



**Evidence to ESD committee inquiry on the Wellbeing of Future Generations Bill. Response from WWF Cymru.**

**How the Welsh Government should legislate to put sustainability and sustainable development at the heart of government and the wider public sector;**

1. WWF wholeheartedly applauded when WG committed to legislate to “to embed sustainable development as the central organising principle **in all of our actions** across Government and all public bodies, bringing forward a Sustainable Development Bill. This approach will set Wales apart as a sustainable nation, leading from the front”<sup>1</sup> Furthermore, this was set as one of the actions required to meet the aim of becoming a One Planet nation.
2. WWF Cymru remains totally supportive of the aim of legislation that could make Wales an exemplar for other countries, which we would promote throughout our global network. So, for WWF, there are 2 key questions. Does it embed SD in all actions? Is it ground- breaking and world leading?
3. WWF believes that there are two fundamental areas where this Bill is entirely deficient. First, the complete absence of the key concept of SD- namely that we must live within environmental limits. Second, a lack of any reference to the overall impacts from Wales on the international global community, including damage to the life support systems upon which we all depend.
4. In our view, overall, the proposal<sup>2</sup> made by the Third Sector Alliance remains a clearer and more straightforward approach to achieving WG’s intention.

**A. Does the Bill embed SD as Central Organising Principle – in all actions?**

5. We consider that the architecture of the Bill fails to adequately embed SD into all the actions of the public bodies. We consider it weakly embeds SD because the whole architecture is solely focused on governance and not decision making and delivery. We would prefer to see a specific substantive duty on public bodies to deliver sustainable development, including delivery of the well-being goals. We would prefer

<sup>1</sup> <http://www.clickonwales.org/2011/07/welsh-government%E2%80%99s-legislative-programme/>

<sup>2</sup> <http://www.shapingfuturewales.org/en/our-proposal/>



to see a duty upon public bodies to pursue SD as their primary purpose. This is a key weakness of the Bill in our view and therefore the Bill fails to meet the WG stated aim of embedding SD *in all actions*.

6. Another way in which the Bill fails to embed SD, in our view, is in its treatment of the definition of SD. First, it turns SD into a principle (not the way it is conceived by Brundtland) and second it limits its scope by inserting the phrase ‘seeking to ensure’. As a consequence, SD is defined in a far more qualified and less rigorous way than in the current SD Scheme, One Wales One Planet (OWOP) -8. These failures are compounded, in our view, by the overarching failure, mentioned earlier of not encapsulating the concepts of ‘environmental limits and concern for global impacts.
7. In sum, we consider that this Bill appears to embed some good governance principles but fails to embed SD itself into the exercise of the functions of public servants. It is further weakened by the complexity of its provisions, leading to gaps in coherence and lack of clarity.
8. Despite these weaknesses, we recognise the vital importance of this opportunity in setting us on a more sustainable path. Therefore, it is imperative that we work to strengthen this Bill through effective amendments.

**A. B Is the Bill ground breaking and ‘leading from the front?’**

9. WWF commissioned academic research from Professor Andrea Ross to directly consider this issue. She compared the Bill with legislation from several other countries. Her conclusion is that despite some innovative aspects, which we acknowledge, the Bill falls short of being a ground-breaking Bill.
10. Legislating for well-being goals sends symbolic and ambitious signals. However, the goals will only be effective if collectively they produce a truly sustainable Wales.
11. The requirement for public bodies to take an integrated approach, by legislating for all three aspects of SD, and as part of the general functions of public bodies, is innovative, but that innovation will be lost if some of the gaps in coherence are not addressed.
12. The terminology of the Bill is unfortunately far weaker than some of the clear, symbolic and ambitious terminology that is used in the existing One Wales One Planet scheme. As referred to above, we are greatly concerned that the Bill fails to deliver upon the important concepts such as ‘living within environmental limits’; ‘reducing Wales’ negative international impacts’, and the reduction of ecological footprint to a level of a ‘fair share of the earth’s resources’. As mentioned, these are significant flaws.
13. Further, by reducing the scope of the Bill to the governance systems it is difficult to argue that this Bill is truly exemplar, particularly when more innovative, symbolic and powerful examples exist elsewhere that are not limited to governance alone (Sweden, Minnesota, Quebec, Australia).

