DRAFT STATUTORY INSTRUMENTS

2013 No. 1821

CONSTITUTIONAL LAW
DEVOLUTION, WALES
PUBLIC BODIES

The Natural Resources Body for Wales (Consequential Provision) Order 2013

Made - - - - 17th July 2013

Coming into force in accordance with article 1(2)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 150(1), (2) and (4) and 157(2) of the Government of Wales Act 2006(**1**) and section 2(2) of the European Communities Act 1972(**2**).

The Secretary of State is designated(**3**) for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to basic safety standards for the health protection of the general public and workers against the dangers of ionising radiation.

In accordance with section 150(5) of the Government of Wales Act 2006 and paragraph 2(2) of Schedule 2 to the European Communities Act 1972, a draft of this instrument was laid before and approved by a resolution of each House of Parliament.

PART 1

Preliminary

Citation and commencement

1.—(1) This Order may be cited as the Natural Resources Body for Wales (Consequential Provision) Order 2013.

(2) This Order comes into force on the day after the day on which it is made.

(3) Parts 1 to 5 and 7 and articles 29 to 31 of this Order have effect from 1st April 2013.

(**1**) 2006 c. 32. This Act is referred to in the footnotes to this Order as "the 2006 Act".
(**2**) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).
(**3**) S.I. 1991/2289, to which there are amendments not relevant to this Order.

Interpretation

2. In this Order—

"the 1967 Act" means the Forestry Act 1967(**4**);

"the 1995 Act" means the Environment Act 1995(**5**);

"the 1998 Act" means the Government of Wales Act 1998(**6**);

"the 1999 Order" means the National Assembly for Wales (Transfer of Functions) Order 1999(**7**).

PART 2

Delegation of functions

Delegation of functions by the Environment Agency

3.—(1) The Public Bodies Act 2011(**8**) is amended as follows.

(2) In section 26(1), omit "non-devolved".

(3) In section 36(1), in the definition of "cross-border operator", before paragraph (a) insert—

"(za) the Natural Resources Body for Wales,".

Delegation of functions by the Forestry Commissioners

4.—(1) The Forestry Commissioners may make arrangements with the Natural Resources Body for Wales for that Body to exercise a function of the Commissioners.

(2) Arrangements under paragraph (1) may be made only in relation to land in England that—

(a) has been placed, or is treated as having been placed, at the disposal of the Commissioners under the 1967 Act, and

(b) adjoins, or is adjacent to, Wales.

PART 3

Environment Agency: constitutional and funding arrangements and general provisions

Appointment of members: removal of functions of Welsh Ministers

5. Functions under section 1 of, and Schedule 1 to, the 1995 Act, so far as exercisable by the Welsh Ministers(**9**), are transferred to the Secretary of State.

(**4**) 1967 c. 10.
(**5**) 1995 c. 25.
(**6**) 1998 c. 38.
(**7**) S.I. 1999/672, to which there are amendments not relevant to this Order. The 1999 Order was made under section 22 of the Government of Wales Act 1998 (c. 38). Its provisions continue to have effect despite the repeal of that section, by virtue of section 162 of, and paragraph 26 of Schedule 11 to, the 2006 Act.
(**8**) 2011 c. 24.
(**9**) The function under section 1(2)(b) is exercisable by the Welsh Ministers to the extent that they may make such appointments as will ensure that there is at all times one member of the Environment Agency appointed by them. Functions of the "appropriate Minister" under Schedule 1 are exercisable by the Welsh Ministers to the extent that they relate to any member appointed by them. *See* the entry relating to the 1995 Act in Schedule 1 to the 1999 Order, and section 162 of, and paragraph 30 of Schedule 11 to, the 2006 Act. In relation to any other member of the Environment Agency, functions of "the Minister" and "the appropriate Minister" under section 1 and Schedule 1 are exercisable by the Secretary of State: *see* articles 1 and 2 of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794) ("the 2002 Order"). The effect of

General and financial provisions: removal of functions of Welsh Ministers

6. Functions under sections 37(2) and (4), 38 and 44 of the 1995 Act(**10**), so far as exercisable by the Welsh Ministers, cease to be exercisable by the Welsh Ministers.

7. The function under section 45(2) of the 1995 Act(**11**), so far as exercisable by the Welsh Ministers, is transferred to the Secretary of State.

8. Functions under sections 47 to 52 of the 1995 Act(**12**), so far as exercisable by the Welsh Ministers, cease to be exercisable by the Welsh Ministers.

9.—(1) The function under section 53(1)(b) of the 1995 Act(**13**), so far as exercisable by the Welsh Ministers, ceases to be exercisable by the Welsh Ministers.

(2) Functions under the other provisions of section 53(1)(a) and (2) of the 1995 Act(**14**), so far as exercisable by the Welsh Ministers, are transferred to the Secretary of State.

