

Y Pwyllgor Amgylchedd a Chynaliadwyedd

Lleoliad:
Ystafell Bwyllgora 3 – y Senedd

Dyddiad:
Dydd Mercher, 14 Tachwedd 2012

Amser:
09:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



I gael rhagor o wybodaeth, cysylltwch â:

Alun Davidson
Clerc y Pwyllgor
029 2089 8639
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Agenda

1. Cyflwyniad, ymddiheuriadau a dirprwyon

2. Gorchymyn Corff Adnoddau Naturiol Cymru (Swyddogaethau) (09.30 – 11.30) (Tudalennau 1 – 35) 09.30 – 10.30

E&S(4)-28-12 papur 1- Cyswllt Amgylchedd Cymru
E&S(4)-28-12 papur 2 - RSPB Cymru
E&S(4)-28-12 papur 3 - Coed Cadw
Sharon Thompson, RSPB Cymru
Rachel Sharp, Ymddiriedolaethau Natur Cymru
Rory Francis, Coed Cadw

10.30 – 11.30

E&S(4)-28-12 papur 4 - Undeb Amaethwyr Cymru
Rhian A Nowell-Phillips, Dirprwy Gyfarwyddwr Polisi Amaethyddol

Cymdeithas Tir a Busnesau Cefn Gwlad
Ben Underwood, Cyfarwyddwr Cymru

Undeb Cenedlaethol yr Amaethwyr Cymru
Bernard Llewellyn, Cadeirydd Bwrdd Materion Gwledig Undeb Cenedlaethol yr
Amaethwyr Cymru
Dafydd Jarrett, Ymgynghorydd Polisi Ffermydd

3. Papurau i'w nodi (Tudalennau 36 – 37)

E&S(4)-28-12 paper 5 – Gorchymyn Corff Adnoddau Naturiol Cymru

(Swyddogaethau) – Llythyr gan y Gweinidog Amgylchedd a Datblygu Cynaliadwy

Cyswllt Amgylchedd Cymru



Wales Environment Link

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Cadeirydd / Chair: Dr Madeleine Havard Cyfarwyddwraig / Director: Susan Evans www.waleslink.org

Lord Dafydd Elis-Thomas AM
Chair, Environment and Sustainability Committee
National Assembly for Wales
Cardiff Bay
CF10 1NA

Tuesday 9 October 2012

RE: Natural Resources Body for Wales draft 2nd Order

Dear Dafydd,

As I'm sure you are aware, WEL has been involved in discussions regarding the formation of the Natural Resources Body for Wales (previously the Single (Environment) Body). We are aware that the Environment and Sustainability Committee is scrutinising the draft Order, with a deadline for views of 15th October. WEL has also been asked to make an initial response through the Welsh Government's Living Wales Reference Group and we welcome this early opportunity to make comments. WEL has two major concerns about the new Body and we would like to share these with you and members of the Committee.

1 Purpose of the new Body

We would like to emphasise the importance of developing and retaining a strong purpose for the new Body, which comprises a broad definition of environment and is underpinned by a clear understanding of what is meant by sustainability and sustainable development. In our response to the first Natural Resources Body for Wales consultation WEL stated that the primary purpose of the new Body must be:

“To protect, conserve, enhance and positively manage Wales' environment and so ensure its benefits for the people of Wales, now and in the future.”

WEL believes that the purpose of the NRBW as defined in the legal Orders must conform to these principles. In this way we believe that it will ensure that the Body can positively manage urban and rural environments in Wales in a sustainable and integrated way ensuring the conservation, protection and enhancement of biodiversity, landscapes, seascapes and heritage assets.

The Body must also recognise that its decision-making cannot take place in isolation from international legislation or agreements or without recognition of its consequences on others in a global context. It must also incorporate thinking around the Sustainable Development Bill as well as *Sustaining a Living Wales*.

We believe that the Orders to create the Body must include direct reference to the Body's overarching role and responsibility towards sustainable development and the new ecosystem based approach identified in *A Living Wales*. Without sufficient flexibility and opportunity built into the new organisation's core remit and functions we feel that there is a danger that the Body will be, from its inception, limited and lacking in ambition.

Thus this is a crucial time for Welsh Government to align and integrate these emerging policy areas.

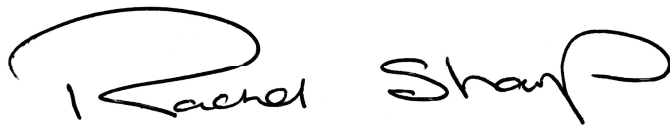
2 Strength of the Natural Beauty and Nature Conservation Duty

WEL has serious concerns over the wording of this duty. Whilst we understand that the wording proposed in the 2nd Order has been taken from the existing duty on the Environment Agency under s7(1) Environment Act, 1995, we believe that the limiting and torturous wording creates a duty narrower and weaker in its obligations than the existing CCW duty. As the weakening of existing duties is prohibited under the powers of the Public Bodies Act, this serious issue needs to be addressed.

WEL would be grateful if you could consider these critical concerns in your own deliberations. If you wish for any further clarification or assistance please do not hesitate to contact Raoul Bhambral, Advocacy Officer for WEL, on raoul@waleslink.org.

Many thanks for your consideration.

Warm regards,

A handwritten signature in black ink that reads "Rachel Sharp". The signature is written in a cursive, flowing style.

Rachel Sharp
Chair of WEL Living Wales Working Group

CC:

Mick Antoniw AM
Keith Davies AM
Russell George AM
Vaughan Gething AM
Llyr Huws Gruffydd AM
Julie James AM
William Powell AM
David Rees AM
Antionette Sandbach AM



Natural Resources Body for Wales (additional consultation) response

October 2012

Wales Environment Link (WEL) is a network of environmental and countryside Non-Governmental Organisations in Wales, most of whom have an all-Wales remit. WEL is officially designated the intermediary body between the government and the environmental NGO sector in Wales. Its vision is to increase the effectiveness of the environmental sector in its ability to protect and improve the environment through facilitating and articulating the voice of the sector.

Wales Environment Link values the opportunity to take part in this important consultation.

Introduction – overarching considerations

Whilst WEL is widely supportive of the creation of the new Natural Resources Body for Wales (NRBW) we have concerns regarding the proposed wording for the duties of the body and will provide further detail in the appropriate section of our response below. In principle we would like to see one strong and common duty for the NRBW, which is applied across the range of its activities and is in line with WEL's position on the purpose of the new body. We will be revisiting this point in our future work with Government on the Environment Bill. We are also concerned that Welsh Government has not provided sufficient detail in important areas where the transfer of functions (duties and powers) has been proposed. There is little information available on the arrangements for planning and management of the marine environment with regard to the new body, and issues relating to landscape management and protection have thus far been significantly under-represented in the proposed role, functions and scope of the new body.

The omission of detail on such important areas is contributing to growing uncertainty within WEL that all of the existing functions of the legacy bodies will be transferred across to the NRBW with the same weight and relevance as they had in their predecessor organisations. WEL would be highly concerned if this were not the case, and we therefore seek reassurance from Welsh Government that the final legislation will ensure that the full range of functions of the existing organisations is transferred with no loss of protection/ operational functionality. In addition, WEL has repeatedly asked to see a list of all the pieces of legislation being reviewed and the amendments proposed. For 27 September 2012 Reference Group meeting, Welsh Government provided a list of pieces of legislation that are being considered. However, this is only part of what was requested as WEL is primarily interested in reviewing the proposed amendments, and we would appreciate the information in its entirety as soon as possible.

