

## **The Natural Resources Body for Wales (Functions) Order 2012**

### **Background**

The Natural Resource Body for Wales (Establishment) Order 2012 ('the Establishment Order') created the body as a legal entity with an overarching aim and provided it with wide powers to undertake preparatory work. This first order was approved by the National Assembly on 18 July 2012 and made by the Minister for Environment and Sustainable Development on the same day. The new body was subsequently established on 19 July 2012.

The functions provided for in the first order were those necessary to enable the Natural Resources Body for Wales to undertake the necessary preparatory work ready to receive the full range of environment functions in April 2013.

A further order is now required to transfer functions to the new body and make consequential changes. It is intended that the Natural Resources Body for Wales (Functions) Order 2012 ('the Functions Order') will be laid before the National Assembly in November 2012. It will be laid with an Explanatory Memorandum.

### **The Natural Resources Body for Wales (Functions) Order 2012**

The Functions Order contains further general powers and duties of the body, updating those in the first order to reflect operational needs. It also transfers functions to the body in respect of Wales, including all the relevant Environment Agency functions (with the exception of the Wye Navigation) and Countryside Council for Wales and Forestry Commission functions. The transfer of functions is largely achieved by amending existing legislation in place. The order also makes provision to abolish the Countryside Council for Wales and the Welsh Environment Protection Advisory Committee and Regional and Local Fisheries Advisory Committee of the Environment Agency.

The detail relating to the functions of the Natural Resources Body for Wales are contained in the schedules to the order.

## **Schedule 1 and the Establishment Order**

The provisions of schedule 1 need to be read in conjunction with the Establishment Order. This explanation therefore deals with both orders.

The main effect of the provisions can be summarised as follows:

The purpose of the body and associated guidance remain as set out in the Establishment Order.

Nature conservation duties. The existing duties of CCW and EA in respect of conservation overlap to a large extent, although there are important differences. To a lesser extent, they also overlap with the 'balancing duty' in section 1(3A) of the Forestry Act 1967.

For the present draft of the Functions Order, we have rationalised the various duties by removing the Environment Protection Act 1990 provisions and amending section 7 of the Environment Act 1995. [The detailed amendments to the source legislation are in schedule 2 of the Functions Order].

We have also brought across the reference to the broad ecological change from the section 131 Environmental Protection Act 1990, and retained the balancing duty in respect of forestry.

Our intention in making these changes is to provide the body with similar conservation duties in respect of its functions as those that exist now.

The wording in the order is aligned with the wording contained in the current Natural Resources Body for Wales consultation, which provides more detail. This will be reviewed once we have considered the detailed responses.

Based on consultation feedback we have already received we have updated the definition of nature conservation to explicitly include geographical and physiographic features.

Access and recreation duties. These duties are set out on the face of the Functions Order. They are closely based on the provisions of existing legislation, although we have taken the opportunity to extend the power to encourage the provision and improvement of facilities to include 'opportunities', which we believe better reflects current practice. Again, we intend to review this wording once we have received all consultation responses.

Revocation of preparatory powers. Paragraph 5 of Schedule 1 to the Functions Order revokes the broad preparatory powers provided to the body by the Establishment Order, which are not needed after vesting date.

Consultation and co-operation with the Environment Agency. The Functions Order provides duties on the body to co-operate and undertake appropriate consultation on matters which affect England. This is intended to underpin cross-border activity and is supplemented by the powers in sections 27 and 28 of the Public Bodies Act 2011. We have provided for similar duties on the Environment Agency in schedule 2 of the order, via an amendment to the Environment Act 1995. We are looking at whether further provisions are needed to ensure that both bodies have clear powers to address cross-border matters on behalf of the other.

Costs and benefits. Article 8 of the Establishment Order continues to have effect. This makes the Body subject to a duty equivalent to that in section 39 of the Environment Act 1995, i.e. to have regard to costs and benefits in exercising its powers. This does not override any statutory duties, such as the need to comply with European Directives.

General incidental functions. Article 9 of the Establishment Order continues to be in effect and provides broad, general powers. The detail of this is drawn directly from existing legislation. The Functions Order makes some amendments to these powers, and adds powers to make agreements with local authorities and other public bodies, again using working from existing legislation.

