

# Y Pwyllgor Amgylchedd a Chynaliadwyedd

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Lleoliad:  
Ystafell Bwyllgora 3 – y Senedd

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Dyddiad:  
Dydd Iau, 2 Gorffennaf 2015

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Amser:  
09.30

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



I gael rhagor o wybodaeth, cysylltwch â:

**Alun Davidson**

Clerc y Pwyllgor

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## Agenda

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### 1 Cyflwyniad, ymddiheuriadau a dirprwyon

### 2 Bil yr Amgylchedd (Cymru) – Cyfnod 1: Sesiwn dystiolaeth 4 (09:30 – 10:00) (Tudalennau 1 – 30)

Yr Athro Terry Marsden, Cyfarwyddwr, Sefydliad Ymchwil Mannau Cynaliadwy, Prifysgol Caerdydd

Yr Athro Janet Dwyer, Cyfarwyddwr, Sefydliad Ymchwil Cefn Gwlad a Chymunedau, Prifysgol Swydd Gaerloyw

Robert Berry, Cymrawd Ymchwil, Sefydliad Ymchwil Cefn Gwlad a Chymunedau, Prifysgol Swydd Gaerloyw

### 3 Bil yr Amgylchedd (Cymru) – Cyfnod 1: Sesiwn dystiolaeth 5 (10:00 – 10:45) (Tudalennau 31 – 66)

Annie Smith, Rheolwr Datblygu Cynaliadwy, RSPB Cymru

Rachel Sharp, Prif Weithredwr, Ymddiriedolaethau Natur Cymru  
Peter Ogden, Cyfarwyddwr, Ymgyrch Diogelu Cymru Wledig  
Anne Meikle, Pennaeth, WWF Cymru

E&S(4)-20-15 Papur 1: RSPB Cymru  
E&S(4)-20-15 Papur 2: Ymddiriedolaethau Natur Cymru  
E&S(4)-20-15 Papur 3: Ymgyrch Diogelu Cymru Wledig

**Egwyl (10:45 – 10:55)**

**4 Bil yr Amgylchedd (Cymru) – Cyfnod 1: Sesiwn dystiolaeth 6 (10:55 – 11:40)** (Tudalennau 67 – 87)

Ifer Gwyn, Pen Swyddog Polisi, Parc Cenedlaethol Eryri  
Neville Rookes, Swyddog Polisi Amgylcheddol, Cymdeithas Llywodraeth Leol Cymru

E&S(4)-20-15 Papur 4: Parciau Cenedlaethol Cymru  
E&S(4)-20-15 Papur 5: Cymdeithas Llywodraeth Leol Cymru

**5 Bil yr Amgylchedd (Cymru) – Cyfnod 1: Sesiwn dystiolaeth 7 (11:40 – 12:25)** (Tudalennau 88 – 108)

Rachel Lewis-Davies, Cynghorwr ar yr Amgylchedd/Materion Gwledig, NFU Cymru  
Dr Nick Fenwick, Pennaeth Polisi, Undeb Amaethwyr Cymru  
Martin Bishop, Rheolwr Cenedlaethol Cymru, Confor  
Karen Anthony, Cyfarwyddwr Polisi, CLA Cymru

E&S(4)-20-15 Papur 6: NFU Cymru  
E&S(4)-20-15 Papur 7: Undeb Amaethwyr Cymru  
E&S(4)-20-15 Papur 8: Confor  
E&S(4)-20-15 Papur 14: CLA Cymru

**Cinio (12:25 – 13:00)**

**6 Bil yr Amgylchedd (Cymru) – Cyfnod 1: Sesiwn dystiolaeth 8 (13:00 – 13:45)** (Tudalennau 109 – 139)

Peter Quinn, Pennaeth yr Amgylchedd a Newid Hinsawdd, TATA Steel  
Richard Leonard, Rheolwr Amgylchedd, TATA Steel

E&S(4)-20-15 Papur 9: TATA Steel

**7 Bil yr Amgylchedd (Cymru) – Cyfnod 1: Sesiwn dystiolaeth 9 (13:45 – 14:30)** (Tudalennau 140 – 145)

Matthew Bell, Prif Weithredwr, Y Pwyllgor Newid Hinsawdd  
Peter Davies, Cadeirydd, Comisiwn Newid Hinsawdd Cymru

E&S(4)-20-15 Papur 10: Y Pwyllgor Newid Hinsawdd

E&S(4)-20-15 Papur 11: Comisiwn Newid Hinsawdd Cymru

**8 Bil yr Amgylchedd (Cymru) – Cyfnod 1: Sesiwn dystiolaeth 10 (14:30 – 15:00)** (Tudalennau 146 – 162)

Haf Elgar, Ymgyrchydd, Cyfeillion y Ddaear Cymru  
Jessica McQuade, Swyddog Polisi, WWF Cymru

E&S(4)-20-15 Papur 12: Cyfeillion y Ddaear Cymru

E&S(4)-20-15 Papur 13: WWF Cymru

## Eitem 2

Mae cyfyngiadau ar y ddogfen hon



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 life<sup>1</sup>. 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***

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<sup>1</sup> European Commission 2013 Flash Eurobarometer 379. Attitudes towards biodiversity. November 2013.

**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 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 benefits<sup>2</sup> 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 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 to<sup>i</sup> achievement of the objective in subsection (2),*
- b) *taking other action that contributes to<sup>ii</sup> achievement of that objective, and*
- c) *not taking action that hinders achievement of that objective.*

3(2) *The objective is to maintain, enhance and restore<sup>iii</sup> biodiversity<sup>iv</sup> and the resilience of ecosystems and the benefits they provide and, in doing so, contribute to meeting<sup>v</sup> the needs of*

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<sup>2</sup> E.g. RSPB 2014 Special Sites: Resilient Ecosystems

*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<sup>vi</sup>*

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 restore<sup>i</sup> biodiversity in the exercise of its functions in relation to Wales, and in so doing, promote biodiversity<sup>ii</sup> 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 ecosystems<sup>iii</sup>*

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 Bill<sup>3</sup> 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 physiological features of special interest.*

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

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 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.

National Assembly for Wales  
Environment and Sustainability Committee  
EB 28  
Environment (Wales) Bill  
Response from Wildlife Trusts Wales



In addition to the evidence below, Wildlife Trusts Wales have contributed to, and endorse, Wales Environment Link (WEL) evidence.

## **SECTION 1 – RECOMMENDATIONS FOR INCLUSION**

### **INTRODUCTION**

Despite current policy, strategies and legislation to protect and enhance biodiversity it is in a state of major and continuing decline (Welsh Government's Nature Recovery Plan<sup>1</sup>, the UK National Ecosystem Assessment<sup>2</sup>, State of Nature Report<sup>3</sup> etc). For example, the State of Nature highlights that 60% of the 3,148 species that were assessed had declined in the last 50 years and 31% have declined strongly. A new Watchlist indicator assessing the state of 155 priority species showed that numbers had declined by 77% in the last 40 years.

