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Consultation Document

Natural Resources Body for Wales (additional consultation)

Date of issue: 13 August 2012
Responses by: 5 October 2012



Overview

This consultation provides further detail on the arrangements for establishing the new Natural Resources Body for Wales.

How to respond

Please complete the response form and return it to us no later than 5 October 2012, either by the on-line form, email or post using the contact details below.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

The consultation document and consultation response form are available on the Welsh Government's website at www.wales.gov.uk

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Data protection

How the views and information you give us will be used.

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Foreword

On 9 February 2012, I issued a consultation on the proposed arrangements for establishing and directing a new body for the management of Wales' natural resources; a body that would combine the functions of the Countryside Council for Wales and the Welsh devolved functions of the Environment Agency and the Forestry Commission. The consultation ran for a period of twelve weeks, ending on 2 May.

During the subsequent debate on the responses to the consultation, held in the National Assembly on 22 May, I reported how the consultation had provided us with a rich and valuable source of feedback that will be of use in helping to shape the new body's vision, values and ways of working. I also stated my intention to move forward with work to create the body and transfer functions to it.

The new body formally came into being on 19 July after the National Assembly voted to make the Natural Resources Body for Wales (Establishment) Order 2012. The order provides it with all the necessary powers to undertake the preparatory work in advance of having substantive functions of the legacy bodies transferred to it by a second order.

As the work on preparing the second order progresses, I have continued to consider carefully the consultation responses, looking to ensure that the functions to be transferred to the new body properly encompass its role in protecting the natural environment, the cultural and historic landscape and access to the countryside and coast.

I want to ensure that the new body has clear duties and powers necessary to maintain these and other crucial roles as carried out by the three existing bodies. I have decided, therefore, to undertake an additional consultation. The intention is to supplement the main consultation, seeking views on specific aspects of implementation, looking at the overarching duties of the new body and seeking additional views about the proposed legal and working arrangements of the body.

I look forward to your responses to these important questions.

Summary

This consultation provides further detail on the arrangements for establishing the new Natural Resources Body for Wales. The consultation supplements the earlier consultation, issued in February 2012, which sought views on the proposal to establish the new body. The consultation is being carried out under section 18 of the Public Bodies Act 2011.

There are two main parts of the consultation:

- The overarching duties of the new body.
- Additional information on legal and working arrangements of the body.

The first part focuses on the duties relating to natural beauty, conservation, access, protection of historic landscape and forestry.

These represent areas where a number of duties have to be brought together and reconciled, rather than simply transferred. Proposed provisions which cover these matters are included within the consultation document.

The second part of the consultation considers a number of detailed areas where further information has been sought, or where the analysis has indicated that it would be helpful to share intentions and seek views from stakeholders. Specific aspects include:

- Cross-border issues – general principles.
- Regulation and enforcement including the Environmental Permitting Regime (EPR) and inspection, investigation, enforcement and prosecution, including civil sanctions and investigatory powers.
- Monitoring and sampling of cross-border sites and impacts.
- Statutory planning and reporting.
- Emergency response including the transfer of powers under the Control of Major Accidents and Hazards Regulations (COMAH).
- Trading schemes and producer responsibility.
- Transitional arrangements e.g. measures to transfer ongoing prosecutions, existing decisions and permits to the body.

1. Background

Development of proposals and earlier consultation

Over the last two years the Welsh Government has been examining options for the future of environmental regulation and management in Wales.

In 2010, the Welsh Government published 'A Living Wales' which consulted on policies for managing the Environment in Wales. This included the option of combining the functions of the Countryside Council for Wales (CCW) and the Welsh devolved functions of the Environment Agency and the Forestry Commission. For ease of reference, this consultation document refers to the latter two groups of functions as the Environment Agency in Wales (EAW) and the Forestry Commission in Wales (FCW). The legacy bodies (following full vesting of the new body) will be the Environment Agency (EA) and the Forestry Commission (FC).

Alongside the 'Living Wales' consultation, Ministers commissioned an initial review of delivery options. This review compared a wide range of options and recommended in January 2011 that the best way forward was likely to be the creation of a new body comprising the functions of EAW, FCW and CCW.

The Welsh Ministers took the decision to continue further work toward a single delivery body. They requested a more detailed review (the business case) focusing in particular on the option of combining the functions of EAW, FCW and CCW. The business case was completed and published in November 2011. This confirmed that the combined option was the best way forward, both in terms of delivery and value for money. This proposal was included in the Programme for Government.

In December 2011, the Public Bodies Bill received Royal Assent. This made explicit provision to enable the Welsh Ministers to create a new body and transfer functions of EAW, FCW and CCW to it.

A consultation on the proposed arrangements for establishing and directing a new body for the management of Wales' natural resources was published by the Welsh Government on 9 February 2012. This consultation was carried out in accordance with the provisions of the Public Bodies Act 2011. A total of 308 responses were received and a summary of the responses to the consultation was published on 15 May 2012.

A copy of the consultation document, the summary of responses and the actual consultation responses are available from the Welsh Government's website at: <http://wales.gov.uk/consultations/environmentandcountryside/singlebody/?lang=en&status=closed>

The Minister's decision

Following Cabinet agreement, the Minister for Environment and Sustainable Development, John Griffiths AM, announced on 22 May that he intended to proceed with the creation of the new body, in line with the consultation proposals. He also announced that the main legal work to create the body would proceed via two orders made with powers under the Public Bodies Act 2011. This process is described further below.

2. Legal approach and timetable

The first consultation entitled 'Natural Resources Wales' and the Green Paper entitled 'Sustaining a Living Wales' proposed a two phased approach to the creation of the body:

- The creation of the body with a preparatory stage, followed by transfer of functions to that body would be implemented with minimal change using the powers provided by the Public Bodies Act 2011.
- More radical legislative changes, where necessary, through the proposed Environment Bill.

This evolutionary approach will allow the new body to contribute to the development of the legislation that it will be tasked with carrying forward. This approach was broadly welcomed in response to the first consultation.

Phase 1 – creation of the body

The body is being established using the powers contained in the Public Bodies Act 2011. These powers enable the Welsh Ministers to introduce secondary legislation, in the form of an order, to create a new body and to transfer functions from the three main bodies to that body, with necessary modifications. There will be two orders.

The first order

The first order created the new body and established it in a way that ensures that, prior to it having the full range of appropriate functions, it will be able to undertake preparatory work. This preparatory work is that which is necessary to ensure that the new body is able to function fully from the first day that it takes on the responsibilities that are to be transferred to it.

This first order, entitled The National Resources Body for Wales (Establishment) Order 2012, was laid in draft in the National Assembly for Wales on 30 May. Following the approval of the Assembly on 18 July 2012, it came into force on 19 July 2012. The order provides the body with the working title *Natural Resources Body for Wales*. It is available on the National Assembly's website via the following link.

<http://www.assemblywales.org/bus-home/bus-legislation/bus-fourth-legislation-sub.htm>

The second order

A second order, subject to the approval of the National Assembly and the consent of UK Government Ministers, will provide the new body with all the functions necessary to deliver its intended effect. This order will also amend provisions in the first order as necessary.

