

12 February 2013

Paper Title	Permitting Publication Scheme – Public Consultation
Paper Reference:	NRW B O 10.14
Paper Sponsored By: Paper Authored By:	Trefor Owen Martin Cox & Stephen Attwood

Purpose of Paper:	Decision
Recommendation:	
Decision Required:	To agree the proposed approach to produce a new Natural Resources Wales permitting publication scheme. To agree the next steps set out in paragraph 19.

Impact: To note – all headings might not be applicable to the topic	Impact on the Environment: Improved public accessibility to information and transparency will encourage permit applicants to give greater consideration to environmental outcomes. Impact on the Economy: In developing the proposal we have taken care to ensure the new scheme will not discourage development in Wales and will improve the quality of our decision making. Impact on Community: The proposed scheme will improve access to environmental information for local communities and other stakeholders. Impact on Knowledge: The proposed scheme will increase our knowledge base and inform improved processes and decision making.
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Issue

1. The Natural Resources Body for Wales (Functions) Order 2013 (the Functions Order) placed a new duty on Natural Resources Wales to have a separate publication scheme relating specifically to information about permit applications and our permitting decisions. We refer to this as the “permitting publication scheme” to distinguish it from the publication scheme required of all public bodies under the Freedom of Information Act 2000 (FOI).
2. We introduced an interim permitting publication scheme when Natural Resources Wales was established on 1 April 2013. The interim scheme is published on our website. Following consultation and agreement by Welsh Ministers a new scheme will be published and will replace the interim scheme.
3. This paper has been shaped by discussions with board members from the Economy and Environment Groups.

Summary

4. The Functions Order specifies the requirements for the permitting publication scheme, and under regulation 18 inserts relevant articles 16, 17, and 18 into the Establishment Order. These requirements are summarised below.
5. Natural Resources Wales is required to:
 - Develop, adopt and maintain a scheme in relation to publication of information about applications for permits and permitting decisions.
 - Publish information in accordance with the scheme.
 - Review the scheme from time to time.
6. The scheme must specify:
 - Classes of information which Natural Resources Wales publishes or intends to publish, which must include information about all applications made by Natural Resources Wales where Natural Resources Wales determines the application.
 - The manner and time within which information of each class will be published.
 - Whether the material will be available free of charge to the public.
7. In developing the scheme we must:
 - Consult such persons as we consider appropriate.
 - Have regard to public interest in:
 - allowing access to information we hold,
 - and publication of information about permit applications and permitting decisions.
 - Publish the scheme on our website and make copies available on request.
8. The scheme must be approved by Welsh Ministers.

Background

Other requirements to make information available

9. In addition to the permitting publication scheme our duties to make information available arise from the FOI, the EU Directive on public access to environmental information, and the requirements laid down in specific regulatory regimes.
10. Many of the regulatory regimes we are responsible for implementing in Wales have their own requirements for making information available and allowing representations to be made. Commonly these include the requirements to keep public registers and to publicise that applications have been made to allow representations to be submitted. There are provisions to allow certain information to be excluded from the public registers, e.g. on grounds of commercial confidentiality and national security. The individual requirements for each regime are in appendix 1.
11. There is a degree of duplication between the requirements of the permitting publication scheme in the Functions Order, the FOI requirements and the requirements of the separate regulatory regimes. However, there are substantial differences between the requirements of each regulatory regime. Some such as the Environmental Permitting Regulations 2010 (EPR) have extensive requirements which already largely meet and in some cases surpass the requirements in the Functions Order. Other regimes require much less and in some cases fall far short of the requirements in the Functions Order.
12. Natural Resources Wales also has a public participation statement for applications under made EPR which explains why and how we will consult on these applications. We also have a policy of increased consultation on applications at sites where we consider there is, or is likely to be a high degree of public interest.
13. A significant number of requests we receive under FOI are for information that we already place in the public domain. We hope that this permitting publication scheme will reduce future requests by highlighting the information that is available and signposting it as clearly as possible.

Overview of Natural Resources Wales's scheme

14. Natural Resources Wales is fully committed to openness and transparency in all our dealings, and our permitting publication scheme reflects this and is part of that commitment. Although we are a single body our remit is very wide and we operate predominately under primary legislation that was created before we were formed. Therefore, there is a wide variation in the requirements of the regulatory regimes we operate.
15. The Functions Order places a duty on us to publish information about permit applications and our decisions, but it does not grant us additional powers to release information beyond what is allowed under the existing legislation. We are also bound by the requirements of the Data Protection Act.

16. The Internet provides an excellent resource for sharing information and we will make as much information available as possible via our website. This will improve over time and we will make increasingly more information available electronically. At the moment our public registers are a mixture of web based information, hard copy registers held in local offices and electronic registers accessible at our offices, but not currently on-line.
17. Our intention with this scheme is to introduce a core common standard for all our permitting functions, and to make the wide range of information available as accessible as possible by effective signposting and by improvements to our Website. We also seek to strike the right balance between proactively providing information that people will be interested in, and ensuring the best use of public money by not incurring unnecessary cost where there is little public interest. As a safeguard to ensure that information will be accessible if people want it, we are committed to providing as much information as possible on request without the need for formal FOI requests.

Consultation

18. As required by the Functions Order we will consult on this draft scheme. Our consultation will consist of a web-based public consultation exercise, which will be open for a minimum of six weeks. We are proposing a six week timescale because the proposal does not contain any major changes from the current position, and does not significantly impact on any individuals or groups. In addition we will undertake direct consultation with a number of customer groups.

Next Steps

19. We will:
 - Convert the propositions in this paper into a public consultation document by 28 February.
 - Complete the public consultation and engage with key customer groups by mid April.
 - Produce and agree with Welsh Ministers a revised Permitting Publication Scheme by mid May.
 - Implement a revised Permitting Publication Scheme by July 2014.

Risks

20. There is an inherent difference in the views of the parties potentially affected by the permitting publication scheme. Applicants will often be reluctant to increase the amount of information available beyond the existing statutory minimum. Other interested parties who would be interested in the information will want to see as much as possible.
21. Therefore, it is likely that the consultation will raise intractable differences in views, and that the proposal will be criticised as being too restrictive and for going too far.
22. However we believe the proposal reflects the correct balance and delivers as far as possible the requirements of the Functions Order.

Financial Implications

23. There are no significant financial implications from this proposal.
24. There will be improvements required to our web-site, but it is envisaged these will be part of the wider upgrading of the site.
25. There will be a small increase in the amount of work for each application determined. We estimate this is around 1-2 FTEs spread between about 60 staff.

Communications

26. There will be a six week public consultation exercise on the proposed scheme, and direct consultation with key customer groups. A detailed communications plan is being developed.

Equality impact assessment (EqIA)

27. An initial assessment concluded there are no significant implications, and that access to information would generally be improved for all.
28. There is some further work to be done to ensure our permitting processes are improved to fully meet the requirements of the Welsh language scheme. However, this is outside the scope of this work.

Index of Appendices and Annexes

- Appendix 1 – Draft propositions for the Natural Resources Wales Permitting Publication Scheme.
- Annexe 1 – Charging for information under this scheme
- Annexe 2 – Freedom of information requests
- Annexe 3 – Model publication scheme under FOI
- Annexe 4 – Blank template for basic publication scheme