

Y Pwyllgor Amgylchedd a Chynaliadwyedd

Lleoliad:
Ystafell Bwyllgora 2 – Y Senedd

Dyddiad:
Dydd Iau, 21 Mehefin 2012

Amser:
09:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



I gael rhagor o wybodaeth, cysylltwch â:

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Agenda

- 1. Cyflwyniad, ymddiheuriadau a dirprwyon**
- 2. Gorchymyn Corff Adnoddau Naturiol Cymru (Sefydlu) 2012 (09.30 – 10.30)** (Tudalennau 1 – 38)
- 3. Papurau i'w nodi** (Tudalennau 39 – 42)
Cofnodion y cyfarfodydd a gynhaliwyd ar 17 a 31 Mai.
- 4. Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer: Eitem 5**
- 5. Ymchwiliad i bolisi ynni a chynllunio yng Nghymru – Ystyried yr adroddiad drafft**

Eitem 2

Gorchymyn Drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 19 o Ddeddf Cyrff Cyhoeddus 2011, ar gyfer cymeradwyaeth drwy benderfyniad gan Gynulliad Cenedlaethol Cymru

OFFERYNNAU STATUDOL
CYMRU DRAFFT

2012 Rhif (Cy.)

CYRFF CYHOEDDUS, CYMRU

YR AMGYLCHEDD, CYMRU

**Gorchymyn Corff Adnoddau
Naturiol Cymru (Sefydlu) 2012**

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Gorchymyn)

Mae'r Gorchymyn hwn, a wnaed o dan Ddeddf Cyrff Cyhoeddus 2011 ("y Ddeddf"), yn sefydlu corff statudol newydd, Corff Adnoddau Naturiol Cymru ("y Corff"), ac yn darparu ar gyfer ei ffurf, ei ddiben, ei aelodaeth, ei weithdrefn, ei lywodraethu ariannol a'i swyddogaethau cychwynnol.

Prif swyddogaeth y Corff ar y cam hwn yw paratoi i ysgwyddo swyddogaethau rheoleiddio sylweddol a swyddogaethau eraill, sy'n ymwneud ag amgylchedd ac adnoddau naturiol Cymru, yn ddiweddarach. Bydd y gwaith rhagbaratoawl hwn yn cynnwys sefydlu strwythurau mewnol y Corff a pharatoi ar gyfer trosglwyddo'r swyddogaethau hynny, ac ar gyfer trosglwyddo staff, eiddo a hawliau a rhwymedigaethau eraill, mewn deddfwriaeth ddilynol.

Mae'r Corff yn cael ei sefydlu fel hyn oherwydd bod Gweinidogion Cymru yn dal wrthi'n llunio eu cynigion terfynol, o dan y Ddeddf, o ran pa swyddogaethau i'w trosglwyddo i'r Corff o'r sefydliadau presennol, ac a ddylid addasu unrhyw un neu rai o'r swyddogaethau hynny.

Mae erthygl 6 yn rhoi i'r Corff ei swyddogaethau rhagbaratoawl cychwynnol. Mae paragraff (1) o erthygl 6 yn dynodi'r categorïau o gynigion Gweinidogion Cymru y mae'r swyddogaeth ragbaratoawl hon yn ymwneud â hwy. Os oes angen i gynnig gael ei gymeradwyo gan Gynulliad Cenedlaethol Cymru (neu unrhyw gorff arall) er mwyn

iddo gael ei weithredu, mae paragraff (2) yn ei gwneud yn glir nad oes dim yn y Gorchymyn hwn yn dileu'r angen i gael y gymeradwyaeth honno.

Mae'r Gorchymyn hefyd yn rhoi i'r Corff bwerau eraill y gall fod eu hangen arno er mwyn cyflawni ei swyddogaethau rhagbaratoawl: er enghraifft, y pŵer i ymrwymo i gytundebau (erthygl 9), benthycu arian (erthygl 14) a chyflogi staff (paragraff 13(4) o'r Atodlen). Mae'r Gorchymyn hefyd yn gosod amodau penodol ar arfer swyddogaethau'r Corff (gweler erthyglau 7 ac 8).

Yn y Gorchymyn hwn, ni roddir unrhyw swyddogaethau rheoleiddio sylweddol na swyddogaethau eraill i'r Corff mewn perthynas ag amgylchedd neu adnoddau naturiol Cymru. Oni bai neu hyd nes bod y swyddogaethau hynny'n cael eu trosglwyddo i'r Corff, byddant yn parhau i fod yn swyddogaethau'r cyrff neu'r swydd-ddeiliaid y maent wedi eu breinio ynddynt ar hyn o bryd.

Mae'r Gorchymyn yn breinio nifer o swyddogaethau sy'n ymwneud â'r Corff yng Ngweinidogion Cymru, gan gynnwys y pŵer i benodi a diswyddo nifer o'i aelodau (paragraffau 2, 4 a 7 o'r Atodlen); pwerau o ran ei lywodraethu corfforaethol ac ariannol (paragraffau 10 i 15, 18, 19 ac 21 i 24 o'r Atodlen) a phwerau i roi canllawiau (erthygl 5) a chyfarwyddiadau (erthygl 11) i'r Corff.

Gorchymyn Drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 19 o Ddeddf Cyrff Cyhoeddus 2011, ar gyfer cymeradwyaeth drwy benderfyniad gan Gynulliad Cenedlaethol Cymru

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Gwnaed 2012

Yn dod i rym gweler erthygl 1

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddwyd iddynt gan adrannau 13(7) a 15(1) o Ddeddf Cyrff Cyhoeddus 2011(1) ("y Ddeddf"), yn gwneud y Gorchymyn a ganlyn.

Yn unol ag adran 16 o'r Ddeddf, mae Gweinidogion Cymru o'r farn—

- (a) wedi iddynt roi sylw i'r ffactorau a nodir yn adran 16(1) o'r Ddeddf, bod y Gorchymyn hwn yn ateb y diben o wella'r broses o arfer swyddogaethau cyhoeddus;
- (b) nad yw'r Gorchymyn hwn yn dileu unrhyw ddiogelwch angenrheidiol nac yn atal unrhyw berson rhag parhau i arfer unrhyw hawl neu ryddid y gallai'r person hwnnw ddisgwyl yn rhesymol barhau i'w harfer neu i'w arfer.

Mae Gweinidogion Cymru wedi cynnal ymgynghoriad yn unol ag adran 18 o'r Ddeddf.

Mae drafft o'r Gorchymyn hwn a dogfen esboniadol sy'n cynnwys yr wybodaeth sy'n ofynnol o dan adran 19(2) o'r Ddeddf wedi eu gosod gerbron Cynulliad

(1) 2011 p.24.

Cenedlaethol Cymru yn unol ag adran 19(1) ar ôl diwedd y cyfnod o ddeuddeng wythnos a grybwyllir yn adran 19(3).

Yn unol ag adran 19(4) o'r Ddeddf, mae'r drafft o'r Gorchymyn hwn fel y'i gosodwyd wedi ei gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru ar ôl diwedd y cyfnod o 40 niwrnod y cyfeirir ato yn y ddarpariaeth honno.

RHAN 1 - RHAGARWEINIOL

Enwi a chychwyn

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Corff Adnoddau Naturiol Cymru (Sefydlu) 2012.

(2) Daw'r Gorchymyn hwn i rym drannoeth y diwrnod y caiff ei wneud.

Dehongli

2. Yn y Gorchymyn hwn, mae i "y Corff" (*"the Body"*) yr ystyr a roddir iddo gan erthygl 3(1).

RHAN 2 – SEFYDLU A SWYDDOGAETHAU CYFFREDINOL

Y Corff

3.—(1) Bydd corff corfforaethol o'r enw Corff Adnoddau Naturiol Cymru neu Natural Resources Body for Wales (y cyfeirir ato yn y Gorchymyn hwn fel "y Corff").

(2) Mae'r Atodlen yn cynnwys darpariaethau pellach am y Corff.

Diben y Corff

4.—(1) Diben y Corff yw sicrhau bod amgylchedd ac adnoddau naturiol Cymru—

- (a) yn cael eu cynnal yn gynaliadwy;
- (b) yn cael eu gwella yn gynaliadwy; ac
- (c) yn cael eu defnyddio yn gynaliadwy.