- 14. Action: WWF recommends a suite of amendments to the Bill (the Purpose, Goals, the SD definition and/or section 8 (2) Principles, along with some other procedural changes) to deal with these shortcomings. These will be detailed later and will address the scope of the Bill, embedding environmental limits and strengthening the substantive duty, so that it is fit for purpose**

## **2. The general principles of the Well-being of Future Generations (Wales) Bill and the need for legislation in the following areas –**

15. WWF considers that the need for new legislation was well established by WG in 2010.
16. The Wales Audit office identified failings by government to embed SD in its decision making using the Government of Wales Act approach of making a scheme with indicators and annual reports.
17. Key failures identified by the report<sup>3</sup> were:
  - SD was seen as one of many competing objectives, not a means of managing competing priorities
  - there was a lack of clarity on what was meant by SD;
  - there were areas where SD had not been considered e.g. resource allocation, financial and business planning
18. WWF agreed with WG that there was a need for legislation to address these serious shortcomings. It was anticipated that the WG would bring forward legislation that would overcome some of the key barriers to embedding SD within government decision making. These were identified as:
  - A political focus on the short term (rather than long term taking into account future generations)
  - Embedding SD as an integrated approach to strategic, financial and operational planning.<sup>4</sup>
  - The need to go beyond business practices and create a culture where SD is embedded in all key decisions.<sup>5</sup>
- 19. So a crucial question is whether the Bill addresses these issues, improves on the existing system and changes business as usual approaches.**

The short answer is – partially. It does improve the weight on the long term and tries to be clear on integration however there are gaps in this provision. The major failure is in the scope of the Bill, which does not cover financial and operational matters.

### **2a The “common aim” and “sustainable development principle” established in the Bill and the “public bodies” specified;**

20. WWF welcomes the fact that the Bill is structured to provide a clear purpose and aim to be pursued by all public bodies.
21. However we are concerned that the scope of the common aim is limited to ensuring only ‘governance arrangements’ are put in place. Therefore, we do not believe this addresses the WAO’s concern on areas where SD was not embedded nor does it meet WG intention.

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<sup>3</sup> Colman, J. Sustainable development and business decision making in the Welsh Assembly Government. 2010. Cardiff. Wales Audit Office.

<sup>4</sup> WAO recommendation , ibid

<sup>5</sup> WAO recommendation, ibid

22. The WG's ambition is to place SD as a central organising principle of governance. We consider that this requires not only the right governance structures are put in place by public bodies in terms of their systems and processes, including financial and planning, **but also clear obligations placed upon public bodies to achieve the common aim in the exercise of all of their functions.**

23. WWF is of the view that due to the above drafting the impact of the Bill is likely to remain largely neutral in its effect on embedding SD as a central organising principle.

24. Further, WWF is concerned that by including a purpose, aim and principles, together with the delivery of a set of objectives and a duty to maximise contribution, the architecture is unduly complicated, contributing to a lack of coherence to the Bill.

**25. WWF suggests amendments to section 1 to extend the scope to delivery and to section 3 to remove 'seeking to ensure'. A suite of further amendments will be needed to fill the gaps in the overall coherence of the architecture of the Bill.**

**2b The approach to improving well-being, including setting of well-being goals, establishment of objectives by public bodies and the duties imposed on public bodies;**

26. WWF agrees that there is a need for legislation that contains both substantive and procedural duties in order for the implementation of the Bill's provisions to be effective. We consider that a Bill that provides for integration of SD and is coherent would prove truly ground-breaking.

#### **Well-being Goals: section 6**

27. WWF applauds the attempt to provide goals for the public sector which seek to achieve sustainable development in Wales. This structure also partially follows the approach from the UN process in sustainable development goals, which is welcome.

28. However we see three key weaknesses with the Goals – first, the goals do not include provision for 'living within environmental limits'; second, they fail to acknowledge Wales' international impacts ( see Q3); finally, they lack any sense of the scale of change being envisaged.

