

**National Assembly for Wales
Environment and Sustainability Committee
WFG 59
Well-being of Future Generations (Wales) Bill
Response from Natural Resources Wales**



Written evidence from Natural Resources Wales to the Environment and Sustainability Committee on the Well-being of Future Generations Bill, as laid July 7 2014.

1. Key Messages:

We are very supportive of the Well-being of Future Generations Bill (the Bill), its Goals, duties and intent. We particularly welcome the changes to create the resilient Goal. We believe that our founding legislation and purpose as an organisation is already well aligned and that the Bill will support achievement of our purpose.

There are some specific areas where we ask for clarification, raise concerns, and make recommendations. These are across:

- The Global context of the Bill
- Environmental limits and climate change;
- NRW's roles on Public Service Boards (PSBs) and Future Generations Commissioners' Advisory Panel;
- Sanction and redress;
- Alignment with other emerging legislation, particularly the Environment Bill and Local Government Reform;
- Measures of progress and Reporting requirements;
- Role of Future Generations Commissioner in respect of climate change;
- The figures used in Regulatory Impact Assessment (RIA);
- Subordinate legislation.

We offer our expertise in respect of the development of the National Indicators, statutory and other guidance, as well as to the Welsh Government and the Future Generations Commissioner in the production of their respective Future Trends and Future Generations reports.

2. Introduction:

The purpose of Natural Resources Wales is to ensure that the environment and natural resources of Wales are sustainably maintained, sustainably enhanced and sustainably used. In this context sustainably means with a view to benefiting, and in

a manner designed to benefit, the people, environment and economy of Wales now and in the future.

Our establishment as a body to manage the natural resources of Wales from an ecosystems approach, is in itself a contribution to the sustainable development of Wales.

We therefore welcome legislation that further strengthens governance arrangements in Wales for decision making that embeds sustainable development principles. We see the Bill as an important step and tool, in achieving sustainable development in Wales.

We believe that we are well positioned to transition to delivery of the general requirements of the Bill on us, anticipated to be from 2016. We have developed a corporate and business planning process which prioritises activities to deliver common outcomes that we share and have agreed with the Welsh Government, via our sponsoring department. We therefore believe that our current corporate plan, which runs until 2017, is already well aligned to the requirements of the Bill. It sets out how and where our activities will be good for people, the economy and the environment and how we will operate as a good organisation, all underpinned by use of good knowledge and working with others to deliver it.

In respect of applying the Sustainable Development (SD) Principles, we developed our Corporate Plan through involvement, will need to work collaboratively to deliver our purpose and we already need to consider future generations when managing natural resources, for example: water resources. We believe the Bill will support the delivery of our purpose. Our Corporate Plan from 2017 will be based on objectives that align to the Goals.

We welcome the opportunity to present to the Committee on our general support for the Bill, whilst also raising some areas for further consideration and clarification. We have responded under the Committees' Terms of Reference headings.

3. Detailed response:

General:

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

How effectively the Bill addresses Welsh international obligations in relation to sustainable development;

We have been involved in the Advisory Group to the Bill and are pleased with the overall intent and principles set out in the Bill. We particularly welcome the re-wording of the Goals to better reflect natural resources and the role healthy and resilient ecosystems play, in the well-being of society and the economy. We also welcome the addition of descriptors to the Goals. These help to give greater understanding and clarity around the integrated nature of each goal. We believe

however that the measures of progress and statutory guidance will be equally important to convey intent.

Whilst we welcome the Welsh Government legislating to put sustainable development at the heart of government in Wales and appreciate that the Bill can only apply to Welsh bodies and processes, we have some concern that there appears to be little recognition of it operating in a wider UK, EU and global landscape. This will include legislation and policy, as well as international economic processes and global environmental systems. These may prevent Wales realising sustainable development.

