

## Constitutional and Legislative Affairs Committee

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Meeting Venue:  
**Committee Room 2 – Senedd**

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Meeting date:  
**25 June 2012**

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Meeting time:  
**14:30**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

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### Agenda

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- 1. Introduction, apologies, substitutions and declarations of interest**
- 2. Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

None

Affirmative Resolution Instruments

None

- 3. Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

**CLA157 – The Plant Health (Fees) (Wales) Regulations 2012** (Pages 1 – 26)  
Negative Procedure. Date made 5 June 2012. Date laid 12 June 2012. Coming into force date 6 July 2012

## Affirmative Resolution Instruments

None

## Supper Affirmative Resolution Instruments

**CLA155 – The Natural Resources Body for Wales (Establishment) Order 2012**  
(Pages 27 – 58)

Super Affirmative Procedure. Date made 2012. Date laid not stated. Coming into force date – see article 1

### **4. Committee Inquiries: Inquiry into the establishment of a separate Welsh jurisdiction** (Pages 59 – 68)

**Present:**

The Rt. Hon. Lord Morris of Aberavon KG QC

**Papers:**

CLA(4)-15-12(p1) – Additional Responses WJ – Rt. Hon. Lord Morris of Aberavon KG QC

### **5. Paper(s) to note**

**Subsidiarity monitoring report (January 2012 – April 2012)** (Pages 69 – 80)

**Paper:**

CLA(4)-15-12(p2) – Subsidiarity monitoring report (January 2012 – April 2012)

**Report of the Meeting 18 June 2012** (Pages 81 – 82)

CLA(4)-14-12 – Report of the Meeting 18 June 2012

### **Date of the next meeting**

2 July 2012

**6. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

**7. Consideration of the evidence submitted to Inquiry to date**

### **Transcript**

View the [meeting transcript](#).

## **Constitutional and Legislative Affairs Committee Draft Report**

**CLA157**

**Title: The Plant Health (Fees) (Wales) Regulations 2012**

**Procedure: Negative**

These Regulations, which apply in relation to Wales, specify fees payable to the Welsh Ministers in the field of plant health. The fees are payable in relation to specified inspections/other operations carried out pursuant to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community.

In addition, these Regulations consolidate several previous instruments which dealt separately with particular fees in relation to plant health.

### **Technical Scrutiny**

Under Standing Orders 21.2 the Assembly is invited to pay special attention to this instrument:-

In particular, concerning Regulation 3 (3) there is a discrepancy between the English and Welsh text. The Welsh text has additional wording which is not reflected in the English text.

We believe the English text is the correct version.

[Standing Order 21.2 (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts] and [Standing Order 21.2 (vi) that its drafting appears to be defective or it fails to fulfil its statutory requirement].

### **Merits Scrutiny**

No points are identified for reporting under Standing Order 21.3 in respect of this instrument at this stage.

### **Legal Advisers**

Constitutional and Legislative Affairs Committee

**June 2012**

**The Government has responded as follows:**

**The Plant Health (Fees) (Wales) Regulations 2012**

The Government accepts the reported inconsistency between the Welsh and English texts which arose in final amendment of the draft Statutory Instrument prior to making to remove otiose text. The relevant text was removed from the English text of the Statutory Instrument, but inadvertently left in the Welsh text. Given that the relevant text has no impact on the meaning or intended effect of the instrument, the Government proposes to amend the Welsh text upon publication.

**2012 No. 1493 (W. 191)**

**PLANT HEALTH, WALES**

**The Plant Health (Fees) (Wales)  
Regulations 2012**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations, which apply in relation to Wales specify fees payable to the Welsh Ministers in the field of plant health.

The fees are payable in relation to specified inspections and other operations carried out pursuant to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ No L 169, 10.7.2000, p.1).

The fees for documentary, identity and plant health checks in relation to certain imports of plants, plant products and other objects from third countries (regulation 2 and Schedules 1, 2 and 3) are specified pursuant to the requirement in Article 13d of Directive 2000/29/EC.

The Regulations consolidate several previous instruments which dealt separately with particular fees in relation to plant health; those previous instruments are revoked (regulation 7). These Regulations do not introduce any new types of fee.

The fee levels provided for in this instrument form part of a phased move towards full cost recovery of fees over a period of three years. Most fees are substantially increased: import inspection fees by 229%, fees in relation to seed potatoes by 52%, licensing fees by 160%, fees for inspection of Egyptian potatoes by 184% and fees for plant passporting services by 55%. Further details are provided in the Explanatory Memorandum.

Regulatory impact assessments of the effect that this instrument will have on the costs of business, in relation to each of the five types of fees covered by this instrument, have been prepared and are available

from the Department of Environment and Sustainable  
Development, Welsh Government, Cathays Park,  
Cardiff CF10 3NQ.

**2012 No. 1493 (W. 191)**

**PLANT HEALTH, WALES**

**The Plant Health (Fees) (Wales)  
Regulations 2012**

*Made* 5 June 2012

*Laid before the National Assembly for Wales*  
12 June 2012

*Coming into force* 6 July 2012

The Welsh Ministers are designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the common agricultural policy of the European Union.

The Welsh Ministers make regulation 7(a), (b) and (c) in exercise of powers conferred by section 2(2) of the European Communities Act 1972.

The Welsh Ministers make these Regulations, with the exception of regulation 7(a), (b) and (c), with the consent of the Treasury, in exercise of powers conferred by section 56(1) and (2) of the Finance Act 1973<sup>(3)</sup> and now vested in them.<sup>(4)</sup>

**Title, application, commencement and interpretation**

**1.**—(1) The title of these Regulations is the Plant Health (Fees) (Wales) Regulations 2012. They apply in relation to Wales and come into force on 6 July 2012.

(2) In these Regulations—

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- (1) By virtue of Article 3 of the European Communities (Designation) (No.5) Order 2010, S.I. 2010/2690.  
(2) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a), and the European Union (Amendment) Act 2008 (c.7), Part 1 of the Schedule.  
(3) 1973 c.51. Subsection (6) of section 56 was repealed by the Statute Law (Repeals) Act 1977 (c.18).  
(4) By virtue of section 59(5) of the Government of Wales Act 2006 c32.

- (a) “the Directive” (“y Gyfarwydddeb”) means Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community<sup>(1)</sup>; and
- (b) “the PHO” (“y GIP”) means the Plant Health (Wales) Order 2006<sup>(2)</sup>.

(3) Terms used in these Regulations which are also used in the Directive have the meaning they have in the Directive.

### **Import inspection fees**

2.—(1) This regulation applies in relation to consignments of—

- (a) plants, plant products and other objects of a description specified in column 1 of Schedule 1 that are listed in Part B of Annex V to the Directive, and
- (b) seeds of *Solanaceae* whether or not listed in that Part,

that are introduced into Wales from a country or territory other than one within the European Union or are the subject of an agreement made under article 12(6) of the PHO.

(2) Upon import of a consignment to which this regulation applies, an importer must pay to the Welsh Ministers—

- (a) the fee specified—
  - (i) in column 3 of Schedule 1 in respect of a consignment of a plant, plant product or other object listed in column 1 of that Schedule, other than a consignment of a plant or plant product to which paragraph (ii) of this sub-paragraph applies, or
  - (ii) in column 4 of Schedule 2 in respect of a consignment of a plant or plant product listed in column 1 of that Schedule and originating from a country listed in column 3 of that Schedule; and
- (b) the fees specified in column 3 of Schedule 3 for a documentary check and an identity check.

(3) But where, at the request of an importer or any other person responsible for the consignment, a plant health check is carried out on a consignment outside

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(1) OJ No L 169, 10.7.2000, p.1, as last amended by Commission Directive 2010/1/EU (OJ No L 7, 12.1.2010, p.17).

(2) S.I. 2006/1643 (W.158).

daytime working hours, the fee payable under paragraph (2)(a) in respect of that consignment is—

- (a) the fee specified in column 4 of Schedule 1 if the consignment is a consignment to which paragraph (2)(a)(i) applies; or
- (b) the fee specified in column 5 of Schedule 2 if the consignment is a consignment to which paragraph (2)(a)(ii) applies.

(4) In this regulation “daytime working hours” (“*oriau gwaith yn ystod y dydd*”) means any time between the hours of 8.30 a.m. and 5.00 p.m. on any day except a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(1) in Wales.

### **Seed potatoes: fees**

3.—(1) The fees specified in Schedule 4 are payable in respect of the functions specified in column 1 of that Schedule, which relate to an application for—

- (a) certification of seed potatoes in accordance with regulation 9 of the Seed Potatoes Regulations;
- (b) an authorisation to market seed potatoes in accordance with regulation 8 of those Regulations.

(2) The fee payable in respect of a function is subject to any minimum fee specified in column 3 of Schedule 4 in relation to that function.

(3) The fee in respect of a function specified in Schedule 4 must be paid to the Welsh Ministers.

(4) In this regulation “the Seed Potatoes Regulations” (“*y Rheoliadau Tatws Hadyd*”) means the Seed Potatoes (Wales) Regulations 2006(2).

### **Plant health licence fees**

4.—(1) Fees payable under this regulation relate to a licence described in article 40 or 41 of the PHO.

(2) In respect of an application or inspection of a type described in column 2 of Schedule 5, a person must pay to the Welsh Ministers the fee specified in column 3 of that Schedule in relation to that type of application or inspection.

### **Plant passport authorisation fees**

5.—(1) The fee specified in paragraph (2) must be paid to the Welsh Ministers in respect of an inspection (which may include an inspection of business records) carried out in connection with—

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(1) 1971 c.80; see section 1 and Schedule 1.  
(2) S.I. 2006/2929 (W.264).

- (a) an application for an authority; or
- (b) ensuring compliance with any conditions subject to which an authority was granted.

(2) The fee is £31.50 for each quarter of an hour or part of quarter of an hour (including time spent on an inspection, on travelling and on associated administration), subject to a minimum fee of £63.00 per visit.

(3) In this regulation “authority” (“*awdurdod*”) means an authority to issue plant passports conferred under article 8 of the Plant Health (*Phytophthora ramorum*) (Wales) Order 2006(1) or article 29 of the PHO.

### Potatoes originating in Egypt: fees

6.—(1) Where an inspector takes a sample of potatoes originating in Egypt in order to ascertain whether, for the purposes of paragraph 5 of the Annex to the Decision, those potatoes are infected with *Ralstonia solanacearum* (Smith) Yabuuchi et al., the importer must pay to the Welsh Ministers £87.80 in respect of each lot sampled.

(2) In this regulation “the Decision” (“*y Penderfyniad*”) means Commission Implementing Decision 2011/787/EU authorising member States temporarily to take emergency measures against the dissemination of *Ralstonia solanacearum* (Smith) Yabuuchi et al. as regards Egypt(2).