The powers in the Public Bodies Act 2011 enable the Welsh Ministers to transfer existing functions to the new body with some modifications, but do not enable them

to make widespread legislative change. Essentially the second order will amend existing legislation and make changes that are considered necessary as a consequence of the transfer of functions or incidental or supplementary to such transfer.

More than 300 pieces of primary and secondary legislation have been analysed which has resulted in the identification of a large number of amendments that will need to be made. The vast majority of these are straightforward – changing references to one or more of the existing bodies to refer to the new body. For example, there are many pieces of legislation which name one or more of the bodies as a statutory consultee.

This exercise involves a considerable amount of work. Although the initial policy analysis has been completed, legal analysis and drafting of amendments is ongoing.

As part of this process, the Welsh Government intends to:

- Liaise with Defra and the three existing bodies during the summer on initial drafting of the second order.
- Share the draft second order with the relevant Committees of the National Assembly for Wales in September. This will provide an initial opportunity for amendments to be proposed and considered prior to the order being laid.
- Consider the responses from this consultation and publish a summary by the end of October 2012.
- Lay the second draft order in November 2012.
- Consider proposals for amendments proposed by the Committees and Assembly Members and, if necessary, lay a revised draft order in February 2013 for final debate in March 2013 prior to the order coming into force on 1 April 2013.

The second phase

On 12 July 2011, the First Minister announced the Welsh Government's five year legislative programme. This included the proposal to introduce an Environment (Wales) Bill during the five year term. The Environment Bill will enable a more integrated approach to the management of the environment, as well as helping to improve urban green spaces. The Bill will also provide an opportunity to put in place a clear Welsh environmental legislation which is fit for the future. It will also allow us to pick up outstanding issues relating to the regulatory framework which are unlikely to be addressed through the orders to establish the new body.

Following the consultation on the 'Sustaining a Living Wales' Green Paper, we expect to produce a White Paper prior to introduction of the Bill.

There are also likely to be White Papers on the forthcoming Sustainable Development and Planning Bills.

Taken together, these Bills provide the opportunity to bring in changes in a phased, evolutionary way.

3. Why are we seeking your views?

The main consultation on 'Natural Resources Wales', published in February 2012, set out the overall plan and approach. Although the overall approach was widely supported, a number of respondents requested further detail on specific aspects of the proposals.

In parallel with the consultation process, a considerable amount of work has been undertaken to analyse the legal changes required. Discussions have taken place with EA and FC to further develop operational principles. This has not resulted in any significant shift of direction, but has provided a further level of detail which will help to clarify the proposals.

This consultation is therefore intended to supplement the previous consultation, seeking views on specific aspects of implementation. It is split into two main parts:

- The overarching duties of the new body.
- Additional information on legal and working arrangements of the body.

The consultation will last for 8 weeks. This is because it supplements the main consultation which was carried out over 12 weeks between February and May 2012. It is necessary to receive stakeholder views on the issues raised in this consultation prior to finalising the draft order, which is scheduled to be laid in November 2012.

Part 1. Overarching duties

4. Duties

The first consultation on 'Natural Resources Wales' stated that:

'The general principle underlying our proposal is that in the initial phase, unless otherwise stated, our intention would be to transfer the relevant functions of the three main bodies to the new body. In making the order we would aim to rationalise duplicate functions, taking the opportunity to simplify or update the legislation.'

As stated in section 3, the powers contained in the Public Bodies Act 2011 enable the Welsh Ministers to transfer existing legislative functions to the new body with modifications, but do not enable more widespread legislative change.

An analysis of the legislation has been undertaken and it identified three main areas where proposals may require the rationalisation/simplification of duplicate functions. These are (i) the purpose of the body (which was the subject of the first consultation, and is included in the first order), (ii) cross-cutting duties such as those relating to conservation, recreation and landscape protection, and (iii) general powers, such as prosecution powers, and powers to raise charges.

4.1 The purpose and cross-cutting duties

The 'Natural Resources Wales' consultation sought views on the aim of the new body. Substantial input was received on this matter, which was taken into account in developing the purpose of the body.

The intention behind the purpose, as set out in the first order, is that the body should interpret its duties and use its powers to benefit the people, environment and economy of Wales. As stated in the first consultation, the body will have to take decisions which take account of all of these interests, seeking to secure the best outcomes.

Under present legislation (section 4 of the Environment Act 1995) the Welsh Ministers already provide statutory guidance to the EA on implementation of their statutory duty in Wales in respect of sustainable development. Ministers also issue remit letters to the EA and CCW. In line with the proposals in the first 'Natural Resources Wales' consultation, a similar power to issue guidance has been included in article 5 of the first order.

These provisions are repeated below in box 1, as they provide context for the matters that are being consulted on.

Box 1. Extract from the first order

The Natural Resources Body for Wales (Establishment) Order 2012

Article 4 – Purpose of the Body

- (1) The purpose of the Body is to ensure that the environment and natural resources of Wales are—
 - (a) sustainably maintained;
 - (b) sustainably enhanced; and
 - (c) sustainably used
- (2) In this article—
 - (a) “sustainably” means—
 - (i) with a view to benefitting; and
 - (ii) in a manner designed to benefit, the people, environment and economy of Wales in the present and in the future;
 - (b) “environment” includes, without limitation, living organisms and ecosystems.
- (3) Wherever the Body exercises any function in relation to, or that affects, the Welsh zone (as defined in section 158(1) of the Government of Wales Act 2006(1), both the references to “Wales” in paragraph (1) are to be interpreted as including references to the Welsh zone.

Article 5 - Guidance with respect to the Body’s purpose

- (1) The Welsh Ministers may 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.
- (2) In preparing any guidance under paragraph (1), the Welsh Ministers must have regard to the Body’s responsibilities and resources.
- (4) In discharging its functions, the Body must have regard to guidance given under this article.
- (5) Before giving guidance to the Body under this article, the Welsh Ministers must consult the Body and such other bodies or persons as the Welsh Ministers consider appropriate.
- (6) The Welsh Ministers must publish any guidance given under this article as soon as is reasonably practicable after giving the guidance.
- (7) The power to give guidance under this article includes power to vary or revoke it.

4.1.1 Natural beauty and nature conservation duties

Current position

In respect of natural beauty, CCW has a duty to exercise its countryside functions for the purpose of conserving and enhancing natural beauty in Wales and the natural beauty and amenity of the countryside in Wales both in the areas designated as National Parks and those designated as Areas of Outstanding Natural Beauty (AONB), and elsewhere. Its nature conservation functions also include the conservation of flora, fauna and geological or physiographical features and fostering the understanding of nature conservation¹

The EA has a duty to further the conservation and enhancement of natural beauty and the conservation of flora, fauna geological or physiographical features of special interest when formulating or considering any proposals relating to any of its functions other than pollution control and to have regard to the desirability of conserving and enhancing natural beauty and the conservation of flora, fauna geological or physiographical features of special interest in formulating or considering any proposals relating to pollution control functions. In addition the EA has the duty, to such extent as it considers desirable generally to promote the conservation and enhancement of the natural beauty and amenity of inland and coastal waters and of land associated with such waters.²

The Forestry Commissioners, as far as may be consistent with the discharge of their functions, shall endeavour to achieve a reasonable balance between the development of afforestation, the management of forests and the production and supply of timber and the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest.³

The intention

The objective in bringing together the conservation and natural beauty duties is to protect, and if possible strengthen the work undertaken by the body to promote and protect conservation features and natural beauty, but to do that in a way that does not impose new regulatory burdens on industry or on operational forestry.

