

Constitutional and Legislative Affairs Committee Draft Report

CLA(4)-08-13

CLA222 - The Natural Resources Body for Wales (Functions) Order 2013

The Natural Resources Body for Wales (Establishment) Order 2012 established a new statutory body, the Natural Resources Body for Wales and provided for its purpose, membership, procedure, financial governance and initial functions. This Order makes further provision about the Body, including provision about the modification and transfer of environmental functions to the Body.

This Order was initially laid in draft on 15 November 2012. Having taken account of issues raised by Assembly Committees and others, the Minister for Environment and Sustainable Development revised the draft. Annex 2 of the Explanatory Memorandum sets out the changes that have been made in detail.

Procedure: Affirmative

Technical Scrutiny

Under Standing Order 21.2 the Assembly is invited to pay special attention to the following draft instrument:

21.2 (i) - that there appears to be doubt as to whether it is intra vires

The consent of the Secretary of State and Minister which is required under Section 17 of the Public Bodies Act 2011 has not yet been obtained.

Section 17 provides that: -

(1) The Secretary of State's consent is required for an order under section 13 or 14 which transfers a function to, or confers a function on—

(a) the Environment Agency,

(b) the Forestry Commissioners, or

(c) *any other cross-border operator.*

(2) *The Secretary of State's consent is required for an order under section 13 or 14 made by virtue of section 15 which in any other way modifies the non-devolved functions of a person referred to in subsection (1).*

(3) *A Minister's consent is required for an order under section 13 or 14 which transfers a function to, or modifies the functions of, the Minister.*

The explanatory memorandum states that:-

“The making of the Order is conditional upon the consent of the Secretary of State being obtained in advance under Section 17 of the Public Bodies Act 2011. Consent has been provided subject to agreement being reached between officials on the outstanding details and technicalities relating to the Natural Resources Body for Wales Transfer Scheme, Shared Service Agreements and Delegated Functions, and the Government of Wales Act Order. Discussions on all these are progressing well and we expect discussions to be finalised before the Order is voted upon”

21.2 (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements

Schedule 3

Forestry Commission Byelaws 1982

Paragraph 17 (2)

The definition of “the Commissioners” needs to be deleted otherwise this becomes “the appropriate forestry authority” means the appropriate forestry authority.

Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999

Paragraph 104 (2) - **“the Commissioners”** appears in the opening words to Regulation 16 rather than paragraph a.

Hazardous Waste (England and Wales) Regulations 2005

Paragraph 205 (4) (b)- “)” **needs to be added** after Northern Ireland. Without this, it could be confusing as all the added words remain within the brackets.

Plant Health Forestry Order 2005

Paragraph 208 (9) - the reference should refer to **“European Union”** rather than **“European Community”**.

Schedule 5

Countryside Access (Draft Maps) (Wales) Regulations 2001

Paragraph 3

There is no definition of “the Council” in regulations 3-7.

It would be reasonable for the reporting points highlighted above to be corrected on publication, as they make no material change to the draft Order.

Merits Scrutiny

Under Standing Order 21.3 the Assembly is invited to pay special attention to the following instrument: -

No Risk Impact Assessment (RIA) accompanies the draft Order. Paragraph 6 of the Explanatory Memorandum provides the reasons for this.

Legal Advisers
Constitutional and Legislative Affairs Committee
March 2013