

National Assembly for Wales

Environment and Sustainability Committee

Draft Natural Resource Body for Wales (Functions) Order 2012 – report

Introduction

- 1.1 We are grateful for the open manner with which the Minister for Environment and Sustainable Development ('the Minister') has engaged with us in the development of the draft Natural Resources Body for Wales (Functions) Order 2012 ('the draft Order'). In particular, we were pleased to receive an early version of the draft Order prior to its formal laying before the National Assembly for Wales ('the Assembly'). The Minister has responded to representations made by this Committee and by stakeholders, and we are pleased to see this positive interaction take place as we believe it has resulted in a better piece of legislation. We would also like to thank Professor Robert Lee for his invaluable assistance in assessing the early version of the draft Order.
- 1.2 We characterise the legislative process that the Minister determined for the creation of Natural Resources Wales as tortuous. We have had two Orders under the Public Bodies Act and further provision is to be made in future Welsh Government Bills. As we have mentioned previously, we have found it difficult to discern the entirety of the Minister's vision for the new body from consideration of these instruments alone, as elements of Natural Resources Wales's legislative foundations will not be set out until we come to look at the Environment Bill, or Bills.
- 1.3 We look forward to monitoring the development of Natural Resource Wales ('NRW'), to see the provisions that this draft Order, and the previous Establishment Order, being tested in action. The observation of the practical application of these provisions will allow us to consider whether or not they need to be improved by provisions in the forthcoming Environment Bill, or Bills.

1.4 The remainder of this report focuses on the draft Order. In the context of the limitations imposed by the Public Bodies Act, we are generally content with the draft Order's provisions. The Constitutional and Legislative Affairs Committee ('the CLA') will be looking at those constraints, and whether they have been adhered to. Consequently, we recognise the specific functions of the CLA and do not offer an opinion on these matters here.

2. Nature conservation duties

2.1 We note that the draft Order seeks to add an additional article to the Natural Resources Body for Wales (Establishment) Order 2012 ('the Establishment Order') relating to nature conservation duties. We understand that a path must be navigated between the functions of the existing bodies' duties within the constraints of the Public Bodies Act and that is what this and other amendments seek to achieve.

2.2 Following the Welsh Government's consultation on the draft Order and our consideration of an early version of the draft Order, the Minister made further amendments in this area.

2.3 Stakeholders have raised concerns with us that the duties, as currently proposed, are weaker than those currently required of the Countryside Council for Wales, and are therefore removing 'necessary protection' for the natural environment.

2.4 In particular, RSPB Cymru raised 'serious concerns' that the current drafting is not in keeping with the constraints imposed by the Public Bodies Act. The CLA will be looking at this in further detail and we ask that Minister gives careful consideration to this wording before seeking the Assembly's agreement of the draft Order.

2.5 Concerns about the social and economic definition of sustainable development were also raised with us by stakeholders, however we recognise that this was a matter for the Establishment Order. Again, this points to the difficulty that this approach has caused for some stakeholders.

3. Self-permitting and internal consultation

3.1 The Minister will be aware from our earlier work that we have had long-standing concerns about how self-permitting and internal consultation

processes will be separated within NRW. The Minister has previously assured us that transparency and internal separation of functions will allow these processes to be adequately performed without conflict of interest.

- 3.2 We acknowledge that these arrangements do not need to be set out in law. However, we believe setting out how these arrangements will be established at an early juncture would provide significant assurance to concerned stakeholders.
- 3.3 Substantial stakeholder concerns remain in relation to the internal separation of functions. We sympathise with these concerns, and will be bearing them in mind when we come to scrutinise the arrangements that NRW put in place. We ask that the Minister works with NRW to ensure that arrangements are in place by 1 April 2013 and that details of how this separation will operate are communicated to stakeholders as soon as possible.

4. Transparency and accountability

- 4.1 In term of ensuring the transparency and accountability of decision making, the draft Functions Order places a duty on the Body to develop, adopt and maintain a publication scheme. Whilst this provides a mechanism for ensuring transparency, the timing of information disclosures under the scheme will be crucial in terms of allowing adequate public accountability, especially in cases where the Body is self-permitting. Whilst we understand that it will be for the Body to develop the scheme, we ask that the Minister ensures that NRW provides details of how this will operate in practice before the vesting date of 1 April.
- 4.2 We reiterate our expectation that Welsh Ministers ensure that the scheme sets out a timeline and order to the process that ensures openness and transparency to a level that is at least in line with the situation that prevails at the moment in relation to the separate bodies.
- 4.3 We understand that, initially at least, existing appeal arrangements will remain in place. Natural Resources Wales will need to ensure that the different arrangements are clearly managed and communicated to stakeholders. We also expect the Welsh Government to look for opportunities in the Environment Bill, or Bills, to streamline appeals processes to improve upon the current situation.

5. Natural Resources Wales

- 5.1 Perhaps inevitably, much of the evidence we received in relation to the draft Order related more broadly to non-legislative aspects of the establishment of Natural Resources Wales. We have not passed comment on all of these concerns here, as the purpose of this report is to express our view of the draft Order.

- 5.2 We will be taking forward many of the concerns raised with us in future scrutiny of the Minister and Natural Resources Wales, and this evidence has provided us with a corpus of knowledge from which to develop our future scrutiny.