We would like to emphasise the importance of developing and retaining a strong purpose for the body, which comprises a broad definition of environment and is underpinned by a clear understanding of what is meant by sustainability and sustainable development. In our response to the previous NRBW consultation WEL stated that the primary purpose of the new body must be: “To protect, conserve, enhance and positively manage Wales’ environment and so ensure its benefits for the people of Wales, now and in the future.” WEL believes that the purpose of the NRBW as defined in the legal orders must conform to these principles and serve to ensure that the body positively manages urban and rural environments in Wales in a sustainable and integrated way ensuring the conservation, protection and enhancement of biodiversity, landscapes, seascapes and heritage assets. The body must also recognise that its decision-making cannot take place in isolation from international legislation or agreements or without recognition of its consequences on others in a global context.

The incorporation of Welsh Government’s work on the Sustainable Development Bill with the establishment of the NRBW is therefore essential if the new body is to achieve its potential as a powerful, creative and influential force for the responsible and sustainable stewardship of the Welsh environment in an international context. The new body could then serve as an ambassador for public bodies in implementing the sustainable development duty and help to spearhead the important cultural and behavioural shifts necessary to create a sustainable Wales.

The body also has potential to lead a step change in environmental management and adaptation in the face of accelerating environmental change; outcomes we anticipate the emerging Natural Environment Framework and Living Wales agenda will introduce. As a result, WEL was surprised and concerned to find no obvious reference to Living Wales in the establishment legislation, especially given that the NRBW will be a key developer and deliverer of this programme. We believe that the orders to create the body must include direct reference to the body’s overarching role and responsibility towards sustainable development and the new approaches identified by the work of Living Wales. Without sufficient flexibility and opportunity built into the new body’s core remit and functions there is a danger that the NRBW will be, from its inception, limited and lacking in ambition. Thus there has never been a more crucial time for Welsh Government to effectively align and integrate the emerging policy areas.

Natural beauty and nature conservation duty

WEL is unhappy with the wording proposed in Box 2 (a). Whilst we understand that it has been taken from the existing duty on the Environment Agency under s7(1) Environment Act, 1995, the limiting and torturous wording serves to create a duty much narrower in its obligations than the existing CCW duty. In particular, the references to “proposals” in the duty create uncertainty over whether the duty applies only to these proposals as opposed to the wider exercising of its functions. By comparison the recreation duty in Box 3(2)(1) is much clearer – “The NRBW must exercise its functions so as to encourage...”. WEL feels that the natural beauty and nature conservation duty must therefore be amended to expand and clarify its meaning, i.e. “to exercise and discharge any power/ its functions to **further...**”.

Forestry duty

WEL recognises the limited nature of the powers in the Public Bodies Act and that Welsh Government is unable to make legislative changes in this process other than those considered ‘necessary’ to facilitate the transfer of functions to the new body. However, we do not feel that either option put forward by Welsh Government in the consultation document, i.e. the transfer of the forestry balancing duty or the duty to have regard to the desirability of nature conservation from the Environment Act 1995, is the ideal scenario for the new body, and as a result we cannot directly support either option.

WEL understands that it would be unhelpful to ask Welsh Government to make substantial changes to the forestry balancing duty as part of this particular legislative process and we will instead be recommending amendments as part of subsequent legislative programmes, i.e. the Environment Bill. WEL would like to take this opportunity to state our belief that it is the duty of the NRBW to manage its woodland estate sustainably to fulfil a variety of needs and outcomes. We would expect this approach to integrate environmental, economic and social factors.

Powers of direction and cross-border arrangements

WEL would like clarification from Welsh Government on powers of direction (Welsh ministers and Westminster) in respect of cross border activities and how the consultation between Welsh-UK ministers and the respective bodies will take place. We would also like acknowledgement from Welsh Government that the last sentence on page 18 of the consultation document “we anticipate that this work will continue” with respect to management of cross-border protected sites by CCW and other Statutory Nature Conservation Bodies (e.g. JNCC, Natural England) is poorly worded, and that the management of these sites will continue once the new body is vested.

Statutory consultee role

WEL is concerned at the current lack of information on the NRBW’s plans for engagement and working relationships with the environmental NGO sector. WEL wants to see more information on this crucial element of the new body’s role in order to have confidence in the future arrangements.

Internal separation of decision-making, transparency and public registers

While WEL agrees in principle with the concept of internal separation to ensure independent decision-making and adequate transparency for the new body, we have some concerns about how the NRBW will achieve this in practice. The Seaports Investments judgment states that “a functional separation [must] be organized so that an administrative entity internal to it has real autonomy” so that it is in a position to “give an objective opinion on the plan or programme...”. Therefore WEL cannot agree with the specific proposals outlined by Welsh Government in the consultation document, and we would like further detail on how a high level of functional separation in compliance with the Seaports judgment will be achieved in the NRBW to ensure transparency.

WEL also has concerns over the procedure Welsh Government has outlined in section 6.3 of the consultation document, for the NRBW to publish a “list... of all legal permits, of any type” that the body issues in respect of its own operations. In order to ensure complete transparency in the process, we believe that instead of simply listing any legal permits it has issued, the body must publish a list of permits it intends to issue. The incorporation of an advance notification period into the process would provide a crucial opportunity for interested parties to view the information upon which a proposed decision has been based and act accordingly, legitimizing the final decision. WEL has similar concerns over the retrospective publication of the “scheme” and public registers, and would like reassurance from Government that an advance notification period will be included in all these processes to ensure transparency.

WEL finds the proposal for a public register confusing as it is not clear how it relates to the list of permits, the scheme, the formal publication of decision documents (s6.2) and existing obligations with respect to registers. This section needs further clarity to make it clearer how these different documents relate, what they would include and how they would operate.

Civil sanctions

WEL supports Welsh Government's proposals for the NRBW regarding civil sanctions. We understand that whilst the civil sanction powers will be extended to the whole body they will remain within the existing functions of the Environment Agency for an initial period. We would strongly support the extension of these powers to other functions of the new body in future, including but not limited to the existing functions of CCW.

The following WEL members support this document:

Afonydd Cymru

Bat Conservation Trust

British Mountaineering Council

Butterfly Conservation Wales

Cambrian Mountains Society

Campaign for National Parks

Campaign for the Protection of Rural Wales

Coed Cadw / Woodland Trust

The Conservation Volunteers

Cymdeithas Eryri / Snowdonia Society

Marine Conservation Society

Plantlife Cymru

Ramblers Cymru

RSPB Cymru

Salmon and Trout Association

Vincent Wildlife Trust

Wildlife Trusts Wales

Wye & Usk Foundation

Ymddiriedolaeth Genedlaethol / National Trust

Environment and Sustainability Committee

E&S(4)-28-12 paper 2



Evidence from the RSPB to the Environment & Sustainability Committee

Inquiry into the Draft Natural Resources Wales (Functions) Order

8th November 2012

The RSPB is Europe's largest wildlife charity, with more than one million members, over 51,000 of them living in Wales. The Society manages one of the largest conservation estates in the UK, covering more than 140,000 hectares; over 16,000 of these in Wales. Across the UK the RSPB's reserves are home to 80% of our rarest or most threatened bird species. The RSPB also works beyond our reserves, including in Futurescapes areas, with a range of organisations, businesses and landowners to bring about habitat improvements for species of conservation concern. We work to protect and enhance habitats such as upland and lowland farmland, heather moorland, coastal heath, wet grassland, estuaries and reedbeds, and our reserves help to protect rare and threatened wildlife.