(2) Yn yr erthygl hon—

- (a) ystyr "yn gynaliadwy" (*"sustainably"*) yw—
 - (i) gyda golwg ar wneud lles, a
 - (ii) mewn modd sydd wedi ei ddylunio i wneud lles,

i bobl, amgylchedd ac economi Cymru yn awr ac yn y dyfodol;

- (b) mae “amgylchedd” (“*environment*”) yn cynnwys, heb gyfyngiad, organeddau byw ac ecosystemau.

(3) Lle bynnag y bo’r Corff yn arfer unrhyw swyddogaeth mewn perthynas â pharth Cymru (fel y diffinnir “*Welsh zone*” yn adran 158(1) o Ddeddf Llywodraeth Cymru 2006(1)), neu unrhyw swyddogaeth sy’n effeithio ar y parth hwnnw, mae’r ddau gyfeiriad at “Cymru” ym mharagraff (1) i’w dehongli fel eu bod yn cynnwys cyfeiriadau at barth Cymru.

(4) Lle bynnag y bo’r Corff yn arfer swyddogaeth mewn perthynas ag unrhyw ardal arall y tu allan i Gymru, neu mewn modd sy’n effeithio ar ardal o’r fath, mae’r ddau gyfeiriad at “Cymru” ym mharagraff (1) i’w dehongli fel eu bod yn cynnwys cyfeiriadau at yr ardal o dan sylw.

(5) Nid yw paragraff (1) yn rhoi i’r Corff bŵer—

- (a) i wneud unrhyw beth na fyddai ganddo’r pŵer i’w wneud fel arall, neu
- (b) i arfer unrhyw un o’i swyddogaethau mewn modd sy’n groes i ddarpariaethau unrhyw ddeddfiad arall neu unrhyw rwymedigaeth UE(2).

Canllawiau o ran diben y Corff

5.—(1) Caiff Gweinidogion Cymru roi canllawiau i’r Corff o ran y modd y dylai arfer ei swyddogaethau er mwyn rhoi effaith i’w ddiben.

(2) Wrth lunio unrhyw ganllawiau o dan baragraff (1), rhaid i Weinidogion Cymru roi sylw i gyfrifoldebau ac adnoddau’r Corff.

(3) Wrth gyflawni ei swyddogaethau, rhaid i’r Corff roi sylw i’r canllawiau a roddir o dan yr erthygl hon.

(4) Cyn rhoi canllawiau i’r Corff o dan yr erthygl hon, rhaid i Weinidogion Cymru ymgynghori â’r Corff ac unrhyw gyrff neu bersonau eraill y mae Gweinidogion Cymru yn eu hystyried yn briodol.

(5) Rhaid i Weinidogion Cymru gyhoeddi unrhyw ganllawiau a roddir o dan yr erthygl hon cyn gynted ag y bo’n rhesymol ymarferol ar ôl rhoi’r canllawiau.

(6) Mae’r pŵer i roi canllawiau o dan yr erthygl hon yn cynnwys pŵer i’w hamrywio neu i’w dirymu.

(1) 2006 p.32 (adran 158(1)). Mewnosodwyd y diffiniad o “*Welsh zone*” gan adran 43(2) o Ddeddf y Môr a Mynediad i’r Arfordir 2009 (p.23).

(2) Diffinnir “*EU obligation*” yn Atodlen 1 i Ddeddf y Cymunedau Ewropeaidd 1972 (p.68), fel y’i diwygiwyd gan Ddeddf yr Undeb Ewropeaidd (Diwygio) 2008 (p.7; gweler adran 3 a’r Atodlen). Mae’r diffiniad hwn yn gymwys i ddeddfwriaeth arall yn rhinwedd adran 5 o Ddeddf Dehongli 1978 (p.30) ac Atodlen 1 iddi.

Swyddogaeth gychwynnol y Corff

6.—(1) Mae gan y Corff y swyddogaethau a nodir yn is-baragraffau (a) a (b)—

- (a) y swyddogaeth o hwyluso'r gwaith o weithredu unrhyw un o gynigion Gweinidogion Cymru ar gyfer trosglwyddo unrhyw un o'r canlynol (wedi ei addasu neu beidio) i'r Corff—
 - (i) unrhyw un o swyddogaethau Cyngor Cefn Gwlad Cymru;
 - (ii) unrhyw un o swyddogaethau Asiantaeth yr Amgylchedd neu'r Comisiynwyr Coedwigaeth sydd wedi ei datganoli i Gymru(1);
 - (iii) unrhyw un o swyddogaethau un o Bwyllgorau Llifogydd ac Arfordir Cymru(2);
 - (iv) unrhyw un o'u swyddogaethau eu hunain sy'n ymwneud â'r amgylchedd; neu
 - (v) unrhyw swyddogaeth amgylcheddol Gymreig(3) unrhyw berson;
- (b) y swyddogaeth o hwyluso'r gwaith o weithredu unrhyw un o gynigion eraill Gweinidogion Cymru a wnaed mewn cysylltiad ag unrhyw gynigion sy'n dod o fewn is-baragraff (a)—
 - (i) sy'n ymwneud â phwnc y cynigion hynny, neu
 - (ii) sy'n ganlyniad neu'n atodol i'r cynigion hynny neu sy'n gysylltiedig â hwy, neu sy'n ymwneud â materion trosiannol.

(2) Mae paragraff (1) yn gymwys i gynnig gan Weinidogion Cymru ni waeth a yw Cynulliad Cenedlaethol Cymru neu unrhyw berson neu gorff arall wedi rhoi unrhyw gydsyniad neu gymeradwyaeth y mae, yn ôl y gyfraith, gweithredu'r cynnig hwnnw yn dibynnu arni, ond nid yw'n dileu'r angen i gael unrhyw gydsyniad neu gymeradwyaeth o'r fath cyn y gellir gweithredu'r cynnig.

7.—(1) Rhaid i'r Corff gyflawni ei swyddogaethau o dan erthygl 6(1) yn ôl y meini prawf a nodir yn y paragraffau a ganlyn.

(2) Y maen prawf cyntaf yw bod yn rhaid i'r Corff sicrhau, i'r graddau y mae'n bosibl heb gyfaddawdu'r gwaith o gyflawni ei swyddogaethau o dan erthygl 6(1), bod yna gydweithredu effeithiol mewn perthynas â'r gwaith o weithredu unrhyw gynnig rhyngddo ef,

(1) *Gweler* adran 36(1) o Ddeddf Cyrff Cyhoeddus 2011 (p.24).

(2) *Gweler* adran 13(8) o Ddeddf Cyrff Cyhoeddus 2011.

(3) *Gweler* adran 36(1) o Ddeddf Cyrff Cyhoeddus 2011.

Gweinidogion Cymru ac unrhyw berson neu gorff arall—

- (a) y cyfeirir ato yn erthygl 6(1)(a), a
- (b) yr effeithir arno gan y cynnig perthnasol.

(3) Yr ail faen prawf yw na chaniateir i'r Corff ymyrryd ag unrhyw un o'r personau neu'r cyrff a grybwyllir yn erthygl 6(1)(a) wrth iddynt gyflawni unrhyw un o'u swyddogaethau yn effeithiol.

Dyletswydd gyffredinol y Corff i roi sylw i gostau a buddiannau wrth arfer pwerau

8.—(1) Wrth ystyried p'un ai arfer unrhyw bŵer a roddwyd iddo gan unrhyw ddeddfiad neu o dano ai peidio, rhaid i'r Corff ystyried y costau a'r buddiannau sy'n debygol o ddeillio o arfer y pŵer hwnnw neu beidio.

(2) Wrth benderfynu ar y modd i arfer unrhyw bŵer o'r fath, rhaid i'r Corff ystyried y costau a'r buddiannau sy'n debygol o ddeillio o'i arfer yn y modd o dan sylw.

(3) Mae'r dyletswyddau ym mharagraffau (1) a (2) yn gymwys oni bai, neu i'r graddau, ei bod yn afresymol i'r Corff fod yn ddarostyngedig iddynt o ystyried natur neu ddiben y pŵer neu o dan amgylchiadau'r achos penodol.

(4) Ond nid yw'r dyletswyddau hynny'n effeithio ar rwymedigaeth y Corff i gyflawni unrhyw ddyletswyddau, cydymffurfio ag unrhyw ofynion, neu fynd ar drywydd unrhyw amcanion, a osodwyd arno neu a roddwyd iddo gan unrhyw ddeddfiad ac eithrio'r erthygl hon.

Swyddogaeth gysylltiedig gyffredinol y Corff

9.—(1) Caiff y Corff wneud unrhyw beth yr ymddengys iddo ei fod yn gydnaws neu'n gysylltiedig â chyflawni ei swyddogaethau.