Wales, along with other nations, have failed to hit its national and international agreed commitments and **non-statutory targets** (See Environment Strategy for Wales<sup>4</sup>) to:

- halt biodiversity loss by 2010, agreed under the Convention on Biological Diversity (CBD)(**The Environment and Sustainability Committee held an inquiry into that failure**<sup>5</sup>) and
- ensure that 95% of all international sites are in favourable conservation status (FCS) by 2010 and 95% of Sites of Special Scientific Interest (SSSI) in FCS by 2015 – with all sites being in FCS by 2026<sup>6</sup>. (**NB. A rapid review in 2006 judged that conservation features at only 47% of Welsh (SSSIs) were in favourable condition**<sup>7</sup>)

It is worth noting that the decline of biodiversity is not because traditional conservation efforts have failed. This decline is due to the enormous scale of the challenge caused by;

- the failure to sufficiently integrate nature conservation into Government policy areas such as agriculture and economic development
- a lack of significant long-term funding
- a lack of leadership to gain the political momentum to tackle the issues causing the decline in biodiversity and
- a lack of accountability and no consequences for the failure to meet non-statutory targets.

We welcome Welsh Government's intentions to tackle some of these issues. The Environment Bill is an opportunity to reinforce the 'Resilient Wales' goal of the Well-being of Future Generations (WFG) Act. It can give a new statutory driver to recover biodiversity and restore the services that we need from it. However, in order to achieve this goal, we believe that there are a number of key elements missing from the Bill – namely:

- statutory biodiversity targets;
- mechanisms for delivery for action to halt the loss of biodiversity and to restore it;
- consequence's for not delivering on the above; and
- sufficient independent scientific advice/ consultation

### **Statutory independent scientific advisory panel**

Part 1 of the Bill proposes

- new biodiversity duties (Clause 6(1) and 7(3)) for public authorities and Welsh Ministers
- the creation of a number of new reporting commitments, biodiversity lists, a State of Natural Resources Report, Area Statements and a National Natural Resources Policy and

<sup>1</sup> Draft Nature Recovery Plan <http://gov.wales/docs/desh/consultation/140910-nature-recovery-plan-consultation-en.pdf>

<sup>2</sup> UK National Ecosystem Assessment <http://uknea.unep-wcmc.org/>

<sup>3</sup> State of Nature Report <http://www.wildlifetrusts.org/news/2013/05/22/state-nature-60-uk-species-decline-groundbreaking-study-finds>

<sup>4</sup> Environment Strategy for Wales (2006) <http://gov.wales/docs/desh/publications/060517environmentstrategyen.pdf>

<sup>5</sup> Committee Report on the Inquiry into Biodiversity (2010) <http://www.assembly.wales/Laid%20Documents/CR-LD8384%20-%20Sustainability%20Committee%20Inquiry%20into%20biodiversity%20in%20Wales-31012011-208859/cr-ld8384-e-English.pdf>

<sup>7</sup> From 2006 CCW Rapid Review of SSSI in Wales - As reported in the UK NEA - Chapter 20: Status and Changes in the UK's Ecosystems and their Services to Society: Wales downloaded from <http://uknea.unep-wcmc.org/Resources/tabid/82/Default.aspx>

- NRW and/or Welsh Ministers to implement the policies or Area Statements and encourage others to take such steps.

However, many of these processes have very few consultation requirements (if any). For example, there is no duty for Welsh Government to consult on the National Natural Resource Policy (CL9) even with NRW. This detracts from greater scrutiny and may constitute an inappropriate manner of rulemaking contrary to the **Aarhus Convention**<sup>8</sup> which provides the right to participate in environmental decision-making. This states that “**Arrangements are to be made by public authorities to enable the public affected and environmental non-governmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment, these comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it**”.

To increase accountability and transparency, we **recommend** that

- the Bill sets up an **statutory independent scientific advisory panel** – a **Biodiversity Commission** - to advise on all the new requirements in Part 1 of the Environment Bill and WFG Act Resilient Wales Goal. In practice would be the **Welsh Biodiversity Strategy Board** thus requiring little new resources. However, as these groups include environmental NGOs, amongst others, Welsh Government should compensate NGO participants for their time and associated expenses.
- The Commission should be chaired by a **new independent Biodiversity Commissioner** who should report to the Wellbeing and Future Generations Commissioner.
- The Commission and Commissioner have the same rights and responsibilities as the other Commission and Commissioners.

As biodiversity and ecosystem services are our life support systems, biodiversity at least requires a position on a par with the other Commissioners.

### Biodiversity targets

We **recommend** that the Environment Bill has an opportunity to make statutory the **current commitments under the Environment Strategy for Wales (p36)**<sup>9</sup> and the **EU Biodiversity Strategy**<sup>10</sup>, namely :

1. To ensure that all **designated sites** are truly in favourable conservation status (FCS) by 2026 (or have the management in place by 2026 to allow FCS to be achieved)
2. **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.";
3. **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.”

Targets two and three could be implemented by a **15% increase in biodiversity by 2050** with interim targets set every five years. We would also **recommend** that the Bill require NRW to implement the Lawton Review<sup>11</sup> - Making Space for Nature - by Sir John Lawton. This report into protected sites found that they need to be **‘better, bigger, more and connected’** to secure wider ecological resilience.

The Environment Strategy for Wales foreword was given by the then Minister for Environment, **Carwyn Jones AM**, where he pledged his “**ongoing commitment to delivering the vision set out in the Strategy**” (e.g. halting the loss of biodiversity by 2010, and FCS by 2026). We hope that this is still the case, and that the revised targets will be put into the Environment Bill.

Whilst setting targets is relatively easy, monitoring and measuring against the targets will be more difficult. There is currently a monitoring system in place for designated sites. Regarding species and habitats, we already have a lot of information and we are developing a set of indicators to measure progress towards the Resilient Wales Goal which should be used to monitor and measure the Biodiversity targets – thus no duplication of effort is required. This indicator(s) may be based on one or more of

<sup>8</sup> Aarhus Convention - <http://ec.europa.eu/environment/aarhus/>

<sup>9</sup> <http://gov.wales/docs/desh/publications/060517environmentstrategyen.pdf>

<sup>10</sup> <http://ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm>

<sup>11</sup> <https://www.gov.uk/government/news/making-space-for-nature-a-review-of-englands-wildlife-sites-published-today>



- the biodiversity list required under Clause 7 of the Bill (NERC Act section 42 list),
- the Watchlist Indicator from the State of Nature,
- the Red Lists for threatened species
- Welsh Government Sustainable Development wild bird lists and index and or
- Living Planet Index

Also, this reporting and monitoring can be improved over time as better data (and data on more groups of species) becomes available. By 2050 we would have also 35 years of State of Natural Resources Reports. Progress towards the targets could be reported in the new Wellbeing Plans, National Natural Resources Policy and State of Natural Resources Report, thus no new reporting mechanism is required.

