

Draft Order laid before the National Assembly for Wales under section 19 of the Public Bodies Act 2011, for approval by resolution of the National Assembly for Wales

DRAFT WELSH STATUTORY
INSTRUMENTS

2012 No. (W.)

PUBLIC BODIES, WALES

ENVIRONMENT, WALES

**The Natural Resources Body for
Wales (Establishment) Order 2012**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Public Bodies Act 2011 (“the Act”), establishes a new statutory body, the Natural Resources Body for Wales (“the Body”), and provides for its form, purpose, membership, procedure, financial governance and initial functions.

The Body’s principal function at this stage is to prepare to assume substantive regulatory and other functions, relating to the environment and natural resources of Wales, at a later stage. This preparatory work will include setting up the internal structures of the Body and making ready for the transfers of those functions, and of staff, property and other rights and liabilities, in subsequent legislation.

The Body is being set up in this way because the Welsh Ministers are still in the process of finalising their proposals, under the Act, as to which functions to transfer to the Body from existing organisations, and whether any of those functions should be modified.

Article 6 gives the Body its initial, preparatory, functions. Paragraph (1) of article 6 identifies the categories of Welsh Minister proposals to which this preparatory function relates. Paragraph (2) makes it plain that, if a proposal requires the approval of the National Assembly for Wales (or any other body) in order to be implemented, then nothing in this Order removes the need for that approval.

The Order also gives the Body other powers it may need in order to carry out its preparatory functions: for example, the power to enter into agreements (article 9), to borrow money (article 14) and to employ staff (paragraph 13(4) of the Schedule). And the Order places certain conditions on the exercise of the Body's functions (see articles 7 and 8).

The Body is not given any substantive regulatory or other functions in relation to the environment or natural resources of Wales in this Order. Unless or until those functions are transferred to the Body, they will remain with the bodies or office-holders in whom they are currently vested.

The Order vests a number of functions regarding the Body in the Welsh Ministers, including the power to appoint and remove a number of its members (paragraphs 2, 4 and 7 of the Schedule); powers in relation to its corporate and financial governance (paragraphs 10 to 15, 18, 19 and 21 to 24 of the Schedule) and powers to give the Body guidance (article 5) and directions (article 11).

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**The Natural Resources Body for
Wales (Establishment) Order 2012**

Made 2012

Coming into force see article 1

The Welsh Ministers, in exercise of the powers conferred on them by sections 13(7) and 15(1) of the Public Bodies Act 2011(1) (“the Act”), make the following Order.

In accordance with section 16 of the Act, the Welsh Ministers consider that this Order—

- (a) serves the purpose of improving the exercise of public functions, having had regard to the factors set out in section 16(1) of the Act;
- (b) does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

The Welsh Ministers have carried out consultation in accordance with section 18 of the Act.

A draft of this Order and an explanatory document containing the information required by section 19(2) of the Act have been laid before the National Assembly for Wales in accordance with section 19(1) after the

(1) 2011 c.24.

end of the period of twelve weeks mentioned in section 19(3).

In accordance with section 19(4) of the Act, the draft of this Order so laid has been approved by resolution of the National Assembly for Wales after the expiry of the 40-day period referred to in that provision.

PART 1 - PRELIMINARY

Title and commencement

1.—(1) The title of this Order is the Natural Resources Body for Wales (Establishment) Order 2012.

(2) This Order comes into force on the day after the day on which it is made.

Interpretation

2. In this Order, “the Body” (“*y Corff*”) has the meaning given by article 3(1).

PART 2 – ESTABLISHMENT AND GENERAL FUNCTIONS

The Body

3.—(1) There is to be a body corporate to be known as the Natural Resources Body for Wales or *Corff Adnoddau Naturiol Cymru* (referred to in this Order as “the Body”).

(2) The Schedule contains further provisions about the Body.

Purpose of the Body

4.—(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” (“*yn gynaliadwy*”) 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” (*“amgylchedd”*) 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.

(4) Wherever the Body exercises a function in relation to, or in a manner that affects, any other area outside Wales, both the references to “Wales” in paragraph (1) are to be interpreted as including references to the area in question.

