



**John Griffiths AM**  
Minister for Environment and  
Sustainable Development  
Welsh Government  
Cardiff Bay  
CF99 1NA

24 October 2012

Dear John

### **Draft Natural Resources Body for Wales (Functions) Order 2012**

Thank you for providing the Committee with an early version of the draft Natural Resources Body for Wales (Functions) Order (the 'draft Functions Order'). We considered the draft Functions Order at our meeting on 10 October 2012.

In the context of the limitations imposed by the Public Bodies Act 2011, we are generally content with the draft Functions Order's provisions. As we mentioned previously, we have found it difficult to discern the entirety of your vision for the new body from these instruments alone, as elements of its legislative foundations will not be set out until we come to look at some of your forthcoming Bills. Any indication of what you might seek to include in subsequent legislation would assist us in our consideration of the draft Functions Order, and may allay some stakeholder concerns that persist.

You will be aware that we now need to plan our future scrutiny of the draft Functions Order, once it has been laid before the Assembly in November. We are planning to invite oral evidence from stakeholders in advance of our session with you on 28 November. To assist us in our planning, we would be most grateful of an early indication of the date on which you plan to lay the draft Functions Order. It would also be useful to have sight of the consultation responses you've received as soon as you are able to publish them.

In advance of the formal laying of the draft Functions Order, we believe that there are areas that require some further clarification, and we set these out below. Paragraphs are numbered for ease of reference.

#### **1. Nature conservation duties**

- 1.1 We note that the draft Functions Order seeks to add an additional article to the first 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 2011 and that is what this and other amendments seek to achieve.

- 1.2 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.
- 1.3 We ask that you consider these concerns before bringing forward the draft Functions Order in November.

## **2. Self-permitting and internal consultation**

- 2.1 You 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 the Natural Resources Body (‘the Body’). You have previously assured us that transparency and internal separation of functions will allow these processes to be adequately performed without conflict of interest.
- 2.2 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. We believe it reasonable to expect further detail in this area to accompany the draft Functions Order in November. For example, we would like to know whether these arrangements will be for the Body to determine or whether the Body will be subject to Ministerial direction in making these arrangements and an outline of how these arrangements might work in practice would be useful.

## **3. Transparency and accountability**

- 3.1 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 you consider setting out your expectations in terms of the timing of publication of information. We will expect Welsh Ministers to 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.

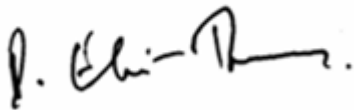
## **4. Regulation of Investigatory Powers Act 2000**

- 4.1 We understand that the purpose of seeking amendments to the *Regulation of Investigatory Powers Act 2000* (‘RIPA’) is to transfer powers currently vested in the Environment Agency to the Body. In transferring these powers we have some concerns that the broader remit of the Body will mean a potentially broader application of the RIPA powers..

- 4.2 We ask that you provide further information on the scope of the powers being transferred and how you intend them to be managed. For example, would you expect the Body to make representations to the UK Government for amendments to codes of practice to reflect the Body's role and management structure, will Welsh Ministers be making representations, and are you considering making any directions to the Body in this area?
- 4.3 We believe clarification of this should be provided alongside the introduction of the draft Functions Order in November.

Thank you for your continued assistance with our work. I look forward to receiving your response. You will wish to note that this letter will be published on our website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Elis-Thomas'.

**Lord Dafydd Elis-Thomas AM**  
Chair of the Environment and Sustainability Committee