



September 2013

Forest of Dean campaign group
response to the **Forestry
Commission** Woodland Policy
Enabling Programme, *Towards
a new Public Forest Estate
management body*

BACKGROUND

Forests represent wilderness spaces within the UK that are an important part of the intrinsic geography of Britain. The people living in the Forest of Dean district have a particularly close connection to their woodland, enjoying traditions, customs and rights that are ancient as well as unique to this area.

From its onset, on a freezing cold and snowy day in January 2011, when 3,500 residents of the Forest of Dean attended a rally in the heart of our forest at the Speech House, while more than 10,000 local people signed a petition, Hands Off Our Forest (HOOF) has been resolute and unchanging in its demands and focus: for the Forest of Dean to remain in public ownership and publicly managed.

We welcome the assurance in Point 1 of *Towards a new Public Forest Estate management body*, that our forest and others in England will remain in public ownership. However we do have major concerns, not least about the proposed powers to be vested in the new Public Forest Estate management organisation (PFE MO), and in particular, the Board.

We are pleased that Defra has entered into open dialogue with us and other grassroots campaign representatives, that the forestry minister David Heath has been willing to meet with us, and also DEFRA officials. We now hope you will acknowledge and take our views on board, as you state in Point 4: *“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.”*

HOOF broadly welcomed the findings and recommendations of the Independent Panel for Forestry (IPF) in July 2012. We were also pleased to see the Panel’s recommendations endorsed in the Government Forestry and Woodlands Policy Statement of January 2013. But in both cases we expressed caution regarding the detail of the proposed management structure and that the implementation of the new structure be properly resourced from the public purse, rather than by cutting public spending from its rate of approximately 35p per person annually. In particular we were worried as to whether the Guardians would be allowed to truly be “Guardians” with appropriate make up and sufficient powers to genuinely fulfil the interests of all of us, the public.

When HOOF met with the Bishop of Liverpool, the Right Reverend James Jones, the chair of the IPF, to discuss these new proposals in July 2013, he said: *“I would not be content with any proposals about the future of forestry which contradicted the recommendations of the Independent Panel. In particular I would be unhappy if the Government abandoned the proposal to establish a Parliamentary Charter, if it marginalised the proposed Guardians to the point that they became ineffectual, if it failed to establish a distance between the Government and the management and development of the Public Forest Estate. There were all key elements of the Panel’s report and recommendations. The Government would be unwise to provoke a public reaction by failing to follow through on the Panel’s recommendations.”*

EXECUTIVE SUMMARY

Our concerns and opposition to the proposals contained in the latest PFE MO document (*Towards a new Public Forest Estate management body*) principally fall into three categories: governance, safeguarding and finance.

Governance – We strongly oppose the newly proposed role of the Guardians as an advisory body with a non-definitive, non-statutory function as “the conscience of the Public Forest Estate” and to “raise the alarm” if the PFE MO “begins to fail in its duties to maintain the overall integrity of the estate” (Point 8). HOOF supports the proposed governance model recommended by the IPF in its final report, which included the delivery of a Charter “through a group of Guardians, or Trustees, who will be accountable to Parliament. The Guardians will oversee the new public forest management organisation evolved from Forest Enterprise England”. The Government’s July 2013 policy document states “the Guardians would not be a second Board for the organisation and would not be responsible for managing the organisation.” We reject this proposal and call for the Guardians to be charged with the role envisaged by the IPF.

The Guardians must be vested with the control and powers necessary to secure compliance with the Charter without governmental interference. The subverting of their role and position as envisaged by the panel, does not allow the necessary distance from Government.

We also note the Government not only proposes to demote the Guardians’ role from delivering a 10-year Charter and overseeing the PFE MO, but nor has it acknowledged their role, suggested by the Panel, as Trustees of the PFE. Point 17 states: “The organisation would take over ownership of the estate – ownership would be vested in the new body rather than its Board.” As the Board is the controlling mind of the body, HOOF recognises that this does not detract in any way from the Board’s power to deal with the estate and assets. Point 1 reiterates the promise made by Government in its January 2013 statement “that a new body will be created to hold the Estate in trust for the nation”. It is commonplace in English law that land is held by trustees on behalf of others. If the land is not vested in Trustees, but rather in a “body corporate” (Point 13) controlled by a Board of Non-Executive and Executive directors, this compromises the corporation’s public accountability and thus contradicts the notion of the PFE MO holding the PFE “in trust for the nation”.