The Explanatory Memorandum only seems to discuss the wider than Wales issues in the context of what UK, EU and Global SD agendas, helped inform the principles within the Bill. It does not identify or discuss in any detail the implications for Wales of delivering the Goals, whilst operating in these wider than Wales systems. The Explanatory Memorandum discusses some barriers to undertaking long term thinking; for example the discounting of future costs and benefits. However, what is not clear is whether it is proposed, or even possible, that Wales do something different in respect of these barriers. For example, develop its own model for economic appraisal including accounting for future generations. We believe more consideration will need to be given to these wider than Wales issues in any guidance.

There is also a risk that unknowingly Wales' exports its unsustainability through pursuit of an only Wales agenda and that at a global level there is no improvement through the introduction of the Bill.

- **Specific comments:**

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

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

- We support the Purpose, Aim and SD principle set out in the Bill. We welcome establishment of a governance framework for the public bodies, which requires an integrated consideration of the social, economic and environmental wellbeing issues in respect of decisions and action taken now, whilst taking the needs of future generations into account.

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;

Goals:

- We believe the Goals set out in the Bill better reflect the outcomes for a sustainable Wales. We particularly welcome the better reflection of natural

resources, systems and resilience; the ecosystems approach is a tool that supports delivery of SD.

- The measures of progress for the Goals, will be key to ensuring articulation and assessment of the direction of travel to a sustainable Wales.
- Guidance will be key to explain the linkages between Goals, measures of progress and objectives, as well as the specifics of how to comply with the requirements of the Bill.
- The guidance that supports the Bill will need to set out explicitly, the issues that are only implicitly covered in the Goals. For example:
 - **Environmental limits.** Whilst the Explanatory Memorandum provides some clarity in respect of the need to operate within environmental limits, the guidance will need to state this explicitly and through discussion of the ecosystem approach, explain what this means and how it's applied.
 - **Climate change** is only implicit in the Goals, with little or no explicit reference in the Bill. The guidance must make clear where and how climate change should be considered. Climate change could be made more explicit in the Goals by inserting in Table 1 under 'A resilient Wales', 'including Climate Change' at the end of the description;
- We believe we have experience and expertise that would usefully inform the development of statutory guidance with respect to the Bill and we would welcome the opportunity to contribute.

Well-being Objectives:

- We support a requirement to set outcome focused objectives within the corporate planning process, which maximise the organisations contribution to the Goals.
- We expect our post 2017 Corporate Plan to have objectives fully in line with the Bill.

Duties:

- We support the SD principle of 'considering future generations needs in the decisions and activity we take now' and therefore support development of objectives that consider this and set out how an organisation, will maximise its contribution to achievement of the Goals.
- We support the Duty, as set out in Section 7 and 8 of the Bill, which requires the public bodies named in the Bill to set well-being objectives in line with the 'sustainable development principles'. The principles set out in Section 8 are well established SD principles.

- As discussed in Goals above, the other established principle is “living within environmental limits”, which will require greater explanation in the guidance.
- We particularly support the principles of collaboration and prevention, along with the requirement for resources/budgets to be aligned to delivery of the objectives. We hope that the intention of this includes opportunity for flexible budgeting linked to outcomes. For example, health prevention budgets supporting access and activity in natural green space.

The establishment of a Future Generations Commissioner for Wales, the Commissioner’s role, responsibility, governance and accountability.

- We support the establishment of an Independent Future Generations Commissioner with powers to make recommendations to public bodies.
- The Bill however also provides caveats that allow public bodies to not comply with a recommendation (20(1)(a/b)). This seems to weaken the primary sanction or redress provided for in the Bill. We appreciate that there needs to be some flexibility around an organisations response to the issues identified by the Commissioner and also recognise that the Bill will operate within the democratic process. We believe therefore that the Bill and any supporting guidance would benefit from greater clarification as to the role of the democratic process, scrutiny, at local government, Welsh Government and by the Wales Audit Office, and the transparency of reporting, in ensuring compliance.
- We welcome the recognition that natural resource management and the environment needs to be reflected in the Commissioners Advisory Panel and that NRW, as the leading body for the environment and natural resources in Wales, has been identified as a member. However, along with others, we have some concern about the potential for conflict of interest arising between the roles. We may be issued recommendations by the Commissioner which have been informed and advised on by the Advisory Panel, on which our Chair or nominated Non-executive will sit. We are unclear how this will be managed. We note that the explanatory memorandum does clarify that a role on the Advisory Panel does not impact on members other statutory functions.

