

# ENVIRONMENT (WALES) ACT 2016

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 - Climate change**

144. **Part 2** of the Act places a duty on the Welsh Ministers to ensure that the ‘net Welsh emissions account’ for the year 2050 is at least 80% lower than the baseline. The Act makes provisions for a net Welsh emissions account.
145. The Welsh Ministers must in regulations specify interim emissions targets for 2020, 2030 and 2040. These interim targets must be consistent with the 2050 target. The Act also requires the Welsh Ministers to set in regulations a series of carbon budgets for each five-year period between 2016 and 2050 and ensure that the net Welsh emissions account for each of these periods does not exceed the carbon budget for that period. These carbon budgets must be consistent with the interim and 2050 targets.
146. The Act places a duty on the Welsh Ministers to produce a report detailing the policies and proposals that will deliver the reductions demanded by the carbon budgets in Wales by reference to the areas of responsibility of each of the Welsh Ministers. In setting or amending interim targets or carbon budgets, the Welsh Ministers must receive advice from the ‘advisory body’, which can be the UK Committee on Climate Change (as established in the Climate Change Act 2008), a person designated by the Welsh Ministers in subordinate legislation, or a new body established by the Welsh Ministers to exercise functions of the advisory body.

#### **Section 28 – Purpose of this Part**

147. This section sets out the purpose of this Part, which is to require the Welsh Ministers to meet targets for reducing emissions of greenhouse gases from Wales.

#### **Section 29 - The 2050 emissions target**

148. Subsection (1) of this section imposes a duty on the Welsh Ministers to ensure that the net Welsh emissions account for 2050 is at least 80% lower than the baseline. The baseline is defined in section 38 as the aggregate amount of net Welsh emissions of certain listed greenhouse gases for the baseline years of those gases (either 1990 or 1995 for each gas). The target for 2050 is set by reference to baseline years rather than a particular quantum of emissions because the baseline years are subject to revision as understanding of historic emissions improves. Using baseline for this calculation is consistent with the methodology employed for the purposes of the Kyoto Protocol to the United Nations Framework Convention on Climate Change 1998, an international agreement to limit emissions of greenhouse gases, to which the UK is party.
149. Subsection (3) provides the Welsh Ministers with a power to amend subsection (1) by setting the 2050 target as a percentage greater than 80%. The power may only be used if one of the conditions provided in section 32(2) is met and must have regard to the matters provided in section 32(3). Before the Welsh Ministers lay draft regulations to amend the 2050 target, they must seek advice from the advisory body (section 49(1)).

The advice provided to the Welsh Ministers by the advisory body must also include the body's opinion on the matters provided in section 50(1), which includes whether the proposed target is the highest achievable target and if not, what is the highest achievable target.

150. The term “the net Welsh emissions account” is defined in section 34. See explanatory notes on sections 33 and 38 for a more detailed explanation of carbon accounting and the net Welsh emissions account.

### ***Section 30 - Interim emissions targets***

151. This section places a duty on the Welsh Ministers to set interim emissions targets, which are maximum amounts for the net Welsh emissions account for each interim target year. It also places a duty on the Welsh Ministers to ensure that those targets are not exceeded. These interim targets will be expressed as a percentage reduction and work in the same way as the 2050 target.
152. Subsection (3) specifies that the interim target years are 2020, 2030 and 2040 and subsection (4) requires that before the end of 2018, the Welsh Ministers must set interim emissions targets for those years. When making the regulations to set these targets, the Welsh Ministers must regard to the matters provided in section 32(3). Before the Welsh Ministers lay draft regulations to set the targets for 2020, 2030 and 2040, they must seek advice from the advisory body (section 49(1)). The advice provided to the Welsh Ministers by the advisory body must also include the body's opinion on the matters provided in section 50(1), which includes whether the proposed targets are the highest achievable targets and if not, what are the highest achievable targets.