Why? Statutory targets help drive political change, prioritise action and direct funding. For example,

- Environment Bill includes targets to reduce greenhouse gas emissions by 80% by 2050. In announcing this commitment, the Minister Carl Sargeant AM stated **“Including statutory targets will allow us to better evaluate progress, provide certainty to help drive investment...and confirm achievable targets to work towards”**.
- Section 3 of the Waste Measure 2010<sup>12</sup> sets targets for Local Authorities in respect of recycling and makes those that do not meet them liable to a **financial penalty**. For every 1% missed from Welsh Government targets, Local Authorities get fined £400,000<sup>13</sup>. Statutory targets in waste helped take recycling from a less than 10% in 2000 to a Wales average of 54.3% today. The Minister Carl Sargeant AM stated **“We are still the only UK government that has set statutory recycling targets and this focus is delivering results”**<sup>14</sup>.

Recently, the Minister wrote to Local Authority Chief Executives asking them to maintain their ecological expertise so that they could undertake their forthcoming duties (WFG Resilient Wales Goal) and their existing duties (NERC Duty) let alone the new duties under the Environment Bill. We believe that the response that the Minister received was broadly ‘give us more money’. However, we are aware that the Sustainable Development Grant from Welsh Government to Local Authorities is in many cases being used, almost exclusively to meet waste targets with little or no money spent on, or hypocathed to, biodiversity – leading to ecological jobs being lost or under threat.

Welsh Government has highlighted the benefits of statutory waste targets<sup>15</sup> including providing more green jobs and increasing skills as well as ensuring that everybody can contribute. We believe that these outcomes and more can be achieved through setting biodiversity targets – see the EU Report on the **Economic benefits of Natura 2000**<sup>16</sup> and the DEFRA report on the **Benefits of Sites of Special Scientific Interest**<sup>17</sup>. The DEFRA report has estimated that every £1 spent on maintaining SSSIs, it delivers £8 worth of benefits to the economy and society - this is likely to be an underestimation. These reports highlight the significant **multiple benefits** including economic benefits from restoring our most precious sites and biodiversity. However, as previously noted only 47% of Welsh SSSIs are in favourable condition.

Therefore, we **recommend** that the Bill set consequences for non-delivery of the targets.

### General Binding Rules

We are disappointed that the General Binding Rules have not been included within the Bill – but acknowledge they are proposed as a possible experimental measure (CL22). We support the use of General Binding Rules in order to tackle offences such as diffuse pollution which has a significant adverse impact on biodiversity including both nationally and internationally designated sites such as SSSIs. General Binding Rules could help tackle poor environmental practice and diffuse pollution which is currently outside current regulatory system – particularly poor land management practices in rural locations.

The scale of poor land management practice is, as evidenced by NRW<sup>18</sup>, the reason why many water bodies fail the Water Framework Directive in Wales. General Binding Rules have the potential to bring equity and proportionality

<sup>12</sup> The Waste Measure 2010

[http://gov.wales/topics/environmentcountryside/epq/waste\\_recycling/legislation/measure2010/?lang=en](http://gov.wales/topics/environmentcountryside/epq/waste_recycling/legislation/measure2010/?lang=en)

<sup>13</sup> See Capital Times [https://www.cardiff.gov.uk/ENG/Your-Council/News/Capital-](https://www.cardiff.gov.uk/ENG/Your-Council/News/Capital-Times/Documents/Capital%20Times%20June%202015%20English.pdf)

[Times/Documents/Capital%20Times%20June%202015%20English.pdf](https://www.cardiff.gov.uk/ENG/Your-Council/News/Capital-Times/Documents/Capital%20Times%20June%202015%20English.pdf)

<sup>14</sup> <http://www.letsrecycle.com/news/latest-news/wales-hits-record-54-recycling-rate-201314/>

<sup>15</sup> [http://gov.wales/topics/environmentcountryside/epq/waste\\_recycling/zerowaste/?lang=en](http://gov.wales/topics/environmentcountryside/epq/waste_recycling/zerowaste/?lang=en)

<sup>16</sup> [http://ec.europa.eu/environment/nature/natura2000/financing/docs/ENV-12-018\\_LR\\_Final1.pdf](http://ec.europa.eu/environment/nature/natura2000/financing/docs/ENV-12-018_LR_Final1.pdf)

<sup>17</sup> <http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=1&ProjectID=17005>

<sup>18</sup> <http://naturalresources.wales/media/1785/water-strategy-for-wales.pdf>

to regulation for relatively minor, but widespread, poor practice. They have the potential to encourage more sustainable land management practices and key environmental outcomes.

This model has been used to great effect in Scotland enabling resources to be freed up to concentrate on serial offenders.

### Stronger Wording

In many places the Environment Bill uses weak language which in turn could create weak policy or get-out clauses. Examples include:

- ‘consider the appropriate scale...
- ‘Promote and engage...
- ‘take account of all relevant evidence and gather evidence in respect of uncertainties
- Take account of...
- Seek to achieve
- Have regard to
- For contributing
- They consider relevant
- As it appears to them
- Reasonably practicable
- otherwise have an adverse effect on the exercise of the public body’s functions

We would like stronger language used such as ‘give effect to...’, ‘must ensure’, ‘achieve’, ‘deliver’. However, we are unsure of the legal definitions and would **recommend** that the Committee to look into the definitions of the above wording and suggest appropriate language that will clearly **drive action** to recovery nature.

## SECTION 2 – SPECIFIC COMMENTS ON THE BILL

### CL2 (a) Natural resources

Natural Resources are partly defined as ‘animals, plants and other organisms’. The Explanatory Memorandum states that the list does not include description of scale at which individual components exist such as habitat or landscape. The list is supposed to be building blocks of ecosystems. However, biological diversity (biodiversity) is the basis of ecosystems. Therefore, we **recommend** that ‘animals, plants and other organisms’ should be changed to ‘biodiversity’. This will also have the effect of creating consistency within the Bill (e.g. CL6 – Biodiversity and resilience duty) and external commitments such as the EU Biodiversity Strategy to halt the loss of biodiversity by 2020. The term ‘Biodiversity’ is consistent with the Explanatory Memorandum as it does not imply scale but is *the* building block of ecosystems.

### CL5 - General purpose of NRW

We have previously evidenced a number of concerns regarding NRW’s purpose to the Committee. Principally, a reduction in ecological expertise and that NRW ‘**has a wider statutory purpose**’ putting perceived socio-economic considerations ahead of environmental protection.

