

CLIMATE CHANGE ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Impact of and adaptation to climate change

Reporting authorities: non-devolved functions

Section 61: Guidance by Secretary of State to reporting authorities

265. This section gives the Secretary of State a power to issue guidance to “reporting authorities”. The term “reporting authority” is defined in section 70(1) to mean any person or body with functions of a public nature, and statutory undertakers.
266. *Subsection (1)* gives the Secretary of State the power to issue guidance. It provides that the guidance may deal with how reporting authorities should assess the current and predicted impact of climate change, how they should prepare proposals and policies to adapt to climate change and how they should co-operate with other reporting authorities when assessing the impact of climate change and preparing those proposals and policies.
267. *Subsection (2)* means that the guidance will not apply to a reporting authority’s “devolved functions”. Section 70 sets out how to determine what a reporting authority’s “devolved functions” are – see the notes on that section for more detail.

Section 62: Directions by Secretary of State to prepare reports

268. This section allows the Secretary of State to require reporting authorities, individually or jointly with other reporting authorities, to prepare reports on adaptation.
269. *Subsection (1)* provides that the Secretary of State may require a reporting authority to prepare a report covering any or all of the following matters:
- an assessment of the current and predicted impact of climate change on the authority’s functions;
 - a statement setting out the authority’s proposals and policies for adapting to climate change, and its timescales for introducing the proposals and policies;
 - an assessment of the progress the authority has made towards implementing any proposals and policies contained in an earlier report.
270. *Subsection (2)* allows the Secretary of State to require two or more authorities to prepare a joint report. *Subsection (3)* allows the Secretary of State to give directions to the reporting authority about the timing of the report and the matters it should cover, and allows the Secretary of State to limit the report’s coverage to a particular geographical area.
271. *Subsection (4)* has the effect that the Secretary of State cannot require an authority to produce a report dealing with how it will adapt to the impact of climate change in relation to its “devolved functions” (defined in section 70 – see the notes on that section

for more information). But the Secretary of State can require the report to cover all of the authority's other, non-devolved, functions.

Section 63: Compliance with Secretary of State's directions

272. This section requires any reporting authority issued with directions under section 62 to comply with them and sets out other details of how they must prepare their reports.
273. *Subsection (1)* sets out the basic duty on reporting authorities to comply with directions. *Subsection (2)* provides that where two or more reporting authorities have been directed to prepare a joint report, then they must take reasonable steps to cooperate with one another in preparing it.
274. *Subsection (3)* lists a number of reports and programmes that all reporting authorities must have regard to when preparing their own reports following a direction from the Secretary of State:
- the Secretary of State's most recent report on the current and predicted risks of climate change under section 56;
 - the Secretary of State's most recent adaptation programme under section 58; and
 - any guidance issued by the Secretary of State under section 61.

But reporting authorities need have regard to those reports and programmes only so far as they are relevant.

275. *Subsection (4)* applies where the Secretary of State directs a reporting authority which has functions exercisable in or as regards Wales or which has "devolved Welsh functions" (as defined in subsections (6) and (7) of section 70). In those circumstances, the authority must also have regard, so far as is relevant, to:
- any guidance issued by the Welsh Ministers under section 66;
 - the Welsh Ministers' most recent report on climate change under section 80.
276. *Subsection (5)* requires a reporting authority to send a copy of its report to the Secretary of State. *Subsection (6)* requires the Secretary of State to publish the report in such manner as he considers appropriate, but subject to the exceptions in subsection (7). Under *subsection (7)*, the Secretary of State is not required to publish anything that he could refuse to disclose under the [Freedom of Information Act 2000 \(c.36\)](#) or under the [Environmental Information Regulations 2004 \(S.I. 2004/3391\)](#) or which he is prohibited from disclosing by any enactment.
277. *Subsection (8)* requires reporting authorities to have regard to their own reports in the exercise of all of their functions other than their "devolved functions" (see section 70 for the definition).

Section 64: Consent of, or consultation with, devolved authorities

278. This section deals with situations where one or more of the "devolved authorities" (as defined in section 70(3)) has an interest or is involved in a function covered by the Secretary of State's guidance under section 61 or in directions given by the Secretary of State under section 62. For example, the Secretary of State may wish to issue guidance to reporting authorities in an area where he would normally only have the power to act with the consent of, or following consultation with, one or more of the devolved authorities; this section sets out the procedures the Secretary of State must follow.
279. *Subsection (1)* sets out two situations in which the Secretary of State is required to obtain the consent of a devolved authority before issuing guidance under section 61 or directions under section 62:

*These notes refer to the Climate Change Act 2008 (c.27)
which received Royal Assent on 26th November 2008*

- the first situation, under paragraph (a), is where the guidance or directions relate to a function of a reporting authority in relation to which a function is exercisable jointly by the devolved authority and a Minister of the Crown. For example, certain functions on the Welsh border are exercisable jointly by the Secretary of State and the Welsh Ministers; before issuing guidance relating to those functions, the Secretary of State would be required to obtain the consent of the Welsh Ministers;
 - the second situation, under paragraph (b), is where a function of a reporting authority relates to a function exercisable by a Minister of the Crown but only with the agreement of the devolved authority.
280. *Subsection (2)* sets out two situations in which the Secretary of State is required to consult a devolved authority before issuing guidance under section 61 or directions under section 62:
- the first situation, under paragraph (a), is where a devolved authority has a function which relates to a reporting authority's function, but in exercising its function the devolved authority is not required to do so jointly with a Minister of the Crown. This covers situations where a devolved authority and a Minister of the Crown have concurrent functions which cover the same or similar ground but are exercisable independently;
 - the second situation, under paragraph (b), is where a reporting authority's function relates to a function of a Minister of the Crown which may only be exercised after consulting the devolved authority.

Section 65: Report on exercise of power to give directions

281. *Subsection (1)* of this section requires the Secretary of State to lay reports before Parliament setting out how he intends to exercise his powers under section 62.
282. *Subsection (2)* provides that the Secretary of State must state the circumstances in which he is likely to give directions to reporting authorities, and the authorities (or kinds of authorities) to whom directions should be given as a matter of priority; *subsection (3)* provides that this does not affect the Secretary of State's general discretion as to how he may exercise his power to issue directions.
283. *Subsection (4)* requires the Secretary of State to consult, as appropriate, persons likely to be affected by his report before he lays it before Parliament.
284. *Subsection (5)* requires the Secretary of State to lay his first report before Parliament within 12 months of the Act obtaining Royal Assent. *Subsection (6)* provides that subsequent reports must be laid before Parliament no later than the time he lays his adaptation programme under section 58 before Parliament (this means that there will be reports at least every 5 years).
285. *Subsection (7)* requires the Secretary of State to send a copy of each report to each of the other national authorities.