#### **Living within environmental limits and international impacts**

29. OWOP explicitly refers to both protection of the Earth's life support systems and environmental limits as part of its vision. We consider that living within environmental limits is an inherent aspect of SD as enunciated in the 1987 Brundtland report. This stated that

*"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:*

- *the concept of **needs**, in particular the essential needs of the world's poor, to which overriding priority should be given; and*
- *the idea of **limitations** imposed by the state of technology and social organization on the environment's ability to meet present and future needs."*

Brundtland further stated that:

- *sustainable development must not endanger the natural systems that support life on Earth: the atmosphere, the waters, the soils, and the living beings.*
- *But ultimate limits there are, and sustainability requires that long before these are reached, the world must ensure equitable access to the constrained resource and reorient technological efforts to relieve the pressure.”*

30. OWOP explicitly refers to both protection of the Earth’s life support systems and environmental limits as part of its vision and referred to the need for equitable use of resources. It goes on to set explicit aims, outcomes and targets as a means of delivery. However, both these aspects of SD are absent from this Bill. In consequence, the Goals are less ambitious and clear than its predecessor on OWOP.
31. FG Bill fails to make living within environmental limits an overarching goal and a common aim and therefore cannot be considered to be delivering SD.
32. We would suggest that the goals are amended as follows:

**Goal 1: A prosperous Wales.**

33. This goal must be amended to include
- the need for a prosperous wales to reduce its use of resources to operate within environmental limits
  - to address the issue of equitable access to resources and the
  - UN SD goal of sustainable consumption and production
34. Such an amendment would bring this goal into line with its predecessor in OWOP which included the goal of ‘living within environmental limits, using only its fair share of the earth’s resources so that Ecological Footprint is reduced to the global average availability of resources’.
35. We consider the Goal’s use of the words ‘proportionate use of resources’ is vague, it is not proportionate in relation to anything and is therefore open to wide interpretation.
- 36. WWF suggests that the Goal be reworded to include the notion of living within environmental limits and a fair share of the earth’s resources– for instance, by reference to “A more sustainable, efficient and proportionate share of resources within the limits of the carrying capacity of nature, nationally and globally.....”**

**Goal 2: A resilient Wales**

37. WWF is pleased that this seeks to address the health of the natural systems within Wales, although it makes no mention of the impacts we have on natural systems in other parts of the world.
38. This is important because people in Wales now, and in the future, are reliant on imports of goods and materials from abroad. Additionally, we are reliant on global processes, such as climate. Therefore, anything which affects the availability of those resources (for example a shortage of freshwater) or the health of the ecosystems on which we all depend (for example, the ability of forests to absorb carbon) or the functioning of global systems (such as climate change) will have an impact on our ability to meet our current needs and those of future generations. This is the principle of ‘living within environmental limits’, to which Brundtland refers.
39. We are broadly content with the drafting of Goal 2 save for the omission of its reference to international impacts. See Q3 for how this could be remedied.

### Scale of change

40. The goals, whilst aspirational, are generic and fail to give a sense of the scale of change that is required to become a sustainable Wales, which can meet the needs of future generations as well as present ones. In terms of a sense of the scale of change, it appears to us that most public bodies could read the goals and honestly state that they were working towards these already in some way. Therefore they may easily believe that they are doing all that is required and business as usual is OK.
41. OWOP addresses this challenge by stating a goal such as 'Wales will use only its fair share of earth's resources' and then setting some clear aims such as stabilising ecological footprint by 2020.
42. This OWOP approach is similar to that being adopted by the UN in regard to Sustainable Development goals where there is an overarching broad goal, with several SMART objectives under each, which include a measurable target and time frame which helps to qualify what the goal requires to achieve it. e.g. 'By 2030, eradicate extreme poverty for all people everywhere, currently measured as people living on less than \$1.25 a day.
43. **WWF recommends this Bill should include a requirement to set targets in relation to the goals and set SMART objectives, (containing targets) on which performance can be measured.**

### **Objectives: sections 7-8**

44. Sections 7 and 8 of the Bill outline the key duty / requirements on how the public bodies' objectives will be set and the way in which they will be delivered / operationalized
45. Section 8 outlines the process for delivering sustainable development. However, WWF is concerned that the issues to be taken into account by public bodies listed within section 8 (2) (a)-(e) appear to re-define the meaning of the SD principle in a more limiting way than in Section 3.
46. In our view, the issues to be taken into account in section 8 (2) do not include all of the matters typically considered as part of the delivery of SD such as the need to base decisions on scientific evidence and the precautionary principle..

