

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 RSPB Cymru	Response from RSPB Cymru
EB 11	EB 11



yn rhoi giving
cartref i nature
fyd natur a home

Evidence from RSPB Cymru to the Environment & Sustainability Committee Environment (Wales) Bill

June 2015

RSPB Cymru is part of the RSPB, the country's largest nature conservation charity. The RSPB works together with our partners, to protect threatened birds and wildlife so our towns, coast, seas and countryside will teem with life once again. We play a leading role in BirdLife International, a worldwide partnership of nature conservation organisations. The RSPB has over 1 million members, including more than 51,000 living in Wales.

Our evidence on the Environment Bill focuses on the areas where we have identified the need for improvement if the Bill is to deliver for Wales' wildlife. We also support the evidence submitted by Wales Environment Link.

1. **Part 1: Sustainable Management of Natural Resources** The Environment (Wales) Bill is not up to the task of halting the loss of Wales' biodiversity and putting it on the road to recovery, due to a critical gap in the natural resources management approach. We do not believe that the new approach to sustainable management of natural resources (SMNR), as set out in the Bill, will address the specific needs of species and habitats that are being lost from Wales.
2. Our primary aim in proposing changes to Part 1 is to ensure that delivery for biodiversity is properly integrated into the new approach, and integral to how we measure success. We call for:

- a statutory target for biodiversity recovery to secure Government leadership and a focus on outcomes;
 - specific references to biodiversity to be added to the objective and principles of the sustainable management of natural resources (SMNR); and
 - improvements to the new general biodiversity duties.
3. In addition, we consider the process created for SMNR (national policy and area statements) is weak and unlikely to drive action as currently drafted.
 4. **Statutory Targets for biodiversity**

The Well-being of Future Generations (Wales) Act made an important advance in formally recognising that maintaining and enhancing a biodiverse natural environment is a goal of sustainable development, with responsibility for delivery shared by public bodies in Wales. This is necessary if we are to tackle biodiversity loss and improve the health of our natural environment. However, in focusing on making biodiversity a shared responsibility Government is in danger of neglecting its leadership role in relation to the direct steps that are needed to tackle declines and restore biodiversity in line with international commitments.
 5. The *State of Nature* report found that many of the species suffering dramatic declines are those with specialist habitat requirements, dependent on appropriate management and protection of their habitats. The objective of SMNR, as set up in the Bill, is to maintain and enhance the resilience of ecosystems and the benefits they provide. We are concerned that this will result in a focus on broad habitat types, based on the ecosystem services identified as priorities. Indeed, this is suggested by a case study in the statement of policy intent, which goes so far as to suggest that considering biodiversity conservation may act as a blockage to NRW fully undertaking its role in relation to SMNR (<http://www.senedd.assembly.wales/documents/s40639/Policy%20Intent%20Statement.pdf>).
 6. The Bill must be amended to make explicit that halting and reversing species declines is a required outcome of SMNR. Otherwise, not only will the new approach fail to benefit priority biodiversity; it could make matters worse for biodiversity by failing to take species' needs properly into account in developing priorities, and by diverting attention and resources away from implementing existing nature conservation legislation.
 7. It is a concern that even in the draft Nature Recovery Plan (NRP) published for consultation last year, the Government said little about delivery for priority species. This reflects either: a belief – in our expert view wrong, as we repeatedly stated in discussions of the Wales Biodiversity Strategy Board during the drafting of the NRP – that an approach based on natural resources can automatically be

assumed to deliver benefits for species under pressure; or: a decision that addressing species declines in Wales is not a priority.

