Natural Resources Wales consultation response to the recent public consultation on our proposed approach to enforcement and prosecution.

1. Introduction

The new single environmental body called Natural Resources Wales is an environmental regulator and has powers to respond to environmental offences (crimes).

Natural Resources Wales consulted on the proposed approach to enforcement and prosecution, following the decision to transfer civil sanctions powers to Natural Resources Wales, and whether the information in the documents clearly explains what is taken into consideration when making a decision about an enforcement response.

The approach is detailed in the Enforcement and Prosecution Policy and associated Guidance. The consultation ran from 17th January 2013 to 28 February 2013 i.e. for a period of six weeks. The consultation documents were available from the Welsh Government's website.

The Enforcement and Prosecution Policy covers all offences for which Natural Resources Wales will be the responsible enforcing authority from 1st April 2013. These include those offences which were the responsibility of previous enforcing authorities.:

- the Countryside Council for Wales;
- the Forestry Commission in Wales; and
- the Environment Agency in Wales.

Natural Resources Wales will not have any new enforcement powers, all of the powers it will have, will be transferred from these existing authorities.

The Guidance on Enforcement and Sanctions explains how Natural Resources Wales will apply this policy; and make decisions on enforcement responses to offences. This is supported by Appendix 4 which gives examples of offences and options for our enforcement response.

2. Overview and analysis of responses

A total of 21 consultation responses were received. Of these over a third were from industry or businesses, who, experience regulation and are directly affected by this policy. A summary of each response is provided in Annex 1.

Common themes are discussed and replies to certain specific individual points are also provided in Annex 1.

Common Themes:

Clarity on working with other enforcement bodies and Local Authorities.
Whilst the Policy requires Natural Resources Wales staff to liaise and work together with other enforcement bodies and to ensure that any action is consistent and appropriate, it does not include details on how this should happen. The responses have highlighted the important part good liaison, support and joint working with others plays in enforcement and prosecution. We will address this through the way we now shape and implement enforcement and prosecution procedures and processes within Natural Resources Wales.

Consistent and appropriate use of powers.
The responses highlighted that powers should be used, and in a consistent manner. The policy and guidance provides the general approach that will be taken and we will monitor implementation of this for example, by using an Enforcement Review Panel to assess consistently an appropriateness of all enforcement decisions.

Subject to the statements on action against the Crown, our response to offences by public bodies including Natural Resources Wales will be determined according to the relevant public interest factors and will be treated in the same way as for other bodies corporate.

Use of education and advice to avoid the need to prosecute.
A number of responses highlighted the need to help avoid the need to enforce by providing good advice and education. We recognise that prevention is better than cure, and will continue to provide guidance. Shortly we will also be setting the longer term direction. One of the emerging priorities which we will consult on with stakeholders as we develop our first Corporate Plan is how best we support industry and businesses with clear, concise & timely advice, guidance & facilitation.

3. Executive summary

Of the responses over three quarters are mainly supportive of the general approach, with the remainder not expressing any specific views. Approximately half of the responses have concerns that the previous enforcing authorities have a weak enforcement record and sometimes apply the policy inconsistently. Comments from the regulated encourage the continued use of advice and guidance as an enforcement response.

Two technical errors were identified in the covering consultation. This should have stated, Civil Sanctions are not available for the CRC energy efficiency scheme and Trans-frontier Shipment regulations do not currently apply in Wales. As these were not part of the actual policy documents therefore no amendments are required.

The consultation responses will be particularly helpful in shaping and improving the procedures and processes within Natural Resources Wales. There are no changes to the Policy and minor changes to the Guidance.

This Policy and associated revised Guidance documentation will now be placed on the Natural Resources Wales website.