(2) Yn benodol, caiff y Corff—

- (a) ymrwymo i gytundebau;
- (b) caffael neu waredu eiddo a gwneud gwaith peirianyddol neu waith adeiladu yn unol â'r hyn y mae'n ei ystyried yn briodol;
- (c) yn ddarostyngedig i gymeradwyaeth Gweinidogion Cymru, ffurfio cyrff corfforaethol neu gaffael neu waredu buddiannau mewn cyrff corfforaethol;
- (d) ffurfio ymddiriedolaethau elusennol;
- (e) derbyn rhoddion;
- (f) buddsoddi arian.

(3) Yn yr erthygl hon, mae "gwaith peirianyddol neu waith adeiladu" (*"engineering or building operations"*), heb ragfarnu cyffredinolrwydd yr ymadrodd hwnnw, yn cynnwys—

- (a) adeiladu, newid, gwella, cynnal a chadw neu ddymchwel unrhyw adeilad neu strwythur neu unrhyw gronfa ddŵr, cwrs dŵr, argae, cored, ffynnon, twll turio neu waith arall, a
- (b) gosod neu addasu unrhyw beiriannau neu gyfarpar neu gael gwared ag unrhyw beiriannau neu gyfarpar.

Cyngor a chymorth i Weinidogion Cymru

10. Rhaid i'r Corff roi i Weinidogion Cymru unrhyw gyngor a chymorth y byddant yn gofyn amdanynt.

Cyfarwyddiadau

11.—(1) Caiff Gweinidogion Cymru roi cyfarwyddiadau cyffredinol neu benodol i'r Corff o ran arfer ei swyddogaethau.

(2) Rhaid i Weinidogion Cymru gyhoeddi unrhyw gyfarwyddiadau a roddir o dan yr erthygl hon cyn gynted ag y bo'n rhesymol ymarferol ar ôl rhoi'r cyfarwyddiadau.

(3) Mae'r pŵer i roi cyfarwyddiadau o dan yr erthygl hon yn cynnwys pŵer i amrywio neu i ddirymu'r cyfarwyddiadau.

(4) Rhaid i'r Corff gydymffurfio ag unrhyw gyfarwyddiadau a roddir o dan yr erthygl hon.

RHAN 3 – MATERION ARIANNOL

Grantiau

12.—(1) Caiff Gweinidogion Cymru roi grantiau i'r Corff.

(2) Gall grant o dan yr erthygl hon gael ei roi yn ddarostyngedig i amodau.

Dyletswyddau ariannol cyffredinol

13.—(1) Caiff Gweinidogion Cymru benderfynu dyletswyddau ariannol y Corff.

(2) Gellir gwneud penderfyniadau gwahanol ar gyfer swyddogaethau a gweithgareddau gwahanol y Corff.

(3) Rhaid i Weinidogion Cymru—

- (a) ymgynghori â'r Corff cyn gwneud penderfyniad am ddyletswyddau ariannol y Corff, a
- (b) rhoi hysbysiad i'r Corff am bob penderfyniad o'r fath y maent yn ei wneud.

(4) Caiff penderfyniad o'r fath—

- (a) ymwneud â chyfnod sy'n dechrau cyn y dyddiad y'i gwneir, arno neu ar ei ôl;

- (b) cynnwys darpariaethau atodol; ac
- (c) cael ei amrywio gan benderfyniad dilynol.

(5) Caiff Gweinidogion Cymru roi cyfarwyddyd i'r Corff gan ei gwneud yn ofynnol iddo dalu swm sy'n gyfartal â'r cyfan o unrhyw swm neu ran ohono a bennir yn y cyfarwyddyd, neu unrhyw swm o ddisgrifiad a bennir felly a hwnnw'n swm sy'n cael neu sydd wedi cael ei dderbyn gan y Corff hwnnw.

(6) Lle yr ymddengys i Weinidogion Cymru fod gan y Corff waged, p'un ai ar gyfrif cyfalaf neu refeniw, cânt gyfarwyddo'r Corff i dalu iddynt swm nad yw'n fwy na'r gwaged hwnnw a bennir yn y cyfarwyddyd.

(7) Rhaid i Weinidogion Cymru ymgynghori â'r Corff cyn rhoi cyfarwyddyd o dan baragraff (5) neu (6).

Pwerau benthycu

14.—(1) Caiff y Corff fenthycu yn unol â darpariaethau canlynol yr erthygl hon, ond nid fel arall.

(2) Caiff y Corff fenthycu symiau o'r fath mewn sterling ag y mae eu hangen arno i gyflawni ei rwymedigaethau a'i swyddogaethau.

(3) Caiff y Corff fenthycu—

- (a) gan Weinidogion Cymru, neu
- (b) gan bersonau ac eithrio Gweinidogion Cymru, ond dim ond gyda chydsyniad Gweinidogion Cymru.

(4) Caniateir i gydsyniad gael ei roi o dan baragraff (3)(b) yn ddarostyngedig i amodau.

Gwarantau Gweinidogion Cymru o ran benthycu gan y Corff

15.—(1) Caiff Gweinidogion Cymru warantu, yn y fath fodd ac ar yr amodau sy'n briodol yn eu barn hwy, yr ad-daliad o unrhyw brif swm y mae'r Corff yn ei fenthycu gan unrhyw berson, y taliad o log ar y swm hwnnw a chyflawni unrhyw rwymedigaeth ariannol arall sy'n gysylltiedig ag ef.

(2) Os telir unrhyw symiau er mwyn cyflawni gwarant o dan yr erthygl hon, rhaid i'r Corff dalu i Weinidogion Cymru, ar yr adegau ac yn y modd y byddant yn ei gyfarwyddo o bryd i'w gilydd,—

- (a) symiau yn ôl eu cyfarwyddyd i ad-dalu neu tuag at ad-dalu'r symiau hynny a dalwyd, a
- (b) taliadau llog, ar y gyfradd yn ôl eu cyfarwyddyd, ar yr hyn sy'n weddill ar hyn o bryd mewn cysylltiad â'r symiau hynny a dalwyd.

Gweinidog yr Amgylchedd a Datblygu Cynaliadwy,
un o Weinidogion Cymru

Dyddiad

Darpariaethau pellach am y Corff

Statws

1.—(1) Nid yw'r Corff i'w ystyried yn was nac yn asiant i'r Goron neu'n un sy'n mwynhau unrhyw statws, imiwnedd na braint sydd gan y Goron.

(2) Nid yw eiddo'r Corff i'w ystyried yn eiddo'r Goron neu'n eiddo sy'n cael ei ddal ar ran y Goron.

Aelodaeth

2.—(1) Rhaid i'r Corff gynnwys—

- (a) cadeirydd a benodir gan Weinidogion Cymru;
- (b) dim llai na 5 na mwy nag 11 o aelodau eraill a benodir gan Weinidogion Cymru;
- (c) y prif weithredwr (gweler paragraff 13); a
- (d) dim llai na 2 na dim mwy na 4 o aelodau eraill a benodir gan y Corff.

(2) Yn achos penodiadau cychwynnol i'r Corff, mae penodiadau o dan is-baragraff (1)(d) i'w gwneud gan yr aelodau a benodir o dan is-baragraff (1)(a) i (c), ac mae'r ymadrodd “y Corff” (*“the Body”*) i'w ddehongli yn unol â hynny.

(3) Ni chaniateir i'r cadeirydd a'r aelodau eraill a benodir gan Weinidogion Cymru o dan is-baragraff (1)(b) fod yn gyflogeion i'r Corff a chyfeirir atynt yn yr Atodlen hon fel “aelodau anweithredol” (*“non-executive members”*).

(4) Mae'r prif weithredwr a'r aelodau eraill a benodir gan y Corff o dan is-baragraff (1)(d) i fod yn gyflogeion i'r Corff a chyfeirir atynt yn yr Atodlen hon fel “aelodau gweithredol” (*“executive members”*).

(5) Caiff Gweinidogion Cymru benodi un o'r aelodau anweithredol yn ddirprwy gadeirydd.

(6) Wrth benodi person yn aelod, rhaid i Weinidogion Cymru neu'r Corff (yn ôl y digwydd) roi sylw i'r ffaith ei bod yn ddymunol—

- (a) penodi person sydd â phrofiad o ddelio â mater sy'n berthnasol i arfer swyddogaethau'r Corff neu sydd wedi dangos gallu yn hynny o beth, a
- (b) sicrhau bod amrywiaeth o sgiliau a phrofiad ar gael ymhlith yr aelodau.

