

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



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref LF CS 0887 15

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

Dear 

 November 2015

ENVIRONMENT (WALES) BILL

Thank you once again for your consideration of the Environment (Wales) Bill during Stage 1. I am pleased that the general principles of the Bill have been agreed, and I thank your Committee for their recommendations in this regard.

Following the Stage 1 debate on the General Principles on 20 October, I have set out below my response to the recommendations made by the Environment and Sustainability Committee, the Constitutional and Legislative Affairs Committee and Finance Committee in each of their reports. This includes details of where I agree there is need to put forward amendments to the Bill.

I look forward to working with Committee members on the finer details, not only to ensure that this Bill is fit for purpose, but also to deliver our Programme for Government commitment to introduce new legislation for the environment in addition to a number of other strategic commitments, including those in relation to positioning Wales as a low carbon, green economy.

As you're aware, I have already tabled a number of Government amendments to the Bill and expect to table further amendments in a second tranche of Governments amendments before the deadline.

I hope that the attached information helps to inform your further scrutiny as the Bill progresses through Stage 2.

I am copying this letter to the Chair of the Finance Committee and the Chair of the Constitutional and Legislative Affairs Committee.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

*Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)
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Yours sincerely,

A handwritten signature in black ink, appearing to read 'Carl Sargeant', written in a cursive style.

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

Environment (Wales) Bill Stage 1 Committee Report recommendations

Recommendation 1

We recommend that the Minister publishes the full exchange of correspondence between the Welsh Government and the UK Government in relation to each of the Minister of the Crown consents that were sought for provisions in the Bill. In particular, we ask that the Minister confirms the date on which the Welsh Government first sought the Secretary of State's consent to the provisions in section 6.

I **accept** this recommendation. The exchange of formal correspondence between the Welsh Government and the UK Government to be published is included at Annex 1 to this letter.

The First Minister wrote to the Secretary of State on 1 April 2015 to formally request Minister of the Crown consents prior to the introduction of the Environment Bill on 11 May 2015. The letter of 7 August 2015, which has been referred to by some Members', was a follow up letter.

The formal request made in April followed many months of liaison between my officials and the UK Government. The process commenced in November 2014 when my department outlined the content of the Bill in writing to the UK Government and then met to discuss the Bill in December 2014. A draft of the Bill was shared with the Wales Office in January 2015 and Wales Office responded in March with their comments.

The First Minister received a formal response from the Secretary of State on 11 September and he replied to that letter on 13 October. We are waiting for a response to this letter and I will inform you of the outcome as appropriate.

Recommendation 2

If the Secretary of State has not granted consent by the end of Stage 2 of the Bill's consideration, then we recommend that the Minister brings forward amendments to section 6 of the Bill at Stage 3 to limit the biodiversity duty to public authorities in Wales.

This recommendation is dependent on the Secretary of State's decision to grant consent for section 6 of the Bill where it impacts on Ministers of the Crown and I therefore **accept in principle** this recommendation.

Recommendation 3

We recommend that the Assembly supports the general principles of the Bill.

I am grateful for all the input from the Assembly Committees who have contributed to the scrutiny of the Bill and I therefore **accept** this recommendation. I also welcome the support of the stakeholders and thank them for their contributions.

Recommendation 4

We recommend that the Minister brings forward amendments to the Bill to insert the UN Convention's definition of 'biological diversity' as the definition of 'biodiversity'.

I accept the views of stakeholders, in particular, on the importance of creating a consistency with the definitions provided in the Bill with the UN Convention on Biological Diversity (CBD). However, 'biodiversity' is already a widely used and understood term used in existing international, EU, and UK legislation.

As it is an accepted legal term that follows internationally-recognised good practice, in drafting the Bill, it was not thought necessary to include it as a definition on the face of the Bill. I **accept in principle** this recommendation and am considering how the provisions in Part 1 of the Bill can better reflect what is meant by 'biodiversity'.

Recommendation 5

We recommend that the Minister brings forward amendments to the Bill to insert the UN Convention's definition of 'ecosystem' i.e. "Ecosystem means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

The Bill enshrines into Welsh law the ecosystem principles adopted by the UN's CBD. Whilst the definition is strictly speaking not necessary on the face of the Bill, I am happy to consider how the provisions in Part 1 of the Bill can better reflect what is meant by 'ecosystems' and therefore, I **accept in principle** this recommendation.

Recommendation 6

We recommend that the Minister brings forward an amendment to section 3(2) of the Bill to leave the objective as drafted and to insert the Resilient Wales Goal, as set out under section 4 of the WFG Act 2015.

I am pleased with the level of support for the Resilience Goal and the need for clear links between the Environment Bill and Well-being of Future Generations (Wales) Act 2015.

I am happy to consider how the objective of sustainable management of natural resources in section 3(2) of the Bill may be enhanced to reflect closer links to all of the goals in the Well-being of Future Generations (Wales) Act. The objective relates to all of the goals provided in section 4 of the Well-being of Future Generations (Wales) Act. For example, a healthy, prosperous or globally responsible Wales would not be possible without sustainably managing Wales' natural resources. In effect, changing the definition to include the Resilient Goal could risk weakening the definition of the sustainable management of natural resources, in addition to narrowing the scope of the entire Bill.

The removal of the objective for the sustainable management of natural resources would take away many of the key components of the ecosystem approach, in particular the recognition of the benefits from ecosystems and their contribution to sustainable development – these elements are not covered by the goal for 'resilient Wales'.

I am however, happy to **accept in principle** the spirit of the recommendation in terms of how the Bill may be enhanced to reflect closer links to all of the goals in the Well-being of Future Generations (Wales) Act.

Recommendation 7

We recommend that the Minister brings forward amendments to the Bill that define the principles under section 4 to include reference to the 'precautionary principle' and to 'acting within environmental limits'.

The approach in the Bill already reflects the key elements of the precautionary approach. The principles of sustainable management of natural resources require that evidence is gathered on uncertainties and that such evidence be taken into account. This feeds into the considerations on the potential consequences of impacts in the short, medium and long-term.

As a government we fully recognise the principle of 'acting within global environmental limits' which is already reflected in the Well-being of Future Generations (Wales) Act. The way the Bill deals with this issue is to focus on resilience and align the objective of sustainable management of natural resources to building resilience within our ecosystems. This is both a more positive and evidence based approach than one which would be based on a determination of what is 'the maximum level of damage to a natural resource system that we are prepared to tolerate and accept'.

I would also highlight that the approach taken in the Bill is based on international best practice and fully aligned with the UN CBD and the proposals contained in the White Paper and Green Paper. It is for these reasons that I am **resisting** this recommendation.

Recommendation 8

We recommend that by the end of March 2016 the Welsh Government publishes the consultation arrangements that will apply to the production of the NNRP and the Section 7 biodiversity list.

I **accept** this recommendation and am happy to publish this information on this basis.

Recommendation 9

We recommend that the Minister brings forward amendments to the Bill that define the consultation arrangements that will apply to the production of SoNaRRs and area statements.

I agree with the Committee and stakeholders on the importance of consultation in relation to engaging with all the relevant sectors when producing SoNaRR and area statements.

NRW will be required to apply the principles of sustainable management of natural resources in both the preparation of SoNaRR and area statements as a result of the new general purpose provided in section 5 of the Bill. At present section 4(c) of the principles refers to collaboration and co-operation. I **accept in principle** this recommendation and I have already tabled an amendment (no. 2) to clarify that

section 4 includes making appropriate arrangements for public participation in decision-making, which could include consultation.

Recommendation 10

We recommend that the Minister brings forward amendments to leave out all uses of the phrase ‘take such steps as appear to them reasonably practicable’ and to insert ‘take all reasonable steps’ in their place.

