

1. What consultation was carried out on the amended aim of the body ?

2. Does the Welsh Government intend to consult on the second draft order ?

a. If it does, what are the plans for this consultation?

b. If it does not why doesn't it think further consultation is necessary ?

The 'Natural Resources Wales' Consultation set out our proposals for the body, including a draft aim. We made clear in our consultation that the wording of the purpose of the Body for an order would be developed in legal drafting after consideration of responses to the consultation. We have done this, and in developing the wording we have taken account of the responses to all aspects of Section 4 of the consultation document ("The Purpose of the New Body").

The stakeholder Reference group, which discussed the order on its publication, have welcomed these changes, and I do believe that the statutory purpose as we have set it out is now appropriate.

While I believe that the NRW consultation set out our proposals and met the legal requirements of the Act, I do want to seek views from stakeholders and members in order that we get the second order right.

The nature of the second order will be highly technical, as it will contain a large number of amendments to existing legislation in the form of schedules. The order itself will, not therefore be particularly accessible to the wider public. The vast majority of these changes will be minor – with the effect of changing or adding the name of the new body to existing legislation in respect of Wales.

My intention is therefore to publish a further document which focuses on those matters which are likely to be of wider interest. I expect to publish this in July with consultation completing at the end of September.

In particular I intend to consult on cross-cutting duties of the body, where they have to be amended to remove triplication. These would include the duties in respect of Conservation, Access, Natural Beauty and Recreation. We will also seek views on whether these duties are fully aligned with the statutory purpose that we have included in the first order.

I have made it clear in the explanatory memorandum that the second order will amend the first order (for example to give the body its final name).

3. What Consideration was given to defining the Term Natural Resources ?

Originally, the Government had intended to provide a definition of “natural resources” in the draft Order. We intended to make clear that the term included – without limitation – air, water, land (living organisms and ecosystems). However, that was on the basis of the purpose for the body as set out in the consultation document. This did not contain the term “environment”.

In light of the responses to the consultation, the Government decided to include the word “environment” in the purpose. It is clear, as a matter of natural interpretation, that the courts would construe “environment” as including air, land and water. Therefore the Government considered that it was only necessary to ensure that living organisms and ecosystems were included in the definition. It was considered more appropriate to include these in the definition of “environment” than in a definition of “natural resources”.

We recognise that the purpose as set out on the face of the order is important to stakeholders, and we take the view that including the phrase Natural Resources helps make clear our intention that the body will have a clear role in encouraging sustainable use for public good, as well as maintaining and enhancing the environment.

4. Why are definitions for some terms provided, whilst definitions for others are not?

The decision about whether to define a term or not – and if so, how - is one of the most difficult for a drafter.

The thinking here was that we should define a term only where:

- (a) The term is ambiguous, so that there is a risk that the courts might interpret it in a way that the Government or the Assembly did not intend; or
- (b) we wish it to have a meaning that is narrower or wider than the natural meaning that the courts would ascribe to it.

In this case, we are confident that the courts will interpret the term “natural resources” according to its natural, dictionary meaning, particularly as it appears alongside the term “environment”.

5. Was consideration given to including a definitions clause within the draft order ?

The draft Order contains an interpretation article (in an Order, “article” is the equivalent of a “clause” in a Bill). This defines the term “The Body” because it is used throughout the draft Order.

Some other terms are defined in the individual articles, e.g. “sustainability” in article 4, or “financial year” in paragraphs 21 and 22 of the Schedule. This is often done where the terms only appears in one article, or a very small number. The thinking is that it is easier for the reader if the definition is close to the concept it defines.

Also, of course there are two different interpretations of “financial year” in the Schedule. It would have been confusing to have tried to deal with this in a single interpretation article.

6. How will the definition of ‘sustainability’ relate to the Sustainable Development Bill and the current consultation in relation to that Bill?

The overall approach contained in this Order, including the ability for Ministers to provide statutory guidance to the Body in respect of how it carries out its statutory purpose, is consistent with our current intentions for the Sustainable Development Bill.

We are consulting on the Sustainable Development Bill, and it would be premature to assume the outcome of that consultation in respect of either the definition of Sustainability or Sustainable Development.

However, if necessary, either the second order, or the Sustainable Development Bill itself would be able to amend this order to ensure that the policy and legislation remain aligned.

7. In its report on the Business Case for the Single Environment Body the Committee stated that, as Assembly Members, [they] are also eager to ensure that there is appropriate accountability to the National Assembly for Wales for matters of financial control, and sought the Minister of Environment and Sustainable Development’s assurance that the chief executive officer of the new body will be designated an Additional Accounting Officer and thus made accountable to the National Assembly for Wales for the discharge of their accounting officer responsibilities. Will the Minister place such a duty on the chief executive?

a. If so, why is this requirement not included on the face of the draft Order?

b. If not, why not

The norm in Wales is for the appropriate Additional Accounting Officer of each WG department (in this case, Sustainable Futures) to appoint the permanent head of each of its WGSBs as Accounting Officers for those bodies (see paragraph 3.2.3 of Managing Welsh Public Money).

