2 nor”.

(6) Omit paragraphs 3 and 4.

(7) In paragraph 5, omit “paragraph 4(3) where applicable and to”.

SCHEDULE 2 Article 4(1)

ACTS OF PARLIAMENT

PART 1

Public General Acts

Statistics of Trade Act 1947 (c. 39)

1.—(1) Section 9A of the Statistics of Trade Act 1947 is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a), after “the Environment Agency” insert “, the Natural Resources Body for Wales”;
- (b) in paragraph (b), for “either of those Agencies authorised by that Agency” substitute “any of those bodies authorised by that body”.

(3) In subsection (2), for “Agency” substitute “body”.

Coast Protection Act 1949 (c. 74)

2. The Coast Protection Act 1949 is amended as follows.

3.—(1) Section 2A is amended as follows.

(2) The existing provision becomes subsection (1).

(3) In subsection (1), for paragraph (b) substitute—

- “(b) the Environment Agency, in relation to coastal erosion risks in England, and
- (c) the Natural Resources Body for Wales, in relation to coastal erosion risks in Wales.”

(4) After subsection (1), insert—

“(2) In this Part, references to the area of a coastal erosion risk management authority are—

- (a) in relation to the Environment Agency, references to England, and
- (b) in relation to the Natural Resources Body for Wales, references to Wales.”

4.—(1) Section 4 is amended as follows.

(2) In subsection (1)—

- (a) for “coast protection authority” substitute “coastal erosion risk management authority”;
- (b) for “district” substitute “area”.

(3) In subsection (1B), for “district” substitute “area”.

(4) Omit subsection (1C).

5.—(1) Section 5 is amended as follows.

(2) In subsections (1) to (5), for “Environment Agency”, in each place where it occurs, substitute “appropriate agency”.

(3) In subsection (5A)—

(a) after “the Environment Agency” insert “or the Natural Resources Body for Wales”;

(b) after “the Agency” insert “or the Body”.

(4) In subsection (6), for “Environment Agency” substitute “appropriate agency”.

6. In section 8(1), for “Environment Agency”, substitute “appropriate agency”.

7. In sections 16 and 17, for “Environment Agency”, in each place where it occurs, substitute “appropriate agency”.

8. In section 45(1)(b), after “Environment Agency” insert “, the Natural Resources Body for Wales”.

9. In section 47(c), after “Environment Agency”, in each place where it occurs, insert “, the Natural Resources Body for Wales”.

10.—(1) Section 49(1) is amended as follows.

(2) In the appropriate places insert the following definitions—

““appropriate agency” means—

(a) the Environment Agency in relation to work in England;

(b) the Natural Resources Body for Wales in relation to work in Wales;”;

““England” includes the territorial sea adjacent to England not forming any part of Wales;”;

““Wales” has the meaning given by section 158(1) of the Government of Wales Act 2006;”.

(3) In the definition of “drainage authority”, after “the Environment Agency” insert “, the Natural Resources Body for Wales”.

11.—(1) In Schedule 1, paragraph 1 is amended as follows.

(2) In sub-paragraph (b), omit “on the Environment Agency and”.

(3) After sub-paragraph (b), insert—

“(ba) on the Environment Agency if any part of the area affected by the order is

in England, and on the Natural Resources Body for Wales if any part of the area affected by the order is in Wales;”.

12.—(1) Schedule 2 is amended as follows.

(2) In paragraph 2, after “the Environment Agency” insert “(if any land to which the draft order relates is in England), the Natural Resources Body for Wales (if any land to which the draft order relates is in Wales),”.

(3) In paragraph 12, after “the Environment Agency” insert “(if any land to which the interim order relates is in England), the Natural Resources Body for Wales (if any land to which the interim order relates is in Wales),”.

National Parks and Access to the Countryside Act 1949 (c. 97)

13. The National Parks and Access to the Countryside Act 1949 is amended as follows.

14. For any reference to the Countryside Council for Wales substitute a reference to the Natural Resources Body for Wales.

15. For any reference to the Council, other than in section 111, substitute a reference to the NRBW.

16. In section 99(6), after “the Environment Agency” insert “, the Natural Resources Body for Wales”.

17. In section 114(1), for the definition of “drainage authority”, substitute—

““drainage authority” means—

- (a) as respects England, the Environment Agency;
- (b) as respects Wales, the Natural Resources Body for Wales;
- (c) in either case, an internal drainage board;”.

18. In Schedule 1, in paragraph 2(4), after “the Environment Agency” insert “(as respects England), the Natural Resources Body for Wales (as respects Wales), ”.

Opencast Coal Act 1958 (c. 59)

19.—(1) Section 7(8) of the Opencast Coal Act 1958 is amended as follows.

(2) In the definition of “statutory water undertakers”—

- (a) in sub-paragraph (i) omit “and Wales”;
- (b) at the end of sub-paragraph (i) omit “and”;

- (c) at the end of sub-paragraph (ii) insert “and”;
- (d) after sub-paragraph (ii) insert—
 - “(iii) in Wales, the Natural Resources Body for Wales, a water undertaker or a sewerage undertaker.”

Plant Varieties and Seeds Act 1964 (c. 14)

20.—(1) Section 29 of the Plant Varieties and Seeds Act 1964 is amended as follows.

- (2) In subsection (2)—
 - (a) for “Forestry Commissioners” substitute “appropriate authority”;
 - (b) for “those Commissioners”, in each place where it occurs, substitute “the appropriate authority”;
 - (c) for “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

(3) In subsection (3), for “Forestry Commissioners” substitute “appropriate authority”.

- (4) After subsection (3) insert—
 - “(4) In this section “appropriate authority” means—
 - (a) in relation to Wales, the Welsh Ministers;
 - (b) in all other respects, the Forestry Commissioners.”

Harbours Act 1964 (c. 40)

21. The Harbours Act 1964 is amended as follows.

22. In section 58, after “the Environment Agency,” insert “the Natural Resources Body for Wales,”.

23. In Part I of Schedule 3, in paragraph 18(4), in the definition of “the relevant conservation body”, for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Nuclear Installations Act 1965 (c. 57)

24.—(1) Section 26(1) of the Nuclear Installations Act 1965 is amended as follows.

- (2) In the definition of “appropriate Agency”—
 - (a) omit “or Wales”;
 - (b) after sub-paragraph (b), insert—
 - “(c) in the case of a site in Wales, the Natural Resources Body for Wales.”

Plant Health Act 1967 (c. 8)

25. In section 1(2)(a) of the Plant Health Act 1967, at the beginning insert “for England and Scotland”.

Forestry Act 1967 (c. 10)

26. The Forestry Act 1967 is amended as follows.

27.—(1) Section 1 is amended as follows.

(2) After subsection (1) insert—

“(1A) In this Act, “the appropriate forestry authority” means—

- (a) in relation to England and Scotland, the Commissioners;
- (b) in relation to Wales, the Natural Resources Body for Wales.”

(3) In subsection (2)—

- (a) for “Commissioners” substitute “appropriate forestry authority”;
- (b) for “and in England and Wales” substitute “in England and in Wales”.

(4) In subsection (3)—

- (a) for “Commissioners” substitute “appropriate forestry authority’s”;
- (b) for “and in England and Wales” substitute “in England and in Wales”.

(5) In subsection (3A)—

- (a) omit “under the Forestry Acts 1967 to 1979”;
- (b) for “Commissioners” substitute “appropriate forestry authority”.

(6) After subsection (3A) insert—

“(3B) In subsection (3A) “functions” means—

- (a) in relation to the Commissioners, functions under the Forestry Acts 1967 to 1979;
- (b) in relation to the Natural Resources Body for Wales, functions under this Act.”

(7) In subsection (4)(a), omit “and Wales”.

(8) In subsection (6), for “Great Britain” substitute “England and Scotland”.

28.—(1) Sections 3, 5(1) and (2) and 6 are amended as follows.

(2) For any reference to the Commissioners substitute a reference to the appropriate forestry authority.

(3) For “England and Wales”, in each place where it occurs, substitute “England or Wales”.

29. In section 7, for “Commissioners”, in each place where it occurs, substitute “appropriate forestry authority”.

30. In section 7A(1), omit “and Wales”.

31. In section 8A, for “England and Wales” substitute “England or (as the case may be) Wales”.

32.—(1) Section 9 is amended as follows.

(2) In subsection (1), for “Commissioners” substitute “appropriate forestry authority”.

(3) In subsection (3)(b)(i), after “which are felled” insert “in the relevant territory”.

(4) In subsection (5), for “Commissioners” substitute “appropriate legislative authority”.

(5) In subsection (6), after the definition of “quarter” insert—

““relevant territory” means—

- (a) England and Scotland where the felling is carried out in England or Scotland;
- (b) Wales where the felling is carried out in Wales;”.

33.—(1) Sections 10 to 22 are amended as follows.

(2) For any reference to the Commissioners, substitute a reference to the appropriate forestry authority.

(3) For “England and Wales”, in each place where it occurs, substitute “England or Wales”.

34. In section 23(1), for “Commissioners” substitute “appropriate legislative authority”.

35.—(1) Sections 24 to 26 are amended as follows.

(2) For “Commissioners”, in each place where it occurs, substitute “appropriate forestry authority”.

(3) For “England and Wales”, in each place where it occurs, substitute “England or Wales”.

36.—(1) Section 27 is amended as follows.

(2) For “England and Wales”, in each place where it occurs, substitute “England or Wales”.

(3) In subsection (1), after “Forestry Commissioner” insert “, member of the Natural Resources Body for Wales”.

(4) For “Commissioners”, in each place where it occurs, substitute “appropriate forestry authority”.

37. In section 28, for “Commissioners”, in each place where it occurs, substitute “appropriate forestry authority”.

38. In section 30(5), for “Commissioners” substitute “appropriate forestry authority”.

39.—(1) Section 32 is amended as follows.

(2) In subsection (1), for “The Commissioners may, subject” substitute “The appropriate legislative authority may, subject (in the case of the Commissioners)”.

(3) In subsection (3), for “and” substitute “, as regards”.

(4) In subsection (4), omit “and Wales”.

(5) After subsection (5) insert—

“(5A) A statutory instrument containing regulations under this Part making provision only as regards Wales—

- (a) in the case of regulations under section 9(5)(b) or (c), must not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales;
- (b) in a case not falling within paragraph (a), is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

40.—(1) Section 35 is amended as follows.

(2) In the definitions of “conservancy” and “felling directions”, for “Commissioners” substitute “appropriate forestry authority”.

(3) In the definition of “prescribed”, for “Commissioners” substitute “appropriate legislative authority”.

41.—(1) Section 37 is amended as follows.

(2) For subsection (1) substitute—

“(1) For the purposes of advising the appropriate forestry authority as to the performance of their functions under section 1(3) and Part II of this Act, and such other functions as the appropriate forestry authority may from time to time determine—

- (a) the Commissioners shall continue to maintain, in relation to England and Scotland, the central advisory committee known as the Home Grown Timber Advisory Committee; and
- (b) the appropriate forestry authority shall continue to maintain a regional advisory committee for each conservancy (within the meaning of Part II of this Act) in Great Britain.”

(3) In subsection (3), for “Commissioners” substitute “appropriate forestry authority”.

(4) Accordingly, the heading to section 37 becomes “Advisory committees”.

42.—(1) Section 38 is amended as follows.

(2) In subsection (3), for “Commissioners” substitute “appropriate forestry authority”.

(3) In subsection (4)(a) for “or” substitute “, and the appropriate forestry authority may pay to the members”.

43.—(1) Section 39 is amended as follows.

(2) In subsection (1), for “England and Wales” substitute “England or Wales”.

(3) For “Commissioners”, in each place where it occurs, substitute “appropriate forestry authority”.

44.—(1) Section 40(3) is amended as follows.

(2) For “Commissioners”, in each place where it occurs, substitute “appropriate forestry authority”.

(3) In paragraph (a)(i), for “England and Wales” substitute “England or Wales”.

45.—(1) Section 46 is amended as follows.

(2) In subsection (1) for “the Commissioners” substitute “the appropriate legislative authority”.

(3) In subsection (2)—

(a) in the opening words, for “Commissioners” substitute “appropriate legislative authority’s”;

(b) in paragraph (a), for “Commissioners” substitute “appropriate forestry authority”.

(4) In subsection (4) omit “and Wales”.

(5) After subsection (4B) insert—

“(4C) A draft of any statutory instrument containing byelaws under this section with respect to land in Wales must be laid before the National Assembly for Wales.”

46. In section 48, for “Commissioners”, in each place where it occurs, substitute “appropriate forestry authority”.

47. In section 49(1), in the appropriate place insert—

““the appropriate forestry authority” has the meaning given by section 1(1A);

“the appropriate legislative authority” means—

(a) the Commissioners, in relation to England and Scotland;

(b) the Welsh Ministers, in relation to Wales;”.

48. In Schedule 6, in paragraph 4(2), for “as continuing after that commencement to be so placed”

substitute “as being placed at the disposal of the appropriate forestry authority”.

Parliamentary Commissioner Act 1967 (c. 13)

49.—(1) Schedule 2 to the Parliamentary Commissioner Act 1967 is amended as follows.

(2) In the list of departments etc subject to investigation, in the appropriate place insert—

“The Natural Resources Body for Wales.”

(3) In the notes following the list of departments etc, in the appropriate place insert—

“The Natural Resources Body for Wales

In the case of the Natural Resources Body for Wales no investigation is to be conducted in respect of any action in connection with functions of that body in relation to Wales (within the meaning of the Government of Wales Act 2006).”

Agriculture Act 1967 (c. 22)

50. The Agriculture Act 1967 is amended as follows.

51. In section 46(3), for “the Forestry Commission” substitute “the appropriate forestry authority”.

52. In section 49(3)(c), for “the Forestry Commission”, in both places where it occurs, substitute “the appropriate forestry authority”.

53. In section 50(3)(g), after “the Environment Agency” insert “, the Natural Resources Body for Wales,”.

54. In section 52(2)(a), for “the Forestry Commission” substitute “the appropriate forestry authority”.

55. In section 57(1), in the appropriate place insert—

““the appropriate forestry authority” means the Forestry Commission in relation to England and Scotland and the Natural Resources Body for Wales in relation to Wales;”.

Sea Fish (Conservation) Act 1967 (c. 84)

56.—(1) Section 18 of the Sea Fish (Conservation) Act 1967 is amended as follows.

(2) In subsection (1), in the first paragraph, for the words from “any waters” to “under the Salmon and Freshwater Fisheries Act 1975” substitute “the waters specified in subsection (1A)”.

(3) After subsection (1), insert—

“(1A) The waters specified for the purposes of subsection (1) are any waters which are included in the area in relation to which—

(a) by virtue of section 6(7) of the Environment Act 1995, the Environment Agency; or

(b) by virtue of section 6(7A) of that Act, the Natural Resources Body for Wales, carries out functions relating to fisheries under the Salmon and Freshwater Fisheries Act 1975.”

Countryside Act 1968 (c. 41)

57. The Countryside Act 1968 is amended as follows.

58. For any reference to the Countryside Council for Wales substitute a reference to the Natural Resources Body for Wales.

59. For any reference to the Council substitute a reference to the Body.

60. Omit section 1.

61. In section 2, omit subsections (1), (4) and (7).

62. In section 8(4), for “and such” substitute “(if the country park is in England), the Natural Resources Body for Wales (if the country park is in Wales), and in either case, such”.

63. In section 12(4), after “the Environment Agency” insert “if the works are to take place in England, or the Natural Resources Body for Wales if the works are to take place in Wales”.

64. In section 16(7)—

(a) after “the Environment Agency”, insert “if the land is in England, or the Natural Resources Body for Wales if the land is in Wales”;

(b) before “of such authorities”, insert “, in either case,”.

65. In section 23, omit subsection (5).

66.—(1) Section 24 is amended as follows.

(2) In subsection (1)—

(a) for “the said Commissioners” substitute “the appropriate forestry authority”;

(b) for “the Commissioners” substitute “the appropriate forestry authority’s”;

(c) for “their”, in each place where it occurs, substitute “its”.

(3) In subsection (2), for “the Commissioners” substitute “the appropriate forestry authority”.

(4) After subsection (5), insert—

“(6) In this section, “the appropriate forestry authority” means—

- (a) in relation to England, the Forestry Commissioners constituted under the Forestry Acts 1919 to 1945; and
- (b) in relation to Wales, the Natural Resources Body for Wales.”

67.—(1) Section 24A(1) is amended as follows.

(2) Omit “and Wales”.

(3) For “the said Commissioners” substitute “the Forestry Commissioners constituted under the Forestry Acts 1919 to 1945”.

68.—(1) Section 38 is amended as follows.

(2) After “the Environment Agency” insert “, the Natural Resources Body for Wales”.

(3) For “that Authority” substitute “the Agency, the Body”.

69. Omit section 46(2).

Conservation of Seals Act 1970 (c. 30)

70.—(1) The Conservation of Seals Act 1970 is amended as follows.

71.—(1) Section 10 is amended as follows

(2) For “the Secretary of State”, in each place where it occurs, substitute “the appropriate licensing authority”.

(3) In subsection (3)(b)—

- (a) for “the appropriate nature conservation body” substitute “Natural England”;
- (b) after “an area” insert “in, or in waters adjacent to, England”.

(4) Omit subsections (4)(c) and (5).

(5) After subsection (6), insert—

“(7) In this section “the appropriate licensing authority” means—

- (a) the Natural Resources Body for Wales where the area in question is in Wales;
- (b) in any other case, the Marine Management Organisation.

(8) In subsection (7)(a), “Wales” has the meaning given by section 158(1) of the Government of Wales Act 2006.”

72. In section 13, after “the Secretary of State” insert “, the Welsh Ministers and the Natural Resources Body for Wales”.

Local Government Act 1974 (c. 7)

73. In the Local Government Act 1974, omit section 9.

Health and Safety at Work etc. Act 1974 (c. 13)

74. The Health and Safety at Work etc. Act 1974 is amended as follows.

75.—(1) Section 28 is amended as follows.

(2) In subsection (3)(a), after “the Environment Agency,” insert “the Natural Resources Body for Wales,”.

(3) In subsection (4), after “the Environment Agency,” insert “the Natural Resources Body for Wales,”.

(4) In subsection (5)(a), after “the Environment Agency” insert “or of the Natural Resources Body for Wales”.

76. In section 38, after “Environment Agency or” insert “the Natural Resources Body for Wales or”.

Control of Pollution Act 1974 (c. 40)

77. The Control of Pollution Act 1974 is amended as follows.

78. In section 30(1), in the definition of “the appropriate Agency”—

(a) in paragraph (a), omit “and Wales”;

(b) after that paragraph insert—

“(aa) in relation to Wales, the Natural Resources Body for Wales; and”.

79. In section 62(2)(a), after “the Environment Agency,” insert “the Natural Resources Body for Wales,”.

Reservoirs Act 1975 (c. 23)

80. The Reservoirs Act 1975 is amended as follows.

81. For any reference to the Environment Agency, other than in sections 1, 2, 12A, 22A and Schedule 1, substitute a reference to the appropriate agency.

82. For any reference to the Agency, other than in section 2, substitute a reference to the appropriate agency.

83.—(1) Section 1 is amended as follows.

(2) In subsection (4)(a)—

(a) after “the Environment Agency” insert “, the Natural Resources Body for Wales”;

(b) after “that Agency” insert “, Body”.

(3) In subsection (4A), omit “and Wales”.

(4) After subsection (4B), insert—

“(4C) The “area” of the Natural Resources Body for Wales (referred to in this Act as the “NRBW”), in its capacity as a relevant authority for the purposes of this Act, is the whole of Wales.”

(5) After subsection (5), insert—

“(5A) In this Act, “appropriate agency” means—

- (a) in relation to reservoirs in England, the Environment Agency;
- (b) in relation to reservoirs in Wales, the NRBW.”

84.—(1) Section 2 is amended as follows.

(2) In subsection (1)—

- (a) omit “and Wales,”;
- (b) after “the Environment Agency” insert “, in Wales the NRBW”.

(3) In subsection (2A)—

- (a) after “the Environment Agency” insert “or the NRBW”;
- (b) after “the Agency” insert “or the NRBW”.

85.—(1) Section 12A is amended as follows.

(2) In subsection (2)—

- (a) in paragraph (b), after “the Environment Agency” insert “or the NRBW”;
- (b) in paragraph (c)—
 - (i) after “the Environment Agency” insert “or the NRBW”;
 - (ii) after “that Agency” insert “, by the NRBW”.

(3) In subsection (3)—

- (a) in paragraph (b), after “the Environment Agency” insert “if the reservoir concerned is in England or any of the flooding to which the plan relates would be in England”;
- (b) after paragraph (b) insert—

“(ba) the NRBW if the reservoir concerned is in Wales or any of the flooding to which the plan relates would be in Wales;”.

86.—(1) Section 22A is amended as follows.

(2) After “the Environment Agency” insert “or the NRBW”.

(3) Accordingly, the heading of section 22A becomes “Service of notices by the Environment Agency and the NRBW”.

87. In Schedule 1, in the list of defined expressions, in the appropriate places insert—

“Appropriate agency	Section 1(5A)”;
“Area (in relation to the NRBW)	Section 1(4C)”;
“NRBW	Section 1(4C)”.

House of Commons Disqualification Act 1975 (c. 24)

88.—(1) Schedule 1 to the House of Commons Disqualification Act 1975 is amended as follows.

(2) In Part 2, in the list of bodies of which all members are disqualified, insert in the appropriate place—

“the Natural Resources Body for Wales”.

(3) In Part 3, in the list of other disqualifying offices, omit “Any member of the Countryside Council for Wales in receipt of remuneration.”

Salmon and Freshwater Fisheries Act 1975 (c. 51)

89. The Salmon and Freshwater Fisheries Act 1975 is amended as follows.

90.—(1) For any reference to the Agency substitute a reference to the appropriate agency, but this is subject to sub-paragraph (2).

(2) Sub-paragraph (1) does not apply to section 37A(5) or 39, or to the definition of “the Agency” in section 41(1).

91. In section 37A, after subsection (5), insert—

“(5A) The amount by which the sums received by the Natural Resources Body for Wales by way of fixed penalties exceed the sums repaid by it under subsection (4)(a) above shall be paid into the Welsh Consolidated Fund.”

92. In section 41(1), in the appropriate place insert—

““the appropriate agency” means—

- (a) the Agency, except in relation to Wales (within the meaning of the Government of Wales Act 2006); and
- (b) the Natural Resources Body for Wales, in relation to Wales (within that meaning);”.

Local Government (Miscellaneous Provisions) Act 1976 (c. 57)

93. In section 44(1B) of the Local Government (Miscellaneous Provisions) Act 1976, for “were a local authority” substitute “and the Natural Resources Body for Wales were local authorities”.

Rent (Agriculture) Act 1976 (c. 80)

94. In section 30(8) of the Rent (Agriculture) Act 1976, after “the Forestry Commissioners” insert “in relation to land in England and the Natural Resources Body for Wales in relation to land in Wales”.

Forestry Act 1979 (c. 21)

95. The Forestry Act 1979 is amended as follows.

96.—(1) Section 1(1) is amended as follows.

(2) Omit “and Wales”.

(3) After “lessees of land” insert “in England and Scotland”.

97.—(1) Section 2 is amended as follows.

(2) In subsection (2), for “The Forestry Commissioners” substitute “The appropriate authority”.

(3) In subsections (4) and (5)(a), for “the Commissioners” substitute “the appropriate authority”.

(4) In subsection (5)(a), omit “and” in the second place where it occurs.

(5) In subsection (5)(b)—

(a) after “shall” insert “, if made by the Forestry Commissioners,”;

(b) for “.” substitute “; and”.

(6) After subsection (5)(b) insert—

“(c) shall, if made by the Welsh Ministers, be made by statutory instrument subject to annulment in pursuance of a resolution of the National Assembly for Wales”.

(7) After subsection (5) insert—

“(6) In this section “the appropriate authority” means—

(a) in relation to Wales, the Welsh Ministers;

(b) in relation to England, the Forestry Commissioners.”

Import of Live Fish (England and Wales) Act 1980 (c. 27)

98. In section 1(2) of the Import of Live Fish (England and Wales) Act 1980, for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Local Government, Planning and Land Act 1980 (c. 65)

99. In section 185(2)(b) of the Local Government, Planning and Land Act 1980, after “the Environment Agency” insert “or the Natural Resources Body for Wales”.

Highways Act 1980 (c. 66)

100. The Highways Act 1980 is amended as follows.

101. For “the Countryside Council for Wales”, in each place where it occurs, substitute “the Natural Resources Body for Wales”.

102.—(1) Section 105B(8) is amended as follows.

(2) In paragraph (b)(i), after “English Heritage” insert “, the Environment Agency”.

(3) In paragraph (c)(ii), after “organisation;” insert “and”.

(4) Omit paragraph (d).

103. In section 107(4), after “the Environment Agency” insert “, the Natural Resources Body for Wales”.

104.—(1) Section 254(4)(a) is amended as follows.

(2) After “an internal drainage board” insert “, the Natural Resources Body for Wales”.

(3) For “that board or that Authority” substitute “that authority”.

105.—(1) Section 276 is amended as follows.

(2) After “the Environment Agency” insert “, the Natural Resources Body for Wales”.

(3) For “that Agency or board” substitute “that authority”.

106. In section 329(1), in the definition of “drainage authority”, after “the Environment Agency” insert “, the Natural Resources Body for Wales”.

107.—(1) Schedule 1 is amended as follows.

(2) In Part 1, in paragraph 3, in item (ii) of the Table, after “the Environment Agency” insert “, the Natural Resources Body for Wales”.

(3) In Part 2, in paragraph 11(b), after “the Environment Agency” insert “, the Natural Resources Body for Wales”.

Wildlife and Countryside Act 1981 (c. 69)

108. The Wildlife and Countryside Act 1981 is amended as follows.

109.—(1) Section 16 is amended as follows.

(2) After subsection (8B) insert—

“(8C) In this section, in the case of a licence granted under any of subsections (1) to (4) in relation to Wales, the “appropriate authority” means the Natural Resources Body for Wales.”

(3) In subsection (9), in the opening words, for “subsection (8A)” substitute “subsections (8A) and (8C)”.

(4) In subsection (12), after paragraph (b) insert—

“(c) “Wales” has the meaning given by section 158(1) of the Government of Wales Act 2006.”

110. In section 27(1), in the definition of “authorised person”, for paragraph (d) substitute—

“(d) any person authorised in writing by—

- (i) the Environment Agency, in relation to anything done in England;
- (ii) the Natural Resources Body for Wales, in relation to anything done in Wales; or
- (iii) a water undertaker or a sewerage undertaker;”.

111. In section 27(3A), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

112.—(1) Section 27AA is amended as follows.

(2) After “sections 28 to 34” insert “(other than section 28D(2)(d))”.

(3) For “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

113. In section 28D(2)(d), after “the Environment Agency” insert “(only in relation to notifications by Natural England)”.

114. In section 34A(b), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

115. In section 36(7), in the definition of “relevant authority”, for “the Environment Agency” substitute “the Natural Resources Body for Wales”.

116.—(1) Section 37A is amended as follows.

(2) In subsection (1)(b), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

(3) In subsection (2)—

(a) in paragraph (b), at the end insert “and”;

(b) omit paragraph (c).

(4) After subsection (2), insert—

“(2A) Subject to subsection (3), upon receipt of a notification under subsection (1), Natural England shall, in turn, notify the Environment Agency.”

(5) In subsection (3), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

117. In section 39(5)(e), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

118. In section 41A, for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

119. Omit section 47.

120. In section 49, for “the Countryside Council for Wales”, in each place where it occurs, substitute “the Natural Resources Body for Wales”.

121. In section 50(1)(a), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

122. In section 51(2)(a), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

123. In section 70B(7)(b), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Animal Health Act 1981 (c. 22)

124. In section 21(9) of the Animal Health Act 1981, in the definition of “appropriate conservation body”, for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Road Traffic Regulation Act 1984 (c. 27)

125. In section 22 of the Road Traffic Regulation Act 1984, in subsections (1)(a)(iv) and (3), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Inheritance Tax Act 1984 (c. 51)

126. In Schedule 3 to the Inheritance Tax Act 1984, for “Countrywide Council for Wales” substitute “The Natural Resources Body for Wales”.

Agriculture Act 1986 (c. 49)

127. In section 18(2)(b) of the Agriculture Act 1986, for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Control of Pollution (Amendment) Act 1989 (c. 14)

128. The Control of Pollution (Amendment) Act 1989 is amended as follows.

129. In section 5C(2), after paragraph (a) insert—

“(aa) where received by the Natural Resources Body for Wales, must be paid to the Welsh Ministers;”.

130. In section 9(1), in the definition of “regulation authority”—

- (a) in paragraph (a), omit “and Wales” and the “and” at the end;
- (b) after paragraph (a) insert—

“(aa) in relation to Wales, the Natural Resources Body for Wales; and”;
- (c) in the closing words, for “and Wales or, as the case may be, in Scotland” substitute “, Wales or Scotland as the case may be”.

Water Act 1989 (c. 15)

131. The Water Act 1989 is amended as follows.

132.—(1) Section 174 is amended as follows.

(2) In subsection (2)(a)—

- (a) after “the Scottish Environment Protection Agency,” insert “the Natural Resources Body for Wales,”;
- (b) for “or the Water Act 2003” substitute “, the Water Act 2003, the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903) or the Natural Resources Body for Wales (Functions) Order 2012”.

(3) In subsection (4)(a), after “the Scottish Environment Protection Agency,” insert “the Natural Resources Body for Wales”.

133.—(1) In Schedule 25, paragraph 1 is amended as follows.

(2) After sub-paragraph (1)(a) insert—

“(aa) the Natural Resources Body for Wales;”.

(3) In sub-paragraph (3), after “the Environment Agency,” insert “the Natural Resources Body for Wales;”.

(4) In sub-paragraph (6), after “the Environment Agency,” insert “the Natural Resources Body for Wales;”.

(5) In sub-paragraph (9)(a), after “the Environment Agency” insert “or the Natural Resources Body for Wales”.

(6) In sub-paragraph (11), after “the Environment Agency” insert “or the Natural Resources Body for Wales”.

Electricity Act 1989 (c. 29)

134. The Electricity Act 1989 is amended as follows.

135.—(1) Schedule 4 is amended as follows.

(2) In paragraph 3(1)(c), after “National Rivers Authority,” insert “the Natural Resources Body for Wales;”.

(3) In paragraph 4(1)(b), after “the Environment Agency,” insert “the Natural Resources Body for Wales;”.

136. In Schedule 9, in paragraph 2(2)(b), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Town and Country Planning Act 1990 (c. 8)

137. The Town and Country Planning Act 1990 is amended as follows.

138. In section 200, after “Forestry Commissioners”, in each place where it occurs, insert “or the Natural Resources Body for Wales”.

139. In section 204, for each reference to the Forestry Commissioners substitute a reference to the Natural Resources Body for Wales.

140. In section 252(12)(i), after “Environment Agency” insert “and the Natural Resources Body for Wales”.

141. In section 262(3), after “Environment Agency,” insert “the Natural Resources Body for Wales;”

142. In section 265(3), at the end of paragraph (a), omit “and” and insert—

“(aa) in relation to the Natural Resources Body for Wales, means the Secretary of State or the Secretary of State for

Environment, Food and Rural Affairs;
and”.

143.—(1) In Schedule 5, paragraph 4 is amended as follows.

(2) For “Forestry Commission”, in each place where it occurs, substitute “appropriate body”.

(3) In sub-paragraph (4), for “Commission” substitute “appropriate body”.

(4) After sub-paragraph (5), insert—

“(6) In this paragraph “appropriate body” means—

- (a) in relation to England, the Forestry Commission; and
- (b) in relation to Wales, the Natural Resources Body for Wales.”

Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)

144. In section 91(3)(b) of the Planning (Listed Buildings and Conservation Areas) Act 1990, after “the Environment Agency” insert “, the Natural Resources Body for Wales”.

Planning (Hazardous Substances) Act 1990 (c. 10)

145. In section 39(5) of the Planning (Hazardous Substances) Act 1990, after “the Environment Agency” insert “, the Natural Resources Body for Wales”.

Environmental Protection Act 1990 (c. 43)

146. The 1990 Act is amended as follows.

147.—(1) Section 30(1) is amended as follows.

(2) In paragraph (a), omit “and Wales” and the “and” at the end.

(3) After paragraph (a) insert—

“(aa) in relation to Wales, is a reference to the Natural Resources Body for Wales; and”.

(4) In the closing words, after “Environment Agency” insert “, the Natural Resources Body for Wales”.

148. In section 33A(5), after “Environment Agency” insert “, the Natural Resources Body for Wales”.

149.—(1) Section 33B is amended as follows.

(2) In subsection (3), after paragraph (a) insert—

“(aa) the Natural Resources Body for Wales;”.

(3) In subsection (4)—

- (a) after “Environment Agency” insert “, the Natural Resources Body for Wales”;
- (b) after “Agency” insert “, Body”.

150. In section 33C(10), in the definition of “relevant enforcement authority” after paragraph (a), omit “or” and insert—

“(aa) the Natural Resources Body for Wales, where the proceedings in respect of the offence have been brought by or on behalf of that Body, or”.

151. In section 34A(14), in the definition of “enforcement authority” after “Environment Agency” insert “, the Natural Resources Body for Wales”.

152.—(1) In section 34B(11), the definition of “enforcement authority” is amended as follows.

(2) In paragraph (a), at the end omit “or”.

(3) After paragraph (a) insert—

“(aa) the Natural Resources Body for Wales, or”.

153. In section 36(7), for “Countryside Council for Wales” substitute “Natural Resources Body for Wales”.

154. In section 73A after subsection (1) insert—

“(1A) The Natural Resources Body for Wales must pay amounts received by it under section 34A above to the Welsh Ministers.”

155. In section 78A(9), in the definition of “the appropriate Agency”—

- (a) in paragraph (a), omit “and Wales”;
- (b) after paragraph (b) insert—

“(c) in relation to Wales, the Natural Resources Body for Wales;”.

156.—(1) Section 78L(1) is amended as follows.

(2) In paragraph (a), omit “in relation to land in England”.

(3) In paragraph (b), for “the Environment Agency in relation to land in Wales” substitute “the Natural Resources Body for Wales”.

157. In section 78U(1) for “in England and Wales or in Scotland” substitute “in England, Wales or Scotland”.

Coal Mining Subsidence Act 1991 (c. 45)

158. The Coal Mining Subsidence Act 1991 is amended as follows.

159. In section 36(8), in the definition of “the appropriate drainage authority”, in paragraph (a), after “the Environment Agency” insert “in relation to England or the Natural Resources Body for Wales in relation to Wales”.

160. In section 52(1), in the definition of “statutory undertakers”, in paragraph (b), after “the Environment Agency,” insert “the Natural Resources Body for Wales,”.

Deer Act 1991 (c. 54)

161. In section 8(2) of the Deer Act 1991, for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Water Industry Act 1991 (c. 56)

162. The Water Industry Act 1991 is amended as follows.

163.—(1) Section 3(4) is amended as follows.

(2) Before paragraph (a), insert—

“(za) the functions of the NRBW;”.

(3) Before “Environment Agency”, in the second place where it occurs, insert “the NRBW,”.

164. In section 4, for “the Countryside Council for Wales” and “the Council”, in each place where they occur, substitute “the NRBW”.

165.—(1) Section 5(4) is amended as follows.

(2) In paragraph (a), after “Agency” insert “and the NRBW”.

(3) In paragraph (b), omit “and the Countryside Council for Wales”.

166. In section 17F(7), after paragraph (d), insert—

“(da) on the NRBW;”.

167. In section 17G(4)(a), after sub-paragraph (iii), insert—

“(iiia) the NRBW;”.

168.—(1) Section 37A is amended as follows.

(2) In subsection (8)—

(a) in paragraph (a), after “Agency” insert “, if the plan (or revised plan) would affect water resources in England;”;

(b) after paragraph (a), insert—

“(aa) the NRBW, if the plan (or revised plan) would affect water resources in Wales;”.

(3) For subsection (9) substitute—

“(9) Before giving a direction under subsection (6)(b), the Secretary of State shall consult—

- (a) the Environment Agency, if the revised plan would affect water resources in England, and
- (b) the NRBW, if the revised plan would affect water resources in Wales.”

(4) After subsection (9) insert—

“(9A) Before giving a direction under subsection (6)(b), the Welsh Ministers shall consult—

- (a) the NRBW, if the revised plan would affect water resources in Wales, and
- (b) the Environment Agency, if the revised plan would affect water resources in England.”

169.—(1) Section 39B is amended as follows.

(2) In subsection (7)—

- (a) in paragraph (a), after “Agency” insert “, if the plan (or revised plan) would affect water resources in England;”;
- (b) after paragraph (a), insert—
 - “(aa) the NRBW, if the plan (or revised plan) would affect water resources in Wales;”.

(3) For subsection (11) substitute—

“(11) Before giving a direction under subsection (6)(b), the Secretary of State shall consult—

- (a) the Environment Agency, if the revised plan would affect water resources in England, and
- (b) the NRBW, if the revised plan would affect water resources in Wales.”

(4) After subsection (11), insert—

“(11A) Before giving a direction under subsection (6)(b), the Welsh Ministers shall consult—

- (a) the NRBW, if the revised plan would affect water resources in Wales, and
- (b) the Environment Agency, if the revised plan would affect water resources in England.”

170. In section 40, for subsection (5) substitute—

“(5) The Authority shall not make an order under this section unless it has first consulted—

- (a) the Environment Agency, if the order applies to a supply of water that would affect water resources in England;
- (b) the NRBW, if the order applies to a supply of water that would affect water resources in Wales.”

171. In section 40A, for subsection (3) substitute—

“(3) Before making any order under this section the Authority shall consult—

- (a) the Environment Agency, if the order applies to a bulk supply agreement that would affect water resources in England;
- (b) the NRBW, if the order applies to a bulk supply agreement that would affect water resources in Wales”.

172.—(1) Section 66F is amended as follows.

(2) In subsection (2), for the words from “the Secretary” to “Agency” substitute “the persons specified in subsection (2A)”.

(3) After subsection (2), insert—

“(2A) The persons specified for the purposes of subsection (2) are—

- (a) the Secretary of State (subject to subsections (3) and (4) below);
- (b) the Environment Agency, if the determination is in relation to a supply of water that would affect water resources in England;
- (c) the NRBW, if the determination is in relation to a supply of water that would affect water resources in Wales.”

173.—(1) Section 66G(4) is amended as follows.

(2) In paragraph (c), after “the Environment Agency” insert “, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker whose area is wholly in England”.

(3) After paragraph (c), insert—

- “(ca) the NRBW, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker whose area is wholly in Wales;
- (cb) the NRBW and the Environment Agency if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker whose area is partly in Wales and partly in England;”.

174.—(1) Section 66H(4) is amended as follows.

(2) In paragraph (c), after “the Environment Agency” insert “, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker whose area is wholly in England”.

(3) After paragraph (c), insert—

“(ca) the NRW, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker whose area is wholly in Wales;”

(cb) the NRW and the Environment Agency, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker whose area is partly in Wales and partly in England;” .

175.—(1) Section 71 is amended as follows.

(2) For “the Environment Agency” and “the Agency”, in each place where they occur, substitute “the appropriate agency”.

(3) After subsection (8), insert—

“(9) In this section “the appropriate agency” means—

(a) the Environment Agency, in relation to a well, borehole or other work in England;

(b) the NRW, in relation to a well, borehole or other work in Wales.”

176.—(1) Section 101A is amended as follows.

(2) In subsection (5)—

(a) in paragraph (a), after “the Environment Agency” insert “, if the guidance applies to premises in England”;

(b) after paragraph (a), insert—

“(aa) the NRW, if the guidance applies to premises in Wales;”.

(3) In subsections (7) to (10), for “Environment Agency”, in each place where it occurs, substitute “appropriate agency”.

(4) After subsection (10), insert—

“(11) In this section “the appropriate agency” means—

(a) the Environment Agency, in relation to disputes between sewerage undertakers and owners or occupiers of premises in England;

(b) the NRW, in relation to disputes between sewerage undertakers and

owners or occupiers of premises in Wales.”

177. In section 110A, for subsection (6) substitute—

“(6) The Authority shall not make an order under this section unless it has first consulted—

- (a) the Environment Agency, where the proposed main connection would discharge to a sewerage system that would dispose of that discharge to any controlled waters in England;
- (b) the NRBW, where the proposed main connection would discharge to a sewerage system that would dispose of that discharge to any controlled waters in Wales.”

178.—(1) Sections 120, 123, 127, 130 to 134 and 135A are amended as follows.

(2) For any reference to the Environment Agency (however framed), other than in section 132(2)(a)(zai) and (ai), substitute a reference to the appropriate agency.

179.—(1) Section 132 is amended as follows.

(2) In subsection (2)(a), before sub-paragraph (i), insert—

“(zai) where the Environment Agency is the appropriate agency, to the NRBW if the discharge or proposed discharge of special category effluent is from trade premises in England;

(ai) where the NRBW is the appropriate agency, to the Environment Agency if the discharge or proposed discharge of special category effluent is from trade premises in Wales;”.

(3) In subsection (3), for “the sewerage undertaker in question and on the person specified in subsection (2)(a)(ii)” substitute “any person consulted under subsection (2)(a)”.

180. In section 133(6), for “the sewerage undertaker in question and on the person specified in section 132(2)(a)(ii)” substitute “any person consulted under section 132(2)(a)”.

181. In section 141(1), in the appropriate place, insert—

““appropriate agency” means—

- (a) in relation to the discharge or proposed discharge of special category effluent to a public sewer that directly or indirectly discharges or is to discharge

(other than via a storm-water overflow sewer) that effluent to any controlled waters in England, the Environment Agency;

- (b) in relation to discharge or proposed discharge of special category effluent to a public sewer that directly or indirectly discharges or is to discharge (other than via a storm-water overflow sewer) that effluent to any controlled waters in Wales, the NRBW;”.

182. In section 156(4)(c) and (d), for “the Countryside Council for Wales”, in each place where it occurs, substitute “the NRBW”.

183.—(1) Section 161 is amended as follows.

(2) In subsection (3)(b), after “the Environment Agency”, in each place where it occurs, insert “or the NRBW”.

(3) In subsection (4), after “the Environment Agency” insert “, where the proposed works will affect any watercourse in England, and the NRBW, where the proposed works will affect any watercourse in Wales,”.

184.—(1) Section 166 is amended as follows.

(2) In subsection (1), for “the Environment Agency” substitute “the appropriate agency”.

(3) After subsection (9) insert—

“(10) In this section “the appropriate agency” means—

- (a) the Environment Agency, in relation to discharges of water in England;
- (b) the NRBW, in relation to discharges of water in Wales.”

185. In section 184(1), after “Environment Agency”, in both places where it occurs, insert “or the NRBW”.

186. In section 195(2)(bb), for “or the Environment Agency” substitute “, the Environment Agency or the NRBW”.

187. In section 202(6), after “the Environment Agency” insert “or on the Welsh Ministers with respect to the NRBW”.

188.—(1) Section 206 is amended as follows.

(2) In subsection (3)(a)—

- (a) after “the Scottish Environment Protection Agency,” insert “the NRBW,”;
- (b) for “or the Water Act 2003” substitute “the Water Act 2003, the Natural Resources Body for Wales (Establishment) Order 2012

(S.I. 2012/1903), or the Natural Resources Body for Wales (Functions) Order 2012”.

(3) In subsection (4)(a), after “the Environment Agency,” insert “the NRBW,”.

189. In section 209(3)(a), after “the Environment Agency,” insert “the NRBW,”.

190. In section 215(3)—

(a) after “the Environment Agency”, in the first place where it occurs, insert “or the NRBW”;

(b) after “the Environment Agency”, in the second place where it occurs, insert “or, as the case may be, the NRBW”.

191.—(1) Section 217 is amended as follows.

(2) In subsection (2), after “the Environment Agency”, in the first and second places where it occurs, insert “or the NRBW”.

(3) In subsection (3), after “the Environment Agency”, in each place where it occurs, insert “or the NRBW”.

(4) In subsection (4) after “the Environment Agency,” insert “on the NRBW,”.

(5) In subsection (7), after “the Environment Agency,” insert “or the NRBW”.

192.—(1) Section 219(1) is amended as follows.

(2) In the definition of “public authority”, after “Environment Agency,” insert “the NRBW,”.

(3) In the definition of “watercourse”, after “Environment Agency” insert “, the NRBW”.

(4) In the appropriate place, insert—

““the NRBW” means the Natural Resources Body for Wales;”.

193.—(1) Section 221 is amended as follows.

(2) In subsection (2), for “Environment Agency” substitute “appropriate agency”.

(3) In subsection (7), in the appropriate place, insert—

““the appropriate agency” means—

(a) in relation to any act or omission of the Crown in England, the Agency;

(b) in relation to any act or omission of the Crown in Wales, the NRBW;”.

194. In Schedule 1A, after paragraph 9(3)(c), insert—

“(ca) the NRBW;”.

195.—(1) In Schedule 11, paragraph 1(3) is amended as follows.

(2) In paragraph (a), after “Environment Agency” insert “, if the whole or any part of a relevant locality is in England”.

(3) After paragraph (a), insert—

“(aa) the NRBW, if the whole or any part of a relevant locality is in Wales;”.

196.—(1) In Schedule 13, paragraph 1 is amended as follows.

(2) In sub-paragraph (2), after “the Environment Agency”, in each place where it occurs, insert “or the NRBW”.

(3) In sub-paragraph (5)(a), after “the Environment Agency,” insert “the NRBW,”.

Water Resources Act 1991 (c. 57)

197. The Water Resources Act 1991 is amended as follows.

198.—(1) For any reference to the Agency substitute a reference to the appropriate agency, but this is subject to sub-paragraph (2).

(2) Sub-paragraph (1) does not apply to sections 15, 84(2), 118(1)(b), 119, 154 to 157, 158(1), 166(3), 169 to 172, 174, 184, 186, 188, 204, 208, 221, 222, 225, Schedule 8, Schedule 20 and paragraph 7(b) of Schedule 26.

199.—(1) Section 15 is amended as follows.

(2) In subsection (1)—

- (a) after “Agency”, in the first place where it occurs, insert “and the NRBW”;
- (b) for “its” substitute “their”;
- (c) after “Agency”, in the second place where it occurs, insert “or the NRBW, as the case may be,”.

(3) In subsection (2)—

- (a) in paragraph (a), for “or the Water Act 1989” substitute “, the Water Act 1989, the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903) , or the Natural Resources Body for Wales (Functions) Order 2012”;
- (b) after “Agency”, in the first and second places where it occurs, insert “or the NRBW”;
- (c) after “Agency”, in the final place where it occurs, insert “and the NRBW”.

200. In section 20(1), after “section 6(2)” insert “or, as the case may be, section 6(2A)”.

201. In section 20A(1), after “section 6(2)” insert “or, as the case may be, section 6(2A)”.

202. In section 20C(1), after “section 6(2)” insert “or, as the case may be, section 6(2A)”.

203.—(1) Section 21 is amended as follows.

(2) In subsection (3)—

(a) before paragraph (a) insert—

“(za) if those waters are in Wales and there are related inland waters in England, the Agency;

(zb) if those waters are in England and there are related inland waters in Wales, the NRBW;”;

(b) in paragraph (e) omit “wholly or partly”.

204. In section 61A(3), after “(which confers powers to make schemes imposing charges)” insert “, as modified by subsection (9A) of that section,”.

205.—(1) Section 84(2) is amended as follows.

(2) For “the Agency” substitute “the appropriate agency”.

(3) At the end of paragraph (a) omit “and”.

(4) After paragraph (a) insert—

“(aa) in the case of the NRBW, to consult, in such cases as it may consider appropriate with the Agency in England; and”.

(5) In paragraph (b)—

(a) at the beginning insert “in the case of the Agency;”;

(b) at the end insert “or with the NRBW in Wales”.

206.—(1) Section 118(1) is amended as follows.

(2) At the end of paragraph (a) omit “and”.

(3) In paragraph (b)—

(a) before “shall be disregarded” insert “where the appropriate agency is the Agency;”;

(b) at the end, for “.” substitute “; and”.

(4) After paragraph (b) insert—

“(c) where the appropriate agency is the NRBW, shall be disregarded in determining the amount of any surplus for the purposes of article 13 of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903).”

207.—(1) Section 154 is amended as follows.

(2) In subsection (1), after “Agency”, in each place where it occurs, insert “or the NRBW”.

(3) In subsection (2), in paragraph (b)—

- (a) after “Agency”, in the first place where it occurs, insert “or, as the case may be, by the NRBW,”;
 - (b) after “Agency”, in the second place where it occurs, insert “or the NRBW”.
- (4) In subsections (3) and (4), after “Agency”, in each place where it occurs, insert “or the NRBW”.
- (5) In subsection (6)—
- (a) after “(incidental general powers of the Agency)” insert “or article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I. 2012/1903)”;
 - (b) after “on the Agency” insert “or the NRBW”;
 - (c) in paragraph (a), after “Agency” insert “or, as the case may be, the NRBW”.
- (6) After subsection (6) insert—
- “(7) In this section, in relation to the NRBW, references to functions have effect as references to relevant transferred functions.”

208.—(1) Section 155 is amended as follows.

- (2) In subsection (1)—
- (a) after “the Agency”, in the first and second places where it occurs, insert “or the NRBW”;
 - (b) after “the Agency”, in the third place where it occurs, insert “and the NRBW”;
 - (c) after “for the purpose of carrying out its functions” insert “or, as the case may be, its relevant transferred functions”.
- (3) In subsections (3) and (4), after “the Agency” insert “or, as the case may be, the NRBW”.
- (4) In subsection (5)—
- (a) after “the Agency”, in the first and second places where it occurs, insert “or, as the case may be, the NRBW”;
 - (b) in paragraph (b), after “the Agency”, in each place where it occurs, insert “or the NRBW”.
- (5) In subsection (6), after “the Agency” insert “or, as the case may be, the NRBW”.

209.—(1) Section 156 is amended as follows.

- (2) In subsection (1)—
- (a) after “(incidental general powers of the Agency)” insert “or article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I. 2012/1903)”;

- (b) after “the Agency”, in the second place where it occurs, insert “or, as the case may be, the NRBW,”;
 - (c) for “that section” substitute “those provisions”.
- (3) In subsection (2)—
- (a) after “(incidental general powers of the Agency)” insert “or article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I. 2012/1903)”;
 - (b) after “the Agency”, in the second place where it occurs, insert “or, as the case may be, the NRBW,”.

210.—(1) Section 157 is amended as follows.

(2) In subsection (1), after “the Agency” insert “and the NRBW”.

(3) In subsection (2), after “the Agency” insert “or, as the case may be, the NRBW”.

(4) After subsection (6) insert—

“(7) In this section “compulsorily acquired land”, in relation to the NRBW, means any land of the NRBW which—

- (a) was acquired by the NRBW compulsorily under the provisions of section 154 above or of an order under section 168 below;
- (b) was acquired by the NRBW at a time when it was authorised under those provisions to acquire the land compulsorily; or
- (c) being land which has been transferred to the NRBW from the Agency in accordance with a scheme made under section 23 of the Public Bodies Act 2011, was compulsorily acquired land of the Agency within the meaning of subsection (6).”

211.—(1) Section 158(1) is amended as follows.

(2) After “section 37 of the 1995 Act (incidental powers of the Agency)” insert “, or (as the case may be) of the NRBW by virtue of article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I. 2012/1903),”.

(3) In paragraph (a), for “Agency’s” substitute “appropriate agency’s”.

(4) In paragraphs (a) and (c), for “Agency” substitute “appropriate agency”.

212. After section 168(8) insert—

“(9) In this section, in relation to the NRBW, references to functions have effect as references to relevant transferred functions.”

213.—(1) Section 169 is amended as follows.

(2) In subsection (1)—

- (a) for “or by the Agency”, substitute “, by the Agency, or by the NRBW,”;
- (b) in paragraph (a), after “Agency” insert “or of any relevant byelaws made by the NRBW”;
- (c) in paragraph (b), for “or the Agency” substitute “, the Agency, or the NRBW”.

(3) In subsection (3), after “Agency” insert “or the NRBW”.

(4) In subsection (4), after “Agency’s” insert “or the NRBW’s”.

(5) After subsection (4) insert—

“(5) In relation to the NRBW, the reference to functions in subsection (3) has effect as a reference to relevant transferred functions.

(6) In this section, “relevant byelaws” means byelaws made (or treated as if made) by the NRBW by or under any relevant transferred functions.”

214.—(1) Section 170 is amended as follows.

(2) In subsection (1), after “Agency” insert “or by the NRBW”.

(3) In subsection (2)(a)(i), after “Agency” insert “or the NRBW”.

(4) In subsection (3)—

- (a) after “Agency”, in the first place where it occurs, insert “or by the NRBW”;
- (b) after “Agency”, in the second place where it occurs, insert “or the NRBW”.

215.—(1) Section 171 is amended as follows.

(2) In subsection (1), after “Agency” insert “or by the NRBW”.

(3) In subsection (2), after “Agency”, in each place where it occurs, insert “or the NRBW”.

(4) In subsection (3)(c), after “Agency” insert “or the NRBW”.

(5) After subsection (5) insert—

“(6) In relation to the NRBW, the reference to functions in subsection (2)(a) has effect as a reference to relevant transferred functions.”

216.—(1) Section 172 is amended as follows.

(2) In subsection (1)—

(a) for “or the Agency” substitute “, by the Agency, or by the NRBW”;

(b) in paragraph (a), for “or on the Agency” substitute “, on the Agency, or on the NRBW,”.

(3) In subsections (2) and (3), for “or the Agency”, in each place where it occurs, substitute “, the Agency, or the NRBW,”.

(4) In subsection (3A), after “Agency’s” insert “or the NRBW’s”.

(5) In subsection (4), after “Agency” insert “or the NRBW”.

(6) After subsection (4) insert—

“(5) In relation to the NRBW, the reference to functions in subsection (4) has effect as a reference to relevant transferred functions.”

217. In section 174(1) and (2), after “Agency” insert “or by the NRBW”.

218. In section 184, for “the Agency”, in each place where it occurs, substitute “the NRBW”.

219.—(1) Section 186 is amended as follows.

(2) In subsection (1), at the appropriate place insert—

““relevant transferred functions” means any functions which—

(a) were exercisable by the Agency before 1 April 2013, and

(b) are functions of the NRBW by virtue of the Natural Resources Body for Wales (Functions) Order 2012,

but this is subject to subsection (1A).”

