

SCHEDULE 1

Article 3

FUNCTIONS OF THE NATURAL RESOURCES BODY FOR WALES

1. The Establishment Order is amended as follows.
2. For article 2 substitute—
 - “2. In this Order—
 - “the Body” (“*y Corff*”) has the meaning given by article 3(1);
 - “nature conservation” (“*cadwraeth natur*”) means the conservation of flora, fauna or geological or physiographical features;
 - “pollution control functions” (“*swyddogaethau rheoli llygredd*”) has the same meaning as in section 5 of the Environment Act 1995(1);
 - “the Welsh zone” (“*parth Cymru*”) has the meaning given by section 158 of the Government of Wales Act 2006(2).”
3. In article 4(3), omit “(as defined in section 158(1) of the Government of Wales Act 2006)”.
4. After article 5 insert—

“Nature conservation duties

5A.—(1) The Body must exercise its functions so as to further nature conservation and the conservation and enhancement of natural beauty and amenity.

(2) The duty in paragraph (1) does not apply to the Body’s pollution control functions or its functions under the Forestry Act 1967.

(3) In exercising its pollution control functions, the Body must have regard to the desirability of nature conservation and of conserving and enhancing natural beauty and amenity.

(4) Section 1(3A) of the Forestry Act 1967(3) makes provision about the balance between nature conservation and other matters which the Body must endeavour to achieve in exercising its functions under that Act.

5B In exercising any function relating to nature conservation, the Body must have regard to actual or possible ecological changes.

Access and recreation duties

5C.—(1) The Body must exercise its functions so as to promote the provision and improvement of opportunities for—

- (a) access to, and 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) does not apply to the Body’s pollution control functions.

(1) 1995 c. 25. The definition of “pollution control functions” in section 5(5) was amended by the Pollution Prevention and Control Act 1999 (c. 24), Schedule 2, paragraphs 14 and 15; and by the Environmental Permitting (England and Wales) Regulations 2010 (S.I.2010/675), Schedule 26, paragraph 13(1) and (2). Schedule 2 to this Order makes further amendments to section 5.

(2) 2006 c. 32. The definition of the “Welsh zone” was inserted by section 43(2) of the Marine and Coastal Access Act 2009 (c. 23). See also the Welsh Zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760).

(3) 1967 c. 10. Section 1(3A) was inserted by section 4 of the Wildlife and Countryside (Amendment) Act 1985 (c. 31).

Status: This is the original version (as it was originally made).

(3) In exercising its pollution control functions, the Body must have regard to the desirability of maintaining the availability to the public of existing opportunities of the kinds mentioned in paragraph (1).

(4) Section 2 of the Countryside Act 1968⁽⁴⁾ makes further provision about the Body's duties relating to facilities for the enjoyment of the countryside, the conservation and enhancement of the natural beauty and amenity of the countryside, and public access to the countryside for recreation.

Duties relating to historic sites

5D In exercising its functions, the Body must have regard to—

- (a) the desirability of protecting and conserving buildings, structures, sites and objects of archaeological, architectural, engineering or historic interest;
- (b) the desirability of maintaining the availability to the public of any facility for visiting or inspecting any such building, structure, site or object, so far as consistent with sub-paragraph (a) and article 5A.

Duties relating to well-being

5E In exercising its functions, the Body must have regard to—

- (a) the health and social well-being of individuals and communities;
- (b) the economic well-being of individuals, businesses and communities.

Duties of Welsh Ministers in relation to proposals relating to the Body's functions

5F.—(1) The duties in articles 5A to 5E apply to the Welsh Ministers when formulating or considering any proposals relating to the Body's functions, as they apply to the Body in exercising those functions.

(2) But the duty in article 5A(1) applies to the Welsh Ministers when formulating or considering such proposals only to the extent that the duty is consistent with—

- (a) the objective of achieving sustainable development; and
- (b) the Welsh Ministers' duties under section 2 of the Water Industry Act 1991⁽⁵⁾.

Recreation in relation to water and associated land

5G.—(1) This article applies where the Body has rights to the use of water or land associated with water.

(2) The Body must take appropriate steps to secure that those rights are exercised so as to ensure that the water or land—

- (a) is made available for recreational purposes; and
- (b) is made available in the best manner.

(3) In paragraph (2), “appropriate steps” (“*camau priodol*”) means steps which are—

- (a) reasonably practicable; and
- (b) consistent with the provisions of any enactment relating to the Body's functions.

(4) 1968 c. 41. There have been numerous amendments to section 2, including those made by the Natural Environment and Rural Communities Act 2006 (c. 16), Schedule 11, paragraph 43. Schedule 2 to this Order makes further amendments to section 2.

(5) 1991 c. 56. There have been amendments to section 2, including in particular those made by the Water Act 2003 (c. 37), section 39.