### Revocations

7. The following are revoked—

- (a) the Plant Health (Licence Fees) (England and Wales) Regulations 1996(3), in relation to Wales only;
- (b) regulation 6 of the Potatoes Originating in Egypt (Wales) Regulations 2004(4);
- (c) the Seed Potatoes (Fees) (Wales) (No. 2) Regulations 2006(5);
- (d) the Plant Health (Plant Passport Fees) (Wales) Regulations 2007(6);
- (e) the Plant Health (Import Inspection Fees) (Wales) Regulations 2010(7); and
- (f) the Plant Health (Import Inspection Fees) (Wales) (Amendment) Regulations 2012(8).

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(1) S.I. 2006/1344 (W.134).

(2) OJ No L 319, 2.12.2011, p.112.

(3) S.I. 1996/26.

(4) S.I. 2004/2245 (W.209).

(5) S.I. 2006/2961 (W.267).

(6) S.I. 2007/1765 (W.154).

(7) S.I. 2010/2917 (W.242), amended by S.I. 2012/285 (W.49).

(8) S.I. 2012/285 (W.49).

*John Griffiths*

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

5 June 2012

SCHEDULE 1 Regulation 2(1)(a), (2)(a)(i) and (3)(a)

Import Inspection Fees

<i>Column 1</i> <i>Plant, plant product or other object</i>	<i>Column 2</i> <i>Quantity</i>	<i>Column 3</i> <i>Fee for each consignment (daytime working hours) (£)</i>	<i>Column 4</i> <i>Fee for each consignment (non-daytime working hours) (£)</i>
Cuttings, seedlings (except forestry reproductive material), young plants of strawberries or of vegetables	up to 10,000 in number	46.98	70.47
	each additional 1,000, or part thereof	1.88, up to a maximum of 375.84	2.81, up to a maximum of 563.76
Shrubs, trees (other than cut Christmas trees), other woody nursery plants including forest reproductive material (other than seed)	up to 1,000 in number	46.98	70.47
	each additional 100, or part thereof	1.15, up to a maximum of 375.84	1.73, up to a maximum of 563.76
Bulbs, corms, rhizomes, tubers, intended for planting (other than tubers of potatoes)	up to 200 kg	46.98	70.47
	each additional 10 kg, or part thereof	0.43, up to a maximum of 375.84	0.64, up to a maximum of 563.76
Seeds, tissue cultures	up to 100 kg	20.13	30.20
	each additional 10 kg, or part thereof	0.46, up to a maximum of 375.84	0.69, up to a maximum of 563.76
Other plants intended for planting, not specified elsewhere in this Schedule	up to 5,000 in number	46.98	70.47
	each additional 100, or part thereof	0.46, up to a maximum of 375.84	0.69, up to a maximum of 563.76
Cut flowers	up to 20,000 in number	46.98	70.47
	each additional 1,000, or part thereof	0.36, up to a maximum of 375.84	0.54, up to a maximum of 563.76
Branches with foliage, parts of conifers (other than cut Christmas trees)	up to 100 kg	46.98	70.47
	each additional 100 kg, or part thereof	4.67, up to a maximum of 375.84	7.01, up to a maximum of 563.76
Cut Christmas trees	up to 1,000 in number	46.98	70.47
	each additional 100, or part thereof	4.67, up to a maximum of 375.84	7.01, up to a maximum of 563.76

<i>Column 1 Plant, plant product or other object</i>	<i>Column 2 Quantity</i>	<i>Column 3 Fee for each consignment (daytime working hours) (£)</i>	<i>Column 4 Fee for each consignment (non- daytime working hours) (£)</i>
Leaves of plants, such as herbs, spices and leafy vegetables	up to 100 kg	46.98	70.47
	each additional 10 kg, or part thereof	4.67, up to a maximum of 375.84	7.01, up to a maximum of 563.76
Fruits, vegetables (other than leafy vegetables)	up to 25,000 kg	46.98	70.47
	each additional 1,000 kg, or part thereof	1.88	2.81
Tubers of potatoes	up to 25,000 kg	140.94 (for each lot)	211.41 (for each lot)
	each additional 25,000 kg, or part thereof	140.94 (for each lot)	211.41 (for each lot)
Soil and growing medium, bark	up to 25,000 kg	46.98	70.47
	each additional 1,000 kg, or part thereof	1.88, up to a maximum of 375.84	2.81, up to a maximum of 563.76
Grain	up to 25,000 kg	46.98	70.47
	each additional 1,000 kg, or part thereof	1.88, up to a maximum of 1879.19	2.81, up to a maximum of 2818.78
Other plants or plant products not specified elsewhere in this Schedule, except forest trees	each consignment	46.98	70.47

SCHEDULE 2 Regulation 2(2)(a)(ii) and (3)(b)

Import Inspection Fees: Reduced Rates

<i>Column 1 Genus</i>	<i>Column 2 Quantity</i>	<i>Column 3 Country of origin</i>	<i>Column 4 Fee for each consignment (daytime working hours) (£)</i>	<i>Column 5 Fee for each consignment (non-daytime working hours) (£)</i>
<b>Cut Flowers</b>				
<i>Dianthus</i>	up to 20,000 in number	Colombia	2.35	3.52
		Ecuador	4.70	7.05
		Kenya	2.35	3.52
		Turkey	11.74	17.62
	each additional 1,000 or part thereof	Colombia	0.02, up to a maximum of 18.79	0.03, up to a maximum of 28.19
		Ecuador	0.04, up to a maximum of 37.58	0.07, up to a maximum of 56.38
		Kenya	0.02, up to a maximum of 18.79	0.03, up to a maximum of 28.19
		Turkey	0.10, up to a maximum of 93.96	0.15, up to a maximum of 140.94
<i>Rosa</i>	up to 20,000 in number	Colombia	1.41	2.11
		Ecuador	1.41	2.11
		Ethiopia	2.35	3.52
		Kenya	2.35	3.52
		Tanzania	4.70	7.05
		Uganda	11.74	17.62
		Zambia	11.74	17.62
	each additional 1,000 or part thereof	Colombia	0.01, up to a maximum of 11.28	0.01, up to a maximum of 16.91
		Ecuador	0.01, up to a maximum of 11.28	0.01, up to a maximum of 16.91
		Ethiopia	0.02, up to a	0.03, up to a

<i>Column 1 Genus</i>	<i>Column 2 Quantity</i>	<i>Column 3 Country of origin</i>	<i>Column 4 Fee for each consignment (daytime working hours) (£)</i>	<i>Column 5 Fee for each consignment (non-daytime working hours) (£)</i>
			maximum of 18.79	maximum of 28.19
		Kenya	0.02, up to a maximum of 18.79	0.03, up to a maximum of 28.19
		Tanzania	0.04, up to a maximum of 37.58	0.07, up to a maximum of 56.38
		Uganda	0.07, up to a maximum of 93.96	0.10, up to a maximum of 140.94
		Zambia	0.07, up to a maximum of 93.96	0.10, up to a maximum of 140.94
<b>Branches with foliage</b>				
<i>Phoenix</i>	up to 100 kg	Costa Rica	16.44	24.66
	each additional 100 kg or part thereof	Costa Rica	1.63, up to a maximum of 131.54	2.45, up to a maximum of 197.32
<b>Fruit</b>				
<i>Citrus</i>	up to 25,000 kg	Egypt	7.05	10.57
		Israel	4.70	7.05
		Mexico	7.05	10.57
		Morocco	2.35	3.52
		Peru	11.74	17.62
		Turkey	1.41	2.11
		Uruguay	7.05	10.57
		USA	7.05	10.57
	each additional 1,000 kg or part thereof	Egypt	0.26	0.39
		Israel	0.19	0.28
		Mexico	0.26	0.39
		Morocco	0.07	0.10
		Peru	0.47	0.70
		Turkey	0.03	0.05
		Uruguay	0.26	0.39

<i>Column 1 Genus</i>	<i>Column 2 Quantity</i>	<i>Column 3 Country of origin</i>	<i>Column 4 Fee for each consignment (daytime working hours) (£)</i>	<i>Column 5 Fee for each consignment (non-daytime working hours) (£)</i>
		USA	0.26	0.39
<i>Malus</i>	up to 25,000 kg	Argentina	4.70	7.05
		Brazil	7.05	10.57
		Chile	2.35	3.52
		China	23.49	35.23
		New Zealand	4.70	7.05
		South Africa	2.35	3.52
		USA	11.74	17.62
	each additional 1,000 kg or part thereof	Argentina	0.19	0.28
		Brazil	0.28	0.42
		Chile	0.09	0.14
		China	0.94	1.40
		New Zealand	0.19	0.28
		South Africa	0.09	0.14
		USA	0.47	0.70
<i>Passiflora</i>	up to 25,000 kg	Colombia	4.70	7.05
		Kenya	4.70	7.05
		South Africa	23.49	35.23
		Zimbabwe	16.44	24.66
	each additional 1,000 kg or part thereof	Colombia	0.16	0.25
		Kenya	0.16	0.25
		South Africa	0.92	1.38
		Zimbabwe	0.63	0.94
<i>Prunus</i>	up to 25,000 kg	Argentina	16.44	24.66
		Chile	4.70	7.05
		South Africa	4.70	7.05
		Turkey	4.70	7.05
		USA	4.70	7.05
	each additional 1,000 kg or part	Argentina	0.63	0.94
		Chile	0.16	0.25

<i>Column 1 Genus</i>	<i>Column 2 Quantity</i>	<i>Column 3 Country of origin</i>	<i>Column 4 Fee for each consignment (daytime working hours) (£)</i>	<i>Column 5 Fee for each consignment (non-daytime working hours) (£)</i>
	thereof	South Africa	0.16	0.25
		Turkey	0.16	0.25
		USA	0.16	0.25
<i>Pyrus</i>	up to 25,000 kg	Argentina	4.70	7.05
		Chile	11.74	17.62
		China	16.44	24.66
		South Africa	4.70	7.05
	each additional 1,000 kg or part thereof	Argentina	0.16	0.25
		Chile	0.47	0.70
		China	0.66	0.98
		South Africa	0.16	0.25
<b>Vegetables</b>				
<i>Solanum melongena</i>	up to 25,000 kg	Turkey	4.70	7.05
	each additional 1,000 kg or part thereof	Turkey	0.16	0.25

### SCHEDULE 3

Regulation 2(2)(b)

#### Import Inspection Fees: Documentary and Identity Checks

<i>Column 1 Check</i>	<i>Column 2 Quantity</i>	<i>Column 3 Fee (£)</i>
Documentary	each consignment	5.36
Identity	each consignment up to the size of a truck load, a railway wagon load or the load of a container of comparable size	5.36
	each consignment bigger than the above size	10.71

## SCHEDULE 4

Regulation 3

### Seed Potatoes: Fees

<i>Column 1</i> <i>Function</i>	<i>Column 2</i> <i>Fee<sup>(1)</sup> (£)</i>	<i>Column 3</i> <i>Minimum fee (£)</i>
<b>Inspection of growing crops and provision of labels and seals in respect of applications</b>		
Certification as pre-basic seed potato	122.57*	n/a
Certification as basic seed potato, classified as:	super elite 1, super elite 2 or super elite 3	122.57
	elite 1, elite 2 or elite 3	122.57
	A	116.52
Certification as certified seed potato	52.96	105.93
Authorisation to market seed potatoes	122.57*	n/a
<b>Inspection of harvested tubers</b>		
Up to two inspections	18.16	36.32
Third and subsequent inspections	122.57*	n/a

<sup>(1)</sup> Of the rates listed in this column and in column 3, those that are marked with an asterisk are per hour or part of an hour, and those not so marked are per half-hectare or part of half-hectare.

