

Cynulliad Cenedlaethol Cymru Pwyllgor Amgylchedd a Chynaliadwyedd	National Assembly for Wales Environment and Sustainability Committee
Egwyddorion cyffredinol Bil yr Amgylchedd (Cymru)	General principals of the Environment (Wales) Bill
Ymateb gan Cymdeithas Llywodraeth Leol Cymru	Response from Welsh Local Government Association (WLGA)
EB 22	EB 22





RESPONSE TO WELSH
GOVERNMENT CONSULTATION
ON THE ENVIRONMENT BILL

12th June 2015



WLGA • CLILC

INTRODUCTION

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities and the three fire and rescue authorities are associate members.
2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh local government and the communities they serve.
3. The WLGA welcomes the opportunity to contribute to the scrutiny of the Environment Bill (the Bill) undertaken by the Environment and Sustainability Committee

General

4. The WLGA makes the observation that the Environment Bill has a collection of apparently disparate actions and functions with a lack of clarity of purpose.
5. Part 1 of the Bill states its purpose is to promote the Sustainable Management of Natural Resources; Part 2 states its purpose is to require Welsh Ministers to meet targets for reducing emissions of greenhouse gases.
6. Parts 3, 4, 5, 6 and 7 provide no clear statement as to their purpose or inclusion within the Bill.
7. The Environment Bill is the first piece of proposed legislation laid before the National Assembly for Wales since the Well-being of Future Generations (Wales) Act 2015 became law and yet there is minimal reference to it on the face of the Bill. The Environment Bill has to be seen to embrace the sustainable development principles primarily in that it will indicate how to embed the principles into future legislation and secondly the Bill is being introduced by the same Minister who delivered the Well-being of Future Generations (Wales) Act 2015
8. The Well-being of Future Generations (Wales) Act 2015 (WFG Act) places a duty upon public bodies *'to carry out sustainable development s3, [the process of improving the economic, social, **environmental** and cultural well-being of Wales by taking action in accordance with the sustainable development principle'...s2]* (emphasis added)

9. The WFG Act also identifies 7 well-being goals and 5 ways of working to show that public bodies have applied the sustainable development principle namely: long term, prevention, integration, collaboration and involvement. The only reference in the Bill to the WFG Act appears in Schedule 2 paragraph 8 where an amendment is proposed.
10. Within the Explanatory Memorandum (EM) (paragraph 1 states : `*The Bill supports the Welsh Government's wider work to help secure Wales' long term well-being, so that it benefits from a prosperous economy, a healthy and resilient environment and vibrant, cohesive communities..*' This makes a veiled and selective reference to the well-being goals within the WFG Act and yet surely managing natural resources MUST be undertaken in a globally responsible way and ALL public bodies have a duty to contribute towards the achievement of all 7 goals.
11. The acronym SSSI is defined as Site of SPECIAL Scientific Interest and not as stated in the list of acronyms as a Site of SPECIFIC Scientific Interest – this is in both the Bill itself and the EM
12. Under paragraph 145 in the EM the year 1010 is referred to instead of 2010

Part 1: Natural Resources Management

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

13. The list of natural resources does seem to be comprehensive and the inclusion of the caveat'but is not limited to'.... is sufficient to be all inclusive.
14. To enhance the links with the WFG Act we recommend that under s3 (2) of the Bill between 'meet the' and 'needs' the words 'social, economic, environmental and cultural well-being' should be inserted.
15. The WFG Act introduces SD Principles and SD governance which surely should be referred to in the sustainable management of natural resources otherwise Natural Resources Wales (NRW) will have one set of principles to adhere to under the WFG Act and another set of principles of sustainability under the Bill- perhaps s4 of the Bill should have the heading 'The application of Sustainable Development Principles in the Sustainable Management of Natural Resources.