The proposal

The overall proposal, therefore, is to give the body a duty, set within the context of its overarching purpose, to promote conservation and natural beauty across all functions of the new body.

For its pollution control functions, this will be limited, as now, to a duty to have regard to the desirability of conserving and enhancing natural beauty and the conservation of flora, fauna geological or physiographical features in formulating or considering any proposals relating to those functions.

¹ S130 and 131 of the Environmental Protection Act 1990

² S7(1)(a) &(b) and s6(1) Environment Act 1995

³ S1(3A) Forestry Act 1967

For the conservation duties it is the intention to amend existing legislation, rather than creating a completely new duty. The duties on CCW in the Environment Protection Act 1990, and those placed on EA in section 7(1)(a) of the Environment Act 1995, are very similar.

The CCW duty is a requirement to discharge its countryside functions “for the conservation and enhancement of natural beauty” and the EA duty is a duty to exercise its non pollution control powers “so as to further the conservation and enhancement of natural beauty”.

The proposal is therefore to amend the legislation so that the section 7(1)(a) duty applies to the activities of the body as a whole, with the exception of the pollution control and forestry functions.

For pollution control, the existing duty to ‘have regard’ would continue to apply.

For forestry, the Forestry Commissioners must, as far as is consistent with the proper discharge of the functions contained in the Forestry Acts 1967 to 1979, endeavour to achieve a reasonable balance between the development of afforestation, the management of forests and the production and supply of timber with the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest. This provision has become known as the FC’s ‘balancing duty’ and has partly provided the legislative basis for the development of sustainable forest management policy in Wales and the UK.

Our preferred option would be to ensure that the body would continue to be subject to the balancing duty in section 1(3A) of the 1967 Act. An alternative approach is that the balancing duty in section 1(3A) of the 1967 Act would cease to apply, but the duty to have regard to the desirability of nature conservation in section 7(1)(b) of the 1995 Act would apply. The Welsh Ministers would give the body guidance as to how it should seek to balance the interests of the people, environment and economy in exercising its forestry functions.

In making these changes we would remove the reference to ‘special interest’ in respect of Wales in section 7(1) to align better with CCW’s existing duties and repeal the equivalent CCW duty in section 130 (2) (a) of the Environment Protection Act 1990.

Other duties, such as the duty in section 6(1) of the Environment Act 1995, would continue with modification to ensure they are applied to the new body in respect of its work for Wales.

CCW’s existing duty includes a requirement to have regard to the social and economic interests of rural areas. Section 7(1)(c) of the 1995 Act includes a similar requirement to have regard to the effects of proposals on the economic and social well-being of local communities in rural areas.

The overall effect of these changes would be that section 7(1) applied to the Welsh Ministers and the new body as follows. The possible wording for the second

order is included in box 2 below. (This would not be the precise wording, which would only set out the changes to the existing provision and would reflect continuing application of the existing wording to UK Ministers and the EA.)

Box 2. Possible wording for the second order

(a) Ministers and the new body would be under a duty, in formulating or considering any proposals relating to any functions of the body other than its pollution control functions or its functions under the Forestry Acts 1967 to 1979, to exercise any power with respect to the proposals so as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features.

This duty would apply so far as it was consistent—

- (i) with the purposes of any enactment relating to the functions of the body,
- (ii) in the case of Ministers, with the objective of achieving sustainable development,
- (iii) in the case of the body, with any guidance under article 5 of the Natural Resources Body for Wales (Establishment) Order 2012 (guidance with respect to the body's purpose),
- (iv) in the case of Ministers, with their duties under section 2 of the Water Industry Act 1991.

(b) Ministers and the new body would be under a duty, in formulating or considering any proposals relating to pollution control functions of the body, to have regard to the desirability of conserving and enhancing natural beauty and of conserving flora, fauna and geological or physiographical features.

(c) Ministers and the new body would be under a duty, in formulating or considering any proposal relating to any functions of the body—

- (i) to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historic interest;
- (ii) to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects; and
- (iii) to have regard to any effect which the proposals would have on the economic and social well-being of local communities in rural areas.

Question 1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty? (Yes, Mainly, Not at all).

If not, how would you change it?

4.1.2 Public access and recreation duties

Current position

In discharging its countryside functions, CCW has a duty to encourage provision or improvement of facilities for the enjoyment of the countryside, and to promote opportunities for outdoor recreation and the study of nature.⁴

FC's powers were widened in 1968 so as to include powers to provide tourist, recreation and sporting facilities such as accommodation, camping and caravan sites, places for meals and refreshments, picnic places, information and display centres, shops and public conveniences etc. They were also given the power to make charges in connection with these facilities.⁵

The EA currently has a duty (which also applies to the Welsh Ministers), in formulating or considering any proposals relating to its functions, to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountain, moor, heath, down, cliff or foreshore and other places of natural beauty and to take into account any effect which the proposals would have on any such freedom of access or on the availability of such facility⁶. The EA also has a duty to take such steps as are reasonably practicable, and consistent with the purposes relating to its functions, to secure, so long as the EA has rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner.⁷

The proposal

We propose to give the new body public access and recreation duties and powers, set within the context of its overarching purpose, to actively promote access and recreation through its operational activities, and to have regard to the desirability of preserving freedom of access, in its regulatory functions.

This would include powers to provide facilities, charging for them where appropriate, as well as the power to enter into joint ventures. The effect of the proposals would to *extend access and recreation duties to forest land* and to expand the geographic extent of the *powers* as compared with current arrangements.

In managing forestry the new body will continue to take account of the needs of both timber production and public access in much the same way as the FC does currently. Similarly the effect of the duty is constrained in respect of the exercise of pollution control functions to align with the current effect of the Environment Act 1995.

⁴ Environmental Protection Act 1990 s130 (2)(b)

⁵ Countryside Act 1968 s23.

⁶ Environment Act 1995 s7(2)

⁷ Environment Act 1995 s7(4)

The possible wording for the second order is shown in box 3 below:

Box 3. Possible wording for the second order

1. The NRBW may take such steps as it considers appropriate to promote and facilitate public access to, and enjoyment of, the countryside and open spaces in Wales.

2.—(1) The NRBW must exercise its functions so as to encourage the provision and improvement of facilities for—

- (a) the enjoyment of the countryside and open spaces;
- (b) open-air recreation; and
- (c) the study, understanding and enjoyment of the natural environment.

(2) The duty in paragraph (1)—

- (a) does not apply to the NRBW's pollution control powers, within the meaning of section 5 of the Environment Act 1995;
- (b) applies only to the extent that it is consistent with—
 - (i) any other duty imposed on the NRBW by an enactment,
 - (ii) the purposes of the enactment conferring the function,
 - (iii) guidance given by the Welsh Ministers under article 5 of the Natural Resources Body for Wales (Establishment) Order 2012.

(3) Section 7(2) to (5) of the Environment Act 1995 make further provision about the NRBW's duties relating to public access to places of natural beauty, facilities for visiting sites of interest, and making water and associated land available for recreation.