As Wales’ **Statutory Nature Conservation Body** (SNCB), NRW is required to show clear, strong and strategic leadership on the natural environment as well as protecting **and enhancing biodiversity**. Therefore, we would like to see the re-establishment of NRW’s primary responsibility, the protection and enhancement of the environment including biodiversity.

As such, based on legal advice obtained by RSPB, we **recommend** ‘*seek to*’ should be omitted as it is weak language. In addition, WTW **recommend** that the general purpose of NRW, to align with the WFD Act and their role as the SNCB, should include, ‘The Body must;

- achieve, deliver and champion the **Resilient Wales Goal** of the Well-being of Future Generations Act.
- apply the ‘**Sandford Principle**’ “*If it appears that there is a conflict between economic, social or environmental purposes, NRW shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area.*”

### CL3 - Sustainable management of natural resources

CL (1) - As the general purpose of NRW (CL 5 of the Environment Bill) is to achieve sustainable management of natural resources as defined by CL3 – we **recommend** that CL3(1) 'sustainable management of natural resources should include;

- ensuring the maintenance and enhancement of biodiversity (as per the CL7 list of the Environment Bill – currently NRW are not charged with this duty).
- ensuring that the EU Biodiversity Strategy is achieved in Wales
- ensuring that all statutory designated sites are favourable condition by 2026 and implement the Lawton Review – Making Space for Nature
- ensuring Wales has a coherent and resilient ecological network
- the 'Sandford Principle'
- adaptation to climate change

We also **recommend**, based on legal advice obtained by the RSPB that in CL3(1)(a+b) 'promotes is' replaced by 'contributes to'

**CL3(2)** - The resilience of ecosystems appears to be explained later under principles of sustainable management (CL4). The Explanatory Memorandum gives a purposive approach to interpretation – which gives the objective a potentially very wide remit. This then can deliver tensions within the interpretation of the Bill between e.g. windfarms on peatland delivering a resilient climate via renewable energy but degrading peatland adding to climate change. Therefore, the use of the Sandford principle, in CL5, gets around those tensions.

The Environment Bill or the Explanatory Memorandum should also clarify that 'ecosystems' is based on the CBD definition: "a dynamic complex of plant, animal and microorganisms and their non-living environment interacting as a functional unit".

In order to make sure that there is consistency within the Bill on biodiversity, that the Bill delivers for biodiversity and based on legal advice obtained by the RSPB be we **recommend** that the objective is strengthened by being changed to "*The objective is to maintain, enhance and restore biodiversity and the resilience of ecosystems and the benefits they provide and, in doing so, contribute to meeting the needs of present generations of people without compromising the ability of future generations to meet their need*"

### CL4 – Principles of sustainability management of natural resources

CL4(a) require NRW to "Manage adaptively, by planning, monitoring and reviewing action", however there is no requirement to act following review. Therefore, we **recommend** a change that requires NRW to act following review, assisted by the Biodiversity Commission and Commissioner.

The Bill should recognise the importance of biodiversity – the building block of ecosystems - as well as ecosystems. Therefore, we **recommend**, based on legal advice obtained by RSPB, that "*The condition of biodiversity (species and habitats) within ecosystems*" is added to section 4(g). We also **recommend** this section should include the management of ecosystems '*within the limits of their functioning*', the precautionary principle and considering the effect of management decisions '*on adjacent and other ecosystems*'.

### CL6 Biodiversity and residence of ecosystems duty

The duty states "*A public authority must **seek to maintain and enhance biodiversity in the exercise of its functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions***".

While this duty is stronger than the existing duty to "*have regard to the purpose of conserving*" biodiversity (s. 40 NERC Act 2006) it still leaves a lot of unanswered questions, namely:

- **What is the mechanism for delivery of action?**
- **What will this legislation require public bodies to do differently?**
- **What are the deliverables**
- **What are the consequences for non-delivery?**
- **Is 'so far as consistent with the proper exercise of those functions' a get out clause?**

The only mandatory action under this Clause is to publish a report on what Public Authorities have done to comply with the duty before end of 2019 and before the end of every third year thereafter. We **recommend** earlier and more frequent reporting is needed. Indeed, **there are very few mandatory requirements** to do anything other than produce reports, statements, or policies within this Part 1 of the Bill. What we need is to enable action,

monitor and report against such action, and for there to be clear consequences for non-compliance (e.g. similar to the recycling targets).

We believe that duty could be stronger – therefore we **recommend**

- CL6(1) changed to – (a) *A public authority must maintain, enhance and restore biodiversity in the exercise of its functions in relation to Wales, and in so doing, promote biodiversity and the resilience of ecosystems, so far as is consistent with the proper exercise of those functions.*  
(b) A public authority achieve the ‘sustainable management of natural resources’ and apply the ‘principles of sustainable management of natural resources’ which have been given meaning by section 3 and 4 respectively of the Environment (Wales) Act 2016.
- CL6 (2) includes ‘*The condition of biodiversity (species and habitats) within ecosystems*’.
- CL6 (5) should be changed to
  - (a) *“A public authority to which subsection (1) applies must publish an annual report on what it has done to comply with the duty in that subsection in the previous year, and what deliverables will be achieved in the forthcoming year to comply with the duty, including what resources will be allocated to fulfilling their duty. This report should be produced following consultation with the Biodiversity Commission and Commissioner and NRW”*
  - (b) *A public authority to which subsection (1) applies should have sufficient ecological expertise and allocate appropriate resources to deliver their new duty.*

In the case of local authorities, **as per the Minister letter to Local Authorities recently**, we **recommend** that CL6(5)(b) should require them to have sufficient staff and resources to implement their duties under Land Use Planning and the new Biodiversity Duty (e.g. Biodiversity Enhancement Officers and Planning Ecologists). Other Public Authorities should be required either have their own ecological experts, or at the very least, to have access to ecological expertise (e.g. local Wildlife Trusts or Biodiversity Enhancement Officers acting as paid consultants via a Service Level Agreement).

We **recommend** that the Bill include **consequences for non-delivery**, such as penalties e.g. 1% of public authorities budget is deducted annually and put into a Welsh Nature Fund.

#### **CL7 – Biodiversity lists and duty to take steps to maintain and enhance biodiversity**

Welsh Ministers are to publish a list of living organisms and types of habitat which are of principal importance for the purposes of maintaining and enhancing biodiversity (the ‘list’). This list is likely to be the current NERC section 42 list. However, the Bill does not appear to

- a) Require Welsh Ministers to consult with anyone other than NRW – however, it is not clear if CL4 (c) requires NRW to consult with external organisations such as environmental NGOs.
- b) Require other public authorities to maintain and enhance the biodiversity on the list (currently they don’t even have to regard to the list).
- c) Detail how Welsh Ministers will a) take such steps as appear to them to be reasonably practicable to maintain and enhance features on list b) encourage other to take such steps.