## SCHEDULE 5

Regulation 4(2)

### Plant Health Licence Fees

<i>Column 1</i> <i>Item</i>	<i>Column 2</i> <i>Type of application or inspection</i>	<i>Column 3</i> <i>Fee (£)</i>
1	Application for a licence other than a licence covered by item 2 or 3	781.27
2	Application for a licence in respect of soil or other growing medium for analysis	563.54
3	Application for a licence for scientific or trial purposes covering 5 or more types of article	781.27, plus 30.74 per type of article in excess of 5
4	Application for renewal or variation of a licence with changes requiring scientific or technical assessment	256.15
5	Application for renewal of a licence with no changes, or for renewal or variation of a licence with only minor changes requiring no scientific or technical assessment	30.74
6	Inspection and associated activities (including travelling time and office time) for monitoring compliance with licence terms and conditions	42.06 per hour or part of an hour



## **Explanatory Memorandum to The Plant Health (Fees) (Wales) Regulations 2012**

This Explanatory Memorandum has been prepared by Sustainable Futures, Natural Environment & Agriculture Team and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with:

Standing Order 27.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Plant Health (Fees) (Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

*John Griffiths*

Minister for Environment & Sustainable Development

5 June 2012

## **1. Description**

The purpose of this instrument is to provide for an increase in the fees payable in relation to plant health services provided by the Food and Environment Research Agency on behalf of Welsh Government, as part of a move towards full cost recovery of such fees, and in doing so, to consolidate several separate fees instruments into one new instrument covering all plant health fees payable in Wales (except export certification fees).

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

## **3 Legislative background**

3.1 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU (“the Plant Health Directive”) establishes the EU plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the EU of serious pests and diseases of plants and plant produce. The Plant Health Directive is implemented in England, for non-forestry matters, by the Plant Health (Wales) (Order) 2006 (SI 2006/1643). Similar but separate legislation operates in England, Scotland and Northern Ireland.

3.2 Article 13d of the Plant Health Directive requires Member States to recover the cost of the import inspections required by the Directive through fees. The Plant Health (Import Inspection Fees) (Wales) Regulations 2010 (S.I. 2010/2917) implement that requirement in Wales. Where reduced checks have been set for trade in a particular commodity from a particular country, on the basis of the compliance record of that trade, a reduced fee is charged.

3.3 In line with the principle that the costs of statutory services should be borne by users who benefit directly from a service, charges also apply for the following activities required by the Plant Health Directive:

- Import inspections on potatoes imported from Egypt through the Potatoes Originating in Egypt (Wales) Regulations 2004 (S.I. 2004/2245)
- Plant health licensing services through the Plant Health (Licence Fees) (England and Wales) Regulations 1996 (S.I. 1996/26)
- Plant passporting services through the Plant Health (Plant Passport Fees) (Wales) Regulations 2007 (S.I. 2007/1765)
- Seed potato certification services through the Seed Potatoes (Fees) (Wales) (No.2) Regulations 2006 (S.I. 2006/2961).

3.4 The reason for making this instrument is to provide for increases in fees payable in relation to plant health, as part of a phased move towards full cost recovery of such fees, and, whilst doing so, to consolidate the various fees instruments specified above into one new instrument.

3.5 The instrument is subject to annulment (the negative procedure).

#### **4 Purpose & intended effect of the legislation**

4.1 FERA is responsible in Wales, on behalf of Welsh Government, for provision of plant health statutory services to facilitate trade and prevent the introduction and spread of plant pests and diseases.

4.2 Charging for these services is consistent with the principle that businesses using the service should bear the costs of any measures to prevent harm that they might otherwise cause by their actions or non-actions, since most serious pests and diseases that arrive in this country do so via commercial trade in plants and plant produce. Fees for plant health statutory services have not increased for many years and the current fees do not reflect the true cost of providing the services; with income received from business users currently less than 35% of the cost of the service provision.

4.3 Following a public consultation a phased increase in fees is being introduced to achieve full cost recovery over three years, with 50% of the gap being closed in 2012 and the remainder in two stages in 2013 and 2014. The Plant Health (Fees) (Wales) Regulations 2012 implement the first stage of the move towards cost recovery.

4.4 Most fees are substantially increased: import inspection fees by 229%, fees in relation to seed potatoes by 52%, licensing fees by 160%, fees for inspection of Egyptian potatoes by 184% and fees for plant passporting services by 55%. Full details of the old and new fees are given in the Annex.

#### **5 Consultation**

5.1 A consultation into these proposals to revise fees for five plant health services ran from 11 October to 5 December 2011, and was carried out by FERA on an England and Wales basis. The majority of respondents, although opposed to any increase in fees, favoured a phased increase in fees to achieve full cost recovery over three years.

5.2 Details of the consultation on FERA's review of fees for statutory plant health services, including a summary of responses, can be found at: <http://www.fera.defra.gov.uk/plants/feesChargingReview/consultation.cfm>

#### **6. Regulatory Impact Assessment (RIA)**

Please see below.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Options**

Full Impact Assessments into the proposals were prepared by the Food and Environment Research Agency as part of the Consultation process. Five Impact Assessments were prepared to cover the five pieces of legislation being amended:

- The Plant Health (Licence Fees) (England and Wales) Regulations 1996 (S.I. 1996/26)
- The Potatoes Originating in Egypt (Wales) Regulations 2004 (S.I. 2004/2245)
- The Seed Potatoes (Fees) (Wales) (No.2) Regulations 2006 (S.I. 2006/2961).
- The Plant Health (Plant Passport Fees) (Wales) Regulations 2007 (S.I. 2007/1765)
- The Plant Health (Import Inspection Fees) (Wales) Regulations 2010 (S.I. 2010/2917)

In each case, three options were presented

1. Do nothing
2. Introduction of fee increases to achieve full cost recovery during 2012.
3. Phased introduction of fee increases to achieve Full Cost Recovery by Year 3 of implementation (2014).

Full details of the Impact Assessments can be found in Doc 4.

### **Consultation**

A consultation into these proposals to revise fees for five plant health services ran from 11 October to 5 December 2011, and was carried out by FERA on an England and Wales basis. The majority of respondents, although opposed to any increase in fees, favoured a phased increase in fees to achieve full cost recovery over three years.

Details of the consultation on FERA's review of fees for statutory plant health services, including a summary of responses, can be found at: <http://www.fera.defra.gov.uk/plants/feesChargingReview/consultation.cfm>

### **Competition Assessment**

A Competition Assessment has been completed, it is considered unlikely that the new Regulations will have an adverse affect on competition.

### **Post implementation review**

A post implementation review will be undertaken once full cost recovery has been achieved.



## APPENDIX A

### The Competition Assessment

1. There are two stages to the Competition Assessment. The first is a quick filter that assesses whether there is a risk of a significant detrimental effect on competition. If the test results show that the risk is low (and there are no anticipated significant benefits for competition) you will only need to record the results of the filter test (including a brief description of any competition effects that are anticipated). If, on the other hand, the test results show that the risk is high you will need to contact D E & T Operations Team for further advice on whether a more detailed assessment and possible further action is needed.
2. You should consider the market that will be affected, i.e. the firms that compete against one another to sell the same or similar products or services. A regulation or proposal may impact directly on just one sector or on several, and some regulations may have indirect effects on other, linked, sectors which either supply goods or services to the affected sectors or buy products from them. (e.g. the recreational craft directive affects the engines needed for boats used for leisure purposes. Within this though there are two distinct markets: engine manufactures that make standard engines, and boat builders who modify them for use on leisure boats.) Some regulations impact almost universally on a very wide range of sectors (e.g. the national minimum wage).
3. For a meaningful competition assessment you must ensure that affected markets are correctly identified. Help and /or advice can also be obtained from the OFT, which has published guidance on markets, entitled "Market definition" (OFT403)  
[http://www.of.gov.uk/shared\\_of/business\\_leaflets/ca98\\_guidelines/oft403.pdf](http://www.of.gov.uk/shared_of/business_leaflets/ca98_guidelines/oft403.pdf).

### The competition filter test

4. This has nine straightforward questions. Where the regulation is likely to have an impact directly on more than one sector (whether directly or indirectly) the competition filter test should be carried out for each sector affected. Where a regulation might impact on many sectors, you will need to identify those sectors that might be affected to the greatest extent. Please contact D E & T Operations Team for further advice
5. The competition filter test is set out below, together with points to consider in answering the questions. Further detail is contained in the OFT's published Guidelines for Competition Assessment (OFT 876) together with examples and references [Competition Policy - The Office of Fair Trading](#)

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	Yes
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	NO

6. Each “yes” answer indicates a possible competition concern.

- “Yes” answers to less than half the questions suggest that the regulation is unlikely to have a significant detrimental effect on competition. As new information comes to light, this result should be re-affirmed by re-applying the filter test.
- “Yes” answers to more than half of the questions indicate that there is some risk that the regulation may have a significant effect on competition and a detailed assessment is necessary. Please contact D E & T Operations Team for further advice.

### Questions 1 to 3: the market

7. Where there are a few large firms in the market, or it is difficult to establish a new firm, competition concerns are more likely.

#### **Question 4: substantially different effect on businesses/organisation**

8. Will the costs fall differently on different businesses/organisation? This is relevant where the costs of complying with a regulation are not proportional to output.

#### **Question 5: changes to market structure**

9. If regulations are likely to penalise certain firms, then this may affect whether those firms stay in business. This could then alter the number or size of firms in the market. The most likely case is where small firms are affected more than large ones are.
10. Consider whether firms that face a greater impact will be able to stay in the market given the additional costs they face. If they have to raise prices as a result of the regulation will customers move to other suppliers?

#### **Questions 6 and 7: penalising new suppliers**

11. Consider whether new suppliers to the market would be affected differently from existing suppliers. An example would be where new firms must meet higher standards immediately, while established firms have a longer period in which to meet them. This could make it harder for the new firms to compete. However, such an effect might be offset by new firms not having to face the costs of changing existing equipment and/or processes, or where existing suppliers have already, voluntarily, decided to carry out the actions required under the regulation.

#### **Question 8: technological change**

12. New technologies may advantage some companies over others who may be driven out of the market. Consider whether technological change will affect the number or size of firms in the market. Where only small changes in technology are happening continuously, this question should be answered "no".

#### **Question 9: restrictions on suppliers**

13. Will the regulation stop suppliers providing products or services that they would otherwise provide? An example would be a regulation imposing minimum standards, thus preventing suppliers from selling lowest cost or quality options. Further examples would be regulations imposing price restrictions or restrictions on what firms use to make their products. If locations are restricted, customers may suffer, especially if there are local markets.