(5) Paragraph (1) does not give the Body power to—

- (a) do anything that it would not otherwise have the power to do, or
- (b) exercise any of its functions in a manner contrary to the provisions of any other enactment or any EU obligation⁽²⁾.

Guidance with respect to the Body’s purpose

5.—(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.

(3) In discharging its functions, the Body must have regard to guidance given under this article.

(4) 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.

(5) The Welsh Ministers must publish any guidance given under this article as soon as is reasonably practicable after giving the guidance.

(6) The power to give guidance under this article includes power to vary or revoke it.

Initial functions of the Body

6.—(1) The Body has the functions set out in subparagraphs (a) and (b)—

(1) 2006 c.32 (section 158(1)). The definition of the “Welsh zone” was inserted by section 43(2) of the Marine and Coastal Access Act 2009 (c.23).

(2) “EU obligation” is defined in Schedule 1 to the European Communities Act 1972 (c.68), as amended by the European Union (Amendment) Act 2008 (c.7; see section 3 and the Schedule). This definition applies to other legislation by virtue of section 5 of, and Schedule 1 to, the Interpretation Act 1978 (c.30).

- (a) the function of facilitating the implementation of any proposal of the Welsh Ministers for the transfer (with or without modification) to the Body of—
 - (i) any function of the Countryside Council for Wales;
 - (ii) any Welsh devolved function⁽¹⁾ of the Environment Agency or the Forestry Commissioners;
 - (iii) any function of a Welsh Flood and Coastal Committee⁽²⁾;
 - (iv) any of their own functions relating to the environment; or
 - (v) any Welsh environmental function⁽³⁾ of any person;
- (b) the function of facilitating the implementation of any other proposal of the Welsh Ministers made in association with any proposals falling within sub-paragraph (a) which—
 - (i) relates to the subject-matter of those proposals, or
 - (ii) is consequential on those proposals, or supplementary or incidental to them, or relates to transitional matters.

(2) Paragraph (1) applies to a proposal of the Welsh Ministers regardless of whether the National Assembly for Wales or any other person or body has given any consent or approval on which, by law, implementation of that proposal depends, but does not obviate the need for any such consent or approval to be obtained before the proposal can be implemented.

7.—(1) The Body must carry out its functions under article 6(1) according to the criteria set out in the following paragraphs.

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

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

(3) The second criterion is that the Body must not interfere with the effective carrying out by any of the persons or bodies mentioned in article 6(1)(a) of any of their functions.

(1) See section 36(1) of the Public Bodies Act 2011 (c 24).
 (2) See section 13(8) of the Public Bodies Act 2011.
 (3) See section 36(1) of the Public Bodies Act 2011.

General duty of the Body to have regard to costs and benefits in exercising powers

8.—(1) In considering whether or not to exercise any power conferred upon it by or under any enactment, the Body must take into account the likely costs and benefits of the exercise or non-exercise of that power.

(2) In deciding the manner in which to exercise any such power, the Body must take into account the likely costs and benefits of its exercise in the manner in question.

(3) The duties in paragraphs (1) and (2) apply unless, or to the extent that, it is unreasonable for the Body to be subject to them in view of the nature or purpose of the power or in the circumstances of the particular case.

(4) But those duties do not affect the Body's obligation to discharge any duties, comply with any requirements, or pursue any objectives, imposed upon or given to it by any enactment other than this article.

General incidental function of the Body

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

(2) In particular, the Body may—

- (a) enter into agreements;
- (b) acquire or dispose of property and carry out such engineering or building operations as it considers appropriate;
- (c) subject to the approval of the Welsh Ministers, form bodies corporate or acquire or dispose of interests in bodies corporate;
- (d) form charitable trusts;
- (e) accept gifts;
- (f) invest money.

(3) In this article “engineering or building operations” (*“gwaith peirianyddol neu waith adeiladu”*), without prejudice to the generality of that expression, includes—

- (a) the construction, alteration, improvement, maintenance or demolition of any building or structure or of any reservoir, watercourse, dam, weir, well, borehole or other works, and
- (b) the installation, modification or removal of any machinery or apparatus.