WWF also takes issue with the phrasing used for the various criteria as follows:

47. Whilst we commend the inclusion of the requirement to safeguard the ability to meet 'long term needs' in 8.2 (a), the explanation of this term in the EM provides only social needs 'Long term' requires the recognition that environmental limits or that the earth's carrying capacity is not breached, in order for societies to continue to sustain the resources needed for the wellbeing of future generations. This issue is at the heart of wellbeing of future generations and without it the Bill will fail to deliver meaningful sustainable development.
48. We consider the use of the phrase within 8 (2) (a) of '**balancing**' the short term needs with the need to safeguard the ability to meet long term needs is incompatible with ensuring that the 'needs of the present are met *without compromising* the ability of future generations to meet their own needs'. The notion that certain short-termist decisions may affect the ability of future generations to live a life of similar quality and standards as today's society is at the heart of SD. However, achieving a

balance allows a public body to exercise their discretion unfettered by an obligation to future generations. This goes to the heart of the Bill's FG purpose.

**49. WWF suggests that either there is a separate clause in this section or that Section 8(2) (a) is amended by adding “including, in the case of the climate, ecosystems the environment and natural resources, such an effect outside Wales”**

50. Section 8(2) b should be strengthened the requirement to integrate in line with OWOP, which states ‘ensure that all decisions **take into full account of, and where possible fully integrate**, the various social, economic and environmental outcomes that are being sought’ .

**2c the approach to measuring progress towards achieving well-being goals and reporting on progress;**

51. WWF considers that measuring progress of public bodies in the pursuit of SD is crucial to the effective delivery of SD.

52. Under the current scheme for delivery of SD the Welsh Ministers must set indicators that can be used to measure the delivery of SD. However, there is clear evidence that this approach has failed.

53. The Welsh Audit office<sup>6</sup> report stated that “Nor do ... Government’s performance management systems enable it to track its progress.....there is little evidence that these [SD indicators] have been actively used in policy appraisal”. In numerous SD Annual reports the Commissioner for Sustainable Futures has raised his concerns about this failed approach by WG in measuring progress. The AG has noted that there is ‘the need to understand both how they (indicators) have influenced policy and the impact of policies on the different measures, such as the response to the issues raised in last year’s State of Nature report.’<sup>7</sup>

54. Nothing in the FG Bill addresses the problem that high level SD (or wellbeing) indicators, at an all Wales scale, have failed to drive change.

55. WWF considers that the Bill needs to be significantly strengthened in this respect. We would wish to see a link made between the wellbeing indicators (section 11) and target setting, to the setting of individual organisational objectives and quantifiable performance measures.

56. The Bill should require Welsh Ministers to set targets at the same time as indicators, in respect of matters relevant to the well-being goals. A duty to take into account these targets and indicators should also be placed upon public bodies when setting objectives

57. Ministers could also be required to introduce, through regulations, the matters upon which targets will be based, for example, to be based on relevant science / advice given in the Future Trends Report and a requirement to include matters such as greenhouse gas emissions.

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<sup>6</sup> Ibid. Paragraph 22, page 12

<sup>7</sup> The Sustainable Development Annual Report 2013-14 p.8

## **2d The establishment of a Future Generations Commissioner for Wales, the Commissioner's role, powers, responsibility, governance and accountability;**

58. WWF fully supports the idea of the appointment of a Commissioner for Future Generations. Other Commissioners in Wales focus on the interests of particular social groupings and a Commissioner who can champion the interests of future generations is a worthwhile addition.