Similar to CL6, the duty still leaves a lot of unanswered questions. **Therefore, we recommend that**

**CL 7(1)** be changed to - *The Welsh Ministers must, in consultation with NRW and the Biodiversity Commission, 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”*

**CL7(2)** *Before publishing a list under this section the Welsh Ministers must consult the NRW and the Biodiversity Commission as to the living organisms or types of habitat to be included in the list*

**Section CL7(3) be replaced by** “Without prejudice to section 6 and in consultation with NRW and the Biodiversity Commission

- a) *the Welsh Ministers must, maintain, enhance **and restore** the living organisms and types of habitat included in any list published*
- b) *all public authorities must, maintain, enhance and restore the living organisms and types of habitat included in any list published under this section.*
- c) *Welsh Ministers and public authorities must publish an annual report on what it has done to comply with the duty in CL7(3)(a+b) in the previous year, and what deliverables will be achieved in the forthcoming year to comply with the duty, including what resources will be allocated to fulfilling their duty.”*

We **recommend** that the Bill include **consequences for non-delivery**

#### **CL8 – Duty to prepare and publish state of natural resources report**

There is no detail on the content report. We are also concerned about the capacity for NRW to solely report on and prepare reports on the state of the natural resources in Wales. We are concerned that it will be difficult

- for NRW to report objectively on their own performance or be critical of other public bodies
- for NRW to report on the state of natural resources given the significant loss of ecological expertise within the organisation.
- To report using data that comes from environmental NGOs whose funding is not secure and, or the significant amount of voluntary recorders that are organised through environmental NGOs

Therefore, we **recommend** that NRW should consult with, and co-produce, the State of Natural Resources Report with the Biodiversity Commission and Commissioner. We **recommend** that Environmental NGOs, and long term scientific studies (e.g. guillemots on Skomer), are properly funded to deliver the required data. In addition, we **recommend** that the report should highlight the obstacles to the targets and duties within the Bill being achieved.

Clarity is required on how SoNaRR will deliver sufficient monitoring and reporting on the marine environment, given the paucity of baseline data. We seek clarity on how Wales' **marine environment** will be monitored and reported on to improve the current data and meet the 2020 target of Good Environmental Status under the Marine Strategy Framework Directive.

#### **CL9 - National Natural Resources Policy (NNRP)**

There is no duty to consult on contents of policy, even with NRW. In addition, the duties are weak as they only require; "Welsh Ministers must take such steps as appear to them to be reasonably practicable to implement the policy" and "Welsh Ministers must encourage others to take such steps"

We **recommend** that

- Welsh Ministers consult with, and co-produce, the NNRP with the NRW and the Biodiversity Commission and Commissioner.
- all Public Bodies should be required to implement, and report on, the NNRP

WTW would like clarification on whether the NNRP will include **marine** resources or is it the Welsh Government's intention to only include marine resources within the Wales National Marine Plan (WNMP)? Also, how will the NNRP be integrated within current and emerging marine policy?

#### **CL10 - Area Statements**

There is no duty for NRW to consult on Area Statements – the geographical area they cover, the number of Area Statements in Wales or the content of the statement.

NRW can ask other public bodies to provide information or other assistance in preparing area statements (CL 14). Public bodies must oblige unless it is incompatible with their own duties or would "otherwise have an adverse effect on the exercise of the public body's functions". The latter point could be used as a get-out clause, leaving the system open to abuse, if the public body stated that they don't have the time or resources to comply with the request. Also, while NRW are tasked with implementing the area statements but there is currently no requirement for Welsh Ministers to implement them.

We **recommend** that

- NRW consult with, and co-produce, the Area Statements with the Biodiversity Commission and Commissioner.
- there needs to be better controls on what constitutes having an 'adverse effect'
- a general duty is included for all public authorities (including Ministers) to take account of, and implement, area statements.
- the Bill includes the same requirements on public bodies to cooperate with the WFG Commissioner and that there are consequences from a refusal to co-operate?

It is not clear within the Bill whether Area Statements would pertain to the Welsh **marine** area or if this is solely fulfilled by the WNMP. If the latter is the case WTW would seek clarity in how terrestrial Area Statements would interact with the WNMP and how the land – sea interface would be managed.

#### **CL 12 Directions to Implement Area Statements**

The Bill does not give Welsh Ministers the power to direct themselves to address the Area Statements e.g. putting resources into achieving the area statements. Therefore, we **recommend** that the Bill is amended to allow Welsh Ministers to direct themselves.

## CL22 - Power to suspend statutory requirements for experimental schemes

We support powers that allow NRW to achieve sustainable management of natural resources. However, we are concerned that this clause could open the door to practices that will have a negative impact upon the environment especially as statutory requirements could be suspended for up to 6 years. For example,

- trialling biodiversity offsetting which has been shown to lead to a net loss of biodiversity<sup>19</sup>.
- the case study within the Policy Intent Statement to enable NRW on behalf of Welsh Ministers to suspend the 'balancing duty' between forestry operations and nature conservation.

Therefore, we would **recommend** that, prior to suspending statutory requirements, NRW and Welsh Ministers consult with the Biodiversity Commission and Commissioner. Also, that the power to suspend statutory requirements for experimental schemes should include a requirement to monitor the impact of suspension of the statutory requirements and to revoke the suspension if it is suspected that undue damage is being caused.

## CL57 - Charges for Carrier Bags

The single-use carrier bag charge was introduced as a type of 'green levy' to enable behaviour change by encouraging a reduction in the usage of plastic bags because they have a significant negative impact upon the environment due to:

- The use of **natural resources** in production - plastic bags are made from polyethylene, a product of petroleum, which is a non-renewable resource.
- They are not **biodegradable** and take hundreds of years to breakdown - when they do eventually breakdown, it's into a "plastic dust" which contaminates wildlife, the soil and the water, the towns and countryside, the oceans and the seas.
- Plastic bags are responsible for the **suffocation** and deaths of animals through unintentional digestion or inhalational - animals mistake them for food and can die as ingested plastic bags obstructed their digestive systems.
- **Entrapment** – many terrestrial animals and marine life get entangled in plastic bags and starve to death as a result.

The justification for the inclusion of 'bags for life' and minimum charging on all types of carrier bag is well made in the explanatory memorandum. However, **we are disappointed that, given the significant environmental harm caused by plastic bags, the Environment Bill calls for the proceeds of the carrier bags to go to 'any good cause' rather than 'environmental good causes'**. We believe that legislation that reduces the number of environmentally harmful carrier bags produced (and littered) should benefit organisations that work to protect the environment. Without such link, there is no connection between cause and effect and does not re-enforce attitude and behavioural changes. The possible adverse effect of the inclusion of social criteria (any good cause) would be to create a new social norm that would associate buying plastic bags with 'doing good'.