(3) After subsection (1) insert—

“(1A) For the purposes of the definition of “relevant transferred functions”—

(a) a function of the Agency is exercisable whether or not the enactment conferring it has come into force before 1 April 2013, but

(b) a function is only a relevant transferred function when the enactment conferring the Agency function transferred to or conferred on the NRBW is commenced.”

(4) In subsection (3), after “the Agency” insert “or on the NRBW”.

220. For section 188 substitute—

“188 Duty of the Agency and NRBW to publish information

(1) The Agency must—

- (a) collate and publish information from which assessments can be made of the actual and prospective demand for water, and of actual and prospective water resources, in England; and
- (b) collaborate with others, so far as it considers it appropriate to do so, in collating and publishing any such information or any similar information in relation to places outside England.

(2) The NRBW must—

- (a) collate and publish information from which assessments can be made of the actual and prospective demand for water, and of actual and prospective water resources, in Wales; and
- (b) collaborate with others, so far as it considers it appropriate to do so, in collating and publishing any such information or any similar information in relation to places outside Wales.”

221.—(1) Section 204 is amended as follows.

(2) In subsection (2)(a)—

- (a) after “the Agency,” insert “the NRBW,”;
- (b) for “or the Water Act 2003” substitute “the Water Act 2003, the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903), or the Natural Resources Body for Wales (Functions) Order 2012”.

(3) In subsection (3)(a) after paragraph (ia) insert—
“(ib) the NRBW;”.

222.—(1) Section 208 is amended as follows.

(2) In subsection (1)—

- (a) after “Agency”, in the first place where it occurs, insert “or the NRBW”;
- (b) after “Agency”, in the second place where it occurs, insert “or, as the case may be, the NRBW,”.

(3) In subsections (2), (3), (5) and (6), after “Agency”, in each place where it occurs, insert “or the NRBW”.

(4) In subsection (4)—

- (a) after “Agency” insert “or the NRBW”;
- (b) after “Agency’s” insert “or the NRBW’s”.

(5) Accordingly, the heading of section 208 becomes “Civil liability of the Agency or NRBW for escapes of water etc”.

223.—(1) Section 221(1) is amended as follows.

(2) After the definition of “analyse” insert—

““the appropriate agency” means:

- (a) in relation to Wales, the NRBW;
- (b) in any other case, the Agency;”.

(3) In the definition of “flood defence functions”—

- (a) for “the Agency”, in each place where it occurs (except in paragraph (b)) substitute “the appropriate agency”;
- (b) in paragraph (b) after “those functions” insert “of the appropriate agency which were previously”.

(4) After the definition of “notice” insert—

““the NRBW” means the Natural Resources Body for Wales;”.

(5) In the definition of “public authority”, after “the Agency,” insert “the NRBW,”.

(6) In the definition of “watercourse”, after “Agency” insert “, the NRBW,”.

(7) After subsection (1) insert—

“(1A) For the purposes of the definition of “appropriate agency” in subsection (1), “Wales” has the meaning given by section 158 of the Government of Wales Act 2006.”

224.—(1) Section 222 is amended as follows.

(2) In subsection (2), for “Environment Agency” substitute “appropriate body”.

(3) In subsection (8)—

- (a) after “Agency’s” insert “or the NRBW’s”;
- (b) after “Agency” insert “or the NRBW”.

(4) In subsection (9), in the appropriate place, insert—

““the appropriate body” means—

- (a) in relation to any act or omission of the Crown in England, the Agency;
- (b) in relation to any act or omission of the Crown in Wales, the NRBW;”.

225. In Schedule 6, in paragraph 1(4) —

- (a) at the end of paragraph (g) insert “and”;
- (b) omit paragraph (h).

226.—(1) Schedule 8 is amended as follows.

(2) In paragraph 1(2), in the Table, in the entry relating to “All orders”, after paragraph (a) insert—

“(aa) The NRBW (where it is not the applicant).”

(3) In paragraph 2(7)—

- (a) after “Agency” insert “or in connection with relevant environmental functions of or in relation to the NRBW”;
- (b) before “, a local inquiry held under this paragraph” insert “as modified by subsection (4) of that section”.

227.—(1) Schedule 20 is amended as follows.

(2) In paragraph 6(3)(b), after “Agency” insert “or the NRBW”.

(3) In paragraph 8(1), for “or the Agency” substitute “, the Agency, or the NRBW”.

228. In Schedule 22, in paragraph 5, after “section 37 of the 1995 Act” insert “or, as the case may be, article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903)”.

Land Drainage Act 1991 (c. 59)

229. The Land Drainage Act 1991 is amended as follows.

230. In sections 2 to 10, for “Agency”, in each place where it occurs, substitute “appropriate supervisory body”.

231.—(1) Section 11 is amended as follows.

(2) In subsection (1), after “Agency”, in both places where it occurs, insert “or the Natural Resources Body for Wales”.

(3) In subsection (2), for “Agency”, in each place where it occurs, substitute “appropriate supervisory body”.

232. In section 14A(8)(b), for “Environment Agency” substitute “appropriate agency”.

233. In sections 16, 18 and 22(3)(b), for “Agency”, in each place where it occurs, substitute “appropriate agency”.

234.—(1) Section 23 is amended as follows.

(2) In subsection (1B), for “Environment Agency” substitute “appropriate agency”.

(3) In subsection (1C), for “Environment Agency” substitute “appropriate supervisory body”.

235. In sections 32 and 35(1), for “Agency”, in each place where it occurs, substitute “appropriate agency”.

236. In sections 36(1), 38, 39 and 47, for “Agency”, in each place where it occurs, substitute “appropriate supervisory body”.

237. In sections 56, 57 and 58, for “Agency”, in each place where it occurs, substitute “appropriate agency”.

238. In section 59, after “Agency” insert “or the Natural Resources Body for Wales”.

239. In section 61A, for “Agency”, in each place where it occurs, substitute “appropriate supervisory body”.

240. In section 61B, for “Agency”, in each place where it occurs, substitute “appropriate agency”.

241. In section 61C, for “the Countryside Council for Wales”, in each place where it occurs, substitute “the Natural Resources Body for Wales”.

242.—(1) Section 61E(4) is amended as follows.

(2) After paragraph (a), insert—

“(aa) the Natural Resources Body for Wales;”.

(3) In paragraph (b), omit “and the Countryside Council for Wales”.

243. In section 61F, for “Agency”, in each place where it occurs, substitute “appropriate agency”.

244.—(1) Section 67 is amended as follows.

(2) In subsection (2), after “Agency”, in each place where it occurs, insert “or the Natural Resources Body for Wales”.

(3) In subsection (5), for “Agency” substitute “appropriate agency”.

245. In section 70, after “Agency” insert “or the Natural Resources Body for Wales”.

246.—(1) Section 72 is amended as follows.

(2) In subsection (1)—

(a) in the appropriate place insert—

““the appropriate agency” means—

(a) in relation to England, the Agency;

(b) in relation to Wales, the Natural Resources Body for Wales;

“the appropriate supervisory body” means—

(a) in relation to internal drainage districts which are wholly or mainly in England, the Agency;

(b) in relation to internal drainage districts which are wholly or mainly in Wales, the Natural Resources Body for Wales.”;

(b) in the definition of “drainage body”, after “Agency,” insert “the Natural Resources Body for Wales,”.

(3) In subsection (6), after “Agency” insert “, the Natural Resources Body for Wales”.

(4) In subsection (8), after “Agency” insert “or the Natural Resources Body for Wales”.

247. In section 74(5), after “Agency” insert “or the Natural Resources Body for Wales”.

248. In Schedule 2, in paragraphs 4(1)(b) and 5(1)(b), for “Agency” substitute “appropriate supervisory body”.

249. In Schedule 4, for “Agency”, in each place where it occurs, substitute “appropriate agency”.

250. In Schedule 6, in paragraph 1(1)(a), after “Agency,” insert “the Natural Resources Body for Wales,”.

Transport and Works Act 1992 (c. 42)

251. In section 6(7)(b) of the Transport and Works Act 1992, for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Protection of Badgers Act 1992 (c. 51)

252. In section 10(4)(b) of the Protection of Badgers Act 1992, for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Clean Air Act 1993 (c. 11)

253. The Clean Air Act 1993 is amended as follows.

254.—(1) Section 31 is amended as follows.

(2) In subsection (4)(b), for “Environment Agency” substitute “appropriate agency”.

(3) After subsection (5) insert—

“(6) In this section, “appropriate agency” means—

(a) in relation to England, the Environment Agency;

(b) in relation to Wales, the Natural Resources Body for Wales.”

255. In section 36(2A), for “Environment Agency”, in each place where it occurs, substitute “appropriate agency”.

256. In section 40, before paragraph (a) insert—

“(za) “appropriate authority” means—

(i) in relation to England, the Environment Agency;

(ii) in relation to Wales, the Natural Resources Body for Wales;”.

Cardiff Bay Barrage Act 1993 (c. 42)

257. The Cardiff Bay Barrage Act 1993 is amended as follows.

258. For any reference to the Countryside Council for Wales, substitute a reference to the Natural Resources Body for Wales.

259. For any reference to the Environment Agency, other than in section 2 and paragraphs 3 and 4(1)(c) of Schedule 3, substitute a reference to the Natural Resources Body for Wales.

260. In Schedule 3, in paragraph 7(1)(a), omit “, 3 or 4(1)(c)”.

Environment Act 1995 (c. 25)

261. The 1995 Act is amended as follows.

262.—(1) Section 4 is amended as follows.

(2) For “the Ministers consider” and “they consider”, in each place where they occur, substitute “the Secretary of State considers”.

(3) For “the Ministers shall”, in each place where it occurs, substitute “the Secretary of State shall”.

263.—(1) Before the heading to section 5, insert the following Chapter heading—

“Chapter 1A

General functions of the Agency and the Natural Resources Body for Wales”.

(2) Sections 5 to 11 become Chapter 1A of Part 1.

264.—(1) Section 5 is amended as follows.

(2) For any reference to the Agency substitute a reference to the appropriate agency.

(3) In subsection (3), for “either of the Ministers” and “that Minister” substitute “the appropriate national authority”.

265.—(1) Section 6 is amended as follows.

(2) In subsection (1), for “the Agency”, in each place where it occurs, substitute “the appropriate agency”.

(3) In subsection (2), omit “and Wales” in each place where it occurs.

(4) After subsection (2) insert—

“(2A) The Natural Resources Body for Wales must take all such action as it may from time to time consider, in accordance with any directions given under article 11 of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903), to be necessary or expedient for the purpose—

- (a) of conserving, redistributing or otherwise augmenting water resources in Wales; and
- (b) of securing the proper use of water resources in Wales (including the efficient use of those resources);

but nothing in this subsection shall be construed as relieving any water undertaker of the obligation to develop water resources for the purpose of performing any duty imposed on it by virtue of section 37 of the Water Industry Act 1991 (general duty to maintain water supply system).”

(5) In subsection (4), after “England and” insert “the Natural Resources Body for Wales shall in relation to”.

(6) In subsection (5), after “England and” insert “the Natural Resources Body for Wales’ flood defence functions shall extend to the territorial sea adjacent to”.

(7) In subsection (6), for “Agency” substitute “appropriate agency”.

(8) In subsection (7), omit “and Wales” in both places where it occurs.

(9) After subsection (7), insert—

“(7A) The area in respect of which the Natural Resources Body for Wales shall carry out its functions relating to fisheries shall be the whole of Wales, together with such part of the territorial sea adjacent to Wales as extends for six miles from the baselines from which the breadth of that sea is measured.”

(10) After subsection (8) insert—

“(8A) For the purposes of this section, the parts of the territorial sea which are adjacent to Wales, and which are therefore not adjacent to England, are the parts of the sea which are treated as adjacent to Wales for the purposes of section 158 of the Government of Wales Act 2006.”

266.—(1) Section 8 is amended as follows.

(2) In subsection (1)—

(a) in the opening words—

- (i) omit “or the Countryside Council for Wales”;
- (ii) omit “or, as the case may be, Wales”;

(b) in paragraph (b), for “Agency”, in each place where it occurs, substitute “appropriate agency”;

(c) in the closing words—

- (i) for “the Agency or (as the case may be) the Council” substitute “Natural England”;

(ii) at the end, for “Agency” substitute “appropriate agency”.

(3) After subsection (1) insert—

“(1A) Where the Natural Resources Body for Wales is of the opinion that any area of land in Wales—

(a) is of special interest by reason of its flora, fauna or geological or physiographical features, and

(b) may at any time be affected by schemes, works, operations or activities of the Agency or by an authorisation given by the Agency,

the Natural Resources Body for Wales shall notify the fact that the land is of special interest for that reason to the Agency.”

(4) In subsection (2), for “Agency”, in each place where it occurs, substitute “appropriate agency”.

(5) In subsection (3)—

(a) for “Agency”, in each place where it occurs, substitute “appropriate agency”;

(b) after “subsection (1)” insert “, (1A)”.

(6) In subsection (4), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

267.—(1) Section 9 is amended as follows.

(2) In subsection (1)—

(a) for “Each of the Ministers” substitute “The appropriate national authority”;

(b) for “Agency”, in each place where it occurs, substitute “appropriate agency”;

(c) for “sections 6(1), 7 and 8 above” substitute “the provisions specified in subsection (5)”.

(3) In subsection (2), for “section 6(1), 7 or 8 above, the Agency” substitute “the provisions specified in subsection (5), the appropriate agency”.

(4) In subsection (3)—

(a) for “Neither of the Ministers shall” substitute “The Secretary of State shall not”;

(b) in paragraph (b), omit “and the Countryside Council for Wales”;

(c) in paragraph (d), omit “and the Sports Council for Wales”.

(5) After subsection (3) insert—

“(3A) The Welsh Ministers shall not make an order under this section unless they have first consulted—

(a) the Natural Resources Body for Wales;

(b) the Sports Council for Wales; and

(c) such other persons as they consider it appropriate to consult.”

(6) In subsection (4)—

- (a) omit “of each of the Ministers”;
- (b) at the end, insert “(in the case of an order made by the Secretary of State) or of the National Assembly for Wales (in the case of an order made by the Welsh Ministers)”.

(7) After subsection (4) insert—

“(5) The provisions referred to in subsections (1) and (2) are—

- (a) in relation to the Agency, sections 6(1), 7 and 8;
- (b) in relation to the Natural Resources Body for Wales—
 - (i) sections 6(1) and 8; and
 - (ii) articles 5A, 5C, 5D, 5E and 5G of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903).”

268. After section 9 insert—

“Cooperation with the Natural Resources Body for Wales

9A. The Agency must cooperate and coordinate with the Natural Resources Body for Wales as may be appropriate in the circumstances.”

269.—(1) Section 10 is amended as follows.

(2) In the heading, after “Agency” insert “and the Natural Resources Body for Wales”.

(3) For “Agency”, in each place where it occurs other than in subsection (1)(a), substitute “appropriate agency”.

(4) In subsection (1)—

- (a) in paragraph (a) omit “and”;
- (b) after paragraph (a) insert—
 - “(aa) for the purposes of article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903), in relation to the Natural Resources Body for Wales; and”;
- (c) after “described in paragraphs (a)” insert “, (aa)”.

270. In the heading to Chapter 3 of Part 1, after “the New Agencies” insert “and the Natural Resources Body for Wales”.

271.—(1) Section 40 is amended as follows.

(2) After subsection (8) insert—

“(9) For the purposes of this section, the “appropriate Minister” in relation to the Agency is—

- (a) in any case not falling within paragraph (b), the Secretary of State;
- (b) in the case of a direction under subsection (1)—
 - (i) which would have any effect in Wales, or
 - (ii) which relates to water resources management, water supply, rivers or other watercourses, control of pollution of water resources, sewerage or land drainage, and which would have any effect in the catchment areas of the rivers Dee, Wye and Severn,

the Secretary of State or the Welsh Ministers.

(10) The Secretary of State may give a direction falling within subsection (9)(b) only after consulting the Welsh Ministers.

(11) The Welsh Ministers may give a direction under this section only with the consent of the Secretary of State.”

272. In section 41, after subsection (9) insert—

“(9A) In this section, other than in subsection (9), any reference to the Agency or to a new Agency includes the Natural Resources Body for Wales.

(9B) The Natural Resources Body for Wales may not make a charging scheme unless the provisions of the scheme have been approved by the Welsh Ministers under section 42.”

273.—(1) Section 42 is amended as follows.

(2) In subsection (3), after paragraph (b) insert—

“(c) in the case of licences granted by the Agency under Chapter II of Part II of the 1991 Act (abstraction and impounding), which the Natural Resources Body for Wales incurs in carrying out its functions under Part II of that Act or section 6(2A) above in the catchment areas of the rivers Dee, Wye and Severn for purposes connected with abstractions from waters in England,”.

(3) After subsection (9) insert—

“(9A) If and to the extent that any sums recovered by the Agency by way of charges

prescribed by charging schemes may fairly be regarded as so recovered for the purpose of recovering the amount required to meet (whether in whole or in part) such of the costs and expenses incurred by the Natural Resources Body for Wales as fall within subsection (3) above, the Agency shall pay those sums to the Natural Resources Body for Wales.”

(4) In subsection (10), “for subsection (9)” substitute “subsections (9) and (9A)”.

(5) After subsection (11), insert—

“(12) In this section—

- (a) references to a new Agency include the Natural Resources Body for Wales;
- (b) in relation to a charging scheme proposed or made by the Natural Resources Body for Wales—
 - (i) references to the Secretary of State have effect as references to the Welsh Ministers;
 - (ii) in subsection (4)(a), the reference to section 44 has effect as a reference to article 13 of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903);
- (c) in subsection (5), references to the Agency include the Natural Resources Body for Wales.”

274.—(1) In section 53, after subsection (3) insert—

“(4) In subsections (1) and (2)—

- (a) references to a new Agency and to the Agency include the Natural Resources Body for Wales;
- (b) in relation to the Natural Resources Body for Wales, the references to the appropriate Minister and to the Secretary of State or the Minister have effect as references to the Welsh Ministers; and
- (c) in relation to the Natural Resources Body for Wales and the Welsh Ministers, references to functions have effect as references to relevant environmental functions.

(5) In subsection (4)(c), “relevant environmental functions” means—

- (a) functions conferred by or under the enactments listed in section 5(5); and
- (b) any functions relating to water resources, flood and coastal erosion risk management or fisheries.”

275.—(1) Section 56(1) is amended as follows.

(2) Before the definition of “the appropriate Minister” insert—

““the appropriate agency” means the Agency or the Natural Resources Body for Wales;”.

(3) After the definition of “the appropriate Ministers” insert—

““the appropriate national authority” means—

(a) in relation to the Agency, the Secretary of State;

(b) in relation to the Natural Resources Body for Wales, the Welsh Ministers;”.

(4) In—

(a) the definition of “environmental licence” which applies in relation to the Agency; and

(b) the definition of “flood defence functions”,

for “Agency”, in each place where it occurs, substitute “appropriate agency”.

276. In section 66(7)(a), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

277. In section 72(2), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

278. In section 81(2), after paragraph (a) omit “or” and insert—

“(aa) in the case of the Natural Resources Body for Wales, the functions conferred on it by or under the enactments listed in section 5(5) above;”.

279.—(1) Section 91(1) is amended as follows.

(2) In the definition of “the appropriate new Agency”—

(a) in paragraph (a) omit “and Wales”;

(b) after paragraph (a) insert—

“(aa) in relation to Wales, the Natural Resources Body for Wales;”.

(3) In the definition of “new Agency”, after “the Agency” insert “, the Natural Resources Body for Wales”.

280.—(1) Section 94 is amended as follows.

(2) In subsection (3)—

(a) for “either new Agency” substitute “a new Agency”;

- (b) for “the other of them” substitute “any other of them”.
- (3) In subsection (6)—
 - (a) in the definition of “the appropriate Agency”—
 - (i) in paragraph (a) omit “and Wales”;
 - (ii) after paragraph (b) insert—
 - “(c) in relation to Wales, the Natural Resources Body for Wales;”;
 - (b) in the definition of “new Agency” for “or SEPA” substitute “, SEPA or the Natural Resources Body for Wales”.

281.—(1) Section 108 is amended as follows.

(2) In subsections (2) and (3), after “the Agency”, in each place where it occurs, insert “, the Natural Resources Body for Wales”.

- (3) In subsection (15)—
 - (a) in the definition of “enforcing authority”, after paragraph (a) insert—
 - “(aa) the Natural Resources Body for Wales;”;
 - (b) in the definition of “pollution control functions” which applies in relation to the Agency and SEPA—
 - (i) in the opening words, after “the Agency” insert “, the Natural Resources Body for Wales”;
 - (ii) in the closing words, after “the Agency” insert “or the Natural Resources Body for Wales”.

282. In section 111(5), in the definition of “environmental licence”, after “the Agency” insert “, the Natural Resources Body for Wales”.

283.—(1) Section 113 is amended as follows.

- (2) In subsection (1)—
 - (a) in paragraph (a), for “the other” substitute “another”;
 - (b) at the end of paragraph (b), omit “or”;
 - (c) after paragraph (c) insert “or” and—
 - “(d) by the Natural Resources Body for Wales to the Forestry Commissioners,”
 - ;
 - (d) in the closing words, for “either” substitute “any”.
- (3) In subsection (5), in the definition of “new Agency”, after “the Agency” insert “, the Natural Resources Body for Wales”.

284. In section 115(3), after “the Agency” insert “, the Natural Resources Body for Wales”.

285.—(1) Schedule 7 is amended as follows.

(2) In paragraph 4(1), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

(3) In paragraph 14(3), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

286. In Schedule 20, in paragraph 5(1)(c), after “the Agency” insert “or the Natural Resources Body for Wales, as appropriate”.

Finance Act 1996 (c. 8)

287. The Finance Act 1996 is amended as follows.

288. In section 70(1), after the definition of “material” insert—

““the Natural Resources Body for Wales” means the body established by article 3 of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903);”.

289. In Schedule 5, in paragraph 35(1), after paragraph (b) insert—

“(ba) the Natural Resources Body for Wales;”.

Government of Wales Act 1998 (c. 38)

290. The Government of Wales Act 1998 is amended as follows.

291. In Part 3 of Schedule 4, omit paragraph 15.

292. In Schedule 7, omit paragraphs 1 and 2.

Pollution Prevention and Control Act 1999 (c. 24)

293. The Pollution Prevention and Control Act 1999 is amended as follows.

294.—(1) Section 2(4) is amended as follows.

(2) In paragraph (a) omit “or Wales”.

(3) After paragraph (a) insert—

“(aa) the Natural Resources Body for Wales if the regulations are to apply in relation to Wales;”.

295. In section 3(4)(a), after “Environment Agency” insert “, Natural Resources Body for Wales”.

Care Standards Act 2000 (c. 14)

296. In Schedule 2A to the Care Standards Act 2000, in paragraph 15, for “The Countryside Council for Wales” substitute “The Natural Resources Body for Wales”.

Regulation of Investigatory Powers Act 2000 (c. 23)

297. In Part 1 of Schedule 1 to the Regulation of Investigatory Powers Act 2000, after paragraph 18 insert—

“**18A.** The Natural Resources Body for Wales.”

Freedom of Information Act 2000 (c. 36)

298.—(1) Part 6 of Schedule 1 to the Freedom of Information Act 2000 is amended as follows.

(2) Omit “The Countryside Council for Wales.”

(3) In the appropriate place insert “The Natural Resources Body for Wales”.

Countryside and Rights of Way Act 2000 (c. 37)

299. The Countryside and Rights of Way Act 2000 is amended as follows.

300. In Parts 1 and 2, for “the Countryside Council for Wales”, in each place where it occurs, substitute “the Natural Resources Body for Wales”.

301.—(1) Section 21 is amended as follows.

(2) In subsection (6)(a), after “any land” insert “in England”.

(3) After subsection (6) insert—

“(6A) Where—

(a) it appears to the Natural Resources Body for Wales that any land in a National Park in Wales which is dedicated for the purposes of this Part under section 16 consists wholly or predominantly of woodland, and

(b) the Natural Resources Body for Wales give to the relevant National Park Authority who are apart from this subsection the relevant authority for the purposes of this Chapter in relation to the land a notice stating that the Natural Resources Body for Wales are to be the relevant authority for those purposes as from a date specified in the notice,

the Natural Resources Body for Wales shall as from that date become the relevant authority in

relation to that land for those purposes, but subject to subsection (7A).”

(4) In subsection (7), after “any land” insert “in England”.

(5) After subsection (7) insert—

“(7A) Where it appears to the Natural Resources Body for Wales that any land in relation to which they are by virtue of subsection (6A) the relevant authority for the purposes of this Chapter has ceased to consist wholly or predominantly of woodland, the Natural Resources Body for Wales may, by giving notice to the National Park Authority who would apart from subsection (6A) be the relevant authority, revoke the notice under subsection (6A) as from a date specified in the notice under this subsection.”

302. In section 33(2), after paragraph (a) omit “and” and paragraph (b).

303. In section 82(2), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

304. In Part 4, other than in section 92(1), for “the Council”, in each place where it occurs, substitute “the NRBW”.

305. In section 83(3), for “Council” substitute “the NRBW”.

306. In section 84(1)(a), for “Council” substitute “the NRBW”.

307.—(1) Section 92(1) is amended as follows.

(2) Omit the definition of “the Council”.

(3) After the definition of “local authority” insert—

““the NRBW” means the Natural Resources Body for Wales;”.

308.—(1) Part 2 of Schedule 1 is amended as follows.

(2) In paragraph 14(1), in the definition of “statutory undertaker”, after “Environment Agency” insert “, the Natural Resources Body for Wales”.

309. In Schedule 6, for “the Countryside Council for Wales”, in each place where it occurs, substitute “the Natural Resources Body for Wales”.

310. In Schedule 13, in paragraph 6(2), for “the Council” substitute “the NRBW”.

Waste and Emissions Trading Act 2003 (c. 33)

311. In section 19(4)(a) of the Waste and Emissions Trading Act 2003, for “the Environment Agency” substitute “the Natural Resources Body for Wales”.

Water Act 2003 (c. 37)

312. The Water Act 2003 is amended as follows.

313. In sections 3, 4, 7, 10, 27, 33(3), 102 and 103, for any reference to the Environment Agency (however framed) substitute a reference to the appropriate agency.

314.—(1) Section 33(5) is amended as follows.

(2) After “Environment Agency” insert “or of the Natural Resources Body for Wales, whether framed by reference to the appropriate agency or otherwise,”.

(3) After “the Agency’s” insert “or, as the case may be, the Natural Resources Body for Wales’,”.

315.—(1) Section 52 is amended as follows.

(2) In subsection (1), after paragraph (b) insert—

“(ba) the Natural Resources Body for Wales,”.

(3) In subsection (3), for paragraph (c) substitute—

“(c) in the case of the Environment Agency and the Natural Resources Body for Wales, to their functions concerning water resources and water pollution so far as they relate to water and sewerage undertakers and licensed water suppliers.”

316. In section 105(2), after paragraph (b) insert—

“(ba) “the appropriate agency” has the meaning given by section 221 of the WRA,”.

Energy Act 2004 (c. 20)

317. The Energy Act 2004 is amended as follows.

318. In section 14(3)(g), after “the Environment Agency” insert “, the Natural Resources Body for Wales”.

319.—(1) Schedule 2 is amended as follows.

(2) In paragraph 4(2), after paragraph (b) insert—

“(ba) the Natural Resources Body for Wales;”.

(3) In paragraph 5(9), after paragraph (c) insert—

“(ca) the Natural Resources Body for Wales;”.

320.—(1) Schedule 3 is amended as follows.

(2) In paragraph 2(1), after paragraph (b) insert—

“(ba) the Natural Resources Body for Wales;”.

(3) In paragraph 3(8), after paragraph (c) insert—

“(ca) the Natural Resources Body for Wales;”.

Civil Contingencies Act 2004 (c. 36)

321. In Part 1 of Schedule 1 to the Civil Contingencies Act 2004, after paragraph 12 insert—

“**12A.** The Natural Resources Body for Wales.”

Public Services Ombudsman (Wales) Act 2005 (c. 10)

322. In Schedule 3 to the Public Services Ombudsman (Wales) Act 2005, for “The Countryside Council for Wales” substitute “The Natural Resources Body for Wales”.

Natural Environment and Rural Communities Act 2006 (c. 16)

323. The Natural Environment and Rural Communities Act 2006 is amended as follows.

324. In section 32(1)(b), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

325. In section 42(2) and (4), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Commons Act 2006 (c. 26)

326. In Schedule 1 to the Commons Act 2006, in paragraph 1(1)(c) and (2), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Commissioner for Older People (Wales) Act 2006 (c. 30)

327. In Schedule 2 to the Commissioner for Older People (Wales) Act 2006, for “The Countryside Council for Wales” substitute “The Natural Resources Body for Wales”.

Government of Wales Act 2006 (c. 32)

328. The Government of Wales Act 2006 is amended as follows.

329.—(1) Section 148(2) is amended as follows.

(2) Omit paragraph (b).

(3) After paragraph (k) insert—

“(ka) the Natural Resources Body for Wales,”.

330. In section 152(6), after paragraph (a) insert—

“(aa) the Natural Resources Body for Wales, if concerned in the case,”.

Regulatory Enforcement and Sanctions Act 2008 (c. 13)

331.—(1) Schedule 5 to the Regulatory Enforcement and Sanctions Act 2008 is amended as follows.

(2) Omit “Countryside Council for Wales”.

(3) In the appropriate place insert “Natural Resources Body for Wales”.

Marine and Coastal Access Act 2009 (c. 23)

332. The Marine and Coastal Access Act 2009 is amended as follows.

333. In section 16(1), after paragraph (e) insert—

“(f) the Natural Resources Body for Wales.”

334. In section 147(1), in the definition of “the appropriate statutory conservation body”, for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

335. In section 149(3), after paragraph (f) insert—

“(g) the Natural Resources Body for Wales, in a case where, if the order were made, the IFC district established by the order would adjoin the Welsh inshore region,”.

336. In section 152(2), after paragraph (g) insert—

“(h) the Natural Resources Body for Wales, in a case where the IFC district established by the order adjoins the Welsh inshore region,”.

337. In section 168(1), after paragraph (b) insert—

“(c) the Natural Resources Body for Wales.”

338.—(1) Section 232 is amended as follows.

(2) In subsections (1) and (5), for “the Environment Agency” substitute “the appropriate agency”.

(3) In subsection (5), in paragraphs (h)(iii) and (j), for “the Agency” substitute “the appropriate agency”.

(4) In subsection (8), before the definition of “appropriate national authority” insert—

““appropriate agency” means—

- (a) the Environment Agency, otherwise than in relation to Wales, and
- (b) the Natural Resources Body for Wales, in relation to Wales;”.

339. In section 238(3), after paragraph (c) insert—

“(ca) byelaws made by the Natural Resources Body for Wales under Schedule 25 to the Water Resources Act 1991;”.

340. Omit section 313.

Equality Act 2010 (c. 15)

341.—(1) Schedule 19 to the Equality Act 2010 is amended as follows.

(2) In Part 2, omit “The Countryside Council for Wales or Cyngor Cefn Gwlad Cymru”.

(3) In Part 4, under the sub-heading “Cross-border Welsh authorities” insert “The Natural Resources Body for Wales—A”.

Flood and Water Management Act 2010 (c. 29)

342. The Flood and Water Management Act 2010 is amended as follows.

343.—(1) Section 6 is amended as follows.

(2) In subsection (13) after paragraph (a) insert—

“(aa) the Natural Resources Body for Wales;”.

(3) In subsection (15)(a), for “the Environment Agency” substitute “the Natural Resources Body for Wales”.

344. In section 13(8), after “the Environment Agency” insert “or the Natural Resources Body for Wales”.

345.—(1) Section 14 is amended as follows.

(2) In subsection (2)—

(a) at the end of paragraph (a) omit “and”;

(b) after paragraph (a) insert—

“(aa) the Natural Resources Body for Wales, and”.

346. In section 15(10)(b)(ii), for “the Environment Agency” substitute “the Natural Resources Body for Wales”.

347.—(1) Section 17 is amended as follows.

(2) In subsection (1), after “an area” insert “in England”.

(3) After subsection (1) insert—

“(1A) The Natural Resources Body for Wales may issue levies to the lead local flood authority for an area in Wales in respect of the Natural Resources Body for Wales’ flood and coastal erosion risk management functions in that area.”

(4) In subsection (3), for “Agency shall” substitute “Agency and the Natural Resources Body for Wales shall each”.

348.—(1) Section 18 is amended as follows.

(2) For the heading substitute—

“18 Reports about flood and coastal erosion risk management”.

(3) In subsection (1), at the end insert “in England”.

(4) After subsection (1) insert—

“(1A) The Natural Resources Body for Wales must report to the Minister about flood and coastal erosion risk management in Wales.”

349.—(1) Section 22 is amended as follows.

(2) In subsection (1), for “Environment Agency” substitute “appropriate agency”.

(3) In subsection (2), for “Agency” substitute “appropriate agency”.

(4) After subsection (2) insert—

“(3) The functions of the appropriate agency under subsection (1)(a) are, in any case affecting both a region that is wholly or mainly in England and a region that is wholly or mainly in Wales, exercisable by the Environment Agency and the Natural Resources Body for Wales acting jointly.”

350.—(1) Section 23 is amended as follows.

(2) In subsection (1), for “Environment Agency” substitute “appropriate agency”.

(3) For any reference to the Agency substitute a reference to the appropriate agency.

351.—(1) Section 25 is amended as follows.

(2) In subsection (1), for “Environment Agency” substitute “appropriate agency”.

(3) In subsection (2), for “Agency” substitute “appropriate agency”.

352. After section 26 insert—

“26A “The appropriate agency”

In this group of sections, “the appropriate agency” means—

- (a) the Environment Agency in relation to English Committees, and
- (b) the Natural Resources Body for Wales in relation to Welsh Committees.”

353.—(1) Section 38 is amended as follows.

(2) In the heading and subsections (1) and (7), for “Environment Agency” substitute “appropriate agency”.

(3) For any reference to the Agency substitute a reference to the appropriate agency.

(4) In subsection (4), before paragraph (a) insert—

“(za) the other appropriate agency, if—

- (i) the work is carried out in its area, or
- (ii) consequences of the kinds listed in subsection (1) are, in the opinion of the appropriate agency carrying out the work, likely to occur in the area of the other appropriate agency,”.

(5) After subsection (10) insert—

“(10A) In this section “the appropriate agency” means—

- (a) the Environment Agency, in relation to work for the benefit of England, and
- (b) the Natural Resources Body for Wales, in relation to work for the benefit of Wales.”

354.—(1) Section 39 is amended as follows.

(2) In subsections (4) and (8), for “Environment Agency”, in each place where it occurs, substitute “appropriate agency”.

(3) After subsection (14) insert—

“(14A) In this section, “the appropriate agency” means—

- (a) the Environment Agency, in relation to work in England, and
- (b) the Natural Resources Body for Wales in relation to work in Wales.”

355. In Schedule 1, in paragraph 1, after paragraph (a) insert—

“(aa) the Natural Resources Body for Wales,”.

356.—(1) In Schedule 3, paragraph 11(3) is amended as follows.

(2) In paragraph (b), after “watercourse” insert “in England”.

(3) After paragraph (b) insert—

“(ba) the Natural Resources Body for Wales, if the drainage system directly or indirectly involves the discharge of water into a watercourse in Wales;”.

357.—(1) In Schedule 4, in the provisions of the Reservoirs Act 1975 to be inserted by that Schedule, for “Environment Agency” and “Agency”, in each place where they occur, substitute “appropriate agency”.

PART 2

Local Acts

Interpretation

358. In this Part, a “relevant reference” (*“cyfeiriad perthnasol”*) means a reference which has effect as a reference to the Environment Agency.

Dee Conservancy Act 1889 (c. clvi)

359. In the Dee Conservancy Act 1889, any relevant reference is to be treated as a reference to the Natural Resources Body for Wales.

Dee and Clwyd River Authority Act 1973 (c. xxix)

360. In the Dee and Clwyd River Authority Act 1973, any relevant reference is to be treated as a reference to the Environment Agency and the Natural Resources Body for Wales acting jointly.

ASSEMBLY MEASURES

Children and Families (Wales) Measure 2010 (nawm 1)

1. In section 6(1)(f) of the Children and Families (Wales) Measure 2010, for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Waste (Wales) Measure 2010 (nawm 8)

2. The Waste (Wales) Measure 2010 is amended as follows.

3. In sections 8(1)(a), 11(1)(a) and 16(1)(a), for “the Environment Agency” substitute “the Natural Resources Body for Wales”.

Welsh Language (Wales) Measure 2011 (nawm 1)

4.—(1) In Schedule 6 to the Welsh Language (Wales) Measure 2011, the table is amended as follows.

(2) Omit the entries relating to the Countryside Council for Wales and the Environment Agency.

(3) In the appropriate place insert—

“The Natural Resources Body for Wales (“ <i>Corff Adnoddau Naturiol Cymru</i> ”)	Service delivery standards Policy making standards Operational standards Record keeping standards”
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UK STATUTORY INSTRUMENTS

Burry Inlet Cockle Fishery Order 1965

1. The Burry Inlet Cockle Fishery Order 1965(1) is amended as follows.

2. For any reference to the Agency, other than in article 2(1), substitute a reference to the NRBW.

3. In article 2(1), for “the Environment Agency (hereinafter referred to as “the Agency”)” substitute “the Natural Resources Body for Wales (hereinafter referred to as “the NRBW”)”.

Salmon and Migratory Trout (Restrictions on Landing) Order 1972

4.—(1) Article 4 of the Salmon and Migratory Trout (Restrictions on Landing) Order 1972(2) is amended as follows.

(2) The existing provision becomes paragraph (1).

(3) After paragraph (1) insert—

“(2) For the purposes of paragraph (1), in relation to Wales, “River Authority” means the Natural Resources Body for Wales.”

Plant Varieties and Seeds Tribunal Rules 1974

5. The Plant Varieties and Seeds Tribunal Rules 1974(3) are amended as follows.

6.—(1) Regulation 2(1) is amended as follows.

(2) In the definition of “respondent authority”, in paragraph (a), for “the Forestry Commissioners;” substitute—

“—

(i) the Forestry Commissioners, where the appeal is made against their decision;

(ii) the Welsh Ministers, where the appeal is made against their decision;”.

7.—(1) In Schedule 1, Form 8 is amended as follows.

(1) S.I. 1965/1235.

(2) S.I. 1972/1966 as amended by S.I. 1975/639, S.I. 1983/58.

(3) S.I. 1974/1136 as amended by S.I. 2002/3198, Constitutional Reform Act 2005 (c. 4), Schedule 4, Part 1, paragraph 80, S.I. 2008/2683.

(2) In paragraph 1(c), for “the Forestry Commissioners” substitute “(the Forestry Commissioners) (or the Welsh Ministers)”.

Forestry (Felling of Trees) Regulations 1979

8. The Forestry (Felling of Trees) Regulations 1979(1) are amended as follows.

9. In regulation 3(1)—

(a) in the definition of “the conservator”, after “the Commissioners” insert “or the NRBW’s”;

(b) at the end, insert—

““the NRBW” means the Natural Resources Body for Wales.”

10. In regulations 4, 6, 7, 8A, 9, 10, 12, 13 and 15, after “the Commissioners” insert “or the NRBW”.

11. In regulation 6 after “the Commissioners” insert “or the NRBW’s”.

12. In regulation 16 after “the Commissioners” insert “, the NRBW”.

13.—(1) In Schedule 1, each of the forms except forms 2 and 11 are amended as follows.

(2) After “the Forestry Commissioners”, in each place where it occurs, insert “*”.

(3) After “the Commissioners”, in each place where it occurs, insert “*”.

(4) After “Forestry Commission”, in each place where it occurs, insert “*”.

(5) At the end of the form insert—

“* in relation to Wales, “the NRBW” must be substituted for “the Forestry Commissioners”, “the Commissioners” and “Forestry Commission” in this form”.

Forestry (Exceptions from Restriction of Felling) Regulations 1979

14.—(1) Regulation 4(5) of the Forestry (Exceptions from Restriction of Felling) Regulations 1979(2) is amended as follows.

(2) After “the Commissioners”, in the first place where it occurs, insert “or the Natural Resources Body for Wales”.

(1) S.I. 1979/791 as amended by S.I. 1987/632, S.I. 2003/2155.
(2) S.I. 1979/792 as amended by S.I. 1986/1356, S.I. 1990/526, S.I. 1996/252, S.I. 1998/603, Utilities Act 2000 (c. 27), section 76(7).

(3) After “the Commissioners”, in the second place where it occurs, insert “, the Natural Resources Body for Wales”.

(4) In sub-paragraph (a)(ii)—

(a) after “approved by the” omit “Forestry”;

(b) after “Commissioners” insert “or the Natural Resources Body for Wales”.

(5) In sub-paragraph (b) after “the Commissioners”, in both places where it occurs, insert “or the Natural Resources Body for Wales”.

Forestry Commission Byelaws 1982

15. The Forestry Commission Byelaws 1982(1) are amended as follows.

16.—(1) Byelaw 2 is amended as follows.

(2) Before the definition of “the Arboretum” insert—

““the appropriate forestry authority” means—

(a) in relation to England, the Commissioners;

(b) in relation to Wales, the Natural Resources Body for Wales;”.

(3) For “the Commissioners”, in each place where it occurs, substitute “the appropriate forestry authority”.

17. In byelaws 3 to 7, for “the Commissioners”, in each place where it occurs, substitute “the appropriate forestry authority”.

18. In Schedule 1, omit “In the County of Gwent, the part of Monmouth Community which is situated east of River Wye”.

Drought Orders (Inquiries Procedure) Rules 1984

19.—(1) Rule 3 of the Drought Orders (Inquiries Procedure) Rules 1984(2) is amended as follows.

(2) After the definition of “appointed person” insert—

““appropriate authority” means—

(a) the Environment Agency, in relation to England;

(b) the Natural Resources Body for Wales, in relation to Wales;”.

(3) In the definition of “the authority”, for “regional water authority” substitute “appropriate authority”.

(1) S.I. 1982/648.

(2) S.I. 1984/999 as amended by Environment Act 1995 (c. 25), section 120(1), Schedule 22, paragraph 233(1); modified by S.I. 2000/253.

Control of Pesticides Regulations 1986

20.—(1) Schedule 4 to the Control of Pesticides Regulations 1986(1) is amended as follows.

(2) In paragraph 2(1)(b), for “England and Wales)” substitute “England), the Natural Resources Body for Wales (if the area in which the aerial application is to take place is in Wales)”.

(3) In paragraph 6, in the definition of “appropriate nature conservation agency”, for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Sludge (Use in Agriculture) Regulations 1989

21. The Sludge (Use in Agriculture) Regulations 1989(2) are amended as follows.

22. In regulations 7(1) and 8(2), and in Schedule 2, in paragraph 2(2)(c), after “Scottish Environment Protection Agency”, in each place where it occurs, insert “or, in Wales, the Natural Resources Body for Wales”.

23. In regulation 11(1), for “the Environment Agency” substitute “the Natural Resources Body for Wales”.

Road Vehicles Lighting Regulations 1989

24.—(1) Regulation 3 of the Road Vehicles Lighting Regulations 1989(3) is amended as follows.

(2) In the Table, in the definition of “emergency vehicle”, in column 2, after sub-paragraph (d) insert—

“(dd) a vehicle owned by the Natural Resources Body for Wales for the purposes of its functions relating to forestry and woodlands and used from time to time for the purposes of fighting fires;”.

General Drainage Charges (Forms) Regulations 1990

25. The General Drainage Charges (Forms) Regulations 1990(4) are amended as follows.

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- (1) S.I. 1986/1510 as amended by S.I. 1997/188, S.I. 2001/880, S.I. 2011/2131.
- (2) S.I. 1989/1263 as amended by S.I. 1990/880, S.I. 1996/593, S.I. 2000/656, S.I. 2010/1820 (W. 177).
- (3) S.I. 1989/1796 as amended by S.I. 1992/1217, S.I. 1994/2280, S.I. 1994/2567, S.I. 1996/3016, S.I. 2001/560, S.I. 2005/2559, S.I. 2005/2929 (W. 214), S.I. 2005/3169, S.I. 2006/594, S.I. 2006/1914, S.I. 2008/1277, S.I. 2009/3220, S.I. 2010/1172, S.I. 2011/935.
- (4) S.I. 1990/564 as amended by Environment Act 1995 (c. 25), section 120(1), Schedule 22, paragraph 233(1).

26. In regulations 2 and 3, after “the Environment Agency” insert “or the Natural Resources Body for Wales”.

27. In the Schedule, in Forms 1 and 2, after “the Environment Agency”, in each place where it occurs, insert “or the Natural Resources Body for Wales”.

Planning (Hazardous Substances) Regulations 1992

28.—(1) Regulation 10(1) of the Planning (Hazardous Substances) Regulations 1992(1) is amended as follows.

(2) In sub-paragraph (e), after “Environment Agency” insert “where the land to which the application relates is in England”.

(3) After sub-paragraph (e) insert—

“(ea) the Natural Resources Body for Wales, where the land to which the application relates is in Wales;

(4) In sub-paragraph (l), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Town and Country Planning (Control of Advertisements) Regulations 1992

29. In regulation 2(1) of the Town and Country Planning (Control of Advertisements) Regulations 1992(2), in the definition of “statutory undertaker”, after “the Environment Agency,” insert “the Natural Resources Body for Wales,”.

Housing (Right to Buy) (Prescribed Persons) Order 1992

30. In the Schedule to the Housing (Right to Buy) (Prescribed Persons) Order 1992(3), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

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- (1) S.I. 1992/656 as amended by S.I. 1994/2567, Environment Act 1995, section 120(1), Schedule 22, paragraph 233(1), S.I. 1996/252, S.I. 1999/981, S.I. 2005/1082, S.I. 2006/1388 (W. 138), S.I. 2010/450 (W. 48).
- (2) S.I. 1992/666 as amended by S.I. 1994/2351, Environment Act 1995 (c. 25), section 120(1), Schedule 22, paragraph 233(1), S.I. 1996/252, S.I. 1996/525, S.I. 1999/1810, S.I. 2001/1149, S.I. 2001/4050, S.I. 2003/2155, S.I. 2005/3050, S.I. 2012/791 (W. 106); modified by S.I. 2003/284.
- (3) S.I. 1992/1703 as amended by S.I. 1994/2567, Environment Act 1995 (c. 25), section 120(1), Schedule 22, paragraph 233(1), S.I. 1996/2651, S.I. 2003/1615, S.I. 2004/696, S.I. 2005/2929 (W. 214), S.I. 2012/1659.

General Drainage Charges (Relevant Quotient) Regulations 1993

31.—(1) Regulation 3 of the General Drainage Charges (Relevant Quotient) Regulations 1993(1) is amended as follows.

(2) After “issued by the Environment Agency” insert “or the Natural Resources Body for Wales”.

(3) For “Environment Agency (Levies) Regulations 1993” substitute “Flood and Coastal Erosion Risk Management (Levies) (England and Wales) Regulations 2011”.

Drainage Rates (Forms) Regulations 1993

32. In the Schedule to the Drainage Rates (Forms) Regulations 1993(2), in Form 2, after “the Environment Agency”, in each place where it occurs, insert “or the Natural Resources Body for Wales”.

Surface Waters (River Ecosystem) (Classification) Regulations 1994

33. In regulation 3 of the Surface Waters (River Ecosystem) (Classification) Regulations 1994(3), for “Environment Agency” substitute “appropriate agency”.

Urban Waste Water Treatment (England and Wales) Regulations 1994

34. The Urban Waste Water Treatment (England and Wales) Regulations 1994(4) are amended as follows.

35. For “Environment Agency”, in each place where it occurs, other than in regulations 6 and 8, substitute “appropriate agency”.

36.—(1) Regulation 2(1) is amended as follows.

(2) After the definition of “agglomeration” insert—

““the appropriate agency” means—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Wales, the Natural Resources Body for Wales;”.

(3) After the definition of “domestic waste water” insert—

(1) S.I. 1993/165 as amended by Environment Act 1995 (c. 25), section 120(1), Schedule 22, paragraph 233(1).
(2) S.I. 1993/223.
(3) S.I. 1994/1057 as amended by Environment Act 1995 (c. 25), section 120(1), Schedule 22, paragraph 233(1).
(4) S.I. 1994/2841 as amended by Environment Act 1995 (c. 25), section 120(1) Schedule 22, paragraph 233(1), S.I. 2003/1788, S.I. 2005/2035, S.I. 2010/675, S.I. 2011/556.

““England” includes the territorial sea adjacent to England not forming any part of Wales;”.

(4) After the definition of “urban waste water” insert—

““Wales” has the meaning given by section 158(1) and (3) of the Government of Wales Act 2006.”

37.—(1) Regulation 6 is amended as follows.

(2) In paragraph (2)—

(a) after “Environment Agency” insert “and of the Natural Resources Body for Wales”;

(b) for “its” substitute “their”.

(3) In paragraph (3), after “Environment Agency” insert “or, as the case may be, the Natural Resources Body for Wales,”.

38. In regulation 8(2), after “Environment Agency” insert “or, as the case may be, the Natural Resources Body for Wales,”.

Town and Country Planning (General Permitted Development) Order 1995

39. The Town and Country Planning (General Permitted Development) Order 1995(1) is amended as follows.

40. In article 1(2), in the definition of “area of outstanding natural beauty”, for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

41.—(1) Schedule 2 is amended as follows.

(2) In Part 14, after “Environment Agency” insert “and the Natural Resources Body for Wales”.

(3) In Part 15, in paragraph A—

(a) after “Environment Agency” insert “or the Natural Resources Body for Wales”; and

(b) for “the purposes of their functions” substitute “the purposes of their respective functions”.

(1) S.I. 1995/418 as amended by Environment Act 1995 (c. 25), section 120(1), Schedule 22, paragraph 233(1), S.I. 1996/252, S.I. 1996/528, S.I. 1997/366, S.I. 1999/293, S.I. 1999/416, S.I. 1999/1661, S.I. 1999/1783, Utilities Act 2000 (c. 27), section 76(7), S.I. 2001/1149, S.I. 2001/4050, S.I. 2002/1878 (W. 187), S.I. 2003/2155, S.I. 2004/945, S.I. 2004/3156 (W. 273), S.I. 2006/124 (W. 17), S.I. 2006/1386 (W. 136), S.I. 2007/952 (W. 83), S.I. 2008/502 (W. 43), S.I. 2008/675, S.I. 2008/2362, S.I. 2009/2193 (W. 185); modified by Countryside and Rights of Way Act 2000 (c. 37), section 93, Schedule 15, paragraph 17.

European Communities (Designation) Order 1996

42.—(1) The Schedule to the European Communities (Designation) Order 1996(1) is amended as follows.

(2) In the entry in Column (2) relating to the Forestry Commissioners, after “Measures” insert “applying otherwise than in relation to Wales”.

(3) After the entry relating to the Forestry Commissioners, insert—

“The Welsh Ministers	Measures applying in relation to Wales and relating to the common agricultural policy of the European Union in respect of Forestry.”
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Landfill Tax Regulations 1996

43. After regulation 21(5)(a) of the Landfill Tax Regulations 1996(2), insert—

“(aa) the Natural Resources Body for Wales;”.

Welsh Language Schemes (Public Bodies) Order 1996

44. In the Schedule to the Welsh Language Schemes (Public Bodies) Order 1996(3), omit the entries relating to the Countryside Council for Wales.

Control of Pollution (Applications, Appeals and Registers) Regulations 1996

45. The Control of Pollution (Applications, Appeals and Registers) Regulations 1996(4) are amended as follows.

46. For any reference to the Agency, other than in regulation 12(6), substitute a reference to the appropriate agency.

47.—(1) Regulation 12(6) is amended as follows.

(2) In sub-paragraph (a) omit “and”.

(1) S.I. 1996/266 as amended by S.I. 1999/2788, S.I. 2001/3495, S.I. 2002/2840.

(2) S.I. 1996/1527 as amended by S.I. 1997/1431, S.I. 1998/61, S.I. 1999/3270, S.I. 2002/1, S.I. 2003/605, S.I. 2003/2096, S.I. 2003/2313, S.I. 2004/769, S.I. 2005/759, S.I. 2006/1054, S.I. 2007/965, 2007/1898, S.I. 2007/3538, S.I. 2008/770, S.I. 2008/1482, S.I. 2008/2693, S.I. 2009/1890, S.I. 2009/1930, S.I. 2010/924, S.I. 2010/675, S.I. 2010/2437, S.I. 2011/894, S.I. 2012/885.

(3) S.I. 1996/1898 as amended by S.I. 2004/1771, S.I. 2005/3225 (W. 237), S.I. 2005/3226 (W. 238), S.I. 2007/2602.

(4) S.I. 1996/2971 as amended by S.I. 1999/1006, S.I. 2010/675.

(3) After sub-paragraph (a) insert—

“(aa) the NRBW, if the appeal relates to information which the NRBW has determined is not commercially confidential; and”.

(4) In sub-paragraph (b), after “Agency” insert “, if the appeal relates to information which the Agency has determined is not commercially confidential”.

Surface Waters (Abstraction for Drinking Water) (Classification) Regulations 1996

48. In the Surface Waters (Abstraction for Drinking Water) (Classification) Regulations 1996(1), for any reference to the Environment Agency (however framed) substitute a reference to the appropriate agency.

Code of Practice on Environmental Procedures for Flood Defence Operating Authorities (Environment Agency) Approval Order 1996

49.—(1) Article 2 of the Code of Practice on Environmental Procedures for Flood Defence Operating Authorities (Environment Agency) Approval Order 1996(2) is amended as follows.

(2) In sub-paragraph (a)—

- (a) after “the Environment Agency” insert “and the Natural Resources Body for Wales”;
- (b) for “section 6(1), 7 and 8” substitute “the provisions specified in section 9(5)”.

(3) In sub-paragraph (b), after “the Environment Agency” insert “and the Natural Resources Body for Wales”.

Hedgerows Regulations 1997

50.—(1) Part 2 of Schedule 1 to the Hedgerows Regulations 1997(3) is amended as follows.