3.—(1) The NRBW may provide, or arrange or assist in the provision of, facilities falling within paragraph (2) on any land belonging to it, which it uses or manages or which is placed at its disposal by the Welsh Ministers.

(2) The facilities referred to in paragraph (1) are—

- (a) facilities for—
 - (i) tourism and the enjoyment of the countryside and open spaces;
 - (ii) recreation and sport;
 - (iii) the study, understanding and enjoyment of the natural environment.
- (b) any equipment, facilities or works ancillary to facilities falling within sub-paragraph (a).

- (3) The facilities which fall within paragraph (2) include, without limitation—
- (a) accommodation for visitors,
 - (b) camping sites and caravan sites,
 - (c) places for meals and refreshments,
 - (d) picnic places, places for enjoying views, parking places, routes for nature study and footpaths,
 - (e) information and display centres,
 - (f) shops in connection with any of the facilities mentioned in paragraphs (a) to (e), and
 - (g) public conveniences.
- (4) In this article, “provide” includes manage, maintain and improve.
4. Nothing in articles 2 and 3 requires the NRBW to make facilities available free of charge.

Question 2. Do you agree with the proposals in respect of public access and recreation duties? (Yes, Mainly, Not at all).

If not, how would you change it?

4.1.3 Forestry duties

The main forestry duties surrounding the growing and promoting the growing of trees for timber are **not** directly duplicated in legislation for the other bodies.

However, there is significant overlap between the conservation element of the ‘balancing duty’ in section 1(3A) of the Forestry Act 1967 and the nature conservation duties described in section 4.1.1. above and the statutory purpose for the new body contained in the first order.

Concerns have been raised by some forestry interests as to whether the new body will have similar duties and powers to FC. In particular businesses have raised concerns about future planning and provision for supply.

For these reasons this consultation document provides further explanation of how the Welsh Government proposes to legislate for the high level forestry duties.

Current position

The Forestry Commissioners have a general duty to promote the interests of forestry, the development of afforestation and the production and supply of timber

and other forest products. Within this general duty the Commissioners are specifically charged with ‘the establishment and maintenance of adequate reserves of growing trees’.

The Commissioners have wide ranging powers (Section 3, Forestry Act 1967) to manage land placed at their disposal by Ministers, to discharge their general duty and wider functions under the Act. The Act specifically states that the Commissioners may plant or otherwise use for the purpose of the exercise of their functions under this Act any land placed at their disposal by Ministers.

This power also enables assistance or advice to be given in relation to the general planting or management of any woods or forests to any owner without restriction. This power, alongside the general duty is the basis for the Forestry Commissions advisory and incentive work.

The Forestry Commissioners are also the competent authority as regards the protection of forest trees and timber from attack by pests under the Plant Health Act 1967. As well as making legal orders in support of this role, Forestry Commissioners have also provided a range of operational responses to both implement these orders, as well as in more general support for the role.

The proposal

The proposal is to ensure that the general duty to promote the interests of forestry is passed to the new body. The section 3 powers of the Forestry Act 1967 for management of the Welsh Ministers’ woodland estate will also be transferred to the new body. The proposals specifically include a duty to promote woodland cover in Wales in line with guidance from Ministers, as well as the support of forest industries through the management of forests and the harvesting of timber products.

All these general powers relating to forestry are ones that are essential powers that the new body should have and the intention is to modify the Forestry Act 1967 so that they apply to the new body. There are two options for the ‘balancing duty’ referred to above– either to transfer it or include it within the body’s nature conservation duties.

The competent authority role for the protection of forest trees and timber from attack by pests under the Plant Health Act 1967 will also be transferred to the Welsh Ministers. The new body will have explicit powers (but not exclusively) to implement legal orders made by the competent authority as regards the protection of forest trees and timber from attack by pests under the Plant Health Act 1967.

Question 3. Do you agree with these proposals for the high level forestry duties? (Yes, Mainly, Not at all).

If not, how would you change them?

4.1.4 Other main duties

As stated above, the 'Natural Resources Wales' consultation made clear:

'that in the initial phase, unless otherwise stated, our intention would be to transfer the relevant functions of the three main bodies to the new body'.

Section 5 and Tables 1-3 of that document set out the **main** functional areas (duties and powers) that will also be transferred to the body.

Some of the more significant duties are described in Annex 1, (though this is not an exhaustive list). In these cases it is the intention to simply amend the existing legislation in place as necessary to transfer the duty to the new body. These do not include the duties covered in earlier sections.

Part 2 – Additional information on legal arrangements

This second part considers a number of detailed areas where further views have been sought, or where the analysis has indicated that it would be helpful to share intentions. Specific aspects include:

- Cross-border issues – general principles.
- Regulation and enforcement including the Environmental Permitting Regime (EPR) and inspection, investigation, enforcement and prosecution, including civil sanctions and investigatory powers.
- Monitoring and sampling of cross-border sites and impacts.
- Statutory planning and reporting.
- Emergency response including the transfer of powers under the Control of Major Accidents and Hazards Regulations (COMAH).
- Trading schemes and producer responsibility.
- Transitional arrangements e.g. measures to transfer ongoing prosecutions, existing decisions and permits to the body.

5. Cross- border issues – general principles

There are two main areas of work where cross-border issues arise: shared service provision and operational arrangements.

Operational issues primarily relate to the EA functions, and how those functions will be exercised after they have been transferred to the new body in relation to Wales. For example, in respect of flood management it may be necessary for the single body to do work in Wales for the benefit of people in England and vice versa. Work which needs to be undertaken co-operatively across the border includes monitoring rainfall, river flows, weather radar, tide gauges and other measurements. Operational structures will still need to be maintained and managed, and in some circumstances there may still be need to undertake construction works on one side of the border, to provide protection on the other. The single body will also need to continue existing work undertaken by CCW with Natural England on land, and with Natural England and JNCC in the seas.

Currently a range of services, such as ICT and forest research, together with many professional and technical services are provided centrally by EA and FC for the whole of EAW and FCW respectively. Some of these services will continue to be provided by EA and FC as they are now – in some instances as a long term arrangement and in others for a transitional period.

For day to day matters, EA and FC internal structures already align with the political border. There are working agreements and procedures in place between EAW and other EA Regions to ensure clarity of roles and responsibilities. There are similar arrangements for FC.

To enable constructive resolution of the wider issues, our intention is to place the EA and the new body under a duty to take account of cross-border impacts in making both operational and regulatory decisions. We also intend to place the new body and the EA under a duty to co-operate with each other and co-ordinate activity on cross-border matters. The new body will also be expected to use appropriate mechanisms (Memoranda of Understanding, for example) to enable it to reach agreement with other bodies for cross-border operational issues such as managing plant health. Additionally, there will be a requirement for the new body and existing bodies to agree circumstances where they will consult each other on activities which could have cross-border effect.

It is the intention to ensure that there are powers for FC and EA to share data with the new body and vice versa, in order to assist one another in exercising their functions.

Alongside these powers and duties, sections 26-29 of the Public Bodies Act 2011 provide general powers for the new body, EA and FC to enter into agreements to provide each other with services, and where appropriate, the new body will be able to delegate functions to EA and FC. There may also be some circumstances where the new body would provide a service to EA and FC.

These powers are sufficient to deal with the vast majority of issues and we are working with both FC and EA to develop practical working agreements.