8. Public attitude surveys carried out by the European Commission suggest that most people in the UK consider biodiversity loss to be a serious problem. Further, most believe that we have a moral obligation to stop it, as well as recognising that biodiversity and nature provide the basis for our wellbeing and quality of life¹. At the time of writing, close to 215,000 people have communicated with the European Commission asking that the Nature Directives not be weakened through the current review process which opened in May: protecting nature matters to people.
9. Policy commitments on biodiversity have not been delivered; the 2010 target to halt biodiversity loss, agreed under the Convention on Biological Diversity (CBD), was not met, and the biodiversity outcomes in the Wales Environment Strategy seem to have fallen by the wayside.
10. Revised goals were set under the CBD in Aichi in 2010, which led to the following commitments in the EU Biodiversity Strategy:
 - **A headline target for 2020:** ‘Halting the loss of biodiversity and the degradation of ecosystem services in the EU by 2020, and restoring them in so far as feasible, while stepping up the EU contribution to averting global biodiversity loss’; and
 - **the 2050 vision:** ‘By 2050, European Union biodiversity and the ecosystem services it provides – its natural capital – are protected, valued and appropriately restored for biodiversity’s intrinsic value and for their essential contribution to human wellbeing and economic prosperity, and so that catastrophic changes caused by the loss of biodiversity are avoided.’
11. We have a potentially strong and comprehensive suite of tools to protect and restore nature in both European and domestic legislation – yet these tools are under resourced and not properly implemented, and biodiversity continues to decline. The Environment Bill is an opportunity for the National Assembly to demonstrate its commitment to the recovery of biodiversity in Wales, in line with our international obligations, by setting statutory targets.
12. ***We recommend that the Bill should require the Welsh Ministers to ensure that by 2050, biodiversity has increased by 15%, as measured by a national index based on priority species.*** This index would need to be based on population trends of priority species that are rare or declining, based on the current ‘section 42 list’ (which will in future fall under s7 of this Bill) – like the UK Watchlist Indicator described in the State of Nature report. It is challenging to

¹ European Commission 2013 Flash Eurobarometer 379. Attitudes towards biodiversity. November 2013.

identify a Wales specific indicator due to a paucity of data for many species and groups, but we are confident this can be achieved, and improved upon over time. It would need to be supported by more comprehensive monitoring programmes. The suggested increase of 15% is meaningful and reasonably ambitious considering the effort that will be required to halt long term species declines. There is precedent for this sort of long-term statutory target in the UK Climate Change Act, reflected in Part 2 of this Bill.

13. ***We also recommend a target to achieve favourable condition of Wales' protected sites.*** We know that our protected sites are the best places for nature, but that they have been allowed to deteriorate largely through absence of appropriate protection or management. Protected sites already deliver multiple benefits² and are the logical starting point for securing wider resilience.
14. ***Further provisions in the Bill should require that milestones towards these statutory targets be set*** every five years in the National Natural Resources Policy, and reported against in the SoNaR reports to be prepared every five years by NRW. In order to implement the National Natural Resources Policy effectively, NRW would have to identify the priorities for biodiversity delivery and means of achieving them within Area Statements.
15. The Environment Bill is based on how important nature is to all of us, and we must ensure that nature itself benefits from this new approach. We believe that underpinning existing legislation by including statutory biodiversity targets in the Bill is the only way to ensure future Welsh Governments use their influence across the board so as to ensure biodiversity conservation and recovery are delivered.
16. **Sections 3 and 4: Objective and Principles of Sustainable Management of Natural Resources (SMNR)** The objective of SMNR (s3) is '*to maintain and enhance the resilience of ecosystems*'. As discussed above, we are concerned that focusing the objective at the level of ecosystems could mean that measurement of success occurs at too coarse a scale to encompass changes in species populations. Species and habitats are the building blocks of ecosystems, but may not be considered integral to resilience depending on how this is measured.
17. The principles of SMNR (s4) reflect that nature has intrinsic value which needs to be considered, and set out a number of aspects of ecosystem resilience including diversity between and within ecosystems. As such, they do not appear to *prevent* attention being paid to biodiversity at a fine scale; however, they do not *require* it either, and as we have already mentioned we are not confident that the