(2) In paragraph 6(1)(b), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Surface Waters (Fishlife) (Classification) Regulations 1997

51. In the Surface Waters (Fishlife) (Classification) Regulations 1997(4), for any reference to the

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- (1) S.I. 1996/3001 as amended by S.I. 2000/3184, S.I. 2001/3911.
 - (2) S.I. 1996/3061.
 - (3) S.I. 1997/1160 as amended by S.I. 2003/2155, S.I. 2006/1177, S.I. 2009/1307.
 - (4) S.I. 1997/1331 as amended by S.I. 2003/1053, S.I. 2009/1264.

Environment Agency (however framed) substitute a reference to the appropriate agency.

Surface Waters (Shellfish) (Classification) Regulations 1997

52. The Surface Waters (Shellfish) (Classification) Regulations 1997(1) are amended as follows.

53. For any reference to the Environment Agency, other than in regulation 6(3), substitute a reference to the appropriate authority.

54. In regulation 1, after paragraph (2) insert—

“(3) In these Regulations—

“the appropriate authority” means—

- (a) in relation to England, the Environment Agency, and
- (b) in relation to Wales, the Natural Resources Body for Wales;

“England” includes the sea adjacent to England to a distance of 12 nautical miles from the baselines from which the breadth of the territorial sea is measured; and

“Wales” has the meaning given by section 158(1) and (3) of the Government of Wales Act 2006(2).”

55. In regulation 6(3), after “Secretary of State” insert “, the Natural Resources Body for Wales”.

Surface Waters (Dangerous Substances) (Classification) Regulations 1997

56. In regulation 4 of the Surface Waters (Dangerous Substances) (Classification) Regulations 1997(3), for “Environment Agency” and “Agency” substitute “appropriate agency”.

Surface Waters (Dangerous Substances) (Classification) Regulations 1998

57. In regulation 4 of the Surface Waters (Dangerous Substances) (Classification) Regulations 1998(4), for “Environment Agency” and “Agency” substitute “appropriate agency”.

(1) S.I. 1997/1332 as amended by S.I. 2009/1266.
(2) 2006 c.32. The boundary between the sea adjacent to Wales and that adjacent to England is described by article 6 of and Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of section 162 of and paragraph 26 of Schedule 11 to the 2006 Act, S.I. 1999/672 continues to have effect.
(3) S.I. 1997/2560.
(4) S.I. 1998/389.

Mines (Notice of Abandonment) Regulations 1998

58. In regulation 2 of the Mines (Notice of Abandonment) Regulations 1998(1), after “Agency” insert “or the NRBW”.

Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

59.—(1) Regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999(2) is amended as follows.

(2) In the definition of “consultation bodies”—

- (a) in sub-paragraph (b)(ii), after “English Nature” insert “and the Environment Agency”;
- (b) in sub-paragraph (b)(iii), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”;
- (c) omit sub-paragraph (b)(iv).

(3) In the definition of “sensitive areas”, in sub-paragraph (h), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999

60. The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999(3) are amended as follows.

61.—(1) In regulation 2(1), the definition of “sensitive area” is amended as follows.

(2) In sub-paragraph (f), omit “or the Countryside Council for Wales, as respects Wales.”.

(3) After sub-paragraph (f) insert—

“(fa)an area of outstanding natural beauty designated as such by an order made—

- (i) under section 87 (Designation of areas of outstanding natural beauty) of the National Parks and

(1) S.I. 1998/892.

(2) S.I. 1999/293 as amended by S.I. 1999/416, S.I. 2000/2867, S.I. 2005/1806 (W. 138), S.I. 2006/3099 (W. 283), S.I. 2006/3295, S.I. 2008/2335 (W. 198), S.I. 2010/675, S.I. 2011/988, S.I. 2011/2043 (S.I. 2007/2610 (W. 221) (revoked) (sav)); modified by the Countryside and Rights of Way Act 2000 (c. 37), section 93, Schedule 15, paragraph 17, S.I. 2006/1282, S.I. 2008/1556.

(3) S.I. 1999/367 as amended by S.I. 2001/1149; modified by Countryside and Rights of Way Act 2000 (c. 37), section 93, Schedule 15, paragraph 17.

Access to the Countryside Act 1949, or

- (ii) under section 82 (Designation of Areas) of the Countryside and Rights of Way Act 2000;”.

62. In Schedule 3, in paragraph 2(c), for “, the Countryside Council for Wales and the Environment Agency” substitute “and the Natural Resources Body for Wales”.

National Assembly for Wales (Transfer of Functions) Order 1999

63.—(1) Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999⁽¹⁾ is amended as follows.

(2) In the entry relating to the Opencast Coal Act 1958—

- (a) for “the Environment Agency” substitute “the Natural Resources Body for Wales”;
- (b) after “Environment Act 1995 (Consequential Amendments) Regulations 1996 (S.I. 1996/593)” insert “and by the Natural Resources Body for Wales (Functions) Order 2012”.

Control of Major Accident Hazards Regulations 1999

64. The Control of Major Accident Hazards Regulations 1999⁽²⁾ are amended as follows⁽³⁾.

65.—(1) Regulation 2(1) is amended as follows.

(2) Omit the definition of “the Agency”.

(3) Before the definition of “CIMAH report”, insert—

““appropriate agency” in relation to an establishment in—

- (a) England, means the Environment Agency;
- (b) Scotland, means the Scottish Environment Protection Agency;
- (c) Wales, means the Natural Resources Body for Wales;”.

(4) In the definition of “competent authority”, for “Agency” substitute “appropriate agency”.

(1) S.I. 1999/672 to which there are amendments not relevant to this Order.

(2) S.I. 1999/743 as amended by S.I. 2002/2469, S.I. 2005/1088, S.I. 2008/960, S.I. 2008/1087, S.I. 2009/1595.

(3) Schedule 7 contains transitional provisions relating to these Regulations.

66. In regulations 7, 9, 10, 20 and 22, for “Agency”, in each place where it occurs, substitute “appropriate agency”.

Water Protection Zone (River Dee Catchment) (Designation) Order 1999

67. In article 3 of the Water Protection Zone (River Dee Catchment) (Designation) Order 1999(1), for “the Environment Agency at Chester Road, Buckley, Clwyd” substitute “the Natural Resources Body for Wales at Chester Road, Buckley, Flintshire”.

Water Protection Zone (River Dee Catchment) (Procedural and Other Provisions) Regulations 1999

68. The Water Protection Zone (River Dee Catchment) (Procedural and Other Provisions) Regulations 1999(2) are amended as follows.

69. For any reference to the Agency substitute a reference to the appropriate agency.

70. In regulation 7(2)(c), omit “or, in Wales, the Countryside Council for Wales”.

Anti-Pollution Works Regulations 1999

71. In the Anti-Pollution Works Regulations 1999(3), for any reference to the Agency, other than in regulation 8(3)(a), substitute a reference to the appropriate agency.

Welsh Language Schemes (Public Bodies) Order 1999

72. In the Schedule to the Welsh Language Schemes (Public Bodies) Order 1999(4), omit the entries relating to the Environment Agency.

The Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999

73.—(1) Regulation 2(1) of the Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999(5) is amended as follows.

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- (1) S.I. 1999/915 as amended by S.I. 2010/675, S.I. 2007/3538.
(2) S.I. 1999/916.
(3) S.I. 1999/1006 as amended by S.I. 2009/1307, S.I. 2009/3104.
(4) S.I. 1999/1100.
(5) S.I. 1999/1672 as amended by S.I. 1999/416, Countryside and Rights of Way Act 2000 (c. 37), section 93, Schedule 15, paragraph 17, Utilities Act 2000 (c.27), section 76(7),

(2) In the definition of “consultation bodies”, in subparagraph (d), for “the Countryside Council for Wales and the Environment Agency” substitute “the Natural Resources Body for Wales”.

Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999

74.—(1) Regulation 2(1) of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999(1) is amended as follows

(2) In the definition of “consultation bodies”, in subparagraph (b), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

(3) In the definition of “drainage body”, in subparagraph (a), after “Environment Agency” insert “in relation to England and the Natural Resources Body for Wales in relation to Wales”.

Town and Country Planning (Trees) Regulations 1999

75. The Town and Country Planning (Trees) Regulations 1999(2) are amended as follows.

76. In regulation 10(1), for “the Forestry Commissioners”, in each place where it occurs, substitute “the Natural Resources Body for Wales”.

77. In the Schedule, in paragraph 5(1)(e), for “the Environment Agency” substitute “the Natural Resources Body for Wales”, and for “the Agency” substitute “the Body”.

Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999

78. The Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999(3) are amended as follows.

79. For “the Commissioners”, in each place where it occurs, other than regulations 2(1) and 25, substitute “the appropriate forestry authority”.

80.—(1) Regulation 2(1) is amended as follows.

(2) After the definition of “the appropriate Authority” insert—

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- S.I. 2007/1996, modified by Countryside and Rights of Way Act 2000, section 93, Schedule 15, paragraph 17.
- (1) S.I. 1999/1783 as amended by S.I. 2005/1399, S.I. 2006/618.
- (2) S.I. 1999/1892 as amended by S.I. 2001/1149, S.I. 2001/4050, S.I. 2003/390 (W. 52), S.I. 2006/1281 (C. 43), S.I. 2012/792 (W. 107).
- (3) S.I. 1999/2228 as amended by S.I. 2006/3106; modified by Countryside and Rights of Way Act 2000 (c. 37), section 93, Schedule 15, part 11, paragraph 17.

““the appropriate forestry authority” means, in relation to England, the Commissioners and, in relation to Wales, the Natural Resources Body for Wales;”.

(3) For the definition of “countryside bodies” substitute—

““countryside bodies” means—

- (a) where any part of the land is situated in England, the Environment Agency, English Nature and any other body designated by statutory provision as having specific environmental responsibilities in relation to England; and
- (b) where any part of the land is situated in Wales, any body designated by statutory provision as having specific environmental responsibilities in relation to Wales;”.

81. In regulations 4(3), 16(b), 17(2) and 20(4)(a), for “the Commissioners” substitute “the appropriate forestry authority’s”.

82.—(1) Regulation 17 is amended as follows.

(2) In the heading, for “the Commissioners” substitute “the appropriate forestry authority”.

(3) In sub-paragraph (5), for “the Commissioner’s” substitute “the appropriate forestry authority’s”.

83. In regulation 24(1), for “England and Wales” substitute “England or Wales”.

84. In regulation 25, in paragraphs (3)(b) and (5)(b), for “their” substitute “the appropriate forestry authority’s”.

85.—(1) In Schedule 2, paragraph 1 is amended as follows.

(2) In the definition of “sensitive area”, in sub-paragraph (g), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999

86.—(1) Regulation 2(1) of the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999(1) is amended as follows.

(2) In the definition of “the consultation bodies”—

(1) S.I. 1999/2892 as amended by S.I. 1999/416, S.I. 2006/657, S.I. 2008/960.

- (a) in sub-paragraph (d), omit “and Wales”;
- (b) in sub-paragraph (f), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”;
- (c) after sub-paragraph (g), insert—
 - “(h) in England and Wales the consultation bodies in sub-paragraphs (d), (e) and (f);”.

Ionising Radiations Regulations 1999

87.—(1) Schedule 1 to the Ionising Radiations Regulations 1999⁽¹⁾ is amended as follows.

(2) For “the Environment Agency”, in each place where it occurs, substitute “the appropriate authority”.

(3) After paragraph 1 insert—

“**1A.** In this Schedule, “the appropriate authority” means—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Wales, the Natural Resources Body for Wales.”

Water Industry (Prescribed Conditions) Regulations 1999

88. The Water Industry (Prescribed Conditions) Regulations 1999⁽²⁾ are amended as follows.

89. In regulation 3(3)—

- (a) in sub-paragraph (b), before “the Environment Agency” insert “where the determination relates to an area that is in the area of a water undertaker whose area is wholly in England,”;
- (b) at the end of sub-paragraph (b) omit “and”;
- (c) after sub-paragraph (b) insert—
 - “(ba) where the determination relates to an area that is in the area of a water undertaker whose area is partly in England and partly in Wales, the Environment Agency and the Natural Resources Body for Wales; and”.

90.—(1) Regulation 4 is amended as follows.

(2) In paragraph (1) for “Environment Agency” substitute “appropriate agency”.

(3) After paragraph (3) insert—

(1) S.I. 1999/3232 as amended by S.I. 2001/2975, S.I. 2008/960, S.I. 2010/675.

(2) S.I. 1999/3442 as amended by S.I. 2005/2035, S.I. 2007/2457.

“(4) In this regulation “appropriate agency” means—

- (a) where the proposed determination relates to the whole or part of an area of a water undertaker whose area is wholly in England, the Environment Agency;
- (b) where the proposed determination relates to the whole or part of an area of a water undertaker whose area is partly in England and partly in Wales, the Environment Agency and the Natural Resources Body for Wales.”

Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000

91. The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000(1) are amended as follows.

92.—(1) Regulation 2(1) is amended as follows.

(2) After the definition of “applicant” insert—

““the appropriate authority” means—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Wales, the NRBW;”.

(3) After the definition of “PCBs” insert—

““the NRBW” means the Natural Resources Body for Wales;”.

(4) In the definition of “registered holder”, for “Agency”, in each place where it occurs, substitute “appropriate authority”.

93. In regulation 3(5)(b), for “Agency” substitute “appropriate authority”.

94.—(1) Regulation 6 is amended as follows.

(2) For “Agency”, in each place where it occurs, substitute “appropriate authority”.

(3) After paragraph (6), insert—

“(7) An application which relates to equipment held or to be held—

- (a) only at a location in England must be made to the Environment Agency;
- (b) only at a location in Wales must be made to the NRBW;

(1) S.I. 2000/1043 as amended by S.I. 2000/3359, S.I. 2005/1806 (W. 138), S.I. 2010/1820 (W. 177), S.I. 2011/988.

(c) at a location both in England and Wales must be made to the Environment Agency and the NRBW.”

95. In regulation 7, for “Agency”, in each place where it occurs, substitute “appropriate authority”.

96. In regulation 8(5), for “Agency”, in each place where it occurs, substitute “appropriate authority”.

97.—(1) Regulation 9 is amended as follows.

(2) In paragraph (5)—

(a) in sub-paragraph (b), omit “and the Welsh Assembly”;

(b) after sub-paragraph (b), insert—

“(c) exercise the functions in paragraphs (1) to (5) in relation to every location in England.”

(3) After paragraph (5) insert—

“(5A) The NRBW must compile an inventory of the contaminated equipment held at every location in Wales in respect of which there is a registered holder.

(5B) Subject to paragraph (3) an inventory compiled in accordance with paragraph (5A) must record the information specified in paragraph (2).

(5C) The NRBW must—

(a) before 30 September in each year, review the inventory which it has compiled in accordance with paragraph (5A) or, as the case may be, the most recent revision of that inventory; and

(b) on or before 30 September in each year provide the Welsh Ministers with a summary which shall include the total for the time being of—

(i) the number of registered holders; and

(ii) the number of items of equipment of which particulars are registered.
”

(4) In paragraph (6), after “paragraph (5)(a)” insert “and paragraph (5C)”.

98. In regulation 10, for “Agency”, in each place where it occurs, substitute “appropriate authority”.

99. In regulation 11, in sub-paragraphs (1), (5) and (6), for “Agency”, in each place where it occurs, substitute “appropriate authority”.

100. In regulation 12 for “Agency” substitute “appropriate authority”.

101. In regulation 13B, for “The Environment Agency” substitute “The NRBW”.

Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000

102. The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000(1) are amended as follows.

103.—(1) Regulation 2(1) is amended as follows.

(2) In the definition of “the consultative bodies”—

(a) in paragraph (c), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”;

(b) for paragraph (d) substitute—

“(d) where the application or proposed application relates to a section 36 consent—

(i) the Environment Agency, otherwise than in relation to Wales and the Welsh zone;

(ii) the Natural Resources Body for Wales in relation to Wales and the Welsh zone; and”.

(3) After the definition of “section 37 consent” insert—

““Welsh zone” has the meaning given by section 158(1) of the Government of Wales Act 2006.”

104. In Schedule 2, in paragraph (5)(h), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Pipe-line Works (Environmental Impact Assessment) Regulations 2000

105.—(1) Regulation 2 of the Pipe-line Works (Environmental Impact Assessment) Regulations 2000(2) is amended as follows.

(2) In the definition of “the consultation bodies”, in sub-paragraph (d), for “the Countryside Council for Wales and the Environment Agency” substitute “the Natural Resources Body for Wales”.

(1) S.I. 2000/1927 as amended by S.I. 2007/1977; modified by the Countryside and Rights of Way Act 2000 (c. 37), s 93, Sch 15, para 17.

(2) S.I. 2000/1928 as amended by S.I. 2007/1992, S.I. 2011/2453.

Burry Port Harbour Revision Order 2000

106. The Burry Port Harbour Revision Order 2000(1) is amended as follows.

107. For any reference to the Environment Agency, other than in article 19, substitute a reference to the Natural Resources Body for Wales.

108. In article 19(2)(g), after “the Environment Agency,” insert “the Natural Resources Body for Wales,”.

Forest Reproductive Material (Great Britain) Regulations 2002

109. The Forest Reproductive Material (Great Britain) Regulations 2002(2) are amended as follows(3).

110.—(1) Regulation 2 is amended as follows.

(2) In paragraph (2)—

(a) before the definition of “approved basic material” insert—

““the appropriate authority”—

(a) in regulations 7 to 9 and Schedules 2 to 5, has the meaning given in regulation 7(11);

(b) in regulations 11, 13 and 14, has the meaning given in regulation 11(4);

(c) in regulations 16, 18 and 22, has the meaning given in regulation 16(7);

(d) in regulation 25, has the meaning given in regulation 25(4).”;

(b) for the definition of “authorised officer” substitute—

““authorised officer” means—

(a) a person authorised by the Commissioners to exercise their powers and execute their functions under these Regulations; and

(b) a person authorised by the Welsh Ministers to exercise their powers and execute their functions under these Regulations.”;

(c) in the definitions of “official certificate” and “region of provenance”, after “the Commissioners” insert “or the Welsh Ministers”.

(1) S.I. 2000/2152.

(2) S.I. 2002/3026 as amended by S.I. 2006/2530.

(3) Schedule 7 contains transitional provisions relating to these Regulations.

- (3) In paragraph (6)—
- (a) omit “Commissioners”;
 - (b) after “payable to the Commissioners” insert “or the Welsh Ministers”.

111.—(1) Regulation 5 is amended as follows.

- (2) In paragraph (1)—
- (a) after “provenance” insert “in England and Scotland”;
 - (b) for “Great Britain” substitute “England and Scotland”.

- (3) After paragraph (1) insert—

“(1A) The Welsh Ministers shall demarcate regions of provenance in Wales in respect of each of the species listed in Schedule 1 which exist in Wales and shall allocate to each region of provenance an identity code.

(1B) The Commissioners and the Welsh Ministers may together exercise their functions under paragraph (1) and (1A) so as to designate a region of provenance of which part is in Wales.”

- (4) In paragraph (2) for “shall draw up maps showing the demarcated regions of provenance referred to in paragraph (1)” substitute “and the Welsh Ministers shall draw up maps showing the regions of provenance which they have demarcated pursuant to this regulation”.

112.—(1) Regulation 6 is amended as follows.

- (2) In paragraph (1) for “shall” substitute “and the Welsh Ministers shall jointly”.

- (3) In paragraph (2) after “the Commissioners” insert “and the Welsh Ministers”.

113.—(1) Regulation 7 is amended as follows.

- (2) For “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

- (3) After paragraph (10), insert—

“(11) In this regulation, regulations 8 and 9, and in Schedules 2 to 5 “the appropriate authority” means—

- (a) the Welsh Ministers, in relation to basic material located in Wales;
- (b) the Commissioners, in any other case.”

- 114.** In regulation 8(2), in each place where it occurs, for “the Commissioners” substitute “the appropriate authority”.

- 115.** In regulation 9, in each place where it occurs, for “the Commissioners” substitute “the appropriate authority”.

116.—(1) Regulation 11 is amended as follows.

(2) For “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

(3) In paragraph (1) for “Commissioners” substitute “the appropriate authority’s”.

(4) In paragraph (1)(c) for “register” substitute “National Register”.

(5) After paragraph (3) insert—

“(4) In this regulation and regulations 13 and 14 “the appropriate authority” means—

- (a) the Welsh Ministers, in relation to the collection, production or marketing of forest reproductive material in Wales;
- (b) the Commissioners, in any other case.”

117. In Regulation 13, for “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

118. In regulation 14(3), for “the Commissioners” substitute “the appropriate authority”.

119.—(1) Regulation 16 is amended as follows.

(2) In paragraph (1) after “(“the Register of Suppliers”)” insert “which is to be jointly maintained by the Commissioners and the Welsh Ministers”.

(3) In paragraph (2)—

- (a) for “the Commissioners” substitute “the appropriate authority”;
- (b) for “the Commissioners” substitute “the appropriate authority’s”.

(4) In paragraphs (3) to (5), for “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

(5) In paragraph (6) after “Commissioners” insert “and the Welsh Ministers”.

(6) After paragraph (6) insert—

“(7) In this regulation and regulations 18 and 22 “the appropriate authority” means—

- (a) the Welsh Ministers, in relation to a supplier whose primary place of business or trade is in Wales;
- (b) the Commissioners, in relation to a supplier whose primary place of business or trade is in England or Scotland.”

120. In regulation 18, for “The Commissioners, in each place where it occurs, substitute “The appropriate authority”.

121. In regulation 20(b), after “the Commissioners” insert “and the Welsh Ministers”.

122. In regulation 22(3), for “the Commissioners” substitute “the appropriate authority”.

123.—(1) Regulation 25 is amended as follows.

(2) In paragraphs (1)(b) and (3), for “the Commissioners” substitute “the appropriate authority”.

(3) After paragraph (3) insert—

“(4) In this regulation “the appropriate authority” means—

(a) the Welsh Ministers, in relation to the importation of forest reproductive material into Wales;

(b) the Commissioners, in relation to the importation of forest reproductive material into England or Scotland.”

124.—(1) Regulation 26 is amended as follows.

(2) In paragraph (3)(b), after “the Commissioners” insert “or the Welsh Ministers”.

(3) In paragraph (5) after “the Commissioners” insert “or (according as the requirement was made) the Welsh Ministers”.

125. In regulation 27(1) after “the Commissioners” insert “or the Welsh Ministers (as the case may be)”.

126.—(1) Regulation 32 is amended as follows.

(2) In paragraph (1)—

(a) after “the Commissioners” insert “or the Welsh Ministers”;

(b) in sub-paragraph (h), after “the Commissioners” insert “or the Welsh Ministers”.

(3) In paragraph (3), after “the Commissioners” insert “and the Welsh Ministers”.

127. In Schedule 2, for “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

128.—(1) Schedule 3 is amended as follows.

(2) For “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

(3) In paragraph (5), for “the Commissioners” substitute “the appropriate authority’s”.

129.—(1) Schedule 4 is amended as follows.

(2) For “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

(3) In paragraph 2(c), for “the Commissioners” substitute “the appropriate authority’s”.

(4) In paragraph 3(b), for “the Commissioners” substitute “the appropriate authority’s”.

130. In Schedule 5, for “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003

131. The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003(1) are amended as follows.

132. For any reference to the Agency, other than in regulations 2 and 6(4), substitute a reference to the appropriate authority.

133.—(1) Regulation 2 is amended as follows.

(2) Omit the definition of “the Agency”.

(3) Before the definition of “appropriate Minister” insert—

““appropriate authority” means the Environment Agency in relation to England and the Natural Resources Body for Wales in relation to Wales;”.

(4) In the definition of “consultation bodies”—

(a) in sub-paragraph (c), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”;

(b) in sub-paragraph (d), for “the Agency” substitute “the appropriate authority”.

134. In regulation 6(4) for “Agency and” substitute “appropriate authority and, if different,”.

Urban Waste Water Treatment (England and Wales) (Amendment) Regulations 2003

135. In the Urban Waste Water Treatment (England and Wales) (Amendment) Regulations 2003(2), for any reference to the Environment Agency (however framed) substitute a reference to the appropriate agency.

Packaging (Essential Requirements) Regulations 2003

136. In Schedule 2 to the Packaging (Essential Requirements) Regulations 2003(3), in paragraph 2(a)(iv), for “the Environment Agency in England and Wales” substitute “the Environment Agency in

(1) S.I. 2003/164 as amended by S.I. 2006/3124.

(2) S.I. 2003/1788.

(3) S.I. 2003/1941 as amended by S.I. 2004/693, S.I. 2004/1188, S.I. 2005/1806 (W. 138), S.I. 2006/1492, S.I. 2009/1504, S.I. 2011/988.

England, the Natural Resources Body for Wales in Wales”.

Electronic Communications Code (Conditions and Restrictions) Regulations 2003

137. The Electronic Communications Code (Conditions and Restrictions) Regulations 2003⁽¹⁾ are amended as follows.

138.—(1) Regulation 2(2) is amended as follows.

(2) Omit the definition of “Countryside Council for Wales”.

(3) In the definition of “national nature reserve”, in sub-paragraph (c), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

(4) In the appropriate place insert—

““Natural Resources Body for Wales” means the Natural Resources Body for Wales as established by article 3(1) of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903);”.

139. In regulation 8(1)(b)(iii), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003

140. The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003⁽²⁾ are amended as follows.

141.—(1) Regulation 2 is amended as follows.

(2) In paragraph (1)—

(a) after the definition of “the Agency” insert—

““the appropriate agency” means—

- (a) in relation to a river basin district that is wholly in England, the Agency;
- (b) in relation to a river basin district that is wholly in Wales, the NRBW; and
- (c) in relation to a river basin district that is partly in England and partly in Wales, the Agency and the NRBW acting jointly;”.

(1) S.I. 2003/2553 as amended by S.I. 2009/584.

(2) S.I. 2003/3242 as amended by S.I. 2005/2035, S.I. 2007/3538, S.I. 2008/1097 (partly as from 14/05/08, fully as from 24/03/15), S.I. 2010/630 (C. 42), S.I. 2011/556 (C. 19).

(b) after the definition of “environmental objectives” insert—

““the NRBW” means the Natural Resources Body for Wales;”.

(3) After paragraph (1) insert—

“(1A) In these regulations, where the appropriate agency is required to make copies of a statement, summary, draft plan or plan (including an approved or revised plan) accessible to the public free of charge, references to doing so through its website means—

(a) where the NRBW is the appropriate agency, through its website;

(b) where the Agency is the appropriate agency, through its website;

(c) where the Agency and the NRBW acting jointly are the appropriate agency, through their respective websites.

(1B) In these regulations, where the appropriate agency is required to make copies of a statement, summary, draft plan or plan (including an approved or revised plan) accessible to the public free of charge, references to doing so at its principal office and each of its principal regional offices means—

(a) where the NRBW is the appropriate agency, at its principal office and each of its principal regional offices;

(b) where the Agency is the appropriate agency, at its principal offices and each of its principal regional offices;

(c) where the Agency and the NRBW acting jointly are the appropriate agency, at their principal offices and each of their principal regional offices.”

142.—(1) Regulation 3 is amended as follows.

(2) In paragraph (1), after “the Assembly” insert “, the NRBW”.

(3) In paragraph (2), for “and the Assembly” substitute “, the Welsh Ministers, the Agency and the NRBW”.

143.—(1) Regulation 4 is amended as follows.

(2) In paragraph (2), after “the Assembly” insert “, the NRBW”.

(3) In paragraph (3)—

(a) in sub-paragraph (b), omit “and”;

(b) after sub-paragraph (b) insert—

“(ba) in the case of the NRBW, its principal office and its principal regional offices; and”.

144. In regulation 5(2), for “Agency” substitute “appropriate agency”.

145. In regulations 7 to 9, for “Agency”, in each place where it occurs, substitute “appropriate agency”.

146.—(1) Regulation 10 is amended as follows.

(2) For “Agency”, in each place where it occurs, substitute “appropriate agency”.

(3) In paragraph (2)(b)—

- (a) for “it thinks fit” substitute “the appropriate agency thinks fit”;
- (b) in paragraph (i) for “its proposals” substitute “the appropriate agency’s proposals”;
- (c) in paragraph (ii) for “its draft proposals” substitute “the appropriate agency’s draft proposals”.

147. In regulation 11(1) for “Agency” substitute “appropriate agency”.

148.—(1) Regulation 12 is amended as follows.

(2) For “Agency”, in each place where it occurs, substitute “appropriate agency”.

(3) In paragraph (1)—

- (a) in sub-paragraph (a)(i) for “it is to take” substitute “the appropriate agency is to take”;
- (b) in sub-paragraph (b) for “which it considers” substitute “which the appropriate agency considers”.

(4) In paragraph (2)(d) for “it thinks fit” substitute “the appropriate agency thinks fit”.

(5) In paragraph (5)(a)—

- (a) at the end of paragraph (i) insert “and”;
- (b) omit paragraph (ii);
- (c) in paragraph (iii) for “and the Countryside Council for Wales” substitute “in relation to the part in England”.

149. In regulations 13 to 15 for “Agency”, in each place where it occurs, substitute “appropriate agency”.

150.—(1) Regulation 16 is amended as follows.

(2) In paragraph (1) for “Agency” substitute “appropriate agency”.

(3) In paragraph (3) for “it thinks fit” substitute “the appropriate agency thinks fit”.

151. In regulation 17 after “Agency” insert “, the NRBW”.

152.—(1) Regulation 18 is amended as follows.

(2) For “Agency”, in each place where it occurs substitute, “appropriate agency”.

(3) In paragraph (1) after “its principal office” insert “or (as the case may be) their principal offices”.

153. In regulation 19(1) for any reference to the Agency substitute a reference to the appropriate agency.

154. In regulation 20(3) for “Agency” substitute “appropriate agency”.

155. In Part 2 of Schedule 2, after paragraph 29 insert—

“30. The Water Protection Zone (River Dee Catchment) (Procedural and Other Provisions) Regulations 1999.

31. The Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903).

32. The Natural Resources Body for Wales (Functions) Order 2012.”

Environmental Assessment of Plans and Programmes Regulations 2004

156. In regulation 4(4)(b) of the Environmental Assessment of Plans and Programmes Regulations 2004(1), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004

157. The Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004(2) is amended as follows.

158.—(1) Article 2 is amended as follows.

(2) Before the definition of “authorised officer”, insert—

““the appropriate authority” means—

(a) where the principal place of business of a person mentioned in article 3(1) is in England or Scotland, the Forestry Commissioners;

(b) where the principal place of business of a person mentioned in article 3(1) is in Wales, the Welsh Ministers;”.

(3) In the definition of “authorised officer”—

(1) S.I. 2004/1633.

(2) S.I. 2004/1684.

- (a) after “the Forestry Commissioners” in each place where it occurs, insert “ or the Welsh Ministers”;
- (b) for “1993” substitute “2005”;
- (c) after “2005” insert “, and accordingly the provisions of article 2A of that Order apply to the exercise of such person’s functions under this Order”.

(4) In the definitions of “phytosanitary certificate” and “reforwarding phytosanitary certificate”, for “the Forestry Commissioners” substitute “the appropriate authority”.

(5) In the definitions of “relevant material” and “third country”, for “1993” substitute “2005”.

159. In articles 3 and 4, for “the Forestry Commission” substitute “the appropriate authority”.

End-of-Life Vehicles (Producer Responsibility) Regulations 2005

160.—(1) Regulation 24(4) of the End-of-Life Vehicles (Producer Responsibility) Regulations 2005(1) is amended as follows.

(2) In sub-paragraph (a), omit “and Wales”.

(3) After sub-paragraph (a) insert—

“(aa) Wales, the Natural Resources Body for Wales;”.

Charities (National Trust) Order 2005

161.—(1) The Appendix to the Charities (National Trust) Order 2005(2) is amended as follows.

(2) In Part 3 of the Schedule—

(a) omit “Countryside Council for Wales”;

(b) in the appropriate place insert “Natural Resources Body for Wales”.

Hazardous Waste (England and Wales) Regulations 2005

162.—(1) Regulation 11 of the Hazardous Waste (England and Wales) Regulations 2005(3) is amended as follows.

(2) After sub-paragraph (a) insert—

“(aa) the Natural Resources Body for Wales;”.

(1) S.I. 2005/263 as amended by S.I. 2010/1095, S.I. 2011/988.
 (2) S.I. 2005/712.
 (3) S.I. 2005/894 as amended by S.I. 2006/937, S.I. 2007/3538, S.I. 2010/675, S.I. 2011/556 (C. 19), S.I. 2011/988, S.I. 2011/2043.

Drought Plan Regulations 2005

163. In regulation 2(2)(i) of the Drought Plan Regulations 2005(1), omit “the Countryside Council for Wales and”.

Plant Health (Forestry) Order 2005

164. The Plant Health (Forestry) Order 2005(2) is amended as follows(3).

165.—(1) Article 2 is amended as follows.

(2) Before the definition of “area of plant health control” insert—

““the appropriate authority” means—

- (a) the Commissioners, in relation to England or Scotland;
- (b) the Welsh Ministers, in relation to Wales;”.

(3) For the definition of “inspector”, substitute—

““inspector”—

- (a) in article 9(1), has the meaning given in that article;
- (b) in any other provision of this Order, means any person authorised by the Commissioners or the Welsh Ministers to be an inspector for the purposes of this Order (see article 2A for further provision about inspectors);”.

166. After article 2 insert—

“Inspectors

2A.—(1) An inspector authorised by the Commissioners may exercise the functions of an inspector under this Order in relation to any person or thing in England or Scotland.

(2) An inspector authorised by the Welsh Ministers may exercise the functions of an inspector under this Order in relation to any person or thing in Wales.”

167. In article 3, in the definition of “approved place of inspection”, for “the Commissioners” substitute “the appropriate authority”.

168. In article 6, for “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

(1) S.I. 2005/1905.
(2) S.I. 2005/2517 as amended by S.I. 2006/2696, S.I. 2008/644, S.I. 2009/594, S.I. 2009/3020.
(3) Schedule 7 contains transitional provisions relating to this Order.

169. After article 9(3) insert—

“(4) In this article “inspector” means—

- (a) where relevant material is landed in England or Scotland, any person authorised by the Commissioners to be an inspector for the purposes of this Order;
- (b) where relevant material is landed in Wales, any person authorised by the Welsh Ministers to be an inspector for the purposes of this Order.”

170.—(1) Article 10 is amended as follows.

(2) In sub-paragraph 2(b), for “control by the Commissioners” substitute “control by the appropriate authority”.

(3) After paragraph (4) insert—

“(5) The Commissioners, the Welsh Ministers and the Commissioners for Her Majesty’s Revenue and Customs may together exercise their functions under paragraph (2) so as to designate an area of plant health control of which part is in Wales.”

171.—(1) Article 12 is amended as follows.

(2) In paragraph (6), for “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

(3) In paragraph (7), for “the Commissioners” substitute “the appropriate authority”.

172. In article 16, in each place where it occurs, for “the Commissioners” substitute “the appropriate authority”.

173.—(1) Article 17 is amended as follows.

(2) In paragraphs (1) to (4), for “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

(3) In paragraph (5), for “the Commissioners may” substitute “the appropriate authority may”.

174. In article 20(7), for “the Commissioners” substitute “the appropriate authority”.

175. In article 24(1), for “the Commissioners shall” substitute “the Commissioners and the Welsh Ministers shall jointly”.

176.—(1) Article 26 is amended as follows.

(2) In paragraph (1)—

- (a) for “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”;
- (b) for “plant” substitute “forestry”.

(3) In paragraphs (2) to (5), for “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

(4) After paragraph (5) insert—

“(6) For the purposes of this article, registration of a forestry trader shall be effected by the appropriate authority entering the particulars listed in paragraph (1) in the register maintained under that paragraph”.

177. In article 27, for “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

178.—(1) Article 28 is amended as follows.

(2) In paragraphs (1) to (3), for “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

(3) In paragraph (4), for “The Commissioners”, substitute “The appropriate authority’s”.

(4) In paragraphs (5) and (6), for “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

179. In article 30(7), after “the Commissioners”, insert “or, as the case may be, the Welsh Ministers”.

180. In article 32(5), after “the Commissioners”, insert “or, as the case may be, the Welsh Ministers”.

181. In article 33(6)(a), for “the Commissioners” substitute “the appropriate authority”.

182.—(1) Article 36 is amended as follows.

(2) In paragraph (2), after “the Commissioners”, insert “or, as the case may be, the Welsh Ministers”.

(3) In paragraph (3), for “the Commissioners” substitute “the appropriate authority”.

183. In articles 38 and 39, for “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

184. In articles 40(1) and 41(1), after “the Commissioners”, insert “, the Welsh Ministers”.

185. In article 42, for “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

186. In Schedule 7, in paragraph 2 of Part A, after “the Forestry Commission” insert “, the Welsh Ministers or the Natural Resources Body for Wales”.

187. In Schedule 9, in sub-paragraph 3(b), for “the Commissioners” substitute “the appropriate authority”.

Water Resources (Abstraction and Impounding) Regulations 2006

188. In the Water Resources (Abstraction and Impounding) Regulations 2006(1), for any reference to the Agency substitute a reference to the appropriate agency.

Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006

189. The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(2) are amended as follows.

190. In rule 4(1), in the appropriate place insert—

““the appropriate agency” means—

- (a) the Environment Agency for works in or adjacent to England;
- (b) the Natural Resources Body for Wales for works in or adjacent to Wales;”.

191.—(1) Rule 7(8) is amended as follows.

(2) In sub-paragraph (c), after “Environment Agency” insert “for a proposal affecting land in or adjacent to, or tidal waters in or adjacent to, England”.

(3) In sub-paragraph (e), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

192.—(1) Rule 8(4) is amended as follows.

(2) In sub-paragraph (c), after “Environment Agency” insert “for a proposal affecting land in or adjacent to, or tidal waters in or adjacent to, England”.

(3) In sub-paragraph (e), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

193. In rule 12(8)(e)(vi), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

194.—(1) In Schedule 5, the table is amended as follows.

(2) In rows 1 to 6 and 20, in column (2), for “Environment Agency” substitute “appropriate agency”.

(3) In rows 17 and 18, in column (2), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

(1) S.I. 2006/641 as amended by S.I. 2008/165.

(2) S.I. 2006/1466 as amended by S.I. 2010/439, S.I. 2010/1551, S.I. 2011/556 (C. 19), S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658.

195.—(1) In Schedule 6, the table is amended as follows.

(2) In rows 1 to 3, in column (2), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

(3) In row 5, in column (2), for “Environment Agency” substitute “appropriate agency”.

Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006

196. The Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006(1) is amended as follows.

197.—(1) Article 2 is amended as follows.

(2) In the definition of “approved measure”, for “the Commissioners” substitute “the appropriate authority”.

(3) In the definition of “inspector”—

(a) after “the Commissioners” insert “or the Welsh Ministers”;

(b) after “2005” insert “and accordingly the provisions of article 2A of that Order apply to the exercise of an inspector’s functions under this Order”.

(4) after the definition of “repair”, insert—

““the appropriate authority” means—

(a) the Commissioners, in relation to England and Scotland;

(b) the Welsh Ministers, in relation to Wales;”.

198. In articles 4 to 11, for “the Commissioners”, in each place where it occurs, substitute “the appropriate authority”.

199. In Schedule 2, in the form of certificate, before the Appendix insert—

“[or, as appropriate]

Signed on behalf of the Welsh Ministers

.....”.

Plant Health (Fees) (Forestry) Regulations 2006

200. The Plant Health (Fees) (Forestry) Regulations 2006(2) are amended as follows.

201. In regulation 2(1), before the definition of “authority” insert—

(1) S.I. 2006/2695.

(2) S.I. 2006/2697 as amended by S.I. 2008/702, S.I. 2009/2956, S.I. 2010/2001.

““action” means any action for which a fee is payable pursuant to paragraphs (2) to (6) of regulation 3.”

202. For regulation 3(1) substitute—

“(1) Fees are payable—

- (a) to the Forestry Commissioners, where an action is carried out by them or by an inspector in relation to any person or thing in England or Scotland;
- (b) to the Welsh Ministers, where an action is carried out by them or by an inspector in relation to any person or thing in Wales.”

Waste Electrical and Electronic Equipment Regulations 2006

203. The Waste Electrical and Electronic Equipment Regulations 2006(1) are amended as follows.

204.—(1) Regulation 2(1) is amended as follows.

(2) In the definition of “appropriate authority”—

(a) in sub-paragraph (a), omit “or Wales”;

(b) after sub-paragraph (a) insert—

“(aa) for the purposes of any provision of these Regulations relating to the exercise of the functions of the appropriate authority in Wales, the Natural Resources Body for Wales;”;

(c) in sub-paragraph (e)(i), omit “or Wales”;

(d) after sub-paragraph (e)(i) insert—

“(ia) where the producer's registered office or principal place of business is in Wales, the Natural Resources Body for Wales;”;

(e) in sub-paragraph (g)(i), omit “or Wales”;

(f) after sub-paragraph (g)(i) insert—

“(ia) where the operator of the scheme's registered office or principal place of business is in Wales, the Natural Resources Body for Wales;”;

(g) in sub-paragraph (h)(i), omit “or Wales”;

(h) after sub-paragraph (h)(i) insert—

“(ia) where the operator of the ATF's or the exporter's registered office or

(1) S.I. 2006/3289 as amended by S.I. 2007/3454, S.I. 2007/3538, S.I. 2009/2957, S.I. 2010/675, S.I. 2010/1155 (partly as from 01/06/10, partly as from 01/12/10 and fully as from 01/06/15), S.I. 2011/988.

principal place of business is in Wales, the Natural Resources Body for Wales;”;

(i) in sub-paragraph (i)(i), omit “or Wales”;

(j) after sub-paragraph (i)(i), insert—

“(ia) where the operator of the collection facility’s registered office or principal place of business is in Wales, the Natural Resources Body for Wales;”.

(3) After the definition of “member State”, insert—

““Natural Resources Body for Wales” means the body established by article 3 of the Natural Resources Body for Wales (Establishment) Order 2012;”.

205. In regulation 41(4)(c)(i), after “Environment Agency” insert “, the Natural Resources Body for Wales”.

206. In regulation 43(e)(i), after “Environment Agency” insert “, the Natural Resources Body for Wales”.

207.—(1) Regulation 45(5) is amended as follows.

(2) In sub-paragraph (a), omit “or”.

(3) After sub-paragraph (a), insert—

“(aa) by the Natural Resources Body for Wales in respect of applications for approval made under regulation 41 to that appropriate authority; or”.

208. In regulation 47(1)(c)(i), after “Environment Agency” insert “, the Natural Resources Body for Wales”.

209. In regulation 48(1)(c)(i), after “Environment Agency” insert “, the Natural Resources Body for Wales”.

210. After regulation 51(4)(a) insert—

“(aa) by the Natural Resources Body for Wales in respect of applications for approval made under regulation 47 or 48 to that appropriate authority; or”.

211.—(1) Regulation 70(2) is amended as follows.

(2) In sub-paragraph (a), omit “and Wales”.

(3) After sub-paragraph (a), insert—

“(aa) in Wales, the Natural Resources Body for Wales; ”.

Water Resources Management Plan Regulations 2007

212. In regulation 2(2)(i) of the Water Resources Management Plan Regulations 2007(1), omit “the Countryside Council for Wales and”.

Producer Responsibility Obligations (Packaging Waste) Regulations 2007

213. The Producer Responsibility Obligations (Packaging Waste) Regulations 2007(2) are amended as follows.

214.—(1) Regulation 2 is amended as follows.

(2) For the definition of “appropriate agency” substitute—

““appropriate agency” means—

- (a) for the purposes of any provision of these Regulations relating to the exercise of the functions of the appropriate agency in England, the Environment Agency;
- (b) for the purposes of any provision of these Regulations relating to the exercise of the functions of the appropriate agency in Scotland, SEPA;
- (c) for the purposes of any provision of these Regulations relating to the exercise of the functions of the appropriate agency in Wales, the Natural Resources Body for Wales;
- (d) for the purposes of any provision of these Regulations relating to the obligations of any other person—
 - (i) the Environment Agency, where at the beginning of the relevant year the person’s registered office or principal place of business is in England;
 - (ii) SEPA, where at the beginning of the relevant year the person’s registered office or principal place of business is in Scotland;
 - (iii) the Natural Resources Body for Wales, where at the beginning of the relevant year the person’s registered office or principal place of business is in Wales;

(1) S.I. 2007/727.

(2) S.I. 2007/871 as amended by S.I. 2007/3538, S.I. 2008/1941, S.I. 2010/675, S.I. 2010/1820 (W. 177), S.I. 2010/2849, S.I. 2011/988.

- (iv) at the election of the person, the Environment Agency, SEPA or the Natural Resources Body for Wales, where at the beginning of the relevant year the person does not have a registered office or principal place of business in Great Britain;
- (v) in relation to schemes, where there is more than one operator of a scheme and such operators have registered offices or principal places of business in England and in Scotland (but not in Wales)—
 - (aa) the Environment Agency where the operators have elected to apply for approval of the scheme from the Secretary of State; or
 - (bb) SEPA where the operators have elected to apply for approval of the scheme from the Scottish Ministers;
- (vi) in relation to schemes, where there is more than one operator of a scheme and such operators have registered offices or principal places of business in Wales and in Scotland (but not in England)—
 - (aa) the Natural Resources Body for Wales where the operators have elected to apply for approval of the scheme from the Secretary of State; or
 - (bb) SEPA where the operators have elected to apply for approval of the scheme from the Scottish Ministers;
- (vii) in relation to schemes where there is more than one operator of a scheme and such operators have registered offices or principal places of business in England and in Wales (but not in Scotland), at the election of the operators, the Environment Agency or the Natural Resources Body for Wales; or
- (viii) in relation to schemes, where there is more than one operator of a scheme and such operators have registered offices or principal

places of business in England, in Scotland and in Wales—

- (aa) SEPA, where the operator has elected to apply for approval of the scheme from the Scottish Ministers;
- (bb) at the election of the operator, the Environment Agency or the Natural Resources Body for Wales, where the operator has elected to apply for approval from the Secretary of State.”

(3) In the definition of “appropriate authority”, in sub-paragraphs (b)(i) and (d), after “the Environment Agency” insert “or the Natural Resources Body for Wales”.

215. In regulation 40B, for “the Environment Agency” substitute “the Natural Resources Body for Wales”.

Marine Works (Environmental Impact Assessment) Regulations 2007

216. In regulation 2(1) of the Marine Works (Environmental Impact Assessment) Regulations 2007(1), in the definition of “the nature conservation bodies”, for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Offshore Marine Conservation (Natural Habitats &c) Regulations 2007

217. The Offshore Marine Conservation (Natural Habitats &c) Regulations 2007(2) are amended as follows.

218. In regulation 25(3)(c), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

219. In regulation 71, for “the Countryside Council for Wales”, in each place where it occurs, substitute “the Natural Resources Body for Wales”.

(1) S.I. 2007/1518 as amended by S.I. 2011/735.
(2) S.I. 2007/1842 as amended by S.I. 2009/7, S.I. 2010/490, S.I. 2010/491, S.I. 2010/1513, S.I. 2011/2043, S.I. 2012/1928.

Large Combustion Plants (National Emission Reduction Plan) Regulations 2007

220. The Large Combustion Plants (National Emission Reduction Plan) Regulations 2007(1) are amended as follows.

221. In regulation 2, after the definition of “National Emission Reduction Plan” insert—

““NRBW” means the Natural Resources Body for Wales;”.

222. In regulation 6(5), after “SEPA” insert “, NRBW”.

223.—(1) Regulation 7 is amended as follows.

(2) In sub-paragraph (1), omit “and Wales”.

(3) After sub-paragraph (1) insert—

“(1A) The NRBW must verify the annual report of each operator of a participating plant in Wales relating to the actual annual mass emission of each of the LCPD pollutants from the participating plant.”

(4) In sub-paragraph (4), after “SEPA” insert “, NRBW”.

224.—(1) Regulation 9 is amended as follows.

(2) In paragraph (2), after “SEPA”, in each place where it occurs, insert “, NBRW”.

(3) In paragraph 4(b)—

(a) in sub-paragraph (i), omit “or Wales”;

(b) after sub-paragraph (i), insert—

“(ia)NRBW, if the participating plant in question is in Wales.”.

225.—(1) Regulation 12 is amended as follows.

(2) In sub-paragraph (a), after “SEPA;” omit “and”.

(3) After sub-paragraph (a), insert—

“(aa) NRBW;”.

226.—(1) In Schedule 1, paragraph 1 is amended as follows.

(2) In sub-paragraph (a), omit “or Wales”.

(3) After sub-paragraph (c) insert—

“(d) of a participating plant in Wales, to NRBW in accordance with the conditions of the environmental permit under the Environmental Permitting (England and Wales) Regulations 2010;”.

(1) S.I. 2007/2325 as amended by S.I. 2007/3476, S.I. 2007/3538, S.I. 2010/675.

Persistent Organic Pollutants Regulations 2007

227.—(1) Regulation 3(1) of the Persistent Organic Pollutants Regulations 2007(1) is amended as follows.

(2) In sub-paragraph (a), omit “and Wales”.

(3) After paragraph (a) insert—

“(aa) in Wales, the Natural Resources Body for Wales;”.

Legislative and Regulatory Reform (Regulatory Functions) Order 2007

228.—(1) The Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007(2) is amended as follows.

(2) In Part 1, in the list of bodies, in the appropriate place, insert “Natural Resources Body for Wales”.

Bathing Water Regulations 2008

229. The Bathing Water Regulations 2008(3) are amended as follows.

230. For “Agency management measures”, in each place where it occurs, substitute “appropriate agency management measures”.

231. For any reference to the Agency, other than in regulation 3, substitute a reference to the appropriate agency.

232.—(1) Regulation 2(1) is amended as follows.

(2) Omit the definition of “the Agency”.

(3) In the appropriate place insert—

““the appropriate agency” means—

(a) in relation to a bathing water in England, the Environment Agency;

(b) in relation to a bathing water in Wales, the Natural Resources Body for Wales;”.

233. In regulation 3(2), for “the Environment Agency” substitute “the Natural Resources Body for Wales”.

(1) S.I. 2007/3106 as amended by S.I. 2010/675.

(2) S.I. 2007/3544 as amended by S.I. 2008/574, S.I. 2008/960, S.I. 2008/1277, S.I. 2008/1284, S.I. 2008/1597, S.I. 2008/1816, S.I. 2009/2824, S.I. 2009/2981, S.I. 2010/630 (C. 42), S.I. 2010/671, S.I. 2010/2960, S.I. 2010/3028, S.I. 2011/881, S.I. 2011/2377 (W. 250), S.I. 2011/2937, S.I. 2012/641, S.I. 2012/1479.

(3) S.I. 2008/1097.

Dee Estuary Cockle Fisheries Order 2008

234. The Dee Estuary Cockle Fishery Order 2008(1) is amended as follows.

235.—(1) Article 2 is amended as follows.

(2) After the definition of “cockle” insert—

““England” includes the sea adjacent to England to a distance of 12 nautical miles from the baselines from which the breadth of the territorial sea is measured;”.

(3) For the definition of “the grantee” substitute—

““the grantee” means the Environment Agency in relation to England and the Natural Resources Body for Wales in relation to Wales;”.

(4) In the appropriate place, insert—

“Wales” has the meaning given by section 158(1) and (3) of the Government of Wales Act 2006(2).”

236. In article 5, after paragraph (1), insert—

“(1A) A licence must apply in relation to the whole of the area of the fishery.”

REACH Enforcement Regulations 2008

237. The REACH Enforcement Regulations 2008(3) are amended as follows.

238. In regulation 2, in the definition of “enforcing authority”, after sub-paragraph (f), insert—

“(fa) the Natural Resources Body for Wales;”.

239. In regulation 21(2)(a), after “the Environment Agency,” insert “the Natural Resources Body for Wales,”.

240.—(1) In Schedule 1, the Table is amended as follows.

(2) In the third column, in the rows relating to the articles listed in paragraph (3)—

(a) after “The Health and Safety Executive.” insert “In relation to England,”;

(b) after “Agency.” insert “In relation to Wales, the Natural Resources Body for Wales.”

(1) S.I. 2008/1472

(2) 2006 c.32. The boundary between the sea adjacent to Wales and that adjacent to England is described by article 6 of and Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of section 162 of and paragraph 26 of Schedule 11 to the 2006 Act, S.I. 1999/672 continues to have effect.

(3) S.I. 2008/2852 as amended by S.I. 2009/716, S.I. 2010/1513, S.I. 2011/3058, S.I. 2012/632.

(3) Paragraph (2) applies to the rows relating to the following articles—

- (a) article 9(6);
- (b) article 14(6);
- (c) article 36(1);
- (d) article 37(4);
- (e) in both rows relating to article 37(5);
- (f) article 37(6);
- (g) article 38(1);
- (h) article 38(3);
- (i) article 56(1);
- (j) article 56(2);
- (k) article 60(10);
- (l) article 67(1).

241. In Schedule 2, in paragraph 1, after “the Environment Agency,” insert “the Natural Resources Body for Wales,”.

242. In Schedule 6, in the heading to Part 1, after “The Environment Agency,” insert “the Natural Resources Body for Wales,”.

243.—(1) Schedule 7 is amended as follows.

(2) In the heading to Section 1, after “The Environment Agency” insert “, the Natural Resources Body for Wales”.

(3) In paragraph 1, after “the Environment Agency” insert “, the Natural Resources Body for Wales”.

244.—(1) Schedule 8 is amended as follows.

(2) In the heading to Part 1, after “the Environment Agency,” insert “the Natural Resources Body for Wales,”.

(3) In paragraph 1—

- (a) for sub-paragraph (a) substitute—
“(a) the Environment Agency, the Secretary of State;”;
- (b) after sub-paragraph (a) insert—
“(aa) the Natural Resources Body for Wales, the Welsh Ministers;”.

Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008

245. The Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008(1) are amended as follows.

(1) S.I. 2008/3087.

246.—(1) Regulation 2 is amended as follows.

(2) In the definition of “competent authority”—

(a) in sub-paragraph (a) , omit “and Wales”;

(b) after sub-paragraph (c), insert—

“(d) in Wales, the Natural Resources Body for Wales;”.

247. In regulation 16, for “and Wales” substitute “the Welsh Ministers in Wales,”.

Environmental Damage (Prevention and Remediation) Regulations 2009

248. In regulation 10 of the Environmental Damage (Prevention and Remediation) Regulations 2009(1), for paragraph (2) substitute—

“(2) If either the Environment Agency or the Natural Resources Body for Wales is responsible for granting the permit, they are enforced by the Environment Agency in all cases.”