### ***Section 31 - Carbon budgets***

153. This section places a duty on the Welsh Ministers to set, for each five year budgetary period, a maximum total amount for the net Welsh emissions account, which is known as a carbon budget. The Welsh Ministers are required to ensure that net Welsh emissions account for each period does not exceed the carbon budget for that period. The first budgetary period is 2016-2020, and the remaining budgetary periods are each succeeding period of five years, ending with 2046-2050.
154. The section requires the Welsh Ministers to set 2 consecutive carbon budgets for the periods 2016-2020 and 2021-2025 before the end of 2018. It also creates a duty to set subsequent carbon budgets at least 5 years in advance of the budgetary period to which they relate. When making the regulations to set carbon budgets the Welsh Ministers must regard to the matters provided in section 32(3). Before the Welsh Ministers lay draft regulations to set a carbon budget they must seek advice from the advisory body (section 49(1)). The advice provided to the Welsh Ministers by the advisory body must also include the body's opinion on the matters provided in section 50(2), which includes the appropriate level of the carbon budget for the period.

### ***Section 32 – Emissions targets and carbon budgets: principles***

155. This section requires the Welsh Ministers to set interim emissions targets at a level that is consistent with meeting the 2050 emissions target. It requires the Welsh Ministers to set carbon budgets at a level that is consistent with meeting the interim targets and the 2050 target.
156. Under subsection (2), the Welsh Ministers may not make regulations which change the 2050 emission target, an interim emissions target or a carbon budget unless at least one of the following conditions is met:
- They are satisfied that it is appropriate to do so as a result of significant development in either scientific knowledge about climate change or in EU or international law or policy that relates to climate change;

- The advisory body has recommended the change; or
  - Regulations have been made under section 35 or 37 providing for emissions of a greenhouse gas from international aviation or international shipping to count as part of the Welsh emissions of the gas, or amending the list of greenhouse gases that are relevant for the purposes of Part 2.
157. Subsection (3) places a duty on the Welsh Ministers to have regard to a set of criteria when making regulations changing the 2050 emissions target, or setting or changing an interim emissions target or a carbon budget. The criteria are:
- The most recent state of natural resources report published by NRW under section 8 of Part 1 of this Act;
  - The most recent future trends report under section 11 of the Well-being of Future Generations (Wales) Act 2015;
  - The most recent report (if any is available at the time of setting or changing any of the targets or budget) of the Future Generations Commissioner under section 23 of that Act;
  - Scientific knowledge about or technology relevant to climate change; and
  - EU and international law and policy relating to climate change, including international agreements which include measures to limit increases in global average temperatures.

### ***Section 33 – The net Welsh emissions account***

158. Subsection (1) defines the net Welsh emissions account as the aggregate of net Welsh emissions, minus any carbon units credited to the account for the period plus any carbon units debited from the account for the period.
159. Subsection (2) enables the Welsh Ministers to define in regulations which carbon units can be credited to and debited from the net Welsh emissions account, and how this can be done.
160. Subsection (3) provides that regulations made under subsection (2) must ensure that, where carbon units are used to reduce the net Welsh emissions account, they are not also used to offset other emissions elsewhere. This could otherwise lead to “double-counting”.
161. Subsection (4) provides that regulations must limit the extent to which carbon units can be used to reduce the net Welsh emissions account.

### ***Section 34 – Net Welsh emissions***

162. This section defines Welsh emissions and Welsh removals of greenhouse gases, and provides that Welsh emissions minus Welsh removals are net Welsh emissions for a period.

### ***Section 35 – Welsh emissions from international aviation and shipping***

163. This section enables the Welsh Ministers to make regulations providing for emissions of a greenhouse gas from international aviation and international shipping to count as Welsh emissions of the gas.

### ***Section 36 – Carbon units***

164. This section enables the Welsh Ministers to define “carbon units” in regulations. It provides the Welsh Ministers with the power by regulations, to establish a scheme or use

an existing scheme, for the registering and tracking of carbon units and for establishing and maintaining accounts in which carbon units may be held.

### ***Section 37 – Greenhouse gases***

165. This section lists “greenhouse gases” for the purpose of Part 2 of the Act and enables the Welsh Ministers to make regulations to add a gas or modify a description of a gas.