² E.g. RSPB 2014 Special Sites: Resilient Ecosystems

Government intends this. If the SMNR approach is going to be an effective tool for halting and reversing biodiversity decline, we believe these sections must directly refer to biodiversity. Based on legal advice we suggest the following amendments:

3(1) *In this Part, “sustainable management of natural resources” means –*
a) *using natural resources in a way and at a rate that contributes toⁱ achievement of the objective in subsection (2),*
b) *taking other action that contributes toⁱⁱ achievement of that objective, and*
c) *not taking action that hinders achievement of that objective.*

3(2) *The objective is to maintain, enhance and restoreⁱⁱⁱ biodiversity^{iv} and the resilience of ecosystems and the benefits they provide and, in doing so, contribute to meeting^v the needs of present generations of people without compromising the ability of future generations to meet their needs*

To 4(g) we suggest adding a new point:

4(g)(vi) *The condition of biodiversity (species and habitats) within ecosystems*^{vi}

Explanation:

i and ii) ‘Contributes to’ is more results focussed than ‘promotes’.

iii) Inserting ‘restore’, rather than focusing only on the present and the future, also places emphasis on the past and the need to address historic damage and declines.

iv) Inserting ‘biodiversity’ makes explicit that conserving biodiversity is required as part of SMNR. It makes the objective of SMNR consistent with the ‘biodiversity and resilience of ecosystems’ duty in s6 of the Bill, and also better reflects the wording of the Resilient Wales Goal in s4 of the Wellbeing of Future Generations Act 2015, which refers to ‘*a biodiverse natural environment with healthy, functioning ecosystems*’.

v) Inserting ‘contribute to’ recognises that SMNR alone will not meet the needs of present generations.

vi) This addition seeks to ensure that the specific biodiversity within an ecosystem is considered in relation to resilience.

18. Section 5: General purpose of the Natural Resources Body for Wales

Our legal advice is that the formulation of the purpose is weak. The words ‘*seek to*’ should be omitted. In combination with the amendments to section 3 suggested above, this would give NRW a more result- focussed duty.

19. Sections 6 and 7: Biodiversity and resilience of ecosystems duty

The duties at s6 and s7 are to replace the duties at s40 (as it applies to Wales) and 42 of the NERC Act, respectively. The s6 duty is arguably more strongly worded than s40 of the NERC Act (‘*seek to maintain and enhance biodiversity*’ as opposed to ‘*have regard...to the purpose of conserving biodiversity*’), and introduces a new reporting requirement. However, we would stress that this

requirement to report is based on actions taken, rather than on results achieved. Consequently, the combination of s6 and s7 does not appear markedly stronger – in terms of securing results – than the existing combination of NERC duties, which have not resulted in the action required to halt biodiversity loss. We suggest some amendments to both duties below, but as discussed above we believe this part of the Bill should be strengthened by inclusion of statutory targets for biodiversity recovery.

20. The s6 duty is reframed around the ‘*resilience of ecosystems*’ and we believe that amendments are necessary to make it clear that actions should be taken specifically to benefit biodiversity (species and habitats).

We suggest the following amendments to s6:

6(1) A public authority must seek to maintain, enhance and restoreⁱ biodiversity in the exercise of its functions in relation to Wales, and in so doing, promote biodiversityⁱⁱ and the resilience of ecosystems, so far as is consistent with the proper exercise of those functions.

To 6(2) we recommend adding a further item to the aspects of the resilience of ecosystems, as per our comments above in relation to the principles of SMNR:

6(2)(f) The condition of biodiversity (species and habitats) within ecosystemsⁱⁱⁱ

Explanation

- i) Adding ‘restore’ is reflective of s40(3) of the NERC Act which defines conserving biodiversity as ‘*restoring or enhancing a population or habitat*’.
- ii) The current drafting does not refer to biodiversity and the resilience of ecosystems equally but makes the resilience of ecosystems the desired outcome of maintaining and enhancing biodiversity. The amendment seeks to make it clear that outcomes for biodiversity (species and habitats) are also the aim of this duty.
- iii) This reflects our proposed addition of s4(g)(vi) above

21. The s7 duty is very similar to the duty Welsh Ministers already have in s42 of the NERC Act (the key difference being that Ministers are required to apply the principles of SMNR in implementing the s7 duty; these would need to be amended to better reflect biodiversity, as we have argued in relation to s4).