However should there be a difference of view between the bodies as to the way forward on a future matter, both the Secretary of State and the Welsh Ministers will be able to direct each body in respect of these cross-border issues. For example, a joint direction on a plan issued to implement the Water Framework Directive. See section 8.1.

CCW undertakes a range of cross-border work. This includes management of cross-border Special Areas of Conservation, Special Protection Areas, Ramsar sites, National Nature Reserves, Sites of Special Scientific Interest, National Trails and other joint work through the JNCC. We anticipate that this work will continue.

Question 4. Do you agree with the general proposals for cross-border arrangements? [Yes, Mainly, No]

If not what would you change?

6. Regulation and enforcement

The 'Natural Resources Wales' consultation addressed the main principles which would underpin regulatory arrangements. In particular, the consultation document made clear the intention that:

- Through a combination of the removal of organisational boundaries and devolving decision-making and process re-engineering, the Welsh Government would look to simplify regulatory processes where appropriate while maintaining environmental standards.
- There will be separate administrative arrangements for regulation and operations within the body. In instances where it is required to permit⁸ or licence its own operational activities, there would be similar functional separation in respect of advice on Strategic Environmental Assessment (SEA) and Habitats Regulation Assessment (HRA).
- Arrangements would be put in place to ensure transparency of decision-and advice where the body was regulating its own functions or providing statutory advice to its own decision-making functions.
- The effect of existing cross-border permits such as mobile plant and rod licences would continue so that permits and licences are valid in both England and Wales. This is to minimise any additional impact on businesses and operators.
- It is anticipated that in some instances, such as managing nuclear sites, the EA would continue to regulate the sites for reasons of cost effectiveness and/or resilience.

These principles were widely supported in responses to the first consultation. However, a number of respondents have requested further detail, particularly as to how cross-border matters would be dealt with and on issues such as charging.

The following sections provide further information on these matters.

6.1 Who will be responsible for regulation?

Most regulated activities are based on a site or location. The general principle being adopted is that all aspects of regulation will follow the geography of the site. In other words sites based in Wales will be regulated by the new body, and those based in England will be regulated by the EA or FC. This will include all aspects of regulation, including activities such as receiving applications, determining permits, regulatory inspection, prosecution, other sanctions and advice.

True cross-border permitted sites (i.e. where the site itself straddles the border) are rare. However where they do occur the issue of regulatory responsibility for any such site (or structure) will need to be addressed. The proposals in this regard depend on function and are dealt with under the relevant sections below.

⁸ For the purpose of this consultation 'permit' is a generic term which covers permits, licences, consents, assents, registrations and exemptions.

6.2 Advising and regulating others - consultee role

The existing bodies are statutory consultees under various pieces of legislation. For example, the bodies provide advice to planning authorities and regulators. These advisory (statutory consultee) roles will be transferred to the new body.

Where the body is regulating other organisations or individuals and is also a statutory consultee, there is no conflict of interest. However, the consultation requirements (which would mean the single body consulting itself) will not be needed. This is because of the other general duties placed on the body which will require it to fully consider matters such as conservation, biodiversity, landscape, access and historic features in its regulatory decision-making, in accordance with European and other legislation. However, where the consultation requirement arises from EU obligations, for example Environmental Impact Assessment or Habitats Regulations, requirements for the body to consult itself will be retained.

There was widespread support for the proposals to ensure transparency of decisions through publication of decision documents. The need for proportionality is recognised (for example, it would not be appropriate to create a decision document, in normal circumstances, for a decision on a minor septic tank application by a householder). However it is important that this arrangement is put in place wherever decisions are likely to be contentious or could have a significant effect on a site designated under European law and/or Ramsar site, either individually or 'in combination' with other plans, projects and decisions.

The Welsh Government will therefore require the body to develop and publish a scheme, agreed by the Welsh Ministers, identifying circumstances where formal publication of decision documents will be required, whether or not required by other legislation.

Question 5. Do you agree with the proposals for the statutory consultee role? [Yes, Mainly, No]

If not what would you change?

6.3 Advising on and regulating its own operational activities

Under the SEA Directive⁹ Member States are required to designate bodies to be consulted when an SEA is carried out. The designated bodies are to be those likely to be concerned by the likely strategic environmental effects of a plan or programme, by reason of their specific environmental responsibilities. As explained in the first consultation¹⁰, we propose that the new body would be a statutory consultee (a "consultation body") for this purpose.

⁹ Council Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, OJ 2001 L 197, p.30.

¹⁰ "Natural Resources Wales, Proposed Arrangements for Establishing and Directing a New Body for the Management of Wales' Natural Resources", Section 6.6.2.

Where the body itself undertakes a plan or programme it will have to carry out statutory consultation internally in a manner consistent with the recent '*Seaport Investments*' judgement¹¹. This means that the operational and regulatory/advice arms will need to be in functionally separate structures within the business.

In relation to Environmental Impact Assessment (EIA) and Habitats Regulation Assessment (HRA), the Welsh Government's view is that it is desirable to make similar arrangements to those proposed above with functionally separate structures within the business

We will therefore ensure that the body organises itself so as to ensure that where it is regulating its own activities, preparing a SEA, EIA or HRA, regulatory decision-making and statutory advice will be separated from the operational delivery of the activity which is being regulated. For SEA it is also the intention to designate the Welsh Government as an SEA consultation body in respect of plans or programmes undertaken by the body itself.

Where the Welsh Ministers have the power to 'call in' applications, we will also ensure that the body is required to notify the Welsh Ministers in respect of any permissions which it proposes to grant itself and which meet the criteria for publication of a decision document (see section 6.2), at the earliest opportunity. This will enable the Welsh Ministers to decide whether they wish to 'call in' and determine the permit.

To improve transparency, it is the intention to require 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. This would be additional to other statutory public register requirements.

Question 6. 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? [Yes, Mainly, No]

If not what would you change?

6.4 Permitting – regime specific issues

6.4.1 Environmental Permitting Regime (EPR)

All existing EPR permits will be preserved with their existing conditions and will be for the new body to regulate including standard rules permits.

Standard rules permits

Under the Environmental Permitting Regulations, for certain lower impact activities, it is possible to apply for a 'standard permit'. In these cases the applicant applies for a

¹¹ *Seaport (NI) Ltd, Magherafelt District Council and Others v Department of the Environment of Northern Ireland* (ECJ case 474/10)

permit with a pre-determined set of conditions. There are over 50 such condition sets and these permits are only available for specific low risk activities where the application complies with pre-determined criteria.

These are currently centrally determined and published by the EA. A change to the published standard rules automatically updates permits already in force.

We propose that the single body will become the rule making authority in relation to Wales. This will enable, in future, the setting of separate sets of standard rules for Welsh permits, though in practice we would expect a high degree of alignment between England and Wales to continue.

The existing standard permit conditions set for sites in Wales, will continue to apply to permits granted or treated as granted by the new body via the second order. Accordingly, as the rule-making authority, the new body would be able to change standard permit conditions in respect of sites in Wales.

Mobile plant permits and deployments

For mobile plant under EPR, the permit effectively indicates that the operator is fit and proper and appropriately equipped to undertake the permitted work. These checks should only be required once, on an England and Wales basis. Applicants will apply to the body in whichever country their principal place of business is sited. Applications from outside England and Wales will be determined by the body to whom the application is made.

