

## **Towards a new Public Forest Estate management body**

**“We intend to establish a new, separate Public Forest Estate management body to hold the Estate in trust for the nation”<sup>1</sup>**

### **Background**

1. The Government Forestry and Woodlands Policy Statement made a promise – that England’s Public Forest Estate will remain secured in public ownership. It said that a new body will be created to hold the Estate in trust for the nation: ‘The new body will have greater independence from Government and greater freedom to manage its resources and maximise its income but with the right safeguards in place to operate for the long-term benefit of people, nature and the economy’.<sup>2</sup>
2. The Policy Statement did not prescribe the exact shape and structure of a new body to manage England’s Public Forest Estate. This document begins to do so, setting out a coherent vision of how Government believes the new organisation could be set up in the right way.
3. Nothing in this document is fixed. Government is committed to seeking views on its content over the coming months and will change or refine things in light of the feedback we receive.
4. The content of this document has been informed by a range of sources, including the Cabinet Office’s publication *Public Bodies: A Guide for Departments*, existing legislation and management documents for other public bodies.

### **Objectives**

5. The Government’s objectives in establishing a new body to manage the Public Forest Estate are set out in the Forestry and Woodlands Policy Statement, published in January 2013. The objectives highlight the need for an “independent, entrepreneurial body”, with greater freedom to manage its resources “within a clear long-term remit to maintain and enhance the land, trees and other assets under its care”. The Policy Statement says we will do this through:

*‘Establishing via legislation a new, operationally-independent Public Forest Estate management body to hold the Estate in trust for the nation. It will be charged with generating a greater proportion of its income through appropriate commercial activity*

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<sup>1</sup> Government Forestry and Woodlands Policy Statement, Jan 2013, p26

<sup>2</sup> Government Forestry and Woodlands Policy Statement, Jan 2013, Ministerial Forward, p2.

*and with maximising the social, environmental and economic value of the assets under its care*<sup>3</sup>.

6. This means balancing creating exciting new opportunities for revenue generation and self sufficiency, with generating positive impacts for people and nature.
7. To develop strong and resilient delivery arrangements, the Policy Statement says that:
  - *'We intend that the new body will be operationally independent of Government, which will play no direct role in its day-to-day affairs. However, as the new body will be the manager of publicly-owned assets and the recipient of Government funding, it will be accountable to Parliament through the Secretary of State for Environment, Food and Rural Affairs'*<sup>4</sup>.
  - *'We will work with stakeholders to develop plans for the new body, but key features might include...a group of expert Guardians, including community representation, established to advise the new body and hold it to account'*<sup>5</sup>.
8. This accountability is vital. The Guardians will be the national voice of the public and different interest groups. Alongside the new organisation's Board and local stakeholders, they will be the conscience of the Public Forest Estate. If the organisation begins to fail in its duties to maintain the overall integrity of the estate, they will raise the alarm.
9. Primary legislation is needed to establish the proposed body. Failure to secure legislation will represent an opportunity missed – to put management of the Public Forest Estate on a much stronger financial footing, enshrine its modern mission in law, and protect its future integrity.

### **Name**

10. While the Forestry Commission name and brand are well established and popular with many stakeholders, the Forestry Commission is established in law as a cross-border (England-Scotland) body, so it will be necessary to give the proposed new body a new name with a distinct brand.
11. Possible alternatives include *Forest England, Forests of England, English Forests* and *Public Forests England*. We welcome stakeholders' views on these names and further suggestions.

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<sup>3</sup> Government Forestry and Woodlands Policy Statement, Jan 2013, Executive Summary, p5.

<sup>4</sup> Government Forestry and Woodlands Policy Statement, Jan 2013, P26

<sup>5</sup> Government Forestry and Woodlands Policy Statement, Jan 2013, pp26-27

### **Status**

12. The Government's working assumption is that the new organisation would be evolved from Forest Enterprise England and be similar in size. It would be a statutorily based Public Corporation within the public sector operating at arm's length from Government. It would not be a Crown body and its staff would not be civil servants.
13. As a body corporate, the organisation would be an independent legal entity, have perpetual succession, could enter into contracts, and hold property - but only within the scope of its legal powers.