Darpariaethau pellach yn ymwneud ag aelodaeth gychwynnol

3. Ym mharagraff 2(6), mae'r cyfeiriad at swyddogaethau'r Corff yn cynnwys unrhyw swyddogaethau a fyddai'n cael eu trosglwyddo i'r Corff pe bai cynnig a wnaed gan Weinidogion Cymru ac sy'n dod o fewn erthygl 6(1) yn cael ei weithredu.

4.—(1) Caiff Gweinidogion Cymru enwebu un aelod o staff Llywodraeth Cynulliad Cymru yn aelod o'r Corff.

(2) Ym mharagraff 2(1), mae'r cyfeiriad at aelodau a benodir gan Weinidogion Cymru yn cynnwys aelod a enwebir o dan y paragraff hwn.

(3) Bydd person a enwebir o dan y paragraff hwn yn peidio â bod yn aelod o'r Corff pan fydd yn peidio â bod yn gyflogedig gan Lywodraeth Cynulliad Cymru, a beth bynnag ar y dyddiad y trosglwyddir unrhyw swyddogaeth i'r Corff o ganlyniad i gynnig gan Weinidogion Cymru sy'n dod o fewn erthygl 6(1).

Deiliadaeth swydd

5. Yn ddarostyngedig i baragraff 4(3) (pan fo'n gymwys) a pharagraffau 6 i 8—

- (a) mae aelod yn dal ac yn gadael ei swydd yn unol â thelerau ei enwebiad neu ei benodiad;
- (b) mae dirprwy gadeirydd yn dal ac yn gadael y swydd honno yn unol â thelerau'r penodiad hwnnw.

6.—(1) Caiff person ymddiswyddo o'i swydd fel aelod anweithredol, neu fel dirprwy gadeirydd, drwy roi hysbysiad ysgrifenedig i Weinidogion Cymru.

(2) Caiff person ymddiswyddo o'i swydd fel aelod gweithredol drwy roi hysbysiad ysgrifenedig i'r Corff.

7.—(1) Caiff Gweinidogion Cymru ddiswyddo person o'i swydd fel aelod anweithredol, neu fel dirprwy gadeirydd, drwy roi hysbysiad ysgrifenedig.

(2) Caiff y Corff ddiswyddo person o'i swydd fel aelod gweithredol drwy roi hysbysiad ysgrifenedig.

(3) Ni chaniateir rhoi hysbysiad o dan y paragraff hwn ond i berson—

- (a) a fu'n absennol o gyfarfodydd y Corff am gyfnod o fwy na 3 mis heb ganiatâd y Corff;
- (b) sydd wedi methu â chydymffurfio â thelerau'r penodiad;
- (c) sydd wedi mynd yn fethdalwr neu wedi gwneud trefniant gyda chredydwy'r, y mae ei ystâd wedi ei secwestru yn yr Alban, neu sydd wedi ymuno â rhaglen trefnu dyledion o dan Ran 1 o Ddeddf Trefnu ac Atafaelu Dyledion (yr Alban) 2002 (dsa 17) fel y dyledwr neu

sydd, o dan gyfraith yr Alban, wedi gwneud compôwnd neu drefniant gyda chredydwy'r yr aelod, neu wedi rhoi gweithred ymddiriedaeth ar eu cyfer;

- (d) sydd, ym marn y person sy'n rhoi'r hysbysiad, yn anaddas i barhau â'r penodiad oherwydd camymddygiad; neu
- (e) sydd, ym marn y person sy'n rhoi'r hysbysiad, fel arall yn analluog, yn anaddas neu'n amharod i gyflawni swyddogaethau'r aelod.

8.—(1) Bydd person yn peidio â bod yn ddirprwy gadeirydd pan fydd yn peidio â bod yn aelod.

(2) Bydd person yn peidio â bod yn aelod anweithredol pan fydd yn dod yn gyflogai i'r Corff.

(3) Bydd person yn peidio â bod yn aelod gweithredol pan fydd yn peidio â bod yn gyflogai i'r Corff.

9.—(1) Caniateir i berson sy'n peidio â bod yn aelod, ac aelod sy'n peidio â bod yn ddirprwy gadeirydd, gael eu hailbenodi i'r swyddi hynny.

(2) Ond ni chaniateir i berson sydd wedi ei ddiswyddo ar sail camymddygiad a nodir ym mharagraff 7(3)(d) gael ei ailbenodi.

Cydnabyddiaeth ariannol a phensiynau etc aelodau

10.—(1) Rhaid i'r Corff dalu i'r aelodau anweithredol ac unrhyw ddirprwy gadeirydd y fath gydnabyddiaeth ariannol a'r lwfansau ag a benderfynir gan Weinidogion Cymru.

(2) Caiff Gweinidogion Cymru wneud penderfyniadau gwahanol o dan yr erthygl hon mewn achosion gwahanol.

11. Rhaid i'r Corff—

- (a) talu'r fath bensiynau neu arian rhodd ag a benderfynir gan Weinidogion Cymru i unrhyw aelod anweithredol neu gyn-aelod anweithredol, neu mewn cysylltiad ag ef;
- (b) talu'r fath symiau ag a benderfynir gan Weinidogion Cymru tuag at ddarpariaeth ar gyfer talu pensiynau neu arian rhodd i unrhyw aelod anweithredol neu gyn-aelod anweithredol, neu mewn cysylltiad ag ef.

12.—(1) Bydd yr erthygl hon yn gymwys—

- (a) os bydd person yn peidio â bod yn aelod anweithredol, a
- (b) os yw'n ymddangos i Weinidogion Cymru fod yna amgylchiadau arbennig sy'n ei gwneud yn briodol i'r person gael ei ddigolledu.

(2) Caiff Gweinidogion Cymru ei gwneud yn ofynnol i'r Corff dalu i'r person y fath swm o

ddigollediad ag a benderfynir gan Weinidogion Cymru.

Staff

13.—(1) Rhaid i'r Corff benodi person yn brif weithredwr.

(2) Rhaid bod y person a benodwyd wedi ei gymeradwyo gan Weinidogion Cymru.

(3) Caiff Gweinidogion Cymru benodi'r prif weithredwr cyntaf.

(4) Caiff y Corff benodi cyflogeion eraill.

14.—(1) Caiff y Corff dalu i'w gyflogeion y fath gydnabyddiaeth ariannol a lwfansau ag a benderfynir ganddo.

(2) Dim ond gyda chymeradwyaeth Gweinidogion Cymru y caiff y Corff wneud penderfyniad o dan y paragraff hwn.

15.—(1) Caiff y Corff—

(a) talu'r fath bensynau neu arian rhodd ag a benderfynir ganddo i unrhyw gyflogai neu gyn-gyflogai, neu mewn cysylltiad ag ef, a

(b) talu'r fath symiau ag a benderfynir ganddo tuag at ddarpariaeth ar gyfer talu pensiynau neu arian rhodd i unrhyw gyflogai neu gyn-gyflogai, neu mewn cysylltiad ag ef.

(2) Dim ond gyda chymeradwyaeth Gweinidogion Cymru y caiff y Corff wneud penderfyniad o dan y paragraff hwn.

Gweithdrefn

16.—(1) Caiff y Corff benderfynu ei weithdrefn ei hun (gan gynnwys cworwm) a gweithdrefn ei bwyllgorau a'i is-bwyllgorau.

(2) Caiff y Corff awdurdodi ei bwyllgorau a'i is-bwyllgorau i benderfynu eu gweithdrefn eu hunain (gan gynnwys cworwm).

(3) Ond os yw penderfyniad o dan y paragraff hwn yn darparu ar gyfer cworwm unrhyw gyfarfod, ni ellir bodloni'r cworwm oni bai bod y rhan fwyaf o'r aelodau sy'n bresennol yn aelodau anweithredol.

17. Ni chaiff unrhyw drafodyn gan y Corff neu unrhyw bwyllgor neu is-bwyllgor ei annilysu gan—

(a) swydd wag cadeirydd, na

(b) unrhyw ddiffyg ym mhenodiad unrhyw aelod.

Dirprwyo swyddogaethau

18.—(1) Caiff y Corff awdurdodi un o'i bwyllgorau, ei is-bwyllgorau, ei aelodau neu ei gyflogeion i arfer unrhyw un o'i swyddogaethau.

