

EXPLANATORY MEMORANDUM TO
THE NATURAL RESOURCES BODY FOR WALES (CONSEQUENTIAL
PROVISION) ORDER 2013

2013 No.

1. This Explanatory Memorandum has been prepared by the Wales Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1. This instrument (“the Order”) makes necessary provision in consequence of the creation of the Natural Resources Body for Wales (“NRBW”), and the transfer to the NRBW of the Welsh devolved functions of the Environment Agency (“EA”) and the Forestry Commissioners (“FC”).

2.2. The main purposes of the Order is to make provision: to enable the EA and the FC to delegate certain functions to the NRBW; to remove functions of the Welsh Ministers in relation to the membership, constitution and financial governance and other related functions of the EA and the FC following the transfer of their Welsh devolved functions to the NRBW; in relation to charging schemes involving the EA and the NRBW and in relation to the transfer of certain appeal functions from the Secretary of State to Welsh Ministers.

2.3. The Order also makes various other provisions in consequence of the establishment of the NRBW, or the transfer to it of the Welsh devolved functions of the EA and the FC, including transitional and savings provisions.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. This is the second Order to be made under section 150 of the Government of Wales Act 2006. The other, unrelated to this Order, is the Local Government (Wales) Measure 2009 (Consequential Modifications) Order 2010 (SI 2010/212).

3.2. Parts 1 to 5 and articles 29 to 31 of the Order apply retrospectively, having effect from 1st April 2013, which is the date on which the Natural Resources Body for Wales (Functions) Order 2013 (“the Functions Order”) comes into force. The power to make provision having retrospective effect is conferred by section 150(4) of the Government of Wales Act 2006 (c. 32).

3.3. The Order makes provision that is closely related to the functions conferred on the NRBW by the Functions Order, and which is necessary for the NRBW, EA and FC to operate effectively. The relevant provisions of the Order apply retrospectively so as to enable

those provisions to take effect at the same time as provisions made by the Functions Order, to ensure a smooth transition, and effective operation of the various bodies notwithstanding the period of time between the coming into force of the Functions Order, and this Order.

4. Legislative Context

- 4.1 The Natural Resources Body for Wales is a new body for the management of Wales' natural resources, combining the existing functions of the Countryside Council for Wales (CCW) and the Welsh devolved functions of the EA and the FC.
- 4.2 The Natural Resources Body for Wales (Establishment) Order 2012 ('the Establishment Order'), which came into force on 19 July 2012, created the NRBW as a legal entity with an overarching aim, set out its general powers and duties, and gave it the function of carrying out preparatory work to facilitate proposals to transfer functions to it.
- 4.3 A second order, the Functions Order, which came into force on 1 April 2013, amends a wide range of legislation in order to transfer to the NRBW functions exercised by CCW, EA and FC, along with certain licensing functions of the Welsh Ministers. It makes consequential changes to legislation, and amends the NRBW's general powers and duties to reflect the range of functions being transferred to it. It abolishes CCW and two statutory advisory committees of the EA. It also transfers a number of functions from FC to the Welsh Ministers rather than the NRBW.
- 4.4 Both the Establishment Order and the Functions Order are made under the powers contained in sections 13 to 15 of the Public Bodies Act 2011.
- 4.5 This Order deals primarily with the removal of functions of the Welsh Ministers in relation to the EA and the FC together with other provisions related to the establishment of (by the Establishment Order), and transfer of functions to (by the Functions Order), the NRBW. It is primarily made under powers conferred by sections 150 and 157(2) of the Government of Wales Act 2006.
- 4.6 Article 32 of the Order is made under the power conferred by section 2(2) of the European Communities Act 1972, as section 150(3) of the Government of Wales Act 2006 provides that an order under section 150 of that Act may not make provision with respect to matters within the legislative competence of the Scottish Parliament.

5. Territorial Extent and Application

The Order extends to the whole of the United Kingdom; it consists largely of amendments to existing legislation, which extend variously throughout England and Wales, Great Britain or the whole of the UK. These amendments have the same extent as the legislation they amend.

6. European Convention on Human Rights

The Rt. Honourable David Jones MP, Secretary of State for Wales, has made the following statement:

“In my view the provisions of the Natural Resources Body for Wales (Consequential Provision) Order 2013 are compatible with Convention rights”.