We could not imagine if a Health (Wales) Bill was introduced and included a levy on junk food in order to reduce the levels of obesity in Wales, it would legislate that the money raised be spend on 'any good cause' rather than 'health initiatives to combat obesity and associated health issues'. Spending a 'junk food levy' on pollution prevention would do little to challenge people to consider the impact of junk food on obesity levels.

We also disagree with the explanatory memorandum that just because sellers have an existing relation with non-environmental charity is sufficient justification for not requiring them to apply the net proceeds to purposes that will benefit the environment. This requirement does not 'cut across existing relationships', it merely alters them – if a seller has an existing relationship with a charity there are many other ways that relationship can flourish (being their charity of the year, staff volunteering or salary sacrifice, in-store promotion days such as bag packs). In addition, the current proposals enable sellers give to 'good causes' outside Wales rather than requiring the proceeds to be kept in Wales. Whilst social issues may be more emotive and attractive in the public eye for charity giving, environmental charities have a much greater wider social and economic reach that is often gone unrecognised.

Therefore, we **recommend** that the Bill enact Schedule 6 of the Climate Change Act as amended by the Waste (Wales) Measure 2010 which requires the sellers to apply the net proceeds to purposes that will benefit the environment. However, the Bill should make it explicit that the proceeds are used to help the Welsh environment or we will continue to see biodiversity loss and species extinction in Wales.

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<sup>19</sup> Curran et al 2014 Is there any empirical support for biodiversity offset policy?

[http://ec.europa.eu/environment/integration/research/newsalert/pdf/biodiversity\\_offsetting\\_habitat\\_386na3\\_en.pdf](http://ec.europa.eu/environment/integration/research/newsalert/pdf/biodiversity_offsetting_habitat_386na3_en.pdf)

It is worth noting that environmental charities have a direct (and indirect) social and economic impact, as well as contributing to the natural environment. Projects (often based in some of the most deprived areas of Wales) have delivered much wider benefits. This is the basis of our very successful partnership with the Co-operative Food.

The **Welsh Wildlife Heroes** campaign is run by Wildlife Trusts Wales and funded entirely by the money collected from the single-use carrier bag charge in The Co-operative food stores in Wales. This funding is being used by the six Wildlife Trusts in Wales to focus the **Welsh Wildlife Heroes** campaign towards:

- Empowering the people of Wales, especially in **Communities First** areas, to become wildlife heroes by working with them to create wildlife friendly gardens, improve the greenspace within their community and school as well as increasing their access to the environment.
- Supporting native species and improving habitats for some of Wales's rarest and most endangered wildlife.

**We would therefore like to invite the Committee to visit a Welsh Wildlife Hero community event** to show you how the single use carrier bag levy is helping both Welsh communities and the environment.

#### **CL 72 – 76 Marine**

The definition of 'harm' is defined too narrowly and we **recommend** that it should instead say "an adverse effect or risk of an adverse effect on the integrity of the site alone or in combination with other plans or projects" to bring it in line with Article 6(3) Habitats Directive.

Currently Welsh Ministers can only serve a site protection notice if "harm" to a European Marine Site (EMS) has occurred or is likely to occur. We **recommend** that this process should be triggered also where "harm may occur".

It is unclear under CL74 as to how the cost will be recovered for damage to an EMS as there is no legal basis for a criminal offence and therefore no legal requirement for cost recovery.

Under CL 74 5B (2) and 5B(4)(c) there is reference to "take steps" we **recommend** that this wording to be strengthened as this current wording still allows for harmful activity to take place within EMS.

#### **CL77 – 81 Marine**

WTW welcome the proposal under CL78 to introduce further charges for marine licencing and the associated monitoring activities under the licence, interpretation of results of monitoring and costs of dealing with the licence. We also welcome the proposals under CL79 for the licencing authorities to seek a deposit and where necessary charge supplementary fees for the work undertaken.

However, we are concerned that these proposed charges will not be fully equivalent to cost recovery. We would **recommend** full cost recovery to ensure that the marine teams of both the Welsh Government and NRW are sufficiently resources to fulfil all of their functions.

It is also unclear within Part 6 of the Bill if the fees and charges that taken under the marine licencing duties will be reinvested within the Welsh Government and NRW marine departments or if they will be available to other departments? We **recommend** the need for these fees to be directly reinvested back into the marine departments to support future marine work including licencing.

We **recommend** that the proposal under part 6 is improved to enable an increase in the **evidence base** for the marine environment to inform future licencing decisions and activities in the marine environment (e.g. marine energy or mineral abstraction). This could be achieved via a mechanism within the Bill for the licencing authority to charge a fee or levy to contribute towards research/evidence gathering. The Bill could also provide a statutory duty for developers to release data on the marine area to the public domain once the outcome of the plan or project has been determined. These or similar mechanisms would aid the marine regulator and competent authorities in combating the paucity of data within the marine environment, this would in turn reduce the risk of damage to sensitive marine systems.



Cadeirydd            Chairman    Dr Jean Rosenfeld  
Cyfarwyddwr       Director    Peter Ogden

The Chairman  
Environment and Sustainability Committee  
C/o Alun Davidson;  
Clerk to the Committee  
National Assembly for Wales  
Cardiff Bay  
CARDIFF  
CF99 1NA

June 10<sup>th</sup> 2015

Dear Alun Ffred- Jones AM

### **Draft Environment Bill**

### **Submission by the Campaign for the Protection of Rural Wales (CPRW)**

The Campaign for the Protection of Rural Wales, Wales' foremost landscape NGO, welcomes the opportunity to respond to the content of the Welsh Government's Draft Environment Bill. Having responded in detail to the issues relating to both the Wellbeing of Future Generations Act and Planning Bill, CPRW's comments elaborate upon some of the points we have made to this Committee in previous representations.

Our comments highlight the fact that whilst supporting the general tenet of the Bill and the desire to manage Wales natural resources in a more integrated and sustainable manner, we find it disconcerting to imagine that a Bill which purports to promote a more sustainable approach of the Welsh environment does not recognise nor make provision in any meaningful way for the stewardship of our most important natural assets and those that form the basis of Wales' thriving tourism industry, the nation's landscapes and seascapes.

It seems to us even more surprising that given that 25% of the land area of Wales is designated because of its national and international landscape importance and the fact these areas coincide with some of the most important natural resources Wales possesses, their role and the potential these areas offer as delivery mechanisms for the sustainable management of their natural resources, is not even mentioned in the Bill.

Our response therefore focuses on the issue that landscapes and seascapes, especially those of national importance, and our belief they provide the overarching framework within which any approach to natural resource management must take place.



The need we contend to recognise this is compelling and if the Bill is to be fit for purpose then it must include strong new provisions which not only recognise the role of landscapes and seascapes.