We suggest the following amendment to s7 to reflect the requirements of the existing NERC duty:

7(1) The Welsh Ministers must prepare and publish a list of the living organisms and types of habitat which in their opinion are of principal importance for the purpose of conserving, enhancing and restoring biodiversity in relation to Wales.

22. Our comments on the subsequent sections should be considered in the context of our suggested amendments above; without these amendments we are concerned about the impact of Part 1 (at least the missed opportunity for positive impact; possibly negative impact in practice) in relation to biodiversity.

23. Section 8: State of Natural Resources Report – SoNaRR

We welcome the duty on NRW to report on the state of Wales' natural resources and the extent to which SMNR is being achieved. This would need to be amended to reflect the requirement to report against statutory biodiversity targets. We also suggest an amendment to make it clear that SoNaR Reports should reflect not only positive performance, but obstacles preventing achievement of SMNR, as follows:

8(1) NRW must prepare and publish reports in accordance with this section containing its assessment of the state of natural resources in relation to Wales, including its assessment of the extent to which sustainable management of natural resources is being achieved including any obstacles which are preventing achievement and how those obstacles may be addressed.

24. It must be clear that, in considering obstacles to progress, NRW must not be limited to commenting on its own functions. For example, it should be made clear if the policy or practice of the Welsh Government or another public body is causing negative impacts or barring progress.

25. Section 9: National Natural Resources Policy (NNRP)

We suggest the words '*contributing to*' should be omitted from s9(1) so that Welsh Ministers are required to set out their general and specific policies *for achieving* SMNR.

26. We welcome the fact that Ministers are able to include anything in the NNRP that they consider relevant to SMNR, as this appears to recognise that a broad range of issues and functions could be relevant to the achievement of SMNR – not only 'environmental' ones. We also welcome the requirement for Ministers to take steps to implement the NNRP and encourage others to do the same (s9(4)), but we are surprised and concerned that the Bill does not say more about how the

NNRP should influence actions. For example, there is no general duty on public bodies to take account of the NNRP, and no specification that it should become a material consideration in the planning process. How is 'setting priorities and opportunities' (EM s89) going to actually make anything happen?

27. There is no indication in the Bill or the EM that the NNRP will have spatial elements, although it is intended to provide direction for delivery of SMNR by the Welsh Ministers (EM paragraph 89). If it is to be spatially expressed in any way it will need to be subject to Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA).
28. We are also concerned that the Bill makes no specifications about the process to be followed in formulation of the National Policy, and how it will be validated and adopted.
29. Notwithstanding the requirements in s9(4), it is clear that NRW will be the key body implementing the policy in practice (by virtue of the body's general purpose at s3, the duty to prepare SoNARR (s8) and the duty to prepare area statements (s10)), and that other public bodies will also need to take action if it is to be effective. We are surprised, therefore, that s9 does not include a duty on Ministers to consult at least NRW in developing the NNRP. (It is evident in other environmental legislation that key regulators are consulted on the same policy which they are required to implement and regulate, e.g. the Committee on Climate Change under the UK Climate Change Act 2008). We recommend this section is amended to introduce a requirement to consult NRW, the range of public bodies, and other interested parties prior to publication of the NNRP or a revision thereof.
30. We note that s9(2) refers specifically to what Welsh Ministers consider should be done in relation to climate change. There is no specific mention in Parts 1 or 2 of the need to support climate change adaptation, and we question whether this reference in s9(2) is sufficient. We would expect this to be explained at least in the EM, with reference to the forthcoming Natural Environment Sectoral Adaptation Plan.
31. **Sections 10-15: Area-based implementation of the national policy**
We believe the provisions around area statements are weak, and there is a risk they will end up being little more than area-based work plans for NRW with little or no influence over the activities of other bodies. This is alarming considering the Explanatory Memorandum states that area statements will be the '*delivery mechanism for implementing priorities and opportunities at a local level*' (EM paragraph 89).