Clarification is sought on:

- The statement that the Future Generations Commissioner will provide climate change advice to Welsh Ministers. Will they only provide advice on climate change to Ministers? What about the public bodies?

We suggest the text under Part3/18 (1) (a) could be amended, or a separate point made, to the effect that the Commissioner can

‘..provide advice or assistance to a Public Body, Public Service Board or Community Council in relation to considering climate change and the achievement of the well-being goals’

- Will the Future Generations Commissioner be the Climate Change Commissioner? What will the status of the Climate Change Commission in Wales be post the enactment of this Bill?

A value of the Climate Change Commission is the opportunity it provides to discuss the complex issues around climate change in Wales in a specific forum.

- It would be helpful to have clarity on whether the National Conversation and SD Charter are the processes that will be used to perform this function for SD in Wales. We believe that in order to make the radical shifts needed to achieve a sustainable Wales, debates in these fora based on future scenarios, opportunities and hard choices, will be essential.

The establishment of statutory Public Services Boards, assessments of local Well-being and development / implementation of local well-being plans.

- Whilst we support a stronger framework for delivering sustainable development through local public service delivery and therefore welcome the establishment of PSBs and Well-being plans on a statutory footing, we have some concern about resourcing the needs of all 22 PSBs as a statutory member. This more than doubles our current engagement level.
- To deliver the intent of the Bill and enable efficient and effective engagement, PSBs will need to operate at the strategic level locally, and in line with this Bill, use an integrated approach to needs assessment and delivery to ensure equity across the three issues.
- To ensure efficiencies, the establishment of PSBs and Well-being plans would benefit from being aligned to the proposals for Local Government reforms in the “White Paper – Reforming Local Government”, currently out for consultation. There appears to be potential for 22 PSBs to develop Well-being plans and then within a couple of years the number of LAs and therefore PSBs to be reduced.
- To be effective, senior managers with decision making and resource committing delegated powers would need to attend the PSB. A reduced number of PSBs would therefore enable us, and others, to more efficiently and effectively engage. We believe therefore that it would be preferable to start the PSB and Well-being plan process with the smaller number of local authorities proposed, rather than the larger number and reduce down. There does appear to be scope in both Bills to achieve this, through Minister Direction in the Bill and voluntary merger in the Local Government Reform White Paper.

- Clear alignment with other emerging Bills will also be essential, particularly on process. For example the links between the development of area natural resource statements under the Environment Bill and the Well-being plan of PSBs. Clarity around timeframes, particularly in respect of availability of ecosystem data, evidence and information will be needed. Alignment around joint delivery and reporting requirements on the priorities identified, both nationally and in area statements will also be required.
- In respect of the list of assessments set out in section 36 (3), that should be considered when developing a well-being plan, we recommend that the UK Climate Change Risk assessment, the Climate Change Strategy and sectoral Adaptation plans should be added. We would expect that additional assessments, such as those being proposed under the Environment Bill, would be brought in under the regulations option in 36 (3) h.

The approach to measuring progress towards achieving well-being goals and reporting on progress;

- Measures of Progress and statutory guidance will be key to delivery of the Bill's intention. Indicators and monitoring will need to reflect both Wales' achievement of the Goals, as well as our relative consumption of the earth's resources globally.
- The Bill sets out a number of reporting requirements. We will be both subject to the Bill and be a member of the PSB and will therefore potentially report through two mechanisms. There are already reporting requirements on individual public bodies and for PSBs, so it is our intention to develop a single annual reporting approach that delivers both requirements.
- We note that there is the option in the Bill to discharge our SD duty (objective setting) through the PSB. We do not believe that all of our activities and objectives that describe how we will be contributing to the Goals, could be discharged through the PSB and its well-being plan. We are therefore unlikely to utilise this option.
- We welcome that reporting is through existing mechanisms and not an additional layer. Reporting shouldn't become an industry at the expense of delivering the intent of the Bill.
- We do welcome and support the strengthening of scrutiny around the PSB and well-being plan. We would ask if there is a need for support and training to the scrutiny panels around SD and if this is a role for the Future Generations Commissioner?
- We would welcome working with:
 - The Future Generations Commissioner when producing the Future Generations Report, to ensure the evidence from State of Natural Resources Report (SoNaRR) is utilised.