Audit: removal of functions of Auditor General for Wales

10. Functions under sections 46(4) and 49(3) and (4) of the 1995 Act(**15**), so far as exercisable by the Auditor General for Wales, cease to be exercisable by the Auditor General for Wales.

Repeal of provisions of 1998 Act relating to Welsh functions of the Environment Agency

11.—(1) The 1998 Act is amended as follows.

(2) Omit section 147(**16**).

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the 2002 Order and article 5 of this Order is that functions in relation to all members of the Agency become exercisable only by the Secretary of State.

(**10**) The functions under sections 37(2) and (4), 38 and 44 are exercisable by the Welsh Ministers, in relation to Wales, concurrently with any Minister of the Crown by whom they are exercisable. *See* the entry relating to the 1995 Act in Schedule 1 to the 1999 Order and section 162 of, and paragraph 30 of Schedule 11 to, the 2006 Act. The effect of article 6 is that these functions become exercisable only by the relevant Minister of the Crown.

(**11**) The relevant function of "the appropriate Ministers" under section 45(2) was, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the 1999 Order. That function was transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the 2006 Act. So far as exercisable otherwise than in relation to Wales, the function is exercisable by the Secretary of State: *see* articles 1 and 2 of the 2002 Order. The effect of the 2002 Order and article 7 of this Order is that the function becomes exercisable only by the Secretary of State.

(**12**) The functions of "the appropriate Minister" and "the appropriate Ministers" under these sections are exercisable by the Welsh Ministers, in relation to Wales, concurrently with any Minister of the Crown by whom they are exercisable. *See* the entry relating to the 1995 Act in Schedule 1 to the 1999 Order (which makes specific provision about the exercise of these functions and about the continuing effect of Treasury approval requirements), and section 162 of, and paragraph 30 of Schedule 11 to, the 2006 Act. So far as exercisable in relation to the Environment Agency otherwise than in relation to Wales, the functions are exercisable by the Secretary of State: *see* articles 1 and 2 of the 2002 Order. The effect of the 2002 Order and article 8 of this Order is that these functions become exercisable in relation to the Environment Agency only by the Secretary of State.

(**13**) The function of "the appropriate Minister" under section 53(1)(b) is exercisable by the Welsh Ministers, in relation to Wales, concurrently with any other Minister of the Crown by whom it is exercisable. *See* the entry relating to the 1995 Act in Schedule 1 to the 1999 Order, and section 162 of, and paragraph 30 of Schedule 11 to, the 2006 Act. So far as exercisable in relation to the Environment Agency otherwise than in relation to Wales, the function is exercisable by the Secretary of State: *see* articles 1 and 2 of the 2002 Order. The effect of the 2002 Order and article 9(1) of this Order is that the function becomes exercisable in relation to the Environment Agency only by the Secretary of State.

(**14**) The functions were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the 1999 Order. Those functions were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the 2006 Act. So far as exercisable in relation to the Environment Agency otherwise than in relation to Wales, the function is exercisable by the Secretary of State: *see* articles 1 and 2 of the 2002 Order. The effect of the 2002 Order and article 9(2) of this Order is that these functions become exercisable in relation to the Environment Agency only by the Secretary of State.

(**15**) The functions of the Comptroller and Auditor General under sections 46(4) and 49(3) and (4) are exercisable concurrently with the Auditor General for Wales so far as they relate to any of the Welsh functions of the Environment Agency or to any funding provided to the Agency by the Welsh Ministers: *see* the entry relating to the 1995 Act in Schedule 1 to the 1999 Order. The effect of article 10 is that these functions become exercisable only by the Comptroller and Auditor General: but see the transitional provision in article 26 of this Order.

(**16**) There are amendments to section 147 that are not relevant to this Order.

(3) In section 154, in subsections (3)(b) and (6)(a) omit ", 147(1)".

PART 4

Forestry Commissioners: constitutional and funding arrangements

Abolition of the National Committee for Wales

12.—(1) The 1967 Act is amended as follows.

(2) In section 2(3), for "England, Scotland and Wales" substitute "England and Scotland".

(3) In Schedule 1, in paragraph 7(2)(**17**), omit "or Wales".

Funding arrangements: removal of functions of Welsh Ministers

13.—(1) Functions under section 41 of the 1967 Act(**18**), so far as exercisable by the Welsh Ministers, are transferred to the Secretary of State.

(2) In section 41 of the 1967 Act—

(a) for "Minister", in each place where it occurs, substitute "Secretary of State";

(b) in subsection (7)(a), after "exchange of land" insert "in England".

Remuneration and superannuation: removal of functions of Welsh Ministers

14.—(1) Functions under Schedule 1 to the 1967 Act(**19**), so far as exercisable by the Welsh Ministers, are transferred to the Secretary of State.