16. Reference is made in s3 (1) to the 'resilience of ecosystems'. Consideration should be given to clarifying the understanding and providing a definition of 'ecosystem' and an 'ecosystems approach'. The **Article 2 Convention on Biological Diversity 1992** definition within the Explanatory memorandum (paragraph 17) should be on the face of the Bill.

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

17. *'The action a public body takes in carrying out sustainable development must include - (a) setting and publishing objectives ("well-being objectives") that are designed to maximise its contribution to achieving each of the well-being goals, and (b) taking all reasonable steps (in exercising its functions) to meet those objectives'* WFG Act s3(2). All strategic and policy decisions must be seen to be contributing towards the achievement of the Well-being Goals within the WFG Act. Therefore it follows that a National Natural Resources Policy must also contribute towards the achievement of the well-being goals and be seen to do so. The Bill must be amended to include the connection between sustainable development in the WFG Act and the development of the NNR Policy. If not, then the Minister would be determining one policy (in the WFG Act) to be implemented by public bodies and another (in the Bill) which would be contrary to the WFG Act.
18. Clarification is needed on how the timescale for the National Natural Resources Policy fits with the preparation of the National Development Framework. Work is expected to start on the NDF imminently and continue until Spring 2018. The Bill should be amended to make clear whether the NNRP covers land and marine and, if marine is included, what the relationship with the Marine Plan is?

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

19. According to the Explanatory Memorandum the area based approach is to integrate the management of natural resources at a local level – integrate with what? Is it the integration of the management of natural resources within Natural Resources Wales or for natural resources management being integrated with the management of social, economic and cultural well-being?

20. The WLGA agree with s10 (1) of the Bill that *'NRW must prepare and publish statements for the areas of Wales that it considers appropriate for the purpose of facilitating the implementation of the National Natural Resources Policy'*. It is essential that this be linked with the well-being assessment and development of Well-being Plans, something which is not clear within the Bill. The Area Statement should be part of the collective data brought to and shared at the PSB table.
21. In s10 (3) the Bill states that NRW must state how they propose to address the risks, priorities and opportunities for sustainable management of Natural resources in the area- will the 'area' be co-terminus with the PSB area?
22. It is not clear within the Bill as to whether the Area Statements will be subject to consultation. The Bill should be amended to state that other public bodies should/could have an input into the development of the Area Statement because Local Authorities, other PSB members, invitees and other partners may address and deliver on the risks, priorities and opportunities identified. Without consultation or input how can Local Authorities be expected or directed to implement an Area Statement if they disagree with the proposals and/or the method of implementation?
23. The production and publishing of the Area Statement must rest with NRW and must apply the sustainable governance principles from the WFG Act of long term, preventative, collaboration, involvement and integration, however the operational delivery of the Area Statement may rest within the public, private or third sector.
24. The WLGA expresses its concern with respect to s12 'Welsh Ministers' directions to implement area statements'. In particular s12 (1) which proposes that Welsh Ministers may direct a public body to take such steps as appear to them to be reasonably practicable to address the matters specified in an area statement under s10(3). There needs to be clarification that when the Minister is directing a public body the decision is not only based on the area statement but takes into consideration (and evidences that consideration) that the state of the social, economic , cultural and environmental well-being have informed the Ministers' decision as to what is 'reasonably practicable'.
25. The Ministers' approach would also be contrary to the role and function of the PSB to analyse the social, economic, environmental and cultural well-being of the PSB area, before determining a well-being plan for the PSB area, as determined in the WFG Act.