32. If the NNRP is to be a high level, non-spatially expressed policy, the area statements will be critical in setting out what actually needs to happen on the ground. Critically, if the area statements are to *implement* the NNRP, they need to influence what is done by bodies other than NRW, because NRW's functions and powers are unlikely to cover all of the issues that the NNRP should cover (since Ministers are empowered to include *anything they consider relevant* in the NNRP). The EM (paragraph 99) describes area statements as an '*evidence base*', but surely they need to be more.
33. There is no requirement for area statements to cover the whole of Wales; we believe there should be. Criteria for NRW to consider when selecting which areas to prioritise for development of area statements would also be helpful.
34. We need some clarity as to how the NNRP and area statements will interface with the Wales National Marine Plan and potentially influence marine management.
35. There is no general duty for public bodies to take account of area statements in delivering their functions. The EM states that the Welsh Ministers' direction making power at s12 will ensure other public bodies contribute to implementation. Is it therefore envisaged that the Minister will direct public bodies to implement area statements as a matter of course (s12), or assumed that public bodies will do so under encouragement from NRW (s10(4)(b))?
36. The only clear direct link made in the Bill with another process is that an area statement should be taken into account in development of a Local Wellbeing Plan (LWP). How important this link will be in terms of securing action will surely depend on how detailed and specific LWPs turn out to be. We believe the Bill should be made clear that area statements should influence, for example, local development plans and the targeting of rural payments (such as Glastir) by the Welsh Government. As for the NNRP, there is no stipulation around the process to be followed in developing area statements, such as consultation with public bodies and people who could be affected by their implementation, and how they might be validated and adopted. It appears the whole of this process is to be owned by NRW, with no formal adoption or endorsement by the Welsh Government.
37. There is no real indication of what sort of product an area statement is, but surely it will have to be spatial if it is to be meaningful. If this is the case, we assume it will be captured under requirements for SEA and HRA, and we would like the Bill to specify this.

38. The list of public bodies in section 11 does not include the Welsh Ministers, but the Welsh Ministers will have a critical role in implementation (e.g. as a licensing/consenting authority, and as the body responsible for rural payments).

39. Section 16: Land management agreements

We welcome the enhanced powers for NRW to make land management agreements, although we have a potential concern that the financial resources available to NRW for the purpose of entering such agreements may not be greater than that which is currently available for entering land management agreements for the current, smaller range of purposes. Thus, the broader applicability of the power could mean NRW committing fewer resources to management agreements for protected sites, for example. Protected sites are crucial to nature conservation, as well as providing a range of valuable benefits to society (thus we would argue they are crucial in the context of SMNR), but their management is critically poorly resourced. This reinforces the need for statutory biodiversity targets, and to ensure that biodiversity (species and habitats) is properly reflected in the definition and principles of SMNR.

40. We are disappointed that the Bill does not make provisions for General Binding Rules, which we believe are a useful tool in enforcing environmental standards necessary to tackle, e.g. diffuse pollution.