(4) The Body must obtain the consent of any navigation authority, harbour authority or conservancy authority before doing anything under paragraph (1) which causes obstruction of, or other interference with, navigation which is subject to the control of that authority.

(5) Section 6 of the Environment Act 1995⁽⁶⁾ makes further general provision about the Body's functions with respect to water.

Provision of facilities for recreation and other purposes

5H.—(1) The Body may provide, or make arrangements for the provision of, facilities for the purposes specified in 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 purposes referred to in paragraph (1) are—

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

(3) In paragraph (1), “facilities” (“*cyfleusterau*”) includes, without limitation—

- (a) accommodation for visitors, camping sites and caravan sites;
- (b) picnic sites and places for meals and refreshments;
- (c) places for enjoying views and parking places;
- (d) routes for walking, cycling or study of the natural environment;
- (e) education centres, display centres and information;
- (f) shops in connection with any of the facilities mentioned in paragraphs (a) to (e);
- (g) public conveniences.

5I The power of the Welsh Ministers under section 39 of the Forestry Act 1967⁽⁷⁾ to acquire land includes power to acquire land in proximity to land placed by them at the disposal of the Body pursuant to section 3 of that Act where it appears to the Welsh Ministers that the land which it is proposed to acquire is reasonably required for the provision of the facilities mentioned in article 5H.

5J The power of the Welsh Ministers to make byelaws under section 46 of the Forestry Act 1967 includes power to make byelaws—

- (a) for regulating the reasonable use of facilities provided under article 5H, and
- (b) in relation to any matter described in section 41(3) of the Countryside Act 1968⁽⁸⁾.”

5. Omit articles 6 and 7.

6.—(1) Article 8 is amended as follows.

(2) In paragraph (3), for “apply unless” substitute “do not apply if”.

(3) After paragraph (4) insert—

“(5) For the purposes of this article, costs include costs—

(6) 1995 c. 25. Amendments to section 6 which are relevant to this Order have been made by the Water Act 2003 (c. 37), section 72; the Aquatic Animal Health (England and Wales) Regulations 2009 (S.I. 2009/463), Schedule 2, paragraph 9(b); the Marine and Coastal Access Act 2009 (c. 23), section 230; and the Flood and Water Management Act 2010 (c. 29), Schedule 2, paragraphs 51 and 52. Schedule 2 to this Order makes further amendments to section 6.

(7) 1967 c. 10. Amendments to section 39 which are relevant to this Order were made by the Scotland Act (Cross-Border Public Authorities) (Adaptation of Functions etc.) Order 1999 (S.I. 1999/1747), Schedule 12, paragraph 4(1) and (28) to (31).

(8) 1968 c. 41. There have been amendments to other provisions of section 41.

- (a) to any person; and
- (b) to the environment.”

7. After article 8 insert—

“Cooperation with the Environment Agency

8A The Body must cooperate with the Environment Agency, and coordinate its activities with those of the Environment Agency, as may be appropriate in the circumstances.”

8.—(1) Article 9(2) is amended as follows.

(2) In sub-paragraph (c), after “form” insert “or participate in the forming of”.

(3) After sub-paragraph (d) insert—

“(da) act, or appoint a person to act, as an officer of a body corporate or as a trustee of a charitable trust;”.

(4) In sub-paragraph (e), after “gifts” insert “or contributions”.

9. After article 9 insert—

“Power to enter into agreements with local authorities and public bodies

9A.—(1) Without prejudice to the generality of the powers conferred by article 9, the Body is to be treated as both a local authority and a public body for the purposes of the provisions of the Local Authorities (Goods and Services) Act 1970⁽⁹⁾, except section 2(2).

(2) But the Body may not, under section 1 of that Act, make arrangements which could be made under section 28(1) of the Public Bodies Act 2011⁽¹⁰⁾.”

10.—(1) Article 10 is amended as follows.

(2) The existing provision becomes paragraph (1).

(3) After paragraph (1) insert—

“(2) The Body may advise the Welsh Ministers on the development and implementation of policies for or in relation to any matter in respect of which the Body exercises functions, whether or not it has been requested to do so.”

11. After article 10 insert—

“Advice and assistance to others

10A.—(1) The Body may provide advice or assistance, including training facilities, to any person on any matter in which the Body has knowledge, skill or experience.

(2) The power conferred by paragraph (1) must not be exercised where the person to whom the advice or assistance is provided is outside Wales, except—

- (a) in accordance with a power or duty conferred or imposed by this or any other enactment;
- (b) with the consent in writing of the Welsh Ministers; or
- (c) in accordance with arrangements approved by the Welsh Ministers.

⁽⁹⁾ 1970 c. 39. There have been amendments to the Act which are not material for the purposes of this Order.

⁽¹⁰⁾ 2011 c. 24.