Ozone-Depleting Substances (Qualifications) Regulations 2009

249.—(1) Regulation 7 of the Ozone-Depleting Substances (Qualifications) Regulations 2009(2) is amended as follows.

(2) In paragraphs (1), (2) and (4), for any reference to the Agency substitute a reference to the appropriate authority.

(3) In paragraph (5)—

(a) omit the definition of “the Agency”;

(b) before the definition of “the local authority” insert—

““the appropriate agency” means—

(a) as regards England, the Environment Agency;

(b) as regards Wales, the Natural Resources Body for Wales;

(c) as regards Scotland, the Scottish Environment Protection Agency;”.

Fluorinated Greenhouse Gas Regulations 2009

250. The Fluorinated Greenhouse Gas Regulations 2009(3) are amended as follows.

(1) S.I. 2009/153 as amended by S.I. 2009/3275, S.I. 2010/587, S.I. 2010/675, S.I. 2010/2221, S.I. 2011/556 (C. 19), S.I. 2011/988, S.I. 2011/2131, S.I. 2012/630.

(2) S.I. 2009/216 as amended by S.I. 2011/1543.

(3) S.I. 2009/261 as amended by S.I. 2010/1513.

251.—(1) Regulation 3 is amended as follows.

(2) In paragraph (1), for the definition of “the Agency” substitute—

““the appropriate agency” means—

- (a) as regards England, the Environment Agency;
- (b) as regards Wales, the Natural Resources Body for Wales;
- (c) as regards Scotland, the Scottish Environment Protection Agency;”.

(3) In paragraph (3), for “the Agency”, in each place where it occurs, substitute “the appropriate agency”.

252. In regulation 56(5), for “the Agency” substitute “the appropriate authority”.

Waste Batteries and Accumulators Regulations 2009

253. The Waste Batteries and Accumulators Regulations 2009(1) are amended as follows.

254.—(1) Regulation 2(1) is amended as follows.

(2) In the definition of “extension of approval charge”, in sub-paragraph (a), after “Environment Agency” insert “, the NRBW”.

(3) After the definition of “industrial battery” insert—

““NRBW” means the Natural Resources Body for Wales”.

(4) In the definition of “scheme application charge”, in sub-paragraph (a), after “Environment Agency” insert “, the NRBW”.

(5) in the definition of “scheme subsistence charge”, in sub-paragraph (a), after “Environment Agency” insert “, the NRBW”.

(6) in the definition of “treatment, recycling and export application charge”, in sub-paragraph (a), after “Environment Agency” insert “, the NRBW”.

255.—(1) Regulation 3(2) is amended as follows.

(2) In sub-paragraph (a), omit “and Wales”.

(3) After sub-paragraph (a) insert—

“(aa) Wales is the NRBW;”

256. In regulation 13(2)(d)(i), after the words “Environment Agency” insert “, the NRBW”.

257.—(1) Regulation 83 is amended as follows.

(1) S.I. 2009/890 as amended by S.I. 2009/3381, S.I. 2010/675, S.I. 2011/988.

(2) In paragraph (1), after “Environment Agency”, insert “the NRBW,”.

(3) In paragraph (2)—

(a) in sub-paragraph (a), omit the words after “Secretary of State” to the end;

(b) after sub-paragraph (a), insert—

“(aa) against a decision of the NRBW must be made to the Welsh Ministers;”.

(4) Omit paragraph (3).

258.—(1) Regulation 86(2) is amended as follows.

(2) in sub-paragraph (a), omit “and Wales”.

(3) after sub-paragraph (a), insert—

“(aa) in Wales, the NRBW;”.

Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009

259.—(1) Schedule 1 to the Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009(1) is amended as follows.

(2) In the entry relating to section 42(2)(c), in column 2, in paragraph (c), after sub-paragraph (xi) insert—

“(xia) the Natural Resources Body for Wales;”.

(3) In the entry relating to section 68(3)(c), in column 2, in paragraph (b), after sub-paragraph (xi) insert—

“(xia) the Natural Resources Body for Wales and is not below the grade of senior manager;”.

(4) In the entry relating to section 378(1)(b), in column 2, in paragraph (b) of the entry relating to England and Wales, after sub-paragraph (xi) insert—

“(xia) the Natural Resources Body for Wales;”.

(5) In the entry relating to section 378(2)(d), in column 2, in paragraph (b) of the entry relating to England and Wales, after sub-paragraph (xi) insert—

“(xia) the Natural Resources Body for Wales and is not below the grade of senior manager;”.

(1) S.I. 2009/975 as amended by S.I. 2009/2707, S.I. 2009/2748, S.I. 2011/2085.

Infrastructure Planning (National Policy Statement Consultation) Regulations 2009

260.—(1) Regulation 3 of the Infrastructure Planning (National Policy Statement Consultation) Regulations 2009⁽¹⁾, is amended as follows.

(2) In Table 1—

- (a) in column 2 of the entry for the Forestry Commission, after “forests or woodlands” insert “in England or Scotland”;
- (b) in column 1, for “The Countryside Council for Wales” substitute “The Natural Resources Body for Wales”.

Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009

261. The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009⁽²⁾ are amended as follows.

262. For “the Environment Agency”, in each place where it occurs, substitute “the regulator”.

263.—(1) Regulation 2 is amended as follows.

(2) Before the definition of “Category A mining waste facility”, insert—

““the 2010 Regulations” means the Environmental Permitting (England and Wales) Regulations 2010;”.

(3) Before the definition of “site”, insert—

““regulator” means—

- (a) the Natural Resources Body for Wales where that body is the regulator of the mining waste facility under the 2010 Regulations;
- (b) the Environment Agency, where that body is the regulator of the mining waste facility under the 2010 Regulations;”.

264. In regulation 4(1), for “in its area” substitute “in the authority’s area”.

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

265.—(1) In Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and

(1) S.I. 2009/1302 as amended by S.I. 2010/439.

(2) S.I. 2009/1927.

Procedure) Regulations 2009(1), the Table is amended as follows.

(2) In the entry for the Environment Agency, in columns 2 and 3, omit “and/or Wales”.

(3) In column 1, for “The Countryside Council for Wales” substitute “The Natural Resources Body for Wales”.

(4) In the entry for the Forestry Commission, in columns 2 and 3, after “forests or woodlands” insert “in England or Scotland”.

(5) After the entry for the Forestry Commission, insert a new entry—

“The Natural Resources Body for Wales	All proposed applications likely to affect the protection or expansion of forests and woodlands in Wales	All applications likely to affect the protection or expansion of forests and woodlands in Wales”
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Flood Risk Regulations 2009

266. The Flood Risk Regulations 2009(2) are amended as follows.

267. After regulation 8B insert—

““Appropriate agency”

8C. The “appropriate agency” means—

- (a) in relation to a river basin district that is wholly in Wales, the Natural Resources Body for Wales;
- (b) in relation to a river basin district that is partly in Wales and partly in England, the Natural Resources Body for Wales and the Environment Agency acting jointly;
- (c) in relation to any other river basin district, the Environment Agency.”

268. In regulation 9(1), for “Environment Agency” substitute “appropriate agency”.

269.—(1) Regulation 10 is amended as follows.

(2) In paragraph (3), for “Environment Agency” substitute “appropriate agency”.

(3) In paragraph (5), for “Agency’s” substitute “appropriate agency’s”.

(1) S.I. 2009/2264 as amended by S.I. 2010/439, S.I. 2012/635.
(2) S.I. 2009/3042 as amended by S.I. 2010/1102, S.I. 2011/2880 (W. 308).

270. In regulation 11(2)(a), after “the Environment Agency” insert “or the Natural Resources Body for Wales”.

271.—(1) Regulation 12 is amended as follows.

(2) In paragraph (2)(b), after “the Environment Agency” insert “or the Natural Resources Body for Wales”.

(3) In paragraph (7), for “Environment Agency”, in the first place where it occurs, substitute “appropriate agency”.

272.—(1) Regulation 13 is amended as follows.

(2) In paragraph (1), for “Environment Agency” substitute “appropriate agency”.

(3) In paragraph (2), for “Agency” substitute “appropriate agency”.

273.—(1) Regulation 14 is amended as follows.

(2) In paragraph (4), for “Environment Agency” substitute “appropriate agency”.

(3) For any reference to the Agency substitute a reference to the appropriate agency.

274. In regulation 15(1), for “Environment Agency” and “Agency” substitute “appropriate agency”.

275. In regulation 16, for “Environment Agency”, in each place where it occurs, substitute “appropriate agency”.

276. In regulation 18, for “Environment Agency”, in each place where it occurs, substitute “appropriate agency”.

277.—(1) Regulation 19 is amended as follows.

(2) In paragraph (4), for “Environment Agency” substitute “appropriate agency”.

(3) In paragraph (6), for “Agency’s” substitute “appropriate agency’s”.

278. In regulation 20(8), for “Environment Agency” in the first place where it occurs, substitute “appropriate agency”.

279. In regulation 21(4), for “Environment Agency”, in the first place where it occurs, substitute “appropriate agency”.

280. In regulations 22, 23 and 25, for “Environment Agency” and “Agency”, in each place where they occur, substitute “appropriate agency”.

281.—(1) Regulation 26 is amended as follows.

(2) In paragraph (3), for “Environment Agency” substitute “appropriate agency”.

(3) In paragraph (5), for “Agency’s” substitute “appropriate agency’s”.

282.—(1) Regulation 27 is amended as follows.

(2) In paragraphs (7) and (8), for “Environment Agency” substitute “appropriate agency”.

(3) In paragraph (9), in sub-paragraphs (a) and (b), for “Environment Agency”, in the first place where it occurs, substitute “appropriate agency”.

283.In regulations 28(1) and 29(1), for “Environment Agency” substitute “appropriate agency”.

284.—(1) Regulation 32 is amended as follows.

(2) In the heading and paragraphs (1)(a) and (3), for “Environment Agency” substitute “appropriate agency”.

(3) In paragraphs (2) and (6), for “Agency”, in each place where it occurs, substitute “appropriate agency”.

285.—(1) Regulation 35(2) is amended as follows.

(2) In sub-paragraph (a), omit “and”.

(3) After sub-paragraph (a) insert—

“(aa) the Natural Resources Body for Wales, and”.

286.—(1) Regulation 36 is amended as follows.

(2) In paragraph (1)—

(a) after “the Environment Agency” insert “or the Natural Resources Body for Wales”;

(b) after “the Agency” insert “or the Body”.

(3) In paragraph (2), for “The Environment Agency and an” substitute “An”.

(4) In paragraph (3)—

(a) before sub-paragraph (a) insert—

“(za) the Environment Agency,

(zb) the Natural Resources Body for Wales,
”;

(b) omit sub-paragraph (k).

Eels (England and Wales) Regulations 2009

287. The Eels (England and Wales) Regulations 2009(1) are amended as follows.

288. For any reference to the Agency, other than in regulations 2 and 11, substitute a reference to the appropriate agency.

289.—(1) Regulation 2 is amended as follows.

(2) After the definition of “the Agency”, insert—

““the appropriate agency” means—

(1) S.I. 2009/3344 as amended by S.I. 2011/2976.

- (a) in relation to England, the Agency, and
 - (b) in relation to Wales, the NRBW;”.
- (3) After the definition of “fish pass”, insert—
 ““the NRBW” means the Natural Resources Body for Wales;”.

Infrastructure Planning (Interested Parties) Regulations 2010

290.—(1) In the Schedule to the Infrastructure Planning (Interested Parties) Regulations 2010(1), the Table is amended as follows.

(2) In the entry for the Environment Agency, in column 2, omit “and/or Wales”.

(3) In column 1, for “The Countryside Council for Wales” substitute “The Natural Resources Body for Wales”.

(4) In the entry for the Forestry Commission, in column 2, after “forests or woodlands” insert “in England or Scotland”.

(5) After the entry for the Forestry Commissioners, insert a new entry—

“The Natural Resources Body for Wales	All applications likely to affect the protection or expansion of forests and woodlands in Wales”
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Infrastructure Planning (Compulsory Acquisition) Regulations 2010

291.—(1) In Schedule 2 to the Infrastructure Planning (Compulsory Acquisition) Regulations 2010(2) (S.I. 2010/104), the Table is amended as follows.

(2) In the entry for the Environment Agency, in column 2, omit “and/or Wales”.

(3) In column 1, for “The Countryside Council for Wales” substitute “The Natural Resources Body for Wales”.

(4) In the entry for the Forestry Commission, in column 2, after “forests or woodlands” insert “in England or Scotland”.

(5) After the entry for the Forestry Commissioners insert a new entry—

“The Natural Resources Body for Wales	All proposed provisions likely to affect the protection or expansion of forests and woodlands in Wales”
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(1) S.I. 2010/102 as amended by S.I. 2012/635.
 (2) S.I. 2010/104 as amended by S.I. 2011/2055, S.I. 2012/635.

Mercury Export & Data (Enforcement) Regulations 2010

292.—(1) Regulation 4(1) of the Mercury Export & Data (Enforcement) Regulations 2010(1) is amended as follows.

(2) In sub-paragraph (a), omit “and Wales”.

(3) After sub-paragraph (a), insert—

“(aa) in Wales, the Natural Resources Body for Wales;”.

Conservation of Habitats and Species Regulations 2010

293. The Conservation of Habitats and Species Regulations 2010(2) are amended as follows.

294. For “the Countryside Council for Wales”, in each place where it occurs other than in regulations 9, 56 and 134, substitute “the Natural Resources Body for Wales”.

295. In regulation 9(2), for the words from “sections 131, 132 and 134” to “Countryside Council for Wales)” substitute “the Natural Resources Body for Wales (Establishment) Order 2012, where the functions are exercised for purposes relating to nature conservation”.

296. In regulation 9A(10), after “Forestry Commissioners,” insert “the Natural Resources Body for Wales,”.

297.—(1) Regulation 56 is amended as follows.

(2) In paragraph (2)—

(a) after “means”, insert “in relation to England”;

(b) for sub-paragraphs (a) and (b) substitute—

“(a) so far as the licence relates to the restricted English inshore region, the Marine Management Organisation, and

(b) otherwise, Natural England.”

(3) In paragraph (3), after “granted” insert “in relation to England”.

(4) After paragraph (3), insert—

“(4) In the case of a licence granted in relation to Wales, “relevant licensing body” means the Natural Resources Body for Wales.”

(1) S.I. 2010/265 as amended by S.I. 2012/630.

(2) S.I. 2010/490 as amended by S.I. 2011/625, S.I. 2012/630, S.I. 2012/635, S.I. 2012/1927.

298. In regulation 99(2), after “the Environment Agency” insert “in relation to England or the Natural Resources Body for Wales in relation to Wales”.

299. In regulation 127(2), after “the Environment Agency” insert “in relation to England or the Natural Resources Body for Wales in relation to Wales”.

Environmental Permitting (England and Wales) Regulations 2010

300. The Environmental Permitting (England and Wales) Regulations 2010(1) are amended as follows.

301.—(1) Regulation 2(1) is amended as follows.

(2) After the definition of “agricultural waste” insert—

““appropriate agency” means—

- (a) in relation to England, the Agency;
- (b) in relation to Wales, the NRBW;”.

(3) After the definition of “non-hazardous waste” insert—

““the NRBW” means the Natural Resources Body for Wales;”.

(4) In the definition of “rule-making authority”, in sub-paragraph (b), for “Agency” substitute “appropriate agency”.

302.—(1) Regulation 32 is amended as follows.

(2) In paragraph (1)—

- (a) after “regulation 33” insert “and paragraph 11A of Schedule 23”;
- (b) for “paragraph (2)” substitute “paragraph (1A) or (2)”.

(3) After paragraph (1) insert—

“(1A) Subject to regulation 33, functions in relation to a regulated facility which is or will be operated in Wales, other than a regulated facility mentioned in paragraph (2), are exercisable by the NRBW.”

(4) After paragraph (4) insert—

“(4A) Subject to regulation 38(2A) if the principal place of business of an operator of mobile plant, other than mobile plant mentioned in paragraph (2), is in England and Wales, functions in relation to that regulated facility are exercisable by the appropriate agency in whose area the place of business is.

(1) S.I. 2010/675 as amended by S.I. 2010/676, S.I. 2010/2172, S.I. 2011/881, S.I. 2011/988, S.I. 2011/2043, S.I. 2011/2377 (W. 250), S.I. 2011/2933, S.I. 2012/630, S.I. 2012/811.

(4B) Subject to regulation 38(2A) if the principal place of business of an operator of mobile plant, other than mobile plant mentioned in paragraph (2), is not in England and Wales, functions in relation to that regulated facility are exercisable by—

- (a) the appropriate agency which granted the environmental permit authorising the operation of the regulated facility; or
- (b) if no permit has been granted, the appropriate agency in whose area the regulated facility is first operated or intended to be operated.”

303.—(1) Regulation 33 is amended as follows.

(2) In paragraph (6), omit “and” and before “the Agency” insert “where the appropriate agency is the Secretary of State,”.

(3) After sub-paragraph (a), insert—

“(aa) where the appropriate authority is the Welsh Ministers, the NRBW, and”.

304. In regulation 38, after paragraph (2) insert—

“(2A) The appropriate agency for the purposes of enforcing the offence described in paragraph (2) is the appropriate agency in whose area the offence was committed.”

305. In regulations 33, 46, 58, 59, 61, 63 and 65, for any reference to the Environment Agency or to the Agency substitute a reference to the appropriate agency.

306. In regulation 108, at the end of paragraph (2) insert “and in relation to Wales references to the Agency in paragraph 2(1) of Schedule 2, and in paragraphs 7(2)(a) and 30(1)(b)(i) of Schedule 3, are deemed to be references to the NRBW such that the NRBW is the exemption registration authority in relation to waste operations in Wales falling within Part 1 of Schedule 3, subject to paragraphs 2(2) and 2(3)”.

307.—(1) Schedule 2 is amended as follows.

(2) In paragraph 1(1), in the definition of “applicable fee”, for “Agency” substitute “appropriate agency”.

(3) In paragraph 2(1), (4) and (5), for “Agency” substitute “appropriate agency”.

308. In Schedule 23, after paragraph 11 insert—

“11A Discharge of functions: mobile radioactive apparatus

Subject to regulation 38(2A), if the principal place where the apparatus mentioned in paragraph 11(5) is kept when not in use, is in

England or Wales, functions in relation to that apparatus are exercisable by the appropriate agency in whose area the principal place of keeping is.”

CRC Energy Efficiency Scheme Order 2010

309.The CRC Energy Efficiency Scheme Order 2010(1) is amended as follows.

310.—(1) Article 9 is amended as follows.

(2) In paragraph (1)(b)—

- (a) in paragraph (i) omit “and Wales”;
- (b) after paragraph (i) insert—

“(ia) the Natural Resources Body for Wales, in respect of Wales;”.

(3) In paragraph (2), after sub-paragraph (a) insert—

“(aa) the Natural Resources Body for Wales, the Welsh Ministers;”.

311.—(1) Schedule 10 is amended as follows.

(2) In paragraph (2)—

- (a) for sub-paragraph (a) substitute—

“(a) the Environment Agency, the appeal body is the Secretary of State;”;

- (b) after sub-paragraph (a) insert—

“(aa) the Natural Resources Body for Wales, the appeal body is the Welsh Ministers;”.

(3) In paragraph (6), after sub-paragraph (a) insert—

“(aa) the Welsh Ministers;”.

Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010

312.—(1) Regulation 2 of the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010(2) is amended as follows.

(2) In the definition of “the consultation bodies”, in sub-paragraph (a)(ii), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Flood Risk Management Functions Order 2010

313. In article 2(1)(a) of the Flood Risk Management Functions Order 2010(3), after “the Environment Agency” insert “or the Natural Resources Body for Wales”.

(1) S.I. 2010/768 as amended by S.I. 2011/234.
(2) S.I. 2010/768 as amended by S.I. 2011/234.
(3) S.I. 2010/2232.

**Flood and Water Management Act 2010
(Commencement No 3 and Transitional Provisions)
Order 2011**

314. In article 5(2) of the Flood and Water Management Act 2010 (Commencement No 3 and Transitional Provisions) Order 2011(1), after “the Agency”, in each place where it occurs, insert “in relation to English Committees or the Natural Resources Body for Wales in relation to Welsh Committees”.

Regional Flood and Coastal Committees (England and Wales) Regulations 2011

315. The Regional Flood and Coastal Committees (England and Wales) Regulations 2011(2) are amended as follows.

316.—(1) For “Agency”, in each place where it occurs, substitute “appropriate agency”, but this is subject to sub-paragraph (2).

(2) Sub-paragraph (1) does not apply to regulations 2(1), 3, 8(4), 11(1)(b)(i), 31, 32 or 35(4).

317.—(1) Regulation 4 is amended as follows.

(2) In paragraph (3)(a), in the opening words, for “and” substitute “or”.

(3) After paragraph (6), insert—

“(7) In the case of a revision affecting the boundary between a region wholly or mainly in England and a region wholly or mainly in Wales—

(a) the functions of the appropriate agency under paragraphs (1) and (2) are exercisable by the Agency and the Natural Resources Body for Wales acting jointly;

(b) paragraph 3(a) is satisfied when both the Agency and the Natural Resources Body for Wales publish a map or maps fulfilling the conditions specified in that paragraph.”

318. In regulation 11(1)(b)(i), after “the Agency” insert “or the Natural Resources Body for Wales”.

Environment Agency (Levies) (England and Wales) Regulations 2011

319. The Environment Agency (Levies) (England and Wales) Regulations 2011(1) are amended as follows.

(1) S.I. 2011/694.
(2) S.I. 2011/695.

320. In the title to the Regulations, for “Environment Agency” substitute “Flood and Coastal Erosion Risk Management”.

321.—(1) Regulation 1 is amended as follows.

(2) In paragraph (1)(a), for “Environment Agency” substitute “Flood and Coastal Erosion Risk Management”.

(3) After paragraph (2) insert—

“(3) Any reference to the Environment Agency (Levies) (England and Wales) Regulations 2011, wherever it occurs, is to be treated as a reference to these Regulations.”

322.—(1) Regulation 2 is amended as follows.

(2) For any reference to the Agency, other than in the definition of “the Agency”, substitute a reference to the appropriate agency.

(3) In the appropriate place insert—

““the appropriate agency” means the Agency in relation to England and the Natural Resources Body for Wales in relation to Wales;”.

323. In regulations 3 to 6 and 8 to 12, for any reference to the Agency substitute a reference to the appropriate agency.

Waste (England and Wales) Regulations 2011

324. The Waste (England and Wales) Regulations 2011(2) are amended as follows.

325. For any reference to the Environment Agency or to the Agency, other than in regulations 3, 9 and 29, substitute a reference to the appropriate body.

326. In regulation 3(1), after the definition of “appropriate authority” insert—

““appropriate body” means—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Wales, the Natural Resources Body for Wales;”.

327. For regulation 9 substitute—

“Directions to the appropriate body

9.—(1) An appropriate authority may give directions to an appropriate body requiring it—

(1) S.I. 2011/696.

(2) S.I. 2011/988 as amended by S.I. 2011/600 (W. 88), S.I. 2011/2043.

- (a) to advise the authority on the measures or policies which are to be included in a waste prevention programme or waste management plan;
- (b) to carry out a survey or investigation into any other matter in connection with the preparation of such a programme or plan or any modification of it, and report its findings to the authority.

(2) A direction given under paragraph (1)(b)—

- (a) must specify or describe the matters which are to be the subject of the survey or investigation;
- (b) may specify bodies or persons to be consulted before carrying out the survey or investigation; and
- (c) may make provision in relation to the manner in which—
 - (i) the survey or investigation is to be carried out; or
 - (ii) the findings are to be reported and made available.

(3) The appropriate body must comply with a direction given under paragraph (1).

(4) Where a direction is given under paragraph (1)(b), the appropriate body must also consult any body or person that it considers appropriate but is not specified in the direction.

(5) The appropriate body must make its findings available to the bodies and persons it consults.

(6) The power under paragraph (1) may only be exercised—

- (a) by the Secretary of State in relation to the Natural Resources Body for Wales with the consent of the Welsh Ministers;
- (b) by the Welsh Ministers in relation to the Environment Agency, with the consent of the Secretary of State.”

328. For regulation 29 substitute—

“Procedure for registration

29.—(1) This regulation applies to—

- (a) registration of a carrier for the purposes of the Control of Pollution (Amendment) Act 1989; and
- (b) registration of a broker or dealer for the purposes of regulation 25.

(2) An application for registration must be made to the appropriate body, using the form provided by that body.

(3) All the information required by the form must be provided, together with any fee prescribed in a charging scheme made by the appropriate body under section 41 of the Environment Act 1995.

(4) The appropriate body may require additional information to be provided.

(5) Registration may be refused if, in the opinion of the appropriate body—

- (a) it is undesirable for the applicant to be authorised to transport controlled waste or to act as a broker or dealer of controlled waste (as the case may be); and
- (b) the applicant or another relevant person has been convicted of an offence under—
 - (i) regulation 42,
 - (ii) section 1, 5 or 7(3) of the Control of Pollution (Amendment) Act 1989,
 - (iii) section 33 or 34 of the Environmental Protection Act 1990,
 - (iv) section 110(2) of the Environment Act 1995,
 - (v) the Hazardous Waste (England and Wales) Regulations 2005,
 - (vi) the Hazardous Waste (Wales) Regulations 2005,
 - (vii) the Transfrontier Shipment of Waste Regulations 2007,
 - (viii) regulation 38 of the Environmental Permitting (England and Wales) Regulations 2007, or
 - (ix) regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010.

(6) On registration the appropriate body must provide a certificate of registration to the applicant.

(7) If registration is refused the appropriate body must notify the applicant and give written reasons for the refusal.

(8) For the purposes of an application under paragraph (2) the appropriate body is—

- (a) in the case of a carrier, broker or dealer whose registered office or principal place of business is in England, the Environment Agency;
- (b) in the case of a carrier, broker or dealer whose registered office or principal place of business is in Wales, the Natural Resources Body for Wales.”

329.—(1) In Schedule 1, paragraph 13 is amended as follows.

(2) In the definition of “consultation bodies”, in subparagraph (b), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Environmental Protection (Control of Ozone-Depleting Substances) Regulations 2011

330.—(1) Regulation 7 of the Environmental Protection (Control of Ozone-Depleting Substances) Regulations 2011(1) is amended as follows.

(2) In paragraph (1), for “the Agency” substitute “the appropriate agency”.

(3) In paragraph (5)—

- (a) omit the definition of “the Agency”;
- (b) before the definition of “local authority” insert—

““the appropriate agency” means—

- (a) as regards England, the Environment Agency;
- (b) as regards Wales, the Natural Resources Body for Wales;
- (c) as regards Scotland, the Scottish Environment Protection Agency;”.

Infrastructure Planning (Changes to, and revocation of, Development Consent Orders) Regulations 2011

331.—(1) In Schedule 1 to the Infrastructure Planning (Changes to, and revocation of, Development Consent Orders) Regulations 2011(2), the Table is amended as follows.

(2) In the entry for the Environment Agency, in columns 2 and 3, omit “and/or Wales”.

(3) In column 1, for “The Countryside Council for Wales” substitute “The Natural Resources Body for Wales”.

(1) S.I. 2011/1543.
 (2) S.I. 2011/2055 as amended by S.I. 2012/635.

(4) In the entry for the Forestry Commission, in columns 2 and 3, after “forests or woodlands” insert “in England or Scotland”.

(5) after the entry for the Forestry Commissioners insert a new entry—

“The Natural Resources Body for Wales	All proposed applications likely to affect the protection or expansion of forests and woodlands in Wales	All applications likely to affect the protection or expansion of forests and woodlands in Wales”
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Greenhouse Gas Emissions Trading Scheme Regulations 2012

332. The Greenhouse Gas Emissions Trading Scheme Regulations 2012 are amended as follows.

333.—(1) Regulation 3(1) is amended as follows.

(2) In the definition of “regulator”—

(a) in sub-paragraph (a)(i) omit “and Wales”;

(b) after sub-paragraph (a)(iii) insert—

“(iv) Wales, the NRBW;”.

(3) After the definition of “notice of surrender” insert—

““the NRBW” means the Natural Resources Body for Wales;”.

334.—(1) Regulation 21 is amended as follows.

(2) In the definition of “area”—

(a) in sub-paragraph (a) omit “and Wales”;

(b) after sub-paragraph (c) insert—

“(d) in respect of the NRBW, Wales;”.

(3) In the definition of “authority”, for sub-paragraph (a) substitute—

“(a) the Welsh Ministers, where P’s regulator is the NRBW;”.

335.—(1) Regulation 28 is amended as follows.

(2) In paragraph (a)(i), omit “or Wales”.

(3) At the end of paragraph (c), for “.” substitute “;”.

(4) After paragraph (c) insert—

“(d) the NRBW, where P has its registered office in Wales.”

336.—(1) Regulation 48(5) is amended as follows.

(2) In sub-paragraph (a) omit “and Wales”;

(3) In sub-paragraph (b), after “in relation to” insert “Wales;”.

337. In regulation 87, after paragraph (1) insert—
“(1A) The relevant provisions continue to have effect as if—

- (a) in regulation 2(1) the definition of “regulator” was amended as follows—
 - (i) in sub-paragraph (i) omit “and Wales”;
 - (ii) after sub-paragraph (i) insert—
 - “(ia) in relation to an installation (other than an offshore installation) which is (or will be) situated in Wales, the Natural Resources Body for Wales;”;
- (b) regulation 35(5) was amended as follows—
 - (i) in sub-paragraph (a) omit “and Wales”; and
 - (ii) in sub-paragraph (b) after “in relation to” insert “Wales,”.

338. In regulation 89, after paragraph (1) insert—
“(1A) The relevant provisions have effect as if the 2010 Regulations were amended as follows—

- (a) in regulation 4(1)—
 - (i) in sub-paragraph (a)(i) omit “and Wales”;
 - (ii) after sub-paragraph (a) insert—
 - “(aa) the Natural Resources Body for Wales, where the UK operator has its registered office in Wales.”;
- (b) for regulation 7(a) substitute—
 - “(a) the Welsh Ministers, where the regulator is the Natural Resources Body for Wales;”;
- (c) in regulation 52(9)—
 - (i) for sub-paragraph (a) substitute—
 - “(a) in respect of an appeal against a notice or deemed refusal of the Environment Agency, the Secretary of State;”;
 - (ii) after sub-paragraph (a) insert—
 - “(aa) in respect of an appeal against a notice or deemed refusal of the Natural Resources Body for Wales, the Welsh Ministers;”;
- (d) in regulation 60—

- (i) in paragraph (5)(a) for “paragraph (5A)” substitute “paragraphs (5A) to (5C)”;
- (ii) in paragraph (5)(g) after “and 9” insert “, as modified by paragraph (7A)”;
- (iii) for paragraph (5A) substitute—
 - “(5A) In regulation 2—
 - (a) in the definition of “area”—
 - (i) in sub-paragraph (a) omit “and Wales”
 - (ii) after sub-paragraph (a) insert—
 - “(aa) in respect of the Natural Resources Body for Wales, Wales;
 - (b) in the definition of “UK operator”, after “means” insert “(subject to regulation 2A of the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010.”;
- (iv) after paragraph (5A) insert—
 - “(5B) In regulation 4—
 - (a) in sub-paragraph (a)(i) omit “and Wales”;
 - (b) after sub-paragraph (a) insert—
 - “(aa) the Natural Resources Body for Wales, where the UK operator has its registered office in Wales;”.
- (5C) For regulation 7(a) substitute—
 - “(a) the Welsh Ministers, where the regulator is the Natural Resources Body for Wales;”.
- (v) after paragraph (7) insert—
 - “(7A) In regulation 36(6)—
 - (a) for sub-paragraph (a) substitute—
 - “(a) in respect of an appeal against a notice or deemed refusal of the Environment Agency, the Secretary of State”;
 - (b) after sub-paragraph (a) insert—

“(aa) in respect of an appeal against a notice or deemed refusal of the Natural Resources Body for Wales, the Welsh Ministers;”.

339. In Schedule 10, in paragraph 1(1)(a)(ii) for “the registered office of the UK operator is in Wales” insert “the NRBW is the regulator”.

WELSH STATUTORY
INSTRUMENTS

**Countryside Access (Draft Maps) (Wales)
Regulations 2001**

1. The Countryside Access (Draft Maps) (Wales) Regulations 2001(1) are amended as follows.

2. For any reference to the Council, other than in regulation 2, substitute a reference to the NRBW.

3.—(1) Regulation 2 is amended as follows.

(2) Omit the definition of “the Council”.

(3) In the appropriate place insert—

““the NRBW” (“*CANC*”) means the Natural Resources Body for Wales;”.

(4) In the definition of “draft map”, for “the Council” substitute “the NRBW”.

(5) In the definition of “issued”, for “the Council” substitute “the NRBW”.

(6) In the definition of “section 4(2) land”, for “the Council” substitute “the NRBW”.

4. In Schedule 1, after “Forestry Commission” insert “(where land included in a draft map has a border with England)”.

Wildlife and Countryside (Sites of Special Scientific Interest, Appeals) (Wales) Regulations 2002

5. The Wildlife and Countryside (Sites of Special Scientific Interest, Appeals) (Wales) Regulations 2002(2) are amended as follows.

6. For “the Countryside Council for Wales”, in each place where it occurs, substitute “the Natural Resources Body for Wales”.

7. For “the Council”, in each place where it occurs, substitute “the Body”.

Countryside Access (Provisional and Conclusive Maps) (Wales) Regulations 2002

8. The Countryside Access (Provisional and Conclusive Maps) (Wales) Regulations 2002(1) are amended as follows.

(1) S.I. 2001/4001(W. 329) as amended by S.I. 2002/1796 (W. 171).

(2) S.I. 2002/1772 (W. 168).

9.—(1) Regulation 2(1) is amended as follows.

(2) Omit the definition of “the Council”.

(3) In the appropriate place insert—

““the NRBW” (“*CANC*”) means the Natural Resources Body for Wales;”.

10. For every other reference to the Council substitute a reference to the NRBW.

11. In Schedule 1, after both “The Environment Agency” and “Forestry Commission” insert “(where land included in the provisional or conclusive map has a border with England)”.

Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002

12.—(1) Regulation 13(4) of the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002(2) is amended as follows.

(2) In sub-paragraph (e), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

(3) Omit sub-paragraph (f).

Countryside Access (Dedication of Land as Access Land) (Wales) Regulations 2003

13. The Countryside Access (Dedication of Land as Access Land) (Wales) Regulations 2003(3) are amended as follows.

14. In regulation 2(1), omit the definition of “the Council”.

15.—(1) Regulation 4(4) is amended as follows.

(2) In sub-paragraph (b), for “the Council” substitute “the Natural Resources Body for Wales”.

(3) Omit sub-paragraph (d).

Coast Protection (Notices) (Wales) Regulations 2003

16. In regulation 4(c) of the Coast Protection (Notices) (Wales) Regulations 2003(4), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

(1) S.I. 2002/1796 (W. 171).

(2) S.I. 2002/3188 (W. 304) as amended by S.I. 2005/1913 (W. 156), S.I. 2005/2759.

(3) S.I. 2003/135 (W. 9).

(4) S.I. 2003/1847 (W. 197).

Water Industry (Prescribed Conditions) (Undertakers Wholly or Mainly in Wales) Regulations 2004

17.—(1) Regulation 3(3) of the Water Industry (Prescribed Conditions) (Undertakers Wholly or Mainly in Wales) Regulations 2004(1) is amended as follows.

(2) For sub-paragraph (b), substitute—

“(b) where the determination relates to an area that is the whole or part of an area of a water undertaker whose area is wholly in Wales, the Natural Resources Body for Wales;”.

(3) For sub-paragraph (c), substitute—

“(c) where the determination relates to an area that is the whole or part of an area of a water undertaker whose area is partly in Wales and partly in England, the Natural Resources Body for Wales and the Environment Agency;”.

Landfill Allowances Scheme (Wales) Regulations 2004

18. In regulation 5 of the Landfill Allowances Scheme (Wales) Regulations 2004(2), for “Environment Agency” substitute “Natural Resources Body for Wales”.

Environmental Assessment of Plans and Programmes (Wales) Regulations 2004

19. In regulation 4 of the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004(3), for paragraph (1) substitute—

“(1) Subject to paragraph (2), in relation to every plan or programme to which these Regulations apply, each of the following bodies are consultation bodies—

- (a) the Natural Resources Body for Wales;
- (b) Cadw.”

Hazardous Waste (Wales) Regulations 2005

20. The Hazardous Waste (Wales) Regulations 2005(4) are amended as follows.

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- (1) S.I. 2004/701 (W. 75) as amended by S.I. 2005/2035.
 - (2) S.I. 2004/1490 (W. 155) as amended by S.I. 2005/1820 (W. 148), S.I. 2011/971 (W. 141), S.I. 2012/65 (W. 16).
 - (3) S.I. 2004/1656 (W. 170).
 - (4) S.I. 2005/1806 (W. 138) as amended by S.I. 2006/937, S.I. 2007/3538, S.I. 2009/2861 (W. 250), S.I. 2010/675, S.I. 2010/1820 (W. 177), S.I. 2011/556 (C. 19), S.I. 2011/971 (W. 141), S.I. 2011/2043.

21.—(1) For any reference to the Agency substitute a reference to the NRBW, but this is subject to sub-paragraph (2).

- (2) Sub-paragraph (1) does not apply to—
- (a) regulations 5, 11, 59 and 72; and
 - (b) Schedules 9, 11 and 12.

22. In regulation 5(1), in the appropriate place insert—

““NRBW” (“*CANC*”) means the Natural Resources Body for Wales;”.

23. In regulation 11, after paragraph (a) insert—

“(aa) the NRBW;”.

24. In regulation 65A(1), for “the Environment Agency” substitute “the NRBW”.

25.—(1) Schedule 7 is amended as follows.

(2) In paragraph 4—

- (a) in sub-paragraph (3)(b) after “from Northern Ireland” insert “or the Agency (where the waste is transported from England)”;
- (b) in sub-paragraph (4)—
 - (i) after “or Northern Ireland” insert “or England”;
 - (ii) after “from Northern Ireland” insert “or the Agency (where the waste is transported from England)”.

(3) In paragraph 5—

- (a) in sub-paragraph (1) after “or Northern Ireland” insert “or England”;
- (b) in sub-paragraph (2)(a)(i) after “in Northern Ireland” insert “or the Agency (where the waste is to be consigned to a consignee in England)”.

26. In Schedule 10, in the Form of Fixed Penalty Notice, for “the Environment Agency” substitute “the Natural Resources Body for Wales”.

Town and Country Planning (Local Development Plan) (Wales) Regulations 2005

27.—(1) Regulation 2(1) of the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005(1), is amended as follows.

(2) In the definition of “specific consultation bodies”—

(1) S.I. 2005/2839 (W. 203) as amended by S.I. 2011/971 (W. 141).

- (a) in sub-paragraph (a), for “the Countryside Council for Wales” substitute “Natural Resources Body for Wales”;
- (b) omit sub-paragraph (b).

Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006

28. In regulation 18(2)(a) of the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006⁽¹⁾, after “the Agency” insert “, the Natural Resources Body for Wales,”.

Contaminated Land (Wales) Regulations 2006

29. In the Contaminated Land (Wales) Regulations 2006⁽²⁾, for “the Environment Agency” and “the Agency”, in each place where they occur, other than in regulation 7(1)(r)(i) substitute “the Natural Resources Body for Wales”.

Controls on Dogs (Non-application to Designated Land) (Wales) Order 2007

30.—(1) In the Schedule to the Controls on Dogs (Non-application to Designated Land) (Wales) Order 2007⁽³⁾, the Table is amended as follows.

(2) In the first description of land, in the first column, for “the Forestry Commissioners” substitute “the Natural Resources Body for Wales”.

Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007

31. The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007⁽⁴⁾ are amended as follows.

32.—(1) In regulation 2(1), the definition of “consultation bodies” is amended as follows.

(2) In sub-paragraph (a), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

(3) Omit sub-paragraph (b).

33. In regulation 5(7)(d), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

(1) S.I. 2006/2988 (W. 277) as amended by S.I. 2007/3250, S.I. 2008/521, S.I. 2010/2146.
 (2) S.I. 2006/2989 (W. 278) as amended by S.I. 2007/3538, S.I. 2010/675, S.I. 2012/283 (W. 47).
 (3) S.I. 2007/701 (W. 58).
 (4) S.I. 2007/2933 (W. 253).

Nitrate Pollution Prevention (Wales) Regulations 2008

34. The Nitrate Pollution Prevention (Wales) Regulations 2008(1) are amended as follows.

35.—(1) Regulation 6 is amended as follows.

(2) Omit the definition of “Agency”.

(3) In the appropriate place insert—

““Body” (“*y Corff*”) means the Natural Resources Body for Wales;”.

36. In regulation 49, for “the Environment Agency” substitute “the Body”.

37. In regulations 7(1)(a), 8(3), 13A, 13B, 13C, 13D and in paragraph 19(1) and (2) of Schedule 4, for “the Agency”, in each place where it occurs, substitute “the Body”.

Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009

38. The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009(2) are amended as follows.

39.—(1) Regulation 10 is amended as follows.

(2) For paragraph (2) substitute—

“(2) If either the Environment Agency or the Natural Resources Body for Wales is responsible for granting the permit, they are enforced by the Natural Resources Body for Wales in all cases.”

(3) In sub-paragraph (3)(b)(ii), for “the Environment Agency” substitute “the Natural Resources Body for Wales”.

(4) In sub-paragraph (3)(b)(iii), for “Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

40.—(1) Regulation 11 is amended as follows.

(2) In the table, in the third column—

(a) for “Environment Agency” in each place where it occurs substitute “Natural Resources Body for Wales”;

(b) for “Countryside Council for Wales” substitute “Natural Resources Body for Wales”.

(1) S.I. 2008/3143 (W. 278) as amended by S.I. 2010/489 (W.55), S.I. 2012/1238 (W. 151).

(2) S.I. 2009/995 (W. 81) as amended by S.I. 2011/556 (C. 19), S.I. 2011/971 (W. 141), S.I. 2011/2131, S.I. 2012/630.

41. In regulation 31(2), for “Environment Agency” substitute “Natural Resources Body for Wales”.

Crime and Disorder Strategies (Prescribed Descriptions) (Wales) Order 2009

42. In article 3(2)(a) of the Crime and Disorder Strategies (Prescribed Descriptions) (Wales) Order 2009(1), for “the Environment Agency” substitute “the Natural Resources Body for Wales”.

Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009

43.—(1) Regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009(2) is amended as follows.

(2) In the definition of “the consultation bodies”—

- (a) in sub-paragraph (b)(ii), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”;
- (b) omit sub-paragraph (b)(iii).

(3) In the definition of “sensitive area”, in sub-paragraph (g), for “the Countryside Council for Wales” substitute “the Natural Resources Body for Wales”.

Water Resources (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Wales) Regulations 2010

44. The Water Resources (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Wales) Regulations 2010(3) are amended as follows.

45. For any reference to the Environment Agency, other than in regulation 2(1), substitute a reference to the NRBW.

46.—(1) Regulation 2(1) is amended as follows.

(2) Omit the definition of “Environment Agency”.

(3) In the appropriate place insert—

““NRBW” (“*CANC*”) means the Natural Resources Body for Wales;”.

(1) S.I. 2009/3050 (W. 267) as amended by S.I. 2010/1142 (W. 101).
(2) S.I. 2009/3342 (W. 293).
(3) S.I. 2010/1493 (W. 136).

Environmental Civil Sanctions (Wales) Order 2010

47. In article 2 of the Environmental Civil Sanctions (Wales) Order 2010⁽¹⁾, for “The Environment Agency” substitute “The Natural Resources Body for Wales”⁽²⁾.

Llangollen and Corwen Railway Order 2010

48. In the Llangollen and Corwen Railway Order 2010⁽³⁾, for any reference to the Environment Agency substitute a reference to the Natural Resources Body for Wales.

Sea Fish (Specified Area) (Prohibition of Fixed Engines) (Wales) Order 2010

49. In article 4(1)(a) of the Sea Fish (Specified Area) (Prohibition of Fixed Engines) (Wales) Order 2010⁽⁴⁾, for “the Environment Agency” substitute “the Natural Resources Body for Wales”.

Marine Licensing (Exempted Activities) (Wales) Order 2011

50. The Marine Licensing (Exempted Activities) (Wales) Order 2011⁽⁵⁾ is amended as follows.

51. In articles 18(1) and 19(1), after “by or on behalf of” insert “the Natural Resources Body for Wales or”.

52. In article 25(1) for “the Countryside Council for Wales”, in each place where it occurs, substitute “the Natural Resources Body for Wales”.

Flood and Coastal Erosion Risk Management Information Appeals (Wales) Regulations 2011

53. In regulation 1(c)(ii) of the Flood and Coastal Erosion Risk Management Information Appeals (Wales) Regulations 2011⁽⁶⁾, after “the Environment Agency” insert “and the Natural Resources Body for Wales”.

(1) S.I. 2010/1821 (W. 178).
(2) Schedule 7 contains transitional provisions relating to this Order.
(3) S.I. 2010/2136 (W. 192).
(4) S.I. 2010/2915 (W. 240).
(5) S.I. 2011/559 (W. 81).
(6) S.I. 2011/865 (W. 127).

Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011

54. The Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011(1) are amended as follows.

55. In regulation 2, in the definition of “the WasteDataFlow system”, for “the Environment Agency” substitute “the Natural Resources Body for Wales”.

56. In regulation 3(1), for “the Environment Agency” substitute “the Natural Resources Body for Wales”.

Incidental Flooding and Coastal Erosion (Wales) Order 2011

57. The Incidental Flooding and Coastal Erosion (Wales) Order 2011(2) is amended as follows.

58. In article 3(3) for “the Environment Agency” substitute “the Natural Resources Body for Wales”.

59.—(1) Article 4 is amended as follows.

(2) For “Agency”, in each place where it occurs, substitute “NRBW”.

(3) In paragraph (2)—

(a) in sub-paragraph (b), for “(6)” substitute “(7)”;

(b) in sub-paragraph (d), for “157(6)(a)” substitute “157(7)(a)”;

(c) in sub-paragraph (e), for “157(6)(c)” substitute “157(7)(c)”.

60. In article 6, for “Agency”, in each place where it occurs, substitute “NRBW”.

61. In article 8, for “Agency”, in each place where it occurs, substitute “appropriate agency”.

Town and Country Planning (Development Management Procedure) (Wales) Order 2012

62. The Town and Country Planning (Development Management Procedure) (Wales) Order 2012(3) is amended as follows.

63.—(1) Article 27(3) is amended as follows.

(2) In sub-paragraph (b), for “Countryside Council for Wales” substitute “Natural Resources Body for Wales”.

(1) S.I. 2011/1014 (W.152).
(2) S.I. 2011/2829 (W. 302).
(3) S.I. 2012/801 (W. 110).

(3) Omit sub-paragraph (c).

64.—(1) In Schedule 4, the Table is amended as follows.

(2) For any reference to the Countryside Council for Wales substitute a reference to the Natural Resources Body for Wales.

(3) For any reference to the Environment Agency substitute a reference to the Natural Resources Body for Wales.

OTHER SUBORDINATE
LEGISLATION

Security and Emergency Measures (Water and Sewerage Undertakers) Direction 1998

1. In direction 4(1) of the Security and Emergency Measures (Water and Sewerage Undertakers) Direction 1998, after paragraph (b) insert—

“(ba) The Natural Resources Body for Wales;”.

Environment Agency (River Dee) (Limitation of Salmon and Sea Trout) Order 2004

2. The Environment Agency (River Dee) (Limitation of Salmon and Sea Trout) Order 2004 is amended as follows.

3. In the title to the Order and in article 1, after “Environment Agency” insert “and the Natural Resources Body for Wales”.

4. After article 1, insert—

“**1A.** In this Order—

““the appropriate agency” means—

(a) in relation to England, the Environment Agency; and

(b) in relation to Wales, the Natural Resources Body for Wales;

“England” includes the sea adjacent to England to a distance of 12 nautical miles from the baselines from which the breadth of the territorial sea is measured; and

“Wales” has the meaning given by section 158(1) and (3) of the Government of Wales Act 2006(1).”

5. In articles 5 and 9, for “the Agency” substitute “the appropriate agency”.

6. In article 6, for “Net Licensing Committee” substitute “Net Licence Officer”.

(1) 2006 c.32. The boundary between the sea adjacent to Wales and that adjacent to England is described by article 6 of and Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of section 162 of and paragraph 26 of Schedule 11 to the 2006 Act, S.I. 1999/672 continues to have effect.

Environment Agency (Limitation of Net Fishing Licences) (Wales) Order 2009

7. The Environment Agency (Limitation of Net Fishing Licences) (Wales) Order 2009 is amended as follows.

8. For “the Environment Agency”, in each place where it occurs, other than in article 2, substitute “the Natural Resources Body for Wales”.

9. For “the Agency’s area”, in each place where it occurs, other than in article 2, substitute “the NRBW’s area”.

10. For “the Agency”, in each place where it occurs, other than in article 2, substitute “the NRBW”.

11.—(1) Article 2 is amended as follows.

(2) Omit the following definitions—

- (a) “the Agency”;
- (b) “the Agency’s area”.

(3) In the the definition of “licence”, omit “and”.

(4) In the definition of “net licence officer”—

- (a) for “the Agency” substitute “the NRBW”;
- (b) for “the Agency’s area” substitute “the NRBW’s area”;
- (c) for “.” Substitute “;”.

(5) After the definition of “net licence officer” insert—

““the NRBW” means the Natural Resources Body for Wales;

“the NRBW’s area” means the area in respect of which the NRBW carries out its functions relating to fisheries pursuant to section 6(7A) of the Environment Act 1995.”

12. In article 5, for paragraph (1) substitute—

“(1) Subject to article 8(2), all applications for licences for each year pursuant to this Order must be made to the NRBW not later than the 31st day of December in the previous year.”

13. In article 6, for paragraph (2) substitute—

“6(2) The NRBW must publish the criteria referred to in paragraph (1) of this article, and make them available for public inspection at its offices.”

14. In the Schedule, in Parts 1 and 2, omit column 3.

TRANSITIONAL PROVISIONS AND SAVINGS

PART 1

General provisions

Interpretation

1.—(1) In this Schedule—

“the transfer date” (“*y dyddiad trosglwyddo*”) means 1 April 2013;

“transferee” (“*trosglwyddar*”) means the body or person by whom a transferred function becomes exercisable on the transfer date;

“transferor” (“*trosglwyddwr*”) means the body or person by whom a transferred function was exercisable immediately before the transfer date;

“transferred function” (“*swyddogaeth drosglwyddedig*”) means any function which, by virtue of any provision made by this Order, becomes exercisable on the transfer date by a body or person other than the body or person by whom it was exercisable immediately before that date.

(2) For the purpose of the definition of “transferred function”, it does not matter that a function continues to be exercisable on and after the transfer date by the transferor as well as the transferee (whether jointly or otherwise).

(3) In this Schedule, any reference to anything done by or in relation to a transferor includes a reference to anything which, by virtue of any enactment, is treated as having been done by or in relation to that transferor.

Continuity of exercise of functions

2.—(1) None of the following, that is to say—

- (a) the abolition of the CCW,
- (b) the transfer, modification, repeal or revocation by this Order of any function, or
- (c) the transfer by this Order of any property, rights or liabilities,

affects the validity of anything done before the abolition, transfer, modification, repeal or revocation takes effect.

(2) Anything (including, without limitation, legal proceedings) which, at the transfer date, is in the process of being done by or in relation to a transferor

in the exercise of, or in connection with, a transferred function may be continued by or in relation to the transferee.

(3) Anything done by or in relation to a transferor before the transfer date in the exercise of, or otherwise in connection with, a transferred function is, so far as is required for continuing its effect on and after that date, to have effect as if done by or in relation to the transferee.

(4) Any reference to a transferor (and any reference which is to be read as a reference to a transferor) in any document constituting or relating to anything to which the provisions of this paragraph apply is, so far as is required for giving effect to those provisions, to be treated as a reference to the transferee.

3.—(1) This paragraph applies where—

- (a) a function (“the old function”) was conferred on the CCW by Part 7 of the 1990 Act or any other provision which is repealed by this Order;
- (b) an equivalent function (“the new function”) is conferred on the Body by any provision of the Establishment Order (as amended by this Order).

(2) Anything (including, without limitation, legal proceedings) which, at the transfer date, is in the process of being done in relation to the old function may be continued in relation to the new function.

(3) Anything done in relation to the old function is, so far as is required for continuing its effect on and after the transfer date, to have effect as if done in relation to the new function.

(4) Any reference to the CCW (and any reference which is to be read as a reference to the CCW) in any document relating to the old function is, so far as is required for giving effect to this paragraph, to be treated as a reference to the Body.

4. The provisions of this Part—

- (a) are without prejudice to any provision made by this Order in relation to any particular functions;
- (b) are not to be treated as continuing in force any contract of employment made by a transferor.

PART 2

Directions

General directions

5.—(1) A direction which was given under section 3(1) of the National Parks and Access to the Countryside Act 1949⁽¹⁾ or section 131(4) of the 1990 Act before the transfer date is to be treated on and after the transfer date as a direction given to the Body under article 11(1) of the Establishment Order.

(2) A direction which was given for the purposes of section 1(4) of the Forestry Act 1967⁽²⁾ before the transfer date is, to the extent that it applies in relation to a function that becomes exercisable by the Body by virtue of any provision made by this Order, to be treated on and after the transfer date as a direction given to the Body under article 11(1) of the Establishment Order.

(3) A direction which was given under section 40(1) of the 1995 Act before the transfer date is, to the extent that it applies in relation to a transferred function, to be treated on and after the transfer date as a direction given to the Body under article 11(1) of the Establishment Order.

(4) A direction which was given under section 40(2) of the 1995 Act before the transfer date is, to the extent that it applies in relation to Wales, to be treated on and after the transfer date as a direction given to the Body under article 11(3) of the Establishment Order (as substituted by this Order), but this is subject to any provision made by this Part in relation to particular directions.

The River Basin Districts Surface Water and Groundwater Classification (Water Framework Directive) (England and Wales) Direction 2009

6.—(1) The River Basin Districts Surface Water and Groundwater Classification (Water Framework Directive) (England and Wales) Direction 2009 is to be treated on and after the transfer date as a direction given to the appropriate agency—

- (a) under article 11(3) of the Establishment Order (as substituted by this Order) in so far as the direction applies where the appropriate agency is the Natural Resources Body for Wales;
- (b) under section 40(2) of the 1995 Act in so far as the direction applies where the

(1) 1949 c. 97.