Mobile plant permits also require a deployment form which has to be approved to enable operation of mobile plant. Forms are normally site specific (i.e. the mobile plant will be deployed at a specified location). The deployment form can only be approved if the applicant holds a permit. Accountability for issuing and regulating deployment forms will follow the principles set out in section 6.1 above (i.e. the body approving the form will normally be the body in whose area the mobile plant will be operated).

6.4.2 Carriers and brokers

Similar principles will apply to carriers and brokers registration as to mobile plant permits and registration with either body will be valid for England and Wales.

As for mobile plant, applicants will apply to the body in whose area their principal place of business is located. Applications from outside England and Wales will be determined by the body in whose area the main place of operation is located.

Our current plans for carriers and brokers are that EA will provide the registration service for both bodies, at least for a transitional period. These transitional arrangements would be made under the powers contained in section 27 of the Public Bodies Act 2011. This approach would need to be formally agreed with the EA.

6.4.3 Fisheries Licences

Rod licences

Currently customers only have to purchase one licence, which will allow them to fish in both England and Wales. The intention is, from a practical perspective, to continue with this arrangement. Rod licences and navigation licences will continue to be issued through the existing Post Office Counters Ltd contract for the first two years of operation, until the end of 2014, when the contract is due for renewal. Each England and Wales rod licence will, once functions have been transferred to the new body in relation to Wales, be issued by the Environment Agency, in relation to England, and the new body, in relation to Wales. Allocation of income from rod licences will be agreed between the bodies.

Arrangements beyond 2014 will be the subject of further discussion between the new body and EA.

Other fisheries permits

Under other fisheries legislation, such as regulated fishery orders which cross the England/Wales border, the same 'composite' approach will generally be utilised. This means that each body will be responsible for its own jurisdiction, and orders or permissions will be issued by both bodies, each acting in respect of their own jurisdiction. This is in line with present the present devolution structure in Wales.

Question 7. Do you agree with the proposals for permitting? [Yes, Mainly, No]

If not what would you change?

6.5 Permit charging

Currently charges are limited to EA permitting, licences and registrations, (which is the substantial majority of permit types). CCW and FCW do not currently charge for permits.

The Public Bodies Act 2011 is not the most appropriate mechanism for the introduction of entirely new charges. This will be considered at a future date as part of the development of and consultation on the future Environment Bill.

Transitional arrangements will be included to allow the new body to continue charging on the basis of existing EA charging schemes (or any approved before the new body takes on its functions). The intention is that all EA charging schemes as at 1 April 2013 will continue for the life of the current approved charging scheme. Once existing schemes lapse, the body itself will make schemes for Wales, which we propose will be approved by the Welsh Ministers. For mobile plant, carriers and brokers and rod licences these would remain fully aligned with the EA schemes.

Question 8. Do you agree with these proposals for charging? [Yes, Mainly, No]

If not what would you change?

6.6 Public registers

There are a range of public register requirements placed on the bodies, particularly in the case of EA where there is a requirement to publish specific documents associated with permit applications, licences and consents. These duties will transfer to the new body in respect of its accountabilities in Wales.

Legal provisions will allow for either joint registers with EA (each body being responsible for its own data within joint registers) or for the new body to create Wales only registers. The actual arrangements will be determined on a case by case basis, by agreement with EA.

Question 9. Do you agree with the proposals for public registers? [Yes, Mainly, No]

If not what would you change?

6.7 Inspection, investigation, enforcement and prosecution

6.7.1 General principles

Our proposal is that inspections, enforcement action and prosecutions will follow geography – i.e. inspections on sites in Wales will be carried out by the new body and in England by EA.

Where an activity causes a cross-border impact, or an offender crosses the border, properly warranted officers will be able to continue investigation or action across the border¹².

Prosecutions and other enforcement action will be led according to the location of the offence.

6.7.2 Regulation of Investigatory Powers Act 2000

EA is a listed body under the Regulation of Investigatory Powers Act 2000. This enables the EA to undertake certain surveillance activity in respect of environmental crime, such as waste crime. It is the intention to provide the new body with equivalent powers, to ensure that effective enforcement of environmental regulations can continue. It is therefore proposed to add the new body to Part 1 of Schedule 1 to

¹² The other body will be informed of such action at the earliest practical opportunity, and agreements made locally regarding arrangements for ongoing investigations.]

the 2000 Act (i.e. the list of relevant authorities for the purposes of sections 28 and 29).

Question 10. Do you agree that the new body should be a listed body under the Regulation of Investigatory Powers Act 2000? [Yes, Mainly, No]

6.7.3 Civil sanctions

Civil sanctions were brought in by the Regulatory Enforcement and Sanction Act 2008.

There are six types of civil sanctions:

- **Compliance notice** - a regulator's written notice requiring actions to comply with the law, or to return to compliance, within a specified period.
- **Restoration notice** - a regulator's written notice requiring steps to be taken, within a stated period, to restore harm caused by non-compliance, so far as possible.
- **Fixed monetary penalty** - a low-level fine, fixed by legislation, that the regulator may impose for a specified minor offence.
- **Enforcement undertaking** - an offer, formally accepted by the regulator, to take steps that would make amends for non-compliance and its effects.
- **Variable monetary penalty** - a proportionate monetary penalty, which the regulator may impose for a more serious offence.
- **Stop notice** - a written notice which requires an immediate stop to an activity that is causing serious harm or presents a significant risk of causing serious harm.

The EA were given powers to use civil sanctions in Wales on 15 July 2010. In Wales, specified civil sanctions are available for offences referred to in the following legislation:

- Flood and Water Management Act 2010.
- Environmental Civil Sanctions (Wales) Order 2010.
- Environmental Civil Sanctions (Miscellaneous Amendments) (Wales) Regulations 2010.

The EA have also had, since April 2011, the power to impose limited financial penalties under section 15 of the Flood and Water Management Act 2010.

Civil sanctions are a valuable tool in creating a proportionate and effective response to environmental incidents. For that reason it is the intention that the new body has these powers.

However the new body will need to exercise the power in accordance with the better regulation principles namely, that the exercise of the power must be proportionate, transparent, consistent, accountable and targeted. Regulators granted the power to impose a civil sanction must also publish guidance about the use of the sanction and revise the guidance where appropriate. Further, the regulator must have regard to the guidance or revised guidance in exercising its functions.

Environmental offences for which civil sanctions can currently be applied only relate to EA functions. In order to ensure compliance with these principles from the day of transfer, the new body will be expected to initially follow the existing EA policies and procedures. These can be found at the following location:

<http://www.environment-agency.gov.uk/business/regulation/116844.aspx>

As the body develops its own policies and procedures it will need to consult and publish relevant policies and guidance. We will review any changes to ensure that they are robust and continue to comply with the principles and that they continue to be implemented by appropriately trained staff.

To ensure that these principles are carried forward into the culture of the new body, a review of compliance with these principles will be commissioned, after the first 12 months of operation.

Question 11. Do you agree that the new body should have powers to use civil sanctions? [Yes, Mainly, No]

6.8 Appeals

The general principle that will be applied to the new arrangements is that the new body takes operational decisions (such as issuing or refusing permits) and the Welsh Ministers will remain the route of appeal. This is currently the case for much of the existing legislation. Some legislation however provides that appeals against decisions will be heard by the Secretary of State.