I have considered carefully the call from some stakeholders to strengthen the language in certain sections of the Bill and I therefore **accept** this recommendation. I have tabled amendments (nos. 3, 4 and 5) to strengthen provisions where the phrase, “take such steps as appear to them reasonably practicable” will be replaced “take all reasonable steps”. These amendments relate to sections 7, 9 and 10 of the Bill. This will also ensure consistency with the language used in the Well-being of Future Generations (Wales) Act.

Recommendation 11

We recommend that the Minister brings forward an amendment to the Bill that leaves out ‘seek to achieve’ in section 5(2) and inserts ‘to pursue’.

I **accept in principle** this recommendation and am considering how the language in section 5 of the Bill can be amended to reflect the Committee’s findings.

Recommendation 12

We recommend that the Welsh Ministers produce statutory guidance on NRW’s general purpose, to be consulted upon as soon as the Bill received Royal Assent.

I **accept** this recommendation and intend to bring forward guidance on NRW’s general purpose following Royal Assent of the Bill.

Recommendation 13

We recommend that the Minister brings forward an amendment to section 6(1) of the Bill to leave out ‘seek to’ and insert ‘take all reasonable steps’.

I note that some stakeholders have asked for the duty to be strengthened and I agree in principle with the overall aim of the recommendation. However, this section of the Bill is currently subject to discussions with the UK Government in relation to Minister of the Crown consent. On this basis, I **accept in principle** this recommendation and will give further consideration to this amendment when those discussions have progressed.

Recommendation 14

We recommend that guidance is issued by Ministers on the reporting requirements and should contain additional information on the activities that public bodies will be expected to undertake to demonstrate compliance with the duty.

I **accept** this recommendation. It is my intention to develop guidance to outline all of the relevant information in relation to the new biodiversity duty. Guidance is currently issued for the existing duty under section 40 of the Natural Environment and Rural Communities Act 2006, so it is expected that this arrangement will continue with the new duty. In this way, a consistency in the way public authorities are expected to meet the new duty and subsequently report on it will be provided.

Recommendation 15

We recommend that the Minister brings forward amendments to:

- *Require public bodies carry out their duty under section 6 with reference to the list established under section 7;*
- *Require the State of Natural Resources Report to include an assessment of the status of habitats and species in the section 7 list; and*
- *Require the NNRP and area statements to include the actions that will be taken to maintain and enhance the species in the section 7 list.*

I will consider whether amendments can be made to the Bill in order to more clearly emphasise the importance of biodiversity, particularly in the State of Natural Resources Report (SoNaRR) and the National Natural Resources Policy (NNRP).

I agree with the Committee and stakeholders that the section 7 list is important. However, I believe it is important to recognise that the SoNaRR, the NNRP and area statements deal with the sustainable management of all of Wales' natural resources in its entirety, and not only the specific species or habitats that are covered by this list. I believe the current drafting of these provisions reflect this wider approach that needs to be taken. I therefore **accept in principle** this recommendation.

Recommendation 16

We recommend that the Welsh Government sets out the scope and timescale for its consultation on the biodiversity element of the Well-being of Future Generations indicators and a timescale for the introduction of these indicators. To allow this to be considered in the context of the Bill, we ask that this information is published before the conclusion of the Stage 2 proceedings, currently 27 November 2015.

I **accept** this recommendation. The Well-being of Future Generations (Wales) Act 2015 requires the Welsh Ministers to publish national indicators and lay a copy before the National Assembly for Wales. Before publishing national indicators the Welsh Ministers are required to consult with the Future Generations Commissioner, public bodies subject to the Act and other persons they consider appropriate.

The consultation on the national indicators began on 19 October, and I wrote to Assembly Members on that date. The consultation will run to 11 January 2016 in order to keep to the timetable for consulting with the appointed Commissioner, and laying of the final indicators by March 2016.

The consultation includes indicators that reflect progress to achieving the well-being goals, including those relevant to healthy, functioning ecosystems and a bio-diverse

natural environment. In particular, I would draw the Committee's attention to proposed indicator 32 on healthy ecosystems, and indicator 33 on a bio-diverse natural environment. The consultation document will invite views on the proposed set of indicators, as well as specific consultation questions for certain indicators where needed. A working group is being set up to develop these further, through the Nature Recovery Plan.

A link to the consultation webpages is attached below.

<http://gov.wales/consultations/people-and-communities/future-generations-act-how-do-you-measure-a-nations-progress/?lang=en>

Recommendation 17

We recommend that the Welsh Government ensures that the State of Natural Resources Report includes an assessment of past and future trends (including risk and opportunities for sustainable natural resources management) in addition to an assessment of the current state of natural resources in Wales.

In addressing this recommendation, we ask that the Welsh Government considers the merit's or otherwise of specifying this on the face of the Bill.

I **accept in principle** this recommendation on the basis that I believe the recommendation is covered by the principles of the sustainable management of natural resources and already provided for on the face of the Bill.

The provision to produce a SoNaRR as provided under section 8 of the Bill includes the necessary criteria relevant to providing a full assessment of past, present and future data on the state of natural resources in Wales. The purpose of SoNaRR is to provide information that can be used to track progress towards achieving the sustainable management of natural resources i.e. identifying whether the state of natural resources will be able to continue to provide services over the long term.

The policy intent is to establish a process for the regular provision of an objective, scientifically credible evidence base which reports on the condition of Wales' natural resources i.e. establishing a data set that captures present day information on the state of natural resources. This will establish a regular evidence and reporting feedback loop which helps to inform future policy and delivery but also considers the long term impact of drivers and pressures on those resources.

As is standard process, a necessary requirement for producing a robust assessment requires that data is measured against a baseline. It is in producing a baseline set of data on state of natural resources where information that represents past trends will be captured.

Furthermore, under section 4(f) of the principles, a requirement is included to take account of the short, medium and long term consequences and actions.

Recommendation 18

We recommend that the Minister brings forward amendments to the Bill to provide detailed criteria for the minimum contents of a NNRP.

On the grounds that Section 9 of NNRP, as currently drafted, already provides criteria for its minimum content, I **accept in principle** this recommendation.

Section 9 sets out that the Welsh Ministers:

- Must set out their general and specific policies for contributing to achieving sustainable management of natural resources in relation to Wales (section 9(1));
- Must set out the key priorities and opportunities for sustainable management of natural resources in relation to Wales, including what they consider should be done in relation to climate change (section 9(2));
- May include anything which they consider relevant to achieving sustainable management of natural resources in relation to Wales.

Under section 9(8), the Welsh Ministers must apply the principles of sustainable management of natural resources in exercising their functions under section 9. In particular, they must:

- consider the appropriate scale for action;
- promote and engage in collaboration and co-operation;
- take account of all relevant evidence and gather evidence in respect of uncertainties;
- take account of the benefits and intrinsic value of natural resources and ecosystems; and
- take account of the short, medium and long term consequences of actions.

In addition, I am considering bringing forward an amendment to address the intention behind recommendation 20 (as covered below).

Recommendation 19

We recommend that the Minister clarifies how the NNRP will interact with Glastir and the Rural Development Plan.

I **accept** this recommendation. The NNRP will set out the priorities and opportunities for achieving the sustainable management of natural resources. This therefore will cover all of our biological and non-biological resources whether they are in rural, urban or coastal areas.

The NNRP will point to the Rural Development Plan 2014-2020 and Glastir as a means of contributing towards the key priorities and opportunities for agriculture and forestry, with the Glastir Monitoring and Evaluation Programme being an important tool in demonstrating its effectiveness in achieving results.