### **Remit, functions and duties**

14. The organisation would have a number of statutory objectives and duties based around the fundamental function of managing the estate for the benefit of people, the economy and nature. Its draft mission and objectives, on which the statutory purposes and duties would be based, are laid out in **Annex A**.
15. In addition to the legislation, the organisation's objectives and duties would be reflected in a public-facing "charter", setting the body's remit for a long period, for example 10 years. This charter would provide a vital touchstone for the new organisation, summarising its commitments to stakeholders and the public. The Guardians would hold the new organisation to account, assessing whether it was honouring commitments set out in the Charter and alerting Ministers when it failed to do so.
16. The new organisation's remit would not be confined to a forestry role in the same way as the existing legislation currently limits the FC to forestry-focused activities<sup>6</sup>. We have drafted the mission and objectives on the basis that the new organisation would be a land management body rather than just a forestry one. It would maximise the economic, social and environmental value of the estate.
17. The organisation would take over ownership of the estate – ownership would be vested in the new body rather than its Board. It would be entitled to acquire and dispose of its assets, subject to an overall duty to maintain the "integrity of the estate". The integrity of the estate could be defined in terms of the overall size of the land holding, its economic value, environmental condition and social use, and the use of asset receipts by the organisation for beneficial reinvestment into the estate in pursuit of its mission and objectives.

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<sup>6</sup> "The Commissioners shall be charged with the general duty of promoting the interests of forestry, the development of afforestation and the production and supply of timber and other forestry products" - The Forestry Act 1967

18. The PFE comprises a range of different types of asset, including woodland, heath, farm land and other types of land, as well as buildings, equipment and other resources. While there must be rules governing the acquisition and disposal of all classes of asset, the most stringent requirements should relate to land assets, and particularly to the woodlands that underpin the body's purpose.
19. In the case of proposed significant land acquisitions and disposals, the organisation's Board would be required to consult both the Guardians (see below) and the Secretary of State prior to entering into the transaction. The cumulative impact of smaller land transactions would also be kept under regular review to ensure that the integrity of the estate was maintained.
20. The new organisation would be expected to generate income from the estate and would need a range of commercial freedoms to help it to achieve this. These could include:
- The ability to hold and invest funds associated with commercial contracts, specific projects and programmes.
  - The ability to undertake non-forestry activities, e.g. renewable energy, mineral extraction, agriculture and industrial lettings of land and premises.
  - The ability to enter into joint ventures and partnerships to develop commercial opportunities.
  - The ability to enter into joint ventures and partnerships to develop public benefit opportunities.
  - The ability to delegate its functions and to establish subsidiaries or other bodies, including charities, to undertake specific functions in line with the body's broad purposes.
  - The ability to carry funding over from one year to the next.
  - The ability to borrow money, subject to clear restrictions and limits.
  - The ability to lend or make grants to others in pursuit of the estate's objectives, subject to clear restrictions and limits.
  - The ability to provide services to other bodies.
  - The ability to charge fees for goods or services rendered, including car parking, entry, licensing etc.
21. Gaining these kinds of freedoms would give the new organisation the opportunity to build an even stronger public forest estate, taking advantage of new opportunities, meeting the needs of different users and customers, and playing a full part in the rural economy.
22. The new organisation would be able to make appropriate byelaws as necessary for the good management of the estate.

### **Operational structure**

23. While the new organisation would be a national-level body, with a central headquarters housing a range of managerial and operational functions, it would own and manage land across the whole of England. This would mean operating at a very local level and may suggest the need for some form of regional structure to enable effective management and decision-making within an appropriate geographical area.
24. FEE currently has a regional structure based on six large geographical areas. It is assumed that this structure would continue in the new body, although it would be for the new organisation once established to review and decide how it organises its resources.
25. FEE is already working to develop further its existing regional and local engagement structures and arrangements, including relationships with key local partners such as forest friends groups and business interests. This will feed into the new body's arrangements.