For the future, clause 48 of the draft Public Audit Wales Bill contains a specific provision enabling the Welsh Ministers to "make provision for the Permanent Secretary to the Welsh Government to designate accounting officers" for a list of devolved bodies including CCW and FC (see

<http://wales.gov.uk/docs/dpsp/consultation/120315pawconsultbill2en.pdf>). The Government will ensure that the final version of the Bill is amended to list the SB instead of CCW and FC in Wales (or, if the Bill was enacted before our Order came into force, we would amend that Act, in our second Order, to have the same effect.

8. Can you clarify which figures in the Business Case relate to the costs associated with the draft Order and which bodies will provide this funding?

Costs are contained within a number of figures in the business case. The major elements are within the £344k for policy and legislation, the £250k for legal and actuarial advice and the £413k for finance, assets and liabilities (which includes asset transfer scheme costs). All these are 2012 / 13 costs. They are largely funded by WG, though a limited amount will be costs of staff seconded from the body, which will be paid for by the relevant legacy body.

These figures are included in annex 9.

9. Section 7(2) of the draft Order states that the Body must ensure, so far as possible without compromising the achievement of its functions under article 6(1), that there is effective co-operation in relation to the implementation of any proposal between itself, the Welsh Ministers, and any other person or body which is —

- (a) referred to in article 6(1)(a), and**
- (b) affected by the relevant proposal**

Can you please clarify the intention behind this sub section and the meaning of ‘effective co-operation’?

We simply wanted to place a duty on the body to work co-operatively with WG and the legacy bodies to ensure a smooth transition.

10. Section 8 of the draft Order states that in considering whether or not to exercise any power conferred upon it and in deciding the manner in which to exercise any such power the new Body must take into account the likely costs and benefits of exercising or not exercising these powers.

Can you clarify the intention behind this section – with regard to the extent to which the new Body will be required to demonstrate publicly that it has considered costs and benefits in deciding to use its powers?

This section is an existing duty on the Environment Agency (section 39 of the Environment Act 1995) and has the same legal effect. This is already built into existing EA policies and processes, which the body will take as a starting point for much of its work, and we would expect that approach to continue.

This duty primarily relates to exercise of the body's functions post vesting, but we took the view that this requirement was good practice in any event and should be applied to the activities of the body from its establishment.

As written the wording does not affect the body's obligation to discharge its duties, as opposed to exercising its powers.

11. Section 9 of the draft Order deals with general incidental function of the Body. The Committee is concerned that, as currently drafted, this section is too broad, in particular sub section 9 (1)

(1) The Body may do anything that appears to it to be conducive or incidental to the discharge of its functions.

Can you provide an explanation for the drafting of this section?

Article 9(1) is a standard "ancillary function" provision. Whenever a new body is established, standard practice is to give it a wide power to do things that are "conductive" or "incidental" to the discharge of its substantive functions.

The drafting of article 9 (both 9(1) and 9(2)) is heavily based on the ancillary powers of the legacy bodies, particularly the Environment Agency (see section 37 of the Environment Act 1995) and the Countryside Council for Wales (see section 132(2) of the Environmental Protection Act 1990, as amended), as well as drawing on the more recent precedent in the Natural Environment and Rural Communities Act 2006 (incidental powers of Natural England).

The power is broad in one sense but is of course heavily constrained by the fact that it only allows actions which are "parasitic" on the substantive functions of the body in question. In this case, the body as established under the draft Order has very few substantive functions – and in particular, no functions of managing or regulating activities affecting the environment or natural resources of Wales (or anywhere else). (The Body's purpose in article 4 is not, of course, a "function").

Overall, therefore, the new body's ancillary powers, set out in article 9, will be no wider than the equivalent powers of the legacy bodies.

12. Can you clarify what the intention behind drafting this sub-section, and why it is drafted using 'appears to Welsh Ministers' rather than less ambiguous wording e.g. 'when the Body has a surplus'?

This wording is derived from Section 44 of the Environment act. This wording 'appears to Welsh Ministers' does not, therefore, signal any change of current arrangements – it is intended to enable effective administration by both the body and Ministers in the event of underspend or income surplus.

The drafting will enable Welsh Ministers to act promptly at year end, if necessary before the publication of final accounts.

For the avoidance of doubt, since Welsh Ministers will provide a substantial part of the funding for the body through Grant-in-aid, there are other mechanisms available to them to withdraw or add funds should they wish to do so.

13. Can you explain why there are no limitations placed on the tenure of office, or the reappointment, of the chairperson and other members of the body?

It was considered unnecessary to detail the limitations on tenure and the reappointments process on the face of the Order as all public appointments made by Welsh Ministers are made in accordance with the code of practice issued by the Office of the Commissioner for Public Appointments.

The relevant section in the code (published April 2012) is as follows:

Reappointments and Extensions

Ministers may reappoint or extend the terms of public appointees or statutory office holders so long as:

- any such reappointment or extension had been made in accordance with the law relating to the particular public body or statutory office;
- no reappointment or extension is made without a satisfactory performance appraisal, evidence of which must be made available to the Commissioner on request; and
- no individual will serve in any one post for more than ten years.