## **Presenting the results of the competition filter test**

14. The findings of the competition filter test should be written up as part of the draft regulatory impact assessment (and should also be included in the final impact assessment if no detailed assessment is required). You should include a clear statement setting out whether there is likely to be any detrimental effects on competition, with reasoning and evidence presented to support this conclusion. If you anticipate any beneficial effects, you should assess these and include them in the write-up. This will improve internal and external consultation and inform Ministers.

## **The detailed assessment**

15. The aim of the detailed assessment is to understand in more depth the potential competition impacts identified whilst carrying out the competition filter test. The Office of Fair Trading's (OFT) "Guidelines for Competition Assessment" (OFT 876) [Competition Policy - The Office of Fair Trading](#) provide detailed guidance on how to approach the detailed assessment. The OFT publication "Market Definition" (OFT 403) [http://www.of.gov.uk/shared\\_of/business\\_leaflets/ca98\\_guidelines/oft403.pdf](http://www.of.gov.uk/shared_of/business_leaflets/ca98_guidelines/oft403.pdf) provides guidance on how to identify the relevant markets.

**CLA155**

## **Constitutional and Legislative Affairs Committee Draft Report**

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

**Procedure: Affirmative**

This draft order is being brought forward under powers contained in sections 13 and 15 of the Public Bodies Act 2011. It establishes a new statutory body, the Natural Resources Body for Wales and provides for its form, purpose, membership, procedure, financial governance and initial functions.

### **Technical Scrutiny**

The following point is identified for reporting under Standing Order 21.2 in respect of this draft instrument.

Article 13(5) contains a requirement in certain circumstances for the Body to make payment to Welsh Ministers. The words 'to them' are included in the English text, but the corresponding 'iddynt' is absent in the Welsh text. The intention is clear, so it would be appropriate to insert the missing word on publication to make the provision easier to follow.

[Standing Order 21.2(vi) – that the drafting appears to be defective.

### **Merits Scrutiny**

The following points are identified for reporting under Standing Order 21.3 (ii) in respect of this draft instrument – that it gives rise to issues of public policy likely to be of interest to the Assembly.

This is the first order under the Public Bodies Act 2011 (“the 2011 Act”) that the National Assembly for Wales has considered.

The Order establishes the new single body for the management of Wales’ natural resources. The new body has the working title *Natural Resources Body for Wales*. The Welsh Government state within the Explanatory Memorandum that the order establishes the body in a way that ensures that, prior to its having transferred to it the full range of appropriate functions, it will be able to undertake the preparatory work necessary to ensure the new body will be able to function fully from the first day it becomes responsible for all the environmental responsibilities that are to be transferred to it. The preparatory work will include setting up the internal structures of the Body and

preparing for the transfers of those functions, and of staff, property and other rights and liabilities in other legislation.

The Order is subject to a form of affirmative procedure in accordance with section 19 of the 2011 Act. In addition to the normal requirement of affirmative procedure – i.e. that the Order cannot be made unless the Assembly approves it, the 2011 Act requires that the Order be laid in draft for 40 non-recess days. At any time within 30 days of it being laid (which expires on 5<sup>th</sup> July 2012), the Assembly may resolve or a committee tasked with scrutinising the Order may recommend that the draft Order be laid for an additional 20 non-recess days (i.e. 60 in all) before it can be made. Any recommendation by a committee is subject to being overruled by a motion of the Assembly. In the event that the Assembly resolves or a committee recommendation stands, then the Order must be laid for a further 20 days to allow for further scrutiny, consultation etc. The Welsh Ministers will have to have regard to any representations, any resolutions of the Assembly and any recommendations of a Committee of the Assembly tasked with scrutinising the Order. If any material changes are made to the draft Order as a result, the revised draft Order would need to be re-laid before the Assembly, with a statement summarising the changes. The revised draft Order would then be subject to normal affirmative procedure in the Assembly.

The Constitutional and Legislative Affairs Committee referred the draft Order to the Environment and Sustainability Committee for consideration on 11 June 2012.

**Legal Advisers  
Constitutional and Legislative Affairs Committee**

**June 2012**

**The Government has responded as follows:**

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

The Government accepts the technical reporting point and will correct the error on publication.

*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*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**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).

*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*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2012 No. (W.)**

**PUBLIC BODIES, WALES**

**ENVIRONMENT, WALES**

**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

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(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)—

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(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<sup>(1)</sup> of the Environment Agency or the Forestry Commissioners;
  - (iii) any function of a Welsh Flood and Coastal Committee<sup>(2)</sup>;
  - (iv) any of their own functions relating to the environment; or
  - (v) any Welsh environmental function<sup>(3)</sup> 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.

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(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.

## **Explanatory Memorandum to the Natural Resources Body for Wales (Establishment) Order 2012**

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Natural Resources Body for Wales (Establishment) Order 2012.

*JOHN GRIFFITHS AM*

MINISTER FOR ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

28 MAY 2012

## 1. Description

This order establishes the new single body for the management of Wales' natural resources. The new body has the working title *Natural Resources Body for Wales*, and this order establishes the body in a way that ensures that, prior to its having transferred to it the full range of appropriate functions, it will be able to undertake the preparatory work necessary to ensure the new body will be able to function fully from the first day it becomes responsible for all the environmental responsibilities that are to be transferred to it. A second order will be brought forward to transfer functions of the Forestry Commission in Wales (FCW)<sup>1</sup>, Environment Agency – Wales (EAW)<sup>2</sup> and the Countryside Commission for Wales (CCW) to the body.

## 2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The Order is being brought forward under powers contained in sections 13 and 15 of the Public Bodies Act 2011 (“the 2011 Act”)

The Order is subject to a form of affirmative procedure, in accordance with section 19 of the 2011 Act. In addition to the normal requirement of affirmative procedure – i.e. that the Order cannot be made unless the Assembly approves it – the 2011 Act requires that the Order be laid in draft for 40 non-recess days. Moreover, at any time within 30 days of it having been laid, the Assembly may resolve, or a Committee tasked with scrutinising the Order may recommend, that the draft Order be laid for an additional 20 non-recess days (i.e. 60 in all) before it can be made<sup>3</sup>. In that event, the Welsh Ministers will have to have regard to any representations, any resolutions of the Assembly and any recommendations of a Committee of the Assembly tasked with scrutinising the Order. If any material changes are made to the draft Order as a result, the revised draft Order would need to be re-laid before the Assembly, with a statement summarising the changes. This revised draft Order would then be subject to normal affirmative procedure in the Assembly.

Taken as a whole, this procedure is a form of ‘super-affirmative’ procedure.

The Order confers a number of functions on the Welsh Ministers, as follows.

Article 5 - power to 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. The Body must have regard to this guidance in exercising its functions.

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<sup>1</sup> Technically speaking, the Forestry Commission is one body; FCW is merely an operational name for its arm in Wales. Functions transferred will be Functions of the Forestry Commission but they will, for obvious reasons, be transferred (normally) in so far as they relate to Wales.

<sup>2</sup> A similar point applies, in relation to the Environment Agency, as to the Forestry Commission – see footnote 1.

<sup>3</sup> But the full Assembly could overrule the Committee’s recommendation and revert to the 40-day procedure for the Order.

Article 10 - implied power to request advice and assistance from the Body (to the extent, if any, that the Welsh Ministers do not already have this power under their own incidental powers contained in section 71 of the Government of Wales Act 2006)

Article 11 - power to give the Body directions as to the exercise of its functions. The Body must comply with any such directions.

Article 12 - power to give the Body grants (in addition to the Welsh Ministers' existing powers under s. 70 of the Government of Wales Act 2006)

Article 13 - power to determine the financial duties of the Body, including a power to direct the Body to pay over to the Welsh Ministers sums received by the Body, or the amount of any capital or revenue surplus that the Body may accrue

Article 14 - power to lend to the Body (in addition to the Welsh Ministers' existing powers under s. 70 of the Government of Wales Act 2006) and to consent to the Body's borrowing from another person

Article 15 - power to guarantee loans taken out by the Body (in addition to the Welsh Ministers' existing powers under s. 70 of the Government of Wales Act 2006) and power to make directions ensuring that the Welsh Ministers recover any amounts paid out by them in consequence

Schedule paragraph 2 - power to appoint the chairperson and deputy chairperson of the Body; power to appoint 5 - 11 non-executive (non-employee) members of the Body (any deputy chairperson being one of these). (References in this document to the "Board" of the Body are references to members of the Body).

Schedule paragraph 4 - power to appoint an employee of the Welsh Assembly Government as one of the non-executive members referred to above

Schedule paragraph 7 - power to remove a non-executive member (including the chairperson or deputy chairperson) from office

Schedule paragraphs 10 -12 - power to determine the level of remuneration and allowances of the chairperson, deputy chairperson and other non-executive members and to make other determinations in relation to the payment, or amounts, of pensions, gratuities and compensation to current or former members of the Body

Schedule paragraph 13 - power to appoint, or to approve the appointment of, the first chief executive; and power to approve the appointment of subsequent chief executives

Schedule paragraphs 14 and 15 - power to approve the level of remuneration and allowances of the Body's staff and to approve determinations of the Body

in relation to the amounts of pensions or gratuities to current or former members of staff of the Body

Schedule paragraph 19 - power to determine the remuneration and allowances of co-opted committee or sub-committee members

Schedule paragraphs 21 - 22 - role of considering the Body's advance Corporate Plan and receiving its Annual Report of activities; duty to lay the latter before the Assembly

Schedule paragraphs 23-24 - power to give directions as to the Body's accounts; role of receiving the annual statement of accounts; and implied power to require information relating to the Body's property or discharge or proposed discharge of its functions.

### **3. Legislative background**

Section 13 of the Public Bodies Act 2011 enables the Welsh Ministers to make an Order to establish a new body corporate for the purposes of that section. Other provisions in section 13 enable the Welsh Ministers to transfer certain functions (including those of the Countryside Council for Wales, a Welsh Flood and Coastal Committee and the Welsh devolved functions of the Environment Agency and Forestry Commission) to a new body established under that section. The powers also enable those bodies' functions to be modified, and the modified functions to be transferred to a new body. This Order is being made to establish a new body for the purpose of having functions transferred to it under section 13.

### **4. Purpose & intended effect of the legislation**

#### Purpose

This Order is intended to establish a new single body for the management of Wales' natural resources, referred to for the purposes of this legislation as the Natural Resources Body for Wales.

The overarching purpose ascribed to the new body (article 4) is to ensure that the environment and natural resources of Wales are sustainably maintained, sustainably enhanced and sustainably used. The Welsh Ministers will be able to issue guidance to the Body as to how it should exercise its functions so that it fulfils this purpose.

The purpose recognises the key role of the Body in delivering our central organising principle of sustainable development. In both its regulatory and operational functions it will need to optimise opportunities for delivering well-integrated environmental, social and economic outcomes for the people and communities in Wales.