Annex 1

Response summary	Specific replies
1. Monmouth Tree Services *Supportive* Past enforcement has been weak concerning wildlife & habitat crimes. NRW need to ensure the powers are used and where possible to use the civil sanctions available to repair the damage caused.	
2 Eryri National Park Authority Queried whether restocking Notices could be issued prior to a conviction for felling without a licence, as stated in Appendix 4 of the consultation.	The Forestry Act was amended through the Regulatory Reform Order (Forestry) 2006, article 4, and gave Forestry Commission Wales the option of serving a Restocking Notice on an owner without first securing a prosecution.
3. Monmouthshire Bat Group *Partial support* Guidance on infringements by developers needs to be clearer. Concerns about engagement with Local Authority planners, ecologists and biodiversity staff, and about how reports of wildlife crimes are currently handled, and low financial penalties not deterring developers.	
4. Wye and Usk Foundation *Supportive* Past enforcement has demonstrated a reluctance to use the powers	
5. Neath, Port Talbot Countryside & Wildlife Team No Specific issues. Welcomes working with Local Authorities.	
6. Bat Conservation Trust (Wales) *Mainly supportive* Would welcome : o specific reference to protected species o specific mention of working with the Police. o extension of civil sanctions powers beyond those currently available o cost recovery to include others involved in bringing cases.	The Policy is generic for all the environmental regimes. Specific species are referred to in the different legislation. We are providing an Offences Response Options list which details the legislation and responses available to us by law, this was not included in this consultation, but will be published on our website. Where the law allows we are able to recover costs, including when enforcement is untaken jointly with others such as the Police or Local Authorities. Unfortunately we cannot recover

	costs on behalf of third parties who have given support.
7. Elaine Jones *Supportive*	
8. South Wales Outdoor Activity Providers Group Seeking continuation of current local arrangements with Forestry Commission Wales for enforcement at Dinas Rock in Brecon Beacons	We welcome partnership working and local arrangements and these will now need to be line with this policy and guidance.
9. BSW Timber Association *Mainly supportive* Welcomes proportionate response and need to maintain a sense of its sustainable development aims when considering enforcement proceedings.	
10. NFU Cymru *Mainly Supportive* Concern about our intention to fully recover costs for both investigation and enforcement	The Policy and guidance does not introduce any cost recovery which is additional to that which currently exists.
11. John Bowers *Mainly supportive* Concerns about working with other public bodies –specifically Planners. Recommends a full list of NRW legislative powers be published. Other specific comments about text.	We are providing an Offences Response Options list which details the legislation and responses available to us by law, this was not included in this consultation, but will be published on our website.
12. Environment Agency Wales Specific comment that regulators should recognize that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection	
13. Country Land and Business Association (CLA) *Supportive* Needs more clarity on the target audience, layout and terminology.	Target audience is staff within Natural Resources Wales.
14. RSPB Cymru *Supportive* Extension of Civil sanctions powers would be welcomed. Concerns about the content of ‘our aim’ and the need for more clarity on working	

with other enforcement bodies.	
15. Chartered Institution of Wastes Management (CIWM) *Supportive.* Error highlighted in Annex 1 –where Variable money Penalty is stated as being limited to £250, where there is in fact no limit in Wales	Annex 1 amended
16. Mineral Products Association *Supportive.* Concern about the whole organisation being able to demonstrate Hampton compliance, cross border issues and consistency	Links are established to ensure effective working with other cross-border organisations.
17. Federation of Small Businesses (FSB Wales) *Supportive* Recommends the use of education and advice as the first recourse to non-compliance	
18. Farmers' Union of Wales *Supportive* Recommends consistent approach to applying the policy and that financial sanction should only be used as a last resort to offences.	
19. Welsh Water *Broadly supportive* Concerns about timeliness for enforcement cases, and even-handedness, consistency of application of the policy, expansion of civil sanctions, and internal regulation	Legal and best practice obligations require us to separate internal processes and functions between Directorates. The Non-Financial Scheme of Delegation and the Publication Scheme set out how internal regulatory decisions will be made clear and transparent.
20. Equality and Diversity *Broadly supportive.*	
21. Hywel Dda Health Board *No Comments*	