Recommendation 20

We recommend that the Minister brings forward an amendment to section 9(2) of the Bill to require Welsh Ministers to set out any challenges to sustainably managing natural resources, alongside the key priorities and opportunities.

I **accept in principle** this recommendation and will consider bringing forward an amendment which addresses the intention behind this recommendation.

Recommendation 21

We recommend that the Minister brings forward an amendment to section 9(6)(a) to place Welsh Ministers under a duty to review the NNRP within twelve months of an Assembly general election.

I **accept in principle** this recommendation. As currently drafted, the Bill requires that the first NNRP must be published within 10 months of section 9 coming into force. The Bill already makes clear that the Welsh Ministers can review the NNRP at any time but must review it following an Assembly election. This would also allow it to be reviewed if there was an extraordinary general election.

Reviewing the NNRP will be important to ensure that the policy is relevant. Under common law the Welsh Ministers would be expected to review the NNRP within a reasonable timeframe. In practice this is likely to be after an Assembly election and within a timeframe that would enable the other documents that link to it such as area statements to be produced. It is important that the NNRP is kept relevant, which is therefore why it should be kept under constant review.

For these reasons I do not believe it necessary to set a specific timescale for the review of NNRP.

Recommendation 22

We recommend that the Minister brings forward an amendment to the Bill to require NRW to produce Area Statements that collectively cover the whole of the terrestrial and coastal areas of Wales.

It is envisaged that every part of terrestrial and coastal Wales will be covered by an area statement in due course, and on this basis, I **accept in principle** this recommendation. Area statements will identify opportunities to deliver local level strategic commitments set out in the NNRP, which will look at the interface between air, land and sea at a local level.

In doing this, area statements will support the local delivery of the national priorities set out in both the Wales National Marine Plan and the NNRP, ensuring that the management of our land and sea is joined up in practice. It is not intended that the Bill will replace the framework established for the marine environment, but it will work with it to ensure that the management of natural resources in terrestrial and marine environments are integrated.

Recommendation 23

We recommend that the Minister, in responding to this recommendation in Plenary, set out the Welsh Government's intentions for Area Statements and whether they are to include actions for delivery as well as an evidence base.

I **accept** this recommendation. I provided some further detail on area statements during the Stage 1 general principles debate on 20 October.

The primary purpose of an area statement is to draw together evidence in relation to the natural resources in an area, and the key risks and opportunities associated with them. This will enable both NRW to prioritise and organise their activities, and inform wider public service delivery and the democratic governance at a local level within that area.

They will also provide evidence of opportunities within an area, which can be adopted by another party. For example evidence on biodiversity can be used by a public authority to help it deliver on its biodiversity duty.

Recommendation 24

We recommend that the Minister brings forward amendments to the Bill in order to place a duty on public bodies in Wales to take all reasonable steps to implement Area Statements.

The Welsh Ministers have the power to direct public bodies to implement area statements. In particular public bodies defined in section 11 of the Bill will be under a duty to assist NRW in implementing area statements.

I **accept in principle** this recommendation and am content to consider bringing forward an amendment in line with the Committee's recommendation. However, further consideration is needed on the wording to ensure this is in line with how other bodies can implement via local well-being plans.

NRW will also be required to engage and collaborate with other stakeholders and interested parties with an area (in applying the principles of sustainable management of natural resources).

Recommendation 25

We recommend that the Welsh Government publishes updated figures on the costs of implementing this legislation and the resources available to NRW to deliver the additional functions included within this Bill.

Fully implementing the Bill will take time, and I recognise that there will be short-term costs associated with that transitional period. The most up to date figures on the costs of implementing the Bill are contained in the Regulatory Impact Assessment (RIA). The costs of implementing the regulations will be set out in more detail within their accompanying RIA as required by standing orders.

There is significant potential for efficiency savings in the short and medium term, by taking advantage of the opportunity to integrate and rationalise planning and delivery functions using the framework set out in the Bill.

With regard to NRW's resources, we have worked closely with NRW during the development of the Bill and will continue to do so. I need to underline, however, that a key aspect of Part 1 of the Environment Bill relates to how NRW will be required to deliver its core purpose; and in that respect, these requirements should not be seen as 'additional' functions, but instead be seen as central to its remit.

On this basis I **resist** this recommendation.

Recommendation 26

We recommend that the Minister brings forward amendments to the Bill to place additional duties on NRW to:

- *Prepare and publish a risk assessment before making an application to Welsh Minister;*
- *Monitor, report and publish the impacts of any schemes undertaken.*

I believe the necessary safeguards are already in place in the current drafting in the Bill. NRW must submit a detailed application to the Welsh Ministers before the power can be used, where it is expected that this will include a risk assessment of the scheme. In particular, NRW would have to submit an application to provide a case for the use of this power and a risk assessment would form part of this case. I therefore believe that the first part of the recommendation is already captured in the Bill and **accept this recommendation in part**.

In response to the second part of the recommendation, NRW will be required under the application of the section 4 principles to monitor the impacts of any schemes undertaken. However, I will consider if the wording of the relevant provisions can better reflect this in the Bill.

Part 2 – Climate Change

Recommendation 27

We recommend that the Minister brings forward an amendment to the Bill to require the advisory body to review and report on the adequacy of the 2050 target every five years.

I agree that it is important to review and report on the target and it is for that reason that Part 2 of the Bill has been drafted to ensure that the targets represent up to date scientific knowledge as well as international agreements. I therefore **accept in principle** this recommendation.

The framework provided by the Bill, as drafted, puts this in place given that the requirement is for five year budgetary periods from 2016 up until 2050. At the end of each budgetary period there is a progress review from the Advisory Body including whether progress on the 2050 target is being met. The setting of the carbon budgets and the long term emission reduction pathway being developed will therefore be regularly reviewed, taking into account the latest evidence base and advice from the Advisory Body.

To include an amendment similar to this would duplicate the five year reporting progress on meeting carbon budgets.

Recommendation 28

We recommend that the Minister brings forward an amendment to the Bill to provide a power for Welsh Ministers to vary the 2050 target by regulations (subject to the affirmative procedure).

I **accept** this recommendation and will consider bringing forward an amendment that provides a power for the Welsh Ministers to vary the 2050 target by regulations, thus enabling a stronger structure for responding to developments in the global efforts to reduce emissions.

Recommendation 29

We recommend that the Minister brings forward an amendment to section 32(3) of the bill to insert the principle of keeping global warming within 2 degrees centigrade in the criteria that Ministers must consider when setting carbon targets and budgets.

In setting out the framework in legislation, it is important that a clear pathway for decarbonisation is set together with the flexibility to allow us in Wales to react to the latest evidence to inform our decision making.

The principle of keeping global warming within 2°C is already provided for in the current list of criteria as section 32(3) which requires that the Welsh Ministers must consider scientific knowledge in addition to EU and international policy relating to climate change.

However, as our knowledge on climate change continues to advance and new international agreements and commitments are made, the approach provided for in the Bill needs to be sufficiently flexible to allow for a changing evidence base.

The approach in the Bill allows this; it enables the criteria to be flexible to both advances in knowledge on scientific evidence and future developments on climate change policy and law at both the international and European level.

Whilst I **accept in principle** this recommendation, I believe that putting the principles of keeping global warming within 2°C on the face of the Bill would not allow Wales to respond to changing scientific evidence or to developments in international and European climate change policy and law. As a Government, we are one of the founding signatories to the global under 2° Memorandum of Understanding.

Recommendation 30

We recommend that the Welsh Government sets out the scope and timescale for its consultation on interim targets and a timescale for the introduction of these targets. To allow this to be considered in the context of the Bill, we ask that this information is published before the conclusion of Stage 2, currently 27 November 2015.

