

## **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 Assembly<sup>1</sup>.

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 laid<sup>2</sup>. 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,

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<sup>1</sup> 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).

<sup>2</sup> 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 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 NRW 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 NRW.

Section 4 imposes environmental duties with respect to sites of special interest. CCW's functions under this section are transferred to the NRW.

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 NRW 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 NRW.

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 NRW 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 NRW 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 NRW 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 NRBW.

### **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 NRBW 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 NRBW 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 NRBW 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 NRBW. The Functions Order also makes consequential amendments to enable the EA to charge the NRBW 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 NRBW.

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
<b>Environment Agency</b>	
Members	<ul style="list-style-type: none"> <li>• Removal of the Welsh Ministers' power to appoint a member and functions relating to the member they appoint.</li> </ul>
Charging issues	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>
Finances, audits and reports	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.)</li> <li>• 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.</li> </ul>

<b>Forestry Commission</b>	
Constitution of the Forestry Commission	<ul style="list-style-type: none"> <li>• Removal of references in section 2 and in schedule 1 of the Forestry Act 1967 in relation to FC's Welsh Committee.</li> <li>• 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.</li> </ul>
Forestry Funding	<ul style="list-style-type: none"> <li>• Removal of the Welsh Ministers role in relation to FC funding under section 41 of the Forestry Act 1967.</li> <li>• Repeal of section 105 of the Government of Wales Act 1998 relating to Welsh finances of Forestry Commission.</li> <li>• 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.</li> <li>• 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.</li> </ul>
<b>Natural Resources Body for Wales</b>	
Cross-border operator	<ul style="list-style-type: none"> <li>• 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"> <li>• Welsh Ministers can modify its constitution/funding arrangements and transfer functions to it without Secretary of State consent;</li> <li>• EA can delegate functions to it, and other bodies can delegate Welsh environmental functions to it without Secretary of State consent.</li> </ul> </li> </ul>