RSPB Cymru welcomes the opportunity to respond to the Committee's scrutiny of the Second Order and the invitation to give oral evidence to the Committee. RSPB Cymru has serious concerns about many of the main aspects proposed for inclusion in the draft second Order for the Natural Resources Wales (NRW). We have provided an overview of these concerns under headlines below. Our views are based on the proposals within the draft second Order and the recent NRW consultation which closed 5th October 2012. The latter according to the explanatory note accompanying the draft second Order, provides further detail and is aligned with the draft second Order.

The new body has a huge role in tackling the challenges ahead. The natural environment of Wales is degraded and under an increasing burden from human and climactic pressures. Wales, alongside other nations globally, failed to meet the 2010 international target to halt the loss of biodiversity. And without a body to proactively manage, protect and restore the natural environment, Wales will continue to lose its wildlife and fail to meet the 2020 international biodiversity target to halt and reverse biodiversity loss.

Providing Leadership in Addressing Wildlife Declines

To deliver sustainable development (SD), the objectives of all three pillars of SD – social,

economic and environmental – must be achieved. Consequently, without a public body that specifically leads on environmental enhancement and sustainability, the Welsh Government will not achieve SD. Moreover, without environmental sustainability, Welsh society and the Welsh economy will no longer be able to derive the ecosystem service benefits which we value. We would also add that nature should be protected and conserved for its own sake (i.e. its intrinsic value). The RSPB and many of our supporters would agree that we have a moral responsibility for the stewardship of nature, as well as managing it for the utilitarian services humans receive from it.

NRW is not and should not be a sustainable development body – a separate SD Body is being proposed by the Welsh Government under the SD Bill. The aim of NRW must be to protect biodiversity (i.e. the building blocks of ecosystems) as well as ecosystems themselves. A healthy natural environment where biodiversity loss has been halted and reversed would be a key test to achieving SD in Wales.

Statutory Purpose

The recently published ‘Summary of Responses to the Sustaining a Living Wales consultation’¹ provides the Welsh Government with the mandate for creating a body that provides leadership on nature conservation. However, this is not reflected strongly enough in the statutory purpose for the body.

Within the first Order the terms “*sustainably maintained*” and “*sustainably enhanced*” are ambiguous. Furthermore, the definition of “*sustainably*” itself is also ambiguous, but appears to imply that NRW must show benefits for people and the economy as well as the environmental benefits when carrying out conservation and biodiversity enhancement actions.

Whilst NRW must proactively contribute to delivering SD, it cannot be responsible for delivering SD alone – this is the responsibility of the Welsh Government as a whole. Given that our environment has suffered degradation and still faces significant pressures, it is essential that NRW is able to take actions and give advice based on what the Welsh environment needs.

We believe that many, if not most, of the actions to improve the environmental management by NRW will also provide economic and social gains and make a clear contribution to sustainable development. However, NRW must also be free to take actions and give advice for the good of the Welsh environment even when the economic and social benefits are not immediately obvious. Restoring our environment requires direct investment even when the wider benefits are not apparent or quantifiable but will be essential in order to move towards living within our environmental limits – a key tenet of sustainable development.

NRW must provide robust and proactive leadership for the natural environment and wildlife of Wales and improve on the work delivered by CCW, EAW and FCW up until now.

¹ Welsh Government (Sept 2012) *Consultation Report – Executive Summary. Sustaining a Living Wales Green Paper*. <http://wales.gov.uk/docs/desh/consultation/120920nefexecutivesummaryen.pdf>

The statutory purpose of NRW must be that of providing ‘environmental leadership’.

We would urge the Welsh Government to use the second Order to amend the first to make this clear in the statutory purpose.

RSPB Cymru proposes the following statutory purpose as we believe it better meets our, and Welsh Government’s aspirations for the new body:

“To maintain, protect and proactively improve Wales’ natural environment, for the benefit of the environment, people and economy of Wales now and in the future.”

Nature Conservation & Natural Beauty Duty

RSPB Cymru’s most significant concern is that the proposed Nature Conservation & Natural Beauty duty is weaker than the existing nature conservation duty for CCW, and consequently is legally not permissible under the restrictions of the Public Bodies Act ² as it weakens the “*necessary protection*” for the wildlife and natural environment of Wales.

Although the Second Order make some improvements on the proposals in the Welsh Government’s consultation document, the wording is still weaker than the current CCW conservation duty, plus there are still outstanding weaknesses.

The main issue is that the proposed duty is limited to applying “... *so far as is consistent with*” four subclauses. These subclauses create caveats that result in a proposed conservation duty (and the Public Access & Recreation Duty which is drafted in a similar fashion) that can only be exercised if the impacts on people and the economy are also acceptable. We believe that this drafting limits any conservation of the natural environment to actions that can be shown to have benefits for people and the economy. Often this is not possible, as the benefits are either indirect, such as pollination or maintaining healthy soils, or will not be realised in the short-term, such as water purification or the storage of Carbon in peatlands.

In addition, the wording of the duty appears to imply that it applies only when the body is formulating “*proposals*”, rather than covering the body when exercising any of its functions or carrying out any actions. While this wording comes from the existing duty on the Environment Agency, compared with the existing CCW duty, this is narrower wording and consequently risks non-compliance with the Public Bodies Act by removing “*necessary protection*”.

Should the word “*proposals*” be removed from the text, we would welcome the duty “... *to further the conservation and enhancement of natural beauty and the conservation of flora, fauna, geological or physiographical features*” as specified in the consultation document. However, a

² The Public Bodies Act 2011 allows Welsh Ministers to transfer existing functions to the new body with some modifications, but does not enable them to make widespread legislative changes. Furthermore, Welsh Ministers are not allowed to remove “*any necessary protection*”.

positive proposal in the consultation document to amend this duty to exclude the phrase “of special interest” at the end and so align it with the current CCW duty has not been included in the draft second Order. We urge the government to ensure the tightening up of the wording around the duty in the publication of the second Order to ensure compliance with the Public Bodies Act.

Overall, the outcome is a weaker conservation duty than that currently applying to CCW, hence, under the Public Bodies Act is considered as the removal of “*necessary protection*” for the natural environment. This limitation means the Welsh Government are reducing the action that will be taken to meet the international target to halt and restore biodiversity loss also puts us at a disadvantage with respect to achieving sustainable development.

RSPB Cymru calls on the Welsh Government to amend the Nature Conservation & Natural Beauty Duty; and the Public Access & Recreation Duty to ensure they are not weaker than the current situation (CCW's duty), and in doing so avoid non-compliance with the Public Bodies Act 2011.

Lack of Transparency and Accountability

RSPB Cymru is concerned that a number of significant proposals regarding how NRW will operate are presented with inadequate levels of detail in the consultation document making it impossible to determine whether and how these proposals will deliver the requisite levels of openness, transparency and accountability. In particular, we are concerned about the following:

1. **Self-Permitting & Self-Assessment**

The lack of effective internal separation and transparency specified in the legislation regarding decisions when NRW advises on and regulates its own operations – self-permitting and assessing its own projects.