I understand the importance of monitoring progress toward the 2050 target and the role that interim targets will contribute to this and therefore **accept** this recommendation. As set out in the Statement of Policy of Intent for the Bill, the power to set an interim target will be used as soon as is reasonably practicable based on advice received from the advisory body and in conjunction with the development and setting of the first two carbon budgets to ensure consistency.

Any further use of the power to set any further interim targets will only be considered if scientific and technical evidence, advice from the advisory body or reviews of progress on meeting the 2050 target indicate that a further interim target is required.

I will therefore consider bringing forward an amendment to the Bill to set a timeline for interim targets.

In setting any interim targets, it is important that Welsh Ministers retain an ability to react to any changes in evidence and international and European law and policy. This flexibility is provided at section 32(2), which enables the Welsh Ministers to amend interim target years or an interim emission target if certain conditions are met, for example, as a result of significant developments in scientific knowledge or the developments with EU or International law or policy or due to a change recommended by the advisory body.

Recommendation 31

We recommend that the Minister brings forward an amendment to the Bill to place a duty on Welsh Ministers to report on consumption as well as a production basis.

I am considering how greenhouse gas emissions are measured on a consumption basis as part of the national well-being indicators required under the Well-being of Future Generations (Wales) Act 2015 on which we are currently consulting.

I **accept in principle** this recommendation and will consider further the need to bring forward any necessary amendment to the Bill.

Recommendation 32

We recommend that the Minister brings forward amendments to the Bill to require the first carbon budget to be set earlier than the end of 2018 and for the second and third carbon budgets to be published before the end of 2018.

I recognise the overarching imperative to take forward this work as quickly as is possible. I therefore **accept in principle** and will consider the timeframes for introducing the first three carbon budgets.

For the first budgetary period, I would however underline the importance of the detailed work needed to be undertaken to inform the budgetary process which involves the quantification of our emissions and consideration of the key considerations such as the latest science, technology and the Future Trends reports, which may not be available until May 2017.

Making allowance for the importance of setting the decarbonisation pathway Wales, it is crucial that there is both sufficient time to complete the analysis and consider the implications. This includes taking the appropriate advice from the Advisory Body which will apply the same criteria as the Welsh Ministers, in addition to factoring in sufficient time to engage stakeholders.

Recommendation 33

We recommend that the Minister brings forward amendments to the Bill to change the power in section 33(2) to a duty.

Based on the accompanying text that supports this recommendation, I believe that the Committee are referring to section 33(3). On that premise, my response relates to section 33(3) and not section 33(2).

I **accept** this recommendation and have already tabled an amendment that addresses it (no.7). The amendment requires the Welsh Ministers to set a limit on the net amount of carbon units that may be used to reduce the net Welsh emissions account.

Recommendation 34

We recommend that the Minister brings forward amendments to the Bill to extend the parameters in section 32(3) to the advisory body.

I **accept** this recommendation and will consider bringing forward an amendment to ensure that the advisory body will consider the same criteria as the Welsh Ministers, when advising the Ministers on the setting and amending of interim targets and carbon budgets.

Recommendation 35

We recommend that the Minister brings forward an amendment to the Bill to place a duty on Welsh Ministers to produce an annual report on progress towards 2050 target.

In addition to reporting on the carbon budgets every five years under the Environment Bill, there will also be the provisions set out in the Well-being of Future Generations (Wales) Act, which includes a clear requirement for annual reporting.

Section 10 of the Well-being of Future Generations (Wales) Act requires the Welsh Ministers to publish national indicators on progress at achieving the well-being goals. The Welsh Ministers can then set milestones one of which could be on progress to the 2050 target. One of the indicators will measure greenhouse gas emissions for the whole of Wales. Progress against this indicator will be reported upon through the annual well-being report. Section 10(3) of the Act allows the Welsh Ministers to set milestones for the indicators, one of which could include greenhouse gas emissions.

The Welsh Ministers (along with the rest of the listed public bodies) will also have a duty to produce an annual report on their well-being objectives. Given the requirement to work towards all seven goals, I would fully anticipate that the annual report would include details on progress towards the 2050 target, thus, I **accept in principle** this recommendation.

The requirement being framed in this way recognises that action on climate change is not a stand alone issue, but one that must underpin all our action if reductions in emissions required are to be delivered, and must be at the centre of the action taken across the public service.

Recommendation 36

We recommend that the Minister provides greater clarity to the Assembly and stakeholders on how the reporting requirements in this Bill and the Future Generations Act will be coordinated.

I **accept** this recommendation and provide below information on the associated reporting requirements.

The Well-being of Future Generations (Wales) Act reporting arrangements fall into two key areas:

- National indicators – reported on through an annual well-being report; and
- Well-being objectives – reported on through an annual report by each public body

There are also periodic reports that will be produced by Welsh Ministers on future trends as well as one by the new Commissioner on what public bodies should do to achieve the well-being goals. The reporting arrangements under the Well-being of Future Generations (Wales) Act are inevitably broader than those under the Bill and could relate to objectives aimed at developing a skilled and well-educated population, encouraging participation in the arts, sports and recreation as well as efforts to maintain and enhance Wales' biodiverse natural environment. More specific reporting will come through the reporting arrangements under the Bill, for example, the State of Natural Resources Report (SoNaRR) will provide the evidence base used throughout Wales to inform national and local scale priority setting and will underpin the National Natural Resources Policy (NNRP) and also area statements.

The NNRP requires that the Welsh Ministers take into consideration all relevant evidence from the latest SoNaRR, which will also refer to evidence provided by the Future Trends Report.

As a public document, SoNaRR will be available to all interested parties on the state of Wales' natural resources and can assist public authorities in what actions may need to be taken to ensure that their well-being objectives are contributing to the well-being goals provided for in the Well-being of Future Generations (Wales) Act.

The reporting provisions in both the Act and Bill will complement one another and I would expect them to reduce the burden and complication for public bodies.

In my previous correspondence of 3 September 2015 to the Committee, I provided a timeline on the timings and interaction of products and reports required under this Bill, the Well-being of Future Generations (Wales) Act and the Planning (Wales) Act 2015 also communicated to the Committee.

Recommendation 37

We recommend that the Welsh Government engages with the Tyndall Centre with a view to further exploring the inclusion of aviation and shipping emissions in the setting of carbon budgets and targets and reports back to the Assembly on its consideration of the Tyndall Centre recommendations.

I **accept** that further consideration is needed to explore this issue and the relevant engagement with stakeholders will take place on the best way forward in determining how the aviation and shipping emissions could be included in the setting of carbon budgets and targets.

Recommendation 38

We recommend that the Minister sets out how the Commissioner for the Future Generations and the advisory body on climate change will interact.

I **accept** this recommendation and I have already asked the Climate Change Commission for Wales to consider this in the context of the role.

Section 19 of the Well-being of Future Generations (Wales) Act states that in carrying out her/his general duty, the Commissioner may provide advice and assistance to public bodies, which can include advice on climate change. Any advice provided should be at the discretion of the Commissioner. There are no powers available to the Welsh Ministers setting out how the Commissioner will fulfil this duty.

The advisory body on climate change may develop a working relationship with the Commissioner, but it is neither possible nor appropriate at this point for the Welsh Government to speculate on the details of how this interface is set out. The Commissioner may provide advice and assistance to public bodies, which can include advice on climate change. This is set out in the Act. The advisory body may provide independent advice on setting and meeting carbon budgets, monitor progress in reducing emissions and achieving carbon budgets, conduct independent analysis into climate change science, economics and policy and engage with a wide range of organisations to share evidence and analysis,

Climate change is one of our greatest long-term challenges and I would expect that the Commissioner would want to explore the implications of this for future generations. Consequently, I would anticipate there to be an effective working relationship with the advisory body.