(3) The Welsh Ministers may impose conditions when giving consent or approving arrangements under paragraph (2).

Financial assistance

10B.—(1) The Body may give financial assistance to any person in respect of any expenditure incurred or to be incurred by that person in doing anything which the Body considers conducive to the attainment of any objective which the Body seeks to attain in the exercise of its functions.

(2) The Body may give financial assistance under this article by way of grant or loan (or partly in one way and partly in the other).

(3) The Body may attach conditions to financial assistance under this article, which may include (without limitation) conditions requiring the repayment of the whole or part of any grant in specified circumstances.

(4) The Body must exercise the power in paragraph (3) so as to ensure that any person receiving financial assistance in respect of premises to which the public are to be admitted (on payment or otherwise) makes appropriate provision for the needs of members of the public with disabilities.

(5) In paragraph (4), “appropriate provision” (“*darpariaeth briodol*”) means such provision with respect to—

- (a) means of access to or within the premises; and
- (b) the parking facilities and sanitary conveniences to be available (if any),

as is practicable and reasonable in the circumstances.

(6) The Body may give financial assistance under this article only with the consent of the Welsh Ministers (which may be specific or general) or in accordance with arrangements approved by them.

Research

10C.—(1) The Body must make arrangements for the carrying out of research activities in respect of matters relevant to any of its functions.

(2) The Body may—

- (a) carry out research activities on its own account or jointly with other persons;
- (b) commission or support research activities (whether by financial means or otherwise).

(3) In exercising its functions under this article in relation to research into nature conservation, the Body must have regard to any common standards established under section 34(2)(c) of the Natural Environment and Rural Communities Act 2006⁽¹¹⁾.

(4) In this article—

- (a) “research activities” (“*gweithgareddau ymchwil*”) means research and related activities;
- (b) “related activities” (“*gweithgareddau cysylltiedig*”) includes, without limitation, the making of experiments and inquiries and the collection of statistics and information.

(11) 2006 c. 16.

Further provision about advice, assistance and research

10D The functions conferred by articles 10 to 10C are exercisable in relation to Wales and the Welsh zone.

Criminal proceedings

10E.—(1) The Body may institute criminal proceedings in England and Wales.

(2) The Body may authorise persons to prosecute on its behalf in proceedings before magistrates' courts in England and Wales.

(3) A person so authorised is entitled to prosecute in such proceedings even though that person is not a barrister or solicitor.”

12. In article 11, for paragraphs (2) to (4) substitute—

“(2) The power in paragraph (1) may also be exercised by the Secretary of State for the purpose of directing the Body as to the exercise of its relevant transferred functions, where the direction—

(a) would have any effect in England; or

(b) relates to water resources management, water supply, rivers or other watercourses, control of pollution of water resources, sewerage or land drainage, and would have any effect in the catchment areas of the rivers Dee, Wye and Severn.

(3) The Welsh Ministers or the Secretary of State may give the Body general or specific directions for the implementation of any EU obligation or international obligation of the United Kingdom.

(4) Except in an emergency, the power to give a direction under this article may be exercised only after consultation with the Body.

(5) The Welsh Ministers may give a direction falling within paragraph (2) only after consulting the Secretary of State.

(6) The Secretary of State may give a direction under this article only after consulting the Welsh Ministers.

(7) Any power of the Welsh Ministers or Secretary of State to give directions to the Body under any other enactment is without prejudice to their powers to give directions under this article.

(8) In this article, “relevant transferred functions” (“*swyddogaethau trosglwyddedig perthnasol*”) means any functions which—

(a) were exercisable by the Environment Agency before 1 April 2013; and

(b) are functions of the Body by virtue of the Natural Resources Body for Wales (Functions) Order 2013,

but this is subject to paragraph (9).

(9) For the purposes of the definition of “relevant transferred functions” (“*swyddogaethau trosglwyddedig perthnasol*”)—

(a) a function of the Environment Agency was exercisable before 1 April 2013 whether or not the enactment conferring it had come into force before that date; but

(b) a function is only a relevant transferred function when the enactment conferring the function has come into force.”

13. After article 11 insert—

“Further provisions about directions

11A.—(1) A direction under article 11 must be in writing.

(2) The Welsh Ministers or the Secretary of State (as the case may be) must publish any direction given to the Body—

- (a) under article 11;
- (b) under any other enactment for the purpose of implementing any EU obligation or international obligation of the United Kingdom,

as soon as reasonably practicable after giving the direction, and must make copies available on request.

(3) The power to give directions under article 11 includes power to vary or revoke the directions.

(4) If the Welsh Ministers or the Secretary of State vary or revoke any direction given to the Body for the purpose of implementing any EU obligation of the United Kingdom (whether under article 11 or under any other enactment), they must—

- (a) publish the variation or revocation as soon as reasonably practicable;
- (b) make copies of the variation or revocation available on request.