With respect to self-permitting and assessing the environmental effect of its own projects, Welsh Government are proposing providing transparency and accountability through internal separation of decision-making within NRW, i.e. the part of NRW proposing the project will be operationally separate from that part which will be assessing the implications of the project (under a number of EU Directives) and awarding the permit. However, the proposals lack any detail about how this separation is to be carried out in practice and how NRW intends to achieve genuine transparency and accountability.

The consultation document states that the proposals are compliant with a piece of case law on this issue (the *Seaport Investments* judgment). However, this case law states that the operational separation must ensure real autonomy within the organisation, including at an administrative level to ensure that an “*objective opinion*” can be given on a project. Legal advice received by RSPB Cymru finds that this means that the separation must be permanent rather than temporary and supported by separate administration, including human resources, finance, etc. Without further detail, it is unclear whether the proposals will be adequate to ensure openness and accountability and whether they are compliant with the current case law.

A further concern is that even operational separation within NRW would not be adequate to allow prosecutions in relation to European Protected Species (EPS) licenses or SSSI protected site issues (for which CCW currently has responsibility) to be brought, where NRW is carrying out projects which might be in breach of these offences. The Welsh Government need to provide more detail on this issue.

2. Statutory Consultee Role

We believe it necessary to set out in the legislation the detail of how NRW should conduct itself when it is consulting with itself in order to be appropriately transparent.

The consultation document proposes that the requirement to consult with itself be removed from NRW, except where such requirements stem from EU legislation. It is only sensible that if there are going to be circumstances where NRW is no longer obliged to consult with itself that there should be greater transparency and accountability of decision-making. Information which previously would have been publicly available in responses to consultations from each of the existing bodies for example, will no longer be available if there is no consultation process between organisations. However, Welsh Government have not provided information within the consultation document about how this will be achieved in practice in the future. This information may be contained within the 'scheme' (see point 3 below) which is due to be developed by NRW but again, the consultation document does not provide enough information to be satisfied that this is what will happen or whether it will be adequate.

3. Publication of 'Schemes' & Public Registers

There are issues regarding the timing or order of actions, in particular the timing of the publication in 'schemes' and public registers of decisions that have already been made by NRW.

Welsh Government are proposing that NRW publishes a 'scheme' identifying conditions where formal publication of decision documents will be required, irrespective of whether or not publication is required by other legislation, as well as the publication of public registers. The scheme should cover decisions made where NRW no longer has to consult with itself (see point 2 above) and list permits including those where it has assessed its own projects (see point 1 above).

However, the current proposals relate to decisions that have already been taken and permits that have already been granted. This means that interested parties would not be able to make representations prior to or during the decision-making process, unless they were a consultee. It would also prejudice civil society's ability to bring legal actions, for example, judicial review of decisions because the first the public would learn of it would be after the decision was taken or the permit granted. The issue here is the timing and order of the various aspects of the process which remove, rather than deliver, openness and transparency.

<p>We ask the Welsh Government to provide assurances and further detail on how in practice these processes will be truly open, transparent and accountable to the Senedd and the wider public.</p>
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**RESPONSE BY COED CADW (THE WOODLAND TRUST) TO THE
CONSULTATION ON THE WELSH GOVERNMENT'S NATURAL
RESOURCE BODY FOR WALES (ADDITIONAL CONSULTATION)**

October 2012

***Natural Resource Body for Wales
(additional consultation)***

Introduction

Coed Cadw (The Woodland Trust) welcomes the opportunity to respond to this consultation. The comments that follow are delivered on behalf of Wales' leading woodland conservation charity. We achieve our purposes through a combination of acquiring woodland and sites for planting and through wider advocacy of the importance of protecting ancient woodland and trees, enhancing its biodiversity, expanding woodland cover and increasing public enjoyment. We have over 1,000 sites in our care covering approximately 20,000 hectares (50,000 acres). These include over 100 sites in Wales, with a total area of 1,580 hectares (3,900 acres). We have 300,000 members and supporters across the UK. Coed Cadw has three key aims: i) to enable the creation of more native woods and places rich in trees; ii) to protect native woods, trees and their wildlife for the future and; iii) to inspire everyone to enjoy and value woods and trees. Coed Cadw believes it can be a key delivery body in assisting the Government of Wales with its aspirations for woodland expansion.

Coed Cadw is an active member of Wales Environment Link (WEL) and also intends to sign up to the WEL joint response to this consultation, although there is a significant difference in our view on the transfer of the forestry balancing duty as indicated in our response below to question 3 . Our response, however, goes into a little more detail about how the Assembly could make native woodland its hidden ally in managing and developing Wales' new approach on sustainable land and marine management.

We welcome the modern forward looking vision of approach and concepts of A Living Wales and agree that the opportunity should be taken to form a new integrated Single Environmental Body (SEB) tasked with delivering these ideas. This approach will be very challenging to both of the new body and Government generally. Our ambition is to see integrated approach and environmental sustainability a priority and at the heart of what it does.

**Question 1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty? (Yes, Mainly, Not at all).
If not, how would you change it?**

Coed Cadw would *mainly* agree with the proposal for the duties of the body in respect of conservation and natural beauty, but subject to the following comments:-

1. We believe that the body must be proactive in enhancing and adapting the landscape of Wales to meet such drivers of change including climate change, nitrogen deposition, resource depletion and land use intensification. Whilst this thinking is enshrined in Living Wales we ask whether the duty as defined will drive a sufficiently proactive approach by the body in leading and managing landscape change? We suggest the inclusion of the word “adaptation” into the phrase “...*further the **adaptation**, conservation and enhancement...*” wherever it occurs.
2. We believe that the new body must vigorously set out its expectations of agricultural land management and hold industry and government to account in meeting demanding environmental standards. The new body’s conservation duty cannot be met without comprehensive engagement with farming. We believe there needs to be strong linkage between the work of the new body and the delivery of Glastir and we have previously proposed that the new body has objective or duty to set the standard for

environmentally sustainable farming. Alternatively we seek assurance that the wording of the conservation duty as proposed is sufficiently open to allow the new body to fulfil such a role.

3. We seek clarification as to whether the duty as currently proposed in Box one is sufficient to ensure the delivery of the Welsh Government's policy to create 100,000 ha of new woodland. The outcomes sought by this policy relate substantially to non forestry purposes including climate change adaptation and Water Framework Directive requirements and delivery depends on non forestry actions on farmland. We ask whether the new body can fully deliver this policy if it is framed solely as a forestry duty as proposed under 4.1.3.
4. We generally support comments made by Wales Environment Link at the consultation meeting held with David Clarke on 14th September about concerns that the detailed wording in Box 2 a) and b) might unduly reduce or constrain the conservation duty of the new body, however:-
5. We think that the reminder (Box 2 a) of a obligation to work within an "...objective of achieving sustainable development" is important and should be specifically included to ensure that the sustainability test is applied in the furtherance of the body's conservation duty.
6. We note that currently CCW has grant making powers but EA does not. We ask for confirmation that grants making powers will be fully available to the new body for the purpose of meeting all parts of its conservation duty including for example in work to meet Water Framework Directive requirements.
7. We will judge the effectiveness of the new body in meeting its proposed duties by its commitment and successes in delivering the woodland



expansion objective and in achieving the conservation of ancient trees, ancient woodlands and plantations on ancient woodland sites.