### ***Section 38 – The baseline***

166. This section defines the “baseline” for the purposes of this Part of the Act and enables the Welsh Ministers to make regulations to amend that baseline. This would enable the Welsh Ministers to specify the baseline year for a greenhouse gas which has been added by regulations under subsection 37(2) or modify the baseline year for a greenhouse gas that is already listed. The Welsh Ministers can only modify the baseline year for a greenhouse gas if they are satisfied that it would be appropriate to do so as a result of significant developments in EU or international law or policy relating to climate change.

### ***Section 39 - Proposals and policies for meeting carbon budgets***

167. This section places a duty on the Welsh Ministers to prepare a report for each budgetary period which sets out their proposals and policies on how the budget they have set will be met. The report must include proposals and policies by reference to the areas of responsibilities of each of the Welsh Ministers. For the first budgetary period the report is to be produced as soon as reasonably practicable after setting the carbon budget for that period (as provided in section 31). For subsequent budgetary periods the report must be published before the end of the first year of the period in question. The Welsh Ministers are required to publish the report.

### ***Section 40 - Carrying amounts from one budgetary period to another***

168. This section provides a power for the Welsh Ministers to “bank” and “borrow” emissions between budgetary periods.
169. Under subsections (1) and (3), the Welsh Ministers may “borrow” up to 1% of the next budget. An amount from the next budget is “carried back” to the budget preceding it. Where this power is used, the next budget (which will already have been set by order) is reduced by the amount that has been borrowed.
170. Under subsection (4) the Welsh Ministers may carry forward any part of the carbon budget that exceeds the net Welsh emissions account for that period (i.e. to “bank” a budget surplus, but not necessarily all of it). The banked amount is added to the next budget (subsection (5)).
171. The Welsh Ministers must consult with the ‘advisory body’ before exercising powers under this section (that is, before banking or borrowing).

### ***Section 41 - Final statement for budgetary period***

172. This section places a duty on the Welsh Ministers to lay a statement before the National Assembly for Wales on the final figures for the net Welsh emissions account during a budgetary period these figures are used to determine whether a budget has been met.
173. Subsections (2) to (6) place a duty on the Welsh Ministers to provide information on:
- under subsection (2), the total amounts of Welsh emissions, Welsh removals and net Welsh emissions for each greenhouse gas (each of the gases included in the target – see section 36);

- under subsection (3), the total amount of carbon units that have been credited to or debited from the Welsh emissions account in that budgetary period, and details of the number and type of those units;
  - under subsection (4), the final amount of the net Welsh emissions account for the budgetary period;
  - under subsection (5), whether the Welsh Ministers have decided to bank a surplus from the previous budget or to borrow from the next budget (using the power in section 40) and, if so, the amount banked or borrowed;
  - under subsection (6), the final amount of the carbon budget for the period.
174. Subsection (7) provides that the question of whether the budget has been met is to be determined by reference to the figures in the statement.
175. Subsection (8) requires the Welsh Ministers to provide an explanation of why they consider that the carbon budget has been met or not met.
176. Subsection (9) requires that the statement must include the Welsh Ministers' assessment of the extent that their proposals and policies (including those set out in the report under section 39) have contributed to the carbon budget for that period and how these have been carried out.
177. Under subsection (10) an assessment must cover the areas of responsibility for each Welsh Minister, which corresponds to the requirements under section 39(2) to include proposals and policies covering the areas of responsibility of each of the Welsh Ministers.
178. Subsections (11) and (12) require that the statement for each carbon budget period to include an estimate of the total amount of emissions, whether in Wales or elsewhere, which are attributable to the consumption and use of goods and services in Wales.

#### ***Section 42 - Proposals and policies where carbon budgets not met***

179. This section applies where a final statement has been laid before the National Assembly for Wales in respect of a budgetary period, and the net Welsh emissions account for the period exceeds the carbon budget. It requires the Welsh Ministers to lay a report before the National Assembly setting out proposals and policies to compensate for the excess emissions. They must do so no later than three months after laying the final statement for the budgetary period.