(2) Oni bai bod y Corff yn penderfynu fel arall, caiff un o bwyllgorau'r Corff awdurdodi un o is-bwyllgorau, aelodau neu gyflogeion y Corff i arfer unrhyw un o swyddogaethau'r pwyllgor hwnnw, gan gynnwys swyddogaethau y mae'r Corff wedi eu dirprwyo iddo.

(3) Oni bai bod y Corff neu'r pwyllgor perthnasol yn penderfynu fel arall, caiff un o is-bwyllgorau'r Corff awdurdodi un o aelodau neu gyflogeion y Corff i arfer unrhyw un o swyddogaethau'r is-bwyllgor hwnnw, gan gynnwys swyddogaethau y mae'r Corff neu bwyllgor wedi eu dirprwyo iddo.

(4) Caiff awdurdodiad o dan ddarpariaethau blaenorol y paragraff hwn fod yn gyffredinol neu'n benodol, a rhaid ei roi yn ysgrifenedig.

(5) Rhaid i'r Corff anfon copi o'r awdurdodiad at Weinidogion Cymru.

(6) Nid yw darpariaethau blaenorol y paragraff hwn yn atal y Corff (neu'r pwyllgor neu'r is-bwyllgor, yn ôl y digwydd) rhag arfer y swyddogaeth o dan sylw.

Aelodaeth o bwyllgorau ac is-bwyllgorau

19.—(1) Caiff pwyllgor neu is-bwyllgor gynnwys personau nad ydynt yn aelodau o'r Corff.

(2) Caiff y Corff dalu'r fath gydnabyddiaeth ariannol a lwfansau ag a benderfynir gan Weinidogion Cymru i unrhyw berson—

- (a) sy'n aelod o bwyllgor neu is-bwyllgor, ond
- (b) nad yw'n aelod o'r Corff nac yn gyflogai iddo.

Gosod y sêl a phrofi dogfennau

20.—(1) Rhaid i'r weithred o osod sêl y Corff gael ei dilysu drwy lofnod—

- (a) aelod o'r Corff sydd wedi ei awdurdodi (yn gyffredinol neu'n benodol) at y diben hwnnw, neu
- (b) cyflogai sydd wedi ei awdurdodi felly.

(2) Mae dogfen sydd i bob golwg wedi ei gweithredu'n briodol o dan sêl y Corff—

- (a) i'w derbyn fel tystiolaeth, a
- (b) i'w thrin fel pe bai wedi ei gweithredu felly oni ddangosir fel arall.

Cynllun Corfforaethol

21.—(1) Cyn dechrau pob blwyddyn ariannol, rhaid i'r Corff—

- (a) llunio cynllun gan nodi sut y mae'n bwriadu cyflawni ei swyddogaethau yn ystod y flwyddyn ariannol ganlynol, a
- (b) cyflwyno'r cynllun i Weinidogion Cymru ei ystyried.

(2) Yn y paragraff hwn—

- (a) ystyr “blwyddyn ariannol” (“*financial year*”) yw'r cyfnod o 12 mis sy'n dod i ben ar 31 Mawrth, a
- (b) blwyddyn ariannol gyntaf y Corff yw'r cyfnod o 12 mis sy'n dod i ben ar yr ail 31 Mawrth ar ôl i'r Corff gael ei sefydlu.

Adroddiad blynyddol

22.—(1) Ar gyfer pob blwyddyn ariannol, rhaid i'r Corff—

- (a) llunio adroddiad blynyddol ar sut y mae wedi cyflawni ei swyddogaethau yn ystod y flwyddyn honno, a
- (b) anfon copi o'r adroddiad at Weinidogion Cymru cyn gynted â phosibl ar ôl diwedd y flwyddyn honno.

(2) Rhaid i Weinidogion Cymru osod copi o'r adroddiad gerbron Cynulliad Cenedlaethol Cymru.

(3) Yn y paragraff hwn a pharagraff 23, ystyr “blwyddyn ariannol” (“*financial year*”) yw cyfnod o 12 mis sy'n dod i ben ar 31 Mawrth, ond blwyddyn ariannol gyntaf y Corff yw'r naill neu'r llall o'r canlynol—

- (a) y cyfnod sy'n dechrau ar ddiwrnod sefydlu'r Corff ac sy'n dod i ben ar y 31 Mawrth nesaf, neu
- (b) cyfnod arall, heb fod yn fwy na 2 flynedd, yn ôl cyfarwyddyd Gweinidogion Cymru.

Cyfrifon

23.—(1) Ar gyfer pob blwyddyn ariannol, rhaid i'r Corff—

- (a) cadw cyfrifon priodol a chofnodion priodol mewn perthynas â hwy, a
- (b) llunio datganiad o gyfrifon,

yn unol â chyfarwyddiadau Gweinidogion Cymru.

(2) Rhaid i'r Corff gyflwyno'r datganiad o gyfrifon a gaiff ei lunio o dan y paragraff hwn i Archwilydd Cyffredinol Cymru a Gweinidogion Cymru.

(3) Rhaid cyflwyno'r datganiad o gyfrifon ddim hwyrach na 31 Awst yn y flwyddyn ariannol ar ôl y flwyddyn ariannol y mae'r datganiad yn ymwneud â hi.

(4) Rhaid i gyfrifon a datganiadau o gyfrifon y Corff roi darlun gwir a theg o—

- (a) amgylchiadau'r Corff ar ddiwedd y flwyddyn ariannol, a
- (b) incwm a gwariant y Corff yn y flwyddyn ariannol.

(5) Rhaid i Archwilydd Cyffredinol Cymru—

- (a) archwilio ac ardystio'r datganiad o gyfrifon ac adrodd arno;
- (b) rhoi copi o'r datganiad ardystiedig o gyfrifon, ynghyd â'i adroddiad arno, i'r Corff; ac
- (c) heb fod yn hwyrach na 4 mis ar ôl i'r datganiad o gyfrifon gael ei gyflwyno, gosod gerbron Cynulliad Cenedlaethol Cymru gopi o'r datganiad ardystiedig o gyfrifon a'r adroddiad.

Gwybodaeth

24.—(1) Rhaid i'r Corff roi i Weinidogion Cymru unrhyw wybodaeth y mae ei hangen arnynt yn ymwneud ag eiddo'r Corff neu â chyflawni ei swyddogaethau neu â'r ffordd y mae'n bwriadu cyflawni ei swyddogaethau.

(2) Rhaid i'r Corff hefyd—

- (a) caniatáu i unrhyw berson a awdurdodir gan Weinidogion Cymru arolygu unrhyw gyfrifon, dogfennau neu gofnodion eraill y Corff (ar unrhyw ffurf), a gwneud copïau ohonynt, a
- (b) rhoi unrhyw esboniad arnynt y mae ei angen ar y person hwnnw neu Weinidogion Cymru.

Explanatory Memorandum to the Natural Resources Body for Wales (Establishment) Order 2012

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Natural Resources Body for Wales (Establishment) Order 2012.

JOHN GRIFFITHS AM

MINISTER FOR ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

28 MAY 2012

1. Description

This order establishes the new single body for the management of Wales' natural resources. The new body has the working title *Natural Resources Body for Wales*, and this order establishes the body in a way that ensures that, prior to its having transferred to it the full range of appropriate functions, it will be able to undertake the preparatory work necessary to ensure the new body will be able to function fully from the first day it becomes responsible for all the environmental responsibilities that are to be transferred to it. A second order will be brought forward to transfer functions of the Forestry Commission in Wales (FCW)¹, Environment Agency – Wales (EAW)² and the Countryside Commission for Wales (CCW) to the body.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The Order is being brought forward under powers contained in sections 13 and 15 of the Public Bodies Act 2011 (“the 2011 Act”)

The Order is subject to a form of affirmative procedure, in accordance with section 19 of the 2011 Act. In addition to the normal requirement of affirmative procedure – i.e. that the Order cannot be made unless the Assembly approves it – the 2011 Act requires that the Order be laid in draft for 40 non-recess days. Moreover, at any time within 30 days of it having been laid, the Assembly may resolve, or a Committee tasked with scrutinising the Order may recommend, that the draft Order be laid for an additional 20 non-recess days (i.e. 60 in all) before it can be made³. In that event, the Welsh Ministers will have to have regard to any representations, any resolutions of the Assembly and any recommendations of a Committee of the Assembly tasked with scrutinising the Order. If any material changes are made to the draft Order as a result, the revised draft Order would need to be re-laid before the Assembly, with a statement summarising the changes. This revised draft Order would then be subject to normal affirmative procedure in the Assembly.