8. We seek confirmation that the proposed duties will be interpreted to specifically include these outcomes and that the body accepts a specific role and remit to promote the conservation of ancient, veteran and heritage trees by providing advice and support for their owners, including grant aid where necessary. Coed Cadw is currently running a petition calling on the Welsh Assembly and the Welsh Government to ensure that this duty falls within the remit of the new body, and this has so far attracted the support of over 4,600 people. The Woodlands for Wales Strategy includes a commitment to “promote the value of ancient woodlands *and veteran trees* [our italics], and support owners in managing them appropriately, so that they are safeguarded for the future.” Coed Cadw believes this commitment to promote the conservation of ancient trees is vital, but in reality has yet to be delivered. For the avoidance of doubt, we suggest that this commitment be incorporated as a power, or a duty, of the new single body. Coed Cadw believes that the ancient, veteran and heritage trees of Wales are a vital and irreplaceable part of our environment and heritage.
9. There is a need to recognise the opportunities for soft engineering solutions to issues, for instance of water management, which also provide nature conservation and landscape benefits. We would cite the example of Pontbren farmers, where an increase in tree cover and the creation of ponds has improved water quality in the catchment and reduced the risk of local flooding, while also increasing the sustainability of the farming businesses, improved biodiversity and restored landscape features.
10. We wish to seek assurance that these duties will cover the promotion of trees and woodland in urban areas. Particularly in the light of climate change, there are compelling reasons for planting more trees in urban areas in Wales. Urban trees can help to reduce the urban heat island effect in summer by cooling the air by transpiration, they reduce air pollution, provide shelter from



the harmful effects of the sun, help reduce surface water run-off (flooding) by interception and storage, provide valuable habitats for wildlife and of course they are very efficient at storing carbon, thus minimising the loss of greenhouse gases to the atmosphere, and also they create a more attractive environment for us humans. It has been estimated that doubling the tree cover in the West Midlands of England would reduce mortality as a result of poor air quality from particulates by 140 people per year^[1]. Another study in Manchester indicate that a 10% decrease in green cover in high density residential areas and town centres could lead to 7°C increase in surface temperatures². If the NRBW is to improve the Welsh environment, then arguably it should start in our towns and cities, where most Welsh people live, especially as recent statistics reveal that 65% of the Welsh population live in urban areas. There is evidence that Local Authorities in Wales have a strong interest in maintaining and increasing urban tree canopy cover, by planting new trees. The Strategy for Council Trees 2008-2013 produced by Wrexham County Borough Council is just one example of this. A lack of funding is a huge barrier to achieving new urban tree planting, however, some limited support for this from the NRBW could allow the Body achieve its and the Welsh Government's objectives very effectively. The Woodlands for Wales Strategy included some excellent aspirations with regard to urban trees (section 2.6 of it to be precise), but the Forestry Commission Wales was never really able to fulfil this promise. Will the NRBW have the same problems, or will it be empowered act proactively on this issue?

Question 2. Do you agree with the proposals in respect of public access and recreation duties? (Yes, Mainly, Not at all). If not, how would you change it?

^[1] Stewart, H., Owen S., Donovan R., MacKenzie R., and Hewitt N. (2002). *Trees and Sustainable Urban Air Quality*. Centre for Ecology and Hydrology, Lancaster University.

² S.E Gill, J.F Handley, A.R.Ennos and S.Pauleit. *Adapting Cities for Climate Change: The Role Of The Green Infrastructure*.



Coed Cadw would *mainly* agree with these proposals, subject to the following comments.

1. The new Body should make sure the considerable recreational value of the thousands of accessible woodlands throughout Wales receives comparable high profile promotion in an integrated and complementary way to Wales other major recreational assets – the coastal footpath and open access land.

We would like Box 3 point 1 to include specific reference to woodland. Woodland is not open space, and neither is it necessarily countryside.

*“The NRBW may take such steps as it considers appropriate to promote and facilitate public access to, and enjoyment of, the countryside, **woodland** and open spaces in Wales.”*

This is an important and economically valuable objective. Woodland access opportunities need to be fully realised as part of an integrated strategy which is not happening at the moment. In particular, the value of woodland access at a local and community level is not being supported. The targeting of Glastir woodland management grants favours woods which provide for tourist recreational use and there is a danger that woods that principally provide local community access will not be supported.

2. We note that the duty refers to promotion and facilitation but not the assessment of needs or provision. We suggest this purpose is added to ensure appropriate focus and prioritisation and a properly strategic approach including, for example, in integrating access provision the Government’s substantial forest estate with that land in other ownership.

Question 3. Do you agree with these proposals for the high level forestry duties? (Yes, Mainly, Not at all). If not, how would you change them?

Coed Cadw would *mainly* agree with these proposals, subject to the following points.

1. We would like to see the precise wording proposed and the proposed text for modifications to the Forestry Act referred to on page 15 of the consultation document.
2. We support the inclusion of the FC balancing duty in the 2nd order and the transfer of this existing duty to the new body. We support the principle that the forestry duty should acknowledge an important role in economic timber production but in a financially, socially and environmentally sustainable way. The total economic value of forestry in Wales arises from both the production of timber (market benefits) and the public goods (non-market benefits), including recreation and tourism, biodiversity and ecosystem services.
3. We also strongly support the inclusion of the statement on page 15 to specifically include '*a duty to promote woodland cover in Wales*'. We don't agree with concerns expressed by others in Wales Environment Link on this point. We gave our reasoning for this in our response to the first consultation and this is reproduced in Appendix A.
4. As noted in our response to question 1 above we seek reassurance that this new duty is not confined to afforestation for traditional forestry purposes or using traditional forestry techniques. For example, some valuable approaches to tree planting on farms are not currently considered to be woodland, creating unnecessary bureaucratic barriers to the provision of support and risking these activities not being counted towards the Government's woodland creation target. Specifically what are currently regarded as 'trees outside woods' i.e. shelter belts, hedgerow trees and small groups of trees,



are key elements of developing resilience and climate adaptation, particularly in urban areas and the farmed landscape.

5. We look forward to receiving more detail on how the new body will interpret its duties in the delivery of the management of the Welsh Government's forest estate. In particular we:-

- a. We support the continuation of a core of FCW staff in leading roles in implementing the strategy but anticipate that closer engagement with water management and biodiversity specialists and more generalist land managers will help ensure more joined up policy delivery.
- b. Retention of the WG forest estate under independent forest certification under UKWAS is vital, with corrective actions comprehensively addressed, including those relating to PAWS restoration. This management approach provides an excellent case study for the achievement of integrated land management ideals enshrined in Living Wales. Areas which need attention to ensure the management of the estate is sustainable and meets certification requirements include:
 - Addressing the decline in condition of PAWS sites in Government ownership. This requirement applies to about 10% (need to check figure) of the total estate and is consistent with managing these sites under productive continuous cover forestry as the Woodland Trust is demonstrating at Wentwood Forest.
 - Addressing the detrimental impact of current clear felling practice on achievement of Water Framework Directive outcomes. Refer to the map evidence attached which identifies catchments in Wales judged to be failing to meet WFD standards due to forestry operations (i.e. clearfelling).



