

ENVIRONMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Sustainable management of natural resources

Section 6 – Biodiversity and resilience of ecosystems duty

36. Section 6 places a duty on public authorities, as defined in subsection (9), to seek to maintain and enhance biological diversity (referred to as biodiversity). All public bodies, statutory undertakers, Ministers of the Crown and other public office holders are required to apply the duty when they are carrying on any functions in Wales, or in relation to Wales. Two exceptions are set out in subsection (3): the functions of Her Majesty's Revenue and Customs (HMRC) and the judicial functions of courts and tribunals are not subject to the duty.
37. Where the duty in section 6 applies, public authorities are required to comply with that duty instead of the duty in section 40 of the NERC Act 2006.
38. Section 40 of the NERC Act 2006 required all public authorities in England and Wales to have regard to conserving biodiversity when carrying out their functions. Section 40 is amended so that it continues to apply where HMRC are carrying out their functions, and where other public authorities are carrying out functions in relation to England (see paragraph 9(2) of Schedule 2 to the Act).
39. Section 6(1) of the Act requires that public authorities when carrying out their functions in relation to Wales do so in a way that aims to improve and not reduce biodiversity and that in doing they must seek to further the resilience of ecosystems. A definition of biodiversity is provided in section 26 to aid in the general interpretation of the term, and relates to the variety of all living organisms at the various levels at which they exist. Whilst resilience is not defined in section 6, a number of key characteristics of resilience are contained in subsection (2).
40. Section 6(2) of the Act requires that in delivering the obligation under subsection (1), public authorities must consider diversity between and within ecosystems for example the diversity of species and habitats, the extent, state, connectivity of ecosystems and their ability to deal with and recover from unexpected events for example the impacts of climate change. The list in subsection (2) is not intended to be an exhaustive list of matters that must be taken into account as some matters may not be relevant to every situation. See also the notes for section 4.
41. Under section 6(4) of the Act, the Welsh Ministers, the Counsel General, government departments and Ministers of the Crown are under an additional duty to have particular regard to the Convention on Biological Diversity 1992¹, which is a global agreement addressing all aspects of biodiversity. This duty does not apply to the other public authorities as defined in subsection (5) but these other public authorities are required

¹ <https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0ahUKEwiEljiJzLAhUG6xQKHeGGBEcQFghCMAM&url=https%3A%2F%2Fwww.cbd.int%2Fdoc%2Flegal%2Fcbd-en.pdf&usq=AFQjCNHQwSARPEu3dL617rq7mCuJhVkhfg>

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

to have regard to any guidance issued by the Welsh Ministers in relation to complying with the duty under section 6.

42. Subsection 6(5) requires that in complying with the duty under section 6(1) public authorities, other than Ministers of the Crown or government departments, must have regard to the list of living organisms and types of habitat published under section 7, a state of natural resources report published under section 8 and any area statement published under section 11, which relates to the area of the public authority.
43. A public authority, other than Ministers of the Crown or government departments, must publish a plan outlining how it will meet its duty under subsection (1). This plan must be reviewed in light of a report published under subsection (7).
44. Section 6(7) requires that every three years, all public authorities must publish a report on how they have met their obligations under the biodiversity duty. Public authorities could include this report in any other reports that they are required to publish.
45. Subsection 6(9) lists the public authorities to which the duty in section 6(1) applies. This includes a wide range of bodies including for example local health boards, national health trusts and national park authorities.
46. Although section 6 only applies in relation to Wales, this does not mean that it is about biodiversity only in Wales. It applies to biodiversity in a global sense and requires public authorities to consider the effect of decisions taken, or activities carried out, within Wales insofar as those decisions or activities may have implications in relation to biodiversity outwith Wales. This might be illustrated by the example of a public authority in Wales which is considering whether to purchase products made from materials sourced from a tropical rainforest. The biodiversity implications of that purchasing decision would need to be considered by the public authority. The table identifies those public authorities with requirements under each section of section 6.

<i>Section: Duty</i>	<i>Welsh Government</i>	<i>Minister of the Crown and Government Departments</i>	<i>Other public authorities</i>
Sections (6) (1),(2)	Yes	Yes	Yes
Section (6) (4)(a)	Yes	Yes	Yes
Section (6) (4)(b)	Yes	Yes	Yes
Section (6) (5)	Yes	No	Yes
Section (6) (6)	Yes	No	Yes
Section (6) (7)	Yes	Yes	Yes
Section (6) (8)	Yes	No	Yes