Recommendation 39

We recommend that the Minister sets out how he sees the future of the Climate Change Commission for Wales.

I **accept** the Committee's recommendation. The Climate Change Commission for Wales will continue to run in its current form until March 2016. I have asked the Climate Change Commission for its views on how it believes the role should be taken forward in the context of the creation of the role of the Future Generations Commissioner.

Recommendation 40

We recommend that the Minister provides a list of the mechanisms he is referring to alongside a description of the aspects of adaptation that they cover so that we can assess the breadth and depth of their coverage.

In my letter to the Committee on 3 September, I set out the other mechanisms in place within the Bill to deal with adaptation and therefore I **accept** this recommendation. The Bill contains provisions covering adaptation such as the development of the national natural resources policy which must take in to consideration actions on climate change including mitigation and adaptation. Furthermore, the ecosystems approach, developed by the UN Convention on Biological Diversity and provided for by the Bill, includes the role that our natural resources can contribute to tackling the causes and consequences of climate change.

It is important to note that the Bill is designed to support the requirements of the Well-being of Future Generations (Wales) Act, which already has a number of provisions which are required to take adaptation into consideration. For example, the Future Trends report and Well-being assessments which must take into account the UK Climate Change Risk Assessment.

Part 3 – Charges for Carrier Bags

Recommendation 41

Notwithstanding our comments above, for any extension of the scheme e.g. bags for life, we recommend that these proceeds are directed to charities with an environmental remit. Further, where possible, they should only be directed to charities operating in Wales.

I believe that part of the success of the carrier bag charge has been due to the support it has had from retailers and the public. This is demonstrated by the fact that most retailers are already willingly donating their net proceeds to good causes.

However, I believe that by removing the retailers' discretion as to who they give their proceeds to, will not only result in money being taken away from those already benefitting, but will also undermine the existing support and relationships as well as jeopardising the success of the policy and therefore, I **resist** this recommendation.

I believe that there is flexibility in the existing regulations to limit where the net proceeds may be applied and when the regulations are made. I will of course take into account recommendations made by the Committee as well as the views of other interested parties.

Part 4 – Collection and Disposal of Waste

Recommendation 42

We recommend that the Welsh Government sets out the support it will provide to small business to help them meet any new separation requirements.

I recognise that businesses will need support and guidance in relation to meeting the new regulations and on this basis I **accept** this recommendation. Discussions with local authorities are now underway on the nature of support businesses need and further discussions will be on this with trade and business organisations.

Details of any support package will need to be developed in conjunction with the development of regulations and will be set out at the time, as the support will need to be tailored to the regulatory requirements.

I am considering a number of steps to help SMEs meet the separation requirements, including:

- the development of an industry “green growth prospectus” for the waste management sector covering collections, reprocessing of recyclates and energy from waste facilities to promote opportunities for job creation and investment.
- a detailed communications campaign before the Regulations come into force,
- the development of support activities such as business advice packages and
- a sufficient lead-in period to ensure businesses are able to make suitable arrangements.

Many SMEs are already separating out their wastes for collection and welcome the improved collection service that the proposals will promote and the consequent reduction in costs.

My officials will be working with service providers such as WRAP and stakeholders to develop a support package as part of the development of Regulations. It is not appropriate to set the support package out until Regulations are developed, as the support will need to be tailored to the regulatory requirements and future budgets.

Recommendation 43

We recommend that any regulations brought forward under section 45AA of the Environmental protection Act 1990 (inserted by section 66 of the Bill) include the TEEP test.

I will consider the appropriateness of TEEP in the development of Regulations, which will be subject to consultation and full scrutiny by the Assembly. The regulations themselves will need to be proportionate – whether this is achieved through TEEP or through other measures will be considered in developing the regulations, and on this basis I **accept in principle** the recommendation.

The current requirement, under the Waste (England and Wales) Regulations 2011 (as amended), is for waste collectors (i.e. waste management companies and local authorities) to collect certain materials separately – but not for the customer to present the waste separate for collection to facilitate this. The current requirement is

therefore one-sided, and collection companies often dictate how waste is collected, with a consequent drop in quality of material because of contamination.

This is the reason that I am proposing the new duty on businesses to present wastes separately – to match up the requirements. This will ensure that systems are fully aligned as regulations are developed.

Recommendation 44

We recommend that the Minister engages with the businesses and industry representatives that have made representations to us in relation to the ban.

We also recommend that the Minister revises the RIA to take account of the latest technologies that are being used - especially those that meet Water Research council standards.

I **accept in part** this recommendation. In response to the first part of this recommendation, I **accept** this and agree on the importance of engagement with business so as to ensure I get the provisions right and this has been done. The views of industry representatives have been carefully considered throughout the process. Meetings have been held with industry associations such as AMEDA and CESA, in addition to companies involved in manufacturing and supplying food waste treatment equipment in Wales. Engagement with the industry will continue as the appropriate regulations or guidance is developed.

With regard to the second part of the recommendation, I do not propose to revise the RIA for the Bill. In preparing the RIA for the Bill, we modelled the existing situation, whereby food waste is disposed to sewer largely via macerator, and an alternative option whereby this food waste is diverted to beneficial treatment. The appropriate time to consider the impacts on specific technologies will be in the preparation of the regulations under the Bill, which will be full consultation and scrutiny. I will ensure that these points are fully considered in the development of the accompanying RIA for the regulations. It is on these grounds that I **accept in principle** this part of the recommendation.

Recommendation 45

We recommend that the Minister considers the case for exempting equipment that meets the Water Research council (WRc) standards.

The WRc certification considers the functionality of the equipment. The primary purpose of the ban is to divert food waste from disposal to sewer to high quality fertiliser and energy generation.

As the Bill provides for exemptions from the ban, specific technologies can be considered during the development of the regulations, which will be subject to full consultation and scrutiny and on this basis I **accept** this recommendation.

Recommendation 46

We recommend that the Minister considers whether the exception in section 67 for waste mixed with water or any other liquid used for cleaning will allow oil, fat, and/or grease to be disposed in sewers simply by virtue of these standards being emulsified during a cleaning process. If there is any doubt, we recommend that he revisits the drafting of this exception.

The primary purpose of the ban is to divert food waste from disposal to sewer to high quality fertiliser and energy generation.

However, in view of the committee's concerns, I **accept** this recommendation and will consider the drafting of this exception.

Recommendation 47

We recommend that the Welsh Government sets out its proposals for the enforcement of the ban in more detail; including the body that will be responsible for enforcement and that this includes the estimated costs of enforcing a ban.

I have considered carefully the comments of stakeholders and the committee, and I **accept** this recommendation.

Proposals for the enforcement of the ban will be set out when the Welsh Government consults on the associated regulations. Once the Bill is passed, the potential regulators and industry will be further consulted to inform the development of proposals for the development of the ban. In addition to this, the regulations will also be subject to full scrutiny by the Assembly.

Precise costs, including training and enforcement costs will depend on the exact nature of any proposed ban or restriction and the level of regulation required. This will be considered in greater detail as part of the RIA.

Recommendation 48

We recommend that the Welsh Government clarifies where the responsibility lies for separating waste i.e. with the waste carriers or the incinerator operators.

I **accept** this recommendation. Incinerator operators will not be required to carry out separation activities. The Bill allows the Welsh Ministers to spread the responsibility throughout the waste management chain. Waste producers will have a duty to present their waste separately, and waste carriers will have to keep it separate.