7. Policy background

- 7.1 During the course of the 2007-2011 Assembly, the Welsh Government began examining options for the future of environmental regulation and management in Wales. In considering how best to take forward the management of natural resources in Wales, the Welsh Government issued in September 2010 a consultation, ‘A Living Wales’, which it followed with a green paper, ‘Sustaining a Living Wales’. In these papers it set out its aspiration to manage the natural resources in more joined up ways, to help make better and more sustainable decisions.
- 7.2 Following receipt of a detailed business case, the Minister for Environment and Sustainable Development announced on 29 November 2011 that, to simplify arrangements for managing the environment in Wales, he was minded to proceed with the creation of a single body subject to further consultations on the business case and details of proposed new arrangements.
- 7.3 The Public Bodies Act 2011 makes explicit provision to enable the Welsh Ministers to create a new body and to transfer to it the relevant functions of the CCW, the EA and the FC.
- 7.4 The Natural Resources Body for Wales (NRBW) is the new single body for the management of Wales’ natural resources. The new body has been established by Welsh Ministers using powers provided in the Public Bodies Act 2011
- 7.5 An analysis conducted by the Welsh Government of more than 500 pieces of primary and secondary legislation identified a large number of necessary amendments. 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.
- 7.6 The powers of the Welsh Ministers under the Public Bodies Act 2011 are subject to some limitations – for example section 15(4) of that Act provides that the Welsh Ministers may not modify the constitutional or funding arrangements of the EA or the FC.
- 7.7 As a result of these limitations, together with other factors, it was decided that it would be most efficient and transparent for the Secretary of State to make an order in exercise of the powers conferred by sections 150 and 157(2) of the Government of Wales Act 2006. This Order contains provisions that could not be made by the

Welsh Ministers in the Establishment and Functions Orders together with, for the sake of clarity, further provisions (that would otherwise have been contained within the Functions Order) that are related to those provisions. This Order also contains provisions that, for reasons of timing, did not make it into the Functions Order.

- 7.8 As a result of the new body taking on the Welsh devolved functions of the EA and FC it is no longer appropriate for the Welsh Ministers to be involved in appointments to, and the funding of, those two bodies. The Order therefore removes the Welsh Ministers' power (by transfer of the functions to the Secretary of State) to appoint a member of the EA and functions relating to the member they appoint.
- 7.9 It amends section 41A of the Environment Act 1995 to ensure the new body can make charging schemes in relation to the EU Emissions Trading Scheme and to require any charges relating to operator registry functions to be paid to the EA. Amendment of sections 41 and 42 of, and insertion of new sections 41B and 41C into, the Environment Act 1995 enable charging scheme powers in relation to licences for the abstraction and/or impounding of water to provide for the recovery and payment (by the Agency to the NRBW and vice versa) of sums relating to cross-border costs and expenses. These powers will now include the making of a joint (Agency/NRBW) charging scheme in relation to any combined area of England and Wales that comprises of the whole, or any part, of the catchment areas of the Rivers Dee, Wye and Severn.
- 7.10 Transitional provision is included, which modifies the existing (as at 1 April 2013) charging scheme that relates to abstraction and/or impounding of water. That scheme will continue to apply as though it were a 'joint charging scheme' made by the Agency and the NRBW under section 41, 41B and 42 of the 1995 Act as amended by this Order. The Agency and the NRBW are required to agree (by 1st October 2013) the method for apportionment, between those bodies, of sums recovered by way of charges under that scheme.
- 7.11 Welsh Ministers' functions under sections 37(2) and (4), 38, and 44 to 53 of the Environment Act 1995 in relation to EA general financial duties, accounts and records, audit, funding, borrowing and loans, and annual reports, are removed. Amendments are made so that the Auditor General for Wales ceases to have a role in relation to EA accounts and use of resources (including repeal of section 147 of the Government of Wales Act 1998). Transitional provisions are included to enable the Auditor General Wales to continue to exercise its audit functions as regards the EA - but only in relation to any period before April 2013.
- 7.12 The Order removes references in section 2 and in Schedule 1 of the Forestry Act 1967 in relation to the Forestry Commission's National Committee for Wales. It also removes the functions of Welsh Ministers' in Schedule 1 to the Forestry Act 1967 (by transfer of those functions to the Secretary of State), relating to administration and superannuation of the Forestry Commissioners, with savings and transitional provision to ensure the continuity of the transferred functions.