In relation to the new body, our preferred position is to enable the Welsh Ministers to hear appeals in respect of all Welsh matters. We are exploring the best way of enabling this.

Question 12. Do you agree with the proposals for appeal arrangements? [Yes, Mainly, No]

If not what would you change?

7. Monitoring and sampling of cross-border sites and impacts

Where cross-border monitoring is required, the activity will normally be undertaken by the new body for all sites in Wales and by the EA or Natural England for all sites in England, and appropriate recharge made for costs incurred by the monitoring body.

For example, if monitoring is required downstream of a sewage treatment works, there may be a need for monitoring to be undertaken in Wales in respect of a sewage treatment works consent issued by EA in England or vice versa.

It is expected that these arrangements (as a service provision) will be made, data shared, and costs agreed through formal agreement between the bodies at the point of permit issue or review. Such agreements would be made using the powers provided by section 28 of the Public Bodies Act 2011 and (for the EA) are likely to formalise existing inter regional agreements.

[In the event of a substantial disagreement between the bodies, these arrangements could be backed up by Ministerial Direction, either from UK Ministers or the Welsh Ministers, with appropriate agreement/consultation but this is likely to be a rare or non-existent event].

**Question 13. Do you agree with the proposals for cross border monitoring?
[Yes, Mainly, No]**

If not what would you change?

8. Statutory planning and reporting

There are a range of statutory plans and reports which the EA and FC currently produce. In addition, the EA provides advice to Ministers (in both Wales and England) in relation to Water Resource Management Plans and Drought Plans which are produced by water companies).

The general principles underpinning our intentions in respect of these matters are as follows:

8.1 Plans and reporting by the body

For cross-border plans, our intention is that each body (i.e. the new body and EA or FC) will be accountable for its own area, both in respect of planning and subsequent actions such as monitoring, reporting and enforcement/improvement works.

For developing and implementing plans we are proposing that one body may undertake the work to develop the plan on behalf of both, by agreement, using arrangements under Section 28 of the Public Bodies Act 2011. Where a plan is required to be a single plan, such as for a river basin district, it is intended that both bodies will sign off the plan in respect of their own areas.

For example, the River Basin Management Plans for river basin districts wholly in Wales will be the responsibility of the new body. River Basin Management Plans for river basin districts wholly in England will remain the responsibility of the EA.

In relation to cross border River Basin Management Plans for river basin districts partly in Wales and partly in England, it is intended that the new body will be responsible for developing and implementing the plan for the part in Wales and the EA will be responsible for developing and implementing the plan for the part in England.

To ensure co-ordination at the river basin district level, we propose that the new body and the EA will be required to exercise relevant functions in relation to each river basin district, including cross-border districts, so as to best secure the requirements of the Water Framework Directive and co-ordinated for the whole of each district.

We also propose to give the new body a general obligation to exercise certain relevant functions so to ensure compliance with the requirements of the Water Framework Directive.

Where data are required for statutory UK reporting purposes, the single body should have a duty to provide them for Wales – either via the Welsh Ministers to the relevant Government department, or jointly with EA by agreement between the parties.

Each body would have a duty to take account of cross-border impacts in all its decision making and to co-operate on cross-border matters.

8.2 Water Company Drought Plans and Water Resource Management Plans

The Water Industry Act 1991 requires water undertakers to prepare water resource management plans and drought plans. It also sets out a number of functions for the EA. It specifically requires the water undertaker to consult the EA before preparing a drought or water resources management plan. It also requires the Welsh Ministers and the Secretary of State to consult the EA before giving any directions to the water undertaker in relation to the preparation of a revised plan.

We propose that the requirement for a water undertaker to consult the EA will remain. Additionally, as the new body will have responsibility for the management of water resources in Wales, we propose to include the new body as a consultee where drought and water resource management plans impact on water resources in Wales.

We also propose that Welsh Ministers, before issuing a direction to a water undertaker wholly or mainly in Wales will consult the new body and the EA. In addition, the Secretary of State, before issuing a direction to an undertaker wholly or mainly in England will consult the EA and the new body (only in relation to those plans that will impact on water resources in Wales).

Question 14. Do you agree with the proposals for statutory planning and reporting? [Yes, Mainly, No]

If not what would you change?

9. Incident management

9.1 Civil contingencies

The EA has an important role in emergency response, particularly in respect of flood events, marine incidents such as the Sea Empress Oil Spill, events involving airborne emissions such as the recent Fforestfach fire and foot and mouth disease. As a consequence it is listed as a category 1 responder in Part 1 of Schedule 1 to the Civil Contingencies Act 2004.

It is clear that the EA responsibilities will pass to the new body. It is therefore the intention to add the new body to the list of Category 1 responders.

9.2 Control of Major Accident Hazards (COMAH)

Under the COMAH Regulations 1999, EA with the Health and Safety Executive (HSE) are the Competent Authority for enforcing the regulations. This includes the review of emergency response plans prepared by the operators of major accident hazard sites. Local authority emergency planning teams also have responsibilities in respect of these plans.

These functions are operationally aligned with site inspection and permitting functions, which will be placed with the new body. It is therefore the intention to transfer EA's responsibilities for COMAH in Wales to the new body.

There are also functions currently undertaken by the Secretary of State in respect of these issues. With the devolution of the COMAH function from EA to the new body, it makes sense to move these functions to the Welsh Ministers. We are exploring the means to achieve this.

Question 15. Do you agree with the proposals for Civil Contingencies and COMAH? [Yes, Mainly, No]

If not what would you change?

10. Trading schemes and producer responsibility

There are a number of schemes where the EA has a statutory function on a UK basis – i.e. it carries out the function for Scotland and NI, as well as Wales. These include:

- Emissions Trading Registration.
- Carbon Reduction Commitment administration.
- National Emissions Reduction Plan.

There are a number of other regimes where EA provides a service on a UK basis, although they do not have the same statutory duty. These include:

- Producer Responsibility Schemes – Batteries, WEEE directive and Packaging Regulations.
- Chemical compliance - Registration, Evaluation, Authorisation and restriction of CHEMicals (REACH) and Persistent Organic Pollutants (POPS).
- Emissions Trading Scheme Workflow Automated Process (ETSWAP).
- Flycapture (the flytipping database).
- Shipping and the Transfrontier Shipment intelligence service.

We intend to continue with administrative aspects of these arrangements including registrations and reporting on a UK basis. Compliance and on-site regulation will be undertaken by the single body, in line with arrangements for Scotland and Northern Ireland.

We are also currently minded to proceed on this basis in schemes where the FC have an equivalent role.

**Question 16. Do you agree with the proposals for UK wide arrangements?
[Yes, Mainly, No]**

If not what would you change?