- Providing exemplary demonstration of the application of WG Woodland Strategy in moving towards mixed species continuous cover forestry

- c. Protect the forest resource from destruction by pests, diseases and climate change. A major strategy to do this is the move to more diverse continuous cover forestry, which should be continued despite objections from the major commercial timber users.

- d. We also support the recommendation from the National Assembly's Environment and Sustainability Committee in its report of May this year that "The commercial acumen that exists within the Forestry Commission Wales is not lost and is mainstreamed into the work of a new body. This commercial expertise should be built upon to improve the commercial focus in all other appropriate areas of the new body's business."

Question 4. Do you agree with the general proposals for cross-border arrangements? [Yes, Mainly, No] If not what would you change?

This is difficult to comment on if we don't know which of the services provided by FC as they are now will be a long term arrangement or for the transitional period.

We think that UK Forest Research bodes huge benefits for the Welsh Government and should therefore take advantage of this UK-wide research. It is sensible therefore to suggest that the new Single Body takes part and is an active part of the Forest Research Programme. Coed Cadw needs reassuring that SEB will not disconnect from GB arrangements.

**Question 5. Do you agree with the proposals for the statutory consultee role?
[Yes, Mainly, No] If not what would you change?**

In the *main*, yes.

It is imperative however for the new Body to talk about their proposals before they become decisions. It's about making sure there is adequate consultation with the appropriate stakeholders.

**Question 6. Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues? [Yes, Mainly, No]
If not what would you change?**

Yes we *agree* with these proposals.

In relation to the public forest estate we believe that an internal separation between regulation and operations is essential. There needs to be more transparency and better communication of forest level decision making than is currently the case, including showing that forest level decisions are consistent with the Welsh Government's own policy commitments.

Question 7. Do you agree with the proposals for permitting? [Yes, Mainly, No] If not what would you change?

No comment

Question 8. Do you agree with these proposals for charging? [Yes, Mainly, No] If not what would you change?

No comment

Question 9. Do you agree with the proposals for public registers? [Yes, Mainly, No] If not what would you change?

Coed cadw *agrees* with the proposals in the main

We support the proposal under section 6.2 to require the body to publish a list, on its website, of all legal permits, of any type, it has issued in respect of its own operations. We would like to see further information published in readily accessible registers on how it manages the public forestry estate, for example by making forest design plans available on the internet to give appropriate stakeholders the opportunity to engage and consult.

More fundamentally the new body must have a duty to communicate willingly and effectively with stakeholders and the public. Public registers are just one mechanism but do not provide an adequate communications strategy.

Question 10. Do you agree that the new body should be a listed body under the Regulation of Investigatory Powers Act 2000? [Yes, Mainly, No]

No comment

Question 11. Do you agree that the new body should have powers to use civil sanctions? [Yes, Mainly, No]

No comment

Question 12. Do you agree with the proposals for appeal arrangements? [Yes, Mainly, No]

If not what would you change?

Yes, we agree.

Question 13. Do you agree with the proposals for cross border monitoring?

[Yes, Mainly, No]

If not what would you change?

No comment

Question 14. Do you agree with the proposals for statutory planning and reporting? [Yes, Mainly, No]

If not what would you change?

No comment

Question 15. Do you agree with the proposals for Civil Contingencies and COMAH? [Yes, Mainly, No]

If not what would you change?

No comment

Question 16. Do you agree with the proposals for UK wide arrangements?

[Yes, Mainly, No]

If not what would you change?

No comment

Question 17. Do you agree with the proposals for transitional arrangements?

[Yes, Mainly, No]

If not what would you change?



No comment

Coed Cadw (the Woodland Trust), Unit 3, Coopers Yard, Curran Road, Cardiff CF10 5NB

www.coedcadw.org.uk

www.woodlandtrust.org.uk/saveourtrees

For further information please contact:

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Appendix A

The new Body should ensure that the management of the Welsh Government forestry estate is fully in line with the WG woodland strategy and more recent WG policy priorities such as the woodland expansion target. We look forward to seeing a vision statement for the Welsh Government forestry estate that embodies this. The new Body should provide clear vision and direction for the nature and location of the new woodland created to meet the WG 100,000 ha target and should not confine its role to managing a regulatory process.

A well wooded landscape should be an important part of the body's vision for landscape improvement in Wales, and is an excellent example of the practical application of Living Wales. The SEB needs to take responsibility for facilitating the delivery of the target to create 100,000 ha of new woodland by 2050 in an appropriate manner. This targeted woodland expansion should be one of the visionary outcomes that gives an early focus and purpose to a new SEB. We also believe that the benefits of urban trees should be fully appreciated within the new SEB. Currently this is outside the FCW remit, and although is in the Wales Woodland Strategy there is no one to lead on this. The new body should naturally take on this role. There should be a commitment and an integrated strategy across agriculture, rural business support, forestry and conservation.

Coed Cadw believes that one of the key purposes for SEB must be to support a vigorous and actively expanding woodland sector in Wales; one that continues to deliver very significant economic benefits and has a crucial role in providing an attractive environment, protecting wildlife, securing water supplies, providing places to visit and involving communities and continues to deliver very significant economic benefits through commercial forestry. The woodland sector needs to both encompass and distinguish between urban trees, native woodland, and productive forestry. We believe that SEB could help in the wider