#### ***Section 43 - Statements for interim target years and 2050***

180. This section places a duty on the Welsh Ministers to prepare and lay before the National Assembly for Wales a statement for each interim target year and for 2050.
181. Subsections (2) to (4) requires the following information to be included in the statements for each of the appropriate target years:
- under subsection (2), in respect of each greenhouse gas the total amount of Welsh emissions, Welsh removals and net Welsh emissions for the year;
  - under subsection (3), the total amount of carbon units that have been credited to and debited from the net Welsh emissions account, and details of the number and type of units;
  - under subsection (4), the amount of the net Welsh emissions account for the year.
182. Subsection (5) provides that the question of whether the interim targets or 2050 target has been met is to be determined by referring to the information provided in the statement for the target year to which it relates.

- 183. Subsection (6) provides that the Welsh Ministers must include an explanation of the reasons why they consider that the targets have or have not been met.
- 184. A statement under this section must be laid before the National Assembly for Wales before the end of the second year after the year to which it relates; for example, the statement for 2020 must be laid before the end of 2022 (subsection (1)(b)).
- 185. Subsection (7) enables the Welsh Ministers to combine a statement under this section with the statement for a carbon budgetary period (under section 41) that covers the year of the relevant target.

#### **Section 44 - Advisory body**

- 186. This section enables the Welsh Ministers, by regulations, to establish a new body to exercise functions of the advisory body or to designate a person to be the advisory body for the purposes of Part 2 of the Act. The Welsh Ministers may only designate a person that exercises functions of a public nature.
- 187. Subsection (3) provides that if the Welsh Ministers do not establish a new body or designate a person by regulations under subsection (1), the advisory body will be the UK Committee on Climate Change (established under section 32 of the Climate Change Act 2008).
- 188. Subsection (4) provides that regulations under subsection (1)(a) may include provisions about: the status and membership of the body; employment of staff, remuneration, allowances and pensions for members and staff; the organisation and procedure of the body; and reports and accounts.
- 189. Subsection (5) provides that regulations to establish a new body as the advisory body may include a provision which would enable the Welsh Ministers to give directions to the advisory body in relation to the matters listed in subsection (4).

#### **Section 45 - Progress reports**

- 190. This section places a duty on the advisory body to submit reports to the Welsh Ministers setting out its view on progress that has been made in relation to the interim and 2050 targets and on the carbon budgets. The advisory body must provide views on whether the targets and budgets are likely to be achieved and views on any further action considered necessary to achieve them.
- 191. Subsection (1) requires the advisory body to submit a report to the Welsh Ministers before the end of the first budgetary period (which covers the years 2016-20) providing its views on progress towards meeting the carbon budgets that have been set under Part 2, the interim emissions targets and the 2050 emission target.
- 192. Subsection (2) requires the advisory body to send a report to the Welsh Ministers no later than six months after they have laid a final statement for a budgetary period before the National Assembly for Wales under section 41. This report must provide the advisory body's views on the way in which the carbon budget for the period has been met or not, actions taken by the Welsh Ministers to reduce the net Welsh emission account and also the matters that are set out in subsection (1) (i.e. progress towards meeting the remaining budgets and targets).
- 193. Subsections (3) and (4) require the advisory body to send a report to the Welsh Ministers containing its views on whether the next interim target (where relevant) and the 2050 target is the highest target that is achievable and, if not, what is the highest achievable target. The report must be sent to the Welsh Ministers no later than six months after they have laid the statements for the interim target years before the National Assembly for Wales under section 43.



- 194. Subsection (5) provides that a report under subsection (3) or (4) can be combined with a report under subsection (2) on a carbon budget.
- 195. Subsection (6) places a duty on the Welsh Ministers to lay a copy of each of the reports they receive under subsections (1) and (2) before the National Assembly for Wales.
- 196. Subsection (7) places a duty on the Welsh Ministers to lay a response to any report they receive under this section from the advisory body before the National Assembly for Wales no later than six months after receiving the report.

#### ***Section 46 - Duty of advisory body to provide advice and assistance***

- 197. This section places a duty on the advisory body to respond to requests for advice, analysis, information and assistance by the Welsh Ministers in connection with Ministers' functions under the Act or in relation to climate change in general.