HOOF calls for the PFE MO to be held by Trustees rather than the body corporate, and for Government to follow the IPF recommendation: that Guardians (to include a range of stakeholders, including forests communities representatives) be Trustees, charged with the delivery of a 10-year Charter with a public benefit mission, having statutory powers to oversee the development of, operation and Board of the PFE MO, and that the Guardians are answerable to Parliament.

Safeguarding - In the Government Policy Statement of January 2013, the Secretary of State Owen Paterson stated the PFE MO would have “the right safeguards in place to operate for the long-term benefit of people, nature and the economy”, which echoed the IPF recommendation that the PFE MO’s main purposes will be “to sustain and maximise the public value of the estate, in terms of wildlife, access, recreation, education and cultural heritage”. The triple-bottom-line of people,

nature and the economy must not be compromised by commercial freedoms taking precedence over people and nature.

HOOF expects the Forest of Dean's unique cultural heritage to be recognised and upheld, in line with legislation including: The Dean Forest (Timber) Act 1808, Dean Forest Commission Act 1831, Dean Forest Mines Act 1838, Wild Creatures and Forest Laws Act 1971, Forestry Act 1981. It is HOOF's strong view that these Acts should remain in force when new legislation is drawn up to create the PFE MO.

We expect the continuation of the rights by privilege of ancient custom as described by Lord McNair in the House of Lords in 1981: "The rights of the foresters [the people of the Dean], the rights of access to the woodlands, the rights to graze sheep, the rights of vert and pannage..." and a continuation of the current situation where the local Forestry Commission management actively works alongside the Foresters to ensure these customs continue and are properly managed.

HOOF wants proper consultation on both the legislation and charter, and we insist that both charter and legislation can be considered in tandem, rather than being able to view the proposed draft enabling legislation initially but not the charter it will enable. We must be able to make an informed decision on the legislation.

The Guardians must be in a position to *decide* on all potential disposals and acquisitions, and not only be in a position to *advise* on "substantial" disposals and acquisitions, especially as "substantial" is not defined. There must be a process whereby pro-active community consultation is carried out regarding every change of land use, as well as land acquisition and disposal, and annual forest plans.

There must be strong caveats in any legislation relating to commercial activities, to ensure they do not have a negative impact on the public and environmental benefits.

HOOF calls for a strong requirement for any sales, acquisitions or change of use of land to be a means of enhancing the PFE overall in terms of public and environmental benefit, and to ensure none are to their detriment. The Charter must be available for full consultation before or at the same time as the draft of primary legislation. The Charter should be required by legislation, approved by Parliament (and any subsequent changes), and that any deviation from the Charter by the PFE MO should be regarded as deviation from statutory duties, and that any deviation from the Charter or primary legislation is the only grounds on which the Secretary of State can intervene in the running of the PFE. Ministers must also be bound to ensure they comply with the Charter's statutory safeguards and duties. The Guardians, vested with statutory powers to deliver the Charter, must include representatives from forest communities. The Board of Guardians should be Trustees, with the land held for the nation in trust through them, and they should control strategy over a staff-only Executive Board.

Finance – It is crucial that the Treasury commits to £22 million in funding annually for all the public forests in England for the long-term benefit of people and nature. As acknowledged in the IPF report this produces £400 million per year in natural capital, a 20 to 1 return on investment. It must be recognised that permitting inappropriate commercial activity is not an economic benefit. Any income-generating activity that the PFE undertakes must in no way impact negatively on the people and the nature benefits, and that should be embedded in legislation.

The Government must clearly commit to always fund public benefits regarding access and recreation (including car parks, picnic areas, walking trails), and biodiversity measures, as well as the role currently fulfilled by Forest Research.

There must also be a commitment that revenue from the PFE MO will not be offset against the £22 million of funding required, as acknowledged by the IPF.

HOOF calls for Government to guarantee adequate funding of at least £22 million per annum from the taxpayer to ensure public and environmental benefits are maintained, that the Charter and/or primary legislation ensures no sales are made in order to balance the books, and no inappropriate development, change of land use or commercial venture which conflicts with public or environmental benefits be permitted.

POINTS OF CONCERN

Our chief concerns are as follows:

1. Revenue generation and self-sufficiency are given priority over “generating positive impacts for people and nature” (**Point 6**), contradicting the triple-bottom-line acknowledged by the government of people-nature-economy. The amount of finance required to safeguard our woods for people and nature is minimal – one thing our campaign did show is that people believed paying a current subsidy of 35p each per annum was very good value for money. We remain concerned at how revenue is to be generated to ensure self-sufficiency without a national subsidy. The objective of the PFE MO should be “maximising the social, environmental and economic value [£400 million in natural capital] of the assets under its care” (**Point 5**). Commercial freedom and revenue generation should be regarded as operating issues and not the first part of the PFE MO’s remit.
2. **Point 7** quotes the January 2013 Policy Statement when it was proposed that the new PFE MO will “be accountable to Parliament through the Secretary of State for Environment, Food and Rural Affairs”. This fails to distance the PFE from Government, as was recommended by the IPF, with support from HOOF. We want a PFE that is not ultimately controlled or directed, politically driven by successive ministers.
3. The Guardians as envisaged by the IPF would have a much stronger role to play as overseers of forest management than the latest Government proposal. It waters down the role of the Guardians (**Point 8**) to that of little more than a toothless watchdog, only able to raise concerns about major sales and other proposals, with no clear definition of the extent of their powers, if any, or how they can hold the Board of management to account. HOOF believes the “alarm must be raised” by Guardians if any provision in the Charter is breached and where any forest or woodland is put at risk or harmed by any act, neglect or proposal – rather than to merely “maintain the overall integrity of the estate”, a too broad and vague phrase to be quantified.

We are gravely concerned that rather than sitting alongside the PFE MO Board of executive and non-executive directors (appointed by the Government, presumably based upon DEFRA senior officials' recommendations) and management, the Government proposes they will be outside of the management structure. This is strongly opposed by HOOF and deviates from the IPF recommendations. The Guardians must either be as the IPF envisaged, overseers within the management body who the Board must answer to, or have majority representation on the PFE MO Board. We interpret what is currently intended as a complete volte face of the Secretary of State's January 2013 Parliamentary Statement that there will be "a group of expert Guardians, including community representation, established to advise the new body and hold it to account". HOOF's preference is for a single Board of Guardians, owning the land as Trustees, controlling strategy over a staff-only Executive Board, with Guardians reporting to Parliament.

4. HOOF would ask that any legislative Bill (**Point 9**) be published and properly consulted on before its first reading in Parliament, and that the draft Charter (**Point 15**) is consulted on and can be viewed in tandem with the draft primary legislation. In such a Bill, we seek that special safeguards and exemptions be provided for the Forest of Dean with weightings at least akin to those set out in the presently active forestry Acts and related legislation.

The minimum requirements HOOF would look for in the Charter are:

- The PFE owned and held in trust for the nation inalienably.
- That the Charter be due for renewal in 25 years, or more – the IPF acknowledged that "investment and management of forests requires a very long term view".
- Guardians, charged with delivering the Charter, must include representatives of the public interest (grassroots representation), and also contain a diversity of backgrounds, and a clear mechanism for bringing them to account should any be in breach of trust.
- A definitive obligation to protect and foster woodland culture and heritage.
- Clear criteria for buying and selling of woodland, such as to improve forest management, to enlarge the overall PFE, to enhance the PFE's economic viability (within overall stated objectives), to enhance biodiversity and create green corridors, to protect ancient woodland, and avoiding any disposal of forest open spaces (or forest waste).
- The overriding criteria of the Charter should be to ensure that no forest or woodland under active management for timber production, biodiversity and/or public recreation or amenity shall be disposed of, sold, leased, exchanged or otherwise alienated from the PFE.
- The Charter should include a commitment to increasing woodland coverage across the country.

5. It must be clearly stated and reiterated in legislation regarding any new ownership arrangements (**Point 17**) that the organisation is holding the PFE in trust for the nation and therefore must be fully accountable to the public. HOOF prefers the IPF vision of a Charter Trust rather than Public Corporation (**Point 12**) status for the PFE MO. HOOF strongly resists attempts at privatisation, and recognises that Public Corporations are historically and currently more amenable to privatisation – for example, British Gas, British Rail and most recently the Royal Mail.

6. HOOF asks that ALL land acquisitions and disposals, as well as change of land use proposals, be fully consulted on **(Point 19)**, and the word “significant” be dropped as parameters and variables which justify the adjective cannot be adequately defined. The Guardians should play a leading role in deciding on ANY proposed acquisitions and disposals. The “integrity of the estate” is wide open to interpretation, and to us amounts to nothing more than a throwaway line. The vague definition of the “integrity of the estate” **(Point 17)** should be expanded beyond “size of land holding, its economic value, environmental condition and social use” to include landscape value and cultural heritage, particularly relevant for the Forest of Dean with its unique customary privileges and rights such as commoning and freemining.

The overall duty to maintain the integrity of the estate should relate both to the estate as a whole and to the individual forests and woodlands comprising the estate. Any proposal to buy and sell land within the Forest of Dean and its associated woodlands must have regard to the contribution made by the land in question to the forest in general and to the particular locality in which it is situated. These considerations must apply equally to hedgerows, forest waste, grasslands and associated bog areas as well as the forest and woodlands, and no distinction should be made as between afforested land, land used for purposes of forestry and land not afforested or so used.

There should be a presumption against the disposal of any land within such ‘heritage’ forests as the Forest of Dean and New Forest. In the context of the Forest of Dean, HOOF opposes any reductions in the estate and any sale of land within it and the surrounding woodlands. Any sales must be made only to enhance the entire PFE, and not to balance the books or generate revenue.

7. HOOF is highly wary of proposed “commercial freedoms” **(Point 20)** and would analyse each on a case-by-case basis rather than allow the floodgates to be opened for exploitation, particularly non-forestry operations. As has been reiterated a number of times by HOOF and other forests campaigns, the PFE requires very little funding without reliance on commercial operations. This also applies to the expectation of increasing “over time the proportion of its income raised through trading and other commercial activities” **(Point 26)**.
8. Forest Enterprise England (FEE) currently has a regional structure based on six large geographical areas **(Point 24)**. HOOF considers these geographical areas to be too large to enable the PFE MO (and the current FC/ FEE) to adequately carry out its functions and duties, including the vital fight against tree disease and local and specific management of amenities.
9. HOOF is opposed to returning dividends to the Government on trading income **(Point 28)** and calls for any profits made to be reinvested to enhance the PFE. To us, such “dividends” amount to yet another form of taxation by stealth. Instead, HOOF is firmly of the view that if trading income shows a profit it should be ploughed back into the PFE for the direct benefit and enjoyment of everyone, and should not be returned to the Treasury as dividend. While provisions within the Treasury’s *Consolidated Budgeting Guidance 2013-14* (sections

11.16 and 11.17) require a rate of return to be generated they do not prohibit profits to be applied to the development and improvement of the PFE. HOOF calls on the Government to follow the IPF's recommendation that "Government should continue to frame and evaluate its policies in ecosystem terms, taking account of their impact on social and natural capital, alongside traditional economic costs and benefits".

10. We will be paying close attention to the legislation regarding the relationship between Defra and the new organisation and strongly object to the threat of withdrawal of Government funding if unspecified "commissioned outcomes" are not met (**Point 31**). HOOF calls for the Government to guarantee an adequate level of funding for public, environmental and economic benefit.
11. HOOF is concerned at the proposed appointments process for the Board's non-executive members, as all are to be appointed by Defra ministers (**Point 35**), and be given virtually all the power over the PFE. The apparent intended lack of public involvement runs wholly counter to the HOOF campaign.
12. HOOF has already expressed its opposition to the watered-down role of the Guardians as an advisory body (**Point 39**), and says they must either be a standalone safeguard body, contrary to **Point 40**, or work alongside the PFE MO Board within the management team, with involvement in the Board. The Guardians also need to meet separately more than twice a year (**Point 42**) to carry out even minimal advisory duties.
13. The Guardians MUST have adequate representation from forest communities as well as industry and other stakeholders (**Point 43**).
14. Current funding cuts have put the FC in danger of being unable to fulfil its basic roles in maintaining the PFE. Forest users all over the country have noticed the lack of resources in day to day matters. There can be no loss of any further forestry staff. All FC staff, with their considerable expertise, should be given the opportunity to transfer to the new organisation (**Point 44**) to ensure its effectiveness, with no loss of job status, pay, pension rights, working hours and conditions, or change of work base. Funding must be provided to ensure the FC adequately evolves into a new PFE MO.
15. The new PFE MO's mission (**Annex A**) must not only be to "protect and improve" the PFE but also enlarge it.