

## **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.