The Bill must therefore factor in the perspective that people value landscapes not simply because they are attractive places with pretty views, but because of the way they function and provide the backdrop and stage upon which everyone lives their life and as locations which shape an individual's identity as well as providing us all with our personal "sense of place".

In the light of our submissions which we believe will add value and clarity to the provisions of the Bill, CPRW welcomes and looks forward to the opportunity to share and explore further our perspectives and suggested proposals with your Committee.

Thanking you in anticipation

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Peter A. Ogden', with a long horizontal flourish extending to the right.

Peter A. Ogden  
Director

**Environment and Sustainability Committee  
Review of Draft Environment (Wales) Bill**



**Submission by  
the Campaign for the Protection of Rural Wales: (CPRW)**

**June 10<sup>th</sup> 2015**

## Executive Summary

i) Wales' landscapes and seascapes particularly those in our most iconic National Parks and Areas of Outstanding Natural Beauty, are not only amazing places but increasingly provide a huge range of public benefits.



ii) Collectively, all our landscapes are increasingly being recognised as Wales' unnoticed and often overlooked natural resource heroes, quietly and consistently providing 21<sup>st</sup> Century Wales with most of its crucial daily "life support" goods and services.

iii) We believe landscapes and seascapes therefore provide an obvious and compelling unifying framework for the sustainable management of our natural resource.

iv) Likewise our Designated Landscapes covering 25 % of Wales, are unquestionable some of the most important drivers which can energise the actions necessary to promote effective national and local natural resource management.

v) Given the important role all of Wales' landscapes and seascapes play, we believe the Bill should include a clear commitment which recognises landscapes and seascapes as the framework within which the integrated planning and management of Wales' natural resources should occur.

### Our recommendations for improvements to the Bill

- 1. The context for natural resource management in the Bill, should be more obviously and visibly set against the Welsh Government's desire to further the ambitions of the European Landscape Convention.**
- 2. The current Principles of Natural Resource Management must be set in a realistic social and cultural context. Landscapes and seascapes provide the appropriate framework to do this.**
- 3. Approaches which promote the sustainable management of Wales' natural resources must recognise the unique role that those landscape designated because of their national / international importance play.**
- 4. The consequences of refreshing the Purposes of National Parks and Areas of Outstanding Natural Beauty to reflect the pivot role these areas can play in natural resource management and public Wellbeing, should be reflected in the provisions of the Bill.**



## **1. The context for our submission**

1.1 The Campaign for the Protection of Rural Wales (CPRW) is Wales' foremost membership based landscape NGO and welcomes the opportunity to respond to the content of the draft Environment Bill, which will have a profound effect on both the manner and priorities for the management of the Welsh environment, in the future.

1.2 As a founding member of the Alliance for National Parks Cymru, CPRW also endorses the perspectives, conclusions and recommendations of that submission.

1.3 We also note that whilst the Draft Bill's content is passing through its various stages of scrutiny, the work of the Government's Independent Panel established to "Review Designated Landscapes in Wales" is still ongoing. Given that 25% of Wales is internationally designated as National Parks and AONBs and many of these areas are the nation's natural resource "hot spots", their role as "critical natural resource hubs" delivering a huge range of ecosystems services and their associated benefits, should be properly accounted for and clearly reflected in the provisions of Bill.

1.4 At the moment, the role of these Designated areas as engines driving the delivery of this sustainable approach to the management of their natural resources is worst at risk of being overlooked and at best not adequately reflected in the current provisions of this Bill.

1.5 We strongly suggest that the Committee reflects on the recommendations arising from the Independent Review Panel's deliberations (some of which have already been published). Accordingly and prior to the Bill being endorsed, these proposals should be fully considered and as necessary, additional provisions regarding the future role of these areas are appropriately embedded in the final version of the Bill,

1.6 Notwithstanding these circumstances, this response highlights the key issues which CPRW considers crucial if the challenges of managing the natural resources of Wales in a sustainable and publicly acceptable manner, are to be successfully met.

1.7 Our submission focuses on three key themes which we would expect the Bill to properly reflect and clearly articulate.

### **1. The unifying role of landscapes and seascapes in natural resource management**

1.7.1 A fundamental recognition is required in the Bill, that Wales' landscapes and seascapes although not natural resources in their own right (as defined under the terms of the Bill) are by their nature a series of cumulative "higher order, added value natural resources"

1.7.2 By their very nature, these added value natural resources provide the overarching contextual framework within which any approaches to the sustainable

management of Wales' natural resources or ecosystems approach occur. Likewise because of their diversity and important role they play in the public's consciousness, they also provide the physical backcloth which ensures the delivery of many of the wellbeing benefits envisaged in the Wellbeing of Future Generations Act.

1.7.3 The importance of the concept of landscapes and their role as the interface between man and nature is clearly enshrined in the Principles of the European Landscape Convention which defines landscapes as

*“areas as perceived by people, whose character is the result of action and interaction of natural and human / or human factors”*

1.7.4 It is clear from this definition, that one cannot manage natural resources in isolation because their human context adds further values and additional layers of importance and relevance to their status.

1.7.5 Overcoming this difficulty we suggest could therefore be achieved by making specific reference in the Bill to the European Landscape Convention and its role in providing the overarching approach necessary to further the principles of Natural Resource Management.

1.7.6 We therefore suggest

- **the stewardship of landscapes and seascapes at a variety of scales should be recognised as the strategic and guiding framework for managing the interaction between natural resources and human activities.**

1.7.7 Likewise given that Natural Resources Wales (NRW) has already inherited duties and responsibilities to protect the integrity and distinctiveness of all landscapes across Wales, it is therefore also highly appropriate that the Bill includes

- **a specific duty on the Natural Resources Body for Wales to further the principles of the European Landscape Convention when promoting the sustainable management of natural resource across Wales.**

## **2. The need for the Principles of natural resource management to reflect the importance of a location's "sense of place"**

1.7.8 Landscapes and seascapes individually and collectively play a crucial role in defining an individual or community's "sense of place". The need to ensure this contextual integrity is appropriately maintained when implementing an ecosystems approach to natural resource management, is therefore crucial.

1.7.9 Landscapes are places which are more than simply the outcomes of the combined interactions of biodiversity and biotic ecosystems. They are the products of the range of human values and social interactions which shape our ways of life and which over time, increase in importance. This social context must be adequately reflected in the manner in which natural resource management approaches are pursued.