We want the Body to have a clear role in environmental protection, but also to be tasked with encouraging sustainable and appropriate use of our

environment and natural resources for the present and future benefit of the people and economy of Wales. Through the transparent conduct of its work, the Body will promote a wider understanding of the value of our natural resources and of sustainable development...

### Legal Approach

This is the first of two planned Orders to create the Body as a fully functioning entity: this Order establishes it as a legal entity, while a later Order will be laid in order to vest the body with all the functions necessary to deliver its intended remit. This first Order provides the Body with functions necessary to undertake preparatory work to ensure it will be able to carry out any functions transferred to it by that Order.

This approach to delivering the change follows a well established path for changes of this type, with the establishment of an organisation to work with the legacy bodies to plan and implement transition. Creating the “shadow” arrangement at this stage will allow ownership of the organisational design structures and systems of the new body to rest with those who will ultimately be responsible for introducing and administering them.

### Functions

The functions defined in the Order are interim functions to set the direction for the new Body and to enable the preparatory work to take place for the transfer of its substantive functions in the second Order. The second Order will revoke the main initial preparatory function contained in this Order (article 6).

To this end, the Order defines the initial function of the Body as being facilitating the implementation of any proposal of the Welsh Ministers for the transfer (with or without modification) to the Body of any function of the Countryside Council for Wales; any Welsh devolved function<sup>4</sup> of the Environment Agency or the Forestry Commissioners; any function of a Welsh Flood and Coastal Committee; any of their own functions relating to the environment; or any Welsh environmental function<sup>5</sup> of any person.

The Order also provides for the Body to be able to undertake work that is incidental or conducive to those initial functions during the period until the Body takes up its full functions.

These provisions will enable the Body to do those things necessary to make it into a fully functioning organisation, ready to accept the transfer, in due course, of the full range of environmental powers, duties and functions.

The main provisions cover the following issues and enable the Body to:

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<sup>4</sup> “Welsh devolved function” and “Welsh environmental function” are terms defined in section 36 of the 2011 Act.

<sup>5</sup> See previous footnote.

- Appoint and remunerate a Chair and board members (who – in so far as they are not employees - will be appointed by Ministers) and, through the Board, to appoint a Chief Executive Officer and employee members (transitional provisions will allow Welsh Ministers to make the appointment of the first CEO if this is expedient).
- Appoint staff and make decisions on terms and conditions.
- Contract the services of contractors and consultants. It will be able to occupy accommodation, use telephones, email, other ICT, etc, to communicate internally and externally, and to enter into contracts for ICT design and development, and procure other goods and services
- Enter into arrangements, and be party to agreements, receive and pay money, including: paying salaries; incurring and reimbursing travel and subsistence costs; incurring other costs e.g. maintenance, overheads, utility bills and rent for accommodation.
- Design and deliver (and agree with Welsh Government) the key governance required for running the new body, including: organisation structures, financial schemes of delegation, etc.
- Facilitate the adoption of policies, including statutory guidance to others (e.g. prosecution policy; health and safety policy; Welsh Language Scheme) that can be put into effect when the Body takes up its full functions.
- Take steps to ensure that, from the Body's first day of full operation, arrangements are in place (under powers contained in sections 26-28 of the Public Bodies Act 2011) with the Environment Agency and the Forestry Commission for the provision of certain services.

There are specific provisions relating to the establishment and general functions of the Body which, in addition to detailing its initial functions, include a general duty placed on the Body to have regard to costs and benefits in exercising powers, a requirement to provide advice and assistance to Welsh Ministers if requested and the power for Welsh Ministers to give the Body general or specific directions as to the exercise of its functions.

In addition to the broad powers and duties required to establish and run the new body (referred to above) the Order makes provision with regard to general financial duties and to borrowing powers. In this context, the Order also makes provision with regard to Welsh Ministers' ability to underwrite any borrowing undertaken by the body.

The Schedule also places duties on the Body with regard to reporting upon its functions and the keeping and publishing of accounts.

Whilst the general and financial powers and duties that are conferred upon the Body by this Order will continue to apply, partly or wholly, they will in due course be supplemented by the second Order which will also confer the full

range of functions. For example, the second Order will include powers to investigate, to prosecute, and to raise charges.

The purpose of the powers and duties included in the present Order is to enable the Body to undertake those preparatory functions necessary to ensure the new Body will be able to function fully from the first day it becomes responsible for all the environmental responsibilities that are to be transferred to it.

The Schedule to the Order sets out the status and constitution of the new body and its membership. The Body will be established as a body corporate. It will not be a Crown body, although the second Order could confer Crown status on it in relation to certain functions. It will be a Welsh Government Sponsored Body with the Chair and non-employee Members of its Board being appointed by Welsh Ministers and the appointment of the Body's chief officer being made with the approval of Welsh Ministers.

Details and conditions of tenure and remuneration are also given in the Schedule.

The appointment of the Chair and non-employee Board Members of the new body will be regulated by the Commissioner for Public Appointments.

#### Requirements of the Public Bodies Act 2011

Section 19 of the 2011 Act requires the Welsh Ministers to set out why they think the Order meets the requirements of section 16 of the Act. Section 16 stipulates that the Welsh Ministers may make an Order under section 13 or 14 only if they consider that the Order serves the purpose of improving the exercise of public functions having regard to:

- (a) efficiency,
- (b) effectiveness,
- (c) economy, and
- (d) securing appropriate accountability to the Welsh Ministers.

The Welsh Ministers may make an Order under either of those sections only if they consider that:

- (a) the Order does not remove any necessary protection, and
- (b) the Order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

With regard to the section 16 requirements, it should be noted that this Order is part of a package designed to improve the exercise of public functions, the need for which was clearly articulated in the business case

<http://wales.gov.uk/consultations/environmentandcountryside/eshlivingwalescons/?lang=en&status=closed>).

However, in summary, the Welsh Government is confident that the proposed establishment of the new body will achieve efficiencies and economies, and will provide the most effective means of meeting its environmental objectives. By creating a Wales only body, taking decisions for Wales in Wales, it will improve accountability to the Welsh Ministers and the National Assembly for Wales.

This Order only provides for the creation and general powers of the new body, and the Welsh Ministers do not consider that it affects any necessary protections or the exercise of rights and freedoms by any persons.

### The Business Case

Together, the two Orders are intended to deliver a new body that meets the three main factors driving the proposed changes detailed in the business case:

- The need to modernise regulation and natural resource management;
- The need to focus on Wales' priorities, opportunities and challenges reflected in Welsh legislation and policy; and
- The need to ensure value for money

The Welsh Government has undertaken detailed work to evaluate a range of options, including:

- no change;
- sharing services;
- combinations of two of the existing bodies referred to above (EAW + CCW and FCW + CCW); and
- creating a new single body.

The options were assessed against Value for Money (Net Present Value) and six qualitative criteria: outcomes for the environment; outcomes for people; outcomes for business and the economy; focus on Welsh Government priorities; organisational and operational resilience; and opportunities for staff within Wales.

The business case involved a substantial evaluation, which was undertaken by staff from the existing organisations working with Welsh Government officials over a period of more than twelve months. The final report on the work was presented in the form of a strategic outline business case which was subject to an external independent review, before being presented to Ministers.

It concluded that a single body was the option most likely to deliver the best outcome on each of the six qualitative assessment criteria. It would also deliver the best net economic benefit after taking account of the cost of change and discounting for inflation (£69m over 10 years). It also concluded that the up front cost of change is affordable and that risks can be managed.

Section 5 of this Memorandum summarises the consultation process, focusing particularly on responses that have informed the preparation of this Order; wider issues of how public functions will be exercised as a result of the second Order will be covered by the explanatory document accompanying that Order.

## **5. Consultation**

A series of consultations by the Welsh Government has led to the decision to proceed with the policy decisions underpinning this legislation.

The Welsh Government's new Natural Environment Framework (NEF) focuses on managing our environment as a whole rather than focusing on separate parts. 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 (<http://wales.gov.uk/consultations/environmentandcountryside/eshlivingwalescons/?lang=en&status=closed>).

This consultation set out the Welsh Government's new approach to the way we manage our land, water and seas. It also showed how we are actively responding to the failure to meet existing biodiversity targets<sup>6</sup>. The document set a broad direction of travel for the Welsh Government's future work and first raised the potential for bringing together the work of existing environmental bodies in Wales.

In order to better develop their understanding of the implications of following this route, Ministers commissioned an initial review of delivery options which reported in January 2011, followed by a full business case published in November 2011 (<http://wales.gov.uk/topics/environmentcountryside/consmanagement/nef/publications/seb/businesscase/?lang>). It set out the benefits, costs and risks of creating a single body, as well as affordability and an outline plan for its establishment.

Most recently, 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 i.e. for a period of twelve weeks. The consultation document was available from the Welsh Government's website (<http://wales.gov.uk/consultations/environmentandcountryside/singlebody/?lang=en&status=closed>).

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<sup>6</sup> The National Assembly's Sustainability Committee published the report of its inquiry into biodiversity in Wales in January 2011. The inquiry found that Wales had failed to meet both international and national targets. The targets included the binding agreement at the international Convention on Biological Diversity (CBD) in 2002 to achieve a significant reduction of the current rate of biodiversity loss at the global, regional and national level and the 2001 commitment by the EU Heads of State and Government to a target of halting the decline of biodiversity in the EU and restoring habitats and natural systems by 2010.

In particular, the consultation sought views on the following:

- The overall proposals for establishing the new body (including the business case).
- Proposals for implementing the legal changes required to establish the new body.
- Our ambitions for the new body, together with the way in which we intend to frame its overall purpose.
- Our proposed arrangements for customer and stakeholder engagement, including mechanisms for ensuring accountability and transparency in the work of the new body.
- Our proposals for the main functions and powers of the body, including consideration of some elements of Welsh Government functions and Internal Drainage Boards.
- Our proposals for the status of the body and how it will be governed, including arrangements for an executive board and wider stakeholder engagement.
- How we propose to take forward issues around cross-border governance and our proposals for the links to Welsh Government Ministers to ensure that the body will be fully accountable to Ministers.

The consultation document sought views on 12 specific questions covering the above issues.

A total of 308 consultation responses were received. There were 223 responses from organisations and 85 responses from private individuals.

The overall analysis showed that more than 60% of the 308 respondents to the consultation supported the overall proposal to manage natural resources in a more integrated way and to establish a single body by bringing together the existing functions of EAW, CCW and FCW. Approximately 10% of respondents were opposed, with the remainder not expressing any specific views on the overall proposition, or expressing views which were closely balanced.

The sectors which broadly supported the proposal to establish a single body included private individuals, environmental/ conservation bodies, local authorities and/ or their representatives, the fisheries sector, the access and recreation sector, other business and industry, other public sector bodies, academic/ research bodies and the third sector.

Just under half of the responses from the forestry sector were broadly in favour of the proposal, with the remaining responses unsupportive or neutral. Other sectors which were less supportive of the proposal were professional bodies, local partnership groups, trade unions and consultants.