Taken as a whole, this procedure is a form of ‘super-affirmative’ procedure.

The Order confers a number of functions on the Welsh Ministers, as follows.

Article 5 - power to give guidance to the Body with respect to the manner in which it should exercise its functions so as to give effect to its purpose. The Body must have regard to this guidance in exercising its functions.

¹ Technically speaking, the Forestry Commission is one body; FCW is merely an operational name for its arm in Wales. Functions transferred will be Functions of the Forestry Commission but they will, for obvious reasons, be transferred (normally) in so far as they relate to Wales.

² A similar point applies, in relation to the Environment Agency, as to the Forestry Commission – see footnote 1.

³ But the full Assembly could overrule the Committee’s recommendation and revert to the 40-day procedure for the Order.

Article 10 - implied power to request advice and assistance from the Body (to the extent, if any, that the Welsh Ministers do not already have this power under their own incidental powers contained in section 71 of the Government of Wales Act 2006)

Article 11 - power to give the Body directions as to the exercise of its functions. The Body must comply with any such directions.

Article 12 - power to give the Body grants (in addition to the Welsh Ministers' existing powers under s. 70 of the Government of Wales Act 2006)

Article 13 - power to determine the financial duties of the Body, including a power to direct the Body to pay over to the Welsh Ministers sums received by the Body, or the amount of any capital or revenue surplus that the Body may accrue

Article 14 - power to lend to the Body (in addition to the Welsh Ministers' existing powers under s. 70 of the Government of Wales Act 2006) and to consent to the Body's borrowing from another person

Article 15 - power to guarantee loans taken out by the Body (in addition to the Welsh Ministers' existing powers under s. 70 of the Government of Wales Act 2006) and power to make directions ensuring that the Welsh Ministers recover any amounts paid out by them in consequence

Schedule paragraph 2 - power to appoint the chairperson and deputy chairperson of the Body; power to appoint 5 - 11 non-executive (non-employee) members of the Body (any deputy chairperson being one of these). (References in this document to the "Board" of the Body are references to members of the Body).

Schedule paragraph 4 - power to appoint an employee of the Welsh Assembly Government as one of the non-executive members referred to above

Schedule paragraph 7 - power to remove a non-executive member (including the chairperson or deputy chairperson) from office

Schedule paragraphs 10 -12 - power to determine the level of remuneration and allowances of the chairperson, deputy chairperson and other non-executive members and to make other determinations in relation to the payment, or amounts, of pensions, gratuities and compensation to current or former members of the Body

Schedule paragraph 13 - power to appoint, or to approve the appointment of, the first chief executive; and power to approve the appointment of subsequent chief executives

Schedule paragraphs 14 and 15 - power to approve the level of remuneration and allowances of the Body's staff and to approve determinations of the Body

in relation to the amounts of pensions or gratuities to current or former members of staff of the Body

Schedule paragraph 19 - power to determine the remuneration and allowances of co-opted committee or sub-committee members

Schedule paragraphs 21 - 22 - role of considering the Body's advance Corporate Plan and receiving its Annual Report of activities; duty to lay the latter before the Assembly

Schedule paragraphs 23-24 - power to give directions as to the Body's accounts; role of receiving the annual statement of accounts; and implied power to require information relating to the Body's property or discharge or proposed discharge of its functions.

3. Legislative background

Section 13 of the Public Bodies Act 2011 enables the Welsh Ministers to make an Order to establish a new body corporate for the purposes of that section. Other provisions in section 13 enable the Welsh Ministers to transfer certain functions (including those of the Countryside Council for Wales, a Welsh Flood and Coastal Committee and the Welsh devolved functions of the Environment Agency and Forestry Commission) to a new body established under that section. The powers also enable those bodies' functions to be modified, and the modified functions to be transferred to a new body. This Order is being made to establish a new body for the purpose of having functions transferred to it under section 13.

4. Purpose & intended effect of the legislation

Purpose

This Order is intended to establish a new single body for the management of Wales' natural resources, referred to for the purposes of this legislation as the Natural Resources Body for Wales.

The overarching purpose ascribed to the new body (article 4) is to ensure that the environment and natural resources of Wales are sustainably maintained, sustainably enhanced and sustainably used. The Welsh Ministers will be able to issue guidance to the Body as to how it should exercise its functions so that it fulfils this purpose.

The purpose recognises the key role of the Body in delivering our central organising principle of sustainable development. In both its regulatory and operational functions it will need to optimise opportunities for delivering well-integrated environmental, social and economic outcomes for the people and communities in Wales.

We want the Body to have a clear role in environmental protection, but also to be tasked with encouraging sustainable and appropriate use of our

environment and natural resources for the present and future benefit of the people and economy of Wales. Through the transparent conduct of its work, the Body will promote a wider understanding of the value of our natural resources and of sustainable development...

Legal Approach

This is the first of two planned Orders to create the Body as a fully functioning entity: this Order establishes it as a legal entity, while a later Order will be laid in order to vest the body with all the functions necessary to deliver its intended remit. This first Order provides the Body with functions necessary to undertake preparatory work to ensure it will be able to carry out any functions transferred to it by that Order.

This approach to delivering the change follows a well established path for changes of this type, with the establishment of an organisation to work with the legacy bodies to plan and implement transition. Creating the “shadow” arrangement at this stage will allow ownership of the organisational design structures and systems of the new body to rest with those who will ultimately be responsible for introducing and administering them.

Functions

The functions defined in the Order are interim functions to set the direction for the new Body and to enable the preparatory work to take place for the transfer of its substantive functions in the second Order. The second Order will revoke the main initial preparatory function contained in this Order (article 6).

To this end, the Order defines the initial function of the Body as being facilitating the implementation of any proposal of the Welsh Ministers for the transfer (with or without modification) to the Body of any function of the Countryside Council for Wales; any Welsh devolved function⁴ of the Environment Agency or the Forestry Commissioners; any function of a Welsh Flood and Coastal Committee; any of their own functions relating to the environment; or any Welsh environmental function⁵ of any person.

The Order also provides for the Body to be able to undertake work that is incidental or conducive to those initial functions during the period until the Body takes up its full functions.

These provisions will enable the Body to do those things necessary to make it into a fully functioning organisation, ready to accept the transfer, in due course, of the full range of environmental powers, duties and functions.

The main provisions cover the following issues and enable the Body to:

⁴ “Welsh devolved function” and “Welsh environmental function” are terms defined in section 36 of the 2011 Act.

⁵ See previous footnote.

- Appoint and remunerate a Chair and board members (who – in so far as they are not employees - will be appointed by Ministers) and, through the Board, to appoint a Chief Executive Officer and employee members (transitional provisions will allow Welsh Ministers to make the appointment of the first CEO if this is expedient).
- Appoint staff and make decisions on terms and conditions.
- Contract the services of contractors and consultants. It will be able to occupy accommodation, use telephones, email, other ICT, etc, to communicate internally and externally, and to enter into contracts for ICT design and development, and procure other goods and services
- Enter into arrangements, and be party to agreements, receive and pay money, including: paying salaries; incurring and reimbursing travel and subsistence costs; incurring other costs e.g. maintenance, overheads, utility bills and rent for accommodation.
- Design and deliver (and agree with Welsh Government) the key governance required for running the new body, including: organisation structures, financial schemes of delegation, etc.
- Facilitate the adoption of policies, including statutory guidance to others (e.g. prosecution policy; health and safety policy; Welsh Language Scheme) that can be put into effect when the Body takes up its full functions.
- Take steps to ensure that, from the Body's first day of full operation, arrangements are in place (under powers contained in sections 26-28 of the Public Bodies Act 2011) with the Environment Agency and the Forestry Commission for the provision of certain services.

There are specific provisions relating to the establishment and general functions of the Body which, in addition to detailing its initial functions, include a general duty placed on the Body to have regard to costs and benefits in exercising powers, a requirement to provide advice and assistance to Welsh Ministers if requested and the power for Welsh Ministers to give the Body general or specific directions as to the exercise of its functions.

In addition to the broad powers and duties required to establish and run the new body (referred to above) the Order makes provision with regard to general financial duties and to borrowing powers. In this context, the Order also makes provision with regard to Welsh Ministers' ability to underwrite any borrowing undertaken by the body.

The Schedule also places duties on the Body with regard to reporting upon its functions and the keeping and publishing of accounts.