#### ***Section 47 - Guidance to advisory body***

- 198. This section provides that the advisory body must have regard to any guidance given by the Welsh Ministers in respect of carrying out its functions under the Act. Subsection (2) provides that the Welsh Ministers may not give the advisory body guidance on the content of any advice or report.

#### ***Section 48 – Regulations: procedure***

- 199. This section establishes the Assembly procedure to be followed when making regulations under Part 2 of the Act. Where the regulations designate a person to be the advisory body (section 44(1)(b)) and do not amend primary legislation, or where regulations make provision about international carbon reporting (section 52), they are subject to the Assembly's negative procedure. All other regulations in Part 2 are subject to the Assembly's affirmative procedure.

#### ***Section 49 – Requirement to obtain advice about proposals to make regulations***

- 200. This section provides that before any draft affirmative regulations are laid before the National Assembly for Wales under section 48, the Welsh Ministers must request advice from the advisory body (see section 44) about the proposal to make the regulations and also take that advice into account.
- 201. Subsections (2) to (4) require that when the Welsh Ministers request advice from the advisory body, they must specify a reasonable time period in which to provide the advice. The advisory body must provide the advice within that time period and must set out the reasons for the advice.
- 202. Subsection (5) places a duty on the Welsh Ministers to publish any advice they receive from the advisory body as soon as reasonably practicable after they have received it.
- 203. Subsection (6) provides that if the draft affirmative regulations laid before the National Assembly under section 48(3) are different from what was recommended by the advisory body, the Welsh Ministers must lay before the National Assembly a statement explaining the reasons why the regulations are different.
- 204. Subsection (7) provides that the Welsh Ministers do not need to seek the advice of the advisory body before laying draft regulations which either establish a new body as the advisory body or designate a person as the advisory body.

#### ***Section 50 –Advice about proposed regulations relating to targets and budgets***

- 205. This section makes provision about how the advisory body must respond to requests under section 49 for advice on proposed regulations.

206. Subsection (1) requires that in relation to proposed regulations changing the 2050 emissions target or setting or changing interim emissions targets, the advisory body's advice must include its opinion on whether the Welsh Minister's proposed target is the highest achievable target and if not, what the body considers is the highest achievable target.
207. Subsection (2) requires that in relation to proposed regulations setting or changing carbon budgets, the advisory body must advise on the levels at which carbon budgets should be set and on the extent to which budgets should be met by reducing the amount of net Welsh emissions or by the use of carbon units credited to the net Wales emissions account. The advisory body must advise on the respective contributions towards meeting carbon budgets that should be made by sectors of the Welsh economy covered by trading schemes (taken as a whole) and by other sectors not covered (taken as a whole). The advisory body is also required to advise on sectors of the Welsh economy in which there are particular opportunities for contributions to be made towards meeting carbon budgets through reductions in emissions of greenhouse gases.
208. A 'trading scheme' for the purposes of this section is the meaning given by section 44 of the Climate Change Act 2008. Section 44 of that Act defines trading schemes as schemes which either:
- limit activities that consist of the emission of greenhouse gases or that directly or indirectly lead to such emissions (for example, "cap and trade schemes" which cap emissions from a particular set of activities and allow trading of emissions within the cap), or
  - encourage activities that consist of, or that directly or indirectly lead to, reductions in emissions of greenhouse gases or the removal of greenhouse gases from the atmosphere.
209. Subsection (3) requires the advisory body when advising the Welsh Ministers on making regulations that will change the 2050 emissions target or set or change an interim emissions target or a carbon budget to have regard to the matters listed in section 32(3) of the Act.

### ***Section 51 – Measurement of emissions***

210. [Section 51](#) provides that emissions, emissions reductions and removals are to be measured in tonnes of carbon dioxide equivalent, and defines that term.

### ***Section 52 – International carbon reporting practice***

211. [Section 52](#) defines international carbon reporting practice in terms of the protocols to the United Nations Framework Convention on Climate Change, or other European or international arrangements or agreements which the Welsh Ministers specify by regulations. This power allows the definition to be updated to take account of new international arrangements and agreements.