Advice and assistance to Welsh Ministers and others. Article 10 of the Establishment Order remains and is updated by a power to advise Welsh Ministers on matters for which it exercises functions. This power is based on existing powers of all three bodies. A new article 10A provides powers to assist others, for example, to work with the third sector, subject to some limitations in respect of operations outside Wales. A new article 10B makes similar provisions for financial assistance (such as grants) to other parties.

Research. New article 10C provides a duty on the new body to make arrangements for the carrying out of research. This reflects existing duties on the existing bodies.

Criminal proceedings. A new article 10E confers prosecution powers on the Body.

Directions. The Welsh Ministers already have the power to direct the Body by virtue of article 11 of the Establishment Order. Further provisions about the powers of the Welsh Ministers and SoS to direct the new body are set out in paragraphs 12 and 13 of Schedule 1 to the Functions Order. Powers to direct EA are also updated in schedule 2.

Financial matters. Part 3 (articles 12-15) of the Establishment Order made provisions for the funding of the body, and Schedule 1 provided matters such as the provision of accounts. Paragraph 14 of Schedule 1 to the Functions Order adds a charging power. This is limited to reflect existing charging arrangements in current legislation. Schedules 2-6 contain provisions to transfer the existing powers of the bodies to raise charges – generally on a cost recovery basis – for regulation. Transitional arrangements will also be included to transfer existing charging schemes and provide continuity of costs for business and income for the new body.

Part 4 of Schedule 1 to the Functions Order provides for transparency of permitting decisions in line with proposals in our consultation. This includes a requirement for the body to ensure publication of information about all permit applications which it makes to itself.

## **Schedules 2-6**

Schedules 2 to 6 deal with the amendments that have to be made to existing legislation: Acts of the UK Parliament, Measures of the National Assembly, UK Statutory Instruments, Welsh Statutory Instruments and other subordinate legislation respectively. The legislation to be amended is listed in the respective Schedules chronologically, with the oldest legislation appearing first.

These schedules largely replace or add to references to the existing bodies (CCW, EA and FCGB) throughout the legislation, transferring the functions to the new body and removing the role of the existing bodies in Wales. They also include various amendments which are necessary as a consequence of that change, particularly in respect of border matters. The drafting follows the policy principles set out in our consultations. We will provide further explanation of specific issues in the explanatory memorandum when we lay the order.

## **Schedule 7**

This deals with transitional and saving provisions. Essentially it ensures that a range of actions and decisions undertaken by the predecessor bodies continue to have effect as if they had been undertaken or made by the Natural Resources Body for Wales.

## **Other legal aspects**

Alongside the orders, there are a series of other legal requirements/ actions, most of which need to be in place prior to full vesting date. These are summarised below:

A UK Government order (subject to Parliamentary approval) containing provisions which are not within the powers of the Welsh Ministers. The majority of these provisions comprise matters which modify the constitution or funding arrangements of the Environment Agency or Forestry Commission. As this is a UK Government order, it will require Parliamentary approval.

An order to add the new body to section 33 of the VAT Act 1994. As the body already exists, this is a straightforward, relatively short order which is being taken forward by HMRC/Treasury.

A Pensions order to make appropriate provisions in the Local Government Pension Scheme. DCLG have agreed to take this forward on our behalf.

An order made by the Welsh Ministers (subject to Assembly approval) to delegate the existing Welsh Ministers' marine licensing functions to the new body. We intend to delegate these powers via the provisions contained in the Marine and Coastal Access Act 2009.

A Transfer Scheme to be made by the Welsh Ministers with UK Government agreement. This will cover the transfer of assets, liabilities and staff from both the Environment Agency and Forestry Commission to the new body. It will encompass asset and liability transfers, including data and intellectual property rights, as well as staff transfers and TUPE provisions. It will also be the vehicle for contract transfers.

Service agreements between the body, on the one hand, and the Environment Agency and Forestry Commission on the other, under section 28 and 29 of the Public Bodies Act 2011. These cover the ongoing provision of services from both Environment Agency and Forestry Commission.