### General duty and powers

59. In the White Paper in 2012, the Government proposed that the Sustainable Development body (now FG Commissioner) should have powers to be an independent advocate for SD and be capable of 'constructively challenging' organisations on their delivery of SD'. The White Paper considered accountability as a crucial aspect of providing for an effective governance framework for SD and considered it essential that organisations were made accountable.(para 5.2)

60. In particular, the White Paper considered it necessary for the FG Commissioner to have both a 'supporting' and 'monitoring' role but not to duplicate existing audit bodies' role.

61. Inexplicably, the FG Bill provides no such powers and duties upon the FG Commissioner or upon the Auditor General for Wales (AGW). The FG Commissioner retains the weak power to make recommendations in section 20. However, this provision allows public bodies a wide exemption from compliance.

62. Equally, the White Paper argues for the AGW to play a key role in the accountability of public bodies. It states that WG intend to place a duty on the AGW (para 5.5) to include an examination of how organisations have embedded SD as their central organising principle in relation to this duty. Unlike the FG Commissioner, the AGW's powers to examine would be focused upon the systems and processes established by public bodies to govern the making of their strategic decisions when embedding SD in their planning. However, the FG Bill is silent on the AGW's role.

63. WWF agree with the conclusions in the White Paper (and with the Government's reference group) that accountability is central to embedding SD as a central organising principle

64. We suggest therefore the following amendments:

- A duty is placed upon the AGW as cited above
- That the AGW must inform and consult with the FG Commissioner about any such examination
- And that the AGW and FG Commissioner may co-operate with one another in relation to any such examination
- That the FG Commissioner is given the additional powers of enforcement, akin to those of the Children's Commissioner, in the following ways:



- i. Where scrutiny by the AGW leads to a finding of 'systemic failures' by a public body to deliver SD the FG Commissioner shall have power to examine the matter by way of reviewing and monitoring the effects of policies and systems, including the power to hold an inquiry, require information from agencies etc.. and call witnesses
- ii. Where scrutiny by the AGW finds a serious lack of compliance (but less than systemic) that the FG Commissioner has a power to challenge the current practice of the public body by conducting its own investigation and seeking compliance with its Recommendations
- iii. That the FG Commissioner has power to make recommendations for a public body to deliver a plan to bring about compliance, made under section 20 of the Bill and such recommendations must be taken into account by the relevant public body.
- iv. A power (analogous to and of the same status as those of other Commissioners) to require people to give evidence and produce documents, backed with sanctions for non-compliance. At the very least, clause 19(4) should be amended so that there is an obligation on a public body to comply with the Commissioner's request for information

### Independence

65. In order for the FG Commissioner to act both as champion of future generations and to constructively challenge public bodies it is vital that his appointment is sufficiently independent and is seen to be so publicly.
66. This is not the case, however. Current proposals curtail such independence, by requiring appointment by Welsh Ministers, instead of by the democratic will of the Assembly. Also, the shortness of the term of office (3- 5 years) and by the role of Government in deciding on an advisory body and appointing its membership.
67. *We recommend that the Commissioner:*
  - *Is appointed by the Assembly*
  - *Should have a term covering a least one cycle of production and review of the future generations report i.e. 5 years or more, preferably 7.*
68. The requirement for the Commissioner (unlike his existing counterparts) to have an advisory panel, as specified by government, seems unjustified and unsatisfactory. The panel is biased to representatives of the social aspects of SD and does not give the Commissioner the freedom to appoint expertise from across the range of aspects of SD (as recommended by the Bill reference group). WWF believes the function of the panel should be to provide a source of expertise and support. Therefore, the Act should not specify specific members but the criteria for appointment.

### **3.How effectively the Bill addresses Welsh international obligations in relation to sustainable development**

69. Principle 21, Stockholm Declaration has been described as 'the cornerstone of international environmental law'<sup>8</sup>. Principle 21 states that:  
 'States have, in accordance with the charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure

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<sup>8</sup> Sands, Principles of International Environmental Law, Second Edition, Cambridge

that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.’