41. Sections 22 and 23: Experimental schemes

We are alarmed by a case study provided to explain the policy intent of the Bill³ which suggests one such experimental scheme could be to suspend the 'balancing duty' whereby NRW is required endeavour to *achieve a reasonable balance between— (a) the development of afforestation, the management of forests and the production and supply of timber..., and (b) the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest.*

42. This duty provides vital protection from unsustainable forestry practices under the section 1 duties of the Forestry Act that remain. The balancing duty was introduced following decades of unsustainable forestry practices driven by the section 1 duty towards timber production, afforestation and forestry. It is also important to retain this duty so that Welsh Government continues to address its domestic, European, EU and international long-term commitments to biodiversity and sustainable forestry policy, regulation and practice, not to mention the Wellbeing of Future Generations Act. We strongly disagree with the implication that a requirement to conserve biodiversity could be a blockage to achieving SMNR. We believe, and our experience bears out, that species' requirements can be integrated into habitat or ecosystem objectives. This is critical in relation

³ <http://www.senedd.assembly.wales/documents/s40639/Policy%20Intent%20Statement.pdf>

to forestry where pressure to plant more trees, if not planned carefully, could lead to inappropriate planting on important habitats such as ffridd. This case study suggests that integration is not being properly considered, and lends further weight to our concern that addressing biodiversity loss is not a priority for the Welsh Government.

43. In the light of this we consider that additional safeguards are required in these sections of the Bill. The only limit on the scope of the research and the experimental schemes under s22 is that they must be relevant to NRW's functions and must be likely to contribute to SMNR. Besides the shocking interpretation we have found in the above case study, this leaves open the possibility that the s22 power may be exercised in a way which not only furthers the exercise of NRW's functions but which incorporates the commercial interests of third parties.
44. There should be requirement for more rigorous consultation by Ministers before making provisions to support experimental schemes. This should include consultation with members of the Wales Biodiversity Partnership.
45. Further, we Ministers should be required to undertake some form of risk assessment in deciding whether to make provisions.

46. Part 3: Charges for carrier bags

We welcome the proposal to raise a charge on all carrier bags. We are disappointed, though, by the decision to legislate for the funds raised through the carrier bag levy to be disbursed to any good cause. The Environment Bill sets out new ambitions for managing Wales' natural environment, against a backdrop of dwindling funds for the environment in general and nature in particular. We fail to understand why the Welsh Government would choose not to make a clear link between this levy on an environmentally damaging product and projects capable of contributing to the Government's own ambitions around improving the environment.

47. Part 5: Fisheries for shellfish

The provisions in Part 5 relate to the protection and management of European Marine Sites, and as such we consider it crucial that they are as robust as possible. We suggest a number of amendments based on legal advice.

48. This new legislation potentially makes easier the process by which the Welsh Ministers can make "Shellfishery Orders", because s72 now allows this to happen without the Welsh Ministers first making secondary legislation. This could therefore potentially increase the making of these Orders by the Welsh Ministers.
49. When making these Orders, the Welsh Ministers will also be subject to Part 6 of the Conservation of Habitats and Species Regulations 2010 (on appropriate

assessment etc), to the extent that an Order is a “plan” or a “project”. Both the “assessment” regulations 61/62 and the “review” regulations 63/64 will apply.

50. We are concerned that the definition of ‘harm’ in s76 is too narrowly drafted. This s7 definition is important because it feeds into the new provisions inserted by s73 and s74 into the Sea Fisheries (Shellfish) Act 1967. Section 73 provides that an Order made by the Welsh Ministers must contain provisions considered appropriate by the Welsh Ministers for the purpose of preventing any “harm” to any European marine site. Section 74 provides for the service by Welsh Ministers of “site protection notices” to prevent activities that harm, or are likely to harm, a European marine site. We recommend the following changes to s76 to bring it in line with Article 6(3) Habitats Directive.

5F (1)(a) an adverse effect or risk of an adverse effect on the integrity of the site alone or in combination with other plans or projects

The suggested inclusion of the phrase ‘plans or projects’ would also then need to be explained in s76. We would suggest a new insertion into s76 (2) to read:

Plan or project has the same meaning as under the Council Directive 92/43/EEC on the conservation of natural habitats of wild fauna and flora.