(2) 1967 c. 10.

appropriate agency is the Environment Agency;

- (c) under article 11(3) of the Establishment Order (1)(as substituted by this Order) and under section 40(2) of the 1995 Act in so far as the direction applies where the appropriate agency is the Natural Resources Body for Wales and the Environment Agency acting jointly.

(2) In this paragraph “appropriate agency” (“*asiantaeth briodol*”) has the same meaning as in regulation 2(1) of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 as amended by this Order.

The River Basin Districts Typology, Standards and Groundwater threshold values (Water Framework Directive) (England and Wales) Directions 2010

7.—(1) The River Basin Districts Typology, Standards and Groundwater threshold values (Water Framework Directive) (England and Wales) Directions 2010 are to be treated on and after the transfer date as directions given to the appropriate agency—

- (a) under articles 11(3) and 11A(3) of the Establishment Order (as substituted by this Order) in so far as the directions apply where the appropriate agency is the Natural Resources Body for Wales;
- (b) under sections 40(2) and 122(2) of the 1995 Act in so far as the directions apply where the appropriate agency is the Environment Agency; and
- (c) under articles 11(3) and 11A(3) of the Establishment Order (as substituted by this Order) and under sections 40(2) and 122(2) of the 1995 Act in so far as the directions apply where the appropriate agency is the Natural Resources Body for Wales and the Environment Agency acting jointly.

(2) In this paragraph, “appropriate agency” (“*asiantaeth briodol*”) has the same meaning as in regulation 2(1) of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 as amended by this Order.

(1) S.I. 2003/3242 as amended by S.I. 2005/2035, S.I. 2007/3538, S.I. 2008/1097 (partly as from 14/05/08, fully as from 24/03/15), S.I. 2010/630 (C. 42), S.I. 2011/556 (C. 19).

PART 3

Provisions relating to amendments of specific enactments

Environmental Protection Act 1990

8. Notwithstanding the repeal by this Order of Schedules 8 and 9 to the 1990 Act, the amendments made by those Schedules to other Acts continue to have effect to the extent that they had effect immediately before the coming into force of this Order, subject to any amendments to those other Acts made by this Order.

Control of Major Accident Hazards Regulations 1999

9.—(1) This paragraph applies for the purposes of regulation 7(11) of the Control of Major Accident Hazards Regulations 1999⁽¹⁾.

(2) Where—

- (a) a safety report is sent to the competent authority in relation to an establishment in Wales;
- (b) that safety report includes information by reference to information contained in another report or notification sent to the Environment Agency pursuant to a requirement imposed by or under any enactment; and
- (c) the other report or notification was sent to the Environment Agency before the transfer date;

then the report or notification sent to the Environment Agency is deemed to have been sent to the appropriate agency..

(3) In this paragraph, “appropriate agency” (*“asiantaeth briodol”*), “establishment” (*“sefydliad”*) and “safety report” (*“adroddiad diogelwch”*) have the same meaning given by regulation 2(1) of the Control of Major Accident Hazards Regulations 1999 as amended by this Order.

Forest Reproductive Material (Great Britain) Regulations 2002

10.—(1) A person who is an authorised officer for the purposes of the Forest Reproductive Material (Great Britain) Regulations 2002⁽²⁾ immediately before the transfer date is thereafter deemed to be an

(1) S.I. 1999/743 as amended by S.I. 2002/2469, S.I. 2005/1088, S.I. 2008/960, S.I. 2008/1087, S.I. 2009/1595.

(2) S.I. 2002/3026 as amended by S.I. 2006/2530.

authorised officer by virtue of being authorised by both the Commissioners and by the Welsh Ministers.

11. Sub-paragraph (1) does not affect the powers of the Commissioners and the Welsh Ministers to revoke, on or after the transfer date, any authorisation of a person or to subsequently renew that authorisation.

Plant Health (Forestry) Order 2005

12.—(1) A person who is an inspector for the purposes of the Plant Health (Forestry) Order 2005⁽¹⁾ immediately before the transfer date is thereafter deemed to be an inspector by virtue of being authorised by both the Commissioners and by the Welsh Ministers.

(2) Sub-paragraph (1) does not affect the powers of the Commissioners and the Welsh Ministers to revoke, on or after the transfer date, any authorisation of a person or to subsequently renew that authorisation.

Environmental Civil Sanctions (Wales) Order 2010

13.—(1) In this paragraph—

“the 2008 Act” (“*Deddf 2008*”) means the Regulatory Enforcement and Sanctions Act 2008;

“the 2010 Order” (“*Gorchymyn 2010*”) means the Environmental Civil Sanctions (Wales) Order 2010⁽²⁾ as amended by this Order.

(2) Section 67 of the 2008 Act applies to the 2010 Order as if—

- (a) in subsection (2) there were substituted, for the period of three years, a period of one year; and
- (b) any provision of the 2010 Order conferring power on a regulator to impose a civil sanction in relation to an offence—
 - (i) had been made under or by virtue of Part 3 of the 2008 Act; and
 - (ii) had come into force on the transfer date.

(1) S.I. 2005/2517 as amended by S.I. 2006/2696, S.I. 2008/644, S.I. 2009/594, S.I. 2009/3020.
(2) S.I. 2010/1821 (W. 178).

PART 4

Provisions relating to abolition of CCW

Interpretation

14. In this Part, “the relevant period” (“*y cyfnod perthnasol*”) means the period commencing on 1 April 2012 and ending on 31 March 2013.

Final statement of accounts in relation to CCW

15.—(1) The Body must prepare a statement of accounts in relation to the CCW for the relevant period.

(2) The Body must submit the statement of accounts to the Welsh Ministers in such form and at such time as they may direct.

(3) The Welsh Ministers must send a copy of the statement of accounts to the Auditor General for Wales on or before 31 August 2013.

(4) The Auditor General for Wales must—

- (a) examine, certify and report on the statement of accounts;
- (b) provide a copy of the certified statement of accounts together with his or her report on it to the Body; and
- (c) no later than 4 months after the statement of accounts is submitted, lay before the National Assembly for Wales a copy of the certified statement of accounts and report.

Final report in relation to CCW

16.—(1) The Body must prepare for the Welsh Ministers a report on the exercise and performance of the functions of the CCW during the relevant period.

(2) The Body must submit the report to the Welsh Ministers as soon as possible after 31 March 2013.

(3) The Welsh Ministers must lay a copy of the report before the National Assembly for Wales.

Explanatory Memorandum to the Natural Resources Body for Wales (Functions) Order 2012

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Natural Resources Body for Wales (Functions) Order 2012.

John Griffiths

MINISTER FOR ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

14 November 2012

1. Description

This is the second of two Orders to create a new single body for the management of Wales' natural resources, combining the existing functions of the Countryside Council for Wales (CCW) and the Welsh devolved functions of the Environment Agency (EA) and the Forestry Commission (FC).

The Natural Resources Body for Wales (Establishment) Order 2012 ('the Establishment Order') created the body as a legal entity with an overarching aim, set out its general powers and duties, and gave it the function of carrying out preparatory work to facilitate proposals to transfer functions to it.

This second Order is the Natural Resources Body for Wales (Functions) Order 2012 ('the draft Functions Order'). It amends a wide range of legislation in order to transfer to the new body functions exercised by CCW, EA and FC, along with certain licensing functions of the Welsh Ministers. It makes consequential changes to legislation, and amends the body's general powers and duties to reflect the range of functions being transferred to it. It abolishes CCW and two statutory advisory committees of the EA. It also transfers a number of functions from FC to the Welsh Ministers rather than the body.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

Assembly procedure

The Order is being brought forward under the powers contained in sections 13 to 15 of the Public Bodies Act 2011.

As with the Establishment Order, this Order is subject to a form of affirmative procedure, in accordance with section 19 of the Public Bodies Act 2011. In addition to the normal requirement of affirmative procedure – i.e. that the Order cannot be made unless the Assembly approves it – the 2011 Act requires that the Order be laid in draft for 40 days before it can be approved by the Assembly¹.

Moreover, at any time within 30 days of it having been laid, the Assembly may resolve, or a Committee tasked with scrutinising the Order may recommend, that the draft Order should be subject to a procedure in which it can only be approved once 60 days have passed since it was laid². In that event, the Welsh Ministers will have to have regard to any representations, any resolutions of the Assembly and any recommendations of a Committee of the Assembly tasked with scrutinising the Order. If any material changes are made to the draft Order, a revised draft Order may be re-laid before the Assembly,

¹ For the purpose of the 30-, 40- and 60-day periods mentioned in this section, periods when the Assembly is dissolved or is in recess for more than 4 days are ignored: section 19(12).

² But the full Assembly could reject the Committee's recommendation and revert to the 40-day procedure for the Order.

with a statement summarising the changes. This revised draft Order would then be subject to normal affirmative procedure in the Assembly.

Taken as a whole, this procedure is a form of 'super-affirmative' procedure.

UK Government Consent

The making of the Order is conditional upon the consent of the Secretary of State being obtained in advance under section 17 of the Public Bodies Act 2011. Discussions are ongoing with the UK Government about the consent required to make this Order; this Order will not be made without obtaining the necessary consent.

Consent will also be required for service agreements which the body makes with FC and EA under sections 26 to 29, and for the staff and assets transfer scheme which the Welsh Ministers will make under section 25. Discussions are ongoing with the UK Government, particularly Defra, to ensure that these matters are completed to their satisfaction. In particular we need to ensure that the draft Order is consistent with wider UK needs, and that the impact on FC and the EA manageable. We will seek the consent of UK Ministers to all of the elements of the proposals which require consent before the Order is made. We have previously said that we intend to support the 'super affirmative' (60 day) procedure. In this context, section 19(6) requires the Welsh Ministers to have regard to representations made during that period. These will include any representations from Assembly Members, but may also include representations from the UK Government and others.

[NB: The preamble to the draft Order states that the consent of the Secretary of State and Minister has been obtained, as this condition will need to have been satisfied before the Welsh Ministers make the Order].

3. Legislative background

The FC was established under the Forestry Acts 1919 to 1945, and provisions relating to its constitution and general powers were consolidated in the Forestry Act 1967. It has functions in relation to Great Britain under a range of other legislation, including the Plant Health Act 1967.

CCW was established by Part VII of the Environmental Protection Act 1990, and took on functions previously exercised in relation to Wales by the Nature Conservancy Council and Countryside Commission. It has functions under a range of nature conservation and countryside legislation, including the Countryside and Rights of Way Act 2000, Natural Environment and Rural Communities Act 2006, and Conservation of Habitats and Species Regulations 2010.

The EA was established by Part 1 of the Environment Act 1995, and took on functions which were previously exercised by the National Rivers Authority, Her Majesty's Inspectorate of Pollution and waste regulation authorities. It exercises functions under a wide range of environmental legislation in relation

to England and Wales, including the Water Resources Act 1991, Flood and Water Management Act 2010 and Environmental Permitting (England and Wales) Regulations 2010.

The draft Functions Order is being made by the Welsh Ministers in exercise of the powers conferred by sections 13, 14, 15 and 35 of the Public Bodies Act 2011.

Section 13(7) of the Public Bodies Act 2011 enables the Welsh Ministers to make an Order to establish a new body corporate for the purposes of that section. The Establishment Order was approved by the National Assembly on 18 July 2012 and was made by the Minister for Environment and Sustainable Development on the same day. The new body was subsequently established on 19 July 2012. The functions provided for in the Establishment Order were those necessary to enable the Natural Resources Body for Wales (NRBW) to undertake the preparatory work ready to receive the full range of environment functions in April 2013.

The Functions Order makes further provision in relation to the general powers and duties of the body using the same powers.

Other provisions in section 13 enable the Welsh Ministers to transfer certain functions (including those of CCW a Welsh Flood and Coastal Committee and the Welsh devolved functions of the EA and FC) to a new body established under that section. The powers also enable those bodies' functions to be modified, and the modified functions to be transferred to a new body. The draft Functions Order transfers functions to the NRBW using these powers. The draft Functions Order also makes provision to abolish CCW.

Section 14 of the Public Bodies Act 2011 enables the Welsh Ministers to make an Order to abolish a number of committees in Wales. The draft Functions Order makes provision to abolish the Welsh Environment Protection Advisory Committee and Regional and Local Fisheries Advisory Committee of the EA.

4. Purpose & intended effect of the legislation

Purpose

The principal purpose of the Functions Order is to transfer functions to the body from CCW, EA and FC, and to ensure that the body's general functions are appropriate for the range of functions it will exercise.

The draft Functions Order therefore contains further general powers and duties of the body, updating those in the Establishment Order to reflect operational needs and deal with matters raised in consultation.

The Order transfers all CCW functions to the body (apart from functions which are removed in order to avoid duplication). It also transfers a number of wildlife licensing functions of the Welsh Ministers to the body.

The Order transfers most FC functions in respect of Wales to the body, including its forestry management functions. However, the FC's powers to make subordinate legislation in relation to Wales and its functions relating to plant health, are instead transferred to the Welsh Ministers.

EA functions are generally transferred to the body in relation to Wales (and remain exercisable by the EA in relation to England). However, certain functions relating to the water resources and flood risk management are divided differently; e.g. functions relating to the regulation and management of cross-border rivers for the purposes of the Water Framework Directive become jointly exercisable by the EA and the new body. In addition, the transfer does not include the Wye Navigation or a small number of functions which the EA will continue to exercise on a UK-wide basis.

The transfer of functions is largely achieved by amending existing legislation in place.

The Functions Order also makes provision to abolish the CCW and the Welsh Environment Protection Advisory Committee and Regional and Local Fisheries Advisory Committee of the EA. We expect the body to put in place new, more modern stakeholder consultation arrangements and the Establishment Order provides powers for the body itself to create committees should this be appropriate.

Our policy is that the FC's powers to make subordinate legislation relating to plant health is to transfer to the Welsh Ministers. However, following discussions with DEFRA and FCGB, we have concluded that we wish FC to continue to provide the core work of the Plant Health service in relation to forestry following vesting, though many inspections within Wales (which are currently undertaken by FCW staff) will in future be carried out by the NRBW. This reflects the specialist nature of the work, economy of scale, and benefits to customers in retaining existing registration arrangements and systems. This also serves to minimise risk by ensuring service continuity at a time when there are a number of plant health outbreaks which require careful management. We have also agreed that we wish to make these arrangements more flexible, to allow both FC and ourselves to make changes in future, either to reflect changes in arrangements elsewhere in Great Britain, or to recognise growing expertise within the NRBW over time. To give effect to this approach, the Order transfers the FC's functions in the Plant Health subordinate legislation to Welsh Ministers. Alongside this we are preparing an arrangement under Section 83 of the Government of Wales Act 2006. This will delegate subordinate legislation functions back to FC to enable them to provide the core services, while allowing the long term position to be kept under review.

The details relating to the functions of the NRBW are contained in the Schedules to the Order.

Schedule 1 and the Establishment Order

The provisions of Schedule 1 need to be read in conjunction with the Establishment Order. The explanation below therefore deals with both Orders.

The main effect of the provisions can be summarised as follows:

- The purpose of the body and associated guidance remain as set out in the Establishment Order.
- Nature conservation duties. The existing duties of CCW and EA in respect of conservation overlap to a large extent, although there are important differences. They are also similar to the nature conservation element of the FC's 'balancing duty' in section 1(3A) of the Forestry Act 1967.

Based on consultation feedback we have amended our proposals to ensure that we do not weaken the existing conservation duties that apply to CCW functions.

The draft Functions Order rationalises the various duties in a new article 5A of the Establishment Order, which is based on the relevant provisions of Part 7 of the Environmental Protection Act 1990 (in relation to CCW) and section 7 of the Environment Act 1995 (in relation to the EA). The draft Order repeals the provisions in Part 7 of the Environmental Protection Act 1990, and leaves section 7 of the Environment Act 1995 unamended so that it continues to apply to the EA.

CCW's duty to have regard to ecological changes under section 131 of the Environmental Protection Act 1990 is replicated in new article 5B of the Establishment Order. We have also retained the FC's balancing duty in respect of functions under the Forestry Act 1967.

Our intention in making these changes is to provide the body with similar conservation duties in respect of its functions as those that exist now.

- Access and recreation duties. These duties are set out on the face of the draft Functions Order, in a new article 5C of the Establishment Order. They are closely based on the provisions of existing legislation, although we have taken the opportunity to extend the duty to encourage the provision and improvement of facilities, by requiring the body to 'promote' the provision and development of 'opportunities', which we believe better reflects current practice.
- Other general duties. The draft Functions Order inserts new articles 5D and 5E into the Establishment Order, setting out the body's general duties to have regard to matters relating to sites of historic and other interest, and to the well-being of individuals, communities and

businesses. The duties are based on existing duties of CCW and EA, but the well-being duty is expressed more broadly.

New articles 5F and 5G set out general duties of the Welsh Ministers when considering proposals relating to the body, and of the body in relation to the use of water for recreation. They are based on existing duties under section 7 of the Environment Act 1995. New articles 5H to 5J set out powers relating to the provision of recreational and other facilities, based on existing powers of the FC under section 23 of the Countryside Act 1968.

- Revocation of preparatory powers. Paragraph 5 of Schedule 1 to the draft Functions Order revokes the broad preparatory powers provided to the body by the Establishment Order, which are not needed after vesting date.
- Costs and benefits. Article 8 of the Establishment Order continues to have effect. This makes the Body subject to a duty equivalent to that in section 39 of the Environment Act 1995, i.e. to have regard to costs and benefits in exercising its powers. This does not override any statutory duties, such as the need to comply with European Directives. The Functions Order amends article 8 to make clear that costs include costs to both people and the environment.
- Consultation and co-operation with the EA. The draft Functions Order places a duty on the body to co-operate and co-ordinate with the EA. This is intended to underpin cross-border activity and is supplemented by the powers in sections 27 and 28 of the Public Bodies Act 2011. Schedule 2 to the Order amends the Environment Act 1995 to place an equivalent duty on the EA. The extent of co-operation with FC on cross border management is expected to be very limited and we therefore do not consider such a duty is necessary.
- General incidental functions. Article 9 of the Establishment Order continues to be in effect and provides broad, general powers. The detail of this is drawn directly from existing legislation. The draft Functions Order makes some minor amendments to these powers, and adds powers to make agreements with local authorities and other public bodies (which are powers which the EA currently has).
- Advice and assistance to Welsh Ministers and others. Article 10 of the Establishment Order remains and is updated by a power to advise Welsh Ministers on matters for which it exercises functions. This power is based on existing powers of all three bodies. A new article 10A provides powers to assist others, for example, to work with the third sector, subject to some limitations in respect of operations outside Wales. A new article 10B enables the body to provide financial assistance (such as grants) to other parties with the consent of the Welsh Ministers. It replaces certain general grant-making powers of CCW, which the Functions Order repeals.

- Research. New article 10C provides a duty on the new body to make arrangements for the carrying out of research. This builds on the powers of the existing bodies to carry out research, and a similar duty placed on the EA by section 37 of the Environment Act 1995.
- Criminal proceedings. A new article 10E confers prosecution powers on the Body.
- Directions. The Welsh Ministers already have the power to direct the Body by virtue of article 11 of the Establishment Order. Further provisions about the powers of the Welsh Ministers and Secretary of State to direct the new body are set out in paragraphs 12 and 13 of Schedule 1 to the draft Functions Order. Powers to direct EA are also updated in Schedule 2.
- Financial matters. Part 3 (articles 12-15) of the Establishment Order made provisions for the funding of the body, and Schedule 1 provided matters such as the provision of accounts. Paragraph 14 of Schedule 1 to the draft Functions Order adds a general power to charge for goods and services. This is limited to reflect existing charging arrangements in current legislation. Schedules 2-6 contain provisions to transfer the existing powers of the bodies to raise charges – generally on a cost recovery basis – for regulation.

Paragraph 17 amends the Establishment Order to require the body to spend its income from sales of timber and other forest products on the exercise of its functions relating to forestry, forests, woods and woodland industries.

Part 4 of Schedule 1 to the draft Functions Order provides for transparency of permitting decisions in line with proposals in our consultation. This includes a requirement for the body to adopt a scheme for the publication of information about permit applications and decisions, which must ensure the publication of information about all permit applications which the body makes to itself.

Schedules 2-6

Schedules 2 to 6 deal with the amendments that have to be made to existing legislation: Acts of the UK Parliament, Measures of the National Assembly, UK Statutory Instruments, Welsh Statutory Instruments and other subordinate legislation respectively. The legislation to be amended is listed in the respective Schedules chronologically, with the oldest legislation appearing first.

These Schedules largely replace or add to references to the existing bodies (CCW, EA, FCGB or the Welsh Ministers) throughout the legislation, transferring the functions to the new body or the Welsh Ministers, and removing the role of the existing bodies in Wales. They also include various amendments which are necessary as a consequence of that change, particularly in respect of

border matters. The Functions Order does not seek to make other changes to existing functions, for wider policy reasons which are not related to the transfers of functions. The drafting follows the policy principles set out in our consultations. Further explanation of the amendments contained in Schedules 2 to 6 is provided in annex 1.

Schedule 7

This deals with transitional and saving provisions. Essentially it ensures that a range of actions and decisions undertaken by the predecessor bodies continue to have effect as if they had been undertaken by the successor bodies (the NRBW or the Welsh Ministers). Similarly, steps taken by others in relation to the existing bodies will be treated as if taken in relation to the successor bodies. These will include applications which have been made to the existing bodies, permits and licences which they have granted, decisions and determinations they have made, notices and directions they have issued, byelaws they have made, and appeals and other legal proceedings brought by or against them.

Schedule 7 also makes provision for the continuing effect of directions given to the predecessor bodies under powers which are replaced by the Establishment Order and Functions Order, and for the final report and accounts of CCW.

Other legal aspects

Alongside the Orders, there are a series of other legal requirements/ actions, most of which need to be in place prior to full vesting date. These are summarised below:

- A UK Government Order (subject to Parliamentary approval) containing provisions which are not within the powers of the Welsh Ministers. The majority of these provisions comprise matters which modify the constitution or funding arrangements of the EA or FC. Annex 2 lists the main changes we expect to include in this Order.
- An Order to add the new body to section 33 of the VAT Act 1994. As the body already exists, this is a straightforward, relatively short Order which is being taken forward by HMRC/Treasury.
- Orders to make appropriate provisions in the Local Government Pension Scheme and the Principal Civil Service Pension Scheme. DLGC and Cabinet Office have agreed in principle to make the necessary changes.
- An Order made by the Welsh Ministers (subject to Assembly approval) to delegate the Welsh Ministers' marine licensing functions to the new body. We intend to delegate these powers using powers contained in Chapter 4 of Part 4 of the Marine and Coastal Access Act 2009.
- A Transfer Scheme to be made by the Welsh Ministers under section 23 of the Public Bodies Act 2011 with UK Government agreement. This will cover the transfer of assets, liabilities and staff from CCW, EA and FC to the new body. It will encompass asset and liability transfers, including data and intellectual property rights, as well as staff transfers and TUPE provisions. It will also be the vehicle for contract transfers.

Requirements of the Public Bodies Act 2011

Section 19 of the Public Bodies Act requires the Welsh Ministers to set out why they think the Order meets the requirements of section 16 of the Act. Section 16 stipulates that the Welsh Ministers may make an Order under section 13 or 14 only if they consider that the Order serves the purpose of improving the exercise of public functions having regard to:

- (a) efficiency,
- (b) effectiveness,
- (c) economy, and
- (d) securing appropriate accountability to the Welsh Ministers.

Together, the two Orders are intended to deliver a new body that meets the three main factors driving the proposed changes detailed in the business case:

- The need to modernise regulation and natural resource management;
- The need to focus on Wales' priorities, opportunities and challenges reflected in Welsh legislation and policy; and
- The need to ensure value for money

The business case and earlier work looked at how institutional arrangements for achieving environmental benefits, environmental regulation and environmental services would best be delivered for Wales. It involved a substantial evaluation, which was undertaken by staff from the three organisations working with Welsh Government officials over a period of more than twelve months. This included detailed work to evaluate a range of options, including:

- no change;
- sharing services;
- combinations of two of the bodies; and
- creating a new single body.

The options were assessed against Value for Money (Net Present Value) and six qualitative criteria: outcomes for the environment; outcomes for people; outcomes for business and the economy; focus on Welsh Government priorities; organisational and operational resilience; and opportunities for staff within Wales.

The business case concluded that a single body was the option most likely to deliver the best outcome on each of the six qualitative assessment criteria. It would also deliver the best net economic benefit after taking account of the cost of change and discounting for inflation (£69m over 10 years).

The final report on the work was presented in the form of a strategic outline business case which was subject to an external independent review, before being presented to Ministers. The business case, together with its conclusions, and the report of the independent review were published in full on the Welsh Government's website at:

<http://wales.gov.uk/topics/environmentcountryside/consmanagement/seb/?lang=en>

In summary, the Welsh Government is confident that the proposed establishment of the new body will achieve efficiencies and economies, and will provide the most effective means of meeting its environmental objectives. It will secure greater accountability to Welsh Ministers as the new body, with its responsibility for an extensive range of environmental powers will be answerable solely to the Welsh Ministers and the National Assembly for Wales.

Section 16 also states that Welsh Ministers may make an Order under sections 13 and 14 only if they consider that:

- (a) the Order does not remove any necessary protection, and
- (b) the Order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

In drafting this Order we have followed the general principle that we are transferring the existing functions of the three bodies in a manner which retains all existing protections and does not add any new restrictions on individual rights or freedoms.

In particular, where the Functions Order transfers functions which confer enforcement powers, such as powers to impose civil sanctions, or powers of entry or seizure under the Water Resources Act 1991 or Environment Act 1995, it does so in a way which limits their exercise to the circumstances in which they are currently available. We have followed similar principles where we have transferred compulsory purchase powers. This approach avoids creating new powers and interfering with existing rights.

For similar reasons, while some appeal processes may not be particularly efficient or consistent, continuing with them in their present form does not remove any existing protection or adversely affect anyone's rights as compared to the current position.

Through our consultations we have also addressed 'self permitting' and transparency of regulatory decision making. The responses to the second consultation showed a high level of support for the proposed approach, and the Order has followed these principles. As we have made clear in the consultation, a significant amount of 'self permitting' already exists within the three bodies. However in the Functions Order we will also place requirements for the new body to publish information on all permit applications that it makes to itself, which goes beyond existing requirements. The Order also requires the body to inform Welsh Ministers at the time of applying to itself for a permit, in cases where decisions could be called in, to enable them to take decisions where concerns could arise. This would cover applications with potential for significant impact, such as applications for permits under the Environmental Permitting Regulations, or for abstraction licenses under the Water Resources Act 1991. We will also ensure that where the body itself is taking decisions, or providing

internal advice in respect of its own permissions, that these regulatory functions are separated from the operational unit making the application.

The Order also addresses the question of transparency by requiring the body to bring forward, and comply with, a scheme to ensure that applications and decision documents are published, together with relevant information.

The Order is therefore compliant with these requirements.

Section 5 of this Explanatory Memorandum summarises the consultation process, focusing particularly on responses that have informed the preparation of this Order.

5. Consultation

Details of the consultation that has been undertaken in relation to these Orders is contained in the RIA at section 6.

A series of consultations by the Welsh Government has led to the decision to proceed with the policy decisions underpinning this legislation.

Development of proposals

The Welsh Government's Natural Environment Framework (NEF) focuses on managing our environment as a whole rather than focusing on separate parts. The new approach was the subject of a public consultation (A living Wales – a new framework for our environment, our countryside and our seas) published in September 2010 and is available from:

<http://wales.gov.uk/consultations/environmentandcountryside/eshlivingwalescons/?lang=en&status=closed>).

This consultation set out the Welsh Government's new approach to the way we manage our land, water and seas. It also showed how we are actively responding to the failure to meet existing biodiversity targets. The document set a broad direction of travel for the Welsh Government's future work and first raised the potential for bringing together the work of existing environmental bodies in Wales.

In order to better develop their understanding of the implications of following this route, Ministers commissioned an initial review of delivery options which reported in January 2011. This was followed by a full business case, published in November 2011 (see section above).

Main consultation

The Welsh Government consulted on the proposed arrangements for establishing and directing a new body for the management of Wales' natural resources. The consultation ran from 9 February 2012 to 2 May 2012 i.e. for a period of twelve weeks. The consultation document was available from the Welsh Government's website at:

<http://wales.gov.uk/consultations/environmentandcountryside/singlebody/?lang=en&status=closed>).

The consultation document sought views on 12 specific questions covering the issues such as the legal changes needed to establish the body; the ambitions of the body including how the purpose would be framed; the arrangements for customer and stakeholder engagement; the main functions and powers of the body; the status of the body and governance arrangements; cross-border arrangements and accountability.

A total of 308 responses were received to the main consultation. There were 223 responses from organisations and 85 responses from private individuals.

The overall analysis showed that more than 60% of the 308 respondents to the consultation supported the overall proposal to manage natural resources in a more integrated way and to establish a single body by bringing together the existing functions of EAW, CCW and FCW. Approximately 10% of respondents were opposed, with the remainder not expressing any specific views on the overall proposition, or expressing views which were closely balanced.

Some of the key themes emerging from the consultation were:

- Many of the respondents in support of the overall proposal cited a wide range of potential benefits in establishing a single body.
- Some respondents set out their concerns about establishing a single body. These included environmental concerns, issues around resources and transition, as well as specific issues raised by the forestry sector and industry.
- The phased approach to the creation of the body and further development of the legislation was generally supported as respondents agreed that there was a need to carry out the approach efficiently so there is no detrimental effect on existing services and to ensure business continuity.
- There were a lot of views on the principle aim and strategic objective, with most of the respondents suggesting amendments to either the principle aim or strategic objectives or both.
- There was broad support for the approach to the delivery framework, although it was recognised that more work was needed on the actual outcomes and objectives.
- The list of functions for the new body was generally thought to be reasonable.
- Many respondents agreed with the proposal to transfer the marine and wildlife licensing functions to the new body.
- There were differing views on the proposal to transfer policy to the Welsh Government.
- The importance of the new body having a good scientific base was emphasised. There was support for the proposal for the Welsh Government to co-ordinate investment in environmental research, although many thought that that the new body should have flexibility to define and implement its own research.
- In general the proposals for the status, governance and accountability of the new body were welcomed. Most respondents agreed that the body should

be established as a Welsh Government Sponsored Body which is independent from government. There was widespread support for transparency and accountability across the whole range of the body's work.

- Overall the proposals for the stakeholder arrangements were welcomed. Respondents emphasised the importance of pro-active stakeholder engagement and that the success of the new body was dependent on having strong stakeholder arrangements. Many respondents highlighted that any arrangements must be developed in conjunction with stakeholders.
- In general there was support for the proposals relating to the regulatory arrangements, including clear separation of regulatory and operational work in situations where the body regulates its own activities.

The consultation responses helped inform the content of the Establishment Order, in particular the overarching aim of the body. Many stakeholders provided comments on this aspect, including suggestions on how the aim should be worded. As a result, these suggestions helped to inform the final text of the aim which was included in the Establishment Order. The consultation responses also helped to inform other aspects of the programme, including the vision and values of the body and the operational readiness workstream.

Supplementary consultation

An additional consultation, giving more details on creating the new body, was held between 13 August and 15 October 2012. The consultation was available from the following link:

<http://wales.gov.uk/consultations/environmentandcountryside/singlebodyadditioanal/?lang=en>

The first part of the consultation focused on the duties of the new body, including cross-cutting duties and specific duties covering natural beauty and nature conservation, public access and recreation, forestry and other overarching duties. The consultation sought views on three specific questions relating to these proposed duties.

The second part of the consultation provided more information on legal and working arrangements of the body. It covered matters such as cross-border issues, regulation and enforcement, cross-border monitoring, statutory planning and reporting, emergency response, trading schemes and producer responsibility, and transitional arrangements. Stakeholders were asked to provide their views on fourteen specific questions relating to our proposals on these issues.

A total of 107 consultation responses were received, including 82 responses from organisations and 25 responses from private individuals.

Most of the issues relevant to the Functions Order were in relation to the first part of the consultation document. Under this part, most of the respondents who specifically answered questions 1 to 3 either agreed or mainly agreed with the proposed duties. This ranged from 82% for the proposed natural beauty and nature conservation duties (question 1) to 87% for both the proposed

public access and recreation duties (question 2) and the proposed forestry duties (question 3). Stakeholders provided a range of comments on the proposed duties, including suggestions for wording to be included in the Functions Order. The detailed suggestions from stakeholders are not replicated in this Explanatory Memorandum, but a summary of some of the main issues raised on the proposed duties is set out below.

Comments on the natural beauty and nature conservation duties included views about the definition of natural beauty; concern that the proposed duty was much narrower in its obligations than the existing CCW duty; concern that the duty in relation to pollution control functions was less robust than the duties on other functions; and also mixed views on the inclusion of FC's 'balancing duty'. In relation to the proposed public access and recreation duties, common views were that the duties should apply to both land and water-based activities; that the body should promote the historic environment; and concern that the duties should apply to public, not private, land. There were also various comments on the list of facilities to be provided for recreation. In relation to the forestry duties, there was broad support for the confirmation that the existing powers and duties of FC would pass to the new body. Further comments indicated that there was some support for the proposal to include a duty to promote woodland cover in Wales and also that there were mixed views on the inclusion of FC's 'balancing duty'.

There was widespread support for the proposals contained in the second part of the consultation document. In particular, there was overwhelming support for the proposals relating to:

- permitting (question 7);
- the proposal to add the new body as a listed body under the Regulation of Investigatory Powers Act 2000 (question 10);
- the proposals for environmental planning and reporting (question 14);
- Civil Contingencies and COMAH (question 15);
- UK wide arrangements (question 16); and
- transitional arrangements (question 17).

On all of these questions, 100% of stakeholders that directly responded to the question either agreed or mainly agreed with the proposals, with no respondents indicating that they did not agree. For the remainder of the questions contained in the second part of the consultation, the percentage of respondents who either agreed or mainly agreed ranged from 92% to 98%. On these matters the Functions Order implements (or is consistent with) the changes proposed in the consultation document.

We have shared an early draft copy of the Order with the Environment and Sustainability Committee, as well as with members of the Living Wales Reference Group. As a result of the views expressed in the consultation responses, together with further input from the Environment and Sustainability Committee, the following main changes to the body of the Functions Order have now been made:

- The nature conservation and access and recreation duties have been amended so that they now apply to the exercise of the body's functions, not proposals about them. These duties are no longer expressed to be subject to the Welsh Ministers' guidance, but are still subject to the provisions of any enactment relating to the functions being exercised. This reflects concerns expressed by some consultees that the wording proposed would have weakened existing conservation duties. We have accepted that view.
- The draft provisions in the consultation document proposed a new power for the body to actively promote access and enjoyment of the countryside and open spaces, as well as a duty to encourage improvement of facilities etc. However, we have taken on board suggestions that the access and recreation duty should extend to opportunities, rather than just the provision of facilities. Given this change, there would be a very large overlap between this and the proposed power, and the power is not considered necessary. The duty has therefore been reworded to mention "promoting" and to refer to "access".
- In relation to pollution control functions, there is now a duty to have regard to the desirability of maintaining existing access and recreation opportunities, which is intended to be broadly equivalent to the EA's duty in section 7(2)(a) of the Environment Act.
- There is a new article 5D to deal with conservation of, and access to, historic sites. This is based on section 7(1)(c)(i) and 7(2)(b) of the Environment Act.
- A new article 5E deals with the well-being of communities etc. In particular, references to "health" and "businesses" have been added, and the power is not limited to rural communities.
- Some amendments have been made to refine the power to provide facilities, based on FC's powers in the Countryside Act 1968. For example, some minor changes have been made to the list of examples of the "facilities" for recreation and other purposes which the body may provide.

Discussions with Defra

We have also continued discussions with Defra and the three bodies themselves. These have resulted in a number of changes in the Schedules. In particular, in respect of the management of water resources and flood risks in cross-border river basin districts, the Functions Order now provides for the EA and the NRBW to be jointly responsible for assessments and plans. There are already arrangements for the EA and SEPA to work jointly in relation to districts which cross the Scottish border.

6. Regulatory Impact Assessment (RIA)

An RIA has not been included within this Explanatory Memorandum. This follows advice from the Welsh Government's economic advice team and is because:

- The change is, essentially, a machinery of Government change.
- The legislation does not result in any material changes to the regulatory regimes and as such no material impact on the private sector has been identified. Essentially it passes the functions to the new body in a regulatory neutral manner, with any substantive changes deferred until the Environment Bill (where they would be subject, as appropriate, to RIA). So there is no direct regulatory impact to assess.
- The change has been the subject of a series of consultations, and the costs, benefits and risks have been fully described in the published business case (available from <http://wales.gov.uk/topics/environmentcountryside/consmanagement/seb/?lang=en>). This was subject to extensive external review and scrutiny by the National Assembly's Environment and Sustainability Committee.
- The business case recognised the potential for regulatory simplification as a result of the creation of the body itself, and consultation responses have reinforced this. These effects will depend on future decisions that the body and EA will make, and cannot be reasonably quantified now.
- Where EA licences and permits, such as the rod licence or mobile plant permit, currently have effect throughout England and Wales, the body and EA will be expected to make appropriate arrangements to enable applicants to continue to follow a single application process covering England and Wales.
- Similarly nearly all cross border consultation roles transfer from CCW to the new body, and remain in their present form. There will be a limited number of situations (such as the preparation of water company plans) where a person or company could, on occasion, be required to consult two bodies (EA and NRBW) rather than one. However this is expected to affect a very small number of cases, and where it arises the practical effect should be small because the issues covered by the two bodies will be the same as those presently covered by one.

Explanatory notes on Schedules 2 to 6

Schedule 2: Acts of Parliament

Statistics of Trade Act 1947 (c. 39)

This Act enables certain UK government departments to carry out censuses of production and distribution, and to obtain information to understand economic trends and discharge their functions. The disclosure of certain information obtained under the Act is prohibited, but there is an exception for disclosure to the EA or SEPA.

The Functions Order ensures that the NRBW and its officers will also be able to obtain this information.

Coast Protection Act 1949 (c. 74)

This Act contains the regime for coastal protection and provides for various authorities to be consulted before works can be carried out.

The Act gives coast protection authorities and the EA powers to carry out works to manage coastal erosion risks. The Functions Order transfers the EA's powers to the NRBW in relation to coastal erosion risks in Wales.

The Act also requires people carrying out coast protection works to notify the EA or obtain its consent. The Functions Order ensures that the NRBW will be the body to be notified, or whose consent is required, in relation to works in Wales.

National Parks and Access to the Countryside Act 1949 (c. 97)

Part 1 of this Act contains general provisions relating to CCW which are repealed by article 8(2)(c) of the Functions Order as a consequence of the abolition of CCW.

The Act provides the framework for the creation of National Parks and Areas of Outstanding Natural Beauty in England and Wales, and the identification of long distance routes. The Act established the regime for declaring and protecting National Nature Reserves (NNRs) and made provision for management agreements, compulsory purchase and the introduction of byelaws in relation to these reserves.

It was amended in 1990 to include references to CCW. It sets out CCW's functions in respect of the designation and management of National Parks, AONBs, and National Nature Reserves.

The Functions Order replaces the references to CCW with NRBW. It also amends the references to the Environment Agency in relation to Wales within the definition of 'drainage authority'.

Opencast Coal Act 1958 (c. 59)

This Act makes provision with respect to the working of coal by opencast operations and other related matters. Section 4 of the Act provides the Coal Authority with powers to make compulsory rights orders to occupy and use land to work coal. Section 7 of the Act exempts certain rights from being affected by compulsory rights orders, including certain rights of statutory water undertakers.

The Functions Order amends section 7 so that in Wales the definition of statutory water undertakers includes the NRBW. In England, the EA is defined as a statutory water undertaker. Water and sewerage undertakers are also statutory water undertakers in England and in Wales.

Plant Varieties and Seeds Act 1964 (c. 14)

The Functions Order transfers FC's functions to establish and maintain seed testing stations for silvicultural propagating and planting material to the Welsh Ministers in relation to Wales.

Harbours Act 1964 (c. 40)

Section 58 provides that various named bodies will not be considered to be a harbour authority (for the purposes of the 1964 Act) simply because rivers works power or duties are vested in those bodies. The EA is named as one of those bodies. The Functions Order inserts a reference to the NRBW in section 58 so that it will also not be captured as being a "harbour authority".

Paragraph 18 of Part 1 of Schedule 3 to the Harbours Act 1964 deals with objections made in relation to various applications made under the Act. The Functions Order replaces the reference to the CCW in the definition of "relevant conservation body" with a reference to the NRBW.

Nuclear Installations Act 1965 (c. 57)

The Functions Order amends section 26(1) of the Nuclear Installations Act 1965 to make the EA the appropriate Agency in the case of a site in England, and, the NRBW in the case of a site in Wales.

The appropriate Agency has a range of functions conferred on it by this Act, including, being consulted about the grant of a nuclear site licence (see, section 3).

Plant Health Act 1967 (c. 8)

The Functions Order transfers FC's functions regarding the protection of forest trees and timber from attack by pests to the Welsh Ministers, including the power to make orders to prevent the introduction of pests into Wales.

Forestry Act 1967 (c. 10)

This is the principal Act relating to the Forestry Commissioners (“the FC”) and the regulation of forestry. It extends to Great Britain. The functions of Ministers of the Crown under the Act, with very limited exceptions, have been transferred to the Welsh Ministers in relation to Wales.

The effect of the Functions Order is that, in relation to Wales, the FC’s powers to make subordinate legislation are transferred to the Welsh Ministers, and the FC’s functions in relation to the felling of trees (Part II of the Act) are transferred to the NRBW. The FC’s general duties in relation to afforestation and nature conservation (section 1), and its powers at sections 3 – 7 and 46 in relation to management of forestry land, enforcement and other matters, are also transferred to the NRBW in relation to Wales. However, the FC’s duty to comply with directions (section 1(4) to(6), and its general powers at sections 7A and 8, are not transferred to the NRBW, because equivalent provision is made in the Establishment Order (as amended by the Functions Order). Provision is also made for the defunct Home Grown Timber Advisory Committee to no longer have a role in Wales, pending its intended abolition by the UK Government.

The Act also makes provision about constitutional and financial matters. The Welsh Government’s intention is that, given the transfer of the FC’s functions to the NRBW and the Welsh Ministers in relation to Wales, the Welsh Ministers should cease to have any role in the constitution and financing of the FC. Provision to secure this must however be made by the Secretary of State.

The Functions Order does not make provision to apply the Act’s constitutional or financial provisions to the NRBW: the provision made by the Establishment Order will instead apply to the NRBW’s forestry functions. The Establishment Order will make provision for the ringfencing of forestry income (see article 13A inserted by the Functions Order).

Parliamentary Commissioner Act 1967 (c. 13)

The Functions Order amends the Parliamentary Commissioner Act 1967 by adding the NRBW to the list of bodies which are subject to investigation by the Commissioner. However, the Commissioner’s jurisdiction will extend only to the NRBW’s activities outside Wales; its activities within Wales will be subject to investigation by the Public Services Ombudsman for Wales.

Agriculture Act 1967 (c. 22)

Part III of this Act makes provision for the establishment of Rural Development Boards where special problems or needs exist and for the controls of land sales, afforestation and other matters in the area of a Board. The Forestry Commissioners (“the FC”) have a duty to co-ordinate with Boards, have powers in relation to land controls and are excepted from certain regulatory controls.

No Board has been established in relation to Wales, but the provisions remain in force. The Functions Order therefore amends the Act to transfer the functions of, and references to, the FC to the NRBW in relation to Wales.

Sea Fish (Conservation) Act 1967 (c. 84)

The Act provides the EA with seizure, entry and search powers in relation to orders made under the Act which impose restrictions on fishing for or landing salmon or migratory trout.

The Functions Order transfers these powers to NRBW in relation to Wales.

Countryside Act 1968 (c. 41)

The Functions Order repeals section 1 and some provisions of section 2 of this Act, which confer general functions on CCW. (Equivalent functions are conferred by the Establishment Order, as amended by the Functions Order.) Other functions in section 2, relating to the enjoyment of the countryside and assisting local planning authorities, are transferred from CCW to the NRBW.

This Act enlarges the regime for nature conservation and enhancement that originated in the National Parks and Countryside Act 1949. It confers powers on CCW and other bodies for the conservation and enhancement of natural beauty and for the benefit of those enjoying the countryside. It makes provision for other matters as respects the countryside, and amends the law about trees and woodlands, and footpaths and bridleways, and other public paths. It also allows CCW to make, carry out or promote the carrying out of any experimental scheme in respect of enjoyment of the countryside or the conservation and enhancement of natural beauty.

The Functions Order transfers these powers to the NRBW. It also transfers functions of the EA in respect of country parks, access agreements to open country involving rivers, canals and open water and protection against pollution in relation to Wales to the NRBW.

Sections 23 and 24A of the Act confer powers on the Forestry Commissioners ("the FC"). These powers will not apply to land in Wales, and they are not transferred to the NRBW as it will have equivalent powers in its Establishment Order as amended by the Functions Order (see Articles 5H and 9).

Section 24 of the Act confers a power to manage trees in the interest of amenity: this is transferred to the NRBW in relation to Wales.

Conservation of Seals Act 1970 (c. 30)

The Conservation of Seals Act 1970 makes provision for the protection and conservation of seals. The Act has been repealed in relation to Scotland, and the functions of the Secretary of State have been transferred to the Welsh Ministers in relation to Wales.

The Functions Order amends section 10 to transfer to the NRBW the Welsh Ministers' functions in relation to the grant of licences to kill and take seals, taking account of the abolition of CCW. Section 13 is amended to provide that the Natural Environment Research Council will be obliged to provide advice to the NRBW.

Local Government Act 1974 (c. 7)

Section 9 of this Act enables CCW to provide grants and loans to local authorities.

The Functions Order repeals section 9. The Establishment Order (as amended by the Functions Order) provides the NRBW with a general power to give financial assistance by way of grant or loan (or partly in one way and partly in the other).

Health and Safety at Work etc. Act 1974 (c. 13)

Section 28 prohibits the disclosure of certain information obtained under the Act without the consent of the person who provided it. There are exceptions for disclosure to the Health and Safety Executive, EA and certain other authorities. The Functions Order extends this exception to cover disclosure to the NRBW.

Under section 38, the EA or inspectors appointed under the Act are able to bring proceedings, in England and Wales, for an offence under any "relevant statutory provision" (which includes Part 1 of the Act and health and safety regulations). The amendment to section 38 enables the NRBW to bring such proceedings.

Control of Pollution Act 1974 (c. 40)

This Act makes provision for controlled waste (largely repealed), street cleansing and litter, abandoned mines, waste pollution and noise.

The Functions Order adds the NRBW to the definition of the appropriate Agency, which has functions relating to the grant and enforcement of disposal licences, in those cases where the provisions of the Act relating to waste on land still apply.

It also provides that the NRBW will not commit an offence if it operates a loudspeaker between various times in a street in the exercise of any of its functions.

Reservoirs Act 1975 (c. 23)

The Act provides for the supervision and safety arrangements in respect of large raised reservoirs, whether naturally formed or artificially created or enlarged. It requires the EA to maintain a register of large raised reservoirs in England and Wales and enables it to designate high-risk reservoirs, makes it responsible for enforcing the obligations of undertakers relating to matters such

as the supervision of works and periodical inspection of reservoirs, and gives it certain emergency powers.

The Functions Order transfers the powers of the EA in relation to reservoirs in Wales to the NRBW. The powers of the EA in relation to England will remain.

House of Commons Disqualification Act 1975 (c. 24)

Schedule 1 to the Act lists the bodies of which all members are disqualified from membership of the House of Commons. The Functions Order amends the Act to add NRBW to this list of bodies. In consequence of the abolition of CCW, it also removes the disqualification of certain of its members.

Salmon and Freshwater Fisheries Act 1975 (c. 51)

The Salmon and Freshwater Fisheries Act 1975 provides a range of offences, duties and powers in order to maintain, improve and develop salmon and freshwater fisheries (and other species that may be specified by Order of the appropriate national authority).

In particular, the Act constrains the methods of taking or destroying fish, and provides the EA with powers to regulate such fisheries, including establishing licensing regimes. It also includes provision to ensure free passage of fish, including a power for the EA to construct, and maintain fish passes, sluices and screens (or to require that they be provided).

The Act provides water bailiffs (appointed by the EA) and any persons appointed by the Ministers with a range of enforcement powers, including powers of entry, search, the power to apprehend and the power to issue fixed penalty notices.

The Functions Order replaces the references to the EA with a reference to the NRBW in relation to Wales.

Local Government (Miscellaneous Provisions) Act 1976 (c. 57)

Section 16 of this Act provides local authorities with a general power to obtain certain information on persons with an interest in land. Section 44(1B) of this Act extends this power to the EA.

The Functions Order amends section 44(1B) of the Act to make the power under section 16 of the Act exercisable by the NRBW.

Rent (Agriculture) Act 1976 (c. 80)

This Act makes provision for security of tenure for agricultural workers and related matters. Section 30 confers a power to obtain information in respect of housing accommodation. The power is exercisable by the Welsh Ministers and UK Government Ministers, and by the Forestry Commissioners (“the FC”) in relation to forestry land.

The Functions Order transfers the FC's power under section 30 to the NRBW in relation to Wales.

Forestry Act 1979 (c. 21)

Section 1 of this Act confers power on the Forestry Commissioners ("the FC") to make grants and loans. As the Establishment Order confers equivalent powers on the NRBW, the Functions Order disapplies the section 1 power from Wales.

Section 2 of the Act confers a power on the FC to make subordinate legislation for the purposes of metrication of forestry legislation. The Functions Order transfers this power to the Welsh Ministers in relation to Wales.

Import of Live Fish (England and Wales) Act 1980 (c. 27)

Section 1 of the 1980 Act enables the Minister, in certain circumstances, to prohibit (either absolutely or except under a licence granted under that section) the import into, or the keeping or the release, in any part of England and Wales, of live fish or the live eggs of fish, of a species which is not native to England and Wales. In relation to Wales, the functions of the Minister under section 1 are exercisable concurrently by the Secretary of State for Wales and the Welsh Ministers.

Subsection 1(2) requires that the Minister, before determining whether to make such an Order shall consult Natural England and CCW. The Functions Order substitutes the NRBW for CCW.

Local Government, Planning and Land Act 1980 (c. 65)

This Act makes various provision in relation to local and other authorities.

The Functions Order ensures that no local authority in Wales may make byelaws in relation to pleasure boats or vessels operating on any inland waters in respect of which the NRBW may make byelaws by virtue of paragraph 1 of Schedule 25 to the Water Resources Act 1991.

Highways Act 1980 (c. 66)

The Highways Act 1980 contains the statutory regime for the construction and management of highways (and also extends to footpaths and bridleways). There are several provisions that require CCW and EA to be consulted before certain actions can be taken that affect highways, etc and the land through which they pass

The Functions Order replaces the references to CCW with references to the NRBW and the NRBW has been added to references to the EA in relation to Wales.

Wildlife and Countryside Act 1981 (c. 69)

The Wildlife and Countryside Act 1981 contains provisions, which create offences related to the protection of birds, animals and wild plants, including offences of killing or injuring wild birds or animals and offences relating to the introduction of new species into the wild and the sale of invasive non-native species. The Act identifies a number of relevant licensing bodies that may issue derogation licences. Where a licence has been granted and the activity is carried out in accordance with the terms of the licence, no offence is committed.

The wildlife licensing functions of the Welsh Ministers under this Act will be transferred to the NRBW and this body will be responsible for the issuing of all Wildlife and Countryside Act wildlife licenses in Wales.

The Act also amends the law relating to nature conservation, the countryside and National Parks. Under the Act, CCW is identified as the nature conservation body with specific functions in relation to wildlife protection, sites of special scientific interest, National nature reserves, marine nature reserves, Ramsar sites and designation of National Parks. It also provides powers to enter management agreements and issue management notices as well as providing specific powers of entry. The Functions Order transfers all of CCW's functions under this Act to the NRBW.

Section 47 of the Act, which enables the Welsh Ministers to give grants to CCW, is repealed by the Functions Order. Article 12 of the Establishment Order gives the Welsh Ministers the power to make grants to the NRBW.

Animal Health Act 1981 (c. 22)

The Functions Order transfers CCW's function as consultee to proposals by the Welsh Ministers to destroy wildlife for the purposes of eliminating or substantially reducing disease to the NRBW.

Road Traffic Regulation Act 1984 (c. 27)

This Act contains various provisions relating to traffic regulations. One of these refers to experimental schemes that can be made under the Countryside Act 1968.

The Functions Order transfers the function of preparing those schemes from CCW to the NRBW and makes consequential amendments to the relevant section of the 1984 Act.

Inheritance Tax Act 1984 (c. 51)

Transfers of property to the bodies listed in Schedule 3 to this Act may be exempt from Inheritance Tax. CCW is currently listed in Schedule 3.

The Functions Order inserts the NRBW into Schedule 3 in place of CCW.

Agriculture Act 1986 (c. 49)

The Functions Order replaces the requirement, in section 18(2) of the Act, for the Secretary of State to consult CCW in relation to designation of environmentally sensitive areas with a requirement to consult the NRBW.

Control of Pollution (Amendment) Act 1989 (c. 14)

This Act makes provision in relation to registration of carriers of controlled waste within Great Britain. Regulations may require registration with “regulation authorities” (meaning the EA in relation to England and Wales) and require those authorities to keep registers. The Act also provides for offences for failure to register, for the issue of fixed penalty notices by regulation authorities, and for seizure and disposal by officers acting for regulation authorities of vehicles used for illegal waste disposal.

The amendment to section 9 transfers the EA’s functions as a regulation authority to the NRBW in relation to Wales, with no substantive change. The Functions Order also amends section 5C(2) to provide for fixed penalty receipts received by the NRBW to be paid to the Welsh Ministers.

Water Act 1989 (c. 15)

This Act made provision for the establishment of the National Rivers Authority and related matters. Much of the Act has been repealed and the functions of the National Rivers Authority have been transferred to the EA by the Environment Act 1995.

At section 174, provisions are in force imposing a general restriction on the disclosure of certain information obtained under the Act and providing for certain exceptions to that restriction.