70. It was confirmed by the ICJ’s 1996 Advisory Opinion that Principle 21 reflects customary international law.
- 71. WWF consider that it is essential that the FG Bill reflects the principle that States are subject to environmental limits in the exercise of their rights and that they have a responsibility not to cause damage to other States.**
72. This inherent link between the wellbeing of Wales and damage to global natural resources was acknowledged in OWOP but has been excluded from this Bill.
73. Principle 21 has been developed in other environmental agreements establishing more specific and detailed obligations, such as the rules developed in the Climate Convention and Kyoto Agreement and in the Convention on Biological Diversity.
74. Since the initial Brundtland report through the Rio Declaration and the Rio +20 Outcome document Principle 21 has been enshrined in the understanding of sustainable development. Now the UN is working on a set of Sustainable Development Goals (SDGs). The Minister has expressly stated he wishes the Bill to be compatible with the emerging SDGs and to ensure we are not ‘doing harm to our neighbours’
- 75. The Government’s Reference Group also advised the Minister that the environmental and global impacts were often given insufficient weight (in decision making) compared to more local and immediate concerns.<sup>9</sup>**
76. Although the process for developing SDGs is currently ongoing we consider that the Bill must take the opportunity to clarify Wales’ global responsibilities and to ensure that public bodies take into account in their decision making the potential for environmental damage to our global neighbours, particularly in the areas of climate and biodiversity.

We have already make explicit suggestions to amend Goal 1, Section 8.2 and the addition of targets. Additionally we recommend the following:

- 77. Ensure statutory guidance is clear on leadership, accountability, processes and ownership, including in regard to the evidence and advice to public bodies, regarding international environmental impacts, as recommended in the reference group advice to the Minister.**
- 78. Require Government to review the goals in the light of UN (or international) agreements, particularly in regard to UN SDGs.**

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<sup>9</sup> Advice note from FG Bill reference group **RE: Environmental Limits and SD decision making to Minister for Local Communities and Tackling Poverty**. January 2014

#### **4. Any potential barriers to the implementation of these provisions and whether the Bill takes account of them;**

##### 4.1. Evidence

79. A key issue highlighted by the Government's reference group is the availability of evidence and advice, particularly regarding environmental impacts, and at the appropriate scale for the public body concerned. This relates to a general concern as to the availability of expertise within the various public bodies on aspects of SD which are not their core remit.
80. The Reference group recommended "It would be helpful if the legislation set out who is responsible for providing the most up to date advice, after assessing evidence and commissioning research"<sup>10</sup>. We suggest these can be partly addressed through specifying further content for the Future Trends report and clarifying the responsibility for the provision of the evidence base, at the correct scale.
81. This relates to a further key issue in regard particularly to environmental impacts at a global scale. There needs to be clarity on whose role it is to provide advice on emerging science *and* tailor advice on this to the public bodies. The public bodies must also "Note that this lack of data and evidence also applies to social and economic elements and decision making for the long term must include dealing with uncertainty. Consideration must therefore be given to the weight applied where there is uncertainty. A risk based approach seems to be favoured by Local authorities."<sup>11</sup>
82. We note that the precautionary principle, which is one of the SD governing principles in OWOP, has been omitted from the FG Bill and yet is crucial to the governance approach required by existing EC legislation.

##### 4.2 Capacity of FG Commissioner and relationship to others.

83. WWF have some concerns that the potential scale of the role of the Commissioner is not matched by sufficient resources to deliver effectively. SD is a very broad remit and will require expertise across a broad range of areas. The role in advising and monitoring well over 50 organisations (without considering the various departments of government), as well as conducting an effective National conversation will require considerable time. Additionally, the Commissioner will have to collaborate with many other organisations to gain the evidence s/he needs for the Future Generations report. Without sufficient capacity the role will be ineffective.

##### 4.3 Accountability and availability of remedy

84. The reference group recommended "There is a need for clarity on accountability in decision making that addresses key responsibilities through clear duties and powers and which offer incentives and sanctions for non-compliance."
85. This Bill is silent on any remedy for non-compliance or under-performance.

**Anne Meikle, Head, WWF Cymru. 05.09.14**

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<sup>10</sup> *ibid*

<sup>11</sup> *ibid*