26. What are the resource implications to implementing Area Statements? It will be unrealistic to 'direct' public bodies to implement them. Should it be expected that the Area Statements will be time limited and have dates for when NRW will implement different aspects? Is it anticipated that this will be covered in the accompanying guidance?
27. Furthermore s13 (1) states that... 'a public body must have regard to any guidance given to it by the Welsh Ministers about steps that should be taken to address the matters specified in the area statement..' Having taken 'regard to any guidance' is the public body compelled to follow that guidance? What, if any, are the implications of not following the guidance? Is there recourse to challenge the guidance as not being 'reasonably practicable'?
28. The implementation of Area Statements may require changes to Local Authority planning policy or land management, any changes to land management have the potential of needing to involve private individuals or businesses, (groups which cannot easily be directed.)
29. Likewise if the Area Statement requires changes to LDP policies this can only be done at the time of a statutory review of the Local Development Plan

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

30. S7 (1) does not state the frequency with which 'the Welsh Ministers must prepare and publish a list of living organisms and types of habitat which in their opinion are of principal importance for the purpose of maintaining and enhancing biodiversity in relation to Wales'. The phrase '*in their opinion*' could result in the said list changing several times during an administration and at each change of Minister.
31. Clarity must be provided on what criteria constitute 'principal importance'. Whatever is included in the list whether it be Invasive Alien Species (to be eradicated); species to be specifically protected and encouraged (e.g. Red Kites, Black Grouse, Sphagnum Moss) the Minister must be required to state the principal importance for each inclusion on the list?

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

32. Insufficient expertise/knowledge to comment.

Part 2: Climate Change

Do you agree with the proposals for the 2050 targets?

33. The proposals are in line with recommendation of the Committee on Climate Change which states that the United Kingdom should aim to reduce Kyoto greenhouse gas emissions by at least 80% below 1990 levels by 2050. This was deemed as an appropriate UK contribution to a global deal aiming to reduce Kyoto gas emissions to between 20-24 billion tonnes by 2050.

For your views as to whether the interim targets should be on the face of the Bill

34. To maintain consistency with the Well-being of Future Generations (Wales) Act 2015 the phrase 'interim targets' could be replaced with 'milestones'. The milestones on the face of the Bill would provide a clear focus and statement of intent.

Do you believe that the introduction of carbon budgets is a more effective approach than the 3% annual emissions reduction target that is currently in place in Wales

35. The introduction of carbon budget targets could provide a greater focus and they have the benefit of being flexible (i.e. they can be adjusted every 5 years to keep on track).

What are your views on what emissions should be included in targets? All Welsh emissions or those within devolved competence?

36. All Welsh emissions should be included. That would be a stronger message as to how serious Wales is about addressing Climate Change and emissions than if it

was only on devolved competence. Any organisation wishing to do business in Wales must understand how we do business.

37. To include only those within devolved competence would ensure the Welsh Government has control /influence over relevant emissions. However, it would not be demonstrating working towards the Well-being goal of being a globally responsible Wales: *‘ A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.’*
38. We must however ensure that there is no ‘double counting’ and there must be clarity to confirm what has been emitted in Wales.

Do you agree with the Bill’s proposals as to what should happen if the Welsh Ministers fail to meet emissions targets or carbon budgets?

39. There obviously needs to be accountability by Welsh Ministers both collectively and individually for the achievement or/and non-achievement of meeting emissions targets and carbon budgets as proposed in s39 (1) (2).
40. The WLGA welcomes this approach and the restrictions within s32 (2), that carbon budgets, interim emission targets (milestones) cannot be changed unless certain conditions are met. This will ensure continuity within an administration even if Welsh Ministers’ portfolios change.
41. Referring back to 39 above regarding accountability s41 is not clear whether the final statement for the budgetary period is a collective report or whether reflecting s39 (2) each Welsh minister must account for their performance against the carbon budget covering their areas of responsibility.
42. Within s42 the Welsh Ministers must lay before the National Assembly for Wales a report setting out proposals and policies to compensate for excess emissions in later budgetary years, there seems to be no recourse or penalty for successive failure to meet emission or carbon budget targets.
43. It must also be clear that collectively the Welsh Ministers may have met their targets and budgets, it must not be acceptable that inaction and continuing

failure or disregard to meet targets from one Welsh Minister is 'compensated by' or necessitates increased action from another Welsh Minister.