Whilst the general and financial powers and duties that are conferred upon the Body by this Order will continue to apply, partly or wholly, they will in due course be supplemented by the second Order which will also confer the full

range of functions. For example, the second Order will include powers to investigate, to prosecute, and to raise charges.

The purpose of the powers and duties included in the present Order is to enable the Body to undertake those preparatory functions necessary to ensure the new Body will be able to function fully from the first day it becomes responsible for all the environmental responsibilities that are to be transferred to it.

The Schedule to the Order sets out the status and constitution of the new body and its membership. The Body will be established as a body corporate. It will not be a Crown body, although the second Order could confer Crown status on it in relation to certain functions. It will be a Welsh Government Sponsored Body with the Chair and non-employee Members of its Board being appointed by Welsh Ministers and the appointment of the Body's chief officer being made with the approval of Welsh Ministers.

Details and conditions of tenure and remuneration are also given in the Schedule.

The appointment of the Chair and non-employee Board Members of the new body will be regulated by the Commissioner for Public Appointments.

Requirements of the Public Bodies Act 2011

Section 19 of the 2011 Act requires the Welsh Ministers to set out why they think the Order meets the requirements of section 16 of the Act. Section 16 stipulates that the Welsh Ministers may make an Order under section 13 or 14 only if they consider that the Order serves the purpose of improving the exercise of public functions having regard to:

- (a) efficiency,
- (b) effectiveness,
- (c) economy, and
- (d) securing appropriate accountability to the Welsh Ministers.

The Welsh Ministers may make an Order under either of those sections only if they consider that:

- (a) the Order does not remove any necessary protection, and
- (b) the Order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

With regard to the section 16 requirements, it should be noted that this Order is part of a package designed to improve the exercise of public functions, the need for which was clearly articulated in the business case

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

However, in summary, the Welsh Government is confident that the proposed establishment of the new body will achieve efficiencies and economies, and will provide the most effective means of meeting its environmental objectives. By creating a Wales only body, taking decisions for Wales in Wales, it will improve accountability to the Welsh Ministers and the National Assembly for Wales.

This Order only provides for the creation and general powers of the new body, and the Welsh Ministers do not consider that it affects any necessary protections or the exercise of rights and freedoms by any persons.

The Business Case

Together, the two Orders are intended to deliver a new body that meets the three main factors driving the proposed changes detailed in the business case:

- The need to modernise regulation and natural resource management;
- The need to focus on Wales' priorities, opportunities and challenges reflected in Welsh legislation and policy; and
- The need to ensure value for money

The Welsh Government has undertaken detailed work to evaluate a range of options, including:

- no change;
- sharing services;
- combinations of two of the existing bodies referred to above (EAW + CCW and FCW + CCW); and
- creating a new single body.

The options were assessed against Value for Money (Net Present Value) and six qualitative criteria: outcomes for the environment; outcomes for people; outcomes for business and the economy; focus on Welsh Government priorities; organisational and operational resilience; and opportunities for staff within Wales.

The business case involved a substantial evaluation, which was undertaken by staff from the existing organisations working with Welsh Government officials over a period of more than twelve months. The final report on the work was presented in the form of a strategic outline business case which was subject to an external independent review, before being presented to Ministers.

It concluded that a single body was the option most likely to deliver the best outcome on each of the six qualitative assessment criteria. It would also deliver the best net economic benefit after taking account of the cost of change and discounting for inflation (£69m over 10 years). It also concluded that the up front cost of change is affordable and that risks can be managed.

Section 5 of this Memorandum summarises the consultation process, focusing particularly on responses that have informed the preparation of this Order; wider issues of how public functions will be exercised as a result of the second Order will be covered by the explanatory document accompanying that Order.

5. Consultation

A series of consultations by the Welsh Government has led to the decision to proceed with the policy decisions underpinning this legislation.

The Welsh Government's new Natural Environment Framework (NEF) focuses on managing our environment as a whole rather than focusing on separate parts. The new approach was the subject of a public consultation (A living Wales – a new framework for our environment, our countryside and our seas) published in September 2010 (<http://wales.gov.uk/consultations/environmentandcountryside/eshlivingwalescons/?lang=en&status=closed>).

This consultation set out the Welsh Government's new approach to the way we manage our land, water and seas. It also showed how we are actively responding to the failure to meet existing biodiversity targets⁶. The document set a broad direction of travel for the Welsh Government's future work and first raised the potential for bringing together the work of existing environmental bodies in Wales.

In order to better develop their understanding of the implications of following this route, Ministers commissioned an initial review of delivery options which reported in January 2011, followed by a full business case published in November 2011 (<http://wales.gov.uk/topics/environmentcountryside/consmanagement/nef/publications/seb/businesscase/?lang>). It set out the benefits, costs and risks of creating a single body, as well as affordability and an outline plan for its establishment.

Most recently, the Welsh Government consulted on the proposed arrangements for establishing and directing a new body for the management of Wales' natural resources. The consultation ran from 9 February 2012 to 2 May 2012 i.e. for a period of twelve weeks. The consultation document was available from the Welsh Government's website (<http://wales.gov.uk/consultations/environmentandcountryside/singlebody/?lang=en&status=closed>).

⁶ The National Assembly's Sustainability Committee published the report of its inquiry into biodiversity in Wales in January 2011. The inquiry found that Wales had failed to meet both international and national targets. The targets included the binding agreement at the international Convention on Biological Diversity (CBD) in 2002 to achieve a significant reduction of the current rate of biodiversity loss at the global, regional and national level and the 2001 commitment by the EU Heads of State and Government to a target of halting the decline of biodiversity in the EU and restoring habitats and natural systems by 2010.

In particular, the consultation sought views on the following:

- The overall proposals for establishing the new body (including the business case).
- Proposals for implementing the legal changes required to establish the new body.
- Our ambitions for the new body, together with the way in which we intend to frame its overall purpose.
- Our proposed arrangements for customer and stakeholder engagement, including mechanisms for ensuring accountability and transparency in the work of the new body.
- Our proposals for the main functions and powers of the body, including consideration of some elements of Welsh Government functions and Internal Drainage Boards.
- Our proposals for the status of the body and how it will be governed, including arrangements for an executive board and wider stakeholder engagement.
- How we propose to take forward issues around cross-border governance and our proposals for the links to Welsh Government Ministers to ensure that the body will be fully accountable to Ministers.

The consultation document sought views on 12 specific questions covering the above issues.

A total of 308 consultation responses were received. There were 223 responses from organisations and 85 responses from private individuals.

The overall analysis showed that more than 60% of the 308 respondents to the consultation supported the overall proposal to manage natural resources in a more integrated way and to establish a single body by bringing together the existing functions of EAW, CCW and FCW. Approximately 10% of respondents were opposed, with the remainder not expressing any specific views on the overall proposition, or expressing views which were closely balanced.

The sectors which broadly supported the proposal to establish a single body included private individuals, environmental/ conservation bodies, local authorities and/ or their representatives, the fisheries sector, the access and recreation sector, other business and industry, other public sector bodies, academic/ research bodies and the third sector.

Just under half of the responses from the forestry sector were broadly in favour of the proposal, with the remaining responses unsupportive or neutral. Other sectors which were less supportive of the proposal were professional bodies, local partnership groups, trade unions and consultants.

The key themes emerging from the consultation were:

- Many of the respondents in support of the overall proposal cited a wide range of potential benefits in establishing a single body.

- Some respondents set out their concerns about establishing a single body. These included environmental concerns, issues around resources and transition, as well as specific issues raised by the forestry sector and industry.
- The phased approach to the creation of the body and further development of the legislation was generally supported as respondents agreed that there was a need to carry out the approach efficiently so there is no detrimental effect on existing services and to ensure business continuity.
- There were many views on the principal aim and strategic objective, with most of the respondents suggesting amendments to either the principal aim or strategic objectives or both.
- There was broad support for the approach to the delivery framework, although it was recognised that more work was needed on the actual outcomes and objectives.
- The list of functions for the new body was generally thought to be reasonable, though many detailed points were suggested.
- Many respondents agreed with the proposal to transfer marine and wildlife licensing, and tree and plant health, functions to the new body.
- The importance of the new body having a good scientific base was emphasised. There was support for the proposal for the Welsh Government to co-ordinate investment in environmental research, although many thought that the new body should have flexibility to define and implement its own research.
- In general the proposals for the status, governance and accountability of the new body were welcomed. Most respondents agreed that the body should be established as a Welsh Government Sponsored Body which is independent from government. There was widespread support for transparency and accountability across the whole range of the body's work.
- Overall the proposals for the stakeholder arrangements were welcomed. Respondents emphasised the importance of pro-active stakeholder engagement and that the success of the new body was dependent on having strong stakeholder arrangements. Many respondents highlighted that any arrangements must be developed in conjunction with stakeholders.
- In general there was support for the proposals relating to the regulatory arrangements, including clear separation of regulatory and operational work in situations where the body regulates its own activities.
- Many respondents supported the need to simplify regulatory systems, though there were concerns from some that this should not be allowed to impact on environmental protection. Transparency of decision-making and the publication of decision documents were widely supported.