The detail of the ban will be set out in regulations and guidance. The regulations will be subject to full consultation and scrutiny by the Assembly.

Part 5 – Fisheries for Shellfish

Recommendation 49

We recommend that the Welsh Government publishes guidance for the industry on how the provisions in the Bill will be applied and interpreted.

Following discussions with the shellfish industry, and in response to the Committee, I **accept** this recommendation and plan to publish guidance explaining how the new shellfisheries provisions will be operated.

The new provisions are intended to take into account the needs of the applicants of Several or Regulating Orders as well as the Welsh Ministers' responsibilities under the Habitats Directive. The provisions do what is required from a European perspective – which includes being able to act on a precautionary basis.

Advice and guidance for applicants will be developed through further consultation and then published, once the Bill has received Royal Assent.

Recommendation 50

We recommend that the Minister considers whether the Bill should be amended to make failure to comply with a site protection notice a criminal offence and that he publishes his position to this.

Criminalisation of failure to comply with a Site Protection Notice was considered during the development of the Bill, and I concluded that this was unnecessary and disproportionate. In almost every case, it would be in the best interests of the affected person to observe the provisions of the Notice and avoid the damage to the European Marine Site. The available punishment of revocation of the order (which is a valuable asset of the operators involved) is considered a sufficient deterrent.

On this basis, I **resist** this recommendation.

Part 6 – Marine Licensing

Recommendation 51

In undertaking this consultation, we recommend the Minister includes consultation questions on:

- *Performance indicators (i.e. for the performance of the licensing authority) including timescales for processing applications;*
- *Establishing requirements around the publication of data;*
- *Ensuring a transparent mechanism for the setting of fees and*
- *Introducing an hourly rate for fees.*

I am glad that this Part of the Bill has received broad support and I **accept** this recommendation. I anticipate that the associated consultation will begin in June 2016.

There would be difficulties in setting statutory timescales, given the diverse nature of marine licence applications. However, it is recognised that having set timescales are beneficial to businesses. Therefore, where appropriate, expected determination timescales for marine licences will be established at a policy level as part of the fees review.

I recognise the points raised on the matter of publication of data. It is important that opportunities to improve the availability of data in the marine area are considered. A number of marine users are actively providing their marine data into data hubs - and this voluntary practice will continue to be encouraged.

The overall aim of the Marine Licensing Fees Review is to provide a fit for purpose, robust, proportionate, fair and transparent regime for charging for costs associated with marine licensing. The preferred fees model being explored through the Fees Review includes a strong element of hourly rate charging.

Constitutional and Legislative Affairs Committee (CLAC)

Recommendations

Recommendation 1

We recommend that the Welsh Government should table an amendment to the Bill to apply the affirmative procedure to the making of regulations under section 24.

The rationale behind applying the negative procedure to any regulations under section 24 is due to the technical nature to the changes of the timings for the production of the State of Natural Resources Report (SoNaRR) and the National Natural Resources Policy (NNRP), in order for them to be aligned with other statutory reporting requirements. These changes would therefore be administrative and relatively minor.

However, I **accept in principle** this recommendation and will consider amending the procedure to regulations this section so it applies the affirmative procedure to these regulations.

Recommendation 2

We recommend that the Welsh Government should table amendments to the Bill to require there to be a charge for carrier bags sold or delivered to persons in Wales, and for the net proceeds of that charge to be applied to charitable purposes. This would replace the discretionary power to impose a charge which is provided for in Section 55 of the Bill.

I welcome the Committee's recognition of the success of the single use carrier bag charge in Wales and acknowledge that this recommendation is intended to strengthen the policy. I believe that as the charge has now become widely accepted by the Welsh public, it is important that we continue to build on this success. This is why it is now on the face of the Bill that regulations must require retailers to apply their net proceeds from the charge to charitable purposes.

As the Committee has noted, there is a need to ensure that Welsh Ministers retain the flexibility to amend the regulations should future circumstances suggest a change to the existing policy is needed, for example extending the charge to other types of bags.

It is for this reason that I have decided to **resist** this amendment as I do not believe we should remove this flexibility and change the scope of the regulation making powers. I believe that the intent of this recommendation can be more effectively implemented via the secondary legislation amendment process.

Recommendation 3

We recommend that the Welsh Government should table an amendment to the Bill to remove section 63.

I previously stated in Committee that it is unlikely that we would wish to pursue a joint composite order with the UK Government in relation to the carrier bag policy as the UK Government's single use carrier bag legislation is significantly different from ours.

I have now considered this matter further and I **accept** the recommendation to remove section 63 from the Bill.

Recommendation 4

We recommend that the Welsh Government should table an amendment to the Bill to ensure that the appeals processes for both shellfishery and marine licensing are treated consistently in the Bill.

The powers under Part 5 (shellfisheries) and Part 6 (marine licensing) of the Bill apply to separate regulatory regimes. The marine licensing provisions will be inserted into the Marine and Coastal Access Act 2009, where the wider marine licensing regime is already set out and has been implemented in Wales since 2011.

Section 108 of the MCAA imposes a duty on Welsh Ministers to make, through regulations, provision for any person to appeal against certain notices. The notices covered by section 108 of the MCAA include notices to suspend, vary or revoke and are akin to the notices that may be issued under sections 72A(7) or 107(A)(4) that will be inserted into the MCAA by the Bill. The Bill provisions extend the scope of section 108 to apply to notices served under sections 72A (7) and 107(A)(4)

The procedure for setting the appeals mechanism is already set out within the Marine and Coastal Access Act 2009 for other marine licensing notices. The Bill is seeking consistency with the existing notice appeals powers under section 108 of the Marine and Coastal Access Act 2009. Section 108 allows an appeals mechanism to be established by regulations. It is preferable to avoid fixing the appeals mechanism for these new powers on the face of the Bill, mirroring the current flexibility for setting the appeals provisions for the rest of the regime.

In relation to shellfisheries (Part 5), there is no existing appeal mechanism and no available enabling power which would be used to construct such an appeal mechanism. Consequently, on this basis it is necessary to set out a new appeals mechanism on the face of the Bill.

In view of the independence of the regimes, I **resist** this recommendation.

Finance Committee Recommendations

Recommendation 1

The Committee recommends that the summary table showing the costs and benefits in the Regulatory Impact Assessment of this Bill is amended to show separate tables for costs and monetised environmental benefits.

I **accept in principle** this recommendation as I believe the RIA clearly sets out the costs and benefits for each part of the Bill separately and where possible, every effort has been made to include monetised benefits in addition to the non-monetised benefits in the RIA. For some aspects of the Bill it has been extremely difficult to estimate monetised benefits – where this is the case, no figure was included in the overall costs.

I intend to revise the Explanatory Memorandum and RIA at the end of Stage 2 and as is required by Standing Orders.

Recommendation 2

The Committee recommends that the Welsh Government do not present costs and benefits in this way in future legislation, we believe this approach to be confusing and unintentionally misleading.

We would like to see the Welsh Government work with the Auditor General for Wales to agree on the best way to present cost and benefit information in Regulatory Impact Assessments.

There are number of specific policy areas encompassed by the Bill within the overarching aim for this legislation. A separate RIA was therefore undertaken for each Part. I am convinced that this was a clearer and more transparent way of undertaking this assessment as it enables the costs and benefits to be considered for each Part individually.

The results of each RIA were however assimilated into an overall summary table setting out the quantified costs and benefits for each part of the Bill, together with figures for the Bill as whole. This approach enabled us to present the overall costs and benefits of all parts of the Bill.