What should the role of an advisory body on Climate Change be?

44. Within the Well-being of Future Generations (Wales) Act [s19 (1) (a)] *the Future Generations Commissioner advises public bodies on climate change.* . By definition in the Act Welsh Ministers are a 'public body'. The Act does not state that the Commissioner for Future Generations must be designated by the Minister to provide advice on climate change.
45. Concern must be expressed as to why the (UK) Committee on Climate Change is the default advisory body. Is there an intention to 'disband' the current Climate Change Commission for Wales?
46. The independence of the advisory body could be called into question with s46-s49:-
- i. s46 *'...If requested to do so by Welsh ministers, the advisory body must provide the Welsh Ministers with advice, analysis, information or other assistance that is relevant to – (a) the exercise of the Welsh Ministers' functions under this Part or (b) any other matters relating to climate change*
 - ii. s47(1) *' In exercising its function under this Part, the advisory body must have regard to any guidance given to it by the Welsh Ministers '*
and
s49(1) *'...Before laying draft regulations before the National Assembly for Wales in accordance with s48(3) the Welsh Ministers must (a) request advice from the advisory body about the proposal to make the regulations and (b) take the advisory body's advice into account.'*

The Welsh ministers are therefore seeking advice, analysis and information from the advisory body and they must request advice from the advisory body in proposing new regulations yet, at the same time, they are providing guidance to the advisory body.

Part 3: Carrier Bags

Do you agree with the proposal that Welsh Ministers should have the powers to raise different charges on different types of bags?

47. In principle we have no issue with this proposal. Local Authorities have been provided the power to enforce current regulations on single use carrier bags, and although there is no indication in the consultation, we presume the intention would be to extend the powers of local authorities for other types of carrier bags.
48. Business and the public have overwhelmingly accepted and adjusted to the charge for single use carrier bags. The bulk of the work which has fallen to Local Authorities has been in terms of education of businesses, the provision of information and guidance documents etc. on websites, and in printed form; dealing with complaints; and ensuring large multi-site businesses who deliver goods in Wales comply.
49. The work associated with the inclusion of other types of bags within the regulations will constitute new burdens upon local government. Guidance documents will need to be amended and published. Enforcement guidance (clarified in Schedule 1) will need to be amended, consulted upon, changed and implemented. There will be costs for training of officers, and if there is an expectation of proactive business interaction to ensure compliance, those associated officer costs.
50. A different charge for different types of carrier bags may influence the type of bag purchased.
51. Any charge difference between different bags could be determined by for example : made from re-cycleable , sustainable material or biodegradable which could then encourage producers of carrier bags to be more sustainable in their production

Do you agree that the profits from the sale of carrier should be directed to all charitable causes rather than just environmental ones?

52. The WLGA confirms that it agrees that the profits from the sale of carrier bags should not be retained by the seller but should be applied to 'charitable purposes' as determined within the Charities Act 2011 s1-4

Part 4: Collection and disposal of Waste

For your views on whether the Welsh Ministers need further powers to require that certain types of waste are collected, treated and transported separately

53. There is an argument that occupiers of non-domestic property should start to separate some of their waste materials, to bring them more in line with practice in the household sector. However, there are a number of caveats to this.
- a. First, could this be achieved by raising awareness, persuasion and voluntary means (as has largely been the case in relation to households) rather than resorting to legal powers?
 - b. Second, if it is decided that powers *are* needed, should there be a *de minimis* threshold for small businesses (e.g. based on turnover)?
 - c. Third, the Bill refers to waste being collected '*in accordance with any applicable separation requirements*'. Under current legislation the 'separation requirements' are that paper, glass, plastic and metal must be collected separately **but** this is subject to the necessity and TEEP tests. It is possible that the outcome of these tests will be that separate collection is not required to achieve high quality recycling or that it would not be TEEP to introduce separate collections at the current time (such arguments would, of course, have to be substantiated with evidence).
54. These possibilities must therefore be taken into account if Ministers are given any additional powers to require the separate handling of materials. Otherwise, separation requirements imposed by Ministers on businesses could be incompatible with the collection arrangements deemed appropriate at the time by the local authority. Since the local authority would not be allowed to mix materials once they have been collected separately this could result in significant additional costs and may mean it is no longer TEEP for the authority to collect this waste.