(5) The Body and any person exercising functions of the Body must comply with any direction given to the Body under article 11 or any other enactment.

(6) In determining—

- (a) any appeal against, or reference or review of, a decision of the Body, or
- (b) any application transmitted from the Body,

the person making the determination is bound by any direction given to the Body under article 11 or any other enactment to the same extent as the Body.”

14. At the end of article 12 insert—

“(3) The conditions which may be imposed include, without limitation, conditions as to the use of the money for the purposes of the Joint Nature Conservation Committee.”

15. After article 12 insert—

“Power to charge

12A.—(1) The Body may—

- (a) charge for work that it carries out and for goods, services and facilities that it provides;
- (b) allow another person to make charges, on such terms as the Body thinks fit, for facilities which that person provides under arrangements made under article 5H.

(2) Any arrangement between the Body and another person entered into pursuant to paragraph (1) may, with the consent of the Welsh Ministers, include provision for the sharing of profits.

(3) The powers conferred by this article are subject to any specific restriction on charging by the Body in particular cases or categories of case contained in this or any other enactment.”

16. At the end of article 13 insert—

“(8) This article is subject to section 118 of the Water Resources Act 1991(12).”

17. After article 13 insert—

“Forestry income

13A.—(1) The Body must spend all sums which it receives in respect of the sale or other disposal of timber or other forest products on the exercise of its functions relating to forestry, forests, woods and woodland industries.

(2) This article is subject to any determination or direction made by the Welsh Ministers under article 13.”

18. After article 15 insert—

“PART 4 —

INFORMATION ABOUT PERMITTING DECISIONS

Interpretation

16. In this Part—

“permit” (*“hawlen”*) means any registration, exemption, approval, permission, licence, consent, assent or other authorisation, however described;

“permitting decision” (*“penderfyniad ynghylch hawlenni”*) means any decision to—

- (a) grant or refuse an application for a permit;
- (b) suspend, vary or revoke a permit.

Information publication schemes

17.—(1) The Body must—

- (a) develop, adopt and maintain a scheme (in this article referred to as a “publication scheme”) in relation to the publication of information about—
 - (i) applications for permits made to the Body; and
 - (ii) permitting decisions made by the Body;
- (b) publish information in accordance with its publication scheme;
- (c) from time to time review its publication scheme.

(2) A publication scheme must—

- (a) specify classes of information which the Body publishes or intends to publish, which must include information about all applications for permits made by the Body in cases where the Body is responsible for determining the application;
- (b) specify the manner in which, and the time within which, information of each class is, or is intended to be, published;
- (c) specify whether the material is, or is intended to be, available to the public free of charge.

(3) In developing, adopting or reviewing a publication scheme, the Body must—

(12) 1991 c. 57. Section 118 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraphs 128 and 150; and the Flood and Water Management Act 2010 (c. 29), Schedule 2, paragraphs 40 and 43. Schedule 2 to this Order makes further amendments to section 118.

- (a) consult such persons as it considers appropriate;
- (b) have regard to the public interest in—
 - (i) allowing public access to information held by the Body; and
 - (ii) the publication of information about applications for permits made to the Body and permitting decisions made by the Body.
- (4) A publication scheme must be approved by the Welsh Ministers.
- (5) If the Welsh Ministers refuse to approve a proposed publication scheme they must give the Body a statement of their reasons for doing so.
- (6) The Body must publish its publication scheme on its website and make copies of the scheme available on request.
- (7) This article is without prejudice to any other power or duty of the Body to publish or disclose information.

Notification to Welsh Ministers in relation to self permitting

18.—(1) This article applies to any application for a permit in respect of which all of the following conditions are met—

- (a) the Body is the applicant;
- (b) the Body is responsible for determining the application;
- (c) the Welsh Ministers may make a direction that the application be referred to them for determination.

(2) The Body must notify the Welsh Ministers of the application at the time that it makes the application.”

19.—(1) The Schedule is amended as follows.

(2) Before paragraph 1 insert—

“Interpretation

A1. In this Schedule, references to employees of the Body include persons seconded to the Body.”

(3) In paragraph 1(2), for “Property” substitute “Subject to paragraph 1A, property”.

(4) After paragraph 1 insert—

“Status in relation to nature reserves

1A.—(1) This paragraph applies to land in which the Body has an interest and which is managed as a nature reserve.

(2) For the purposes of the application of any enactment or rule of law to the land, the Body is to be treated as a government department.

(3) An interest in land includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an interest in land or by virtue of a licence or agreement.”

(5) In paragraph 2(1)(d), omit “fewer than 2 nor”.

(6) Omit paragraphs 3 and 4.

(7) In paragraph 5, omit “paragraph 4(3) where applicable and to”.

Status: *This is the original version (as it was originally made).*