- 7.13 The Order amends the Public Bodies Act 2011: to ensure that NRBW does not become (by virtue of the Functions Order) a “cross-border operator” for the purposes of that Act, and avoids the unintended consequences that this would otherwise cause whereby section 26 of that Act prevents delegation to a cross-border operator; and provides that the EA can delegate any of its functions to the NRBW, regardless of whether they are “devolved” or “non-devolved” functions. Provision is also made to allow the FC to delegate functions, to the NRBW, in relation to FC land that adjoins or is adjacent to Wales. This will enable the continuation of existing arrangements whereby, because of the way in which FC resources have geographically been located, certain FC land in Shropshire and Herefordshire close to the Welsh border had been managed by Wales-based FC management units.
- 7.14 The Welsh Ministers’ role in relation to Forestry Commission funding under section 41 of the Forestry Act 1967 is removed (by transfer of those functions to the Secretary of State). The Order repeals section 105 of the Government of Wales Act 1998 relating to Welsh finances of Forestry Commission, and paragraphs 3-11 of Schedule 7 to the Government of Wales Act 1998, relating to FC’s Welsh finances and exercise of its functions in relation to Wales. Transitional provisions are included to ensure that, despite the repeal of Schedule 7, the provisions continue to apply in relation to FC’s Welsh finances up to April 2013.
- 7.15 Amendments are made to the Waste Electrical and Electronic Equipment Regulations 2006 and to the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 to transfer, from the Secretary of State to the Welsh Ministers, certain functions to hear and determine appeals brought in relation to certain decisions of the NRBW. As NRBW will be a Welsh body, it is appropriate that Welsh Ministers have the relevant appellate functions.
- 7.16 Amendments are made to the Justification of Practices Involving Ionising Radiation Regulations 2004. The NRBW is included as one of the bodies that must be consulted by a Justifying Authority or the Secretary of State (as the case may be) before making a justification decision, a determination or serving a contravention notice, and to include the NRBW as one of the bodies that must be notified before a contravention notice is served. It ensures NRBW fulfils the same role as the other, equivalent UK territorial bodies.

8. Consultation outcome

- 8.1 In the drafting of this Order, the Wales Office has consulted key UK Government Departments. Their comments were taken into account in the drafting of the Order. There has been no public consultation on this Order because it is consequence of the Welsh Government’s decision to establish the NRWB and transfer devolved environment functions to it.
- 8.2 The proposed arrangements for establishing the NRBW have been the subject of a series of consultations conducted by the Welsh

Government. The new approach was the subject of a public consultation (A living Wales – a new framework for our environment, our countryside and our seas) published in September 2010.

- 8.3 The Welsh Government consulted on the proposed arrangements for establishing and directing a new body for the management of Wales' natural resources. The consultation ran from 9 February 2012 to 2 May 2012 and sought views on issues such as the legal changes needed to establish the body; the ambitions of the body including how the purpose would be framed; the arrangements for customer and stakeholder engagement; the main functions and powers of the body; the status of the body and governance arrangements; cross-border arrangements and accountability. The consultation responses helped inform the content of the Natural Resources Body for Wales (Establishment) Order 2012, in particular the overarching aim of the body.
- 8.4 An additional consultation, giving more details on creating the new body, was held between 13 August and 15 October 2012. The first part of the consultation focused on the duties of the new body, including cross-cutting duties and specific duties covering natural beauty and nature conservation, public access and recreation, forestry and other overarching duties. The consultation sought views on three specific questions relating to these proposed duties.
- 8.5 The second part of the consultation provided more information on legal and working arrangements of the body. It covered matters such as cross-border issues, regulation and enforcement, cross-border monitoring, statutory planning and reporting, emergency response, trading schemes and producer responsibility, and transitional arrangements.

9. Guidance

No guidance will be issued on the terms of the Order. This memorandum explains the purpose and context of the Order. The Natural Resources Body for Wales will issue advice to its transactional stakeholders (previously transactional stakeholders with CCW, EA Wales and FC Wales) on the effect of establishing the new body.

10. Impact

- 10.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies. The impact of the instrument on the public sector is minimal.
- 10.2 The creation of the new body is, essentially, a machinery of Government change. The legislation establishing the body and conferring functions upon it does not result in any material changes to the regulatory regimes and as such no material impact on the private sector has been identified. Essentially it passes the functions to the new body in a regulatory neutral manner.

11. Regulating small business

This Order does not result in any material changes to the regulatory regimes and as such no material impact on small businesses.

12. Monitoring & review

The Order makes consequential changes in connection with the establishment of the Natural Resources Body for Wales. There are no plans for a separate review of the effects of this Order.

13. Contact

13.1 Queries about the content of the instrument or this memorandum should be addressed to Leanne James, Wales Office (Tel: 029 2092 4200 / 029 2092 2672; leanne.james@walesoffice.gsi.gov.uk).

13.2 Rasila Patel, Wales Office, can answer legal queries about the instrument (Tel: 020 7270 0400; rasila.patel@walesoffice.gsi.gov.uk).