Furthermore, indicative costs to illustrate the potential onward financial implications of the implementation of the Bill were provided, for example, in relation to the area statements in Part 1 of the Bill. It is on this basis that I **accept in principle** this recommendation.

I agree with the Committee's findings that we should continue to work with the Auditor General, in particular to link with the implementation of the Well-being of Future Generations (Wales) Act – to ensure that costs and benefits for Bills in the future are considered in line with the framework of that Act.

Recommendation 3

The Committee recommends that the Minister support the suggestion of a future Finance Committee undertaking post legislative scrutiny of the costs associated with the Bill, and that the Minister commits to ensuring that a review of the costs will be made available four/five years after the Bill is enacted.

I agree that the costs should be considered as part of the post legislative process. However it is not for me to comment on the future work of an Assembly Committee or appropriate for me to commit future Welsh Ministers to a recommendation on their behalf. I believe that this is a matter for the relevant Minister at the appropriate time.

On that basis, I **accept in principle** this recommendation.

Recommendation 4

The Committee are concerned about the accuracy of costings in relation to the preparation and production of area statements and the level of funding allocations for Natural Resources Wales to carry out current duties and those included within the Well-being of Future Generations (Wales) Act 2015, Planning (Wales) Act 2015 and Environment (Wales) Bill 2015. The Committee recommends that the Minister work closely with Natural Resources Wales to ensure this work is adequately funded.

Natural Resources Wales (NRW) has been fully involved in the development of the proposals and provisions. Preparatory work to implement the Bill's requirements is already underway, and the Welsh Government will continue to work with NRW. I need to underline, however, that a key aspect of Part 1 of the Environment Bill relates to how NRW will be required to deliver its core purpose; and in that respect, these requirements should not be seen as 'additional' functions, but instead be seen as central to its remit.

The implementation costs and benefits associated with provisions set out in Part 1, particularly those in relation to the development of area statements, will largely be determined by the operational approach NRW chooses to adopt, beyond existing transition work already underway to integrate its regulatory functions where this is possible under existing legislation.

To ensure that the most cost-effective implementation approach is selected, NRW and the Welsh Government are working together to build evidence, identify good practice operational methods through for example the area trials, as well as reviewing current delivery models to take advantage of opportunities for consolidating and streamlining planning and operational functions.

Given that the implementation costs will be determined by NRW's operational approach I **accept in principle** this recommendation. The RIA puts forward illustrative options for implementation covering possible operational approaches for area statement development. The provisions have been designed however to enable NRW to select the most cost-effective approach to deliver the area statements and to allow for flexibility in managing cost implications going forward.

Recommendation 5

The Committee recommends that the Minister review the Regulatory Impact Assessment to provide an indication of the costs associated with Marine Licensing.

Given the costs associated with marine licensing have already been set out in the RIA accompanying the Bill, I **resist** this recommendation. The Marine Licensing Fees Review is currently ongoing and will be accompanied by a separate RIA – building on the information already set out in the Environment Bill RIA.

In general, costs are anticipated to fall on users of the marine licensing regime and should be outweighed by the added benefits. The RIA outlines the costs at approximately £757,330 (over a 10-year period) transferred from NRW to the users of the marine licensing regime.

Recommendation 6

The Committee would like assurance that costs for these waste companies will be lower in the medium to long term and recommends the Minister work with these organisations to ensure they are able to continue operations throughout the transition period and that access to finance is available to these organisations.

The RIA indicates that waste management companies are expected to make considerable savings overall in the medium to long term, from recycling revenues and reduction in disposal costs (i.e. avoided landfill tax).

Work with waste management businesses will be undertaken as we develop the associated subordinate legislation to ensure that it is fit for purpose.. The RIA illustrates that waste management companies will accrue savings from the provisions set out in the Bill. On that basis, I am positive that they will not need additional support to fulfil the requirements. It is on these grounds that I **resist** this recommendation.

Recommendation 7

The Committee would like the Welsh Government to consistently follow the example of the Health Minister who indicated that the Explanatory Memorandum and Regulatory Impact Assessment for the Regulation and Inspection of Social Care (Wales) Bill 2015 would be updated as subordinate legislation was drafted and costed.

The Minister for Health and Social Services committed to produce separate RIAs at the point that subordinate legislation is brought forward. Similarly, it is my intention to publish separate RIAs for subordinate legislation made under the Environment Bill where needed, in line with standard practice and to ensure that the RIAs reflect the most up to date evidence available at the time.

While I agree with post-implementation review of the costs and benefits as a matter of good practice, it is important to guard against adding overly bureaucratic processes to this end, and the associated potential to incur significant costs in the context of the continuing challenges with respect to public spending constraints.

On the basis of our assessment, continual update of the detail set out in the RIA for each Bill each time subordinate legislation is produced would require significant

resources and I therefore, **resist** this recommendation. However, I will consider this as part of the post implementation review of this Bill.



Ein cyf/Our ref: LF/FM/0284/15

Rt Hon Stephen Crabb
Secretary of State
Wales Office
Discovery House
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1st April 2015

Dear Stephen

The Welsh Government plans to introduce the Environment (Wales) Bill into the National Assembly on 11 May 2015.

The overarching aim of the Bill is to ensure that Wales has the legislation in place to enable Wales' natural resources to be managed in a more proactive, sustainable and joined-up way and to tackle climate change. I have enclosed a copy of the Bill for your information.

The Government of Wales Act 2006 provides that a provision which confers a pre-commencement function on a Minister of the Crown is outside competence unless the Secretary of State consents to the provision (see paragraph 1 of Part 2 and paragraph 6 of Part 3 of Schedule 7 to the Act).

Our officials have been in contact over the last few months to discuss the provisions in the Bill that require consent and these are detailed below. I would be grateful if you could now formally give your consent to these provisions. Please note that the Bill now contains a new Part 2 in relation to climate change. The provisions have been discussed with DECC officials although they do not require Minister of the Crown consent.

Section 6 (biodiversity and resilience of ecosystems duty)

The Bill will replace the existing biodiversity duty in section 40 of the Natural Environment and Rural Communities Act 2006 (NERC) with an updated version of that duty. Currently section 40 of NERC requires that in exercising their functions in relation to England and Wales, public authorities, which include Ministers of the Crown, must have regard to the purpose of conserving biodiversity. Section 40(2) imposes a specific duty on Ministers of the Crown to have regard to the United Nations Environmental Programme Convention on Biological Diversity 1992.

Section 6 of the Bill imposes an amended duty on the same public authorities as defined in section 40, including Ministers of the Crown. Those authorities will be required, in so far as they exercise functions in relation to Wales, to seek to maintain and enhance biodiversity. Section 6 also imposes an equivalent provision to that in section 40(2). As section 6 modifies the existing duty in section 40 as it applies to Ministers of the Crown, the Secretary of State's consent is required.

Section 11(2) (meaning of public bodies)

The public Bodies listed in Section 11(1) are subject to duties in relation to the preparation of area statements and the state of natural resources reports. These are as follows;

- Section 12(3) – a duty to comply with the directions of the Welsh Ministers to take steps to implement an area statement.
- Section 13(1) and (2) – a duty to give information and assistance to NRW in preparing the state of natural resources reports under section 8 or area statements under section 10.

None of these duties require a public body to do anything which is incompatible with, or have an adverse effect on, the exercise of their functions (Sections 12(4) and 14(2)(a) and (b)).

Section 11(2) confers a power on the Welsh Ministers to add, remove or amend the description of public bodies as listed in subsection (1). As drafted, this power could be exercised to include Ministers of the Crown in the list. Therefore the duties in sections 12(3) and 14(1) and (2) could potentially apply to Ministers of the Crown.