Advice and assistance to Welsh Ministers

10. The Body must provide the Welsh Ministers with such advice and assistance as they may request.

Directions

11.—(1) The Welsh Ministers may give the Body general or specific directions as to the exercise of its functions.

(2) The Welsh Ministers must publish any directions given under this article as soon as is reasonably practicable after giving the directions.

(3) The power to give directions under this article includes power to vary or revoke the directions.

(4) The Body must comply with any directions given under this article.

PART 3 – FINANCIAL MATTERS

Grants

12.—(1) The Welsh Ministers may make grants to the Body.

(2) A grant under this article may be made subject to conditions.

General financial duties

13.—(1) The Welsh Ministers may determine the financial duties of the Body.

(2) Different determinations may be made for different functions and activities of the Body.

(3) The Welsh Ministers must—

- (a) consult the Body before making a determination of the Body's financial duties, and
- (b) give the Body notice of every such determination which they make.

(4) Such a determination may—

- (a) relate to a period beginning before, on, or after, the date on which it is made;
- (b) contain supplemental provisions; and
- (c) be varied by a subsequent determination.

(5) The Welsh Ministers may give a direction to the Body requiring it to pay to them an amount equal to the whole or such part as may be specified in the direction of any sum, or any sum of a description, so specified which is or has been received by that Body.

(6) Where it appears to the Welsh Ministers that the Body has a surplus, whether on capital or revenue account, they may direct the Body to pay them such amount not exceeding the amount of that surplus as may be specified in the direction.

(7) The Welsh Ministers must consult the Body before giving a direction under paragraph (5) or (6).

Borrowing powers

14.—(1) The Body may borrow in accordance with the following provisions of this article, but not otherwise.

(2) The Body may borrow such sums in sterling as it may require for meeting its obligations and carrying out its functions.

(3) The Body may borrow—

- (a) from the Welsh Ministers, or
- (b) from persons other than the Welsh Ministers, but only with the consent of the Welsh Ministers.

(4) Consent under paragraph (3)(b) may be granted subject to conditions.

Welsh Ministers' guarantees of the Body's borrowing

15.—(1) The Welsh Ministers may guarantee, in such manner and on such conditions as they think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sum which the Body borrows from any person.

(2) If any sums are paid out in fulfilment of a guarantee under this article, the Body must make to the Welsh Ministers, at such times and in such manner as they from time to time direct,—

- (a) payments of such amounts as they direct in or towards repayment of the sums so paid out, and
- (b) payments of interest, at such rate as they direct, on what is outstanding for the time being in respect of sums so paid out.

Minister for Environment and Sustainable
Development, one of the Welsh Ministers

Date

Further provisions about the Body

Status

1.—(1) The Body is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(2) Property of the Body is not to be regarded as property of or property held on behalf of the Crown.

Membership

2.—(1) The Body is to consist of—

- (a) a chairperson appointed by the Welsh Ministers;
- (b) not fewer than 5 nor more than 11 other members appointed by the Welsh Ministers;
- (c) the chief executive (see paragraph 13); and
- (d) not fewer than 2 nor more than 4 other members appointed by the Body.

(2) In the case of the initial appointments to the Body, appointments under sub-paragraph (1)(d) are to be made by the members appointed under sub-paragraph (1)(a) to (c), and the expression “the Body” (“*y Corff*”) is to be interpreted accordingly.

(3) The chairperson and the other members appointed by the Welsh Ministers under sub-paragraph (1)(b) must not be employees of the Body and are referred to in this Schedule as “non-executive members” (“*aelodau anweithredol*”).

(4) The chief executive and the other members appointed by the Body under sub-paragraph (1)(d) are to be employees of the Body and are referred to in this Schedule as “executive members” (“*aelodau gweithredol*”).

(5) The Welsh Ministers may appoint one of the non-executive members to be deputy chairperson.

(6) In appointing a person to be a member, the Welsh Ministers or the Body (as the case may be) must have regard to the desirability of—

- (a) appointing a person who has experience of, and has shown some capacity in, some matter relevant to the exercise of the Body’s functions, and
- (b) securing that a variety of skills and experience is available among the members.

Further provisions relating to initial membership

3. In paragraph 2(6), the reference to the Body's functions includes any functions which would be transferred to the Body if a proposal made by the Welsh Ministers falling within article 6(1) were implemented.