The key themes emerging from the consultation were:

- Many of the respondents in support of the overall proposal cited a wide range of potential benefits in establishing a single body.

- Some respondents set out their concerns about establishing a single body. These included environmental concerns, issues around resources and transition, as well as specific issues raised by the forestry sector and industry.
- The phased approach to the creation of the body and further development of the legislation was generally supported as respondents agreed that there was a need to carry out the approach efficiently so there is no detrimental effect on existing services and to ensure business continuity.
- There were many views on the principal aim and strategic objective, with most of the respondents suggesting amendments to either the principal aim or strategic objectives or both.
- There was broad support for the approach to the delivery framework, although it was recognised that more work was needed on the actual outcomes and objectives.
- The list of functions for the new body was generally thought to be reasonable, though many detailed points were suggested.
- Many respondents agreed with the proposal to transfer marine and wildlife licensing, and tree and plant health, functions to the new body.
- The importance of the new body having a good scientific base was emphasised. There was support for the proposal for the Welsh Government to co-ordinate investment in environmental research, although many thought that the new body should have flexibility to define and implement its own research.
- In general the proposals for the status, governance and accountability of the new body were welcomed. Most respondents agreed that the body should be established as a Welsh Government Sponsored Body which is independent from government. There was widespread support for transparency and accountability across the whole range of the body's work.
- Overall the proposals for the stakeholder arrangements were welcomed. Respondents emphasised the importance of pro-active stakeholder engagement and that the success of the new body was dependent on having strong stakeholder arrangements. Many respondents highlighted that any arrangements must be developed in conjunction with stakeholders.
- In general there was support for the proposals relating to the regulatory arrangements, including clear separation of regulatory and operational work in situations where the body regulates its own activities.
- Many respondents supported the need to simplify regulatory systems, though there were concerns from some that this should not be allowed to impact on environmental protection. Transparency of decision-making and the publication of decision documents were widely supported.

Of those responses that were of particular significance to this Order, were those concerning the phased approach to the creation of the body and further development of the legislation. This was generally supported as respondents agreed that there was a need to carry out the approach efficiently so as to

avoid any detrimental effect on existing services and to ensure business continuity.

A significant majority of respondents were broadly supportive of the development of the new body, with most of the respondents suggesting amendments to either the aim or the objectives, or both. In drafting of the overarching aim included in this Order, we have taken those views fully into account, along with suggestions made by the three existing bodies and views expressed by Assembly Members in the Plenary debate on the consultation responses held on 22 May 2012.

Those consultation responses that relate more to the second Order will be summarised and addressed in the explanatory document that accompanies that Order.

## **6. Regulatory Impact Assessment (RIA)**

No regulatory impact assessment has been prepared for this Order. This is because the purpose of this Order is solely to create a body corporate under section 13 of the Public Bodies Act 2011 to enable certain key arrangements and decisions to be made prior to the full transfer of functions to the body from the Countryside Council for Wales, Environment Agency - Wales, Forestry Commission – Wales, Welsh Government and, potentially, other bodies.

There are therefore no identifiable costs to consumers or businesses associated with the implementation of this Order. Costs and benefits for the Welsh Government and the three existing bodies are set out in the business case. This has been published and subject to consideration by the Environment and Sustainability Committee.

The wider context including the costs, benefits and risks of the overall change has been set out in the business case and the subsequent consultation.

At this point, the new body will not act in a regulatory role nor will it exercise any functions on behalf of the Welsh Government; the functions which will eventually be vested in it will continue to be exercised by the existing environmental bodies up to the full vesting date.

The Order has no impact on –

- (a) the statutory duties of the Welsh Ministers concerning equality of opportunity (section 77 of the Government of Wales Act 2006), the Welsh language (section 78) and sustainable development (section 79); or
- (b) the local government, voluntary sector and business schemes made under sections 73, 74 and 75 of the Government of Wales Act 2006 respectively.

Where the new body, whilst acting in its “shadow” role, has to formulate any policies in advance of the full vesting date (e.g. with regard to equality, Welsh language, enforcement, etc.) to enable the body to function fully upon vesting, the body will undertake any relevant consultation and/or impact assessment.

A further Order will be laid in due course to effect the transfer (and where necessary, the modification) of the full range of relevant functions. That Order will be accompanied by a further explanatory memorandum and any appropriate regulatory impact assessment.

# Agenda Item 4

RT HON LORD MORRIS OF ABERAVON, KG, QC



27 March 2012

Mr. Steve George, Committee Clerk  
Constitutional & Legal Affairs Committee  
National Assembly for Wales  
Cardiff Bay, Cardiff,  
CF99 1NA

*By email to: [CLA.Committee@wales.gov.uk](mailto:CLA.Committee@wales.gov.uk)*

Dear Mr. George

**Oral Evidence to the Constitutional & Legislative Affairs Committee of the Welsh Assembly**

I have pleasure in enclosing a copy of my Oral Evidence. As you can see I have expanded Clause 21.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Lord Morris".

Enc:

cc: Mr. Carwyn Jones, First Minister  
Lord Prys Davies  
Mr. Justice Roderick Evans  
The Rt Hon the Lord Judge  
Lord Justice Pill  
Lord Carnworth



1. I am grateful for the opportunity to make my observations to the Constitutional and Legislative Affairs Committee of the Welsh Assembly.
2. My starting point is that I am a devolutionist which, short of considerable argumentation, means that I wish to bring government closer to the people in Wales. At first blush a separate Welsh (legal) jurisdiction is not a governmental activity, although one of the consequences of the considerable development in powers for the Welsh Assembly since my first proposals in 1976 is that there is a new corpus of law emanating from the Assembly, both before and after the new powers recently granted to it.
3. I would say in passing that in any negotiation between the Assembly and the Westminster Government for further powers there are matters of governmental activity which should have a high priority, such as accountability for Welsh broadcasting, the police, aspects of energy production and perhaps a re-appraisal of how to achieve greater democratic accountability, possibly jointly, of the responsibilities of the Environmental Agency in Wales. I deliberately do not traverse what might be termed "the financial relationship with Westminster", a re-appraisal of which is long overdue.
4. The Secretary of State for Wales had few powers in the beginning. Under governments of both persuasions, those powers were substantially increased, particularly during the period of my stewardship of the office from 1974-79. The driving force for the negotiation for new powers, which occurred simultaneously with the presentation of devolution proposals, was the need to create administrative experience in the Welsh Office in new fields which could serve as the building blocks for the powers of the future Assembly. Without such acquisition the new Assembly would have an even steeper learning curve. I deal with this aspect of my work in some detail in my book *"Fifty Years in Politics and the Law"* chapters 16 and 17.
5. I mention these matters since politics is "the art of the possible". Wise politicians might wish to prioritise more transfers of political decision making, which this proposal is not, however desirable it may be.
6. Let me welcome the administrative decisions which have been taken by a wise judiciary to ensure that the sittings of various important courts now take place in Wales. As enumerated none of these, I surmise, would have unintended political devolutionary consequences.
7. Not having practised as a lawyer in Wales since my very young days I have no experience of the consequences of devolution on practitioners in Wales. I surmise that a lawyer in the civil – possibly criminal field, advising a client on matters in Wales would have to ensure that he checked both the effect of Westminster laws, and laws emanating from Cardiff, both before and after the granting recently of "law-making" powers to the National Assembly. These matters might have to be judicially determined wherever the case was set down.
8. I am, however, unclear as to what a separate jurisdiction entails. I am not alone in this as the first question the Committee asks is the meaning of the term "Separate Welsh Jurisdiction". Short of Wales becoming an independent state nothing can really be wholly

separate. Even the devolution proposals which I proposed and now adopted in subsequent legislation envisaged the judicial determination of disputes between the Assembly and Westminster by the Supreme Court in London.

At least we have a clear answer to one part of the question. A "Separate Welsh Jurisdiction" cannot mean the undermining of this.

9. On the assumption that a more limited "Separate Welsh Jurisdiction" is contemplated in the question it must mean higher and lower courts operating separately from the courts of England. Judges, I presume, would be appointed specifically to the courts in Wales. This harkens back to the courts of the Great Session in Wales (abolished in 1830) to which judges were specifically appointed and I think I am right in my recollection, could still practice as counsel in the courts at Westminster nonetheless.
10. In one of the arguments that used to be put to me when I was working out my proposals for devolution was that Wales, unlike Scotland, did not have a separate legal system with its legal corpus quite distinct from the English Common Law. My reply was "so be it; what does it matter?" The repatriation of democratic decision-making was a different issue and independent of a legal jurisdiction and was no bar to devolution, in our case in Wales.
11. I note that in civil matters there is an appeal from the Scottish Courts direct to the Supreme Court and I surmise if Scotland achieved independence this would be discontinued.
12. However, it is for the proposers of a "Separate Welsh Jurisdiction" to set out what they mean by it, and not for consultees to guess. Does it mean a separate court of appeal in Wales?
13. I have, however, a limited experience of the courts in Northern Ireland as I held the office of Attorney General there, concurrent with being the A.G. for England and Wales. My main responsibilities were for the criminal law with my own Director of Public Prosecutions for the Province whom I supervised and discussed cases of difficulty. The A.G.'s responsibilities were, of course, wider. In addition, and it is not an exhaustive list but the Attorney was the guardian of the public interest. I had a responsibility for commencing contempt cases, for charities and determining whether a Nolle should be entered in prosecutions. This is not an exhaustive list. I have no recollection of any difficulty arising from the fact that Northern Ireland had a separate jurisdiction. I had appropriate relations with the judiciary in the course of my regular visits. I was honoured to be called to the Bar of Northern Ireland.
14. My most onerous responsibility was taking decisions on a very frequent basis, though not as frequent as some of my predecessors, as to whether a defendant should have a jury trial for an indictable offence, or be tried by "The Diplock Courts" without a jury. As a life-long jury man in criminal trials and one of its defenders, I admired the stewardship of the judiciary in their exercise of their probably unwelcome jurisdiction.

15. I understood, because of the small size of the judiciary, both of the High Court and the Court of Appeal, there could be practical difficulties in ensuring that the availability of judges who had not already been “contaminated” by previous knowledge of other stages of a case. My understanding was that any such problems could be and were overcome.
16. This leads me to a conclusion that before the Committee proceeds any further it might wish to canvass the practical implications of whatever is on the table by taking advice from judges, lawyers and others experienced in the work of the Courts of both Northern Ireland and Scotland.
17. Since preparing my evidence I have had the advantage of consulting with the Rt Hon the Lord Carswell, a former Lord of Appeal in Ordinary and Lord Chief Justice of Northern Ireland. I have, with his consent, attached his analysis in a separate and independent factual note.
18. It is not at this stage possible to estimate the cost of creating an “independent jurisdiction”. I surmise they would be considerable. The Committee might want to consider this as a priority.
19. It is self-evident that the pool for the appointment of Chief Justice and judges of the Court of Appeal in Wales would be small if it were decided that promotions would only be made from within the Welsh Judiciary. If, as is likely, a separate Attorney General for Wales were to be appointed, his relationship with the Attorney General for England and Wales would have to be decided. In Northern Ireland the England & Wales Attorney General is still the Advocate General I believe.
20. I am told that in Dublin the model adopted is a judge-led system, which must be demanding on judicial time. In Northern Ireland there is a Director of the Court Service who consults where appropriate with the Lord Chief Justice. If this were the model adopted for Wales, a Director of the Court Service would be required. Other issues to be determined would be family courts and responsibility for magistracy.
21. It may be that it would be more fruitful for the Committee to inquire how the recent developments of court sittings in Wales might be extended and consolidated. I do not know what proportion of Welsh court work is involved in the “Regular Sittings” of the Court of Appeal Division, or indeed the other courts. A presumption that “Welsh work” should be set down for hearing in Wales I surmise would be welcomed.