### **Funding<sup>7</sup>**

26. The new organisation will need a strong financial base in order to deliver on its statutory duties to manage the estate for the benefit of people, nature and the economy. Strong finances are essential to maximising public benefits. That means the new body must focus on generating income through trading and commercial activities, including timber production. It would be expected to increase over time the proportion of its income raised through trading and other commercial activities, for example by utilising the freedoms identified in paragraph 20 above.
27. Government investment in the new organisation would be predicated on the achievement of public benefits in areas such as access, recreation and biodiversity. Broad expected outcomes would be set out in a multi-year Framework Agreement with Defra based on the new organisation's agreed business plan. This long-term agreed plan would be supplemented by more focused expectations set out in shorter-term, e.g. Spending Review period-based, Funding Agreements. The success of the new organisation would be measured against its delivery of these outcomes.
28. With the right safeguards in place, the new organisation could have a mechanism for returning to Government dividends on trading income, where that was justified by commercial results and consistent with the achievement of the new body's broader objectives. Separating trading income returns from payment for public benefits in this

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<sup>7</sup> This section will be informed further through the development of a detailed Business Case in conjunction with HM Treasury. At present it simply sets out some basic premises about the PFE MO's funding arrangements.

way could support the organisation in delivering public benefit and value for money on a sustainable basis.

### **Accountability**

29. The new organisation would be accountable to Parliament via the sponsoring department (Defra) and its Ministers. The principles underpinning the relationship between a sponsoring department and an arm's length body are well established and set out in a range of Treasury documents, including *Managing Public Money*.
30. It is expected that the Chief Executive of the new organisation would be designated as the body's Accounting Officer in line with established government practice.
31. The new organisation would be responsible for the good management of valuable public assets as well as delivery of commissioned outcomes in return for Government funding. The nature of the relationship between Defra and the new organisation would be set out in the legislation establishing the new body and in the supporting management documentation developed as a consequence.
32. In addition to commercial contracts, the new organisation could enter into funding contracts with other government departments or public bodies. These would be managed by those bodies in accordance with their own policies and procedures for accountability. This would not affect the primary accountability relationship with Defra.
33. The new organisation would have a duty to provide information to the Secretary of State when requested. The Secretary of State would also have a reserved power of direction for use if it appeared that the body was not meeting its statutory remit.

### **Board**

#### **Board Remit**

34. The new organisation's Board would be responsible for managing the new organisation. It would be accountable for ensuring that the organisation, and any subsidiary or organisation sponsored by it, operates effectively and to a high standard of probity and corporate governance.

#### **Size and Composition**

35. The legislation would provide for a Board including Non-Executive members. The Chair and other Non-Executive Board members would be appointed by Defra Ministers in line with existing practice and guidance e.g. the Code of Practice issued by the Commissioner for Public Appointments.

36. Non-Executive Board appointments would be for 3-year terms with members serving a maximum of two terms. Initial Non-Executive Director appointments could be staggered or be set at varying lengths up to the 3 year maximum, so that membership could be refreshed regularly.
37. Broad principles for Non-Executive appointments will be set in legislation so that appointees would bring to the body a wide range of relevant skills and experience as well as the necessary degree of independence.
38. Non-Executive Board members would be paid in line with relevant current practice and would be able to claim reasonable expenses. Remuneration levels would be proposed by a sub-committee of the Board and ratified by Ministers.

### **Guardians**

39. In addition to the Board, and in line with the Government's Forestry and Woodlands Policy Statement, there would be a separate group of "Guardians", drawing on the interests and expertise of estate users, to advise on and support the delivery of the body's remit.
40. The Guardians would not be a second Board for the new organisation and would not be responsible for managing the organisation. Their role would be focused on the outcomes that the organisation delivers against its statutory remit and publicly stated objectives rather than on the way it goes about its day-to-day business. Their primary focus is therefore likely to be on the environmental condition of the estate, the public benefits that the organisation is delivering and the question of significant acquisitions and disposals. A close and effective working relationship between the Guardians and the Board will be very important, and it is not envisaged that there would be any bar to an individual with the right skills and experience serving on both bodies.
41. The precise role of the Guardians, particularly in connection with the oversight of significant acquisitions and disposals and the implementation of the Charter, and their relationship with the Board, will be important elements of the new arrangements and Ministers are particularly interested in hearing views on the most sustainable approach. Guardians would not be remunerated but would be able to claim reasonable expenses.
42. Meeting arrangements would be decided by the Guardians themselves. There would be a minimum requirement for the Guardians to meet at least twice a year. Secretariat services would be provided by the PFE MO.