I understand that your officials have raised concerns about the scope of section 11(2) but have indicated that you would be content if section 11 was amended so that Ministers of the Crown must consent to be included in the list of public bodies. We are content with this and have amended the Bill accordingly. I hope that this now deals with your concern.

Section 21 (crown land in relation to land management agreements)

Section 21 sets out the appropriate authorities that may enter into land management agreements in relation to land that is held by or on behalf of the Crown. This provision requires the Secretary of State's consent because it confers a function on "appropriate authorities" and the definition of "appropriate authorities" (as defined in subsection (4)) includes government departments which may include Ministers of the Crown.

Consent is also required for subsection (5) which confers a function on the Treasury to resolve questions over who is the appropriate authority.

For the avoidance of doubt, I seek your consent for the provisions in sections 6, 11(2) and 21 of the Bill in accordance with paragraph 6 of Part 3 of Schedule 7 to GOWA 2006.

It would be helpful if you could respond by Friday 10 April so that the Bill can be introduced into the Assembly with the necessary consents in place.

Yours sincerely



CARWYN JONES



Wales Office
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Rt Hon Stephen Crabb MP
Secretary of State for Wales

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152SUB 15

8 April 2015

Dear Carwyn,

Environment (Wales) Bill

Thank you for your letter of 1 April which confirms the Welsh Government's plans to introduce the Environment (Wales) Bill on 11 May 2015.

You also write seeking formal Minister of the Crown consent for sections 6, 11(2) and 21 of the Bill in accordance with paragraph 6 of Part 3 of Schedule 7 to the Government of Wales Act 2006.

I understand that my officials and lawyers remain in discussions with yours on this, and I will therefore respond substantively when those discussions have reached their conclusion.

Rt Hon Stephen Crabb MP
Secretary of State for Wales

Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM
Prif Weinidog Cymru/First Minister of Wales



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LF/FM/0739/15

Rt Hon Stephen Crabb MP
Secretary of State for Wales
Gwydyr House
London SW1

7 August 2015

Dear Stephen

I am writing in relation to the Environment (Wales) Bill and in particular the Minister of the Crown consents, following on from my earlier letter of 1 April and your reply of 8 April.

In my earlier letter I indicated that there were three specific provisions of the Bill that required the consent of the UK Government. These are:

- section 6 – biodiversity and resilience of ecosystems duty
- section 11(2) – meaning of public bodies
- section 21 – crown land (in relation to land management agreements).

Subsequently, an additional provision was also identified as requiring consent relating to the section 22(2) – power to suspend statutory requirements for experimental schemes - for which my officials provided information to your officials in April.

In your response in April, you indicated that you would be responding substantively when official level discussions have reached their conclusion. However, whilst my officials have provided the information on all the queries raised by your officials in March and April, we have not received any further detailed queries or any indication of when the substantive response will be forthcoming.

As you know, the legislative timetable necessitated the introduction of the Bill into the National Assembly on 11 May. However, as the consents could not be secured by that time, the Bill was introduced without consents for the above four provisions. The Explanatory Memorandum was therefore amended to clearly set out where consent was still required and that discussions would be progressed in order to conclude during Stage 1 of the Bill's scrutiny.

As the end of Stage 1 on 20 October is now fast approaching, in practice this means that the consents will need to be in place by mid-September. I would also highlight that in the event that any amendments are needed to the Bill, the timetable for doing so is increasingly tight in order that the amendments can be made at Stage 2.

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The Minister for Natural Resources met with Lord Bourne on 16 July and raised this issue and the now pressing need for approval within the context of our legislative timetable. I understand that Lord Bourne agreed to look into the issue, with a view to achieving a resolution by the end of July. As we are now though in early August and neither the consents nor any further details of any specific issues have as yet been forthcoming, I would be grateful for your confirmation that the matter is in hand and would request a formal response on the consents by Friday 11 September in order to align with the Assembly's scrutiny process.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES



Wales Office
Swyddfa Cymru

Rt Hon Stephen Crabb MP
Secretary of State for Wales

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Ref: 397SUB 15

11th September 2015

Dear Carwyn
Environment (Wales) Bill

You wrote to me on 7 August 2015 seeking formal Secretary of State consent for the functions of Ministers of the Crown to be modified by sections 6, 11(3)(b), 21 and 22(2) of the Bill as introduced. I am content to provide consent for sections 11(3)(b), 21 and 22(2). I am, however, withholding consent for section 6 at this time.

As well as a duty to seek to maintain and enhance biodiversity in the exercise of their functions, section 6 includes a new duty on those public bodies (including Ministers of the Crown) to report every three years on what has been done to comply with the biodiversity duty.

Since the Bill's introduction, my officials have discussed these provisions with a number of departments. Concerns have been raised about the duties imposed by section 6 and the additional burdens this may place, not just on Ministers of the Crown, but also on bodies carrying out wholly or mainly non-devolved functions in Wales.

We have sought to gain further clarity on these duties from your officials and suggested minor amendments to address shared concerns. However, it remains our view that the duties imposed in this section will be more onerous than the duty on which they are based, in section 40 of the Natural Environment and Rural Communities Act 2006.

I know our respective officials, and those across Whitehall, have worked hard to resolve issues with the Bill and I am encouraged by the joint working that has taken place. Through further negotiation I am confident that our officials can reach a resolution to the remaining issues in the Bill which will allow you to meet your policy objectives.

Rt Hon Stephen Crabb MP
Secretary of State for Wales

Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM
Prif Weinidog Cymru/First Minister of Wales



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L(FM)/0016/15

Rt Hon Stephen Crabb MP
Secretary of State for Wales
Gwydyr House
London
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Correspondence@walesoffice.gsi.gov.uk

13 October 2015

Dear Stephen

I am writing in response to your letter of 11 September regarding the Secretary of State consent for the functions of Ministers of the Crown to be modified by sections 6, 11(3)(b), 21 and 22(2) of the Environment (Wales) Bill.

I am grateful for your consent for sections 11(3)(b), 21 and 22(2) of the Bill.

However, as I indicated at our recent meeting, I am disappointed that you have withheld consent for section 6 of the Bill. Your letter refers to concerns that the section 6 duties will impose additional burdens on Ministers of the Crown and bodies carrying out wholly or mainly non-devolved functions in Wales. Your letter also highlights that you have sought clarity on these duties. I can confirm that the Welsh Government has responded to every query raised by your officials, with the most recent response being provided on 9 April.

In this response my officials sought to provide assurance they did not consider that the duty in section 6 of the Bill would be any more onerous than the current duty on public authorities to have regard to biodiversity conservation under section 40 of the Natural Environment and Rural Communities (NERC) Act 2006. The response also set out examples of what public authorities could do to seek to meet the requirements of the new biodiversity duty, some of which are already being taken forward by Government departments or agencies in Wales.

My officials also highlighted that while the new duty in the Bill will include a reporting requirement, it is not expected to be a detailed or lengthy report. Public authorities could, for example, comply with it by including information about how they have met the biodiversity duty within any of their existing reports and therefore we are not expecting them to produce a new report. There is a similar reporting requirement on public bodies, including Ministers of the Crown, in Scotland.

I understand that your officials have not responded to the information provided in April, and we have not been made aware of any further concerns.

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Your letter also suggests that your officials have suggested minor amendments to address shared concerns. My officials have advised me that the only suggested amendments were in relation to section 11(2) on the definition of a public body. As a result, we included an amendment to include a requirement for the Secretary of State to consent to add a Minister of the Crown to this list (as opposed to the previous provision for them to be consulted). We are not aware of any suggested amendments in relation to the section 6 provision.

I am hopeful that we can resolve this issue as a matter of urgency, as we discussed recently.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES