

Environment and Sustainability Committee

Meeting Venue:
Committee Room 3 – Senedd

Meeting date:
Wednesday, 24 June 2015

Meeting time:
09.00

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

Alun Davidson
Committee Clerk
0300 200 6565
SeneddEnv@Assembly.Wales

Agenda

1 Introductions, apologies and substitutions

2 Environment (Wales) Bill – Stage 1: Evidence session 1 (09:00 – 11:00) (Pages 1 – 45)

Carl Sargeant AM, Minister for Natural Resources, Member in charge
Rhodri Asby, Head of Climate Change & Natural Resource Policy
Andy Fraser, Head of Natural Resource Management Programme
Jasper Roberts, Deputy Director – Waste & Resource Efficiency Division
Helena Bird, Head of Local Environment Quality and Grants Management
Prys Davies, Deputy Director: Energy, Water and Flood Division
Graham Rees, Deputy Director, Marine and Fisheries
John Guess, Senior Lawyer

[Environment \(Wales\) Bill](#)

[Explanatory Memorandum](#)

E&S(4)-19-15 Paper 1

Break (11:00 – 11:10)

3 Environment (Wales) Bill – Stage 1: Evidence session 2 (11:10 – 12:00)

(Pages 46 – 76)

Natural Resources Wales

Emyr Roberts, Chief Executive

Ceri Davies, Executive Director for Knowledge, Strategy and Planning

Sarah Williams, Principal Advisor – Natural Resources & Ecosystems Programme

E&S(4)-19-15 Paper 2

4 Environment (Wales) Bill – Stage 1: Evidence session 3 (Pages 77 – 87)

UK Environmental Law Association

Professor Robert Lee, Joint Convenor, UKELA Wales Working Party

Dr Haydn Davies, Joint Convenor, UKELA Wales Working Party

Dr Victoria Jenkins, Member, UKELA Wales Working Party

E&S(4)-19-15 Paper 3

5 Papers to note

Environment (Wales) Bill: Consultation Responses

Reply to the Chair from the Minister for Natural Resources regarding the appointments process for the Chair of Natural Resources Wales (Page 88)

E&S(4)-19-15 Paper 4

Letter from the Minister for Natural Resources to the Chair of the Constitutional and Legislative Affairs Committee regarding the Environment (Wales) Bill (Pages 89 – 93)

E&S(4)-19-15 Paper 5

Letter to the Chair from Gary Ashton, Director of BASC regarding the Agreement on International Humane Trapping Standards (AIHTS) (Page 94)

E&S(4)-19-15 Paper 6

Agenda Item 2

Document is Restricted

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref LF CS 0594 15

Alun Ffred Jones AM
Chair of the Environment and Sustainability Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

17th June 2015

Dear Alun,

In my letter of 14 May 2015, I indicated that as well as delivering against a number of Programme for Government commitments and wider Government priorities, the introduction of the Environment (Wales) Bill addressed a number of recommendations made by the Environment and Sustainability Committee, and the former Sustainability Committee, in previous inquiries.

Ahead of my appearance before your Committee on 24 June, I am writing to provide details on how relevant Committee recommendations have informed the development of the provisions in the Bill and how the Bill addresses those recommendations.

In 2010, the Welsh Government consulted on *A Living Wales: a new framework for our environment, countryside and seas*. The *Programme for Government* reflected the outcomes of that consultation with the commitments in relation to natural resource management, climate change and the green growth agenda. In practical terms, the Environment (Wales) Bill translates these strategic commitments into a modern legislative framework for Wales – underpinned by the need to reverse the decline of biodiversity and secure the resilience of ecosystems and the services they provide as a whole by recognising their interdependence with our economy and our communities.

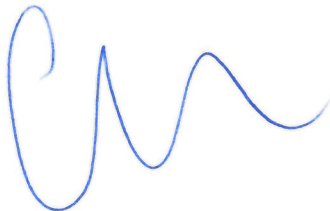
Of the recommendations made by your Committee and the previous Sustainability Committee since January 2011, there are 21 which we assess are specifically addressed by the provisions of the Bill. First and foremost, the Bill directly addresses two key recommendations made by the Sustainability Committee's 2011 Inquiry into Biodiversity: the first in relation to adopting a ecosystems approach to the management of biodiversity, and the second on legislating to place a duty on relevant organisations to support and promote biodiversity.

I also wanted to highlight that the Bill addresses a number of recommendations made by your Committee in its consideration of both the Well-being of Future Generations (Wales) and Planning (Wales) Bills at Stage 1. Details on all the relevant Committee recommendations addressed by the Bill are provided at Annex 1.

I also wanted to take this opportunity to provide your committee with information on the timings of when, subject to the will of the Assembly, I would anticipate the provisions of the Bill coming into force, and when the powers to make subordinate legislation would be exercised by the Welsh Ministers. A 'forward look' of relevant dates is set out at Annex 2.

I hope that you find this helpful and I thank you the contribution the Committee has made to the development of the Bill to date. I look forward to attending your Committee to discuss the Bill in greater detail on 24 June.

Yours sincerely



Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources

Annex 1

Committee recommendations and the Environment (Wales) Bill

1. This annex sets out how the Environment (Wales) Bill delivers against recommendations of the Environment and Sustainability Committee, or where a recommendation has had a direct influence over the underlying policy of the Bill.
2. This annex refers to the report of the Sustainability Committee of the Third Assembly on the Inquiry into Biodiversity, January 2011 (recommendations 6 and 18).
3. It also refers to the following reports or inquiries of the Environment and Sustainability Committee:
 - a. The Business Case for a Single Environment Body, May 2012 (recommendation 4);
 - b. Energy Policy and Planning in Wales, June 2012 (recommendations 4, 5, 27, and 41);
 - c. Coastal protection in Wales, October 2012 (recommendations 2 and 6);
 - d. Invasive Non Native Species, January 2014 (recommendations 1 and 2);
 - e. Sustainable Land Management, May 2014 (recommendation 1);
 - f. Stage 1 Report on the Well-being of Future Generations (Wales) Bill, November 2014 (recommendations 2, 4, 6, 9, 12, 13, and 17);
 - g. Stage 1 Report on the Planning (Wales) Bill, January 2015 (recommendations 10 and 11).
4. The specific recommendations are set out below.

Report of the Sustainability Committee of the Third Assembly on the Inquiry into Biodiversity, January 2011

Number	Recommendation Description	How the Environment (Wales) Bill delivers
6	The Welsh Government should adopt a strategic ecosystems approach to the management of biodiversity in the wider countryside through the Natural Environment Framework. This ecosystems approach should be central to the Government's efforts to achieve the 2020 targets, and its effectiveness should be reviewed in 2015.	<p>The ecosystem approach is a central component of Part 1 of the Bill introduced in the principles of sustainable management and delivered via the state of natural resources report (SoNaRR), the national natural resources policy (NNRP) and also via area statements.</p> <p>The introduction of the sustainable management of natural resources (at section 3) and the supporting principles</p>

(section 4) will contribute to the delivery of the Aichi Biodiversity 2020 targets by addressing the key pressures and drivers that affect biodiversity.

18 The Welsh Government should legislate, in the first legislative programme of the Fourth Assembly, to place a duty to support and promote biodiversity on relevant organisations, building on the duty to have regard to biodiversity established by Natural Environment and Rural Communities Act. Depending on the outcome of the referendum it should do this either using Part 4 of the Government of Wales Act 2006, or by gaining legislative competence through a Legislative Competence Order.

The introduction of a new enhanced biodiversity duty on all public authorities with functions in relation to Wales. The new duty requires that in the proper exercise of their functions, they must seek to maintain and enhance biodiversity.

The Business Case for a Single Environment Body May, 2012

Number	Recommendation Description	How the Environment (Wales) Bill delivers
4	That the Welsh Government ensures that the pathway to creating a new and coherent organisational culture from the merger of three organisations with different cultures is clearly set out and the practical outcomes for stakeholders of this significant institutional change are clearly articulated.	Part 1, section 5 clearly defines a new general purpose for Natural Resources Wales (NRW) in seeking to achieve the objectives of sustainable management as set out in section 3 of the Bill and in doing so apply the principles of sustainable management which are set out in section 4.

Energy Policy and Planning in Wales, June 2012

Number	Recommendation Description	How the Environment (Wales) Bill delivers
4	The Welsh Government should develop a Natural Resource Plan for Wales by the end of 2013. This would sit alongside the Wales Infrastructure Investment Plan, be integrated with the Marine Spatial Plan and be used as a basis for the future planning of energy projects in Wales. The framework should be evidence-based and tested for “soundness” through an independent examination before it is adopted.	The NNRP must take into consideration the evidence from the SoNaRR. The NNRP will sit alongside the National Development Framework. The Marine Spatial Plan would be referred to in the NNRP.
5	That the role and function of the Wales Spatial Plan should be reviewed. This needs to be taken forward alongside work on the natural resource planning.	The review of the national natural resources policy is timed to coincide with the timings of key documents required under the Well-being of Future Generations (Wales) Act 2015. The role and function of the Wales Spatial Plan was revised and became the

		National Development Framework under the Planning (Wales) Bill, which was developed in concert.
19	To complement <i>Energy Wales: A Low Carbon Transition</i> and the associated energy programme the Welsh Government should produce a detailed Action Plan by the end of 2012 with details of specific actions that are required by the Welsh Government and others to meet the targets for each form of renewable energy.	Part 2 of the Bill requires the Welsh Ministers to set five yearly carbon budgets. For each carbon budget the Welsh Ministers must prepare a report, which sets out their proposals and policies on how the budgets they have set will be met. The report must include proposals and policies by reference to the areas of responsibilities of each of the Welsh Ministers.
41	The Welsh Government should clarify how the proposed Natural Resource Plan is to be integrated with any changes made to the development plan system and how this new plan relates to the Wales Spatial Plan.	At the national scale, the National Development Framework contained within the Planning (Wales) Bill will need to have regard to the commitments set out in the NNRP. At the local level, the Well-being Plan - which will reflect evidence contained within Area Statements – will be a material consideration for planning consent.

Coastal protection in Wales, October 2012

Number	Recommendation Description	How the Environment (Wales) Bill delivers
2	The Welsh Government to provide assurances that the final approved second generation of Shoreline Management Plans for Wales clearly reflect and link to the policy objectives of the National Strategy, and there are clear links between the Strategy and other natural resource management policies.	<p>To ensure a consistent approach to the sustainable management of natural resources all plans and strategies should be in line with the NNRP, which outlines the priorities and opportunities for the sustainable management of our natural resources.</p> <p>These priorities and opportunities are delivered via area statements produced by NRW, which consider environmental, economic, and social issues and opportunities for an area. NRW also have the power to determine whether the area statement should be a part of another plan such as a shoreline management plan (SMP). The Welsh Ministers will be able to direct public bodies involved in an SMP to ensure that the SMP is consistent with an area statement and therefore in line with the NNRP.</p>

6 The Welsh Government to ensure that its strategic approach to coastal protection includes putting delivery mechanisms in place that support partnership working and a “Team Wales” approach. If the Natural Resources Body takes on the coastal protection function, a key responsibility of the body must be to ensure coordination of expertise and sharing of best practice across Wales.

The new general purpose of NRW in section 5 refers to the principles of sustainable management of natural resources in section 4, which include promoting and engaging in collaboration and co-operation and taking account of all relevant evidence.

Invasive Non Native Species, January 2014

Number	Recommendation Description	How the Environment (Wales) Bill delivers
1	That the Welsh Government designates Natural Resources Wales as the lead organisation for the co-ordination of data collection and action to address Invasive Non Native Species in Wales, maintaining a link with the GB Non-Native Species Secretariat. This should be done as soon as possible, and no later than the end of March 2014.	NRW’s duty to create SoNaRR, and the power to request data from public bodies, means co-ordinating and collecting data on the state of natural resources and ecosystems, and possible pressures. This would include invasive non-native species.
2	That the Welsh Government sets out how it will monitor Natural Resources Wales’ performance in tackling Invasive Non Native Species in Wales. This should be done at the same time as the designation of Natural Resources Wales as the lead organisation.	In reviewing the NNRP, the Welsh Ministers will take into consideration the findings of the latest SoNaRR. If the latest SoNaRR indicates modifications are needed, the NNRP can be amended. Area statements facilitate the implementation of the NNRP and so will reflect such modifications.

Sustainable Land Management, May 2014

Number	Recommendation Description	How the Environment (Wales) Bill delivers
1	<p>We recommend that the Welsh Government refines its definition of “sustainable management” to take account of four key principles. This should be done before the introduction of the Environment (Wales) Bill, and preferably feature in the draft Bill the Minister for Natural and Resources and Food has committed to providing by the end of 2014. The key principles are:</p> <ul style="list-style-type: none"> – That any definition of sustainable land management should be based upon the Welsh Government’s definition of sustainable development and recognise the interdependence of the environmental, social and economic needs of Wales both now and in the future. 	<p>The definition of sustainable management of natural resources and the supporting principles reflect the components recommended for the definition of sustainable land management.</p> <p>The definitions used in the Bill contain the long-term components of the definition of sustainable development through reference to the needs of future generations and the requirement to consider the short, medium, and long-term consequences on ecosystems.</p> <p>The definition of sustainable management</p>

- That any definition should recognise the need for sustainable land management in Wales to protect and enhance ecosystem services and biodiversity and the public benefits they provide to Welsh society.
- That any definition should recognise the importance of ensuring that land-based business in Wales, including agricultural and forestry businesses, are profitable and can continue to support vibrant rural communities.
- That sustainable land management should seek to protect Wales's most important and cherished landscapes.

of natural resources is to ensure that the use and management of land is undertaken in such a way as to ensure that the resilience of ecosystems and the services they provide are maintained and enhanced for both current and future generations. The supporting principles further identify the need to consider the multiple benefits (services) that we receive from our ecosystems and to ensure that these multiple benefits are considered in decision-making.

Stage 1 Report on the Well-being of Future Generations (Wales) Bill, November 2014

Number	Recommendation Description	How the Environment (Wales) Bill delivers
2	That the Welsh Government takes steps to ensure that the impact of this legislation is understood and addressed across all of the policy areas the Bill encompasses.	The impact of the Well-being of Future Generations (Wales) Act 2015 is reflected in the Environment (Wales) Bill in the provisions relating to the sustainable management of natural resources and its principles; the duty on public bodies to provide information further to implementing the NNRP; and the setting of interim emissions targets and carbon budgets.
4	That the Welsh Government amend the principles set out in section 8(2) to ensure that public bodies are clear that citizen engagement and co-production should be a key element of the approach to applying the sustainable development principle and objective setting.	The principles of sustainable management of natural resources includes the promotion of and engagement in collaboration and co-operation. Public bodies will need to take these into account.
6	That the Welsh Government prepare a detailed document prior to Stage 2 of this Bill clearly setting out the relationship between this Bill, the Planning (Wales) Bill and the proposed Environment (Wales) Bill including: <ul style="list-style-type: none"> – an integrated timetable of planning and reporting duties contained in each of the Bills; – a diagram setting out clearly how the proposed plans contained in each of the Bills relate to each other; 	Correspondence to your Committee in relation to both the Well-being of Future Generations (Wales) and Planning (Wales) Bills during the respective scrutiny process addressed these specific points. Provisions in this Bill have been carefully designed to complement and support delivery of requirements imposed by the Well-being of Future Generations (Wales) and Planning (Wales) Bills, including how a cost-effective approach to integrated to

<p>– the roles of the bodies required to be involved in the development of the plans under each of the Bills.</p>	<p>delivery can be best achieved.</p>
<p>9 That the Welsh Government amends the sustainable development principle to reflect the broader issues included in both the <i>One Wales: One Planet</i> and Brundtland definitions of sustainable development, particularly climate change, using only our fair share of the earth’s resources, environmental limits and the international impact of what we do in Wales.</p>	<p>The Bill expands the meanings, within the framework of a resilient and globally-responsible Wales, of what organisations must seek to achieve on climate change and conservation.</p>
<p>12 That Welsh Government guidance to public bodies sets out how they will be expected to fulfil their obligations under the Bill when engaging other organisations to deliver services on their behalf and make this clear in the document published in response to recommendation 5.</p>	<p>Within the framework set by the Well-being of Future Generations (Wales) Act 2015, this Bill sets out the detail of how the organisations which are subject to it are to fulfil their obligation under the Act to contribute to the environmental well-being of current and future generations.</p>
<p>13 That the Welsh Government clarifies and strengthens the wording of the goals and their descriptors to reflect the many comments made by stakeholders and the findings of the National Conversation interim report. In particular, we believe that the goals should specifically address key issues such as environmental limits, restoration of biodiversity, international impacts and social justice, and that the language used in the goals should be clear and unambiguous.</p>	<p>Building on the requirement for organisations to contribute to the well-being goals (which include healthy, functioning ecosystems, and recognising the limits of the global environment) the Bill places a duty on public authorities to seek to maintain and enhance biodiversity.</p> <p>The Bill, via the current definition of sustainable management of natural resources and the supporting principles, applies an ecosystem approach, which addresses the issue of ‘ecosystem thresholds’ by reflecting that the impacts of human activities are integral to ecosystem interactions and vice-versa, and that the processes underlying ecosystem services are inherently complex and dynamic.</p>
<p>17 That the Welsh Government sets out clearly and concisely exactly what public bodies should achieve as a result of embedding the well-being goals into their decision making processes. We believe that the Minister should set clear, specific outcomes below the level of goals against which public bodies and the Commissioner can assess progress at public body level.</p>	<p>The Bill specifically supports the framework established through the Well-being of Future Generations (Wales) Act 2015 by making provision for strategic and local evidence on the sustainable management of Wales’ natural resources to inform public service delivery planning and decision-making.</p>

Stage 1 Report on the Planning (Wales) Bill, January 2015

Number	Recommendation Description	How the Environment (Wales) Bill delivers
10	That the Welsh Government clearly explains how the proposed national Natural Resources Policy and area-based Natural Resource plans will interface with the planning regime before the introduction of the Environment (Wales) Bill.	Correspondence to your Committee in relation to both the Well-being of Future Generations (Wales) and Planning (Wales) Bill during the respective scrutiny process addressed this specific points and included detail on how the NNRP and Area Statements would interface with wider legislative reforms.
11	That the Minister brings forward amendments to the Bill to ensure that marine and terrestrial planning is closely aligned and that plan-makers (including Welsh Ministers) are required to have due regard for the interrelationship between these two environments.	<p>The Welsh Ministers are responsible for both the NNRP and the Wales National Marine Plan, so there will be consistency between the two statutory documents.</p> <p>The area statements from NRW must consider all relevant evidence, including a Wales National Marine Plan. Public bodies must assist in the implementation of an area statement.</p>

Annex 2

Forward look: Anticipated commencement and subordinate legislation dates

1. This Annex sets out the dates by which it is expected that the provisions of the Bill will be commenced, and dates by which it is anticipated that powers conferred on the Welsh Ministers to make subordinate legislation would be exercised. It may be most helpful to read it alongside the Statement of Policy Intent.

Date	Milestone	Notes
March 2016	-- Anticipated date of Royal Assent, subject to the will of the Assembly --	
May 2016	Commencements two months after Royal Assent.	Part 1 (sustainable management of natural resources); Part 2 (climate change); Part 5 (fisheries for shellfish); Section 83 (repeal of publication requirements); Section 84 (appeals against special drainage levies); Section 85 (power of entry); section 86 (byelaws).
May 2016	-- Elections to the National Assembly for Wales --	
Q3 2016	The Welsh Ministers abolish the Regional Flood and Coastal Committee and establish Flood and Coastal Erosion Committee.	Under section 82 of the Bill and sections 26B, 26C, and 26D of the Flood and Coastal Management Act 2010, as inserted by section 82 of the Bill.
September 2016	NRW publish first SoNaRR.	Under section 8 of the Bill.
December 2016	Indicative date by which the Welsh Ministers make regulations on fees for monitoring, variation etc. of marine licenses.	Under section 72A of the Marine and Coastal Access Act 2009, as inserted by section 78 of the Bill.
December 2016	Indicative date by which the Welsh Ministers make regulations on further provisions for the payment of fees for marine licenses.	Under section 107A of the Marine and Coastal Access Act 2009, as inserted by section 79 of the Bill.
December 2016	Indicative date by which the Welsh Ministers make regulations on appeals against variation etc. of marine licenses for non-payment of fees or deposits.	Under section 108(2A) of the Marine and Coastal Access Act 2009, as inserted by section 80 of the Bill.
January 2017	Earliest time that the Welsh Ministers would consider making regulations for the separate collection of waste.	Under section 45AA of the Environmental Protection Act 1990, as inserted by section 66 of the Bill.
January 2017	Earliest time that the Welsh Ministers would consider making regulations prohibiting disposal of food waste to sewer.	Under section 34D of the Environmental Protection Act 1990, as inserted by section 67 of the Bill.

January 2017	Earliest time that the Welsh Ministers would consider making regulations prohibiting or regulating disposal of waste by incineration.	Under section 9A of the Waste (Wales) Measure 2010, inserted by section 68 of the Bill.
March 2017	The Welsh Ministers publish NNRP.	Under section 9 of the Bill.
May 2017	Indicative date for publication by the Welsh Ministers of guidance about implementing area statements.	Under section 13 of the Bill. It is intended that the guidance would be provided as soon as possible after the Bill receives Royal Assent.
May 2017	Regulations to define the meaning of carbon units.	Under section 36 of the Bill. It is intended that these regulations would be made as soon as reasonably practicable after receiving Royal Assent, having received advice from the advisory body.
December 2018	Time by which the Welsh Ministers must publish the carbon budgets for the net Welsh emissions account for the period 2016-2020 and 2020-2025.	Under section 31 of the Bill.
January 2020	Time by which the Welsh Ministers must publish the carbon budget for the net Welsh emissions account for the period 2025-2030.	Under section 31 of the Bill.
December 2020	NRW publish second SoNaRR.	Under section 8 of the Bill.
May 2021	-- Elections to the National Assembly for Wales --	
June 2021	The Welsh Ministers begin first review of NNRP.	Under section 9 of the Bill.
January 2025	Time by which the Welsh Ministers must publish the carbon budget for the net Welsh emissions account for the period 2030-2035.	Under section 31 of the Bill.
January 2030	Time by which the Welsh Ministers must publish the carbon budget for the net Welsh emissions account for the period 2035-2040.	Under section 31 of the Bill.
January 2035	Time by which the Welsh Ministers must publish the carbon budget for the net Welsh emissions account for the period 2040-2045.	Under section 31 of the Bill.

January 2040	Time by which the Welsh Ministers must publish the carbon budget for the net Welsh emissions account for the period 2045-2050.	Under section 31 of the Bill.
---------------------	--	-------------------------------

Agenda Item 3

Document is Restricted

National Assembly for Wales
Environment and Sustainability Committee
EB 41
Environment (Wales) Bill
Response from Natural Resources Wales



Cyfoeth Naturiol Cymru / Natural Resources Wales

Written evidence to Environment and Sustainability committee – General principles of the Environment (Wales) Bill.

June 2015

SUMMARY

The creation of Natural Resources Wales (NRW) was the first step towards the integrated management of Wales' natural resources. We are developing Natural Resource Management (NRM) as the core approach to the delivery of all our responsibilities. Nevertheless, not all our functional legislation facilitates this way of working. We welcome the introduction of the Environment Bill as it represents the key second step on the journey towards integrated and sustainable management of natural resources. This Bill, along with the Wellbeing of Future Generations Act and the Planning Bill, places sustainable development at the heart of strategic decision making across Wales not just in NRW but across the wider public, private and third sector. **Everyone** will need to grasp the new ways of working set out in the Environment Bill if we are to find innovative solutions to the biggest challenges facing the natural resources of Wales.

The need for the legislation:

1. Our air, land, water, wildlife, plants and soil – our 'natural resources' – provide us with our basic needs, including food, energy, health and enjoyment. When cared for in the right way, they can help us to reduce flooding, improve air quality and supply material for construction. They also provide a home for some rare and beautiful wildlife and iconic landscapes, which improve our wellbeing and boost the economy via tourism.
2. But these natural resources are coming under increasing pressure – from climate change, from a growing population and from the need for energy production, amongst others.
3. Decades of work to understand, protect and improve our environment have taken us a long way.
4. Yet despite this, the continuing decline in biodiversity and the threats to the ability of our natural resources to continue to deliver benefits to society, poses a significant risk to the well-being of Wales. The evidence we present in our report *Snapshot of the State of Wales' Natural Resources* (Annex 1), underlines the **need for a step-change in the approach to natural resource management by all parts of the public, private and third sector in Wales.**
5. Much of the environmental legislation governing the work of NRW is functional and does not facilitate more integrated and flexible approaches to the management of our natural resources.

6. Part One of the Environment Bill builds on the best Welsh and international evidence base. We believe the provisions will facilitate a **flexible and adaptive** approach to secure the integrated and sustainable management of natural resources in Wales.
7. The definition of sustainable management of natural resources in Section 3 and the principles set out in Section 4 of the Bill are clearly aligned to the Ecosystem Approach principles defined by the UN in the Convention on Biological Diversity. We support the definition and principles.
8. Section 5 of the Bill refines our general purpose to align it to the definition of sustainable natural resource management and the principles. We are happy with the proposed changes, as the new purpose aligns much more closely with our long term vision for our organisation. Nevertheless, we recognise that the **new purpose will not change our underpinning functional legislation** but provides a more helpful framework to develop NRM ways of working.

Implementation

9. The management of our natural resources is a **shared responsibility** not just the concern of NRW.
10. At the moment public bodies and other organisations are focussing on their specific responsibilities or duties under the WFG Act and perceive that the proposals in the Environment Bill relate solely to NRW. Unless this gap in understanding is addressed, it is likely to create major challenges for implementation.
11. Under the WFG Act, the formation of Public Service Boards (PSBs) and inclusion of NRW as a core member provides an important opportunity to join up and integrate approaches to implementation.
12. However PSBs will not necessarily represent the interests of land managers (agriculture and forest/woodland), the business sector or environmental NGOs. Other arrangements may need to be developed to ensure these groups can participate effectively.
13. Area Statements could provide us with an opportunity to streamline the number of other plans that we and others produce.
14. Co-production and collaboration is central to how we propose to develop the State of Natural Resources Report and Area Statements. Annex 2 and 3 set out our propositions of how we want to work with others to produce them.
15. We are concerned that Section 15 of the Bill is too open ended and raises the expectation that NRW will provide information and lead on the implementation of area statements on behalf of other public bodies. Clarification is needed to set limits around the assistance that NRW could be asked to provide.

Financial Implications of the Bill

16. The provisions in the Environment Bill are central to our purpose of delivering an integrated approach to the sustainable management of natural resources in Wales. As the NRW business case demonstrates, efficiency savings will be realised in the longer term for us and our partners.
17. However, in the **short to medium term, implementation of the requirements in the Bill will require us to dedicate significant staff time to get through the initial increase in work.**
18. This investment is essential if we are to realise savings and efficiencies in the longer term. As we develop a better understanding of the likely costs we will discuss funding with Welsh Government.
19. Thereafter, NRM will be embedded across the organisation and will be at the heart of everything we do.

The Environment (Wales) Bill is a once-in-a-generation opportunity. Taking a joined up approach to managing our natural resources will help us to tackle old problems in new ways. To find better solutions to the challenges we face – and create a more successful, healthy and resilient Wales, now and in the future.

1. Introduction

1.1 Many of the proposals in the Bill are central to the role and remit of NRW. Our response is divided into eight sections in line with the Parts of the Bill. We have used the Committee's term of reference to structure our response. We have addressed questions two and three in our sections on 'Proposals' and 'Implementation'. Question four is addressed for each part, in paras 2.4, 3.2, 5.4, 6.2, 7.2 and 8.5 below. We do not think it is our role to address question five. We have provided more detail on the proposals on sustainable natural resource management, waste and flood risk management. The covering note cross references the different sections of this submission with the terms of reference and consultation questions defined by the Environment and Sustainability Committee.

2. Part one – Sustainable management of natural resources

2.1 The need for the legislation

2.1.1 Our air, land, water, wildlife, plants and soil – our 'natural resources' - provide us with our basic needs, including food, energy, health and enjoyment. When cared for in the right way, they can help us to reduce flooding, improve air quality and supply materials for construction. They also provide a home for some rare and beautiful wildlife and iconic landscapes we can enjoy and which boost the economy via tourism.

2.1.2 The scale of the challenges facing our natural resources in Wales is demonstrated in our report, *Snapshot of the State of Wales' Natural Resources* (Annex 1) which sets out the latest evidence from our monitoring of natural resources across Wales. Decades of work to understand, protect and improve our environment have taken us a long way. But these natural resources are coming under increasing pressure – from climate change, from a growing population and from the need for energy production.

2.1.3 In 2010, Wales, alongside other administrations in the UK and Europe, failed to meet international biodiversity targets agreed under the UN Convention on Biological Diversity¹ and triggered a number of government led reviews in Wales², Westminster³ and Brussels⁴⁵. The policy and scientific consensus that emerged underlined the need for a more **integrated** approach to the management of natural resources, focussing much more explicitly on the **benefits** to society of **resilient ecosystems** and the need for flexible, **adaptive management**.

2.1.4 Much of the environmental legislation governing the work of NRW is functional and does not facilitate the integrated, flexible and adaptive approaches to the management of our natural resources identified as so important in the policy and scientific evidence. The proposals in the Environment Bill, along with the WFG Act, Planning Bill, and UK Marine and Coastal Access Act (2009) provide the legislative framework to drive adaptive management of our natural resources in Wales allowing us to look at the whole picture.

2.2 Proposals for Sustainable Management of Natural Resources

¹ 2010 Biodiversity Target: <https://www.cbd.int/2010-target/about.shtml>

² <http://www.assembly.wales/Laid%20Documents/CR-LD8384%20-%20Sustainability%20Committee%20Inquiry%20into%20biodiversity%20in%20Wales-31012011-208859/cr-ld8384-e-English.pdf>

³ <http://uknea.unep-wcmc.org/Resources/tabid/82/Default.aspx>

⁴ EC 2020 Biodiversity Strategy: <http://ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm>

⁵ EC Green infrastructure Strategy: http://ec.europa.eu/environment/nature/ecosystems/index_en.htm

2.2.1 If we are to secure new solutions to old problems we must encourage innovation and creative problem solving by working with others. The Environment Bill along with the WFG Act and Planning Bill facilitates such an approach. We anticipate the need for additional legislation in the future as we gather more evidence and learn from the early implementation of Area Statements.

2.2.2 The definition of sustainable management of natural resources in S3(1) and S3(2) and the principles set out in Section 4 of the Bill are clearly aligned to the principles defined by the UN Convention on Biological Diversity. We support these proposals.

2.2.3 S5(2) of the Bill refines our general purpose to align it to the definition of sustainable natural resource management and the principles. We are happy with the proposed changes, as the purpose aligns much more closely with our long term vision for the organisation:

Proud to be leading the way to a better future for Wales by managing the environment and natural resources sustainably.

Nevertheless, it is important to recognise that the proposed change will not alter our underpinning functional legislation. The revised purpose serves an important role in clearly defining a framework in which we can develop NRM ways of working across the organisation and with other parts of the public, private and third sector in Wales.

2.2.4 We welcome the proposals in Section 6 of the Bill for a revised biodiversity duty for Public Bodies. Strengthening the current biodiversity duty is critically important because it will ensure that the wider public sector integrate the principles of sustainable management of natural resources and the resilience of ecosystems within their decision making processes. The improved accountability resulting from the introduction of tri-annual reporting on compliance with the duty will also address a gap identified in the 2010 Defra review of the biodiversity duty.

2.2.5 On the specific requirements in the Bill for the sustainable management of natural resources, we welcome the proposals in Section 8, 9 and 10 of the Bill which set out a flexible legislative framework to facilitate **adaptive management** of our natural resources:

1. The **State of Natural Resources Report (SoNaRR) will be developed by NRW** and will set out the current evidence base and the potential risks to the ability of natural resources to deliver long-term benefits for the wellbeing of Wales. Developed collaboratively, SoNaRR will help set the scene, will look ahead, and will prompt and be a catalyst for change. Our proposal for developing the first statutory SoNaRR is contained in Annex 2.
2. The **National Natural Resources Policy (NNRP) will be developed by Welsh Government** and will need to set the vision and “plan” for managing the issues and opportunities associated with Wales’ natural resources. We believe this document plays a critical role. It needs to be clear on:
 - a. priorities and outcomes **without** prescribing the activity or means of delivery;
 - b. tackling conflicts at the national level through the integration of policy;
 - c. alignment of funding mechanisms.

In practice, we believe that the NNRP will be critical to driving integration and efficiency, addressing the conflicts and strategic challenges around the use and management of natural resources at national and local levels. If this does not happen there is a risk that Area Statements will get bogged down, trying to resolve issues locally when they really need to be addressed nationally.

3. The **Area Statements developed by NRW** will facilitate local action and delivery of the national priorities using the NRM approach. Developed **collaboratively**, Area Statements will be evidence based – drawing upon evidence at the catchment and landscape scale as well as more local information. It will drive action to the appropriate level of decision making. We will use them as vehicle to engage people, communities and stakeholders in decision making. It will also need to put in place systems to **monitor** activity and report on outcomes. In the last 18 months we have set up three NRM trials to test and develop practical approaches to the implementation of NRM across Wales, to inform future development of Area Statements. Our proposal for taking these forward is contained in Annex 3.
4. The **second SoNaRR** will then capture the evidence obtained from both local delivery (Area Statements) and the overall national picture.

2.2.6 The Area Statements will also help us understand any barriers to adopting a more integrated approach to the management of natural resources. For example, working with a particular group of people in a place may highlight that a specific piece of legislation is driving a way of working that has a negative impact on the environment. Using this evidence, NRW will review if our guidance or interpretation of the law is the cause of the problem. In this situation we would work with stakeholders to revise our guidance, in line with our commitment to adaptive management. If the under-pinning legislation is the source of the problem, then the provisions in S22(1c) and S23(3) of the Bill will allow us to put a case to Welsh Ministers to temporarily suspend the specific piece of legislation. If we secure Ministerial agreement, we expect to continually monitor and review progress and will report to Ministers with recommendations which either support a future case for legislative change or not. These provisions therefore allow for adaptive management and governance.

2.2.7 Co-production is one of the central principles of sustainable management of natural resources as reflected in Section 4c of the Bill. We are committed to working collaboratively with a wide range of stakeholders in order to better identify environmental problems and solutions. This is not always simple or straight forward and we welcome the provisions in Sections 12, 13 and 14 of the Bill to place a clear duty on the wider public sector to work with us to prepare SoNaRR and Area Statements. Although we recognise that we must support other parts of the public sector with the provision of information and evidence, we are concerned that Section 15 is too open ended, and raises the expectation that NRW will provide information and lead delivery of Area Statements for other public bodies.

2.2.8 We welcome Sections 16-21 that set out revised powers for entering into management agreements for the achievement of any of our functions. Our current powers are limited to nature conservation, landscape and recreation interests. We consider this change will complement the set of tools needed to manage natural resources adaptively. Some examples of how these may be applied include:

- Permitting flooding of land in order to complement or even reduce the need for hard flood defences.
- Management agreement with landowners to block up drains to restore peat bogs. Furthermore funding could be derived from water companies if a saving in water treatment costs for sediment removal was identified.
- Management agreement with a private woodland owner to manage their woodlands and sell timber, or to include sales of timber in NRW e-sales auctions i.e. act as a broker for private woodlands and timber purchasers.

These could potentially be considered forms of “payments for ecosystem services”.

2.3 Implementation

2.3.1 We are concerned that public bodies and businesses may not yet fully appreciate the importance of looking at the Environment Bill alongside the WFG Act, Planning Bill, and Marine and Coastal Access Act, and do not understand the linkages and flows of information between the “products” produced under each piece of legislation. At the moment organisations are focussing on their specific responsibilities or duties under the WFG Act and perceive that the proposals in the Environment Bill relate solely to NRW. Unless this gap in understanding is addressed now, it is likely to create major challenges for implementation. Of equal importance is the risk of duplication, missing major opportunities for streamlined and efficient sharing of information and evidence.

2.3.2 Under the WFG Act, the formation of PSBs and inclusion of NRW as a core member, provides an important opportunity to join up and integrate approaches to enable the implementation of provisions in the Environment Bill. We recognise the value of using the PSBs to foster a common understanding of the opportunities and benefits in a particular place. There will be opportunities to share evidence from both SoNaRR and the Area Statements to inform the preparation of needs assessments and well-being plans. However, it is important to recognise that PSBs will not necessarily represent the interests of land managers (agriculture and forest/woodland), the business sector or environmental NGOs. These are potentially significant gaps. It may therefore be necessary to develop other governance mechanisms linked to PSBs to facilitate decision making or in some cases, create separate processes.

2.3.3 Our approach to Area Statement will need to be flexible. It will vary according to the priorities identified in the National Natural Resources Policy, the type of resource at stake, the location and the stakeholders involved (see Annex 3). We will draw on the learning from catchment approaches to managing our water environment. Catchment approaches are evolving to consider landscape scale solutions as they address such difficult issues as diffuse pollution. We recognise that our underpinning environmental evidence will normally be at a catchment or a landscape scale. But we may need to translate this to different spatial scales to make it more meaningful and compelling for the people, communities and decision makers we need to work with in the spirit of the principles of sustainable natural resource management.

2.3.4 We recognise that the Area Statements could provide us with an opportunity to streamline the number of other plans that we and others produce. It means that issues which have traditionally been covered in a separate functional plan could be included in the Area Statement and no longer be produced separately. This will be a change for our staff as well as affected partners and stakeholders. Nevertheless, it is important to recognise that a number of plans that we produce are required under EU Directives with clearly defined requirements. Subsuming these within the Area Statements will require a longer time frame. The scope for including other plans within an Area Statement will also be very sensitive to the geographical scale and the timetable for their production. This will require careful negotiation with Welsh Government as well as other partners and stakeholders.

2.3.5 We believe the requirement in the Bill S10(6) for NRW to consider whether “another plan, strategy or similar document should be incorporated into the Area Statement” is appropriate, and should extend to plans and strategies beyond the jurisdiction of NRW. The drive to ensure integration can be aided further through the use of the S13 power to issue guidance to other public bodies, and the S14(2) power for NRW to request assistance. It

may be simpler and stronger to have a duty on public bodies to consider for themselves where and how they could implement measures through their existing plans and programmes.

2.4 Financial implications of Part 1 – Sustainable Management of Natural Resources for NRW

2.4.1 Through the development of the Regulatory Impact Assessment (RIA) by Welsh Government in the summer and autumn of 2014, NRW staff have provided advice and evidence to inform the approach, assumptions and costs underpinning the Natural Resource Management aspects. We provided the best information available to us at the time. The RIA sets out four options for implementation of the Area Statements. We acknowledge that these were developed as illustrative examples and should not be seen as NRW's preferred approach. As we have refreshed our own NRM transformational programme, we have developed a better understanding of the scale of the changes we need to implement such as IT, staff training, new systems and process to develop Area Statements. These will undoubtedly incur additional costs which we are currently estimating.

2.4.2 As the NRW business case demonstrates, efficiency saving will be realised in the longer term for us and our partners. Nevertheless, in the short to medium term the Environment Bill will require us to invest staff time and money to realise savings and efficiencies in the longer term. Thereafter, NRM will be embedded across the organisation and will be at the heart of everything we do. As we develop a better understanding of the likely costs we will discuss funding with Welsh Government.

3. Part Two: Climate change

3.1 The need for the legislation

3.1.1 We believe the Part 2 provisions provide an appropriate framework for the development of climate change targets and carbon budgets for Wales. In early 2014 we recommended the consideration of statutory Welsh climate change targets. In the Ministerial briefing we stated that "Statutory emission reduction targets in Wales would raise their profile, but more importantly would be a clear signal across government departments and beyond of the imperative of ensuring they are met".

3.1.2 Statutory emission reduction targets foster long term and robust strategies, policies and investments by the public sector, business and industry to ensure their compliance with the targets. It provides a greater degree of certainty for business, acting as a clear signal of future intent that should provide confidence for expansion of the green economy.

3.1.3 Other devolved administrations that have climate change mitigation targets also have provisions for adaptation as well. The UK Act includes statutory requirement for a 5-yearly reviewed National Adaptation Plan for England and the Scottish Act makes requirement for Scottish Ministers to produce an adaptation programme, report on progress and update.

3.1.4 We recognise that Part 1 of the Environment Bill includes principles of 'manage adaptively' 'take account of the short, medium and long-term consequences', 'take account of the resilience of ecosystems' including 'the adaptability of ecosystems'. We also note that the NNRP must consider climate change mitigation and adaptation. It follows that the Area Statements will need to specifically address climate change. The WFG Act by implication also requires public bodies to consider long-term and preventative measures in the exercise of their duties under that Act. Together we acknowledge this constitutes a programme for adaptation.

3.1.5 However in the absence of a specific National Adaptation Programme, Welsh Ministers may wish to consider whether by integrating programmes for adaptation into these functions, all sectors are covered. Careful monitoring will need to take place to assess whether there may be gaps. If any gaps emerge appropriate mechanisms should be put in place to address those gaps.

3.2 Financial implications of Part 2 for NRW – Climate Change

3.2.1 We will inevitably be drawn into activities in relation to Part 2 of the Bill in several ways, for example, providing information and advice in the setting, monitoring and achievement of targets. This would be consistent with our current roles and functions.

3.2.2 In our remit letter for 2015-16 Welsh Government has provided us with £825,000 specifically to examine how we might become a “carbon positive” organisation. In undertaking this work, we expect to gain a better understanding of the financial implications for NRW.

4. Part Three: Charges for Carrier Bags

4.1 We are supportive of the additional powers for Welsh Ministers to charge for other carrier bags. We believe this change will further support the incentive for reuse, thus safeguarding valuable resources. Reducing the number of bio-degradable carrier bags in use across Wales will, over time, reduce the number littering our rivers, beaches and marine environments and inadvertently entering the food chain. This measure provides a useful mechanism to establish and raise awareness of the behaviour change necessary to deliver Welsh Government ambition for zero waste.

4.2 We would support a policy preference for environmental good causes to benefit from the proceeds of the carrier bag charges. We recognise a possible role for NRW to work with environmental charities to help inform how such monies could be put to best use to maximise the benefits for the environment and people of Wales.

4.3 There are no cost implications on NRW of this Part.

5 Part Four: Collection and Disposal of Waste

5.1 The need for the legislation

5.1.1 We believe the proposals will assist delivery of Towards Zero Waste policy objectives and increase the quantity and quality of recyclates, supporting the establishment of a circular economy in Wales.

5.1.2 The focus of many of the policy and legislative drivers to date has been on municipal waste. This has been very successful, with Local Authorities collectively achieving 54% recycling rate last year. However, household waste accounts for just 16% of the overall waste produced in Wales. The vast majority of waste is generated by the industrial, commercial, construction and demolition sectors. The proposals will apply to all waste streams and hence has implications for all sectors.

5.1.3 The existing separate collection regulations are limited in effectiveness as they only place a requirement on waste collection operators, including private companies, social

enterprises and local authorities, to provide their customers with separate collections for paper, metal, plastic and glass. There is no direct responsibility for the producer to participate.

5.1.4 Any change to waste legislation must take care to avoid any perverse environmental or economic outcomes. Such issues could result, in part, from the lack of suitable treatment /reprocessing facilities within Wales and further afield. Whilst we strongly support the principles of waste recovery and the obvious benefits to the economy and environment of Wales from the appropriate recycling of wastes as a resource, this can only be in the context of wastes being managed appropriately, with necessary environmental safeguards.

5.2 Proposals for separate collection and disposal of waste

5.2.1 We believe the proposals in Section 66 to require non-domestic premises to put their waste out for collection, will provide a clearer and more enforceable framework.

5.2.2 We support the proposals for materials, such as food waste, to be collected separately. This will divert these materials from disposal at landfill or incineration, enabling a useful resource to be captured and recovered/recycled. Any proposed changes would require detailed modelling and the benefits of international experience where available, to ensure that all potential outcomes - positive and negative - are identified to avoid perverse consequences.

5.2.3 The inclusion of wider powers to ban some recyclable waste from incineration set out in Section 68 is sensible and working in conjunction with proposed landfill bans, would provide a useful additional driver to ensure resources are not wasted. This will also provide flexibility for the Welsh Government to modify the legislative regime in support of future policy objectives. The consequence of any future proposed changes would need to be fully considered (as in this case) before introduction.

5.2.4 In addition, when considering Local Authority Recovery Targets, Landfill Allowances Scheme and landfill tax, it is not yet clear that further regulatory interventions are necessary. We would like to see further voluntary measures to increase participation in recycling (for businesses) and by the waste industry considered alongside proposals for regulation and enforcement. These measures aim to change behaviour and so there is also a need for education to effect behaviour change, by Welsh Government, waste service providers (private sector and Local Authorities), and other appropriate bodies including NRW.

5.3 Implementation

5.3.1 We will continue to work with Welsh Government to provide technical information and to advise on the practical implications of the proposed changes. It is likely that the provisions will require NRW to produce advice, guidance and training for our staff as well as for our customers. Some permits and compliance assessment tools will need to be varied to take account of the additional requirements. These new duties will also require additional inspection of waste producers.

5.3.2 To ensure that the implementation of these requirements are effective it is important that Welsh Government provide adequate funding to the regulator to enable an appropriate compliance and enforcement regime.

5.3.3 Whilst we support the proposal in Section 67 to ban food waste from disposal at sewer, we do not believe NRW is the most appropriate body to regulate. We would have limited interaction with the businesses affected by this requirement; sewerage undertakers or Local Authority food hygiene inspectors may be better placed to regulate this.

5.3.4 Some small businesses may have limited space for separate recycling bins for all the waste streams. Also, if only small quantities of some waste categories are produced, small businesses may have difficulty obtaining a waste contractor at an economic rate. Early feedback from companies surveyed as part of the 2012 waste arisings survey has indicated that companies are already recycling and segregating where it is economic to do so, whereas small businesses find this more challenging. There may be opportunities to innovate. For example, drawing on initiatives from Europe where street-level recycling schemes operate for small businesses. Collection system providers could also adapt their service with encouragement from Welsh Government, prompting the markets to respond and adapt to these changes so that this material is appropriately managed and recycled and recovered in a timely fashion, avoiding unnecessary stockpiling of material.

5.3.5 We are happy to work with Welsh Government and the Waste and Resources Action Programme to consider how we can aid waste producers, particularly small businesses, and to ensure that waste management service providers understand the new requirements and adapt their waste management practises.

5.3.6 Within our offices and facilities we want to help the move towards a circular economy in Wales, though our own actions in relation to our own use of resources. We already actively manage our waste aiming to minimise waste at source and ensuring any waste we do produce is stored securely, segregated and transferred for recycling. We are happy to share the experience we have had with others.

5.4 Financial Implications of Part 4 Collection and disposal of waste for NRW

5.4.1 We have worked with Welsh Government in their development of the indicative regulatory impact assessment to consider the implications of the waste provisions on NRW. We are happy that the indicative costs presented provide a reasonable reflection of the costs we may incur implementing these new regulatory duties. The provisions included in the Bill will allow Welsh Government to develop regulations. Additional information related to the implementation of these regulations will also be available. We understand that the regulations will be subject to a further RIA. This process will refine the cost estimates and provide us with greater certainty on the likely costs we will incur.

6 Part Five: Fisheries for shellfish

6.1 Need for the legislation

6.1.1 We believe the changes proposed in the Bill will help to enhance the management and protection of marine protected areas and the wider marine environment.

6.1.2 Currently the Sea Fisheries (Shellfish) Act 1967 grants the Minister the powers to issue a certificate to the grantee of a Several or Regulating Order to cease activities within the prescribed area in which their rights are exercisable, only if they are not properly cultivating the ground. The new proposals will strengthen and widen the Minister's ability to intervene in the operation of a Several or Regulating Order if it is perceived the grantee's activities or external circumstances such as impacts from non-native species are causing environmental harm by the issuing of a Site Protection Notice.

6.2 Financial implications of Part five for NRW – fisheries for shellfish

6.2.1 There are minimal cost implications on NRW of this Part. NRW may be required to provide evidence to help determine whether environmental harm would occur.

7 Part Six: Marine Licensing

7.1 Need for the legislation - Marine Licensing

7.1.1 We agree that having a wider suite of charging powers will allow NRW to achieve greater cost recovery in undertaking its delegated functions under the Marine Licensing regime. This will enable NRW to continue to offer services such as more thorough pre-application advice, which will benefit both the applicant and NRW's licence determination process. In summary, it will allow NRW to provide a marine licensing regime that has fairer charges and is fit for purpose. We are part of a Welsh Government Working Group developing the approach to implementation working with marine stakeholders across Wales.

7.2 Financial implications of Part six for NRW – Marine Licensing

7.2.1 The powers will enable cost recovery therefore having a positive financial impact on NRW.

8 Part Seven: Miscellaneous

8.1 Need for the legislation - Flood risk management committee

8.1.1 We believe that it is appropriate to disband the current FRMW committee and replace it with a new committee that advises at a Wales wide basis on the whole of the flood risk management agenda. NRW is one of 28 statutory flood and coastal risk management authorities and our current committee's remit is limited to the activities of NRW on managing river and coastal flood risk. The management of local sources of flooding such as surface water and coastal erosion is led by Local Authorities in partnership with water and sewerage companies. A wide range of infrastructure operators and resilience partners play key roles. Therefore it is sensible to have a committee, led by and responsible to Welsh Ministers, with the remit to look at the complete picture, to ensure investment is targeted and action delivered in the most efficient and effective way.

8.1.2 We believe it is very important for the new committee to be a key conduit for advising on the strategic direction for flood risk management. This includes advising on the shaping and implementation of WG's national Flood and Coastal Erosion Risk Management Strategy, discussing the resolution of barriers to effective flood risk management and sharing of good practice approaches.

8.2 Need for the legislation - S83. Repeal of requirements to publish in local newspapers etc.

8.2.1 We welcome the repeal of what is now an outdated form of communication. It will enable NRW to offer a more bespoke and effective approach to how it consults local communities on proposals relating to its management of Internal Drainage Districts (IDDs), such as boundary revisions, the raising and allocation of drainage rates etc.

8.3 Need for the legislation - S84. Power to make provision for appeals against special levies

8.3.1 We welcome the addition of this appeal mechanism to the Welsh Ministers regarding the special levies charged to Local Authorities by NRW.

8.3.2 Following the transfer of functions of the Welsh Internal Drainage Boards, NRW now sets these levies, along with land owner rates, to recover costs incurred from the exercise of functions relating to land drainage within our IDD's. Therefore we recognise the need to create an alternative mechanism for Local Authorities for arbitration on NRW's IDD levy setting.

8.4 Need for the legislation - S85. Power of entry: compliance with order for cleansing ditches etc.

8.4.1 We welcome the intention to clarify that agents authorised by the Welsh Government have the right of entry to land to enable investigation of alleged non-compliance with an ALT Order in cases where access is refused by a party to that Order. There was previously no mechanism to allow for entry to land to enable investigation

8.5 Financial Implications of Part 7. Miscellaneous – Flood Risk Management for NRW

8.5.1 The typical annual costs for the running of NRW's current committee are circa £21,000. As the new committee's remit and function will be to advise the Welsh Government, with its Chair responsible to Welsh Ministers and secretariat provided by WG, it will be appropriate for NRW's flood Grant-In-Aid to reduce by that amount.

8.5.2 NRW estimates it costs £40,000 in staff time preparing papers and attending its current committee meetings. A significant proportion of that work involves monitoring and reporting project and financial progress on its annual flood risk management capital and revenue programme. The Bill's proposals for the scrutiny of that work to come under the remit of NRW's Board means this work will continue at current levels, but reporting to a different body. NRW is expected to play a key role in the Welsh Government's new committee, due to our all-Wales remit to collate and supply data on flood risk management implementation on a strategic and operational basis. As such, we see the Bill's proposed changes to NRW's roles as cost neutral in terms of NRW's future governance requirements and input to the new committee.

9 Part 8: General

9.1 We have no comments or observations on this section.

10 Schedules

10.1 We acknowledge the inclusion of Schedule 2 Para 8 – which makes an amendment to WFG Act so that it refers to the potential role of Area Statements as an importance evidence base to support the well-being needs assessment.

10.2 There is a key opportunity here for the Environment Bill to help provide further clarity around the links to the land-use planning, and marine planning systems in line with our comments in para. 2.3.1 above. For example, we would suggest a similar amendment to the S3. Planning (Wales) Act to ensure that s60 (5) of the Planning and Compulsory Purchase Act (2004) (PCPA) includes reference to the NNRP.

10.3 A similar clause could be inserted at Section 6, in PCPA - 60I (6) referring to Area Statements.

10.4 Consideration should be given to inserting a paragraph in Schedule 6 (3) of the Marine and Coastal Access Act (2009) "Marine plans to be compatible with certain other plans" to draw reference to the National Natural Resources Policy.



The Environment (Wales) Bill

Evidence Paper to the National Assembly for Wales's Environment and Sustainability Committee

Introduction

The UK Environmental Law Association (UKELA) aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of environmental law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.

UKELA prepares advice on proposals of governments and regulators covering a range of environmental law topics, with the help of its specialist working parties. This response has been prepared by Gweithgor UKELA ar gyfer Cymru, the UKELA Wales Working Party.

UKELA has only provided evidence in respect of the provisions in Part 1 of the Bill as these are potentially the most contentious in terms of the coherence, integration and transparency of the bill.

In general, UKELA welcomes the innovative approach to natural resource management in Part 1 of the Bill which will have an important impact on the

quality of the environment in Wales. However, we make some suggestions in this evidence paper to improve the Bill in a number of respects.

Summary of Evidence

UKELA has concerns about whether the bill's definition of natural resources, which, although it is 'not limited', should nonetheless specifically include landscapes.

UKELA recommends the expansion of the overall objective of Natural Resources Wales (NRW) so as to more clearly integrate with the Well-being of Future Generations (Wales) Act 2015.

UKELA recommends the expansion of the principles of sustainable management of natural resources to incorporate the preventive and precautionary principles and to include public participation.

UKELA makes recommendations in relation to the biodiversity lists and the biodiversity duty related to them so as to make the provisions clearer, in terms of the (i) content of the duty; (ii) the applicability of the duty; and, (iii) compliance with the duty requirements.

UKELA makes a number of recommendations relating to the National Natural Resource Policy (NNR policy) with respect to the requirements on Welsh Ministers to consult and designed to strengthen the duties imposed on Ministers.

UKELA also highlights the need to establish clear links between the biodiversity lists and the 'biodiversity' duty on public authorities as well as those between the biodiversity lists, the State of Natural Resources Report and the NNR policy.

UKELA recommends that the provisions on Area Statements be revised to remove ambiguity, to better respect the need for consultation and to enhance the observance of related duties.

UKELA generally welcomes the land management agreement provisions but questions whether the provisions take sufficient account of existing domestic legal obligations (including the Human Rights Act 1998).

UKELA does not consider that the case has been made for suspending certain of NRW's existing statutory obligations when exercising experimental powers; indeed, this is viewed as a dangerous precedent.

Detailed Evidence

Part 1: Sustainable Management of Natural Resources

Natural Resources and Sustainable Management of Natural Resources

Do you agree with the Welsh Government's proposals on definitions for 'natural resources' and 'sustainable management of natural resources'? Are there things missing that you think should be included?

1. This Part of the Bill sets out the objective and seeks to implement the “ecosystem approach” contained in the UN Convention on Biological Diversity, which defines ecosystems as “a dynamic complex of plant, animal and micro-organisms, and their living environment interacting as a functional unit”. However, the absence of the UN Convention definition is disappointing and weakens the Bill. UKELA, therefore suggests that this should be included in clause 2. Although Natural Resources are defined in that clause there is a need to be explicit about the coverage of the Bill. In this respect, UKELA believes that it should be extended so as explicitly to include protected landscapes, notwithstanding the fact that the current definition is non-exhaustive. Whilst it is recognised that the sustainable management of natural resources is a necessary condition for the protection of these assets, it is not necessarily a *sufficient* condition which is why we suggest that they should be explicitly included in the definition of natural resources in clause 2.
2. In respect of sustainable management of natural resources, the drafting of clause 3(2) is fundamental to the overall objective of Natural Resources Wales. It is important, therefore, to ensure that the objective is clear and appropriate. In order to align the legislation with the provisions of the Well-being of Future Generations Act and to emphasise the role of Natural Resources Wales in relation to protection of biodiversity, UKELA proposes that clause 3(2) should be expanded, to read as follows:

“The objective is to maintain and enhance a bio-diverse natural environment and healthy, resilient ecosystems, and the benefits they provide, and in doing so, to meet the needs of the present without compromising the ability of future generations to meet their own needs”

Principles of sustainable management of natural resources

3. Clause 4(a) should make it clear that action should follow as a consequence of monitoring and reviewing. It is insufficient to require a review without provisions requiring follow up action where the review has identified shortcomings. UKELA also suggests that the existing provisions of clause 4 should reflect the internationally agreed principles of prevention and precaution. Therefore, we propose that clause 4 be strengthened as follows:

4(a) – adopt a preventive approach and manage adaptively by planning, monitoring, reviewing action and taking appropriate steps where shortcomings are evident.

...

4 (c) – promote and engage in collaboration and cooperation with relevant statutory bodies and non-governmental organisations.

4 (d) – take account of all relevant evidence and where uncertainty exists adopt a precautionary approach.

...

4 (f) – take account of the long-term consequences of actions as well as the short and medium term benefits.

4. Furthermore, a new provision should be included to support public participation, where appropriate, in decision making about the sustainable management of natural resources, particularly in relation to the benefits and intrinsic value of natural resources and ecosystems.
5. UKELA also has some concerns about clause 4(b), as the meaning of the term “appropriate” is unclear. Does it refer to the most appropriate use of public authority resources or to the most appropriate spatial organisation in terms of the objective of resource protection?

What are your views on the proposal to strengthen the biodiversity duty on public authorities operating in Wales?

Biodiversity lists and duty to take steps to maintain and enhance biodiversity

6. The duty under clause 6(1) is a relatively weak duty – simply requiring public authorities to “seek to maintain and enhance biodiversity in the exercise of their functions ... and in doing so promote the resilience of ecosystems. This fails to ensure that the necessary actions will take place. UKELA suggests that omission of “seek to” would strengthen the duty to achieve the desired objective. An alternative, which may be more acceptable, would be to align the wording with that used in the Well-being of Future Generations Act i.e. “take all reasonable steps to maintain and enhance”.
7. In relation to clause 6(4), it is suggested that the words “Environmental Programme” should be omitted as the accepted reference is the United Nations Convention on Biological Diversity.
8. Clause 6(5) imposes a duty on public authorities to publish triennial reports on how they have complied with their duties. However, the absence of a power to ensure that these reports are published, or of any consequences of not publishing the reports, is worrying, as this will weaken the effectiveness of the legislation.
9. There needs to be more coherence between the definition of a public body in clauses 11(1) and 6(6) – as drafted there is considerable potential for confusion between the two. If s6(6) is not specific to public bodies established in Wales, but intended to apply to all public bodies **operating** in Wales this should be made clear on the face of the Bill. UKELA also considers that the Bill should contain, somewhere in clause 6, a definition of biodiversity which is more closely aligned with that contained in the UN Convention on Biological Diversity.

10. Clause 7(1) requires the Welsh Ministers to prepare and publish a list of living organisms and habitat types of principal importance, and clause 7(3) imposes a duty on Ministers to “(a) take such steps as appear to them to be reasonably practicable to maintain and enhance the living organisms and types of habitat included in any list published under this clause, and (b) encourage others to take such steps”. In UKELA’s view, it is unclear why “others” should be amenable to encouragement since no other provision in Part 1 appears even to require public authorities to have regard to the list let alone creates any duties in respect of it. In UKELA’s view it should be made clear how the information in this list is to be used, for example, by public authorities in fulfilling the biodiversity duty, by NRW in creating the State of Natural Resources Report or by Welsh Ministers in creating the NNR policy.
11. In addition, the absence in this clause of the need to consult interested parties on the preparation of the list (other than Natural Resources Wales) is of concern, particularly given the general support for public participation in environmental decision making, and the specific references to this notion in the explanatory memorandum.

Duty to prepare, publish and implement national resources policy

What are your views on the proposals for a National Natural Resource Policy? Is the Bill clear enough about what this will include?

12. Clause 9 states that Welsh Ministers should publish a document setting out general and specific policies for contributing to achieving sustainable management of natural resources; key priorities and opportunities for NRM; what should be done in relation to climate change; and anything else Ministers consider relevant. Though UKELA broadly welcomes this provision, we suggest that the *risks to NRM*, as well as the ‘priorities and opportunities for NRM’ should form part of the policy content. Also it would be helpful if there was more detail in the Bill as to what should be included in the policy more generally. Currently, clause 9 requires only that the policy should set out “key

priorities and opportunities for sustainable management of natural resources in relation to Wales, including what they consider should be done in relation to climate change.” There is no mention, for example, of any requirement to set these as time-bound objectives, whether the policy should stipulate a hierarchy for the addressing of the priorities and opportunities identified, nor to lay down guidance on what should be done if priorities conflict (which is entirely possible). In addition, there is no mention of the relationship between the NNR policy and the State of Natural Resources report created by NRW. There is also no requirement on Welsh Ministers to consult on the contents of the document. UKELA strongly suggests that there should be a duty on Welsh Ministers to consult on the policy at the outset. Moreover, UKELA has serious concerns about the relatively weak duties on Welsh Ministers to “take such steps [to implement to the policy] as appear to them to be reasonably practicable” and “encourage others to take such steps” (clause 9(4)(a)&(b)). UKELA suggests than an alternative, and stronger, drafting might be: “to take all steps they consider necessary to implement the policy” and to “direct others to take such steps”.

Area Statements

Do you agree with the proposals for area statements? What should these cover and is the process for their development clear enough in the Bill?

13. In clause 10 the linkages between the area statements and the NNR policy are unclear. There is also no duty on NRW to implement the policy to be prepared and published under clause 9 and no duty on Welsh Ministers to implement area statements, despite their obvious centrality to the implementation of the NNR policy. UKELA believes that appropriate provisions should be introduced into the Bill in order to ensure that NRW takes account of the policy document and Welsh Ministers take account of area statements in exercising their functions. Furthermore, there should be a requirement for Natural Resources Wales to consult on their area statements, in particular with Welsh Ministers and other relevant stakeholders, such as landowners (see paragraph 55 of the Explanatory Memorandum re “promoting engagement with stakeholders”).

Our comments in respect of relatively weak duties on Welsh Ministers in relation to Clause 9, apply equally to the duties of NRW in respect of this clause. Finally in relation to area statements, it seems inconsistent that provision is made in clause 24 for changing the time requirement for the production of the State of Natural Resources Report and National Natural Resources Policy yet no time requirement is specified at all for the production of area statements.

14. There is some ambiguity in the drafting of clause 12 (1) that needs to be corrected. It is unclear as to whether the reference to “them” refers to Welsh Ministers or a public body. Again, the absence of consultation with interests wider than public bodies, such as landowners, is troubling, particularly as Welsh Ministers have the power to direct public bodies to implement area statements. UKELA welcomes the legally enforceable duty under clause 12(3) which allows Ministers to direct a public body, and the accountability and enforcement arrangements for the other duties listed in clauses 10 (the preparation and publication of area statements); 13 (public bodies’ obligations to take account of guidance in respect of area statements); and 14 and 15 (duty of public body to provide NRW with information and assistance and vice versa).

15. There is a lack of clarity in respect of the provisions in clause 14 which oblige public bodies to provide information and other assistance to NRW unless this would “have an adverse effect on the exercise of the public body’s functions’ (cl.14(2)(b)). It is not clear whether ‘an adverse effect’ could include an adverse *financial* effect. UKELA considers that this contingency should be explicitly addressed.

Land Management Agreements and Experimental Powers

Are you content with the proposals for NRW to have wider powers to enter into land management agreements and have broader experimental powers?

16. The power for NRW to enter into a management agreement with regard to any of its functions is eminently sensible.

17. Management agreements are entered into voluntarily. However, clause 16(2) refers to the imposition of obligations etc. This being the case an appeals process should be provided to ensure compliance with the Human Rights Act.
18. The relationship with existing SSSI management mechanisms under section 28, Wildlife & Countryside Act 1981 (as amended) and these proposals require further clarification.
19. UKELA notes that the clause 17 provisions on successors in title are different to those currently used under section 15 of the Countryside Act 1968. It is not clear why a different approach has been considered necessary nor has this been explained in the Explanatory Memorandum entries relating to cl.17 (at pp. 325-6).
20. UKELA notes that clauses 16-21 do not refer to management agreements entered into in respect of European sites under regulation 16 of the Conservation of Habitats and Species Regulations 2010 (as amended).
21. Proposals under clause 22 allowing the exemption or relaxing or modifying statutory requirements for which NRW is responsible, even with consultation, is of concern and not supported by UKELA. Such a provision would set a dangerous precedent. The power for NRW to conduct research and experimental schemes is sensible but no evidence has been presented that suggests that existing statutory requirements would prove an obstacle to such initiatives?

Overarching Question

For your views on the relationship between this Bill and the Well-being of Future Generations Act 2015 and the Planning (Wales) Bill? Are the links and connections between them clear?

22. Though there are commendable efforts to integrate the requirements of these 'flagship' provisions there are some areas of inconsistency and potential confusion.
23. Perhaps most significant in this respect is the lack of guidance on the integration of, for example: NNR policy, well-being objectives, and the National Development Framework; as well as area statements, local well-being strategies and local development plans.
24. The Environment Bill imposes a biodiversity duty on all public authorities, which are defined (in clause 6(6)) so as to include statutory undertakers. However, statutory undertakers are not subject to well-being objective duties in the Well-being of Future Generations (Wales) Act 2015. Clearly the WFGA provisions are set (for the time-being at least) but it does seem incongruous to have statutory undertakers subject to the biodiversity duty but not (at least not directly) subject to well-being duties, though we realise that this may relate to differing obligations at international level. The point relating to the confusion over the designation of a 'public body' has already been made at paragraph 9 *supra*.

Agenda Item 5.2

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref CS/00816/15

Alun Ffred Jones AM
Chair - Environment and Sustainability Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
Cardiff CF99 1NA

committeebusiness@Wales.GSI.Gov.UK

11 June 2015

Dear Alun,

I received your letter of 22 May regarding the appointment process for a new Chair of Natural Resources Wales, on 27 May, some five days after a press query received by my office on 22 May.

Your reported comments in the media went beyond those expressed in your letter, with a suggestion the independence of NRW and its Chair have been, or are being, called into question. If you have any evidence to support that accusation, I should be pleased to receive it.

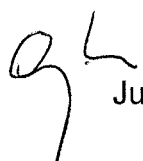
On the substantive point regarding the pre-appointment scrutiny by the E&S Committee, the Welsh Government does not take the view such a process is appropriate as a general rule. The examples you give are, of course, very different in nature and the current process to appoint a new Chair for NRW is properly regulated by the Public Appointments Commission. Therefore, given the Welsh Government position, I cannot agree to your suggestion.

Yours sincerely

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources

Eich cyf/Your ref
Ein cyf/Our ref LF CS 0561 15

David Melding AM
Chair of the Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA


June 2015

Dear David,

I am writing following my appearance before the Constitutional and Legislative Affairs Committee on 1 June to provide evidence on the Environment (Wales) Bill. I committed to supply further information to help explain the provisions of the Bill and how I am intending them to work in practice.

Section 22 – power to suspend statutory requirements for experimental schemes

Where it is likely to contribute to the sustainable management of natural resources, section 22 gives the Welsh Ministers power, in specific circumstances, to suspend a provision or provisions in legislation. This will enable Natural Resources Wales ('NRW'), where necessary, to undertake an experimental scheme (as provided for in section 23 of the Bill).

The suspension means, in effect, that a person is exempted from a statutory requirement, or that the requirement is relaxed as it applies to a person.

The Bill provides a number of checks and balances for the appropriate application of this power.

- The power may only be exercised by the Welsh Ministers following a detailed application by NRW.
- The suspension must relate to a specific scheme and therefore to the application of a provision in relation to the party or parties involved in the scheme. It is not by any means a 'blanket' suspension.
- A suspension may not be provided for unless it is necessary to facilitate the scheme. The scheme itself must be relevant to the exercise of NRW's statutory functions.
- A three-year time limitation applies, as does an obligation to consult and the the Affirmative resolution procedure.

Furthermore, the power relates only to legislation in which NRW is responsible for the application of a statutory provision, or the statutory provision applies to NRW and the way in which, or the purposes for which, natural resources are managed or used. The power is therefore limited to legislation relating to the specific functions of NRW.

My department will be working closely with NRW to ensure it has the necessary clarity on the process for making an application to the Welsh Ministers. I would expect that any application by NRW would include the following:

- Details on what the proposed experimental scheme would entail, its objective and expected duration;
- Why, or in what way, the provision(s) they have identified provides a legal barrier to the scheme it intends to undertake;
- Information on the parties involved in the scheme, including how they are to be involved;
- An assessment of how the suspension of the provision(s) will assist in the sustainable management of natural resources; and
- Information on how the scheme will be monitored.

The Welsh Ministers would then consider the application. As noted, Welsh Ministers would need to be fully satisfied that the suspension is necessary to enable an experimental scheme to be carried out, and that that scheme is likely to contribute to the sustainable management of natural resources. As part of that consideration, the Welsh Ministers must consult with the persons who would be affected by the provision and also the persons affected by the experimental scheme.

If the Welsh Ministers are satisfied that it will, in fact, contribute to the sustainable management of natural resources, the use of the power would then be subject to the agreement of the Assembly via the Affirmative procedure.

The suspension is temporary: limited to three years with the potential to extend, on no more than one occasion, for a further period of no more than three years. In this case the suspension would be in place for a maximum of six years.

For more information on what kind of circumstances under which NRW may wish to make such an application, I refer you to the Explanatory Memorandum, and the Statement of Policy Intent and the examples provided in its Annex.

The policy intent relating to climate change and carbon units, and further information on carbon trading

As I mentioned in Committee on 1 June, our understanding of climate change and the mechanisms to address it are constantly evolving, and it is vital that we are able to respond to these developments quickly. The provisions in the Bill have been drafted in a way that allows us to do this.

Sections 33 and 34 of the Bill outline how we will calculate 'Welsh emissions', which is achieved by the establishment of a 'net Welsh emissions account'.

The 'net Welsh emissions account' is calculated in part by the addition and subtraction of carbon units.

Section 36 enables 'carbon units' to be defined in regulations but this power is limited to three kinds of carbon unit. It includes an amount of greenhouse gas emissions already regulated within an emissions trading scheme to be defined as a carbon unit for the purposes of the 'net Welsh Emissions account'.

At the time of writing, it is intended, that the definition will be units of carbon that can be traded, for example, as in the EU Emission Trading Scheme (EU ETS). The EU ETS works on the 'cap and trade' principle. A 'cap', or limit, is set on the total amount of certain greenhouse gases that can be emitted by the factories, power plants and other installations in the system. The cap is reduced over time so that total emissions fall.

The EU ETS operates in phases, and is subject to regular review by the European Commission. Changes introduced by the Commission could necessitate changes to carbon accounting under the Bill, which is one of the examples that these sections can provide for.

In drafting the relevant provisions of the Bill, we were mindful that any regulatory mechanisms to tackle climate change need to be adaptable to account for new scientific and technological discoveries come to light and new agreements are made at the international and sub-national level. One example will be the 2015 United Nations Framework Convention on Climate Change ('UNFCCC') Conference in Paris in December this year (known as 'COP21'). The UN's forward work programme on Reducing Emissions from Deforestation and forest Degradation ('REDD') may also lead to new binding international agreements. Domestically, the UK Woodland Carbon Code and the pilot UK Peatland Code are good examples of areas where there may be future developments on which we may need to consider how this impacts on the net Welsh emissions account.

These are just a few examples, and with the certainty that there will be more examples looking ahead, it did not seem appropriate to fix a definition on the face of the Bill. Doing so would mean that we would be able to modify the definition to take account of changes at the international, European or domestic level.

As noted in the Statement of Policy Intent, I would wish to make these regulations as soon as is practicable. This work would be necessarily technically complex, and warrants needs careful consideration and analysis. My department would, however, be undertaking this work alongside that in relation to the setting of setting of the five-year carbon budgets.

Current operation of Welsh law in relation to charges to carrier bags as applicable to sellers in England and the Memorandum of Understanding with the UK Government

The carrier bag charge will continue to apply to sellers in England in the same way it applies now. The only difference in the proposed legislation is that the term "seller" will now be defined on the face of the Bill rather than in the regulations. Section 55 of the Bill applies in relation to Wales and, therefore, falls within section 108(4)(b) of the Government of Wales Act 2006.

Sellers, in so far as they operate in Wales, must comply with Welsh law. Supermarkets in England or, for that matter, any businesses elsewhere in the world who deliver goods to households in Wales, will continue to be required to charge for any new carrier bags they supply.

At the Committee session on 1 June, reference was made to the 2013 Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee. The principle of good communication between administrations is a

specific commitment in that Memorandum, particularly where one administration's work may have some impact on the responsibilities of another administration.

While this is an agreement in place between Governments, and not specifically with Local Authorities, the Welsh Government has worked closely with the Local Government Association ('LGA') in England as well as with UK Government departments to ensure that any sellers operating in Wales comply with Welsh law. This has included writing to the LGA to clarify the role of home and primary authorities in England when advising large retailers and to raise awareness of the Welsh Government's enforcement guidance.

I would also like to take this opportunity to confirm my position on section 57 in regards to legislative competence. To be clear, I am satisfied that this provision is appropriate for giving effect to the carrier bag charging regime and therefore falls within section 108(5)(a) of the Government of Wales Act 2006. This being the case there is no requirement to demonstrate that charitable purposes must relate to one or more subjects in Schedule 7 to that Act.

The appeal process in section 74 of the Bill (power to serve notices for protection of European marine sites) and its relationship with the European Convention of Human Rights

Section 5 of the Sea Fisheries (Shellfish) Act 1967 currently allows the Welsh Ministers to determine a Several or Regulated shellfishery if certain matters are occurring, such as if the fishery is not being properly cultivated.

The Welsh Ministers are under obligations (arising pursuant to the Habitats Directive) to protect European Marine Sites ('EMSS') in Wales. There is a concern at present that the powers in section 5 of the 1967 Act may not always be sufficient to ensure that the Welsh Ministers can comply with their European obligations in this regard.

The amendments to the 1967 Act made by sections 74 and 75 of the Bill will allow the Welsh Ministers to take the action necessary to protect EMSSs, if shellfisheries created after the coming into force of the Bill are causing harm to such a site, or are threatening to do so. This will ensure that the Welsh Ministers can comply with their Habitats Directive obligations.

The new powers will enable the Welsh Ministers to serve a Site Protection Notice on the grantee of the fishery in question requiring that it is operated (or not operated) in a particular way. The Welsh Ministers can, subsequently, adjust or revoke the Several or Regulating Order in order to reflect the terms of the Site Protection Notice. These new powers will only apply to Several or Regulating Shellfish Orders made after the Bill provisions have come into force. The new provisions will not, consequently, affect any property rights in shellfisheries that currently exist. Any property rights which are created by such Orders after the coming into force of the Bill will have been created subject to the new powers to adjust or interrupt the same.

Whilst the new powers will enable the Welsh Ministers to adjust or revoke a Several or Regulating Shellfishery Order where that is in the public interest (i.e. in order to protect the marine environment where necessary to comply with the Welsh Ministers obligations under the Habitats Directive), the Welsh Ministers are, of course, under a duty to comply with the European Convention on Human Rights and with that in mind, the new section 5C of the 1967 Act (inserted by section 74 of the Bill) provides an appropriate appeal mechanism which will help ensure that any interference with the property rights is proportionate, and thus providing sufficient protection of property rights.

An appeal may be brought, in relation to a Site Protection Notice, before the First-tier Tribunal which has the power to confirm, vary or cancel the Site Protection Notice, and

order the Welsh Minister to pay compensation if appropriate. The First-tier Tribunal also has the power to suspend or vary a Site Protection Notice until the appeal is concluded.

The Welsh Ministers power to amend or revoke a Several or Regulating Order is undertaken by way of Statutory Instrument which will also be subject to Assembly scrutiny under the Negative procedure. That instrument can only reflect the terms of the Site Protection Notice and can only be made after any period within which an Appeal in relation to the same has expired or the appeal has been determined. The Appeals mechanism set out in section 74 is also, therefore, effective in providing sufficient protection for any property rights affected by the making of an amending or revoking Order under section 75 of the Bill.

I believe that sections 74 and 75 of the Bill will enable the Welsh Ministers to adjust or revoke a Several or Regulating Shellfishery Order where that is in the public interest – i.e. in order to comply with Habitats Directive obligations – and that the new appeals mechanism will help to ensure that any interference with property rights that results from those new powers will be proportionate. I am satisfied that these provisions provide sufficient protection of property rights.

I hope that these explanations are helpful. If you would like any further information on the Bill and how I see it functioning, please contact me. I am copying this letter to the Chair of the Environment and Sustainability Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carl Sargeant'.

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources

CC: Alun Ffred Jones AM, Chair of the Environment and Sustainability Committee

Agenda Item 5.4



Our Reference: GA/lr/Chr

Chair of the Environment and Sustainability Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

01 June 2015

Dear Chair

Agreement on International Humane Trapping Standards

I am writing to ask for your help to obtain derogation to enable the continued use of legal traps for stoats.

The Agreement on International Humane Trapping Standards (AIHTS) is an agreement between the European Union, Russia, Canada and latterly the US to improve the welfare standards associated with 'fur trapping'.

Humane spring traps have been legally regulated in Wales since 1957 and their use is permitted under the Spring Traps Approval Orders which are regularly updated. In Wales the Spring Traps Approval Orders were updated in 2012. The updated orders provide the necessary competent authority approval to use existing humane traps.

Trapping stoats in Wales is carried out for the protection of wildlife. In particular it protects ground nesting birds. Stoats are not trapped for their fur in Wales.

Given these circumstances BASC requests derogation under the terms of the AIHTS. This would be both appropriate and legal as provided for by Article 10 1(c) – the need to protect fauna and flora.

BASC is worried that if the AIHTS is implemented the continued use of hitherto legal traps would be made illegal. This would prevent the control of stoats and other pests, including rats and grey squirrels.

The procedure for developing testing and approving a trap for stoats under the AIHTS would make it uneconomic. This would be detrimental and have unintended consequences for biodiversity.

I would be grateful if you could give this consideration.

Similar letters have been sent to the Minister for Natural Resources and the Deputy Minister for Farming and Food as well as all competent authorities in the UK.

I look forward to hearing from you.

Yours sincerely,

Gary Ashton
Director, BASC Wales

Marford Mill
Rossett
Wrexham LL12 0HL

Switchboard: 01244 573000
Main Fax: 01244 573001
Membership hotline: 01244 573030
www.basc.org.uk
Email: enquiries@basc.org.uk

The British Association for Shooting and Conservation Limited
Registered Society N° 28488R

BASC is authorised and regulated by the Financial Conduct Authority ref 311937

Patron: HRH The Prince Philip, Duke of Edinburgh, KG KT

President: The Earl of Home KT CVO CBE

Chairman: Cllr Alan Jarrett

Chief Executive: Richard Ali BSc (Hons) MSc

Pack Page 94

Together - for shooting, conservation, the future and for you