5F (1)(c) should be amended by deletion of the final words “or the Wild Birds Directive (as applicable)”, because it has been held by the Appeal Court in Scotland in a court case brought by the RSPB in 2000 that the reference in Art 6(2) Habitats Directive to “in relation to the objectives of the Directive” is a reference to the Habitats Directive, not to the Wild Birds Directive, even when one is relating Art 6(2) to a SPA: see *Royal Society for the Protection of Birds v Secretary of State for Scotland* 2000.

51. Under s5B(1) as inserted by s74, the Welsh Ministers have a discretion, not a duty, to serve a site protection notice if “harm” to a EMS has occurred or is likely to occur. It is appropriate for the power to be triggered not only when ‘harm’ has occurred or is likely to occur but also where harm may occur. Para 257 of the Explanatory Memorandum supports the need for this change as it makes clear that “may harm” ought to be covered; in our view the Bill does not say that currently. Therefore we would suggest that s74 be amended as follows, which would lessen the evidential burden of harm that the Welsh Ministers must prove before they act.

5B(1) If it appears to the Welsh Ministers that harm to a European marine site has occurred or may occur, as a result of any activity.

52. There is no criminal offence created if a person fails to abide by the steps set out in the site protection notice as envisaged in s5B(2). There is instead only a power under s5D(1) for the Welsh Ministers to do what the site protection notice states and to recover costs from the person responsible. We doubt the Welsh Ministers

would wish to take this financial risk, so we believe a criminal offence must be created.

53. s5B(2) and s5B(4)(c) refer to a site protection notice requiring the grantees to 'take steps', but this needs to be expanded to also cover 'ceasing any stated activities'. That is, a site protection notice may need to prohibit activities in certain situations, not just require steps to be taken. Para 257 of the Explanatory Memorandum states that "It is noted that a SPN can include a requirement to take action as well as a requirement to abstain from taking certain action" however our legal advice states that this is wishful thinking, as the Bill is not clear enough to draw to this conclusion.

54. There is an appeal mechanism where site protection notices have been served (s5C). However the provisions are silent as to:

- the time limit by which the appeal must be brought. This must be addressed (an appeal period of 28 days is normal); and
- whether the steps / prohibitions in the site protection notice remain in force pending the outcome of the appeal. It is essential that the steps / prohibitions do remain in force pending the outcome of the appeal so as to ensure protection of the European Marine Site. Section 5C(4) *suggests* that it is intended that the site protection notice should continue unless expressly suspended, but this still needs to be made much clearer.

55. Section 75 contains a mechanism whereby an Order made by the Welsh Ministers can be varied or revoked. We note that this ability depends on the Welsh Ministers first serving a site protection notice and that notice not being appealed, or any appeal being complete. This is likely to be a delayed process since delays will occur by the relevant person bringing an appeal.

56. We suggest a separate process should apply in relation to the "review" provisions in Part 6 of Conservation Regulations 2010 (regulations 63/64). Under regulation 63 when a European site/European Marine Site is designated then any existing consent for a plan or project must be reviewed. The review must be carried out under "existing statutory procedures" or, if none exists, under directions from the "appropriate authority". It would be very helpful if the new legislation could include a separate "statutory procedure" for variation or revocation of an Order in circumstances required under regulations 63/64, which did not involve the risk of significant delays under the section 75 procedure. This could be achieved through an amendment to section 5E to make clear that under a regulation 63 situation, the Ministers' power to vary or revoke an order is not dependent on first serving a site protection notice.

57. Part 7: Miscellaneous Section 83: Land drainage

Section 83 removes requirements to publish notices of changes to drainage districts and charges in local newspapers, and does not appear to replace these with any other means of communicating the changes. As a land owner, we would query this: in theory, for example, drainage district boundaries could be expanded to include our reserves which could result in our being charged for work that might be detrimental to wildlife. We would suggest there should be some

requirement for interested land owners and residents to be informed in writing of any major changes.