It may be that a way forward is to delineate that part of the Ministry of Justice and the administrative machinery of the courts further to Wales. It would mean a recognition of the need for special provision for Wales given that the Assembly has law-making powers, as opposed to the present unitary jurisdiction. I am not competent to advise on such policies. If the political will is there some practical progress could be achieved without incurring significant expenditure.

22. I do not think there is any further assistance I can give.

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Note:

The acknowledged legal historian for Northern Ireland is Sir Anthony Hart, a retired High Court Judge and Professor Desmond Greer has written extensively and authoritatively in this field.

Note on "Requirements of a Legal Jurisdiction" is attached.



*Lord Morris of Aberavon*

*27/3/2012*

## Requirements of a separate legal jurisdiction

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### 1. Judiciary

A separate judiciary, both first instance and appellate. Matters requiring consideration include:

- Appointment – a judicial appointments commission, or some other mechanism; the question then arises who has the final say in the appointment, Lord Chancellor or First Minister or some other person (appointments made by The Queen are made on the recommendation of a minister), and whether that person can refuse the appointments commission's recommendation or only refer it back for reconsideration;
- Qualification for appointment – would it be only members of the local Bar, or would members of the English Bar be eligible?

### 2. Barristers

Matters requiring consideration include:

- Qualification for call to the Bar;
- Queen's Counsel or equivalent, and who appoints or recommends for appointment;
- Rights of audience of other Bars (bearing in mind the EU requirements), and rights of such persons to be called to the Bar of Wales;
- Training facilities, both pre- and post-call;

- A complaints and discipline structure;
- An equivalent of the Bar Council to govern the Bar;
- An inn of court or other corporate body.

### **3. Solicitors**

Similar considerations to those relating to barristers, a corporate body such as the Law Society, requirements for admission, training, complaints and discipline.

### **4. Rules of court**

A separate legal system would require its own rules of court, with a rule-making body.

### **5. Court administration**

A self-contained organisation, funded and appointed locally, to run the courts and administer the judiciary (the court service now in place may or may not be sufficient).

### **6. Local legal materials**

Text books relating to the local corpus of law and statute books would be required in the course of time.

### **7. Crown and prosecution service**

An attorney general to head the Crown legal service, a director of public prosecutions and a public prosecutions department, a Crown Office to handle Government legal matters, a youth justice service and various ombudsmen or inspectors to oversee and regulate different aspects of the law and the legal profession.

## **8. Law commission**

A body to consider the development of the law and make recommendations to the Assembly is likely to be required.

All this would have to be negotiated in the light of issues of removal of jurisdiction of English courts and professional bodies and the extent of jurisdiction of Parliament over Welsh legal affairs. That would require primary legislation in Parliament.

Sources for Northern Ireland include the Government of Ireland Act 1920, the Judicature (Northern Ireland) Act 1978, the Justice (Northern Ireland) Act 2002 and such text books as those of Sir Arthur Quekett and Harry Calvert.





## Constitutional and Legislative Affairs Committee

### Subsidiarity monitoring report (January 2012 - April 2012)

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Date of paper:

June 2012

This briefing has been produced by the Research Service for use by the Constitutional and Legislative Affairs Committee.

For further information, contact Owain Roberts in the Research Service  
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Research  
Service



## Contents

<b>1.</b>	<b>Introduction.....</b>	<b>3</b>
<b>2.</b>	<b>The monitoring process.....</b>	<b>3</b>
<b>3.</b>	<b>Overview of draft EU legislative proposals received (January 2012 - April 2012)</b>	<b>5</b>
3.1.	EU legislative proposals identified as raising subsidiarity concerns .....	5
3.2.	EU legislative proposals that did not raise any subsidiarity concerns.....	6

## 1. Introduction

Under Standing Order 21, a “responsible committee” in the Assembly (currently the Constitutional and Legislative Affairs Committee) is empowered to consider draft EU legislation that relates to matters within the legislative competence of the Assembly or to the functions of the Welsh Ministers and of the Counsel General, to identify whether it complies with the principle of subsidiarity.

The principle of subsidiarity is enshrined in Article 5 of the Treaty on European Union:

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.<sup>1</sup>

In addition, the application of the principle is governed by the Protocol on the Application of the Principles of Subsidiarity and Proportionality. The relevant part in relation to the work of the Assembly is included in the first paragraph of Article 6:

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. **It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.** *[RS emphasis]*<sup>2</sup>

## 2. The monitoring process

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<sup>1</sup> Official Journal of the European Union, [\*Consolidated version of the Treaty on European Union\*](#), C83/204, 30 March 2010

<sup>2</sup> Official Journal of the European Union, [\*Protocol on the Application of the Principles of Subsidiarity and Proportionality\*](#), C310/207, 16 December 2004

In order to ensure that the Constitutional and Legislative Affairs Committee fulfils its subsidiarity monitoring function effectively as set out in Standing Orders, Assembly officials monitor all draft EU legislative proposals that apply to Wales on a systematic basis to check whether they raise any subsidiarity concerns. The way in which Assembly officials monitor these proposals is outlined below for information:

- The Assembly in the first instance is notified of all proposals published by the European Commission for consideration through a list (known as the “batch list”) which is sent by the Foreign and Commonwealth Office on behalf of the UK Government to the Research Service for information.
- The relevant UK Government department will then prepare an Explanatory Memorandum (EM) based on the proposals included on the batch list usually within 4 to 6 weeks of the initial notification by the Foreign and Commonwealth Office. Each EM includes an assessment of the policy impact of the proposals (including whether the UK Government department believes the proposal raises any subsidiarity concerns). Copies of each EM are also sent to the Assembly via the Research Service.
- The Research Service filters the EMs received to check whether the proposal they relate to are “legislative” or “non-legislative”<sup>3</sup> and whether they encompass issues which may be of interest to the Assembly (i.e. relating to devolved matters).
- Those EMs that relate to proposals that are both “legislative” and deal with issues of interest to the Assembly are then checked further by officials from the Assembly’s Legal Services, Brussels Office and the Research Service to see whether they raise any potential subsidiarity concerns.
- If a proposal raises subsidiarity concerns, Assembly officials will alert the Constitutional and Legislative Affairs Committee immediately whereupon Members will be asked to consider whether the Committee should ask either or both Houses at Westminster to issue a “reasoned opinion” on the proposal or not.
- Those proposals which are “legislative” and relate to devolved matters but raise no subsidiarity concerns are then collated in a monitoring report produced by the Research Service which is considered as a paper to note by the Constitutional and Legislative Affairs Committee during each term in an Assembly year (Autumn [September–December], Spring [January–April] and Summer [May – August]).

This report therefore includes a general overview of those draft EU legislative proposals received by the Assembly’s Research Service between January and April 2012, and provides further information about those proposals that were identified by Assembly officials as being both “legislative” in nature and relating to devolved matters.

Please note however that this report only monitors “legislative” proposals, **it does not contain details of any “non-legislative proposals” that may be relevant to the work of the Assembly.** These are monitored on a separate basis by the Research Service.

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<sup>3</sup> Subsidiarity concerns can only be raised in relation to draft “legislative” proposals.

### 3. Overview of draft EU legislative proposals received (January 2012 – April 2012)

A total of 147 UK Government EMs relating to EU proposals were received by the Assembly's Research Service between 1 January 2012 and 31 April 2012. Of these, 29 EMs were identified by Assembly officials as being both "legislative" in nature and of interest to the Assembly. Following further analysis by officials from the Assembly's Legal Service, Brussels Office and Research Service, these were subsequently filtered as follows:

- 1 proposal was identified as raising subsidiarity concerns and was the subject of a "written representation" by the Constitutional and Legislative Affairs Committee to the relevant committees in the House of Commons and House of Lords.
- 28 proposals did not raise any subsidiarity concerns.

Additional details about these filtered proposals are included below.

#### 3.1. *EU legislative proposals identified as raising subsidiarity concerns*

<u>Date EM emailed</u>	<u>Title, description and timeline</u>
17 January 2012	<p><i>Proposal for a Directive of the European Parliament and of the Council on <b>Public Procurement</b></i> (COM(2011)896).</p> <p>Concerns relating to this proposal were raised by the Assembly's Enterprise and Business Committee in February 2012. It was subsequently considered by the Constitutional and Legislative Affairs Committee on 20 February 2012 where Members agreed to make a written representation under Standing Order 21 to the House of Commons' European Scrutiny Committee and the House of Lords' European Union Committee.</p> <p>The Committee's concerns were then incorporated into a "reasoned opinion" issued by the House of Commons in relation to the draft proposal on 6 March 2012.</p> <p>This was the first time that an Assembly Committee had utilised the powers available under Standing Order 21 to raise subsidiarity concerns in relation to an EU legislative proposal.</p>

### 3.2. EU legislative proposals that did not raise any subsidiarity concerns

<u>Date EM emailed</u>	<u>Title and description</u>
5 January 2012	<p><i>Proposal for a Regulation of the European Parliament and the Council <b><u>establishing Horizon 2020 – The Framework Programme for Research and Innovation (2014 – 2020)</u></b> (COM(2011)809).</i></p> <p>This proposal is part of a range of documents (detailed below) which establishes the Commission’s proposals for the EU’s next framework programme for research and innovation – Horizon 2010.</p>
5 January 2012	<p><i>Proposal for a Council Decision establishing the <b><u>Specific Programme Implementing Horizon 2020 – The Framework Programme for Research and Innovation (2014 – 2020)</u></b> (COM(2011)811).</i></p> <p>See COM(2011)809.</p>
5 January 2012	<p><i><b><u>Commission Staff Working Paper accompanying the Communication from the Commission on Horizon 2020 – The Framework Programme for Research and Innovation, a Proposal for a Regulation of the European Parliament and of the Council establishing Horizon 2020 – The Framework Programme for Research and Innovation (2014 – 2020), a Proposal for a Council Decision establishing the Specific Programme implementing Horizon 2020 – The Framework Programme for Research and Innovation (2014 – 2020) and a Proposal for a Council Regulation on the Research and Training Programme of the European Atomic Energy Community (2014 – 2018) complementing the Horizon 2020 – The Framework Programme for Research and Innovation – <u>Impact Assessment</u></u></b> (SEC(2011)1427).</i></p> <p>See COM(2011)809.</p>
5 January 2012	<p><i><b><u>Commission Staff Working Paper accompanying the Communication from the Commission on Horizon 2020 – The Framework Programme for Research and Innovation, Proposal for a Regulation of the European Parliament and of the Council establishing Horizon 2020 – The framework Programme for Research and Innovation (2014 – 2020), Proposal for a Council Decision establishing the Specific Programme implementing Horizon 2020 – The Framework Programme for Research and Innovation (2014 – 2020) and a Proposal for a Council Regulation on the Research and Training Programme of the European Atomic Energy Community (2014 –</u></b></i></p>

2018) complementing the Horizon 2020 - The Framework Programme for Research and Innovation - **Executive Summary of the Impact Assessment** (SEC(2011)1428).