55. Therefore, should Ministers be given further powers, the proposals they are allowed to make should acknowledge explicitly the 'necessity' and 'TEEP' tests and respect the consequent decisions made by the local authority in question.

Do you agree that non-domestic premises should be required to put their waste out for collection in line with any separation requirements set out by Welsh Government?

56. As above, there should be a restriction on any separation requirements that might be introduced by Welsh Government such that they are consistent with the collection arrangements deemed appropriate by the local authority.
57. Consideration also needs to be given to the particular circumstances of some small commercial enterprises where it may be impracticable to either store and/or separately present a range of materials at the kerbside. The practicalities of town centre businesses storing and presenting separated materials should not be overlooked. Even if it is TEEP for the service there needs to be an element of practicality with regard to the individual businesses and their storage and presentation circumstances.

Whether you agree that Welsh Government needs wider powers to ban some recyclable waste from incinerators

58. Such a ban would be unenforceable. From a local authority perspective, households are given every opportunity to recycle materials using the collection systems they have available to them. Moreover, local authorities have been taking extensive measures to encourage residents to recycle. As they strive to achieve challenging Statutory Recycling Targets (SRTs) it is not in their interests for any potentially recyclable materials to be missed.
59. However, it cannot be ruled out that some households will place recyclable material in their residual waste bin or bag – through error, ignorance or blatant disregard of requests to recycle or because the 'recyclable' material is in some way contaminated rendering it no longer recyclable. It would be neither safe nor practical to expect local authority operatives to check every residual bin or bag for recyclable materials to prevent them going for incineration.

60. Likewise, for similar reasons, it would not be sensible or fair to place EfW plant at risk of breaking such a ban. (Indeed, some pre-sorting and some post-recovery - e.g. of metals - will occur at EfW plant, further increasing the amount of recyclable material that is extracted from the waste stream).
61. WLGA believes there should be an assumption that household residual waste bins contain no practicably recyclable materials. The SRTs are driving local authorities to capture as much recyclable material as possible without the need for an (unenforceable) ban.

What will the impacts of these waste proposals be for you or your organisation?

62. For the local authorities that WLGA represents the impacts *could* be as follows:
- a. Being faced with requests to collect materials from non-domestic properties that have been separated out in ways that make it difficult and more expensive/uneconomic to collect (or if full costs are passed on this could result in business closure/relocation, impacting on the local economy/jobs)
 - b. Having requirements imposed that are unenforceable and/or raise health and safety issues – e.g. trying to stop residents placing recyclable waste in their residual waste; trying to 'police' food waste being discharged to sewers
 - c. Being subject to penalties in some such cases (e.g. if recyclable material is found in residual waste when a ban has been imposed on its incineration).

Are there any other waste proposals that you think should be included in the Bill?

63. WLGA argued at the time of the White Paper that the waste proposals should not be included within the Environment Bill. Our responses above largely sustained this position (or suggest several caveats will be needed if new powers were to be introduced).
64. The Bill may, however, be an opportunity to revisit the SRTs given that there have been numerous developments since the targets were first set. This might mean allowing more time for targets to be met rather than having to set lower targets.

65. Local authorities have performed well to get to current levels of recycling but the easy steps have now been taken and each additional percentage will become progressively harder to achieve. Pressing ahead with the existing SRTs on the current timetable runs the risk of authorities facing fines for non-compliance at a time when they are already facing substantial financial pressures.
66. It would be preferable to review the targets and ensure progress can be maintained without the fear of fines and giving a message of failure, when, in fact, the 'goalposts have been moved'.