- The Welsh Government on the Future Trends report, utilising evidence from SoNaRR and horizon scanning futures work, and;
- Welsh Government in setting the Measures of Progress (National Indicators) where we have expertise and experience.

4.0 Barriers, unintended consequences, financial implications and subordinate legislation

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

- Whilst there are opportunities for supporting delivery of the intent of the Bill through all the emerging Bills and Local Government reform agenda, the very fact that we are operating in a changing policy and structural landscape with reduced resource, may itself create barriers. Flexibility will be needed to align and manage these changes.
- Operating within local and global agendas, including environmental systems, will pose barriers. Whilst the Bill itself cannot address these directly, we believe the supporting explanatory material and any guidance should raise awareness of the issue and make clear where Wales is considering any solution.
- We operate across borders with England, particularly with respect to managing natural resources. Decision making at these locations may not necessarily be driven by the same principles.
- Activity from non-devolved public sector bodies in Wales, which will not be subject to the duties.

Whether there are any unintended consequences arising from the Bill;

- There is the danger that the process drives a focus on setting objectives and reporting, but is not utilised as the catalyst for fundamental change in service delivery, i.e. to long term, prevention focused, integrated outcome delivery.
- Wales may look like it has a different operating environment for business, which could be seen as negative. This needs to be managed well and the positives of operating in a more sustainable country will need to be communicated.

The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum and Regulatory Impact Assessment; which estimates the costs and benefits of implementation of the Bill); and

- We will continue to work with Welsh Government at the relevant review stage to firm up on the RIA figures. We are unclear on some of the source data for the NRW figures at this stage and there is the potential that these costs are an under estimate. However, this has to be considered against the fact that as

an organisation which needs to work with others to deliver its purpose, we would look to work with key partnerships to achieve this and it may yield efficiencies.

- If PSBs are established as this Bill sets out, i.e. the strategic partnership undertaking integrated consideration and delivery across social, economic and environmental issues, at the local level, we would see this as a worthwhile investment. These would be a key delivery partnership and we would align resources accordingly. As discussed above, this would be more efficient with a smaller number of PSBs.
- We think it would have been beneficial in the PSB section, to use the approach used in the corporate planning element of the RIA which considers a transition cost and then an ongoing cost. There will be work to set up the PSBs, terms of reference, guidance etc., which will increase the initial costs relative to ongoing costs. Also, we have input to needs assessments for some Local Service Boards to date and will in future need to for all PSBs, but are not listed at all in this section.
- For the corporate planning section however, we feel this would be core work, just a different way of working in some cases and should not therefore incur significant additional ongoing costs.
- Overall, we anticipate a small increase in resource for the first few years, but once established, Corporate Planning and engagement with PSBs would become core work within NRW.

The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum, which contains a table summarising the powers for Welsh Ministers to make subordinate legislation).

- We note that there is a power to make subordinate legislation to amend the well-being Goals. Whilst we can appreciate the need to allow for change overtime, the Goals set the long term outcomes and vision for Wales and should not therefore be subject to review over short timeframes. We welcome therefore that this power is an affirmative process, requiring approval in plenary.
- We support 36 (3) h which gives Welsh Ministers powers to require PSB to consider other Assessments. We are recommending that the UK Climate Change Risk Assessment is one that should be listed now, amongst others, but welcome the ability to add others over time as they emerge.
- As per comments already made, we also support powers 43(2)(a) which allows ministers to require a PSB to review its well-being plan if substantially non-compliant, and 46(2) allowing Ministers to issue direction to require two or more PSBs to merge and 47(2) to collaborate.

Natural Resources Wales
5 September 2014