See COM(2011)809.

5 January  
2012

*Proposal for Regulation of the European Parliament and of the Council **laying down the rules for the participation and dissemination in Horizon 2020** - The Framework Programme for Research and Innovation (2014 - 2020)* (COM(2011)810).

The proposal sets out the single set of rules intended for governing the application, evaluation, participation and dissemination processes for Horizon 2020.

5 January  
2012

*Proposal for a Council Regulation on the **Research and Training Programme of the European Atomic Energy Community (2014 - 2020)** complementing the Horizon 2020 - The Framework programme for Research and Innovation* (COM(2011)812).

This proposal sets out the Euratom-related elements of the Horizon 2020 programme.

6 January  
2012

*Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No.294/2008 **establishing the European Institute of Innovation and Technology (EIT)*** (COM(2011)817).

This proposal amends the EIT regulation for its operation from 2014–2020 based on the experiences and lessons learnt during the initial period of setting up the EIT.

6 January  
2012

*Proposal for a Decision of the European Parliament and of the Council on the **Strategic Innovation Agenda of the European Institute of Innovation and Technology (EIT): The contribution of the EIT to a more innovative Europe*** (COM(2011)822).

This proposal (along with COM(2011)817) amends the EIT regulation for its operation from 2014–2020 based on the experiences and lessons learnt during the initial period of setting up the EIT.

10 January 2012	<p><i>Proposal for a Regulation of the European Parliament and of the Council establishing a <b><u>Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (2014 - 2020)</u></b> (COM(2011)834).</i></p> <p>The proposal aims to establish a “Programme for the Competitiveness of Enterprises and SMEs” which is designed to support the Europe 2020 strategy to ensure that SMEs are able to take full advantage of the Single Market’s potential.</p>
10 January 2012	<p><i>Proposal for a Decision of the European Parliament and of the Council on <b><u>serious cross-border threats to health</u></b> (COM(2011)866).</i></p> <p>The proposal intends to strengthen current capacities and structures on health security to protect EU citizens from serious cross border threats that might affect public health.</p>
12 January 2012	<p><i>Proposal for a Regulation of the European Parliament and of the Council on <b><u>the European Maritime and Fisheries Fund</u></b> [repealing Council Regulation (EC) No.1198/2006 and Council Regulation(EC) No.861/2006 and Council Regulation No.XXX/2011 on integrated maritime policy (COM(2011)804).</i></p> <p>The proposal establishes the European Maritime Fisheries Fund to replace the European Fisheries Fund from 1 January 2014 and will run until the end of December 2020.</p>
12 January 2012	<p><i>Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/98/EC on <b><u>re-use of public sector information</u></b> (COM(2011)877).</i></p> <p>This proposal amends the “Re-Use Directive” in order to bring about a further degree of harmonisation of the legal rules governing the re-use of public sector information at the European level.</p>
17 January 2012	<p><i>Proposal for a Directive of the European Parliament and of the Council on the award of <b><u>concession contracts</u></b> (COM(2011)897).</i></p> <p>The proposal aims to extend and expand the European rules governing the award of “concession” contracts by public authorities and utilities, in parallel with proposals to modernise the public and utilities procurement rules.</p>

17 January 2012	<p><i>Proposal for a Directive of the European Parliament and of the Council on <b><u>procurement by entities operating in the water, energy, transport and postal services sectors</u></b> (COM(2011)895).</i></p> <p>The proposal replaces the “Utilities Directive” and the “Public Sector Directive” which contain detailed procedural rules that apply to public procurements above certain thresholds.</p>
18 January 2012	<p><i>Proposal for a Regulation of the European Parliament and of the Council on the <b><u>establishment of a Programme for the Environment and Climate Action (LIFE)</u></b> (COM(2011)874).</i></p> <p>The proposal provides for the continuation of the LIFE programme for 2014–2020 to support EU environment and climate objectives.</p>
18 January 2012	<p><i>Proposal for a Regulation of the European Parliament and of the Council on certain measures in relation to countries allowing non-sustainable fishing for the purpose of <b><u>the conservation of fish stocks</u></b> (COM(2011)888).</i></p> <p>The proposal establishes a framework of trade measures that could be implemented against countries that are judged to be allowing non-sustainable fishing on stocks in which the EU has a common interest in their management.</p>
27 January 2012	<p><i>Proposal for a Council Regulation establishing for the period 2014-2020 the programme "<b><u>Europe for Citizens</u></b>" (COM(2011)884).</i></p> <p>The proposal builds on the existing programme which ends in December 2013. It aims to enhance capacity for civic participation at the Union level.</p>
30 January 2012	<p><i>Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the <b><u>recognition of professional qualifications</u></b> and Regulation on administrative cooperation through the Internal Market Information System (COM(2011)883).</i></p> <p>The proposal updates the Recognition of Professional Qualifications Directive and introduces a number of new processes which aim to facilitate free movement in the regulated professions throughout the EU.</p>

2 February 2012	<p><i>Proposal for a Directive of the European Parliament and of the Council amending Directive 2004/40/EC on <b><u>minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields)</u></b> (eighteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (COM(2012)15).</i></p> <p>The proposal will further delay the transposition of Directive 2004/40/EC from 30 April 2012 to 30 April 2014.</p>
20 February 2012	<p><i>Report from the Commission to the European Parliament and the Council on the <b><u>outcome of the review of Annex X to Directive 2000/60/EC of the European Parliament and of the Council on priority substances in the field of water policy</u></b> (COM(2011)875).</i></p> <p>This proposal relates to proposal COM(2011)876 which will aim to review the list of substances which are identified as priority hazardous substances in water.</p>
20 February 2012	<p><i>Proposal for a Directive of the European Parliament and of the Council amending Directives 2000/60/EC and 2008/105/EC as regards <b><u>priority substances in the field of water policy</u></b> (COM(2011)876)</i></p> <p>This proposal will aim to review the list of substances which are identified as priority hazardous substances in water.</p>
20 February 2012	<p><i>Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No.1342/2008 of 18 December 2008 <b><u>establishing a long-term plan for cod stocks and the fisheries exploiting those stocks</u></b> (COM(2012)21).</i></p> <p>The proposal aims to delegate powers to the Commission allowing the modification of parts of the “cod recovery plan” without the need to pass through the co-decision process.</p>
22 February 2012	<p><i>Proposal for a Council Decision establishing the position to be adopted on behalf of the European Union with regard to the <b><u>proposals for amending Annexes II and III to the Protocol concerning Specially Protected Areas</u></b></i></p>

**and Biological Diversity in the Mediterranean of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean at the seventeenth meeting of the Contracting Parties** (COM(2012)47).

The provides for an EU position at the “Barcelona Convention” to secure EU support to place 6 species of shark on Annex II (list of threatened and endangered species) to the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean.

19 March  
2012

*Proposal for a Regulation of the European Parliament and of the Council on the **non-commercial movement of pet animals*** (COM(2012)89).

The proposal clarifies the animal health requirements that apply to the non-commercial movement of pets following the expiry of the transitional regime (Regulation 288/2003).

19 March  
2012

*Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/65/EEC as regards the **animal health requirements governing intra-Union trade in and imports into the Union of dogs, cats and ferrets*** (COM(2012)90).

The proposal amends an existing Directive relating to animal health rules for trade between Member States of the EU and import from third countries of non-livestock species.

19 April  
2012

*Proposal for Council Directive amending Annex I to European Parliament and Council Directive 94/62/EC on **packaging and packaging waste*** (COM(2012)141).

The proposal adds new illustrative examples of packaging and non-packaging the “Packaging and Waste Directive”.

19 April  
2012

*Proposal for a Council Directive laying down requirements for the **protection of the health of the general public with regard to radioactive substances in water intended for human consumption*** (COM(2012)122).

The proposal sets out similar standards as those included in “the Drinking Water Directive” in relation to radioactivity in water intended for human consumption but specifies one new standard for Radon and new



monitoring frequencies and additional analytical requirements.

26 April  
2012

*Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators as regards **the placing on the market of portable batteries and accumulators containing cadmium intended for use in cordless power tools** (SWD(12)65).*

The proposal amends the “Batteries Directive” by amending the exemption that allows cadmium to be used in batteries for cordless power tools so that the exemption ceases to have effect from 1 January 2016.

# Agenda Item 5.2

Cynulliad  
Cenedlaethol  
Cymru  
National  
Assembly for  
Wales



## **Constitutional and Legislative Affairs Committee**

**Report: CLA(4)-14-12 : 18 June 2012**

**The Committee reports to the Assembly as follows:**

**Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

### **Negative Resolution Instruments**

**CLA156 – The Special Educational Needs Tribunal for Wales (Amendment) Regulations 2012**

**Procedure:** Negative.

**Date made:** 25 May 2012.

**Date laid:** 30 May 2012.

**Coming in to force date:** 21 June 2012

### **Affirmative Resolution Instruments**

**CLA154 – The Breaks for Carers of Disabled Children (Wales) Regulations 2012**

**Procedure:** Affirmative.

**Date made:** not stated.

**Date laid:** not stated.

**Coming into force date:** 28 June 2012

**Instruments that raise reporting issues under Standing Order 21.2 or 21.3**

### **Negative Resolution Instruments**

None

### **Affirmative Resolution Instruments**

None

### **Other Business**

**Committee Inquiries: Inquiry into the establishment of a separate Welsh jurisdiction**

The Committee took oral evidence from Professor Thomas Glyn Watkin, Head of the Law School, Bangor University. The Members asked for a Note on Speaker's Conference 1918 to be provided.

**CLA151 – The Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2012**

The Committee noted that the First Minister's explanation of the absence of Welsh versions of the Statutory Instruments made jointly with UK Ministers discussed at the meeting 11 November 2011 Committee applies equally to the CLA151 – The Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2012.

**Resolution to Meet in Private**

In accordance with Standing Orders 17.42(vi) and (ix) the Committee resolved to exclude the public from the remainder of the meeting to discuss the implications of the Legislative Consent Memorandum (Local Government Finance Bill) for the debate on the Committee's report on Inquiry into the Granting of Powers to Welsh Ministers in UK Laws and the evidence submitted thus far on the Inquiry into the establishment of a separate Welsh jurisdiction.

**David Melding AM**

Chair, Constitutional and Legislative Affairs Committee

**18 June 2012**