43. Membership and appointment arrangements are still to be determined.

### **Staffing**

44. The new organisation would employ its own staff, under its own terms and conditions. Existing staff are likely to be subject to a transfer to the new organisation under TUPE or a Legislative Transfer Scheme arrangement, which would mean existing terms and conditions of employment would transfer with staff. Any transfer arrangements would be subject to formal consultation with Forestry Commission Trade Unions (FCTU).

45. It is not yet clear whether existing staff would be able to remain in the Civil Service Pension Scheme or what the pension arrangements for new staff would be. The new organisation must offer post-transfer pension arrangements that are 'broadly comparable' to those provided by the previous organisation and transferring staff should suffer no material detriment. Further investigations on this are ongoing but would be subject to formal consultation with Forestry Commission Trade Unions (FCTU).

46. While Executive posts may initially be filled through transfer arrangements to the new body, an open appointments process agreed by the Board would be introduced in due course.

### **Significant asset acquisitions or disposals**

47. The assets including all land and woodland would be held in the name of the organisation. The new organisation would be entitled to acquire or dispose of its assets, including woodlands, in line with its strategic direction and operational needs, subject to its overall duty to maintain the integrity of the estate. Asset receipts would be used by the new organisation for beneficial reinvestment into the estate in pursuit of its mission and objectives.

48. It would be imperative that the arrangements and procedures underpinning all asset acquisitions and disposals should be clear and publicly stated. There may be a role for the Charter in stating what these are. This would allow for the possibility of transparently refreshing the arrangements and procedures as the passage of time makes changes advisable, and for the Guardians to have clear oversight of this process. All transactions undertaken should be as transparent as possible.

49. In minor cases, involving small land acquisitions and disposals, the Board could be required to seek and take notice of local views as appropriate. In the case of proposals to acquire or dispose of more significant land assets, the Board could be

required to consult more widely, including with both the Guardians and the Secretary of State, prior to entering into the transaction. Significance could be determined by:

- The percentage size of the land holding involved in relation to the overall size of the estate; and
- The percentage size of the transaction(s) involved in relation to the overall value of the estate.

If an acquisition or disposal proposal fell within either of these criteria it could be considered significant.

50. The percentage 'trigger' for each of these criteria could be proposed by the Board of the new organisation, and agreed with the Guardians and the Secretary of State.

51. The cumulative impact of disposals would also need to be taken into account in the assessment of significance in relation to these criteria and the requirement to maintain the integrity of the estate. The Board could, therefore, have a duty to inform the Guardians and the Secretary of State at least annually on the net impact of land disposals and acquisitions on the size and value of the estate.

52. The significance criteria and trigger level could be reviewed by the Board at any time but should be reviewed by the Board at least every 10 years to ensure their continuing validity. Any changes would need to be agreed with the Guardians and the Secretary of State.

## **New PFE Management Organisation**

### Mission

- To protect and improve the public forests, woodland and other land assets held on behalf of the nation\* for the benefit of people, nature and the economy.

### Objectives

#### *Overarching Objective*

- The sustainable management of the estate to balance and maximise the benefits to people, nature and the economy.

#### *Economic Objectives*

- To generate income for the long term sustainable management of the estate.
- To encourage economic growth and business development both on and around the estate.
- To deliver value for money in the management of the estate.

#### *Social Objectives*

- To enable widespread and equitable access to woodlands for responsible enjoyment by all members of society.
- To enable recreation, healthy activity and learning on the estate.
- To engage local communities and interest groups in the governance, management and enjoyment of the estate.
- To sustain, protect and improve the cultural heritage of the estate.

#### *Environmental Objectives*

- To maintain and enhance the natural and historic assets comprising the estate.
- To protect, manage and conserve the wildlife, associated habitats and ecosystems on the estate at a local and landscape scale.

\*These public forests, woodland and other land assets are defined as those held freehold or leasehold by the PFE Management Organisation and are generally known as the "Public Forest Estate". For brevity, they are referred to elsewhere in this document as "the estate".