4.—(1) The Welsh Ministers may nominate one member of staff of the Welsh Assembly Government as a member of the Body.

(2) In paragraph 2(1), the reference to members appointed by the Welsh Ministers includes a member nominated under this paragraph.

(3) A person nominated under this paragraph ceases to be a member of the Body upon ceasing to be employed by the Welsh Assembly Government, and in any event on the date on which any function is transferred to the Body as a result of a proposal of the Welsh Ministers falling within article 6(1).

Tenure of office

5. Subject to paragraph 4(3) (where applicable) and to paragraphs 6 to 8—

- (a) a member holds and vacates office in accordance with the terms of the member's nomination or appointment;
- (b) a deputy chairperson holds and vacates that office in accordance with the terms of that appointment.

6.—(1) A person may resign from office as a non-executive member, or as deputy chairperson, by giving written notice to the Welsh Ministers.

(2) A person may resign from office as an executive member by giving written notice to the Body.

7.—(1) The Welsh Ministers may remove a person from office as a non-executive member, or as deputy chairperson, by notice in writing.

(2) The Body may remove a person from office as an executive member by notice in writing.

(3) A notice under this paragraph may only be given to a person who—

- (a) has been absent from meetings of the Body for a period longer than 3 months without the permission of the Body;
- (b) has failed to comply with the terms of the appointment;
- (c) has become bankrupt or has made an arrangement with creditors, whose estate has been sequestrated in Scotland, or who has entered into a debt arrangement programme under Part 1 of the Debt Arrangement and

Attachment (Scotland) Act 2002 (asp 17) as the debtor or has, under Scots law, made a composition or arrangement with, or granted a trust deed for, the member's creditors;

- (d) in the opinion of the person giving the notice, is unfit to continue the appointment because of misconduct; or
- (e) in the opinion of the person giving the notice, is otherwise unable, unfit or unwilling to carry out the member's functions.

8.—(1) A person ceases to be deputy chairperson upon ceasing to be a member.

(2) A person ceases to be a non-executive member upon becoming an employee of the Body.

(3) A person ceases to be an executive member upon ceasing to be an employee of the Body.

9.—(1) A person who ceases to be a member, and a member who ceases to be deputy chairperson, may be reappointed to that office.

(2) But a person who has been removed from office on the ground of misconduct set out in paragraph 7(3)(d) may not be reappointed.

Remuneration and pensions etc of members

10.—(1) The Body must pay the non-executive members and any deputy chairperson such remuneration and allowances as the Welsh Ministers may determine.

(2) The Welsh Ministers may make different determinations under this article in different cases.

11. The Body must—

- (a) pay such pensions or gratuities to or in respect of any non-executive member or former non-executive member as the Welsh Ministers may determine;
- (b) pay such sums as the Welsh Ministers may determine towards provision for the payment of pensions or gratuities to or in respect of any non-executive member or former non-executive member.

12.—(1) This article applies if—

- (a) a person ceases to be a non-executive member, and
- (b) it appears to the Welsh Ministers that there are special circumstances which make it appropriate for the person to receive compensation.

(2) The Welsh Ministers may require the Body to pay the person such amount of compensation as the Welsh Ministers may determine.

Staff

13.—(1) The Body must appoint a person to be chief executive.

(2) The person appointed must have been approved by the Welsh Ministers.

(3) The Welsh Ministers may appoint the first chief executive.

(4) The Body may appoint other employees.

14.—(1) The Body may pay its employees such remuneration and allowances as it determines.

(2) The Body may only make a determination under this paragraph with the approval of the Welsh Ministers.

15.—(1) The Body may—

(a) pay such pensions or gratuities as it determines to or in respect of any employee or former employee, and

(b) pay such sums as it determines towards provision for the payment of pensions or gratuities to or in respect of any employee or former employee.

(2) The Body may only make a determination under this paragraph with the approval of the Welsh Ministers.

Procedure

16.—(1) The Body may determine its own procedure (including quorum) and that of its committees and sub-committees.

(2) The Body may authorise its committees and sub-committees to determine their own procedure (including quorum).