(2) The function of the Treasury under paragraph 6(1) of Schedule 1 to the 1967 Act is exercisable free from any requirement to consult the Welsh Ministers(**20**).

Repeal of provisions of 1998 Act relating to Welsh functions of the Forestry Commissioners

15.—(1) The 1998 Act is amended as follows.

(2) Omit section 105 and paragraphs 3 to 11 of Schedule 7(**21**).

(**17**) Amended by S.I. 1999/1747, 2000/746.

(**18**) The functions of the "the Minister" were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the 1999 Order. Those functions were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the 2006 Act. So far as exercisable otherwise than in relation to Wales, the functions are exercisable by the Secretary of State: *see* articles 1 and 2 of the 2002 Order. The effect of the 2002 Order and article 13(1) of this Order is that those functions become exercisable only by the Secretary of State.

(**19**) The functions of "the Ministers" under paragraphs 6(2), 9(1) and 10(1) of Schedule 1 were, so far as exercisable by the Secretary of State in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the 1999 Order. Those functions were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the 2006 Act. So far as not transferred by the 1999 Order, the functions were transferred to the Secretary of State by articles 1, 2 and 3(5) of the 2002 Order. The effect of the 2002 Order and article 14 of this Order is that those functions become exercisable only by the Secretary of State. Functions under paragraph 7(2) of Schedule 1 were transferred only to the extent that they relate to a committee for Wales appointed under section 2(3) of the 1967 Act; see the amendments to section 2(3) and paragraph 7(2) of Schedule 1 made by article 12 of this Order, which abolish that committee.

(**20**) The function of the Treasury under paragraph 6(1) was transferred to the Minister for the Civil Service by article 2(2) of the Transfer of Functions (Treasury and Minister for the Civil Service) Order 1995 (S.I. 1995/269). In relation to Wales, the function was made exercisable only after consulting the National Assembly for Wales by article 5(1) of, and Schedule 2 to, the 1999 Order (*see* the entry in Schedule 2 relating to the 1967 Act). The function of being consulted was transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the 2006 Act. The entry relating to the 1967 Act in Schedule 2 to the 1999 Order is revoked by article 29(3) of this Order.

(**21**) Schedule 7 was amended by W.S.I. 2013/755 (W. 90); there are other amendments to section 105 and Schedule 7 that are not relevant to this Order. The effect of article 15 is to remove Welsh Ministers' and the Auditor General for Wales' involvement in relation to the funding arrangements and financial accountability of the Forestry Commissioners; but see the transitional provision in article 27 of this Order.

(3) In section 154—

(a) in subsection (3)(b) omit "or paragraph 1 of Schedule 7";

(b) in subsection (6)(a) omit ", paragraph 1 of Schedule 7".

PART 5

Charging schemes

Charging schemes: general provisions

16.—(1) Section 41 of the 1995 Act(**22**) is amended as follows.

(2) In subsection (1), in the opening words, for "section 42" substitute "sections 41B, 41C and 42".

(3) After subsection (10) insert—

"(10A) Any power of the Secretary of State to make regulations under this section is exercisable in relation to Wales only after consultation with the Welsh Ministers."

Charges in respect of EU greenhouse gas emissions trading scheme

17.—(1) Section 41A of the 1995 Act(**23**) is amended as follows.

(2) In subsection (1)—

(a) in the opening words, for "new Agencies" substitute "charging authorities";

(b) in the closing words, for "new Agency" substitute "charging authority".

(3) In subsection (1C)—

(a) for "new Agency" substitute "charging authority";

(b) after "Secretary of State" insert ", the Welsh Ministers".

(4) In subsection (2)—

(a) in paragraph (b), for "SEPA" substitute "another charging authority";

(b) in the closing words—

(i) for "SEPA" substitute "that other charging authority";

(ii) after "Secretary of State" insert ", the Welsh Ministers".

(5) In subsection (3), for "SEPA" substitute "the relevant charging authority".

(6) In subsection (5)—

(a) at the beginning, insert "The Natural Resources Body for Wales and";

(b) for "it receives" substitute "they receive".

(7) In subsection (7), in the appropriate place insert—

""charging authority" means the Agency, the Natural Resources Body for Wales or SEPA;".

18.—(1) Section 42(3A) of the 1995 Act(**24**) is amended as follows.

(2) For "new Agency", in each place where it occurs, substitute "charging authority".

(**22**) Section 41 was amended by W.S.I. 2013/755 (W. 90). There are other amendments to section 41 that are not relevant to this Order.

(**23**) Section 41A was inserted by S.I. 2005/925 and amended by S.I.2012/2788 and W.S.I 2013/755 (W. 90).

(**24**) Section 42(3A) was inserted by S.I 2012/2788.