11. Transitional arrangements

The second order will define a wide range of transitional arrangements which will ensure that decisions of the existing bodies will continue to have effect and that permits, agreements, contracts and so on will continue as if the single body was the original body. These would include:

- Decisions, determinations, designations, agreements (including contracts or grant schemes) or instruments which have effect in Wales.
- Any statutory advice provided to or by the three bodies (see statutory consultee role).
- Any regulations or byelaws made by any of the bodies which apply in Wales.
- Any permit, permission, consent, approval, registration, authorisation, exemption, dispensation or relaxation granted by the bodies in respect of activities in Wales.
- Existing policies or forms where they can have statutory or legal effect in Wales (but are not necessarily policies or forms limited to Wales), UNLESS replaced by a policy or form issued by the new body (either before or after vesting).
- Any notice, direction or certificate given by or to the three bodies which have effect in Wales.
- Any application, request, proposal or objection made by, or to the three bodies which have effect in Wales.
- Any condition or requirement imposed by, or on, the three bodies.
- Any fee or charge paid by or to the three bodies.
- Any appeal, allowed by, or in favour of, or against the three bodies.
- Any proceedings instituted by or against the three bodies, including civil sanctions.
- Any EA charging scheme for the period for which it has been approved.
- Memoranda of Understanding with other parties.
- Relevant parts of public registers (see public register section).

These provisions include functions undertaken by the body where the existing bodies are named or nominated through arrangements outside of the main legislation to undertake functions. Transitional arrangements will cover those matters which are consolidated through general provisions in the orders, as well as those dealt with through simple transfers.

The provisions will include any functions which are transferred to or from Welsh (or English) Ministers.

Question 17. Do you agree with the proposals for transitional arrangements? [Yes, Mainly, No]

If not what would you change?

General environmental and recreational duties

Subject to subsection (1) above, it shall be the duty of each of the Ministers and of the Agency, in formulating or considering any proposals relating to any functions of the Agency—

- (a) to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty;
- (b) to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural, engineering or historic interest; and
- (c) to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.

Subject to obtaining the consent of any navigation authority, harbour authority or conservancy authority before doing anything which causes obstruction of, or other interference with, navigation which is subject to the control of that authority, it shall be the duty of the Agency to take such steps as are—

- (a) reasonably practicable, and
- (b) consistent with the purposes of the enactments relating to the functions of the Agency, for securing, so long as the Agency has rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner.

Section 7(2) of the Environment Act 1995

Section 7(4) of the Environment Act 1995

Table 2: Main duties of the Countryside Council for Wales

Main duty	Source legislation
<p>Countryside functions</p> <p>The conservation and enhancement of natural beauty in Wales and of the natural beauty and amenity of the countryside in Wales, both in the areas designated under the National Parks and Access to the Countryside Act 1949 as National Parks or [under the Countryside and Rights of Way Act 2000]¹ as areas of outstanding natural beauty and elsewhere. (Conservation of the natural beauty of the countryside includes the conservation of its flora, fauna and geological and physiological features.)</p> <p>Encouraging the provision or improvement, for persons resorting to the countryside in Wales, of facilities for the enjoyment thereof and for the enjoyment of the opportunities for open-air recreation and the study of nature afforded thereby;</p> <p>Having regard to the social and economic interests of rural areas in Wales.</p> <p>The Council shall keep under review all matters relating to the provision and improvement of facilities for the enjoyment of the countryside, the conservation and enhancement of the natural beauty and amenity of the countryside, and the need to secure public access to the countryside for the purposes of open-air recreation, and shall consult with such local planning authorities and other bodies as appear to the Council] to have an interest in those matters.</p>	<p>Section 130 (2)(a) of the Environmental Protection Act 1990</p> <p>Section 130 (2)(b) of the Environmental Protection Act 1990</p> <p>Section 2(2) of the Countryside Act 1968</p>
<p>Nature Conservation</p> <p>Conservation and fostering the understanding of nature conservation, the Council shall have the functions conferred on them by this Part and Part 2 of the Natural Environment and Rural Communities Act 2006.</p>	<p>Section 131 (1) of the Environmental Protection Act 1990 and Part 2 of the Natural Environment and Rural Communities Act 2006</p>

<p>In discharging their nature conservation functions, to take appropriate account of actual or possible ecological changes.</p>	<p>Section 131 (2) of the Environmental Protection Act 1990</p>
<p>General Functions</p> <p>The establishment, maintenance and management of nature reserves in their area;</p> <p>The provision of advice for the Secretary of State or any other Minister on the development and implementation of policies for or affecting nature conservation in their area.</p> <p>The provision of advice and the dissemination of knowledge to any persons about nature conservation in their area or about matters arising from the discharge of their functions under this section</p> <p>The commissioning or support (whether by financial means or otherwise) of research which in their opinion is relevant to any of their functions under this section or section 134</p> <p>The power to accept any gift or contribution made to them for the purposes of any of the general functions and, subject to the terms of the gift or contribution, to apply it to those purposes;</p> <p>The power to initiate and carry out such research directly related to its general functions as it is appropriate that they should carry out instead of commissioning or supporting other persons.</p> <p>To do all such other things as are incidental or conducive to those functions including (without prejudice to the generality of this provision) making charges and holding land or any interest in or right over land.</p>	<p>Section 132 (1)(b) of the Environmental Protection Act 1990 (within the meaning of section 15 of the National Parks and Access to the Countryside Act 1949)</p> <p>Section 132 (1)(c) of the Environmental Protection Act 1990</p> <p>Section 132 (1)(d) and section 134 of the Environmental Protection Act 1990</p> <p>Section 132 (1)(e) and section 134 of the Environmental Protection Act 1990</p> <p>Section 132 (2)(a) of the Environmental Protection Act 1990</p> <p>Section 132 (2)(b) of the Environmental Protection Act 1990</p> <p>Section 132 (2)(b) of the Environmental Protection Act 1990</p>

Table 3: Main duties of the Forestry Commission

Main duty	Source legislation
<p>General duty</p> <p>Promoting the interests of forestry, the development of afforestation and the production and supply of timber and other forest products.</p> <p>Promoting the establishment and maintenance of adequate reserves of growing trees.</p> <p>In discharging their functions under the Forestry Acts 1967 to 1979 the Commissioners must, so far as may be consistent with the proper discharge of those functions, endeavour to achieve a reasonable balance between:</p> <ul style="list-style-type: none"> (a) the development of afforestation, the management of forests and the production and supply of timber, and (b) the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiological features of special interest. 	<p>Section 1(2) of the Forestry Act 1967</p> <p>Section 1(3) of the Forestry Act 1967</p> <p>Section 1(3A) of the Forestry Act 1967</p>
<p>Management of forestry land</p> <p>Manage, plant and otherwise use, for the purpose of the exercise of their functions under this Act, any land placed at their disposal by the Minister</p> <p>Undertake the management or supervision, upon such terms and subject to such conditions as may be agreed upon, or give assistance or advice in relation to the planting or management, of any woods or forests belonging to any person, including woods and forests under the management of the Crown Estate Commissioners or under the control of a government department, or belonging to a local authority.</p>	<p>Section 3(1) of the Forestry Act 1967</p> <p>Section 3(2) of the Forestry Act 1967</p>

<p>Purchase or otherwise acquire standing timber, and sell or otherwise dispose of any timber belonging to them or, subject to such terms as may be mutually agreed, to a private owner, and generally promote the supply, sale, utilization and conversion of timber.</p> <p>Establish and carry on, or aid in the establishment and carrying on, of woodland industries.</p>	<p>Section 3(3)(a) of the Forestry Act 1967</p> <p>Section 3(3)(b) of the Forestry Act 1967</p>
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