

ENVIRONMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Sustainable management of natural resources

Section 22 – Power to suspend statutory requirements for experimental schemes

118. **Section 22** enables the Welsh Ministers, on the application of NRW, to make regulations, which can temporarily suspend a specified statutory provision for which NRW is responsible for the purpose of enabling an experimental scheme as provided under section 23. These schemes will enable NRW to trial new approaches to help it achieve the sustainable management of natural resources and may include the development of or application of new methods, concepts or techniques, or the application or further development of existing methods, concepts or techniques.
119. Regulations under section 22(1) may confer an exemption from a requirement, relax a requirement, and require the person to whom the exemption or relaxation applies to comply with conditions stated in regulations. The suspension or relaxation is limited to a period not exceeding three years (and which may be extended once by a further period not exceeding three years). See section 22(4) and (5).
120. The regulations may also modify an enactment in a way the Welsh Ministers consider necessary for the enforcement of, or in consequence of the exemption, relaxation or conditions. Paragraphs (c) and (d) provide that when a statutory requirement is suspended or relaxed by regulations under subsection (1), conditions may be put in place which a party is required to comply with, in addition to enabling the Welsh Ministers to transfer existing enforcement measures from the existing enactment.
121. Regulations may only be made in relation to statutory requirements for which NRW is responsible. These requirements are defined in section 22(9). The requirement must be imposed by an enactment. NRW is responsible for the statutory requirement if it is a requirement:
- to comply with a standard set or requirement imposed by NRW;
 - to obtain a licence or other authorisation from NRW before doing something;
 - that may be enforced by NRW; or
 - that applies to NRW and is concerned with the way in which (or the purposes for which) natural resources are managed or used.
122. **Section 22(2)** provides that regulations may not remove or modify a function of a Minister of the Crown which was exercisable before 5 May 2011, without the consent of the Secretary of State.
123. **Section 22(3)** provides that regulations may also only be made where the Welsh Ministers:

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

- Are satisfied that the provision is necessary to enable an experimental scheme (see sections 22(9) and 23) that is likely to contribute to the sustainable management of natural resources (as defined in section 3);
 - Are satisfied that the regulations do not have the overall effect of increasing regulatory burdens for any person;
 - Have consulted those they think are likely to be affected by the provisions of the regulations and those persons that they think are likely to be otherwise affected by the experimental scheme.
124. Regulations are subject to the affirmative resolution procedure (see section 25(3)) unless their only substantive effect is to revoke previous regulations under section 22(1) – in which case they need only be laid in the Assembly after being made and there is no obligation to undertake any consultation. Regulations might be revoked where an experimental scheme has ended prior to the initial three year period or before the end of any extension period and as such the regulations are no longer necessary.
125. The regulations may apply only in relation to Wales.
126. An application made by NRW for regulations to be made may, for example, be on the basis that a particular proposed experimental scheme would require an exemption from the need to obtain a particular consent to be able to undertake a particular activity. The purpose of the suspension could be to trial minimum common standards, which could be applied in place of the consent for particular circumstances or activities.
127. [Section 22\(8\)](#) requires NRW to evaluate an experimental scheme for which statutory requirements have been suspended or relaxed, and publish the evaluation of the scheme.
128. [Section 22\(9\)](#) defines an experimental scheme as a scheme carried out under arrangements made by NRW under article 10C of the Establishment Order, which is a scheme designed to develop or to apply new or modified methods, concepts or techniques, or to develop or test proposals for regulatory change.