Section 174 is amended to include the NRBW as a body which is excepted from the restriction on disclosure of information in the exercise of certain of its functions.

Schedule 25 to the Act makes minor and consequential provision about the EA and other bodies. The Functions Order amends Schedule 25 to define the NRBW as a deemed statutory undertaker for the purposes of the legislation listed in that Schedule and to make related provision.

Electricity Act 1989 (c. 29)

The Electricity Act 1989 contains provisions for the supply of electricity through electric lines and the generation and transmission of electricity for such supply.

The Act enables the EA to undertake street or road works, which involve a temporary or permanent alteration of any electric line or electrical plant under

the control of a license holder. The Functions Order transfers all of the EA's functions under this Act to the NRBW in relation to Wales. The EA will retain those functions in relation to England.

CCW is identified in the Act as a consultation body in relation to the preservation of amenities and fisheries. The Functions Order also transfers the functions of CCW under this Act to the NRBW.

Town and Country Planning Act 1990 (c. 8)

This Act consolidates certain enactments relating to town and country planning (excluding special controls in respect of buildings and areas of special architectural or historic interest and in respect of hazardous substances).

The Functions Order amends sections 200, 204, 252, 262, 265 and paragraph 4 of Schedule 5. Amendments to sections 200, 204 and Schedule 5 are made to ensure that the functions of FC in relation to tree preservation orders, compensation in respect of a requirement to replant trees and the requirement to be consulted as a condition relating to mineral working where the after use is forestry are transferred to the NRBW. Amendments to sections 252, 262 and 265 are made in respect of the procedure for the service of highways orders; definition of statutory undertaker and the appropriate Minister for the EA to ensure that the NRBW is placed in the same position as the EA is currently

Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)

This Act consolidates certain enactments relating to special controls in respect of buildings and areas of special architectural or historic interest.

The Functions Order amends section 91 (Interpretation) to include a reference to NRBW as a statutory undertaker in respect of listed building purchase notices, compulsory acquisition and contributions towards the expenses of planning authorities.

Planning (Hazardous Substances) Act 1990 (c. 10)

This Act consolidates certain enactments relating to special controls in respect of hazardous substances.

The Functions Order amends section 39 (Interpretation) to include the reference to the NRBW as a statutory undertaker for the purposes of government authorisation for deemed hazardous substances consent for development carried out by it; and allow the NRBW to contribute towards expenses incurred by a hazardous substances authority.

Environmental Protection Act 1990 (c. 43)

Part II of the Act makes provision for the collection, disposal or treatment of controlled waste through licensing; prohibits the unauthorised or harmful deposits, treatment and disposal of waste. The Act imposes a duty of care on

producers, carriers of waste to prevent unauthorised or harmful activities. There are duties on waste disposal and collection authorities to collect controlled waste and provision for fixed penalty notices for related offences.

The Functions Order transfers EA functions under Part II to the NRBW in relation to Wales, with no substantive changes. Amendments to section 73A provide for fixed penalty receipts received by the NRBW to be paid to the Welsh Ministers.

Part IIA of the Act makes provision for a regime for dealing with contaminated land. The EA is the enforcing authority where an area of contaminated land in England and Wales is designated as a 'special site' under section 78C. The Functions Order transfers, to the NRBW, the EA's functions as the enforcing authority in relation to sites in Wales that are designated as 'special sites' under section 78C.

Part VII of the Act establishes CCW and makes provisions for its general functions, including the provision of advice and assistance, carrying out research and making grants. Schedule 6 makes provision about CCW's constitution and Schedules 8 and 9 amend other legislation to confer functions on CCW.

Article 8 of the Functions Order abolishes CCW and as a consequence it repeals sections 128 to 134 in Part VII and Schedules 6, 8 and 9 of the Act. Powers and duties equivalent to those contained within sections 128 to 134 are contained in the Establishment Order, as amended by the Functions Order.

Coal Mining Subsidence Act 1991 (c. 45)

This Act makes provision for compensation to be paid for losses suffered as a result of subsidence caused by coal mining. It makes provision for land drainage schemes and requires consultation with statutory undertakers.

The Functions Order amends sections 36(8)(a) and 52(1)(b) of the Act to ensure that the requirements and responsibilities placed upon the EA remain in relation to England and are transferred to the NRBW in relation to Wales.

Deer Act 1991 (c. 54)

The Functions Order transfers CCW's function as licensor for the transport of deer to another area or taking deer alive for scientific purposes to the NRBW.

Water Industry Act 1991 (c. 56)

The Act consolidates previous enactments relating to the supply of water and the provision of sewerage services.

Part 1 of the Act deals with the establishment of the Water Services Regulation Authority (the "Authority") and other preliminary matters.

Section 3 imposes general environmental and recreational duties. Section 3(4) applies those duties to the Authority and any relevant undertaker in relation to any proposals relating to the functions of the EA. Section 3(4) is amended so those duties also apply in relation to any proposal relating to the functions of the NRBW.

Section 4 imposes environmental duties with respect to sites of special interest. CCW's functions under this section are transferred to the NRBW.

Section 5 provides Ministers with the power by order to approve codes of practice with respect to environmental and recreational duties. Section 5(4) requires Ministers to consult certain persons before making an order, including the EA. Section 5(4) is amended so that Ministers are also required to consult the NRBW before making an order. The reference to CCW is omitted from section 5(4)(b).

Part II of the Act makes provision for the appointment and regulation of undertakers.

Section 17F sets out the procedure for granting water supply licenses. Section 17F(7) requires the Secretary of State or the Authority to serve a copy of a licence or licence variation on certain persons. That subsection is amended so that a licence or licence variation must also be served on the NRBW.

Section 17G is about water supply license conditions. Section 17G(4) makes provision about relevant persons for the purposes of section 17G(3). Section 17(G)(4) is amended to add the NRBW as a relevant person.

Part III of the Act deals with water supply.

Section 37A imposes a duty on water undertakers to prepare and review water resources management plans.

Section 37A(8) requires water undertakers to consult certain persons on their plan (or revised plan). Section 37A(8) is amended so that an undertaker is required to consult the EA if the plan (or revised plan) would affect water resources in England and the NRBW if the plan (or revised plan) would affect water resources in Wales.

Undertakers are required to prepare a revised plan if directed to do so by Ministers (section 37A(6)(b)). Section 37(9) is substituted so that, before making a direction, the Secretary of State is required to consult the EA if the revised plan would affect water resources in England and the NRBW if the revised plan would affect water resources in Wales. Subsection (9A) is inserted so that, before making a direction, the Welsh Ministers are required to consult each of those bodies in the same circumstances.

Section 39B imposes a duty on water undertakers to prepare and maintain drought plans.

Section 39B(7) requires water undertakers to consult certain persons on their plan (or revised plan). Section 39B(7) is amended so that an undertaker is required to consult the EA if the plan (or revised plan) would affect water resources in England and the NRBW if the plan (or revised plan) would affect water resources in Wales.

Undertakers are required to prepare a revised plan if directed to do so by Ministers (section 39B(6)(b)). Section 39B(11) is substituted so that, before making a direction, the Secretary of State is required to consult the EA if the revised plan would affect water resources in England and the NRBW if the revised plan would affect water resources in Wales. Subsection (11A) is inserted so that, before making a direction, the Welsh Ministers are required to consult each of those bodies in the same circumstances.

Section 40 confers power on the Authority by order to require the supply of water in bulk. Section 40(5) is amended so that the Authority must not make an order under this section unless it has consulted the EA if the order applies to a supply of water that would affect water resources in England and the NRBW if the order applies to a supply of water that would affect water resources in Wales.

Section 40A confers power on the Authority by order to vary or terminate a bulk supply agreement. Section 40A(3) is amended so that before the Authority makes an order under this section it must consult the EA if the order applies to a bulk supply agreement that would affect water resources in England and the NRBW if the order applies to a bulk supply agreement that would affect water resources in Wales.

Section 66F(2) requires the Authority to consult before making a determination for certain purposes. Subsection (2) is amended, and subsection (2A) is inserted, so that the Authority is required to consult the Secretary of State (subject to subsections (3) and (4)), the EA, if the determination is in relation to a supply of water that would affect water resources in England and the NRBW if the determination is in relation to a supply of water that would affect water resources in Wales.

Section 66G(4) requires the Authority to give notice of a request or a proposed determination relating to a strategic supply. Section 66G(4) is amended so that the persons to whom notice must be given include the EA, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker whose area is wholly in England; the NRBW, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker whose area is wholly in Wales; and the NRBW and the EA if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker whose area is partly in Wales and partly in England.

Section 66H(4) requires the Authority to give notice of a request or proposed determination relating to a collective strategic supply. Section 66H(4) is amended so that the persons to whom notice must be given include the EA, if

the request or proposed determination relates to an introduction of water to the supply system of a water undertaker whose area is wholly in England; the NRBW, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker whose area is wholly in Wales; and the NRBW and the EA, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker whose area is partly in Wales and partly in England.

Section 71 imposes offences relating to waste from water sources. References to the EA in this section are substituted with “the appropriate agency”. Subsection (9) is inserted to define “the appropriate agency” as the EA, in relation to a well, borehole or other work in England and the NRBW, in relation to a well, borehole or other work in Wales.

Part IV makes provision in relation to sewerage services.

Section 101A imposes a duty on sewerage undertakers to provide a public sewer to be used for the domestic sewerage purposes of premises in a particular locality of its operating area if certain conditions are met. The Welsh Ministers and the Secretary of State may issue guidance in relation to the exercise of that duty, and are required to consult certain persons before doing so. Section 101A(5) is amended so that the persons to be consulted include the EA, if the guidance applies to premises in England and the NRBW, if the guidance applies to premises in Wales.

Subsections (7) to (10) deal with disputes between sewerage undertakers and owners or occupiers of premises. References to the EA in those subsections are substituted with “appropriate agency”. This is defined in subsection (11) as the EA, in relation to disputes between sewerage undertakers and owners or occupiers of premises in England and the NRBW in relation to disputes between sewerage undertakers and owners or occupiers of premises in Wales.

Section 110A provides the Authority with power by order to require an undertaker to allow a main connection into its sewerage system. Subsection (6) is substituted so that the Authority must not make an Order under this section unless it has consulted the EA, where the proposed main connection would discharge to a sewerage system that would dispose of that discharge to any controlled waters in England, or the NRBW, where the proposed main connection would discharge to a sewerage system that would dispose of that discharge to any controlled waters in Wales.

Sections 120, 123, 127, 130 to 134 and 135A deal with discharges of special category effluent. These sections are amended to substitute references to the EA, other than in section 132(2)(a)(zai), with a reference to the appropriate agency. Appropriate agency is defined at section 141(1).

Section 132(2) requires the appropriate agency to give an opportunity of making representations or objections to certain persons before determining certain references or reviews relating to special category effluent discharges. Section 132(2)(a) is amended so that where the EA is the appropriate agency,

the NRBW is given the opportunity to make representations or object if the discharge or proposed discharge is from trade premises in England. Similarly, where the NRBW is the appropriate agency, the EA is given the opportunity to make representations or object if the discharge or proposed discharge is from trade premises in Wales.

Section 132(3) is amended so that the appropriate agency is required to serve notice of its determination on any person consulted under subsection (2)(a).

Section 133(6) provides the appropriate agency with certain powers for the purpose of securing compliance with the provisions of a notice served under section 132. Those powers may be exercised by serving a further notice on any person consulted under section 132(2)(a).

Part VI of the Act sets out undertakers' powers in relation to land and various works.

Section 156 relates to restrictions on the disposal of land. References to CCW in section 156(4)(c) and (d) are replaced with the NRBW.

Section 161 sets out undertakers' powers for dealing with foul water and pollution incidents. Subsection 3(b) is amended so that undertakers may exercise their powers to prevent pollution of certain waters, reservoirs and underground strata in relation to the NRBW. Subsection (4) is amended so that before undertaking any works an undertaker must consult the EA, where the proposed works will affect any watercourse in England, and the NRBW, where the proposed works will affect any watercourse in Wales.

Section 166 deals with consents for certain discharges for works purposes. References to the EA in subsection (1) have been substituted with "the appropriate agency". This is defined in subsection (10) as the EA, in relation to discharges of water in England and the NRBW in relation to discharges of water in Wales.

Section 184 sets out the powers of certain bodies to take up, divert or alter the level of certain public sewers, drains, culverts or any other pipes after giving reasonable notice to the appropriate sewerage undertaker. Subsection (1) is amended so that these powers are available to the NRBW.

Part VII of the Act sets out information provisions.

Section 195 sets out that the Authority should maintain a register for certain purposes. Subsection (2)(bb) is amended so that provision also applies in relation to directions, consents or determinations given or made by the NRBW.

Section 202 sets out the duties of undertakers to provide the Secretary of State and the Welsh Ministers with information. Subsection (6) is amended to refer to functions conferred on the Welsh Ministers with respect to the NRBW.

Section 206 imposes restrictions on the disclosure of certain information in relation to businesses. The restriction does not apply to the EA in the exercise of certain of its functions. Section 206 is amended so that the restriction does not apply to the NRBW in relation to the exercise of certain of its functions.

Part VIII of the Act deals with miscellaneous and supplemental matters.

Section 209 sets out the civil liabilities of undertakers for an escape of water. Reference to the NRBW is inserted in subsection (3)(a).

Section 215 makes provision about local enquiries for sewerage provisions. References to the NRBW are inserted in subsection (3).

Section 217 makes provision about the construction of any enactment which, by reference to the functions of a relevant undertaker, confers power on that undertaker. References to the NRBW are inserted in subsections (2), (3), (4) and (7).

Section 219 is a general interpretation provision. In subsection (1) reference to the NRBW is inserted in the definitions of “public authority” and “watercourse”. A new definition is inserted to state that “the NRBW” means the Natural Resources Body for Wales.

Section 222 deals with Crown application and makes provision so that the EA (and others) may apply to the High Court for a declaration that any act or omission of the Crown which contravenes any provision of the Act is unlawful. This section is amended so that the EA may make an application to the High Court in relation to any act or omission of the Crown in England and the NRBW may do so in relation to any act or omission of the Crown in Wales.

Schedule 1A, paragraph 9, provides power for the Authority to prepare a code of practice governing the discharge of its functions. In preparing the code the Authority must consult certain persons. Paragraph 9(3)(c) is amended so that the persons to be consulted include the NRBW.

Schedule 11 relates to orders for compulsory works powers under section 167 of the Act. Paragraph 1 requires an undertaker to serve notice of an application for an order on certain persons. Paragraph 1(3) is amended so that the persons on whom notice must be served include the EA, if the whole or any part of a relevant locality is in England, and the NRBW, if the whole or any part of a relevant locality is in Wales.

Schedule 13 sets out protective provision in respect of certain undertakings. References to the NRBW are inserted to paragraph 1(2) and 1(5)(a).

Water Resources Act 1991 (c. 57)

This Act consolidated a range of enactments relating to the National Rivers Authority and its functions, which then largely passed to the EA under the provisions of the Environment Act 1995. The Act is in nine Parts.

Part I is largely repealed. Section 15(1) requires the EA, in exercising any of its powers, to have regard to the duties imposed by Parts II to IV of the Water Industry Act 1991 on water or sewerage undertakers. The Functions Order imposes the same requirement on the NRBW in the exercise of its powers.

Section 15(2) is amended so that Ministers are required to consider the duty imposed on the EA and the NRBW by subsection (1) when exercising certain powers.

Part II contains the EA's principal water resources management functions. This includes securing the proper management or operation of water bodies and duties to protect flows in various circumstances. It confers functions on the EA to licence abstractions and impoundments and makes related provision, including provision for enforcement notices and appeals and compensation provisions. It provides for drought orders, associated offences and compensation. The Functions Order transfers the EA's functions under this Part to the NRBW in relation to Wales. The EA retains its functions in any other case. This is achieved by substituting each reference to the Agency with a reference to the appropriate agency (which is defined at section 221 of the Act, as amended by the Functions Order).

The following amendments are also made in relation to Part II:

Sections 20(1), 20A(1) and 20C(1) are amended so that those sections refer to the NRBW's functions under section 6(2A) of the Environment Act 1995 as well as the EA's functions under section 6(2) of that Act (section 6(2A) is inserted by the Functions Order).

Section 21 is amended to impose requirements on the EA and the NRBW to consult each other in certain circumstances.

Section 61A(3), which makes provision in relation to section 41(6) of the Environment Act 1995, is amended to refer to section 41(9A) of that Act. Section 41(9A) is inserted by the Functions Order and modifies the effect of section 41 so that any reference to the Agency or a new Agency in that section (other than in subsection (9)) includes a reference to the NRBW.

Paragraph 1(2) of Schedule 8 is amended so that an applicant for a drought order must notify the NRBW where it is not the applicant.

Part III deals with the control of water pollution and includes provisions relating to water quality, abandoned mines, the prevention and control of pollution and water protection zones. Some important elements of this Part have been repealed and replaced by the Environmental Permitting (England and Wales) Regulations 2010.

Section 84(2) imposes certain obligations on the EA when exercising its functions under the water pollution provisions of the Act or under the Environmental Permitting Regulations, including an obligation to consult the

Scottish Environmental Protection Agency. The Functions Order imposes a similar obligation on the NRBW to consult the EA when exercising those functions.

Otherwise, the Functions Order transfers the EA's functions under this Part to the NRBW in relation to Wales. The EA retains its functions in any other case. This is achieved by substituting each reference to the Agency with a reference to the appropriate agency (which is defined at section 221 of the Act, as amended by the Functions Order).

Part IV makes provision in relation to flood defence, and confers functions in relation to main rivers under the Land Drainage Act 1991 on the EA. It also makes provision in relation to EA consent for structures in main rivers and includes provision for the EA to make arrangements with navigation and conservancy authorities to improve land drainage. The Functions Order transfers the EA's functions under this Part to the NRBW in relation to Wales. The EA retains its functions in any other case. This is achieved by substituting each reference to the Agency with a reference to the appropriate agency (which is defined at section 221 of the Act, as amended by the Functions Order).

Part V of the Act deals with general control of fisheries. It enables the Ministers to make an Order modifying various other fisheries provisions and to make regulations to give effect to international obligations.

The Functions Order transfers the EA's functions under this Part to the NRBW in relation to Wales. The EA retains its functions in any other case. This is achieved by substituting each reference to the Agency with a reference to the appropriate agency (which is defined at section 221 of the Act, as amended by the Functions Order).

Part VI makes financial provision in relation to the EA. This includes provision in relation to flood defence expenditure and powers for the EA to contribute to the works of a navigation authority, harbour authority or conservancy. Chapter II makes provision in relation to water resources charges, drainage charges, Internal drainage Board contributions, and fisheries and navigation charges.

Section 118 imposes special duties with respect to flood defence revenue. It provides that certain revenue raised by the EA is to be disregarded in determining any surplus for the purposes of section 44(4) of the Environment Act 1995. The Functions Order provides that any revenue raised by the NRBW under those provisions should be disregarded in determining the amount of any surplus for the purposes of article 13 of the Establishment Order (general financial duties).

Otherwise, the Functions Order transfers the EA's functions under this Part to the NRBW in relation to Wales (other than under section 119, which is not transferred). The EA retains its functions in any other case. This is achieved by substituting each reference to the Agency with a reference to the appropriate agency (which is defined at section 221 of the Act, as amended by the Functions Order).

Part VII provides the EA with land and works powers. These include arrangements for compulsory purchase and land acquisition, powers for works agreements, pipe laying powers, anti-pollution powers, power to carry out works, powers to discharge, flood defence works powers, and compulsory works powers. This Part also include powers of entry for enforcement and works purposes, for surveys and other purposes. There are also provisions to protect works from interference and for compensation.

The Functions Order confers on the NRBW the powers of compulsory purchase and acquisition available to the EA under sections 154 to 157. The Functions Order also confers on the NRBW the powers of entry available to the EA under sections 169 to 174. The NRBW is able to exercise certain of these functions in relation to any “relevant transferred function” (as defined in section 186 of the Act, as modified by the Functions Order). This avoids extending the existing powers of entry available to the EA, or creating new powers.

Section 184 imposes duties on the EA to make recreational facilities available when building reservoirs in Wales. Those functions are transferred to the NRBW.

Otherwise, the Functions Order transfers the EA’s functions under this Part to the NRBW in relation to Wales. The EA retains its functions in any other case. This is achieved by substituting each reference to the Agency with a reference to the appropriate agency (which is defined at section 221 of the Act, as amended by the Functions Order).

Part VIII contains information provisions and includes provision about the sharing of information, registers and maps.

Section 188 imposes a requirement on the EA to collate and publish certain information and to collaborate with others in certain circumstances. The Functions Order imposes similar requirements in relation to the NRBW.

Section 204 imposes restrictions on the disclosure of certain information relation to businesses. The restriction does not apply to the EA in the exercise of certain of its functions. Section 204 is amended so that the restriction does not apply to the NRBW in relation to the exercise of certain of its functions.

Otherwise, the Functions Order transfers the EA’s functions under this Part to the NRBW in relation to Wales. The EA retains its functions in any other case. This is achieved by substituting each reference to the Agency with a reference to the appropriate agency (which is defined at section 221 of the Act, as amended by the Functions Order).

Part IX makes miscellaneous and supplemental provision. It includes powers for Ministers to direct the EA in respect of national security, and provides liability for the EA in respect of escapes of water from pipes. It provides the EA with powers to make byelaws, and includes enforcement and compensation provisions.

Section 208 deals with the liability of the EA for damage or loss arising from escapes of water from pipes vested in the EA. This section is amended so that it also applies to escapes of water from pipes vested in the NRBW.

Section 221 is a general interpretation provision. Several existing definitions are amended and a new definition of “appropriate agency” is inserted for the purposes of the Act. “Wales” is also defined for the purposes of that defined term.

Section 222 deals with Crown application and makes provision so that the EA may apply to the High Court for a declaration that any act or omission of the Crown which contravenes any provision of the Act is unlawful. It is amended so that the EA may make an application to the High Court in relation to any act or omission of the Crown in England and the NRBW may do so in relation to any act or omission of the Crown in Wales.

Otherwise, the Functions Order transfers the EA’s functions under this Part to the NRBW in relation to Wales (other than under section 225(4), which makes provision in relation to Scotland). The EA retains its functions in any other case. This is achieved by substituting each reference to the Agency with a reference to the appropriate agency (which is defined at section 221 of the Act, as amended by the Functions Order).

Land Drainage Act 1991 (c. 59)

The Act makes provision about the establishment and supervision of internal drainage boards, and about the functions of those boards and of local authorities in relation to land drainage.

The EA has various functions under the Act relating to the supervision of Internal Drainage Boards and their powers to levy rates. The Functions Order transfers these functions to the NRBW in relation to internal drainage districts wholly or mainly in Wales. For districts wholly or mainly in England, functions will remain with the EA.

The EA also has various other functions under the Act, including power to carry out certain land drainage works, and its consent is required for the carrying out of certain works. The Functions Order transfers these functions to the NRBW in relation to Wales. The powers of the EA in relation to England will remain.

The Functions Order also replaces references to CCW with the NRBW.

Transport and Works Act 1992 (c. 42)

This Act provides for the making of orders to provide a system for the construction of rail transport, tramway, inland waterway and harbour infrastructure.

The Functions Order amends section 6 (which deals with the procedure for making orders) to substitute the reference to CCW to the NRBW. The effect of this amendment is that the NRBW will be identified as a 'relevant authority' under Article 5 of the Environmental Impact Assessment of Certain Private and Public Projects Directive

Protection of Badgers Act 1992 (c. 51)

Section 10 of the Protection of Badgers Act 1992 defines the purposes for which a licence may be issued to kill or take a badger or to interfere with a badger sett. Licences relating to development and scientific research are issued by CCW, whereas licences relating to agricultural operations, forestry operations, drainage works or to prevent the spread of disease are issued by the Welsh Ministers.

The Functions Order amends section 10(4) (b) so that the NRBW is substituted for CCW and takes on its badger licensing functions. However, the Welsh Ministers' powers to issue badger licences, which are mostly exercised in relation to forestry and drainage operations, are not transferred to the NRBW.

Clean Air Act 1993 (c. 11)

This Act consolidates the Clean Air Acts 1956 and 1968 and certain related enactments.

The Functions Order amends Part V of the Act which deals with information about air pollution. In particular, the Functions Order amends section 31(4)(b), section 31(5) and section 36(2A) by replacing references to the EA with references to the appropriate agency. The Functions Order also amends section 40 (Interpretation) to define appropriate agency as the EA in England and the NRBW in Wales.

Cardiff Bay Barrage Act 1993 (c. 42)

This Act provides for the construction of the Cardiff Bay Barrage, related works, provisions about the operation and management of the barrage, the outer harbour and the water impounded by the barrage and other miscellaneous matters. The Act confers various functions on the EA, including powers to direct the Harbour Authority. The Authority is required to consult CCW about certain matters relating to the operation of the barrage which include the development and conservation of flora and fauna.

Many of the provisions of the Act are spent but all of the current functions of the EA and CCW are transferred to the NRBW.

Environment Act 1995 (c. 25)

Part I of the 1995 Act established the EA. It also makes provision relating to the EA's general powers and duties, and sets out the areas over which certain of its functions can be exercised. The Functions Order amends sections 5 and

6 (concerning EA functions relating to pollution control and water) to apply to the NRBW as well as the EA. Section 7 is not amended, because equivalent provision for the NRBW is made by amendments to the Establishment Order. Sections 8 to 10 (concerning works affecting sites of special interest, codes of practice, and incidental functions relating to water) are amended to apply to the NRBW.

Sections 12 and 13, requiring the EA to establish Environment Protection Advisory Committees and fisheries advisory committees in relation to Wales, are repealed by article 9(2) of the Functions Order. (The requirements have already been abolished in relation to England by orders made by the Secretary of State.)

Sections 41 and 42 enable the EA to make charging schemes in connection with various environmental permits, with the consent of the Secretary of State. Schedule 2 to the Functions Order amends those sections to enable the NRBW to make charging schemes with the consent of the Welsh Ministers.

Section 53 enables Ministers to establish inquiries in connection with the functions of the EA, or their own functions relating to the EA. The Functions Order amends section 53 so that inquiries can be established in connection with the functions of the NRBW or Welsh Ministers relating to pollution, water, flood and fisheries.

Part III of the Act contains powers relating to national parks and the creation of national park authorities. The Functions Order amends sections 66 and 72 and Schedule 7 in order to transfer CCW functions as a consultee on the grant from Welsh Ministers to National Parks Authorities, National Park Management Plans and the appointment of members to National Park Committees, to the NRBW.

Part IV of the Act is concerned with 'National Air Quality Strategy'. Various functions are conferred on the EA and the Scottish Environment Protection Agency in relation to the strategy.

The Functions Order amends sections 81 and 91 to transfer those functions, in relation to Wales, to the NRBW.

Part V of the Act gives power to the Secretary of State and the Welsh Ministers to make regulations imposing producer responsibility obligations in relation to products or materials. Broadly speaking the Act allows the regulations to designate the EA or the Scottish Environmental Protection Agency (SEPA) as the agency which is to exercise certain powers and duties under the regulations. The Act also allows the Secretary of State to make changes to which of the new Agencies - EA or SEPA - can be designated for which purposes (again, broadly speaking).

The Functions Order adds in the NRBW so that it is now in an equivalent position to EA and SEPA with respect to the role it can play in connection with producer responsibility regulations under Part V of the Act.

Section 108 confers power of entry on the EA in connection with its pollution control functions. These powers are conferred on the NRBW, and will be available in connection with the pollution control functions transferred to it from the EA.

Section 113 makes provision to facilitate the sharing of information between the “new Agencies” (EA or SEPA), Ministers and local authorities. The Functions Order amends section 113 to add the NRBW to the definition of “new Agency” so that it can share information under this section. It also brings the disclosure of information by the NRBW to the FC within the powers in section 113.

Finance Act 1996 (c. 8)

The Functions Order adds the NRBW to the list of bodies who can share information relating to landfill tax, with HMRC.

Government of Wales Act 1998 (c. 38)

The Functions Order amends the Act to remove CCW from the list of bodies to which the Welsh Ministers can transfer functions under section 28 of the 1998 Act; and repeals certain provisions of Schedule 7 relating to the exercise of the Forestry Commissioners’ functions in Wales.

It is intended that sections 105 and 147 of the Act and the remainder of Schedule 7 will also be repealed, as they will become redundant following the transfer of the EA’s and FC’s functions in Wales to the NRBW and the Welsh Ministers. However, the necessary provisions cannot be included in the Functions Order and will have to be made by the Secretary of State (see section 15(4) of the Public Bodies Act 2011).

Pollution Prevention and Control Act 1999 (c. 24)

The Functions Order transfers the EA functions, in relation to Wales, as a consultee, in relation to the making of regulations under this Act.

Pursuant to these amendments in the Functions Order, the Welsh Ministers and the Secretary of State will have to consult the NRBW, amongst others, before making regulations under section 2. The Secretary of State will also have to consult the NRBW, amongst others, before making regulations under section 3.

Care Standards Act 2000 (c. 14)

The persons listed in Schedule 2A to the Act are persons who are subject to review by the Children’s Commissioner for Wales under section 72B of the Act.

The Functions Order inserts the NRBW in place of CCW.

Regulation of Investigatory Powers Act 2000 (c. 23)

Schedule 1 to the Act lists relevant public authorities for the purposes of sections 28 and 29 of the Act, which concerns the authorisation of directed surveillance.

The Functions Order adds the NRBW to the list of authorities.

Freedom of Information Act 2000 (c. 36)

Schedule 1 lists the public authorities which are subject to the requirements of the freedom of information regime.

The Functions Order inserts the NRBW into Schedule 1 and removes CCW.

Countryside and Rights of Way Act 2000 (c. 37)

This Act contains measures to improve public access to the open countryside (mountain, moor, heath and down) and registered common land; and the mapping of that land. It makes improvements to provisions relating to rights of way. It also amends the law relating to nature conservation by strengthening protection for Sites of Special Scientific Interest including tougher penalties and by providing extra powers for the prosecution of wildlife crime. This Act provides for the creation and better management of Areas of Outstanding Natural Beauty. It also makes provision for the creation of statutory Local Access Forums.

The Functions Order transfers the functions of CCW in respect of its duty to prepare, publish and review open access land maps. It also transfers the functions of the EA as a statutory undertaker and consultee and the Forestry Commissioners for woodlands dedicated as open access, in relation to Wales, to the NRBW.

Waste and Emissions Trading Act 2003 (c. 33)

The Act transposes Article 5(1) and (2) of Council Directive 1999/31/EC (“the Landfill Directive”) into UK Law to reduce the amount of biodegradable waste that is sent to landfills. Member States are required to establish a national strategy for the reduction of biodegradable waste going to landfills. The Act enables a landfill allowance system to be set up which limits the amount of biodegradable waste disposal authorities may send to landfill on the basis of allocations made by allocating authorities for each country of the UK.

Section 19 (Strategy for Wales), requires the Welsh Ministers to consult, inter alia, the EA. Since all the functions of the EA in relation to Wales, under this Act, are to transfer to the NRBW, the reference to the EA has been amended to a duty to consult the NRBW.

Water Act 2003 (c. 37)

This Act amends various legislation, including the Water Resources Act 1991 and the Water Industry Act 1991. It makes provision for the sustainable use of water resources, the establishment and functions of the Water Services Regulation Authority and the Consumer Council for Water, and introduces measures to increase competition and promote water conservation.

The Act confers various functions on the EA, including in relation to abstraction and impounding, amends the EA's powers of entry and makes associated provision.

The Act is amended to substitute certain references to the EA with the appropriate agency where appropriate agency has the same meaning as that given in section 221 Water Resources Act 1991 (as amended by the Functions Order). The effect of these amendments is to transfer the EA's functions to the NRBW in relation to Wales. The EA otherwise retains those functions.

Section 52 is also amended so that the duty on water regulators to co-operate imposed by that section also applies to the NRBW.

Energy Act 2004 (c. 20)

The Functions Order amends section 14 of this Act so that the Nuclear Decommissioning Agency (NDA) must provide details of its dealings during the year with the NRBW (along with a number of other relevant bodies including the EA) in its annual report.

The Functions Order amends Schedules 2 and 3 to this Act so that the NDA must also consult with the NRBW in relation to its strategy and annual plans.

Civil Contingencies Act 2004 (c. 36)

Parts 1 and 2 of Schedule 1 list the "Category 1 responders" who must plan for emergencies, etc. The Functions Order inserts the NRBW in that list.

Public Services Ombudsman (Wales) Act 2005 (c. 10)

The Functions Order amends the Public Services Ombudsman (Wales) Act 2005 in order to substitute the NRBW for CCW as a body whose activities in Wales are subject to investigation by the Ombudsman; the NRBW's activities outside Wales will be subject to investigation by the Parliamentary Commissioner.

Natural Environment and Rural Communities Act 2006 (c. 16)

The Act provides definitions for both UK and GB conservation bodies and makes provision in relation to the coordination of their functions as well as a number of incidental powers available to them to undertake their functions.

Under the Act, CCW was identified as a UK and GB conservation body and a statutory consultee.

The Functions Order transfers CCW's functions as a conservation body, for the purposes of nature conservation and fostering the understanding of nature conservation, under this Act to the NRBW. The body must also have regard to the actual or possible ecological changes and the desirability of contributing to sustainable development. The NRBW will therefore become the appropriate UK and GB conservation body in relation to Wales.

Commons Act 2006 (c. 26)

This Act sets out the regime for registration and management of common land and allows specifically for rights of common to be severed permanently from land to which is attached by being transferred to a specified public body including CCW in Wales.

The Functions Order transfers CCW's functions under this Act to the NRBW.

Commissioner for Older People (Wales) Act 2006 (c. 30)

The persons listed in Schedule 2 are persons whose functions are subject to review by the Commissioner for Older People under section 3 of the Act.

The Functions Order inserts the NRBW into Schedule 2 in place of CCW.

Government of Wales Act 2006 (c. 32)

The Functions Order removes CCW from the list of bodies whose records are "Welsh public records" and adds the NRBW. It also adds the NRBW to the list of persons to be notified if the Secretary of State intervenes in the exercise of functions relating to water.

Regulatory Enforcement and Sanctions Act 2008 (c. 13)

Part 3 of the Regulatory Enforcement and Sanctions Act 2008 makes provision for the creation and operation of a civil sanctions regime in relation to specified criminal offences.

The Functions Order amends Schedule 5 in order to substitute the NRBW for CCW in the list of designated regulators upon whom civil sanctioning powers can be conferred under Part 3.

Marine and Coastal Access Act 2009 (c. 23)

Section 16 of the 2009 Act defines "eligible bodies" with whom the Marine Management Organisation can enter into arrangements under section 15. The Transfer Order adds NRBW to the list of eligible bodies.

Part 5 of the Act makes provision for the designation of marine conservation zones and the furtherance of their conservation objectives. Within this regime, specified functions are conferred on “the appropriate statutory conservation body”: it may be required to carry out monitoring, it must be notified of specified matters and it may give guidance and advice.

The Functions Order amends section 147(1) so that in respect of any area in Wales (which includes the Welsh inshore region defined at section 322(1)), the appropriate statutory conservation body will be the NRBW, instead of CCW.

Chapter 1 of Part 6 of the 2009 Act makes provision about the Management of Inshore Fisheries and the operation of Inshore Fisheries Conservation Authorities. The Functions Order makes amendments to those provisions to refer to the NRBW as necessary.

Section 232 enables the appropriate national authority to make regulations prohibiting (in certain cases) the introduction or removal of certain fish unless permitted by the EA. The transfer amends the section to refer to the NRBW in relation to Wales. The EA will remain the appropriate agency otherwise than in relation to Wales.

Section 238(3) is amended so that byelaws of the NRBW will not be enforceable by Marine Enforcement Officers in the same way that byelaws of the EA made under the Water Resources Act 1991 are not currently enforcement by such Officers.

Section 313 amended the Environmental Protection Act 1990 to make clear that certain functions of CCW extend to the Welsh zone. It is repealed as a consequence of the abolition of CCW. Equivalent provision is made for the NRBW by article 10D of the Establishment Order (as inserted by the Functions Order).

Equality Act 2010 (c. 15)

Schedule 19 to the Act lists the public authorities which must comply with the general public sector equality duty in section 149, and which may be subject to specific duties imposed by regulations under section 153 for the purpose of enabling the better performance of the general duty.

The Functions Order removes CCW from Schedule 19 and inserts the NRBW.

Flood and Water Management Act 2010 (c. 29)

The Act makes provision about water, including provision about the management of risks in connection with flooding and coastal erosion.

The Functions Order amends the Act to transfer various functions of the EA to the NRBW. Functions are transferred in a number of different ways.

The NRBW will become a “risk management authority” and “Welsh risk management authority” for the purposes of the Act, so that it is subject to the Welsh Ministers’ national flood and coastal erosion risk management strategy, and is required to co-operate with the Welsh Ministers and other risk management authorities.

In Part 1, the EA’s power to issue levies to lead local flood authorities is transferred to the NRBW in relation to lead local flood authorities for areas in Wales.

In relation to Regional Flood and Coastal Committees, the Functions Order transfers the EA’s functions to the NRBW in relation to committees for areas wholly or mainly in Wales. Any revisions to committee areas which affect both English and Welsh Committees will be for the EA and NRBW acting jointly.

In Part 2, the EA’s power under to do work causing incidental flooding or coastal erosion is transferred to the NRBW in relation to work for the benefit of Wales.

Under Schedule 1 to the Act, the EA may designate structures or features affecting flood or coastal erosion risks, with the effect that they cannot be altered, removed or replaced without the EA’s consent. The Functions Order extends this power to the NRBW. The NRBW will be able to designate in relation to flood and coastal erosion risks in respect of which it exercises functions (i.e. risks in Wales).

Dee Conservancy Act 1889 (c. clvi)

This Act establishes the Dee conservancy as being the harbour, navigation and local lighthouse authority for most of the Dee Estuary in North Wales. The Act prescribes measures to conserve, improve and control navigation of the River Dee between Chester and the estuary mouth. EAW carries out the duties and obligations of the Conservancy.

The Functions Order amends the Act so as any reference which has the effect of a reference to the EA shall be treated as a reference to the NRBW.

Dee and Clwyd River Authority Act 1973 (c. xxix)

This Act prescribes the system of management and regulation of the Dee River Basin District. It confers various functions on the Dee and Clwyd River Authority, which are now exercisable by the EA.

The Functions Order amends the Act so that any reference which has effect as a reference to the EA shall be treated as a reference to the EA and NRBW working jointly.

Schedule 3: Assembly Measures

Children and Families (Wales) Measure 2010 (nawm 1)

Section 6 defines who is a Welsh authority for the purposes of the Measure. A Welsh authority is required to have a strategy for contributing to the eradication of child poverty in Wales.

The Functions Order inserts the NRBW in Schedule 6 in place of CCW.

Waste (Wales) Measure 2010 (nawm 8)

The Measure makes provision about the destination of proceeds from charges for single use carrier bags; targets to be met by local authorities in relation to waste; prohibiting or otherwise regulating the deposit of waste in a landfill; and site waste management plans for works involving construction or demolition.

The Measure provides the Welsh Ministers with the power to make an order under section 3, regulations under sections 4, 5, 6, 9 and 12 and the power to give guidance under section 7 of the Measure. Before doing so, the Welsh Ministers must consult the EA, amongst others. The Functions Order replaces the EA with NRBW.

Welsh Language (Wales) Measure 2011 (nawm 1)

The Measure makes provision for a system of Welsh language standards, to replace the existing system of Welsh language schemes provided for by the Welsh Language Act 1993. Schedule 6 lists persons that are capable of being required to comply with standards, and the classes of standards that may apply to them.

The Functions Order amends Schedule 6 to remove the entries relating to CCW and EA, and to insert the NRBW. The NRBW may be required to comply with service delivery standards, policy making standards, operational standards, and record keeping standards.

Schedule 4: UK Statutory Instruments

Burry Inlet Cockle Fishery Order 1965 (S.I. 1965/1235)

The 1965 Order grants a fishery for cockles to the EA. The manner in which the Burry Inlet Cockle Fishery is to be operated is provided for by both the 1965 Order and the 1967 Act and the EA (as current grantee of the 1965 Order) is bound by the terms of both pieces of legislation in relation to the operation of this fishery.

The Functions Order amends the 1965 Order to transfer the relevant functions to the NRBW and replace references to the EA with references to the NRBW.

Salmon and Migratory Trout (Restrictions on Landing) Order 1972 (S.I. 1972/1966)

The 1972 Order prohibits the landing in Great Britain of salmon and migratory trout caught in specified areas.

Article 3 imposes the prohibition described above and article 4 provides for exemptions to that prohibition. Essentially article 4 exempts salmon and migratory trout caught in certain waters in accordance with a licence granted by the relevant River Authority.

The Functions Order transfers this function, currently exercisable by the EA, to the NRBW in Wales.

Plant Varieties and Seeds Tribunal Rules 1974 (S.I. 1974/1136)

These Rules apply to various specified appeals, including appeals made against decisions made by the Forestry Commissioners (“the FC”) under the Forest Reproductive Material (Great Britain) Regulations 2002. The Rules define the “respondent authority” as the FC in relation to appeals under the 2002 Regulations.

As appeals will in future be against decisions taken by either the FC or the Welsh Ministers, the Functions Order amends the Rules’ definition of “respondent authority” accordingly. A minor amendment to Schedule 1 is also made for the same reason.

Forestry (Felling of Trees) Regulations 1979 (S.I. 1979/791)

These regulations, which apply to Great Britain, prescribe various procedural requirements to supplement the provision made by the Forestry Act 1967 in relation to felling licences, restocking notices and felling directions.

As the functions of the Commissioners to which the Regulations refer are being transferred to the NRBW in relation to Wales, the Functions Order amends the Regulations by adding references to the NRBW to the references to the Commissioners.

Forestry (Exceptions from Restriction of Felling) Regulations 1979 (S.I. 1979/792)

These regulations provide for exceptions from the provision in section 9 of the Forestry Act 1967 that a felling licence granted by FC is required for the felling of growing trees.

As the functions of the Commissioners to which the Regulations refer are being transferred to the NRBW in relation to Wales, the Functions Order amends the Regulations by adding references to the NRBW to the references to the Commissioners.

Forestry Commission Byelaws 1982 (S.I. 1982/648)

The Forestry Commission Byelaws 1982 prohibit and regulate specified activities on land under the management and control of the Forestry Commissioners.

The Functions Order replaces the references to the Commissioners in the Byelaws, in relation to Wales, by references to the NRBW. No amendment is made to Byelaws 8 to 11 as these relate to land in England. The Order also removes an incorrect and obsolete reference to land in Wales as part of the definition of the Forest of Dean in Schedule 1.

Drought Orders (Inquiries Procedure) Rules 1984 (S.I. 1984/999)

These rules prescribe the procedure to be followed at public local inquiries and hearings held in connection with applications made to the Secretary of State or Welsh Ministers for drought orders.

The Functions Order amends the definition of “the authority” in rule 3 by substituting “appropriate authority” for “regional water authority”. “Appropriate authority” is defined as the EA in relation to England and the NRBW in relation to Wales. The effect of the amendments is to include the NRBW and the EA in relation to the various procedures set out in the rules.

Control of Pesticides Regulations 1986 (S.I. 1986/1510)

These regulations prescribe conditions for the control of pesticides. They require the advertisement, sale, supply, storage and use in Great Britain of any pesticide product falling within their scope to be carried out in accordance with Ministerial approval and consent.

Schedule 4 to the regulations provides that where pesticides are sprayed aurally the EA and appropriate nature conservation agency (which includes the CCW) must be informed in certain cases.

The Functions Order amends Schedule 4 to provide for notice to be given to the EA if the area in which the aerial application is to take place is in England

and the NRBW if the area in which the aerial application is to take place is in Wales. In addition the Schedule is amended so as to substitute the NRBW for the CCW as the appropriate nature conservation agency in relation to Wales.

Sludge (Use in Agriculture) Regulations 1989 (S.I. 1989/1263)

The Functions Order transfers to NRBW the EA's functions in regulation 7 (requiring information from sludge producers), 8 (receiving information about dedicated sludge sites), 11 (enforcement of the regulations) and paragraph 2(2) of Schedule 2 (requiring soil testing).

Road Vehicles Lighting Regulations 1989 (S.I. 1989/1796)

Provision is made in the Regulations for emergency vehicles to be exempted from certain vehicle lighting requirements. The definition of "emergency vehicle" includes those owned by the Forestry Commissioners for the purposes of its functions relating to forestry and woodlands and used for the purposes of fighting fires. The Functions Order amends the definition so that it also includes such vehicles owned by the NRBW.

General Drainage Charges (Forms) Regulations 1990 (S.I. 1990/564)

The Regulations prescribe the forms to be used when drainage charges are levied. Such charges will be levied by the EA in England and the NRBW in Wales and as such the Functions Order amends the Regulations to account for the issue of the relevant forms by both bodies.

Planning (Hazardous Substances) Regulations 1992 (S.I. 1992/656)

The Planning (Hazardous Substances) Act provides that the presence of or above the controlled quantity of a hazardous substance on, over or under land, requires hazardous substances consent. These Regulations set out the list of hazardous substances and details, amongst other matters, the procedure to be followed for a consent application.

The Functions Order allows for the NRBW to be consulted before an application for hazardous substances consent is granted where land to which the application relates is in Wales. Where previously the hazardous substances authority would have consulted CCW where the land to which the application relates was a Site of Special Scientific Interest the Functions Order replaces CCW with NRBW.

Town and Country Planning (Control of Advertisements) Regulations 1992 (S.I. 1992/666)

These Regulations concern the control by local planning authorities of the display of outdoor advertisements. The Functions Order includes NRBW as a statutory undertaker which allows the body in carrying out its functions and subject to conditions to display advertisements.

Housing (Right to Buy) (Prescribed Persons) Order 1992

The Housing Act 1985 provides for tenants of public sector landlords to have the right to buy and details the qualification for the right to buy. Under Schedule 4 to the Act, qualification for the right to buy is determined by reference to periods spent as a tenant of a public sector landlord. The Order consolidates the lists of persons treated as public sector landlords for these purposes.

The Functions Order removes CCW from the list and inserts NRBW.

General Drainage Charges (Relevant Quotient) Regulations 1993 (S.I. 1993/165)

The Regulations provide the formula by which the “relevant quotient” for the purposes of section 135 of the Water Resources Act 1991 is to be calculated. The Regulations contained one reference to the NRA that was required to remain as a matter of historical accuracy.

The Functions Order updates the Regulations to reflect the fact that the NRBW will have powers to issue levies.

Drainage Rates (Forms) Regulations 1993 (S.I. 1993/223)

The Regulations prescribe the forms to be used when drainage rates are levied. Such charges will be levied by the EA in England and the NRBW in Wales. The Functions Order therefore amends the Regulations to account for the issue of the relevant forms by both bodies.

Surface Waters (River Ecosystem) (Classification) Regulations 1994 (S.I. 1994/1057)

These regulations prescribe a system of classifying the quality of inland freshwaters which are relevant rivers or watercourses (as defined in section 104 of the Water Resources Act 1991). The system, which consists of five classes ranging in order of decreasing quality, is used for establishing quality objectives.

Regulation 3 deals with the operation of the system of sampling, analysis and compliance all of which are currently determined by the EA. The Functions Order replaces the reference to the EA at regulation 3 with a reference to the appropriate agency (as defined in section 221 of the Water Resources Act 1991, as amended by the Functions Order). The effect of this amendment is that the EA’s functions under this regulation will be exercisable by the NRBW in relation to Wales, and otherwise by the EA.

Urban Waste Water Treatment (England and Wales) Regulations 1994 (S.I. 1994/2841)

These regulations deal with urban waste water treatment and supplement the general duty imposed on sewerage undertakers by requiring them to ensure that “collecting systems” are provided and that urban waste water entering collecting systems is subject to treatment to a specified standard. More stringent treatment is required for waters identified as “sensitive areas” and less stringent treatment is permissible for waters identified as “high natural dispersion areas” both of which having been identified and reviewed by Ministers every four years are shown on maps deposited with the EA.

Various functions under the regulations such as monitoring, sampling, record keeping, consents, permitting and coastal functions are carried out by the EA.

The Functions Order substitutes “appropriate agency” for “Environment Agency” in a number of regulations. The effect of these amendments is that the EA’s functions under these regulations will be transferred to the NRBW in relation to Wales. The EA will retain those functions in relation to England.

Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418)

The main purpose of this Order is to grant planning permission for certain classes of development without any requirement for an application to be made under Part III of the Town and Country Planning Act 1990. Schedule 2 to the Order sets out these classes of development in detail. In some circumstances, the permission given is subject to extensive qualifications and restrictions.

The Functions Order amends the definition of an Area of Outstanding Natural Beauty as being an area designated by the NRBW instead of CCW. It also replaces references to the EA in Schedule 2 Part 14 and 15, in respect of development undertaken by the EA, with references to NRBW. The effect of this amendment is that the permitted development rights previously afforded to the ‘Drainage Board’ and ‘the National Rivers Authority’ are transferred to the NRBW.

European Communities (Designation) Order 1996 (SI 1996/226)

The 1996 Order enables the Forestry Commissioners to exercise the powers in section 2(2) of the European Communities Act 1972 to make orders, rules, regulations and other measures relating to the European common agricultural policy in respect of forestry.

The Functions Order substitutes the Welsh Ministers for the Forestry Commissioners in relation to measures applying in relation to Wales and updates the reference to the policy.

Landfill Tax Regulations 1996 (S.I. 1996/1527)

These Regulations make provision for the administration of landfill tax.

The Functions Order amends the Regulations to add the NRBW to the list of authorities entitled to enforce the removal of waste from landfill sites under the various landfill permitting schemes operating in the UK.

Welsh Language Schemes (Public Bodies) Order 1996 (S.I. 1996/1898)

The Order specifies persons as public bodies which are required to prepare Welsh language schemes under the Welsh Language Act 1993.

The Functions Order amends the Schedule to the Order to omit the entries relating to CCW.

Control of Pollution (Applications, Appeals and Registers) Regulations 1996 (S.I. 1996/2971)

These regulations prescribe the procedure to be followed in relation to certain appeals. The regulations also prescribe the particulars which are to be entered on water pollution control registers which are maintained by the EA. Many of the regulations are revoked in England and Wales.

The Functions Order replaces any reference to the Agency with the appropriate agency. The appropriate agency has the same meaning as that given by section 221 of the Water Resources Act 1991 (as amended by the Functions Order). The effect of these amendments is that all of the EA's functions under these regulations will be transferred to the NRBW in relation to Wales. The EA otherwise retains those functions.

Separate provision is made in relation to regulation 12(6), so that the NRBW will be entitled, in certain cases, to be heard at hearings under that provision.

Surface Waters (Abstraction for Drinking Water) (Classification) Regulations 1996 (S.I. 1996/3001)

These regulations prescribe a system for classifying the quality of inland freshwaters according to their suitability for abstraction for supply as drinking water, the quality required of surface waters intended for abstraction of drinking water, the methods of measurement, frequency of sampling and analysis.

The EA is required by the regulations to sample waters classified under the regulations (and analyse those samples) to monitor the quality of the waters in order to determine whether there is any pollution, the risk of the quality of the waters deteriorating or whether the quality of the waters is superior to that set out in the classification.

The Functions Order replaces any reference to the EA with a reference to the appropriate agency. Appropriate agency has the same meaning as given by section 221 of the Water Resources Act 1991 (as amended by the Functions Order). The effect of these amendments is that all of the EA's functions under these regulations will be transferred to the NRBW in relation to Wales. The EA otherwise retains those functions.

Code of Practice on Environmental Procedures for Flood Defence Operating Authorities (Environment Agency) Approval Order 1996 (S.I. 1996/3061)

The 1996 Order approves a Code of Practice issued under section 9 of the Environment Act 1995 giving guidance to the EA in relation to England and Wales. The functions to which the Code applies are transferred to the NRBW, and the NRBW will be subject to equivalent duties in exercising those functions, so the Functions Order amends the 1996 Order to make reference to NRBW as well as the EA.

Hedgerows Regulations 1997 (S.I. 1997/1160)

These Regulations make provision for the protection of important hedgerows in England and Wales. Before removing any hedgerow, including a stretch of hedgerow the owner must notify the local planning authority. The hedgerow may then not be removed if the local planning authority serves a hedgerow retention notice. Schedule 2 sets out additional criteria for determining important hedgerows in terms of archaeology, history, wildlife and landscape.

The Functions Order replaces the reference to the role of CCW in relation to biological records in Schedule 2 with references to NRBW.

Surface Waters (Fishlife) (Classification) Regulations 1997 (S.I. 1997/1331)

These regulations prescribe a system for classifying the quality of inland freshwaters which need protection or improvement in order to support fish life. The regulations also incorporate the reference methods of measurement and the minimum frequency required for sampling and analysis.

The Functions Order replaces any reference to the EA with a reference to the appropriate agency. Appropriate agency has the same meaning as given by section 221 of the Water Resources Act 1991 (as amended by the Functions Order). The effect of the amendment is that all of the EA's functions under these regulations will be transferred to the NRBW in relation to Wales. The EA otherwise retains those functions.

Surface Waters (Shellfish) (Classification) Regulations 1997 (S.I. 1997/1332)

These regulations classify controlled waters (which are either coastal or brackish waters) for the purposes of Directive 2006/113/EC which require

protection or improvement in order to support shellfish life and growth. The regulatory role in connection with such waters currently rests with the EA.

The Functions Order makes the necessary amendments in order to transfer those responsibilities from the EA to NRBW in relation to Wales.

Surface Waters (Dangerous Substances) (Classification) Regulations 1997 (S.I. 1997/2560)

These regulations prescribe a system for classifying the quality of inland freshwaters, coastal waters and relevant territorial waters with a view to reducing the pollution of those waters by the dangerous substances listed in the Schedules to these regulations.

The EA is required by the regulations to sample waters classified under the regulations (and analyse samples) to monitor the effect on those waters of discharges containing the dangerous substances in question, to determine the extent of any pollution by those substances and compliance with the requirements for the relevant classification.

The Functions Order amends regulation 4 to substitute appropriate agency for the Environment Agency or Agency. Appropriate agency has the same meaning as given by section 221 of the Water Resources Act 1991 (as amended by the Functions Order). The effect of the amendment is that the EA's functions under regulation 4 are transferred to the NRBW in relation to Wales. The EA will otherwise retain those functions.