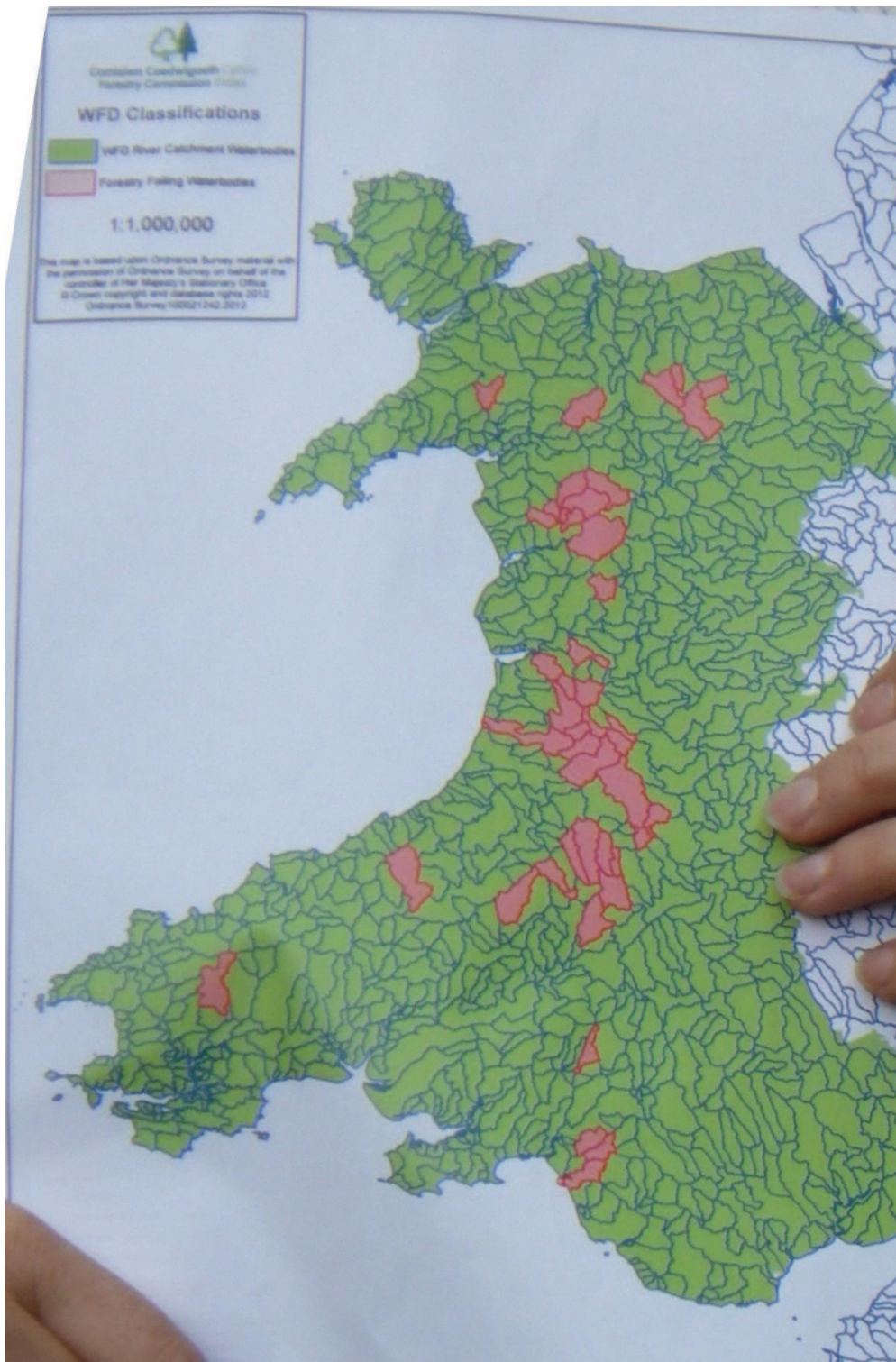
COED CADW
WOODLAND
TRUST

championing of the role of trees and woodland to deliver Welsh Government
Policy objectives across many different policy areas.



COED CADW
WOODLAND
TRUST

Map – Catchments in Wales judged to be failing to meet WFD standards due to forestry operations (i.e. clearfelling)



National Assembly for Wales' Environment & Sustainability Committee's Inquiry into the Natural Resources Body for Wales (Functions) Order.

Response from the Farmers' Union of Wales

INTRODUCTION

The farmers Union of Wales welcomes the Committees ongoing scrutiny of the functions of the Natural Resources Body for Wales and the opportunity to contribute to its deliberations.

Since the inception of the new body, the FUW has been concerned on how it would seek to engage with its customers and has expressed its view that the board needed to reflect farming and other private sector interests to ensure that its regulatory functions were balanced with both the practical and economic considerations of businesses needs.

It is therefore disappointing to note that there is no private sector representation on the new board and that even forestry interests have been excluded from the new body.

The FUW is concerned that the Natural Resources Body will need to ensure that the credibility it has lost within the private sector is swiftly addressed if it is to have any genuine partnership working with the farming sector.

Given the short timescale allowed for responding to Committees request, the FUW has used its response to the recent additional consultation as a basis of its evidence.

Questions

Q1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty?

The FUW is concerned that the Welsh Government is seeking to strengthen the duties undertaken by the Natural Resources Body for Wales to promote and protect conservation features and natural beauty.

The definition of 'natural beauty' is considered to be subjective and thus, unless there is a clear defined view on what it means, there is concern that the wording of the Order will end up being unduly restrictive in recognising the need for sustainable development in rural areas.

Under the proposed wording for the second order outlined in Box 2. The Union is concerned that the balanced approach currently adopted by Forestry Commissioners to seek a 'reasonable' balance between conservation and natural beauty and production has been lost and that the economic and well-being of local communities in rural areas has been relegated to the bottom of the pile in terms of duties.

The FUW believes that there is a need to ensure that the lessons of the past i.e. National Parks which have a statutory purpose to conserve and enhance the natural beauty wildlife and cultural heritage; and to "Promote opportunities for the understanding and enjoyment of the special qualities of National Parks by the Public", whilst the 'duty' to foster the social and economic well being of local communities, can only be considered as an addendum to the purposes.

Whilst recognising the need for the new body to undertake a range of statutory functions to protect and enhance the environment and peoples enjoyment of the same, the FUW believes that the duties of the new body should ensure that the well being of the rural economy and its sustainable development is enshrined in its functions and that there is balance from the outset in its approach to sustainable development.

Q2. Do you agree with the proposals in respect of public access and recreation duties?

Whilst recognising the need to incorporate the duties of the existing bodies in respect of public access and recreation, the Union believes that there should be a clear distinction made to ensure that these duties to provide are for land in public ownership. The FUW would also welcome the inclusion of a duty to ensure that the body can take steps to mitigate any problems that occur on private land in discharging its duties under the second order. This might include for example ensuring that it has a duty to remedy damage to private property, fencing etc or the provision of signage where the public use private land believing it to be in public ownership.

Q3. Do you agree with these proposals for the high level forestry?

The Union has become increasingly concerned over recent years that the Forestry Commission focus in Wales has been driven by Welsh Government priorities for amenity woodland rather than economic production.

As the Forestry Commission has a vital role to play in providing a steer to timber growers and indeed in encouraging farmers to plant more trees, it is extremely important that the new body retains its remit to promote forestry and to help develop a market infrastructure for the production and economic viability of commercial forestry.

The Union would also question why the competent role for the protection of forest trees and timber from attack by pests under the Plant Health Act 1967 is to be transferred to Welsh ministers, when the experience and expertise of forestry staff should remain within the new body.

The omission of Forestry expertise from the Board of the Natural Resources Body is of concern in terms of the future direction of public forestry in Wales.

Q4. Do you agree with the general proposals for cross-border arrangements?

As outlined in its response to the earlier consultation, one of the concerns expressed by the Union on the creation of the new body would be the possible loss of information, R&D, corporate knowledge etc, built up over the years between existing agencies.

There is concern that unless robust Memorandum of Understanding agreements and or contracts are put in place, that the work currently funded over the border which includes Welsh data will be lost and that there will be significantly less work undertaken in Wales due to budgetary constraints.

The information outlined in the consultation does go some way to addressing these concerns, but there is a very real need to ensure that these agreements are pinned down as soon as possible so that Wales is not disadvantaged by the potential loss of future funding and or data sharing.

The FUW would also welcome more detail on how the permitting regime is likely to work under the new body.

Currently, environmental permitting such as Groundwater Authorisations is agreed centrally by the Environment Agency. It is assumed that in future that the permitting regime will be passed to the new body, which begs the question whether costs will increase due to the relatively low number of authorisations or decrease due to improved transparency in the process?

Q5. Do you agree with the proposals for the statutory consultee role?

There has been a great deal of concern expressed regarding the need for transparency within the new body and the FUW believes that requiring the new body to develop and publish a scheme identifying where formal publication of decision documents will be required, is to be welcomed.

Q6, Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues?

As outlined above and in the previous consultation the FUW believes that there is a need to ensure that the Natural resources Body organises itself to ensure that there is a transparent process where it is regulating its own activities and operational delivery.