(3) But if a determination under this paragraph provides for a quorum for any meeting, the quorum cannot be met unless a majority of the members present are non-executive members.

17. No proceeding of the Body or of any committee or sub-committee is invalidated by—

(a) a vacancy in the office of chairperson, or

(b) any defect in the appointment of any member.

Delegation of functions

18.—(1) The Body may authorise a committee, sub-committee, member or employee of the Body to exercise any of the Body's functions.

(2) Unless the Body determines otherwise, a committee of the Body may authorise a sub-committee, member or employee of the Body to exercise any of the functions of that committee, including functions delegated to it by the Body.

(3) Unless the Body or the relevant committee determines otherwise, a sub-committee of the Body may authorise a member or employee of the Body to exercise any of the functions of that sub-committee, including functions delegated to it by the Body or a committee.

(4) An authorisation under the preceding provisions of this paragraph may be general or specific and must be given in writing.

(5) The Body must send a copy of the authorisation to the Welsh Ministers.

(6) The preceding provisions of this paragraph do not prevent the Body (or the committee or sub-committee, as the case may be) from exercising the function in question itself.

Membership of committees and sub-committees

19.—(1) A committee or sub-committee may include persons who are not members of the Body.

(2) The Body may pay such remuneration and allowances as the Welsh Ministers may determine to any person who—

- (a) is a member of a committee or sub-committee, but
- (b) is not a member or employee of the Body.

Application of seal and proof of documents

20.—(1) The application of the Body's seal must be authenticated by the signature of—

- (a) a member of the Body who is authorised (generally or specifically) for that purpose, or
- (b) an employee who is so authorised.

(2) A document purporting to be duly executed under the seal of the Body—

- (a) is to be received in evidence, and
- (b) is to be treated as so executed unless the contrary is shown.

Corporate Plan

21.—(1) Before the beginning of each financial year, the Body must—

- (a) prepare a plan of how it intends to discharge its functions during the following financial year, and
- (b) submit the plan to the Welsh Ministers for consideration.

(2) In this paragraph—

- (a) “financial year” (*“blwyddyn ariannol”*) means a period of 12 months ending with 31 March, and
- (b) the Body’s first financial year is the period of 12 months ending with the second 31 March after the Body is established.

Annual report

22.—(1) For each financial year, the Body must—

- (a) prepare an annual report on how it has discharged its functions during that year, and
- (b) send a copy of the report to the Welsh Ministers as soon as possible after the end of that year.

(2) The Welsh Ministers must lay a copy of the report before the National Assembly for Wales.

(3) In this paragraph and paragraph 23, “financial year” (*“blwyddyn ariannol”*) means a period of 12 months ending with 31 March, but the Body’s first financial year is—

- (a) the period beginning with the day on which the Body is established and ending with the next 31 March, or
- (b) such other period, not exceeding 2 years, as the Welsh Ministers may direct.

Accounts

23.—(1) For each financial year, the Body must—

- (a) keep proper accounts and proper records in relation to them, and
- (b) prepare a statement of accounts,

in accordance with directions given by the Welsh Ministers.

(2) The body must submit the statement of accounts prepared under this paragraph to the Auditor General for Wales and the Welsh Ministers.

(3) The statement of accounts must be submitted no later than 31 August in the financial year following that to which the statement relates.

- (4) The Body's accounts and statements of accounts must give a true and fair account of—
 - (a) the state of the Body's affairs at the end of the financial year, and
 - (b) the Body's income and expenditure in the financial year.
- (5) The Auditor General for Wales must—
 - (a) examine, certify and report on the statement of accounts;
 - (b) provide a copy of the certified statement of accounts together with his or her report on it to the Body; and
 - (c) no later than 4 months after the statement of accounts is submitted, lay before the National Assembly for Wales a copy of the certified statement of accounts and report.

Information

24.—(1) The Body must provide the Welsh Ministers with any information they require relating to the Body's property or to the discharge or proposed discharge of its functions.

- (2) The Body must also—
 - (a) permit any person authorised by the Welsh Ministers to inspect and make copies of any accounts, documents or other records of the Body (in whatever form), and
 - (b) provide such explanation of them as that person or the Welsh Ministers may require.