Surface Waters (Dangerous Substances) (Classification) Regulations 1998 (S.I. 1998/389)

These regulations prescribe a system for classifying the quality of inland freshwaters, coastal waters and relevant territorial waters with a view to reducing the pollution of those waters by the dangerous substances listed in the Schedules to the regulations.

The EA is required by the regulations to sample waters classified under the regulations (and analyse samples) to monitor the effect on those waters of discharges containing the dangerous substances in question, to determine the extent of any pollution by those substances and compliance with the requirements for the relevant classification.

The Functions Order amends regulation 4 to substitute appropriate agency for the EA or Agency. Appropriate agency has the same meaning as given by section 221 of the Water Resources Act 1991 (as amended by the Functions Order). The effect of the amendment is that the EA's functions under regulation 4 are transferred to the NRBW in relation to Wales. The EA will otherwise retain those functions.

Mines (Notice of Abandonment) Regulations 1998 (S.I. 1998/892)

These regulations prescribe the method by which a mine operator must give notice that a mine has been abandoned pursuant to section 91B of the Water Resources Act 1991.

The Functions Order amends section 91B of the Water Resources Act 1991 so that notice is given to the appropriate agency, being the NRBW in relation to Wales and the EA otherwise.

The Functions Order amends these regulations by adding a reference to NRBW in regulation 2. The effect of the amendment is to ensure that these regulations are consistent with the amendments made to section 91B of the Water Resources Act 1991.

Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I. 1999/293)

These Regulations deal with the assessment of the effects of certain public and private projects on the environment and set out procedural requirements in relation to applications for planning permission.

The Functions Order amends Regulation 2 which sets out a list of consultation bodies which relevant authorities must consult and replaces references to CCW and EA in respect of land located in Wales with NRBW. The reference to CCW as the body designating Areas of Outstanding Natural Beauty in Wales as one in the list referred to in the definition of 'sensitive areas' is also changed to NRBW.

Environment Impact Assessment (Fish Farming in Marine Waters) Regulations 1999 (S.I. 1999/367)

The Environment Impact Assessment (Fish Farming in Marine Waters) Regulations 1999 implement Council Directive of 27 June 1985 (on the assessment of the effects of certain public and private projects on the environment (85/337/EEC)) on the assessment of the environmental effects of certain projects in respect of fish farming in marine waters.

The Functions Order replaces references to the CCW and EA with a single reference to the NRBW.

The Functions Order also limits the definition of "sensitive area", at regulation 2(f), so that it applies only in relation to areas designated as AONB in England, and introduces a new paragraph, (fa), in order to ensure that historic and future designations of areas as AONB in relation to Wales will be captured by the definition of 'sensitive area' for the purpose of these Regulations.

National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672)

This Order provides for the exercise by the National Assembly for Wales of statutory functions vested in Ministers of the Crown. Schedule 1 to this Order lists the items of legislation in which the functions are transferred to the National Assembly for Wales and specifies any relevant exceptions to those transfers.

The Functions Order amends the entry in Schedule 1 relating to the Opencast Coal Act 1958 by substituting the reference to the EA with a reference to the NRBW. The amendment is necessary to reflect amendments made by the Functions Order to the Water Act 1989, which deems the NRBW as a statutory undertaker for the purposes of the Opencast Coal Act 1958.

Control of Major Accident Hazards Regulations 1999 (S.I. 1999/743)

These Regulations impose requirements in relation to the control of major accident hazards involving dangerous substances. They implement Council Directive 96/82/EC, except for Article 12 of that Directive, which relates to land use planning.

The Functions Order transfers EA functions in Wales under these Regulations to the NRBW, who will be the 'competent authority' in Wales (acting jointly with the Health and Safety Executive) for the purposes of these Regulations.

Water Protection Zone (River Dee Catchment) (Designation) Order 1999 (S.I. 1999/915)

Section 93 of the Water Resources Act 1991 gives the Secretary of State and the Welsh Ministers power to designate any area as a water protection zone if, in relation to that area, it is appropriate, with a view to preventing or controlling the entry of any poisonous, noxious or polluting matter into controlled waters, to prohibit or restrict the carrying on in that area of activities which the Secretary of State or the Welsh Ministers consider are likely to result in the pollution of any such waters. This Order designates as a water protection zone an area forming part of the freshwater River Dee catchment. The area is defined by reference to a map. The Order prescribes the locations where copies of the map must be deposited which include a specified office of the EA.

The Functions Order amends article 3 so that a specified office of the NRBW is named in the place of the previously specified office of the EA.

Water Protection Zone (River Dee Catchment) (Procedural and Other Provisions) Regulations 1999 (S.I. 1999/916)

Section 96 of the Water Resources Act 1991 gives the Secretary of State and the Welsh Ministers the power to make regulations for the purposes of any

order made under section 93 of the 1991 Act which designates a water protection zone and requires the consent of the EA to the carrying on of activities within it. The Water Protection Zone (River Dee Catchment) Designation Order 1999 has been made which designates as a water protection zone an area forming part of the freshwater river Dee catchment.

The regulations provide the procedure to be followed in relation to controlled activities within the water protection zone and make provisions in relation to applications to the EA for consent and their consideration and determination, appeals, variations, revocations, keeping a register and charges in connection with the applications.

The Functions Order replaces any reference to the Agency with a reference to the appropriate agency. Appropriate agency has the same meaning as given by section 221 of the Water Resources Act 1991 (as amended by the Functions Order). The effect of the amendment is that the EA's functions under regulation 4 are transferred to the NRBW in relation to Wales. The EA otherwise retains those functions.

The reference to the CCW in regulation 7(2)(c) is also omitted.

Anti-Pollution Works Regulations 1999 (S.I. 1999/1006)

These regulations prescribe the contents of anti-pollution works notices served under section 161A of the Water Resources Act 1991, the procedure to be followed in relation to appeals and other miscellaneous matters. They also amend the Control of Pollution (Applications, Appeals and Registers) Regulations 1996 so as to prescribe the particulars of such matters which are required to be placed on the pollution control registers maintained by the EA.

The Functions Order substitutes any reference to the Agency with a reference to the appropriate agency (other than in relation to regulation 8(3)(a)). Appropriate agency has the same meaning as given by section 221 of the Water Resources Act 1991 (as amended by the Functions Order). The effect of the amendment is that all of the EA's functions under these regulations will be transferred to the NRBW in relation to Wales. The EA otherwise retains those functions.

Welsh Language Schemes (Public Bodies) Order 1999 (S.I. 1999/1100)

The Order specifies persons as public bodies which are required to prepare Welsh language schemes under the Welsh Language Act 1993.

The Functions Order amends the Schedule to the Order to omit the entries relating to the EA.

The Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999 (S.I. 1999/1672)

The Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999 implement the Directive on the assessment of the effects of certain public and private projects on the environment (as amended), in relation to the assessment of certain public and private projects on the environment insofar as they relate to applications for proposed pipe-line works by a public gas transporter.

In relation to proposed pipe-line works in Wales, both the EA and the CCW are identified as consultation bodies in relation to for example the content of environmental statements and for the provision of information to the applicant.

The Functions Order replaces the references to both EA and the CCW as the statutory consultation bodies in Wales with a single reference to the NRBW. The NRBW will undertake the functions of the statutory consultation body in the case of proposed pipe-line works in Wales.

Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (S.I. 1999/1783)

The Functions Order transfers the EA's permitting functions to the NRBW and replaces CCW as consultee.

The NRBW will take over EA's permitting functions in Regulation 3 (restrictions on improvement works), 4 (whether improvement works will have a significant effect on the environment), 5 (where no significant effects are likely), 6 (notification on determination of significant effects), 7 (preparation of an environmental statement), 8 (requests for information regarding environmental statements), 9 (consultation with other bodies), 10 (publicity for environmental statements), 12 (determination on whether improvement works should proceed), 13A (ensuring public participation in the process) and 14 (enforcement).

The NRBW will take over CCW's advisory functions and become consultee to itself in relation to regulations 5(2) (likely environmental effects of proposed improvement works), 8(3) (information to be included in an environmental statement), 10(4) (making representations on likely environmental effects), 12(6)(b) (making representations on whether improvement works should proceed). Under regulation 6(3) the NRBW will have a statutory right to receive copies of relevant notices.

Town and Country Planning (Trees) Regulations 1999 (S.I. 1999/1892)

These Regulations set out the regime in respect of the procedure, appeals process, confirmation, variation and revocation of Tree Preservation Orders by Local Authorities. They also provide FC with an exemption for works in

Conservation areas and an exemption in respect of the cutting down, topping, lopping or uprooting of a tree by or at the request of the EA.

The Functions Order transfers these exemptions to the NRBW.

Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 (S.I. 1999/2228)

These Regulations implement the EIA Directive in reaction to forestry projects in England and Wales. They provide for the Forestry Commissioners (“the FC”) to have various functions in relation to proposed projects, including the giving of opinions and consents. EA and CCW are defined as countryside bodies for consultation purposes where a project is to be carried out on land in Wales.

In relation to Wales, the Functions Order transfers the functions of the FC to the NRBW and replaces references to the FC with references to the NRBW. The Order also substitutes the definition of the countryside bodies, so that in relation to projects in Wales, the term refers to any body designated by statutory provision as having specific environmental responsibilities in relation to Wales.

Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 (S.I. 1999/2892)

The Functions Order amends the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 in order to remove CCW from the list of consultation bodies defined in regulation 2 and replace it with the NRBW.

Ionising Radiations Regulations 1999 (S.I. 1999/3232)

The Ionising Radiations Regulations 1999 primarily refer to responsibilities of the HSE. However the Environment Agency is responsible for the environmental permitting of discharges of radioactivity into the environment including the disposal of radioactive waste.

References in the Ionising Radiations Regulations 1999 to the EA's responsibilities in these areas are replaced with references to the appropriate authority, which is defined as being in relation to England, the EA and in relation to Wales, the NRBW. The references relate to the exercise of functions under the Environmental Permitting (England and Wales) Regulations 2010, which are transferred from the EA to the NRBW under this Functions Order.

Water Industry (Prescribed Conditions) Regulations 1999 (S.I. 1999/3442)

These regulations make provision for the determination, by the Secretary of State, of areas of water scarcity and water stress. The regulations do not apply to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Regulations 3 and 4 provide that the Secretary of State is required to consult the EA before determining an area of water scarcity or water stress.

The Functions Order amends regulations 3 and 4 so as to require the Secretary of State to consult the NRBW in addition to the EA where any determination relates to an area that is in the area of a water undertaker whose area is partly in England and partly in Wales.

Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000 (S.I. 2000/1043)

These Regulations specify to which body an application must be made for the registration of equipment and set out the EA's functions in relation to the compilation and review of an inventory of contaminated equipment.

The Functions Order replaces references to the EA with references to the appropriate authority, which in relation to England means the EA, and in relation to Wales, means the NRBW.

Electricity Works (Environmental Impact Assessment) Regulations 2000 (S.I. 2000/1927)

The Electricity Works (Environmental Impact Assessment) Regulations 2000 implement the Directive on the assessment of the effects of certain public and private projects on the environment (as amended), in relation to the assessment of certain public and private projects on the environment insofar as they relate to applications for consent to construct, extend or operate a power station or keep installed electricity lines under sections 36 and 37 of the Electricity Act 1989.

The Regulations identify CCW as the relevant consultative body in relation to applications or proposed applications relating to a site in Wales and the EA in relation to where the application or proposed application relates to a section 36 consent (Electricity Act 1989) to construct, extend or operate a generating station.

The Functions Order transfers the consultative role of CCW to the NRBW. It amends the definition of 'consultative bodies' in regulation 2 by substituting NRBW for CCW. The Functions Order distinguishes between the EA and the NRBW's role for applications.

Pipe-line Works (Environmental Impact Assessment) Regulations 2000 (S.I. 2000/1928)

The Pipe-line Works (Environmental Impact Assessment) Regulations 2000 implement the Directive on the assessment of the effects of certain public and private projects on the environment (as amended), in relation to the assessment of the effects of certain public and private projects on the environment insofar as it relates to authorisations for the construction of oil, gas or chemical pipelines on land in Great Britain.

The Functions Order amends Regulation 2 (the definition of consultation bodies) by substituting the reference to both CCW and EA as consultation bodies in Wales with a single reference to the NRBW. The NRBW will undertake the functions of the statutory consultation body in the case of relevant pipe-line works in Wales.

Burry Port Harbour Revision Order 2000 (S.I. 2000/2152)

The Order authorises Carmarthenshire County Council as the harbour authority for Burry Port Harbour to construct works in the harbour.

The Functions Order transfers the powers of the EA to the NRBW. The primary function of the EA was to give its consent to works undertaken. The Order contained provisions for the EA to direct Carmarthenshire County Council in certain situations. This role will now be performed by the NRBW. This Order is applicable only in Wales and therefore the EA will not retain any powers.

Forest Reproductive Material (Great Britain) Regulations 2002 (S.I. 2002/3026)

These regulations implement Council Directive 1999/05/EC on the marketing of forest reproductive material. The overall purpose of the Directive's requirements is to ensure that persons involved in forestry benefit from a system of control which ensures that seeds, cuttings and planting stock are traceable and are provided with information about their genetic quality. The Regulations make provision for approval of material and its entry onto a national register, designation of regions of provenance, control of the collection, production and marketing of material, registration of suppliers and movement of material. Provision is also made for compliance. Functions are conferred on the Forestry Commissioners ("the FC") and on officers authorised by the FC ("authorised officers")

The Functions Order replaces references to the FC with references to the "appropriate authority", which is to be either the FC or the Welsh Ministers (see the insertion into regulation 2(2)) The general effect is to transfer functions of, and references to, the FC to the Welsh Ministers in relation to Wales. However, the detail terms of the definition are varied according to the subject matter of the controls to which the definition is applied, and provision is made for the register of approved material and the register of suppliers to be maintained by the Welsh Ministers and the FC on a joint basis. The Functions Order also substitutes the definition of "authorised officer" to provide that an authorised officer is to be a person authorised by the Welsh Ministers or by the FC.

Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003 (S.I. 2003/164)

These regulations complete the implementation, in relation to water management projects for agriculture in England and Wales, of Council Directive 85/337/EEC on the assessment of the effects of certain public and private

projects on the environment as amended by Council Directive 97/11/EC. The EA is defined as the competent authority in relation to England and Wales.

The regulations are amended by adding a definition of appropriate authority. The effect of the amendment is that the functions of the EA are transferred to the NRBW in relation to Wales. The EA will continue to exercise those functions in relation to England.

Urban Waste Water Treatment (England and Wales) (Amendment) Regulations 2003 (S.I. 2003/1788)

These regulations amend the Urban Waste Water Treatment (England and Wales) Regulations 1994 which implement Council Directive 91/271/EEC concerning urban waste water treatment. These regulations concern the publicity to be given to decisions taken on the reviews under the principal regulations.

Various functions are dealt with under the regulations such as giving notice of the publication of decisions to the EA, ensuring that revised maps are deposited with them and requiring them to update their website to include certain information.

The Functions Order replaces any reference to the Agency with a reference to the appropriate agency. Appropriate agency has the same meaning as given by regulation 2(1) of the Urban Waste Water Treatment (England and Wales) Regulations 1994 (as amended by the Functions Order). The effect of this amendment is that all of the EA's functions under these regulations will be transferred to the NRBW in relation to Wales. The EA will retain those functions in relation to England.

Packaging (Essential Requirements) Regulations 2003 (S.I. 2003/1941)

These Regulations implement Articles 9 and 11 of Directive 94/62/EC of the European Parliament and the Council on packaging and packaging waste which relate to the essential requirements to be satisfied by packaging. They also implement two Commission Decisions providing for derogations in respect of plastic crates and pallets and glass packaging. These are Commission Decision 1999/177/EC (OJ L056, 04.03.98, p 47) and Commission Decision 2001/171/EC (OJ L062, 02.03.01, p 20).

The maximum allowable concentration levels of heavy metals in packaging do not apply to plastic crates and pallets if certain conditions are met (regulation 6(3)(a)). One of the conditions that can apply is that returned crates and pallets that are no longer reusable are disposed of by a *procedure specifically authorised by the EA* (Schedule 2, paragraph 2(a)(iv)).

The Functions Order amends paragraph 2(a)(iv) of Schedule 2 to The Packaging (Essential Requirements) Regulations 2003 to transfer the EA's function to the NRBW in Wales.

Electronic Communications Code (Conditions and Restrictions) Regulations 2003

The electronic communications code, as set out in the Telecommunications Act 1984 is designed to facilitate the installation and maintenance of electronic communications networks. These Regulations set out restrictions and conditions subject to which the code applies.

The Functions Order substitutes NRBW in place of CCW as one of the bodies to which a code operator must give written notice if it intends to install electronic communications apparatus in a national nature reserve, site of special scientific interest, area of special scientific interest or marine nature reserve.

Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (S.I. 2003/3242)

These regulations make provision for the purpose of implementing in river basin districts within England and Wales Directive 2000/60/EC of the European Parliament and of the Council of 23rd October 2000 establishing a framework for Community action in the field of water known as the Water Framework Directive.

The EA is required to carry out detailed monitoring and analysis in relation to each river basin district. They are also responsible for detailed analytical work, preparation of plans and supplemental plans and other ancillary related functions

The Functions Order amends these regulations so that the EA's functions are conferred on the appropriate agency. Appropriate agency is defined as the EA in relation to a river basin district that is wholly in England, the NRBW in relation to a river basin district that is wholly in Wales and both agencies acting jointly in relation to a river basin district that is partly in England and partly in Wales.

Regulation 3 imposes certain duties in relation to the exercise of "relevant functions" of the Secretary of State, the Welsh Ministers and (in the case of regulation 3(1)) the EA. Regulation 3(1) is amended so that it also applies to the "relevant functions" of the NRBW. Regulation 3(2) is amended so that it also applies to the "relevant functions" of the EA and the NRBW. "Relevant functions" are functions under these regulations and, so far as material, functions under enactments listed under Parts 1 and 2 of Schedule 2 to the Regulations. Schedule 2 is also amended so that three additional items of subordinate legislation are added to Part 2 of that Schedule.

Environmental Assessment of Plans and Programmes Regulations 2004 (S.I. 2004/1633)

These Regulations implement Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment as regards plans and programmes relating solely to any part of England. They also implement

the Directive as regards plans and programmes relating to England and any other part of the United Kingdom.

The Regulations contain provisions, which require an environmental assessment for any plan or programme prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use (except where the regulation states otherwise). The Regulations deal with the determination of significant environmental effect, the publication of environmental reports and consultation procedures.

CCW is designated as a consultation body under these Regulations.

The Functions Order transfers CCW's functions under these Regulations to the NRBW.

Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004 (S.I 2004/1684)

This Order makes provision for the issue of phytosanitary certificates by the Forestry Commissioners ("the FC") in relation to trees, wood and other forestry materials.

The Functions Order transfers the functions of the FC to the Welsh Ministers in relation to exporters whose principal place of business is in Wales. The Functions Order also amends references to the Plant Health (Forestry) Order, so that amendments made to that Order by the Functions Order in relation to inspectors are applied to the definition of "authorised officer" in the 2004 export certification Order.

End-of-Life Vehicles (Producer Responsibility) Regulations 2005 (S.I. 2005/263)

These Regulations implement Articles 5(1), (2), (4) and 7 of Directive 2000/53/EC of the European Parliament and the Council on end-of-life vehicles.

The Functions Order amends regulation 24 to include the NRBW as one of the Environment Agencies the Secretary of State can appoint to carry out her enforcement duties under the Regulations.

Charities (National Trust) Order 2005 (S.I. 2005/712)

The Charities (National Trust) Order 2005 contains a scheme for the administration of the National Trust that is required to be placed before Parliament and made into an Order. In that scheme, CCW were listed as a body entitled to appoint members to the National Trust. The Functions Order transfers that function to the NRBW.

Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894)

These Regulations set out the regime for the control and tracking of the movement of hazardous waste for the purpose of implementing the Hazardous Waste Directive (Directive 91/689/EC) (now replaced by the Framework Directive on Waste (2008/98/EC)).

The Functions Order amends the Regulations to add the NRBW to the list of “requisite bodies” with whom the Secretary of State must consult before making or revoking a determination that a specific waste should be treated as hazardous or non hazardous.

Drought Plan Regulations 2005 (S.I. 2005/1905)

These regulations prescribe how water undertakers are to prepare and publish draft drought plans and to which bodies those plans should be sent. Regulation 2 prescribes the bodies or persons to whom draft plans must be sent. One of the bodies identified in regulation 2 is the CCW.

The amendment to regulation 2 omits the reference to the CCW which is being abolished by the Functions Order. A relevant water undertaker will be under a duty to send plans that would affect water resources in Wales to the NRBW pursuant to regulation 2(2)(a) of these regulations and section 39B(7) of the Water Industry Act 1991 (as amended by the Functions Order).

Plant Health (Forestry) Order 2005 (S.I. 2005/2517)

This Order, which applies to Great Britain and relates to trees, wood and other forestry materials, implements a number of European Directives and decisions concerning the introduction and spread of organisms harmful to plants and plant products. The Order makes provision for a regime of regulatory controls and confers functions on the Forestry Commissioners (“the FC”) and on Inspectors appointed by them.

The Functions Order substitutes references to “the appropriate authority” for references to the FC. The appropriate authority is defined as the Welsh Ministers in relation to Wales, and the FC in relation to England and Scotland. Corresponding amendments are made to the definition of “inspector”.

Water Resources (Abstraction and Impounding) Regulations 2006 (S.I. 2006/641)

These regulations contain provisions relating to the licensing of abstraction and impounding of water in England and Wales. The regulations deal with procedural requirements, including time limits in relation to the making of licence applications and in relation to appeals from decisions on licence applications for the abstraction or impounding of water, enforcement notices, abstractions by the EA and other miscellaneous matters.

The Functions Order replaces any reference to the Agency with a reference to the appropriate agency. Appropriate agency has the same meaning as given by section 221 of the Water Resources Act 1991 (as amended by the Functions Order). The effect of this amendment is that all of the EA's functions under these regulations will be transferred to the NRW in relation to Wales. The EA otherwise retains those functions.

Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006

The Rules prescribe the procedures for the making of applications for orders under Part 1 of the Transport and Works Act 1992, the making of objections and other representations relating to such applications and proposals, and the procedures for handling objections where the Secretary of State decides not to hold a public inquiry or a hearing.

The Functions Order replaces references to CCW with references to NRW and amends the rules with the effect that the appropriate agency for providing views will be the EA for works in or adjacent to England and NRW for works in or adjacent to Wales.

Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006 (S.I. 2006/2695)

This Order, which applies to Great Britain, makes provision for the Forestry Commissioners ("the FC") to issue certificates authorising the application of the International Standard for Phytosanitary Measures No. 15 mark to wood packaging material.

The Functions Order substitutes references to the "appropriate authority" for references to the FC. The appropriate authority is to be the Welsh Ministers in relation to Wales, and the FC in relation to England and Scotland. The Functions Order also amends the definition of "inspector", so that amendments made to the Plant Health (Forestry) Order 2005 by the Functions Order in relation to inspectors are applied to the 2006 Order.

Plant Health (Fees) (Forestry) Regulations 2006 (S.I. 2006/2697)

These regulations make provision for fees to be payable to the Forestry Commissioners ("the FC") in connection with specified activities carried out by them in relation to forestry plant health measures.

By virtue of amendments made by the Functions Order in relation to those measures, the activities attracting a fee will be carried out by either the FC or the Welsh Ministers, or by Inspectors appointed by either. The Functions Order therefore amends the Regulations to provide for fees to be payable to the Welsh Ministers or to the FC in alignment with the identity of the person by whom the related activity was carried out.

Waste Electrical and Electronic Equipment Regulations 2006 (S.I. 2006/3289)

These Regulations transpose the main provisions of Council Directive 2002/96/EC on waste electrical and electronic equipment, which aims to address the environmental impacts of unwanted electrical and electronic equipment at end of life disposal. The WEEE Directive implements the principle of “extended producer responsibility”. Under this principle, producers are required to take financial responsibility for the environmental impact of the products that they place on the market, specifically when those products become waste. The obligations placed on producers of equipment and waste treatment facilities are enforced in England and Wales by the EA for England and Wales (EA).

The Functions Order transfers the functions of the EA as the “appropriate authority” in England and Wales to the NRBW in Wales.

Water Resources Management Plan Regulations 2007 (S.I. 2007/727)

These regulations prescribe how water undertakers are to prepare and publish water resources management plans. Regulation 2 prescribes the method of publication of a draft water resources management plan and the bodies or persons to whom it and the accompanying statement must be copied. One of the bodies specified in regulation 2 is the CCW.

The amendment to regulation 2 omits the reference to the CCW which is being abolished by this Order. A relevant water undertaker will be under a duty to send plans that would affect water resources in Wales to the NRBW pursuant to regulation 2(2)(a) of these regulations and section 37A(8) of the Water Industry Act 1991 (as amended by the Functions Order).

Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871)

The Functions Order transfers the EA’s functions as the “appropriate agency” in Wales to the NRBW. This will mean that the NRBW will be responsible for determining certain applications for registration from certain individuals and companies who produce packaging waste and for registration of certain recovery and recycling schemes that have been approved by the Secretary of State. The NRBW will also be responsible for monitoring compliance with the obligations imposed on certain producers and scheme operators under the Regulations, for collating records and information relating to these obligations, maintaining and for making registers of information available to the public about the producers and schemes for which it is to be the appropriate agency. The Functions Order also transfers the EA’s civil sanctioning powers in Wales to NRBW.

The NRBW will be required to place certain information it receives in connection with its duties as an appropriate agency on a common database

where it can be accessed by the EA who retains responsibility for submitting reports to the Secretary of State.

Two consequential amendments are made to the definition of “appropriate authority” to preserve the Secretary of State’s role in that respect in relation to functions being transferred to then NRW.

Marine Works (Environmental Impact Assessment) Regulations 2007 (S.I. 2007/1518)

These Regulations implement the Environmental Impact Assessment Directive in relation to specified marine works.

The Functions Order substitutes the NRW for CCW as one of the nature conservation bodies which are to be consulted in relation to various matters under the Regulations.

Offshore Marine Conservation (Natural Habitats &c) Regulations 2007 (S.I. 2007/1842)

The Offshore Marine Conservation (Natural Habitats &c) Regulations 2007 make provision for implementing Council Directive 79/409/EEC on the conservation of wild birds and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora in relation to marine areas where the United Kingdom has jurisdiction beyond its territorial sea.

The Functions Order amends regulation 25 to substitute the NRW for CCW as a body which must be consulted where an appropriate assessment relates to specified sites in Wales. Regulation 71 confers connected powers relating to advice, representations and research. The Functions Order substitutes the NRW for CCW as a body on whom these powers are conferred.

Large Combustion Plants (National Emission Reduction Plan) Regulations 2007 (S.I. 2007/2325)

The Functions Order provides a partial transfer of the EA’s functions in connection with the National Emission Reduction Plan register, to the NRW. The Functions Order also makes consequential amendments to enable the EA to charge the NRW a proportion of its costs in establishing and maintaining the register.

Persistent Organic Pollutants Regulations 2007 (S.I. 2007/3106)

The Functions Order transfers the EA’s function as competent authority for Regulation (EC) No 850/2004 (the EC POPs Regulation) and, consequently, its function as enforcement authority, for Wales, to the NRW.

In most cases, persistent organic pollutants (POPs) waste must be disposed of by one of the methods listed in Annex V, Part 1 of the EC POPs Regulation. In exceptional cases there may be other management options for wastes covered

by particular European Waste Catalogue codes. The waste types, POP concentration limits and alternative management methods are contained in Annex V, Part 2 of the EC POPs Regulation. Holders of POPs waste who plan to manage it by one of the alternative methods prescribed in Annex V, Part 2 must get approval (derogation) from the competent authority.

Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (S.I. 2007/3544)

Section 21 of the Legislative and Regulatory Reform Act 2006(1) imposes a duty on any person exercising a specified regulatory function to have regard to specified principles: that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed.

Section 22 of the Act enables a Minister of the Crown to issue a Code of Practice relating to the exercise of regulatory functions: regulators must have regard to it when exercising specified regulatory functions

The 2007 Order, made under section 24 of the Act specifies the regulatory functions to which the duties in section 21 and 22 apply. Part 1 of the Schedule specifies all the regulatory functions exercisable by the statutory regulators named in Part 1. The EA and the Forestry Commissioners are named. The Functions Order amends Part 1 of this Order to add the NRBW.

Bathing Water Regulations 2008 (S.I. 2008/1097)

These regulations implement Directive 2006/7/EC of the European Parliament and of the Council concerning the management of bathing water quality in England and Wales.

The Functions Order transfers all functions of the EA in relation to bathing waters in Wales to the NRBW.

Dee Estuary Cockle Fisheries Order 2008 (S.I. 2008/1472)

The 2008 Order grants a regulated fishery for cockles in the Dee to the EA. The manner in which that fishery is to be operated is provided for by both the 2008 Order and the 1967 Act and the EA (as grantee of the 2008 Order) is bound by the terms of both pieces of legislation in the operation of this fishery.

The Functions Order amends the 2008 Order to transfer the relevant functions to the NRBW in relation to Wales. Given that the Dee Estuary spans the England/ Wales border, the definition of “the grantee” is amended so that it means the Agency in relation to England and the NRBW in relation to Wales. Definitions of “Wales” and “England” are inserted as part of the area of this fishery lies below mean low water mark.

REACH Enforcement Regulations 2008 (S.I. 2008/2852)

These Regulations provide for the enforcement of REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) by allocating responsibility for REACH enforcement to a number of enforcing authorities, by providing these enforcing authorities with the powers they need, by requiring enforcing authorities to cooperate and share information with other bodies connected to REACH enforcement and by setting the offences and penalties for contraventions of REACH requirements.

The Functions Order transfers the EA's function as enforcing authority in relation to Wales, to the NRBW.

Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008 (S.I. 2008/3087)

These regulations revoke and replace the Transfrontier Shipment of Radioactive Waste Regulations 1993. They continue to implement Council Directive 96/29/Euratom laying down basic standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation, and implement Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel.

The Functions Order amends the definition of competent authority in regulation 2 so that the NRBW becomes the competent authority in relation to Wales. Regulation 16 is amended in order to confer a function on the Welsh Ministers to give directions to the competent authority.

Environmental Damage (Prevention and Remediation) Regulations 2009 (S.I. 2009/153)

These Regulations implement the European Parliament and Council Directive 2004/35/EC on environmental liability with regard to the prevention and remediation of environmental damage. They apply to damage to protected species, natural habitats, sites of special scientific interest, water and land in England.

The Functions Order amends these Regulations to provide that the EA is responsible for enforcing the Regulations where either it or the NRBW has granted the permit in question.

Ozone-Depleting Substances (Qualifications) Regulations 2009 (S.I. 2009/261)

These Regulations partially transpose (i.e. Arts 16.5 and 17) of EU Regulation 2037/2000 of the European Parliament and of the Council on substances that deplete the ozone layer (OJ No L 244, 29.9.00, p1). They specify the minimum qualifications for persons working on the recovery etc. of controlled substances

(as defined in the EU Regulation), and make it an offence for persons without the specified qualifications to do such work.

The Functions Order transfers the EA's enforcement functions, as regards Wales, to the NRBW.

Fluorinated Greenhouse Gas Regulations 2009 (S.I. 2009/261)

These Regulations give effect to Regulation (EC) No 842/2006 of the European Parliament and of the Council on certain fluorinated greenhouse gases.

This Functions Order transfers enforcement functions as regards Wales from the EA to the NRBW.

Waste Batteries and Accumulators Regulations 2009 (S.I. 2009/890)

These Regulations partially implement Directive 2006/66/EC on Batteries and accumulators and waste batteries and accumulators which aims to improve the environmental performance of batteries and accumulators and minimize the impact that waste batteries and accumulators have on the environment. The Directive places requirements on the design of all new batteries, and requires the separate collection, treatment and recycling of waste batteries and accumulators, reducing the disposal of batteries and accumulators in the municipal waste stream.

These Regulations divide batteries into three categories: automotive batteries, industrial batteries and portable batteries.

Parts 2, 3, 4 and 6 make provisions in relation to portable batteries and Part 5 makes provision specifically in relation to industrial and automotive batteries.

The obligations placed on producers of portable batteries are enforced in England and Wales by the EA for England and Wales, the "appropriate authority"

The Functions Order transfers the functions of the EA as the "appropriate authority" in England and Wales to the NRBW in Wales.

Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009

This Order provides that references to accredited financial investigators in the Proceeds of Crime Act 2002 (as amended by the Serious Crime Act 2007) are to be read as references to accredited financial investigators within the descriptions specified in the Order. A person must be an accredited financial investigator and satisfy the requirements of the Order by reference to their job description, designated grade and/or type of training undertaken in order to exercise certain functions relating to proceeds of crime investigations.

The Functions Order amends Schedule 1 to the Order by adding the NRBW to the list of organisations which may carry out investigations and related matters under the Proceeds of Crime Act 2002.

Infrastructure Planning (National Policy Statement Consultation) Regulations 2009 (S.I. 2009/1302)

These Regulations prescribe who is to be consulted before a national Policy Statement is adopted under the Planning Act 2008. The Functions Order amends the Regulations so that the FC's role is limited to England and Scotland and to substitute the NRBW for CCW, so that the NRBW is consulted where a Statement is likely to affect Wales.

Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009 (S.I. 2009/1927)

The Functions Order amends these Regulations to ensure that in cases where the NRBW is the regulator of high risk (Category A) mining waste facilities under the Environmental Permitting Regulations 2010 (EPR), it also has the following functions under the 2009 Regulations:

- receiving notification about whether the operator of the high risk mining waste facility has or has not provided emergency planning information to the relevant council (if it has not, the notification triggers paragraph 14 of Schedule 20 to the EPR which will require the NRBW to refuse an application for the grant or variation of a permit for the installation under EPR);
- being consulted in relation to the preparation of an off-site emergency plan by the relevant council.

The amendments also preserve the extent of councils' enforcement powers under the 2009 Regulations and ensure that councils can charge operators for the performance of functions under the 2009 Regulations in cases where the NRBW does so on councils' behalf.

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (S.I. 2009/2264)

These Regulations set out the prescribed forms and application procedure in relation to proposals for infrastructure projects which require a development consent order under the Planning Act 2008. Schedule 1 specifies persons who are to be consulted and notified during the process.

The Functions Order amends Schedule 1 to limit the EA's role to applications likely to affect land in England and to substitute the NRBW for CCW so that the NRBW is consulted and notified in relation to applications likely to affect land in Wales. The amendments also substitute the NRBW for the FC in relation to

applications likely to affect the protection or expansion of forests and woodlands in Wales.

Flood Risk Regulations 2009 (S.I. 2009/3042)

The Regulations contain the regime for the assessment and management of flood risks in England and Wales. The Regulations confer functions and obligations on the EA and Lead Local Flood Authorities.

The Functions Order amends the 2009 Regulations to replace most references to the EA with references to the “appropriate agency”. The EA is the appropriate agency responsible for river basin districts in England, whilst the NRBW is responsible for river basin districts in Wales. In relating to a cross border river basin district, both will act jointly. There is also a general duty to co-operate imposed on all relevant authorities which will allow for co-operation on cross border issues.

Eels (England and Wales) Regulations 2009 (S.I. 2009/3344)

The Eels (England and Wales) Regulations 2009 implement Council regulation (EC) No 1100/2007 in relation to England and Wales and, as originally made, place much of the regulatory burden upon the EA.

The amendments to those Regulations made by the Functions Order ensure that the NRBW is able to exercise powers pursuant to the same in relation to Wales. The EA will continue to exercise those powers in relation to England. If any action should ever be necessary in relation to a cross border area, the two bodies will work compositely.

Infrastructure Planning (Interested Parties) Regulations 2010 (S.I. 2010/102)

These Regulations prescribe who is to be a statutory party for the purposes of entitlement to participate in the consideration of an application for a development consent order under the Planning Act 2008.

The Functions Order amends the Schedule in these regulations so that EA is only to be a statutory party in relation to applications likely to affect land in England, and to substitute the NRBW for CCW so that the NRBW is a statutory party where an application is likely to affect land in Wales. The amendments also substitute the NRBW for the FC in relation to applications likely to affect the protection or expansion of forests and woodlands in Wales.

Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (S.I. 2010/104)

The regulations make provision for the procedure to be followed where an applicant for a development consent order under the Planning Act 2008 wishes to include provision authorising the compulsory acquisition of land (“acquisition

provision”). Regulation 7 requires the applicant to give notice to persons specified in Schedule 2 that their application includes an acquisition provision.

The Functions Order amends Schedule 2 of the regulations to limit the obligation to notify the EA to acquisition provisions likely to affect land in England and to substitute the NRBW for CCW so that the NRBW is notified where an acquisition provision is likely to affect land in Wales. The amendments also substitute the NRBW for the FC in relation to acquisition provisions likely to affect the protection or expansion of forests and woodlands in Wales.

Mercury Export & Data (Enforcement) Regulations 2010 (S.I. 2010/265)

The Functions Order transfers the EA’s function as competent authority for Wales, to the NRBW.

Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490)

These Regulations consolidate the Conservation (Natural Habitats, &c) Regulations 1994 and implement aspects of the Marine and Coastal Access Act 2009. These Regulations transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. The Regulations contain provisions, which provide for the selection, designation and protection of ‘European sites’, the protection of ‘European protected species’, and the adaptation of planning and other controls for the protection of European Sites. The Regulations contain provisions, which allow derogation from species protection where a license has been issued and also set out the enforcement powers of wildlife inspectors and constables.

Under the Regulations, in relation to Wales CCW are defined as the appropriate nature conservation body and as the relevant licensing body.

The Functions Order transfers all of CCW’s functions under these Regulations to the NRBW. In addition, the wildlife licensing functions of the Welsh Ministers under these Regulations will be transferred to the NRBW and this body will be responsible for the issuing of all European Protected Species licenses in Wales.

The Functions Order transfers the functions of the EA in relation to abstraction licences (regulation 99) and as a drainage authority (regulations 127) to the NRBW, where these functions are undertaken in relation to Wales. The EA will retain those functions in relation to England.

The Functions Order replaces references to both the EA and the FC under these Regulations with references to the NRBW in relation to the receipt of guidance from the Welsh Ministers about the appropriate steps to take in relation to the preservation and maintenance of wild bird habitats (regulation 9A(10)).

Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675)

These Regulations provide a consolidated system of environmental permitting in England and Wales. They provide a system for permitting a wide range of operations including waste, mining waste, mobile plant water discharges, groundwater and radioactive substances.

The Functions Order transfers functions to the NRBW in respect of certain regulated facilities (as defined in regulation 8(1)) operated in Wales. In amending the 2010 regulations, it refers to the NRBW and EA as the “appropriate agency”.

In relation to mobile plant, the Functions Order makes provision for the NRBW to exercise functions in relation to such facilities where the principal place of business of an operator is in Wales and, if the principal place of business of an operator is outside England and Wales, where the mobile plant is first operated in Wales or the NRBW granted the environmental permit.

In relation to mobile radioactive apparatus, the Functions Order provides that the NRBW and the EA’s respective functions are exercisable by the appropriate agency in whose area the principal place of keeping is.

In relation to enforcement, the Functions Order provides that this function will be carried out by the appropriate agency in whose area the offence was committed.

CRC Energy Efficiency Scheme Order 2010 (S.I. 2010/786)

This Order establishes in the United Kingdom an emissions trading scheme in respect of greenhouse gases under sections 44 and 46(3) of the and Schedule 2 and paragraph 9 of Schedule 3 to the Climate Change Act 2008 (c.27). It applies to direct and indirect emissions from supplies of electricity, gas and certain fuels by public bodies and undertakings.

The Functions Order transfers certain administrator functions (as set out in column 2 of the Table in article 9(1)) in relation to Wales from the EA to the NRBW.

Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010

These Regulations govern transfers consisting wholly or mainly of oil between ships, known as ship to ship transfers, within the seaward limits of the territorial sea of the United Kingdom. The Functions Order amends the definition of consultation bodies by substituting the reference to CCW with a reference to NRBW.

Flood Risk Management Functions Order 2010 (S.I. 2010/2232)

The Order specifies additional functions as flood risk management functions for the purposes of section 4(2) of the Flood and Water Management Act 2010. The amendment contained in the Functions Order means that the functions of the EA in relation to England and the NRBW in relation to Wales under the Flood Risk Regulations 2009 will be included as additional functions.

Flood and Water Management Act 2010 (Commencement No 3 and Transitional Provisions) Order 2011 (S.I. 2011/694)

This Order commenced various provisions of the Flood and Water Management Act 2010, including those abolishing regional flood defence committees. It also made transitional provisions. Article 5(2) provides for the preservation of the EA's obligation to make certain payments to chairmen of regional flood defence committees who were appointed prior to 31 March 2011.

The Functions Order transfers the obligation to make those payments in respect of Welsh committees to the NRBW.

Regional Flood and Coastal Committees (England and Wales) Regulations 2011 (S.I. 2011/695)

The Regulations make provision for the procedure to be followed by the EA when dividing England and Wales into regions. Although the initial division has been undertaken, these functions continue to be relevant to the revision of regions. The Regulations also make provision for the appointment of members to Regional Flood and Coastal Committees and proceedings of those Committees.

The Functions Order transfers most EA under these regulations to the "appropriate agency" as defined in 26A of the Flood and Water Management Act 2010 (as inserted by the Functions Order). This means that functions are exercisable by the NRBW in respect of Welsh committees.

Environment Agency (Levies) (England and Wales) Regulations 2011 (S.I. 2011/696)

The Regulations provide for the issue of levies to lead local flood authorities under section 17 of the Flood and Water Management Act 2010 in respect of the flood and coastal risk management functions under the 2010 Act.

The Functions Order transfers those functions to the NRBW in relation to Wales and as such the relevant provisions of these Regulations have been amended to apply to the EA in England and the NRBW in Wales. The name of the Regulations has been changed to reflect the transfer of functions in relation to levies away from the EA in relation to Wales.

Waste (England and Wales) Regulations 2011 (S.I. 2011/988)

These Regulations transpose Directive 2008/98/EC of the European Parliament and of the Council on waste. Various parts deal with the establishment of waste prevention programmes and makes related provision, waste management plans, public participation, improved use of waste as a resource, provision for carriers of waste and brokers and dealers along with transfer note. Enforcement provision is made for these Parts.

The Functions Order amends these Regulations to transfer functions of the EA in relation to Wales, to the NRBW. Amendments to regulation 9 provide for a power of the Secretary of State and the Welsh Ministers, to give directions to the EA and NRBW, but the Secretary of State may only direct the NRBW, and the Welsh Ministers only direct the EA, with the consent of the Welsh Ministers or Secretary of State respectively.

Environmental Protection (Control of Ozone-Depleting Substances) Regulations 2011 (S.I. 2011/1543)

These Regulations transpose EU Regulation No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer (OJ No L 286, 31.10.2009, p1). They create several criminal offences for breach of the EU Regulation itself.

The Functions Order transfers the EA's enforcement functions, as regards Wales, in relation to the above EU Regulation to the NRBW.

Infrastructure Planning (Changes to, and revocation of, Development Consent Orders) Regulations 2011 (S.I. 2011/2055)

The Regulations proscribe the procedure to be followed where an application is made to change or revoke a development consent order made under the Planning Act 2008. Regulations 10 and 19 make provision as to persons, including those specified in Schedule 1 to the Regulations, who are to be consulted about and notified of applications.

The Functions Order amends Schedule 1 so that EA is only to be consulted and notified where an application likely to affect land in England, and to substitute the NRBW for CCW so that the NRBW is notified and consulted where an application is likely to affect land in Wales. The amendments also substitute the NRBW for the FC in relation to applications likely to affect the protection or expansion of forests and woodlands in Wales.

Greenhouse Gas Emissions Trading Scheme Regulations 2012

These Regulations implement Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emissions allowance trading within the Community and amending Council Directive 96/61/EC ("the Directive"). In particular they implement the

amendments to the Directive made by Directive 2009/29/EC of the European Parliament and of the Council.

These Regulations also consolidate and replace (with savings) previous sets of implementing regulations and their amending instruments.

The Functions Order transfers the EA's functions as "the regulator" (defined in regulation 3(1)) to the NRBW in relation to Wales.

Schedule 5: Welsh SIs

Countryside Access (Draft Maps) (Wales) Regulations 2001 (S.I. 2001/4001(W. 329))

The Regulations prescribe, in part, the process for the preparation by CCW of maps which define the land in Wales which is either registered common land or open country for the purposes of Part I of the Countryside and Rights of Way Act 2000.

The Functions Order substitutes references to the NRBW for references to CCW, and amends Schedule 1 so that Forestry Commissioners are to be sent a copy of a draft map only where land included in the map has a border with England.

Wildlife and Countryside (Sites of Special Scientific Interest, Appeals) (Wales) Regulations 2002 (S.I. 2002/1772 (W. 168))

These Regulations contain the procedural requirements that are applicable to appeals made against various actions that may have formerly been taken by CCW in relation to SSSIs in Wales. The Functions Order transfers these powers to the NRBW by virtue of amendments made to the substantive provisions within the Countryside Act 1968. As a consequence, the Functions Order amends all references to CCW in the 2002 Regulations and replaces with NRBW.

Countryside Access (Provisional and Conclusive Maps) (Wales) Regulations 2002 (S.I. 2002/1796 (W. 171))

The Regulations prescribe in part, the process for the preparation by CCW of maps which define the land in Wales which is either registered common land or open country for the purposes of Part I of the Countryside and Rights of Way Act 2000.

The Functions Order substitutes references to the NRBW for references to CCW, and amends Schedule 1 so that the Forestry Commissioners and the EA are to be sent copies of a provisional or conclusive map only where land included the map has a border with England.

Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 (S.I. 2002/3188 (W. 304))

The Functions Order transfers from EA and CCW to NRBW their rights as statutory recipients to receive copies of applications for consent to deliberately release genetically modified organisms.

Countryside Access (Dedication of Land as Access Land) (Wales) Regulations 2003 (S.I. 2003/135 (W. 9))

These Regulations prescribe the procedure to be followed where land is to be dedicated as access land for the purposes of Part I of the Countryside and Rights of Way Act 2000. Regulation 4 specifies persons who must be sent a draft of a dedication instrument before it is signed.

The Functions Order amends the Regulations so that the obligation to send a draft instrument to CCW and the Forestry Commissioners is substituted by an obligation to send the draft to the NRBW.

Coast Protection (Notices) (Wales) Regulations 2003 (S.I. 2003/1847 (W. 197))

The Functions Order make an amendment to these Regulations to require that a copy of a notice of a proposal to carry out coast protection work must be served on the NRBW instead of CCW.

Water Industry (Prescribed Conditions) (Undertakers Wholly or Mainly in Wales) Regulations 2004 (S.I. 2004/701 (W. 75))

These regulations make provision for the determination, by the Welsh Ministers, of areas of water scarcity on the application of a water undertaker whose area is wholly or mainly in Wales. Regulation 3 prescribes a duty to consult specified bodies in relation to any such application.

The Functions Order amends regulation 3 so as to require the Welsh Ministers to consult the NRBW where the determination relates to an area that is the whole or part of an area of a water undertaker whose area is wholly in Wales and the NRBW and EA where the determination relates to an area that is the whole or part of an area of a water undertaker whose area of a water is partly in Wales and partly in England.

Landfill Allowances Scheme (Wales) Regulations 2004 (S.I. 2004/1490 (W. 155))

The Functions Order transfers the monitoring authority's functions under these Regulations from the EA to the NRBW.

Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 (S.I. 2004/1656 (W. 170))

The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 implement Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment as regards plans and programmes relating solely to Wales.

Under the Regulations both the CCW and the EA are designated as a consultation body. The Functions Order replaces the reference to both EA and

CCW as a single reference to the NRBW, which will undertake all functions as a consultation body under these Regulations.

Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806 (W. 138))

These Regulations set out the regime for the control and tracking of the movement of hazardous waste for the purpose of implementing the Hazardous Waste Directive (Directive 91/689/EC). The Regulations confer various functions on the EA, such as in relation to notification, records and returns, the carrying out of inspections.

The Functions Order substitutes the NRBW for the EA.

Town and Country Planning (Local Development Plan) (Wales) Regulations 2005 (S.I. 2005/2839 (W. 203))

The Planning and Compulsory Purchase Act 2004 established a new system of local development plans (“LDPs”) in Wales. These Regulations provided for the operation of that system prescribing the form and content of LDPs setting out the procedure to be followed in their preparation.

In the Functions Order Regulation 2(1) which deals with the definition of specific consultation bodies is amended by substituting CCW with NRBW.

Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 (S.I. 2006/2988 (W. 277))

These Regulations apply where relevant legislation needs to be engaged in order to deal with harm caused by ‘radioactivity possessed by any substance’. These regulations provide that the relevant legislation have effect as though they had been modified as set out in these Regulations. The relevant legislation is Part IIA of the Environmental Protection Act 1990 and section 108 of the Environment Act 1995.

The Functions Order amends regulation 18(2) to ensure that the modification applies in relation to the NRBW, as well as in relation to the EA and the Scottish Environment Protection Agency.

Contaminated Land (Wales) Regulations 2006 (S.I. 2006/2989 (W. 278))

The Contaminated Land (Wales) Regulations 2006 sets out provisions for the identification and remediation of contaminated land in exercise of the powers conferred by Part IIA of the Environmental Protection Act 1990.

The Functions Order replaces references to the EA with references to the NRBW in regulation 5(1)(c) and (d), regulation 7(1)(o), regulation 13(3)(b), and paragraphs 10 and 13 of Schedule 3.

Controls on Dogs (Non-application to Designated Land) (Wales) Order 2007 (S.I. 2007/701 (W. 58))

This Order designates descriptions of land which are exempted from the application of Chapter 1 of Part 6 (controls on dogs) of the Clean Neighborhoods and Environment Act 2005. The land designated includes land placed at the disposal of the Forestry Commissioners (“the FC”) under section 39(1) of the Forestry Act 1967.

The Functions Order substitutes the NRBW for the FC, as, by virtue of amendments to the 1967 Act and transitional provisions, land in Wales will be placed at the disposal of the NRBW and existing placement of such land with the FC will have effect as placement with the NRBW.

Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007 (S.I. 2007/2933 (W. 253))

The Functions Order substitutes NRBW for CCW as a consultation body under the Regulations.

The NRBW will be a consultation body for the purposes of regulation 7 (screening decisions), regulations 9 and 11 (applications for consent), regulation 12 (additional environmental information) and regulation 14 (significant projects in another EEA state which may affect Wales). Regulations 15 and 18 will give the NRBW Bodies the right to receive information on the Welsh Ministers’ decision making process regarding the application for consent.

Nitrate Pollution Prevention (Wales) Regulations 2008 (S.I. 2008/3143 (W. 278))

These regulations revoke and replace, in so far as they apply in relation to Wales, the provisions (as set out in regulation 50) which controlled the application of nitrogen fertiliser in nitrate sensitive areas.

In relation to Wales, these regulations continue to implement Council Directive 91/676/EEC concerning the protection of waters against pollution by nitrates from agricultural sources

The Functions Order replaces any reference to “the Agency ” with a reference to “the Body.” The effect of the amendment is to transfer the EA’s functions to the NRBW.

Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 (S.I. 2009/995 (W. 81))

These Regulations implement the European Parliament and Council Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage. They apply to damage to protected species, natural habitats, sites of special scientific interest, water and land; and are enforced by bodies specified in regulations 10 and 11.

The Functions Order amends Regulation 10 to provide that where any grant of a permit by the EA or the NRBW is made it will be enforced by the NRBW. Also in regulation 10(3) if the damage is to water the EA responsibility for enforcement is replaced by the NRBW and if the damage is to natural habitats or protected species or a site of special scientific interest CCW s responsibility for enforcement is replaced by the NRBW.

Crime and Disorder Strategies (Prescribed Descriptions) (Wales) Order 2009 (S.I. 2009/3050 (W. 267))

The Order prescribes for the purposes of the Crime and Disorder Act 1998 the descriptions of persons or bodies at least one of each of which must be invited by responsible authorities to participate in their exercise of the functions conferred by section 6 of that Act. Section 6 concerns the formulation and implementation of strategies.

Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009 (S.I. 2009/3050 (W. 267))

A mandatory procedure for the review of the conditions to which old mineral planning permissions are to be subject is set out in Planning and Compensation Act 1991 and the Environment Act 1995. Applications for reviews are made to the relevant minerals authorities (ROMP applications) and may be the subject of a referral or appeal to the Welsh Ministers.

These Regulations implement in relation to Wales, European Directives on the assessment of the effects of certain public and private projects on the environment

The Functions Order amends Regulation 2 of these Regulations to substitute CCW with the NRBW as a 'consultation body' and also in relation to the definition of 'sensitive area'.

Water Resources (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Wales) Regulations 2010 (S.I. 2010/1493 (W. 136))

The Functions Order transfers EA's functions to NRBW with regard to regulation 3 (receiving notification of the making and or storage of silage), 7 (serving a notice requiring works), 8 (appeals against regulation 7 notices), 9 (receiving notice of silage storage construction works), paragraph 5 of Schedule 2 (agreeing storage capacity) and paragraph 7 of Schedule 2 (agreeing precautions to prevent significant pollution).

Environmental Civil Sanctions (Wales) Order 2010 (S.I. 2010/1821 (W. 178))

The Environmental Civil Sanctions (Wales) Order 2010 empowered the EA, in relation to Wales, to impose specified civil sanctions in relation to the offences

set out at Schedule 5 to the Order, but subject to the limitations and other requirements set out in the Order.

The Functions Order substitutes the NRBW for the EA.

Part 3 of Schedule 7 to the Functions Order also includes a transitional provision relating to this Order. It has effect to modify the effect of section 67 of the Regulatory Enforcement and Sanctions Act 2008 in relation to the 2010 Order, so that the period after which the Welsh Ministers must review the operation of civil sanctioning powers under the 2010 Order is reduced from three years to one year, but commences on the date on which the Agency's powers are transferred to the NRBW.

Llangollen and Corwen Railway Order 2010 (S.I. 2010/2136 (W. 192))

The Functions Order transfers the powers of the EA to the NRBW. The primary function of the EA was for it to give its consent to proposed construction work by the Llangollen Railway Trust. This role will now be performed by the NRBW. This Order extends solely to Wales and therefore the EA will not retain any powers.