The FUW therefore welcomes the proposal to ensure clear separation between regulating its own activities and the operational delivery of the activity. It also welcomes the requirement for the body to publish a list, on its website, of all legal permits, of any type, it has issued in respect of its own operations

Q7. Do you agree with the proposals for permitting?

As outlined previously, the Union supports in principal the proposals for permitting as outlined in the document. The FUW does however believe that there is scope for the new body to re examine the cope for 'standard permits' to consider whether there could be a risk based approach taken to their use in Wales.

Q8. Do you agree with these proposals for charging?

The FUW has had ongoing correspondence with the Environment Agency centrally on the basis of its charging regime for permits such as Groundwater Authorisations.

The actual rationale for the basis of charging remains totally incomprehensible even to the Agency, in that the fees generated by authorisations are not used to monitor the authorised sites but are used to fund generic testing of water bodies (i.e. to monitor those sites which are not subject to authorisation)

The FUW believes that the new body needs to be far more transparent in developing its permitting and charging regime to reflect costs incurred and the level of risk associated with the practice being permitted.

Q9. Do you agree with the proposals for public registers?

Yes

Q10. Do you agree that the new body should be a listed body under the Regulatory Investigatory Powers Act 2000?

The FUW has no formal view on this question

Q11. Do you agree that the new body should have powers to use civil sanctions?

See response to Question 12, below.

Q12. Do you agree with the proposals for appeal arrangements?

The FUW recognises that Civil Sanctions should provide regulators with a broader, more proportionate toolkit to deal with the full range of non-compliance, although it does have concerns that the process could be overly complicated and difficult for the farming industry to understand.

The agricultural industry in Wales is made up predominantly of small businesses which are highly dependent on family labour. It already has a wide range of regulatory requirements to comply with and the associated paperwork to complete, and is therefore one of the most highly regulated industries.

The overwhelming majority of farmers already comply with the existing regulations and, given their concern about understanding the complexity of the standards that are required and the potential financial impacts on the business if an offence is committed, many exceed the expected requirements.

Farmers have to contend with a range of Regulatory processes, most of which come under the auspices of the CAP Cross Compliance regime. Breaches can not only result in a percentage loss of Single Farm Payment,

but farmers might also suffer whatever additional sanction is deemed necessary by the Regulator.

This can result in a business facing an extremely high financial penalty for transgressions, which could affect the financial viability of the business or its ability to rectify the problem for which it was originally penalised. If the new body is seeking to operate in accordance with the better regulation principles to improve the fairness and transparency of its regulatory regimes, it should ensure that the penalties for transgressions are proportionate and are only imposed once, either as a civil sanction or a penalty under the CAP Cross Compliance Regulations.

The Union is concerned that the introduction of fixed or variable money penalties' can result in less dialogue between the operator and regulator, and believes that even minor infringements, which historically carried a warning and a remedial notice, would, in future, attract a financial penalty and welcomes a review of the process within 12 months operation of the new body.

Q13. Do you agree with the proposals for cross border monitoring?

The arrangements for cross border monitoring should be made within the parameters of efficiency and least cost to ensure that there are no disproportionate costs associated with the process. Sharing data and information is considered to be the most positive way forward.

Q14. Do you agree with the proposals for statutory planning and reporting?

Whilst the proposals outlined within the paper seem to reflect a sensible approach, there is concern that for some cross border issues, such as River Basin Management Plans for river basin Districts, have, in the past reflected the EA England view, which has meant a failure to reflect those priorities and actions from Wales which were submitted as part of the Management Plan process.

It is extremely important to ensure that the cross border information sharing and co-ordination procedures be reflected and agreed on both sides of the border.

Q15. Do you agree with the proposals for Civil Contingencies and Control of Major Accident Hazards (COMAH)?

Yes

Q16. Do you agree with the proposals for UK wide arrangements?

The FUW believes that this is a sensible approach which avoids duplication and ensures the best use of resources.

Q17. Do you agree with the proposals for transitional arrangements?

The FUW believes that Welsh Government needs to ensure that the transitional arrangements result in minimal disruption to the day to day functions of the services offered currently by the three agencies, following the change over.

The perception of the new body by farmers will be based on the ability of front line staff to deliver services, advice and guidance from a single point of contact.

John Griffiths AC /AM
Gweinidog yr Amgylchedd a Datblygu Cynaliadwy
Minister for Environment and Sustainable Development



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Lord Dafydd Elis-Thomas AM
Chair of the Environment and
Sustainability Committee

7 November 2012

Dear Dafydd,

Thank you for your letter of 24 October 2012 about the draft Natural Resources Body for Wales (Functions) Order 2012.

The issues raised in your letter were also highlighted in some of the responses to the supplementary consultation which ended on 5 October. A summary of the issues raised in the consultation responses, together with the 107 responses received, will be published shortly on the Welsh Government's website at:

<http://wales.gov.uk/consultations/environmentandcountryside/singlebodyadditional/?status=closed&lang=en>

I am intending to lay the draft Functions Order on 15 November 2012. As a result of the consultation responses, a number of changes will be made to the draft order prior to laying. These changes will be explained in the Explanatory Memorandum which will be laid with the order; but, for ease of reference, I have included below my responses to the specific issues highlighted in your letter.

Nature conservation duties

I have recognised the concern of your committee and of some stakeholders about the possible weakening of CCW duties. The draft order that I will lay on 15 November will take account of that concern. The body's nature general conservation duties will be set out more fully in the order, and they will be more closely aligned with those of CCW where they apply to former CCW functions.

Self-permitting and internal consultation

I welcome your recognition that it is not appropriate to legislate for structures within organisations. My view is that it is for the body to take account of these factors and I will ask the body to ensure that their proposals reflect the intentions that were set out in the main and supplementary consultations.

Transparency and accountability

I agree with the point about the timing of publication of information. The draft order that is laid before the Assembly will therefore ensure that the scheme specifies the time within which information will be published and will require publication of information about applications as well as decisions. The draft order provides that the scheme requires the Welsh Ministers' approval, and I will expect to see reasonable provision for timeliness. The requirements of the body's publication scheme will be in addition to publication requirements that currently apply to the existing bodies.

Regulation of Investigatory Powers Act 2000

The Committee has queried whether the body's broader remit (compared to the Environment Agency) will mean that it applies the Regulation of Investigatory Powers Act 2000 (RIPA) powers more broadly. I do not intend that the broader remit of the body will result in any extension of the use of these powers. The body will only be able to exercise RIPA powers in cases where they are currently available, in connection with functions that are being transferred to the body from the Welsh Ministers and the Environment Agency.

The order will add the body to the list of relevant public authorities in RIPA; but that will not in itself enable the body to exercise the RIPA powers. Before the powers can be exercised, the Secretary of State will need to make an order designating the categories of the body's officers who can authorise use of the RIPA powers, and the circumstances in which they can do so. I intend to ask the Home Secretary to designate the body's officers to authorise use of the RIPA powers only in circumstances where the powers are currently available.

I would like to thank you for your helpful comments on the draft Functions Order and I look forward to providing more information when I attend the Committee on 28 November.

Best wishes,



John Griffiths AC / AM

Gweinidog yr Amgylchedd a Datblygu Cynaliadwy
Minister for Environment and Sustainable Development