Part 5 & 6: Fisheries for Shellfish and Marine Licensing

Do you agree with the proposals to introduce charges for further aspects of the marine licensing process? What will the impacts of these changes be for you?

67. As proposed in the Explanatory Memorandum – cost recovery is a sound basis for charging. Where charges are made, the systems and processes will need to be effective and efficient with clearly defined timescales and deliverables. It will not be acceptable to charge for a service and see inadequate delivery.

Do you agree with the proposals to give Welsh Ministers powers to include provisions in Several and Regulating Orders to secure protection of the marine environment?

68. Insufficient experience/knowledge to comment

For your views on the proposals to give Welsh Ministers powers to issue site protection notices where harm may have been caused by the operation of a Fisheries Order to a European marine site?

69. Insufficient experience/knowledge to comment

Are there any other marine and fisheries provisions you would like to see included in the Bill?

70. Although it should not necessarily be on the face of the Bill, perhaps better to be included in guidance associated with the Bill; there needs to be some provision for dealing with emergency situations. Local Authorities with a coastal protection remit (Maritime Authorities are required to obtain marine licences for the maintenance of Flood Defence Works or for the maintenance of drainage) find delays can occur in the current turnaround of applications. The delays undermine the Local Authorities' ability to respond quickly to events requiring urgent attention. A more responsive/ interim/ emergency licence provision could be helpful.

Part 7: Flood and Coastal Erosion and Land Drainage

Do you agree with the proposals to replace the Flood Risk Management Wales committee with a Flood and Coastal Erosion Committee for Wales?

71. The current role/function of Flood Risk Management Wales committee as a Regional Flood and Coastal Committee established under the Flood and Water Management Act 2010 is not compatible with governance arrangements of NRW in respect of flood risk management.
72. The WLGA agree that there is a need for an independent source of advice for Welsh Ministers on flood and coastal erosion risk management in Wales.
73. Acknowledging that the Welsh Ministers [under s82 26C (1)] shall *'.....make provision about the membership of the Flood and Coastal Erosion Committee....* The current membership of FRMW includes representatives from NRW, Local Authority, environmental groups, and academia with a range of expertise. The WLGA suggests that the diverse nature of the representatives should be reflected in the FCEC

Whether you agree with the proposal for powers to be given to Welsh Government agents to enter land to investigate alleged non-compliance with an Agricultural Land Tribunal order in relation to drainage

74. In principal, the WLGA has no issue with this proposal. Whoever is authorised by Welsh Ministers must be able to recover costs associated with exercising this

power. The Bill should be amended to make clear what action /process should be followed if there is non-compliance.

Overarching Question

For your views on the relationship between this Bill and the Well-being of Future Generations (Wales) Act 2015 and the Planning (Wales) Bill

75. In addition to specific detail and correlation identified in the comments in this document we wish to include :

- i. The Planning (Wales) Bill contains provisions to introduce a National Development Framework (NDF) and in some areas of Wales a Strategic Development Plan (SDP). Together with the existing Local Development Plan tier, these plans comprise the development plan for areas of Wales. These plans are subject to a level of public scrutiny and therefore we would expect that the development plan would be a mechanism for delivering the planning and management of natural resources at a national and local level. Locally, we would expect the Local Development Plan and SPG (Supplementary Planning Guidance) to be a vehicle for delivering against an Area Statement.

- ii. The Planning (Wales) Bill has a provision that in preparing a SDP, the strategic planning panel must have regard to current national policies, therefore we would expect this reference to incorporate the NNRP and Area Statements. With regards to the preparation of the National Development Framework, the Bill is not so specific; the Bill should be amended to confirm that Welsh Ministers should have due regard to the NNRP during the preparation of the National Development Framework particularly when we expect that the NDF will consider renewable energy schemes.

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