Sea Fish (Specified Area) (Prohibition of Fixed Engines) (Wales) Order 2010 (S.I. 2010/2915 (W. 240))

Article 3 of this Order prohibits fishing for sea fish using a fixed engine.

Article 4 provides a number of exceptions to that prohibition and paragraph (1)(a) enables the use of a fixed engines where the placing and use of that instrument is authorised by byelaws made by the EA or predecessor bodies.

The Functions Order replaces the reference to the EA in article 4 with a reference to the NRBW.

Marine Licensing (Exempted Activities) (Wales) Order 2011 (S.I. 2011/559 (W. 81))

This Order specifies, in relation to Wales and the Welsh inshore region, activities which are not to need a marine licence (or are not to do so if conditions specified in the Order are satisfied).

The Functions Order amends articles 18 and 19 to expand the scope of the exemptions conferred by these articles to activities carried out by the NRBW. The amendment to article 25 substitutes the NRBW for CCW as the body whose activities are exempted by this article.

Flood and Coastal Erosion Risk Management Information Appeals (Wales) Regulations 2011 (S.I. 2011/865 (W. 127))

The Regulations prescribe certain procedural matters in relation to appeals brought in relation to section 15 of the Flood and Water Management Act

2010. The Regulations need to continue to apply to the EA because the approach that has been taken in relation to section 15 is to enable the EA to obtain information from bodies in Wales and for the NRBW to be able to obtain information from bodies in England. The Functions Order therefore enables both the EA and the NRBW to obtain information.

Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011 (S.I. 2011/1014 (W.152))

The Functions Order transfers the functions of the monitoring authority under the Regulations from the EA to NRBW. It also amends the definition of the WasteDataFlow system to reflect the fact that from the vesting date, the system is maintained and operated in Wales by the NRBW.

Incidental Flooding and Coastal Erosion (Wales) Order 2011 (S.I. 2011/2829 (W. 302))

The Order applies the relevant provisions of the Water Resources Act 1991 relating to compulsory purchase, powers of entry, and compensation to the exercise of powers under sections 38 and 39 of the Flood and Water Management Act 2010 (incidental flooding or coastal erosion).

The Functions Order transfers the powers of the EA in relation to Wales to the NRBW. The powers of the EA in relation to England remain.

Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (S.I. 2012/801 (W. 110))

This Order provides for procedures connected with planning applications, consultations in relation to planning applications, the determination of planning applications, appeals, local development orders, certificates of lawful use or development, the maintenance of registers of planning applications and related matters.

The Functions Order amends the table in Schedule 4 which deals with consultations before the grant of planning permission and replaces references to CCW with references to NRBW.

Schedule 6: Other Subordinate Legislation

Security and Emergency Measures (Water and Sewerage Undertakers) Direction 1998

This direction, made by the Secretary of State and the Welsh Ministers, is a direction to water and sewerage undertakers made pursuant to section 208 of the Water Industry Act 1991.

Direction 4 is amended to add the NRBW to the list of prescribed consultees.

Environment Agency (River Dee) (Limitation of Salmon and Sea Trout) Order 2004

This Order limits the number of licences for Seine and Trammel net fishing in the River Dee. The Dee estuary spans the England/Wales border.

The Functions Order enables the NRBW to exercise powers pursuant to this Net Limitation Order in relation to Wales whilst ensuring that the EA will continue to be able to exercise those powers in relation to England. Where it is necessary to take action on a cross border basis, that will be undertaken by the EA and the NRBW on a composite basis.

Environment Agency (Limitation of Net Fishing Licences) (Wales) Order 2009

This Order limits the number of various net fishing licences which can be issued in relation to a number of named rivers in Wales.

The Functions Order transfers the EA's licensing functions pursuant to this Net Limitation Order to the NRBW.

Annex 2: List of potential issues to be covered in an order made under section 150 of the Government of Wales Act 2006

Issue	Description
Environment Agency	
Members	<ul style="list-style-type: none"> • Removal of the Welsh Ministers' power to appoint a member and functions relating to the member they appoint.
Charging issues	<ul style="list-style-type: none"> • Amendment of section 41A of the Environment Act 1995 to ensure the new body can collect EU Emissions Trading Scheme operator registry charges for the EA. The body would be required to pass on the charges to the EA. • Amendment of section 42 of the Environment Act 1995 to facilitate raising of abstraction licensing charges by the body on behalf of the EA in relation to the Dee, Wye and Severn catchments.
Finances, audits and reports	<ul style="list-style-type: none"> • Removal of Welsh Ministers' functions under sections 44 to 50 and 52 of the Environment Act 1995 in relation to EA general financial duties, accounts and records, audit, funding, borrowing and loans, and annual reports. • Removal of the role of the Auditor General for Wales in relation to EA accounts and use of resources, and the role of the National Assembly role in relation to EA reports and accounts. (Including repeal of section 147 of the Government of Wales Act 1998.) • Transitional provisions to enable the Auditor General Wales to examine use of resources up to April 2013 and to complete and report on audits and examinations already begun, and to require reports relating to that period to be sent to the National Assembly.

Forestry Commission	
Constitution of the Forestry Commission	<ul style="list-style-type: none"> • Removal of references in section 2 and in schedule 1 of the Forestry Act 1967 in relation to FC's Welsh Committee. • Removal of the functions of Welsh Ministers' in Schedule 1 to the Forestry Act 1967, with savings to ensure that determinations and schemes made by the Welsh Ministers jointly with other Ministers continue to have effect.
Forestry Funding	<ul style="list-style-type: none"> • Removal of the Welsh Ministers role in relation to FC funding under section 41 of the Forestry Act 1967. • Repeal of section 105 of the Government of Wales Act 1998 relating to Welsh finances of Forestry Commission. • Repeal of paragraphs 3-11 of Schedule 7 to the Government of Wales Act 1998, relating to FC's Welsh finances and exercise of its functions in relation to Wales. • Transitional arrangements to ensure that, despite the repeal of Schedule 7, the provisions continue to apply in relation to FC's Welsh finances up to April 2013.
Natural Resources Body for Wales	
Cross-border operator	<ul style="list-style-type: none"> • Amendments to Public Bodies Act 2011 to ensure that NRBW is not a cross-border operator under that Act by virtue of the Functions Order. This would ensure that: <ul style="list-style-type: none"> • Welsh Ministers can modify its constitution/funding arrangements and transfer functions to it without Secretary of State consent; • EA can delegate functions to it, and other bodies can delegate Welsh environmental functions to it without Secretary of State consent.



**The Natural Resources Body for Wales (Functions) Order 2012:
Report for the purposes of section 19 of the *Public Bodies Act 2011***

Introduction

1. On 15 November 2012, the Minister for Environment and Sustainable Development, John Griffiths AM, laid a draft of *The Natural Resources Body for Wales (Functions) Order 2012*.
2. The Order is to be made in accordance with the powers conferred by sections 13, 14, 15 and 35 of the *Public Bodies Act 2011* (“the 2011 Act”).
3. In accordance with section 19(5)(b) of the 2011 Act, an Assembly Committee “charged with reporting on the draft order” may, within 30 days of laying, recommend that an extended reporting period of 60 days should apply, effectively extending the reporting period by 20 days.
4. We undertook an initial consideration of the draft Order in private session on 19 November 2012.

Consideration

5. Under Standing Order 21, our committee is clearly a committee that is charged with reporting on the draft Order.
6. We note that, in accordance with section 17 of the 2011 Act, the consent of the Secretary of State is required before the Order can be made. According to the Explanatory Memorandum accompanying the draft Order, such consent had not been received at the time of laying.¹ In addition, we note that the Order is intended to come into force on 1 April 2013.
7. We consider that the Order is a significant piece of legislation, which is complex in nature.

¹ Welsh Government, *Explanatory Memorandum to the Natural Resources Body for Wales (Functions) Order 2012*, 14 November 2012, page 3.

8. As a consequence, **we recommend that the procedure set out in subsections (6) to (9) of section 19 to the Public Bodies Act 2011 should apply to the draft Order.** This will allow our committee to report on the draft Order within 60 days of the date of its laying (for the purposes of the 2011 Act).

Draft Order laid before the National Assembly for Wales under section 19 of the Public Bodies Act 2011, for approval by resolution of the National Assembly for Wales

DRAFT WELSH STATUTORY
INSTRUMENTS

2012 No. (W.)

PUBLIC BODIES, WALES

ENVIRONMENT, WALES

**The Natural Resources Body for
Wales (Establishment) Order 2012**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Public Bodies Act 2011 (“the Act”), establishes a new statutory body, the Natural Resources Body for Wales (“the Body”), and provides for its form, purpose, membership, procedure, financial governance and initial functions.

The Body’s principal function at this stage is to prepare to assume substantive regulatory and other functions, relating to the environment and natural resources of Wales, at a later stage. This preparatory work will include setting up the internal structures of the Body and making ready for the transfers of those functions, and of staff, property and other rights and liabilities, in subsequent legislation.

The Body is being set up in this way because the Welsh Ministers are still in the process of finalising their proposals, under the Act, as to which functions to transfer to the Body from existing organisations, and whether any of those functions should be modified.

Article 6 gives the Body its initial, preparatory, functions. Paragraph (1) of article 6 identifies the categories of Welsh Minister proposals to which this preparatory function relates. Paragraph (2) makes it plain that, if a proposal requires the approval of the National Assembly for Wales (or any other body) in order to be implemented, then nothing in this Order removes the need for that approval.

The Order also gives the Body other powers it may need in order to carry out its preparatory functions: for example, the power to enter into agreements (article 9), to borrow money (article 14) and to employ staff (paragraph 13(4) of the Schedule). And the Order places certain conditions on the exercise of the Body's functions (see articles 7 and 8).

The Body is not given any substantive regulatory or other functions in relation to the environment or natural resources of Wales in this Order. Unless or until those functions are transferred to the Body, they will remain with the bodies or office-holders in whom they are currently vested.

The Order vests a number of functions regarding the Body in the Welsh Ministers, including the power to appoint and remove a number of its members (paragraphs 2, 4 and 7 of the Schedule); powers in relation to its corporate and financial governance (paragraphs 10 to 15, 18, 19 and 21 to 24 of the Schedule) and powers to give the Body guidance (article 5) and directions (article 11).

Draft Order laid before the National Assembly for Wales under section 19 of the Public Bodies Act 2011, for approval by resolution of the National Assembly for Wales

DRAFT WELSH STATUTORY
INSTRUMENTS

2012 No. (W.)

PUBLIC BODIES, WALES

ENVIRONMENT, WALES

**The Natural Resources Body for
Wales (Establishment) Order 2012**

Made 2012

Coming into force *see article 1*

The Welsh Ministers, in exercise of the powers conferred on them by sections 13(7) and 15(1) of the Public Bodies Act 2011(1) (“the Act”), make the following Order.

In accordance with section 16 of the Act, the Welsh Ministers consider that this Order—

- (a) serves the purpose of improving the exercise of public functions, having had regard to the factors set out in section 16(1) of the Act;
- (b) does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

The Welsh Ministers have carried out consultation in accordance with section 18 of the Act.

A draft of this Order and an explanatory document containing the information required by section 19(2) of the Act have been laid before the National Assembly for Wales in accordance with section 19(1) after the

(1) 2011 c.24.

end of the period of twelve weeks mentioned in section 19(3).

In accordance with section 19(4) of the Act, the draft of this Order so laid has been approved by resolution of the National Assembly for Wales after the expiry of the 40-day period referred to in that provision.

PART 1 - PRELIMINARY

Title and commencement

1.—(1) The title of this Order is the Natural Resources Body for Wales (Establishment) Order 2012.

(2) This Order comes into force on the day after the day on which it is made.

Interpretation

2. In this Order, “the Body” (“*y Corff*”) has the meaning given by article 3(1).

PART 2 – ESTABLISHMENT AND GENERAL FUNCTIONS

The Body

3.—(1) There is to be a body corporate to be known as the Natural Resources Body for Wales or *Corff Adnoddau Naturiol Cymru* (referred to in this Order as “the Body”).

(2) The Schedule contains further provisions about the Body.

Purpose of the Body

4.—(1) The purpose of the Body is to ensure that the environment and natural resources of Wales are—

- (a) sustainably maintained;
- (b) sustainably enhanced; and
- (c) sustainably used.

(2) In this article—

- (a) “sustainably” (“*yn gynaliadwy*”) means—
 - (i) with a view to benefitting, and
 - (ii) in a manner designed to benefit, the people, environment and economy of Wales in the present and in the future;

- (b) “environment” (*“amgylchedd”*) includes, without limitation, living organisms and ecosystems.

(3) Wherever the Body exercises any function in relation to, or that affects, the Welsh zone (as defined in section 158(1) of the Government of Wales Act 2006(1)), both the references to “Wales” in paragraph (1) are to be interpreted as including references to the Welsh zone.

(4) Wherever the Body exercises a function in relation to, or in a manner that affects, any other area outside Wales, both the references to “Wales” in paragraph (1) are to be interpreted as including references to the area in question.

- (5) Paragraph (1) does not give the Body power to—
 - (a) do anything that it would not otherwise have the power to do, or
 - (b) exercise any of its functions in a manner contrary to the provisions of any other enactment or any EU obligation(2).

Guidance with respect to the Body’s purpose

5.—(1) The Welsh Ministers may give guidance to the Body with respect to the manner in which it should exercise its functions so as to give effect to its purpose.

(2) In preparing any guidance under paragraph (1), the Welsh Ministers must have regard to the Body’s responsibilities and resources.

(3) In discharging its functions, the Body must have regard to guidance given under this article.

(4) Before giving guidance to the Body under this article, the Welsh Ministers must consult the Body and such other bodies or persons as the Welsh Ministers consider appropriate.

(5) The Welsh Ministers must publish any guidance given under this article as soon as is reasonably practicable after giving the guidance.

(6) The power to give guidance under this article includes power to vary or revoke it.

Initial functions of the Body

6.—(1) The Body has the functions set out in subparagraphs (a) and (b)—

(1) 2006 c.32 (section 158(1)). The definition of the “Welsh zone” was inserted by section 43(2) of the Marine and Coastal Access Act 2009 (c.23).

(2) “EU obligation” is defined in Schedule 1 to the European Communities Act 1972 (c.68), as amended by the European Union (Amendment) Act 2008 (c.7; see section 3 and the Schedule). This definition applies to other legislation by virtue of section 5 of, and Schedule 1 to, the Interpretation Act 1978 (c.30).

- (a) the function of facilitating the implementation of any proposal of the Welsh Ministers for the transfer (with or without modification) to the Body of—
 - (i) any function of the Countryside Council for Wales;
 - (ii) any Welsh devolved function⁽¹⁾ of the Environment Agency or the Forestry Commissioners;
 - (iii) any function of a Welsh Flood and Coastal Committee⁽²⁾;
 - (iv) any of their own functions relating to the environment; or
 - (v) any Welsh environmental function⁽³⁾ of any person;
- (b) the function of facilitating the implementation of any other proposal of the Welsh Ministers made in association with any proposals falling within sub-paragraph (a) which—
 - (i) relates to the subject-matter of those proposals, or
 - (ii) is consequential on those proposals, or supplementary or incidental to them, or relates to transitional matters.

(2) Paragraph (1) applies to a proposal of the Welsh Ministers regardless of whether the National Assembly for Wales or any other person or body has given any consent or approval on which, by law, implementation of that proposal depends, but does not obviate the need for any such consent or approval to be obtained before the proposal can be implemented.

7.—(1) The Body must carry out its functions under article 6(1) according to the criteria set out in the following paragraphs.

(2) The first criterion is that the Body must ensure, so far as possible without compromising the achievement of its functions under article 6(1), that there is effective co-operation in relation to the implementation of any proposal between itself, the Welsh Ministers, and any other person or body which is—

- (a) referred to in article 6(1)(a), and
- (b) affected by the relevant proposal.

(3) The second criterion is that the Body must not interfere with the effective carrying out by any of the persons or bodies mentioned in article 6(1)(a) of any of their functions.

(1) See section 36(1) of the Public Bodies Act 2011 (c 24).
 (2) See section 13(8) of the Public Bodies Act 2011.
 (3) See section 36(1) of the Public Bodies Act 2011.

General duty of the Body to have regard to costs and benefits in exercising powers

8.—(1) In considering whether or not to exercise any power conferred upon it by or under any enactment, the Body must take into account the likely costs and benefits of the exercise or non-exercise of that power.

(2) In deciding the manner in which to exercise any such power, the Body must take into account the likely costs and benefits of its exercise in the manner in question.

(3) The duties in paragraphs (1) and (2) apply unless, or to the extent that, it is unreasonable for the Body to be subject to them in view of the nature or purpose of the power or in the circumstances of the particular case.

(4) But those duties do not affect the Body's obligation to discharge any duties, comply with any requirements, or pursue any objectives, imposed upon or given to it by any enactment other than this article.

General incidental function of the Body

9.—(1) The Body may do anything that appears to it to be conducive or incidental to the discharge of its functions.

(2) In particular, the Body may—

- (a) enter into agreements;
- (b) acquire or dispose of property and carry out such engineering or building operations as it considers appropriate;
- (c) subject to the approval of the Welsh Ministers, form bodies corporate or acquire or dispose of interests in bodies corporate;
- (d) form charitable trusts;
- (e) accept gifts;
- (f) invest money.

(3) In this article “engineering or building operations” (*“gwaith peirianyddol neu waith adeiladu”*), without prejudice to the generality of that expression, includes—

- (a) the construction, alteration, improvement, maintenance or demolition of any building or structure or of any reservoir, watercourse, dam, weir, well, borehole or other works, and
- (b) the installation, modification or removal of any machinery or apparatus.

Advice and assistance to Welsh Ministers

10. The Body must provide the Welsh Ministers with such advice and assistance as they may request.

Directions

11.—(1) The Welsh Ministers may give the Body general or specific directions as to the exercise of its functions.

(2) The Welsh Ministers must publish any directions given under this article as soon as is reasonably practicable after giving the directions.

(3) The power to give directions under this article includes power to vary or revoke the directions.

(4) The Body must comply with any directions given under this article.

PART 3 – FINANCIAL MATTERS

Grants

12.—(1) The Welsh Ministers may make grants to the Body.

(2) A grant under this article may be made subject to conditions.

General financial duties

13.—(1) The Welsh Ministers may determine the financial duties of the Body.

(2) Different determinations may be made for different functions and activities of the Body.

(3) The Welsh Ministers must—

- (a) consult the Body before making a determination of the Body's financial duties, and
- (b) give the Body notice of every such determination which they make.

(4) Such a determination may—

- (a) relate to a period beginning before, on, or after, the date on which it is made;
- (b) contain supplemental provisions; and
- (c) be varied by a subsequent determination.

(5) The Welsh Ministers may give a direction to the Body requiring it to pay to them an amount equal to the whole or such part as may be specified in the direction of any sum, or any sum of a description, so specified which is or has been received by that Body.

(6) Where it appears to the Welsh Ministers that the Body has a surplus, whether on capital or revenue account, they may direct the Body to pay them such amount not exceeding the amount of that surplus as may be specified in the direction.

(7) The Welsh Ministers must consult the Body before giving a direction under paragraph (5) or (6).

Borrowing powers

14.—(1) The Body may borrow in accordance with the following provisions of this article, but not otherwise.

(2) The Body may borrow such sums in sterling as it may require for meeting its obligations and carrying out its functions.

(3) The Body may borrow—

- (a) from the Welsh Ministers, or
- (b) from persons other than the Welsh Ministers, but only with the consent of the Welsh Ministers.

(4) Consent under paragraph (3)(b) may be granted subject to conditions.

Welsh Ministers' guarantees of the Body's borrowing

15.—(1) The Welsh Ministers may guarantee, in such manner and on such conditions as they think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sum which the Body borrows from any person.

(2) If any sums are paid out in fulfilment of a guarantee under this article, the Body must make to the Welsh Ministers, at such times and in such manner as they from time to time direct,—

- (a) payments of such amounts as they direct in or towards repayment of the sums so paid out, and
- (b) payments of interest, at such rate as they direct, on what is outstanding for the time being in respect of sums so paid out.

Minister for Environment and Sustainable
Development, one of the Welsh Ministers

Date

Further provisions about the Body

Status

1.—(1) The Body is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(2) Property of the Body is not to be regarded as property of or property held on behalf of the Crown.

Membership

2.—(1) The Body is to consist of—

- (a) a chairperson appointed by the Welsh Ministers;
- (b) not fewer than 5 nor more than 11 other members appointed by the Welsh Ministers;
- (c) the chief executive (see paragraph 13); and
- (d) not fewer than 2 nor more than 4 other members appointed by the Body.

(2) In the case of the initial appointments to the Body, appointments under sub-paragraph (1)(d) are to be made by the members appointed under sub-paragraph (1)(a) to (c), and the expression “the Body” (“*y Corff*”) is to be interpreted accordingly.

(3) The chairperson and the other members appointed by the Welsh Ministers under sub-paragraph (1)(b) must not be employees of the Body and are referred to in this Schedule as “non-executive members” (“*aelodau anweithredol*”).

(4) The chief executive and the other members appointed by the Body under sub-paragraph (1)(d) are to be employees of the Body and are referred to in this Schedule as “executive members” (“*aelodau gweithredol*”).

(5) The Welsh Ministers may appoint one of the non-executive members to be deputy chairperson.

(6) In appointing a person to be a member, the Welsh Ministers or the Body (as the case may be) must have regard to the desirability of—

- (a) appointing a person who has experience of, and has shown some capacity in, some matter relevant to the exercise of the Body’s functions, and
- (b) securing that a variety of skills and experience is available among the members.

Further provisions relating to initial membership

3. In paragraph 2(6), the reference to the Body's functions includes any functions which would be transferred to the Body if a proposal made by the Welsh Ministers falling within article 6(1) were implemented.

4.—(1) The Welsh Ministers may nominate one member of staff of the Welsh Assembly Government as a member of the Body.

(2) In paragraph 2(1), the reference to members appointed by the Welsh Ministers includes a member nominated under this paragraph.

(3) A person nominated under this paragraph ceases to be a member of the Body upon ceasing to be employed by the Welsh Assembly Government, and in any event on the date on which any function is transferred to the Body as a result of a proposal of the Welsh Ministers falling within article 6(1).

Tenure of office

5. Subject to paragraph 4(3) (where applicable) and to paragraphs 6 to 8—

- (a) a member holds and vacates office in accordance with the terms of the member's nomination or appointment;
- (b) a deputy chairperson holds and vacates that office in accordance with the terms of that appointment.

6.—(1) A person may resign from office as a non-executive member, or as deputy chairperson, by giving written notice to the Welsh Ministers.

(2) A person may resign from office as an executive member by giving written notice to the Body.

7.—(1) The Welsh Ministers may remove a person from office as a non-executive member, or as deputy chairperson, by notice in writing.

(2) The Body may remove a person from office as an executive member by notice in writing.

(3) A notice under this paragraph may only be given to a person who—

- (a) has been absent from meetings of the Body for a period longer than 3 months without the permission of the Body;
- (b) has failed to comply with the terms of the appointment;
- (c) has become bankrupt or has made an arrangement with creditors, whose estate has been sequestrated in Scotland, or who has entered into a debt arrangement programme under Part 1 of the Debt Arrangement and

Attachment (Scotland) Act 2002 (asp 17) as the debtor or has, under Scots law, made a composition or arrangement with, or granted a trust deed for, the member's creditors;

- (d) in the opinion of the person giving the notice, is unfit to continue the appointment because of misconduct; or
- (e) in the opinion of the person giving the notice, is otherwise unable, unfit or unwilling to carry out the member's functions.

8.—(1) A person ceases to be deputy chairperson upon ceasing to be a member.

(2) A person ceases to be a non-executive member upon becoming an employee of the Body.

(3) A person ceases to be an executive member upon ceasing to be an employee of the Body.

9.—(1) A person who ceases to be a member, and a member who ceases to be deputy chairperson, may be reappointed to that office.

(2) But a person who has been removed from office on the ground of misconduct set out in paragraph 7(3)(d) may not be reappointed.

Remuneration and pensions etc of members

10.—(1) The Body must pay the non-executive members and any deputy chairperson such remuneration and allowances as the Welsh Ministers may determine.

(2) The Welsh Ministers may make different determinations under this article in different cases.

11. The Body must—

- (a) pay such pensions or gratuities to or in respect of any non-executive member or former non-executive member as the Welsh Ministers may determine;
- (b) pay such sums as the Welsh Ministers may determine towards provision for the payment of pensions or gratuities to or in respect of any non-executive member or former non-executive member.

12.—(1) This article applies if—

- (a) a person ceases to be a non-executive member, and
- (b) it appears to the Welsh Ministers that there are special circumstances which make it appropriate for the person to receive compensation.

(2) The Welsh Ministers may require the Body to pay the person such amount of compensation as the Welsh Ministers may determine.

Staff

13.—(1) The Body must appoint a person to be chief executive.

(2) The person appointed must have been approved by the Welsh Ministers.

(3) The Welsh Ministers may appoint the first chief executive.

(4) The Body may appoint other employees.

14.—(1) The Body may pay its employees such remuneration and allowances as it determines.

(2) The Body may only make a determination under this paragraph with the approval of the Welsh Ministers.

15.—(1) The Body may—

(a) pay such pensions or gratuities as it determines to or in respect of any employee or former employee, and

(b) pay such sums as it determines towards provision for the payment of pensions or gratuities to or in respect of any employee or former employee.

(2) The Body may only make a determination under this paragraph with the approval of the Welsh Ministers.

Procedure

16.—(1) The Body may determine its own procedure (including quorum) and that of its committees and sub-committees.

(2) The Body may authorise its committees and sub-committees to determine their own procedure (including quorum).

(3) But if a determination under this paragraph provides for a quorum for any meeting, the quorum cannot be met unless a majority of the members present are non-executive members.

17. No proceeding of the Body or of any committee or sub-committee is invalidated by—

(a) a vacancy in the office of chairperson, or

(b) any defect in the appointment of any member.

Delegation of functions

18.—(1) The Body may authorise a committee, sub-committee, member or employee of the Body to exercise any of the Body's functions.

(2) Unless the Body determines otherwise, a committee of the Body may authorise a sub-committee, member or employee of the Body to exercise any of the functions of that committee, including functions delegated to it by the Body.

(3) Unless the Body or the relevant committee determines otherwise, a sub-committee of the Body may authorise a member or employee of the Body to exercise any of the functions of that sub-committee, including functions delegated to it by the Body or a committee.

(4) An authorisation under the preceding provisions of this paragraph may be general or specific and must be given in writing.

(5) The Body must send a copy of the authorisation to the Welsh Ministers.

(6) The preceding provisions of this paragraph do not prevent the Body (or the committee or sub-committee, as the case may be) from exercising the function in question itself.

Membership of committees and sub-committees

19.—(1) A committee or sub-committee may include persons who are not members of the Body.

(2) The Body may pay such remuneration and allowances as the Welsh Ministers may determine to any person who—

- (a) is a member of a committee or sub-committee, but
- (b) is not a member or employee of the Body.

Application of seal and proof of documents

20.—(1) The application of the Body's seal must be authenticated by the signature of—

- (a) a member of the Body who is authorised (generally or specifically) for that purpose, or
- (b) an employee who is so authorised.

(2) A document purporting to be duly executed under the seal of the Body—

- (a) is to be received in evidence, and
- (b) is to be treated as so executed unless the contrary is shown.

Corporate Plan

21.—(1) Before the beginning of each financial year, the Body must—

- (a) prepare a plan of how it intends to discharge its functions during the following financial year, and
- (b) submit the plan to the Welsh Ministers for consideration.

(2) In this paragraph—

- (a) “financial year” (*“blwyddyn ariannol”*) means a period of 12 months ending with 31 March, and
- (b) the Body’s first financial year is the period of 12 months ending with the second 31 March after the Body is established.

Annual report

22.—(1) For each financial year, the Body must—

- (a) prepare an annual report on how it has discharged its functions during that year, and
- (b) send a copy of the report to the Welsh Ministers as soon as possible after the end of that year.

(2) The Welsh Ministers must lay a copy of the report before the National Assembly for Wales.

(3) In this paragraph and paragraph 23, “financial year” (*“blwyddyn ariannol”*) means a period of 12 months ending with 31 March, but the Body’s first financial year is—

- (a) the period beginning with the day on which the Body is established and ending with the next 31 March, or
- (b) such other period, not exceeding 2 years, as the Welsh Ministers may direct.

Accounts

23.—(1) For each financial year, the Body must—

- (a) keep proper accounts and proper records in relation to them, and
- (b) prepare a statement of accounts,

in accordance with directions given by the Welsh Ministers.

(2) The body must submit the statement of accounts prepared under this paragraph to the Auditor General for Wales and the Welsh Ministers.

(3) The statement of accounts must be submitted no later than 31 August in the financial year following that to which the statement relates.

- (4) The Body's accounts and statements of accounts must give a true and fair account of—
 - (a) the state of the Body's affairs at the end of the financial year, and
 - (b) the Body's income and expenditure in the financial year.
- (5) The Auditor General for Wales must—
 - (a) examine, certify and report on the statement of accounts;
 - (b) provide a copy of the certified statement of accounts together with his or her report on it to the Body; and
 - (c) no later than 4 months after the statement of accounts is submitted, lay before the National Assembly for Wales a copy of the certified statement of accounts and report.

Information

24.—(1) The Body must provide the Welsh Ministers with any information they require relating to the Body's property or to the discharge or proposed discharge of its functions.

- (2) The Body must also—
 - (a) permit any person authorised by the Welsh Ministers to inspect and make copies of any accounts, documents or other records of the Body (in whatever form), and
 - (b) provide such explanation of them as that person or the Welsh Ministers may require.



**Evidence from RSPB Cymru to the
Constitutional and Legislative Affairs Committee
on the Draft Natural Resources Wales (Functions) Order**
7th January 2013

On the 15th November 2012, the Welsh Government published the New Draft Second Order to create the new 'single body', Natural Resources Wales (NRW). RSPB Cymru has already provided the Environment and Sustainability Committee with written evidence on the previous version of the Draft Second Order and, as part of the Wales Environment Link (WEL) coalition, has provided oral evidence to the Committee (14th November), again on the previous draft. We have also considered the oral evidence from the Minister for Environment & Sustainable Development, John Griffiths AM on 28th November to the Environment and Sustainability Committee. While we welcome the Minister's assurances that he will listen to views and makes changes where appropriate, we still have serious concerns and have sought legal advice on the latest draft Order. This contribution provides our views on the new version which we will refer to as the "New Draft Second Order", and is based on that legal advice.

Nature Conservation: Removal of "necessary protection", and the weakening of existing duties and purposes

The New Draft Second Order creates a new Nature Conservation Duty on the face of the First (Establishment) Order¹. However, despite some amendments to the previous version, we are seriously concerned that the outcome is the same as before – the proposals for NRW's Nature Conservation Duty are weaker than those currently applying to CCW, and hence are not compliant with Section 16(2)(a) of the Public Bodies Act 2011.

The main areas of weakness relate to the caveats on the Nature Conservation Duty that in combination with the outstanding weaknesses of the statutory purpose (in the First Order) will limit its scope and so weaken it. There are also new drafting issues that further weaken the duty. We set out these issues in more detail in the bullets below.

1. Caveats on the new Nature Conservation Duty – the New Draft Second Order has been amended to remove the caveats that were of concern in the previous version. However, they have been replaced by a new, more general caveat – i.e. the new Article 5A(1) duty (see Schedule 1) "*applies to any other function only to the extent it is consistent with the provisions of any enactment relating to the function*" (see new Schedule 1, new Article 5A(2)(b)). This caveat limits the application of the nature conservation duty with respect to other legislation, to only applying where it is consistent with functions exercised under other legislation, i.e. making the nature conservation duty subservient to that other legislation. This caveat does not currently apply to CCW in the exercise of its Nature Conservation Duty. Therefore, the new drafting still results in a weaker duty than currently exists, and consequently to be compliant with the Public Bodies Act 2011 and ensure that there is no removal of "necessary protection" from the natural environment of Wales, the caveat (new Article 5A(2)(b)) should be removed from the new Nature Conservation Duty.

¹ See New Draft Second Order, Schedule 1 – the creation of new Article 5A

To be compliant with the Public Bodies Act 2011 and avoid weakening the current CCW duty, the caveat (new Article 5A(2)(b)) must be removed from the new Nature Conservation Duty (Schedule 1, new Article 5A(1))

2. Statutory Purpose – the New Draft Second Order does not amend the statutory purpose set out in the First Order². Therefore, our concerns regarding the previous Draft Second Order remain. Within the First Order, the terms “*sustainably maintained*” and “*sustainably enhanced*” are ambiguous. Furthermore, the definition of “*sustainably*” itself is also ambiguous, but appears to imply that NRW must show benefits for people and the economy as well as the environmental benefits when carrying out conservation and biodiversity enhancement actions. This ambiguity, particularly when taken in combination with the caveat (see above) and other weakened language (see below) further weaken the Nature Conservation Duty and constitute a removal of “*necessary protection*” for the natural environment.

Whilst NRW must proactively contribute to delivering SD, it cannot be responsible for delivering SD alone – this is the responsibility of the Welsh Government as a whole, i.e. across all Government Departments. Given that our natural environment is already degraded and still faces significant ongoing and future pressures, it is essential that NRW is able to take actions and give advice based on what the Welsh environment needs. NRW must also be free to take actions and give advice for the good of the Welsh environment even when the economic and social benefits are indirect or not immediately obvious.

The statutory purpose of NRW must be that of providing ‘environmental leadership’. We would make the following proposal for the statutory purpose which we believe meets the Welsh Government’s aspirations for the new body:

“To maintain, protect and proactively improve Wales’ natural environment, for the benefit of the environment, people and economy of Wales now and in the future.”

We urge the Welsh Government to use the Second Order to amend the First Order to make it clear in the statutory purpose that the body must provide environmental leadership and ensure that the statutory purpose does not “*remove any necessary protection*”.

3. Retaining stronger wording – we strongly believe that the wording of new Article 5A (see Schedule 1), is weak, because the new body “*must exercise its functions so as to promote nature conservation and the conservation and enhancement of natural beauty and amenity*”, whereas the existing version which applies to EAW, is “*to further*”. It is our legal view that “*to promote*” requires an act whereas “*to further*” requires an outcome – the latter being stronger. Language is important, particularly in legislation, and in this case, to be compliant with the Public Bodies Act, the stronger language needs to be retained.

² First Order: **Article 4.**—(1) The purpose of the Body is to ensure that the environment and natural resources of Wales are—

- (a) sustainably maintained;
- (b) sustainably enhanced; and
- (c) sustainably used.

(2) In this article—

- (a) —sustainably|| (—*yn gynaliadwy*||) means—

- (i) with a view to benefitting, and
- (ii) in a manner designed to benefit, the people, environment and economy of Wales in the present and in the future;

- (b) —environment|| (—*amgylchedd*||) includes, without limitation, living organisms and ecosystems.

To ensure no removal of “*necessary protection*” and full compliance with the Public Bodies Act 2011, Welsh Government must retain the current stronger wording – “*to further nature conservation ...*”

4. Removing conflicts – a new addition to the Nature Conservation Duty is “*amenity*” which is included as one of the factors NRW is “*to promote*”. We are worried that as drafted there is the potential for conflicts between amenity and nature conservation interests. Currently the EAW have to take amenity “*into account*” rather than having a duty “*to promote*” (or “*to further*”) it, thus ensuring that nature conservation retains its primacy in EAW decision-making. While promoting amenity is an aim we should support, we believe it should be a secondary benefit of achieving our environmental objectives rather than equal to it (so as not to risk destroying the nature that people are seeking to enjoy).

To address this potential conflict, either the amenity element should be removed from the main Nature Conservation Duty and be taken “*into account*” instead, or alternatively, the amenity element should be subject to a caveat similar to that applying to historic sites (see Schedule 1, new Article 5D(b)) which limits public access to historic buildings under specific circumstances relating to the main Nature Conservation Duty, i.e. through the use of the phrase, “*so far as consistent with ... article 5A*”. In this case the amenity element should be separate from the main Nature Conservation Duty and say “*so far as consistent with ... article 5A(1)*”.

We urge the Welsh Government to address this potential conflict by either removing the amenity element from the main Nature Conservation Duty and to take it “*into account*” instead, or alternatively, the amenity element should be separate from the main Nature Conservation Duty and subject to the caveat “*so far as consistent with ... article 5A(1)*”.

Consulting, Regulating and Permitting its own Operations – Openness, Transparency and Accountability

We remain concerned that no further detailed information has been provided regarding openness, transparency or accountability. For example, there is no detail on how operational/functional separation will be achieved within the new body when issuing nature conservation advice on permits for its own activities or when consulting itself, e.g. on statutory environmental assessments.

Furthermore, despite some amendments regarding the publication of applications and decisions and notifying Welsh Ministers (see Schedule 1, Articles 17 & 18), we do not believe that the Welsh Government have resolved the issue of operational separation within NRW. For example, how will the body enforce against itself should it be in breach of its own permit or if its actions damage a protected site where NRW is also the enforcement authority. In normal circumstances, the part of NRW that will deal with the enforcement functions may seek to take action (involving criminal sanctions) under the Wildlife & Countryside Act 1981 for example, against the person(s) that committed the offence, but should an offence result from NRW carrying out its own functions, a conflict of interest arises. In essence, there is no mechanism for NRW to hold itself to account in such circumstances and even if there were, there is a risk of a conflict of interest arising. Even if there were no conflict of interest, an external bystander may perceive there to be a conflict of interest.

While self-permitting and self-regulation may not be new or novel, the concern is with the merger of the three existing bodies, the number of situations where self-permitting occurs will increase. We cannot expect an external body to arbitrate on each occasion. Therefore, we believe that there should be a legislative requirement to achieve operational separation through permanent separate directorates within NRW to ensure it is compliant with the *Seaports Investments*

judgement. We would also expect NRW to make public internal disagreements, along with a rationale for the final decision taken in such cases.

The Welsh Government must provide further clarity as to how it plans to resolve these serious conflict of interest issues, as well as the lack of openness, transparency and accountability, perceived or otherwise. To that end, there should be a requirement within the New Draft Second Order to create permanent separate directorates within NRW and for internal disagreements to be published

An effective stakeholder engagement process should also enable NRW to deliver its requirements of openness and transparency. One way this could be achieved would be through creating a Stakeholder Advisory Committee that would support NRW in achieving openness, transparency and accountability, in addition to advising the CEO, Chair and Board. Examples of actions for the Stakeholder Advisory Committee include reviewing all applications and decisions that involve NRW as both the applicant and the regulator; the Committee would regularly review the effectiveness of the operational separation within the body; the Committee would be made aware of any internal disagreement regarding advice from one part of the body to another and if necessary act as a mediator or an arbitrator.

New Well-being Duty

A new Well-being Duty (Schedule 1, new Article 5E)³ has been added. It is an expanded version of an existing EAW duty which required the EAW “*to have regard to economic and social well being of local communities in rural areas*”. However, in expanding this duty, to cover health, social and economic wellbeing of individuals, businesses and communities, we believe it has greater potential to conflict with the Nature Conservation Duty. This issue is similar to that with respect to the statutory purpose. NRW cannot achieve Sustainable Development through its functions alone, rather it contributes to it by delivering a healthy natural environment which underpins the well-being of people and the economy. However, as drafted there is a risk that the duty could be interpreted to mean conservation and management activities should be restricted to those that deliver “*economic well-being of ... businesses*”. Whilst in many cases nature conservation supports economy & well-being, NRW must be free to undertake nature conservation activities where these wider benefits are not immediately apparent. NRW must have a clear primary remit to protect, restore and enhance the natural environment.

To address this potential conflict, the new Well-being Duty should be subject to a caveat similar to that applying to historic sites (see Schedule 1, new Article 5D(b)) which limits public access to historic buildings under specific circumstances relating to the main Nature Conservation Duty, i.e. through the use of the phrase, “*so far as consistent with ... article 5A*”. In this case the Well-being Duty should be amended to say “*so far as consistent with ... article 5A(1)*”.

To ensure it does not come into conflict with the main Nature Conservation Duty, the Well-being Duty should be subject to a caveat similar to that applied to historic buildings (see Schedule 1, new Article 5D(b)), by adding “so far as consistent with ... article 5A(1)”

New Forestry Duty

The wording of the proposal in new Article 5A(4) (see Schedule 1), to apply the existing Forestry Duty is overly complex and poorly drafted such that it achieves the unintended outcome that NRW must endeavour to achieve what it is endeavouring to achieve. This duty should be amended in the New Draft Second Order so that NRW is simply made subject to the existing duty under Section 1(3A) of the Forestry Act 1967, by removing the phrase “*endeavour to*”.

³ New **Article 5E**. In exercising its functions, the Body must have regard to—
(a) the health and social well-being of individuals and communities;
(b) the economic well-being of individuals, businesses and communities.

The Forestry Duty in the New Draft Second order should be amended to simply apply the existing duty under the Forestry Act 1967, by removing the phrase “endeavour to”.

Creating NRW’s Stakeholder Engagement Policy

We are concerned that there is still very little information as to how the new body will interact and engage with stakeholders. This is particularly concerning as a number of existing statutory stakeholder engagement bodies, i.e. the Environment Protection Advisory Committee and the Regional and Local Fisheries Advisory Committee, are being abolished (see Article 9).

The current lack of an engagement strategy results in an information vacuum and a high level of stakeholder uncertainty, which is undesirable. We believe that interim stakeholder engagement arrangements need to be put in place to ensure a smooth transition to the new body’s instatement.

Once NRW is established, we would expect to see a number of methods and forums for stakeholder engagement for various issues and geographical scales. In particular, we would expect a top-level Stakeholder Advisory Committee to be set up to advise the CEO and the Board, and a Scientific Advisory Committee to provide expert advice it on scientific and technical matters relating to natural resource management and nature conservation. In addition, we would like further detail on how NRW will engage with environmental NGOs as stakeholders but also as delivery bodies for practical conservation activities.

We would like to see a clear commitment to at least minimum standards of stakeholder engagement enshrined in the New Draft Second Order, and a requirement for NRW to create a Stakeholder Advisory Committee



nature's voice
llais natur



David Melding AM
Chair
Constitutional and Legislative Affairs Committee
The National Assembly for Wales
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07 January 2013

New Draft Second Order to create Natural Resources Wales (NRW)

I understand that the Constitutional and Legislative Affairs Committee is currently scrutinising the Final Draft Second Order (laid on 15th November) to establish Natural Resources Wales (NRW). RSPB Cymru has taken a keen interest in the process to create this new body as it will determine how the environment in Wales will be managed and protected in the future.

I am therefore writing to you to make you aware that RSPB Cymru has significant serious concerns regarding the current draft Second Order. Primarily we are concerned that the Nature Conservation & Natural Beauty duties, are weaker than the current situation. In light of the importance we attribute to getting the legislation right first time, we have sought legal advice on the Order and we believe that the Nature Conservation duty, particularly when combined with the ambiguous statutory purpose, results in weaker duties for NRW than those currently applying to CCW. As a consequence, it is our view, that this draft Second Order is legally non-compliant with the Public Bodies Act 2011 as it removes "necessary protection" for the wildlife and natural environment of Wales. A further area of concern is the lack of detail on how decision-making within the new body will be open and transparent.

The current EC infraction against the UK with respect to the licensing of Pembroke gas-fired Power Station, as recently revealed by the BBC, shines a spotlight on these two key concerns, drawing attention to the risks for Welsh Government in failing to properly take nature conservation into account. Firstly, it emphasises the need for Welsh Government to have access to and use robust and clear advice from its advisors on nature conservation. Consequently, we believe that by putting caveats and other considerations (e.g. economic factors) into NRW's conservation duties and purpose, WG may not get that robust or clear advice and therefore would be at risk of further and potentially more frequent infraction proceedings. NRW must have strong and clear nature conservation duties and statutory purpose. The current CCW nature conservation duties provide the baseline.

Secondly, the differences in advice from the statutory advisory bodies (CCW and EAW) on Pembroke Power Station were publicly available. The result was it was clear where the disagreements lay and which advice was accepted and which was not taken into account when the decisions were made. Therefore, we are concerned that when CCW's and EAW's functions are subsumed into NRW that without a clear process put

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in place in the legislation to ensure openness and transparency, that the public will no longer be aware of these differences of opinion without resorting to Freedom of Information requests.

RSPB Cymru has given both written and oral evidence to the Environment and Sustainability Committee's inquiry into the draft Orders to create NRW. Following the publication of the current iteration of the Draft Second Order by the Welsh Government on 15th November, RSPB Cymru submitted a revised evidence paper to the Environment and Sustainability Committee. I have enclosed this evidence for the attention of the Constitutional and Legislative Affairs Committee and hope that this will aid the Committee's scrutiny of the Order.

We have had considerable dialogue with the Welsh Government on these concerns and some alterations have been made but as the Second Order stands, we remain extremely concerned with regard the current drafting. I understand that the Welsh Government will most likely lay the final Second Order in February and we would hope that by this time the Welsh Government will have taken appropriate steps to address our serious concerns. We welcome the Committee's timely scrutiny of the Order which should enable these issues to be addressed and that there will be no dilution of the current protection and management of the natural environment as a consequence of the merger.

If the Committee has any questions relating to the evidence we would very much welcome the opportunity to provide further oral evidence to the Committee.

Kind regards



Katie-jo Luxton
Director, RSPB Cymru

CLA(4)-03-13 Paper 14

To the Chair of the Constitutional & Legislation Affairs Committee, from
Wales Environment Link

Dear David,

I understand the Constitutional and Legislative Affairs Committee will shortly be considering the Draft Second Order to create Natural Resources Wales (NRW). As you may be aware, WEL member organisations have given oral evidence to the Environment and Sustainability Committee's inquiry into the Order and the network has also submitted written evidence. As many of our concerns relate to the remit of the C & LA Committee, we would like to draw the Committee's attention to the letter which we sent to the Chair of the Environment and Sustainability Committee on 14th December last year. I attach this letter as formal evidence for your consideration.

The two main issues raised in the letter relate to the weakening of the nature conservation duty and arrangements under the new body for stakeholder engagement. In relation to the first point, of serious concern is the weakening of the nature conservation duty resulting in the removal of "necessary protection" under the nature conservation duty, which is not compliant with the Public Bodies Act 2011. To ensure compliance with this Act, the Government must commit to implementing at least the status quo as the bare minimum and amend this duty in the current draft Order.

We hope the Committee will investigate these matters and urge the Welsh Government to provide clarity in the next iteration of the Order.

We welcome the Committee's scrutiny of the Order and our members would be happy to provide further information on this if required.
Regards,

Raoul Bhambral

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Lord Dafydd Elis-Thomas AM
Chair, Environment and Sustainability Committee
National Assembly for Wales
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14 December 2012

RE: Natural Resources Wales new draft Second Order

Dear Dafydd,

Further to our previous letter (9 October) and evidence session in front of the Environment and Sustainability Committee (14 November), WEL has had the opportunity to review the new draft Second Order for Natural Resources Wales (NRW). Following that review, WEL would like to reiterate its concerns around the draft Second Order to you and members of the Committee.

We know the Environment and Sustainability Committee will be scrutinising the draft Order further. WEL hopes that this letter will assist the Committee in making recommendations to the Government to amend the Order.

1 Strength of the Nature Conservation Duty

WEL still has serious concerns over the wording of the Nature Conservation duty which results in a weaker duty than that which currently applies to some of the legacy bodies. In particular, it creates a duty narrower and weaker in its obligations than the existing CCW duty and is therefore not a true transposition. As the removal of “*necessary protection*” is prohibited under the powers of the Public Bodies Act 2011 (Section 16 (2)), we believe that this is a serious compliance issue that needs to be addressed.

WEL believes that it would clarify this point if the Minister were to explain to the Committee and stakeholders how he has complied with the requirement under S16 (2) of the Public Bodies Act 2011. Therefore, WEL would be grateful if the Committee were to ask the Minister this question.

One suggestion to resolve the issue of the weaker Nature Conservation duty would be to transpose verbatim the present CCW duty (s131 Environment Protection Act);

“*The Countryside Council for Wales shall discharge those functions -*

- (a) for the conservation and enhancement of natural beauty in Wales and of the natural beauty and amenity of the countryside in Wales, both in the areas designated under the National Parks and Access to the Countryside Act 1949 as National Parks or [under the*

Countryside and Rights of Way Act 2000] as areas of outstanding natural beauty and elsewhere;

An alternative option would be the following specific amendments that the Committee should recommend to the Welsh Government to address these concerns:

- Delete the caveat (new Article 5A(2)(b)) from the new Nature Conservation Duty (Schedule 1, new Article 5A(1)) – in order to be compliant with the Public Bodies Act 2011 and avoid weakening the current CCW duty
- Amend new article 5A (Schedule 1) – replace 'to promote nature conservation' with 'to further nature conservation' as the latter wording which comes from the current EAW duties is stronger.

To ensure changes to improve and strengthen the Nature Conservation duty are effective, WEL is of the view that the statutory purpose (as set out in the First Order) needs to be amended to remove the current ambiguity and create a new body with a clear environmental remit and a strong leadership role with respect to the protection and enhancement of the natural environment, ecosystems and biodiversity.

2 Stakeholder engagement

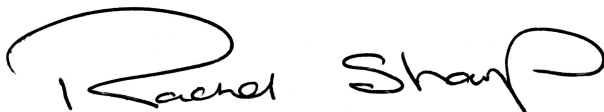
In order to increase openness and transparency, at the request of the Committee (at the evidence-giving session on 14 November), WEL submitted additional evidence on 20 November, regarding proposals for external stakeholder groups that we want to see incorporated into the Second Order. These requirements include NRW setting up a top-level Stakeholder Advisory Committee to advise the CEO and the Board; as well as a Scientific Advisory Committee to provide expert advice on scientific and technical matters relating to natural resource management and nature conservation. Furthermore, WEL and its members would like more detail on how NRW will engage with environmental NGOs; not only as stakeholders but also as delivery bodies for further conservation work.

WEL would be grateful if you could consider these critical concerns in your own deliberations. We also hope that you will recommend that the Government considers these amendments prior to laying the final version of the Second Order in February.

If you wish for any further clarification or assistance please do not hesitate to contact Raoul Bhambral, Advocacy Officer for WEL, on raoul@waleslink.org.

Many thanks for your consideration.

Warm regards,



Rachel Sharp
Chair of WEL Living Wales Working Group

CC:
Mick Antoniw AM
Keith Davies AM
Russell George AM

Vaughan Gething AM
Llyr Huws Gruffydd AM
Julie James AM
William Powell AM
David Rees AM
Antoinette Sandbach AM
Ken Skates AM

David Melding AM
Chair
Constitutional and Legislative Affairs Committee
The National Assembly for Wales
Ty Hywel
Cardiff Bay
Cardiff

18th January 2013

Dear Mr Melding

New Draft Second Order creating Natural Resources Wales

Wildlife Trust Wales (WTW) is aware that the Constitutional and Legislative Affairs Committee is currently scrutinising the Draft Second Order to create Natural Resources Wales (NRW).

WTW is the umbrella organisation for the six Wildlife Trusts in Wales – Brecknock, Gwent, Montgomeryshire, North Wales, Radnorshire and South and West Wales working together in partnership to achieve a common aims. The Trusts in Wales collectively have more than **28,000 members** and manage over 200 nature reserves, covering more than **6,000 hectares** of prime wildlife habitat, from rugged coastline to urban wildlife havens.

The formation of a NRW is of critical concern to WTW and our ambition, to work in partnership with the new body, to create a Living Landscape and Living Seas across Wales. We hope it will strongly influence delivery of European and UK biodiversity targets in Wales, and will specifically influence delivery of the ambitions for ecological restoration set out in 'A Living Wales'.

WTW has previously submitted consultation on the Draft Orders and also, as part of the Wales Environment Link (WEL) coalition, provided the Committee with written and oral evidence.

We have discussed the draft Second Order with partner organisations within the WEL network. From these discussions, **WTW still have serious concerns that New Draft Second Order will not sufficiently address our fears.**

One partner organisation, RSPB, has sought legal advice and submitted additional evidence on the New Draft Second Order, dated 6th December 2012, which we supported in our letter to the Environment and Sustainability Committee (13th December 2012). In addition, RSPB have submitted evidence to you on the 7th January. **WTW fully strongly supports the submissions made by the RSPB.**

Our main concerns, are summarised below;

- That the new order will weaken the conservation duties currently held by CCW. As you are aware, to be compliant with the Public Bodies Act 2011 and there must be **no removal of "necessary protection"**, however the caveats within the Second Order appear to just that. Therefore, the current draft is **non-compliant with the Public Bodies Act 2011.**
- We believe that the Welsh Government (WG) should use the Second Order to amend the First Order to make it clear in the **statutory purpose** that the body must provide environmental leadership, and not be a



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Protecting **Wildlife** for the Future

sustainable development body.

Wales needs a public body with a **clear purpose of protecting, conserving and enhancing the natural environment**. This body should contribute to economic and social aims but be the WG, independent, environmental champion.

- Having a respected, **independent and transparent body** is critical for the WG decision making process to be respected. There is the potential for serious conflict of interest issues, as well as the lack of openness, transparency and accountability, perceived or otherwise. For example, **Pembroke Power Station**, the infraction proceedings that followed are a warning sign. To that end, there should be a requirement within the New Draft Second Order to create permanent separate directorates within NRW and for internal disagreements to be published.

The NRW must be free from economically driven decision-making and must have the strength of purpose to make pro-environmental decisions independent of economic costs or benefits (other WG departments or sponsored bodies do this).

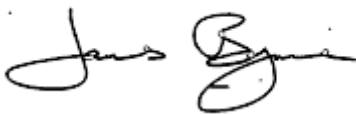
- As third sector organisations, we represent the views of a considerable numbers of the Welsh population and also are significant landowners in our own right. Therefore, we believe that there should be a clear commitment to at least minimum standards of **stakeholder engagement** enshrined in the New Draft Second Order, and a requirement for NRW to create a Stakeholder Advisory Committee.

While we have made these points, and more, to the Welsh Government, and some alterations have been made, we are still concerned that the Second Order does not address many of our concerns.

We welcome the Committees scrutiny of the Order, and the Second Order is amended to address these concerns.

If you require any further information, WTW are happy to provide oral evidence to the committee.

Yours sincerely



James Byrne
Living Landscapes Advocacy Manager

Cc'ed

Suzy Davies AM
Julie James AM
Eluned Parrott AM
Simon Thomas AM
Gareth Williams - Committee Clerk