Of those responses that were of particular significance to this Order, were those concerning the phased approach to the creation of the body and further development of the legislation. This was generally supported as respondents agreed that there was a need to carry out the approach efficiently so as to

avoid any detrimental effect on existing services and to ensure business continuity.

A significant majority of respondents were broadly supportive of the development of the new body, with most of the respondents suggesting amendments to either the aim or the objectives, or both. In drafting of the overarching aim included in this Order, we have taken those views fully into account, along with suggestions made by the three existing bodies and views expressed by Assembly Members in the Plenary debate on the consultation responses held on 22 May 2012.

Those consultation responses that relate more to the second Order will be summarised and addressed in the explanatory document that accompanies that Order.

6. Regulatory Impact Assessment (RIA)

No regulatory impact assessment has been prepared for this Order. This is because the purpose of this Order is solely to create a body corporate under section 13 of the Public Bodies Act 2011 to enable certain key arrangements and decisions to be made prior to the full transfer of functions to the body from the Countryside Council for Wales, Environment Agency - Wales, Forestry Commission – Wales, Welsh Government and, potentially, other bodies.

There are therefore no identifiable costs to consumers or businesses associated with the implementation of this Order. Costs and benefits for the Welsh Government and the three existing bodies are set out in the business case. This has been published and subject to consideration by the Environment and Sustainability Committee.

The wider context including the costs, benefits and risks of the overall change has been set out in the business case and the subsequent consultation.

At this point, the new body will not act in a regulatory role nor will it exercise any functions on behalf of the Welsh Government; the functions which will eventually be vested in it will continue to be exercised by the existing environmental bodies up to the full vesting date.

The Order has no impact on –

- (a) the statutory duties of the Welsh Ministers concerning equality of opportunity (section 77 of the Government of Wales Act 2006), the Welsh language (section 78) and sustainable development (section 79); or
- (b) the local government, voluntary sector and business schemes made under sections 73, 74 and 75 of the Government of Wales Act 2006 respectively.

Where the new body, whilst acting in its “shadow” role, has to formulate any policies in advance of the full vesting date (e.g. with regard to equality, Welsh language, enforcement, etc.) to enable the body to function fully upon vesting, the body will undertake any relevant consultation and/or impact assessment.

A further Order will be laid in due course to effect the transfer (and where necessary, the modification) of the full range of relevant functions. That Order will be accompanied by a further explanatory memorandum and any appropriate regulatory impact assessment.

Mae cyfyngiadau ar y ddogfen hon

Eitem 3

Y Pwyllgor Amgylchedd a Chynaliadwyedd

Lleoliad: **Ystafell Bwyllgora 1 - y Senedd**

Dyddiad: **Dydd Iau, 17 Mai 2012**

Amser: **09:00 - 14:45**

Gellir gwyllo'r cyfarfod ar Senedd TV yn:

http://www.senedd.tv/archiveplayer.jsf?v=cy_200002_17_05_2012&t=0&l=cy

http://www.senedd.tv/archiveplayer.jsf?v=cy_200004_17_05_2012&t=0&l=cy

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Cenedlaethol
Cymru

National
Assembly for
Wales



Cofnodion Cryno:

Aelodau'r Cynulliad:

Dafydd Elis-Thomas (Cadeirydd)
Mick Antoni
Mark Drakeford
Rebecca Evans
Vaughan Gething
Llyr Huws Gruffydd
David Rees
Antoinette Sandbach

Tystion:

Keri Davies, Grŵp Organig Cymru
Sue Evans, Cymdeithas y Tirfeddianwyr
Ant Griffith, Cymdeithas y Tirfeddianwyr
Emma Hockridge, Cymdeithas y Pridd
Dafydd Jarrett, Undeb Cenedlaethol yr Amaethwyr Cymru
Dr Ieuan Joyce, Cyngor Cefngwlad Cymru
Bernard Llewellyn, Undeb Cenedlaethol yr Amaethwyr Cymru
Rhian Nowell-Phillips, Undeb Amaethwyr Cymru
Brian Pawson, Cyngor Cefngwlad Cymru
Arfon Williams, RSBP Cymru

Staff y Pwyllgor:

Lara Date (Clerc)
Catherine Hunt (Dirprwy Glerc)

1. Cyflwyniad, ymddiheuriadau a dirprwyon

1.1 Cafwyd ymddiheuriadau gan Russell George, Julie James a William Powell. Roedd Mark Drakeford yn dirprwyo ar ran Julie James.

2. Ymchwiliad i Glastir – Tystiolaeth lafar

2.1 Atebodd y tystion y cwestiynau gan aelodau'r Pwyllgor ar Glastir.

2.2 Cytunodd Sue Evans i ddarparu rhagor o wybodaeth ar y cyfyngiadau uchaf a allai rwystro mynediad i'r cynllun.

3. Papurau i'w nodi

Ymchwiliad i bolisi a chynllunio ynni yng Nghymru – Llythyr gan Weinidog yr Amgylchedd a Datblygu Cynaliadwy

3.1 Nododd y Pwyllgor y llythyr gan y Gweinidog.

Canllaw Statudol Drafft ar Dir Halogedig – Llythyr gan Weinidog yr Amgylchedd a Datblygu Cynaliadwy

3.2 Nododd y Pwyllgor y llythyr gan y Gweinidog.

Gorchymyn Bwrdd Dyfrffyrdd Prydain (Trosglwyddo Swyddogaethau) 2012 – Llythyr gan Weinidog yr Amgylchedd a Datblygu Cynaliadwy

3.3 Nododd y Pwyllgor y llythyr gan y Gweinidog.

4. Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer eitem 5 ac ar gyfer y cyfarfod ar 23 Mai

4.1 Cytunodd y Pwyllgor ar y cynnig i wahardd y cyhoedd o'r cyfarfod ar gyfer eitem 5 ac ar gyfer y cyfarfod ar 23 Mai o dan Reol Sefydlog 17.42.

5. Ymchwiliad i Glastir – Ystyried tystiolaeth

5.1 Trafododd y Pwyllgor y dystiolaeth a dderbyniwyd ar Glastir a chytuno y byddai'n ystyried papur ar y materion allweddol.

TRAWSGRIFIAD

Gweld [trawsgrifiad o'r cyfarfod](#).

Y Pwyllgor Amgylchedd a Chynaliadwyedd

Lleoliad: **Ystafell Bwyllgora 3 – y Senedd**

Dyddiad: **Dydd Mercher, 23 Mai 2012**

Amser: **09:00 – 12:00**

Cynulliad
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Wales



Cofnodion Cryno:
Cyfarfod preifat

Aelodau'r Cynulliad:

Dafydd Elis-Thomas (Cadeirydd)
Mick Antoniw
Mark Drakeford
Rebecca Evans
Russell George
Vaughan Gething
Llyr Huws Gruffydd
Julie James
William Powell
Antoinette Sandbach

Staff y Pwyllgor:

Alun Davidson (Clerc)
Lara Date (Clerc)
Catherine Hunt (Dirprwy Glerc)
Graham Winter (Ymchwilydd)

1. Cyflwyniad, ymddiheuriadau a dirprwyon

1.1 Cafwyd ymddiheuriadau gan David Rees. Roedd Mark Drakeford yn bresennol fel dirprwy.

2. Ymchwiliad i ddiogelu'r arfordir – Ystyried y cylch gorchwyl

2.1 Cytunodd y Pwyllgor ar y cylch gorchwyl ar gyfer ei ymchwiliad i ddiogelu'r arfordir a thrafododd pa sefydliadau y dylai eu gwahodd i roi tystiolaeth lafar.

3. Ymchwiliad i bolisi ynni a chynllunio yng Nghymru – Ystyried yr adroddiad drafft

3.1 Ystyriodd y Pwyllgor adroddiad drafft ar ei ymchwiliad i bolisi ynni a chynllunio yng Nghymru.