### **3. The role of Protected Landscapes as deliverers of sustainable approaches to natural resource management**

1.7.10 25% of the land area of Wales (and an even greater area of the Marine environment) is designated because of its international conservation importance and the intrinsic qualities of its natural resource. The important role these areas play as a focus for ecosystems services and as the deliverers of coordinated and integrated natural resource management approaches, should be afforded greater recognition in the Bill

1.8 Since the notion of developing a natural resource management approach was first suggested, CPRW has long been a strong advocate of the need for this approach to be undertaken in a strategic, integrated and holistic manner which delivers bespoke approaches to the stewardship of local environments. In promoting this approach we have advocated that this concept will only succeed if it is undertaken:

- in a comprehensive manner within an overarching framework which is socially acceptable and respects the local context within which the particular natural resources exist
- in ways which use, safeguard and preferably enhance the long term integrity of those resources being managed
- in ways which recognise that change should only occur within those acceptable environmental limits which do not threaten the long term integrity of that resource.
- in a manner which operates both geographically and temporally at an appropriate scale and which effectively connects the use of resources on the land with those at sea.

1.9 We believe our suggested “landscape approach” should be recognised in the Bill as it effectively acts as the unifying force which links nature with people, the past with the present and the tangible and intangible cultural associations which individuals have with their surroundings.

1.10 In addition, this approach recognises that “landscapes” not only make a significant contribution to the nation’s economic prosperity, our health, welfare and the quality of life in 21<sup>st</sup> century Wales, but they also create everyone’s individual “sense of place”.

1.11 **We do not however subscribe to, nor support** the proposition that a “Landscape approach” is achieved simply through the management of natural resources on a large geographic scale. This is a gross over simplification of the concept and one which does not recognise that all decisions regarding natural resource and ecosystems management are nested in a not only a spatial but also social and economic context and an agenda driven by political, corporate and personal needs, expectations and benefits.

1.12 Appendix 1 of our submission explains more fully the relationship we believe should exist between the overarching role of landscapes as the framework and driver for sustainable natural resource management and the desire to promote a resilient environment with “healthy functioning and resilient ecosystems”.

1.13 In summary merely striving to create **“well connected biodiverse and resilient ecosystems”** as is currently proposed in the Bill, is in our opinion not enough.

## **2. Detailed comments**

2.1 The remainder of this submission details how we believe a series of additional refinements to the existing provisions of the Bill, would ensure that the important contribution landscapes and seascapes make to the wellbeing of Wales and to public life, are fully accounted for in the approaches proposed for the sustainable management of the nation’s natural resources.

2.2 We believe our suggested amendments would also visibly reinforce the Welsh Government’s commitment to the European Landscape Convention and its desire to pursue its implementation in a creative and enthusiastic manner. Given CPRW’s interests, our comments are therefore confined to the provisions of Part 1 of the Bill.

### **Part 1**

#### **Clause 4**

##### **Principles of sustainable management of natural resources**

2.3 Whilst noting the various elements of the Welsh Government’s definition of “natural resources” in Clause (2), we suggest that none of these natural resources can or should be managed either individually or in isolation from each other. The human and social context within which they exists means they each interact with the others in different ways in different places so as to create different effects. The outcome of these interactions means that whole is greater than the sum of its parts. It is exactly for this reason that the outcomes of these cumulative and added value relationships, create the individuality of a location’s “Sense of place”.

2.4 The distinctive and defining characteristics of a place should therefore be accounted for in the principles of natural resource management as these provide not only the context

but also the sensible framework within which approaches to the sustainable management of natural resource should be pursued.

2.5 Whilst therefore supporting the three defining principles of the sustainable management of natural resources in Para 3(1) we believe that Para 3(2) needs to be strengthened to recognise the important locational framework within which the quest to create resilient ecosystems must operate, if they are to be socially and economically acceptable as well as environmentally sustainable.

2.6 **Proposed Amendment.**  
**Clause 3 Sub section (2)**

After

... *“and enhance the resilience of ecosystems and the benefits they provide...”*

add the words

*“ in a manner which respects that location’s sense of place, ...”*

2.7 To ensure the proposed Principles expressed in Clause 4 are comprehensive and fully fit for purpose, we also believe the following additions and clarifications would be helpful.

**Clause 4(b)**

2.8 Whilst agreeing that the spatial scale of action is important, we also believe that it is important to take into account the appropriate time scales over which action should be taken. Sustainable natural resource management will not be instant and if it is to be effective there must be an ongoing commitment to pursuing it and not one that can be easily jettisoned. For this reason we suggest the following addition to Clause 4(b)

2.9 **Proposed Amendment**  
**Clause 4(b)**

After *“...appropriate spatial...”*

add the phrase

*“.. **and temporal** scale for action”*

**Clause 4(e)**

2.10 With regards to this Clause, we note that the neither the terms “resilience” nor “ecosystem” are defined in the Bill. Without any definitions defined, it is difficult to understand the actual or implied scope of these terms or how they are to be interpreted in the context of the various provisions of the Bill.

2.11 We note however that the Explanatory Memorandum expresses ecosystems (as referred to in the Convention of Biological Diversity), as

*“ a dynamic complex of plant, animal and micro-organisms and their non-living environment interacting as a functional unit”*



2.12 This definition should be included on the face of the Bill to provide clarity and meaningful intent.

2.13 We also suggest a series of further Principles should be added to the existing set, to provide greater clarity as to how the sustainable management of natural resources should be pursued.

2.14 Including these additional Amendments would also provide a helpful cross reference back to the Goals of the Well Being of Future Generation Act and therefore improve one's understanding of how all the suggested Principles, should be collectively implemented

#### **2.15 Proposed Amendment**

**Add the following additional sub sections**

***4(h) guide change within accepted environmental limits and tolerances and in ways which reflect the Precautionary Principle.***

***4(i) promote the enjoyment of Wales' natural resources in a responsible manner***

***4(j) ensure that if when pursuing any of these individual Principles, conflict arises with another, the integrity, intrinsic value and public benefits a resource currently provides are not disproportionately devalued or compromised.***

2.16 We also contend that an additional Clause should added after the existing / extended list of Principles, to ensure they are all pursued in a manner which recognises and reflects the distinctive context and "sense of place" of the locality in which they exist.

#### **2.17 Proposed Amendment**

**Add a following additional Clause 4(2) to read**

***In furthering all of these Principles, any action to promote the sustainable management of natural resources, must have due regard to any values which reflect that location's distinctive "sense of place"***

### **Clause 5**

#### **General duties of Natural Resources Body for Wales**

2.18 We are particularly concerned that this section promotes a very limited, inward looking mechanistic approach to natural resource management and fails to recognise or reflect the full range of responsibilities NRW has inherited from those three "legacy" bodies which predate its establishment.

2.19 We believe that the Bill should make it clear that the manner in which NRW discharges its role and functions in respect of natural resource management should not be at the expense of any of these inherited statutory obligations.

2.20 We would also suggest that if the relevant Natural Resource Body is mandated to be undertake the principles of sustainable management of natural resources, this should be unambiguously reflected in its General Purposes.

2.21 We therefore suggest that Clause 5(2) and its proposed amendment to the existing Article 4(1) of the 2012 NRW Establishment Order, should simply read

***The Body must***

***(a) achieve the sustainable management of natural resources ...***

2.22 Likewise having expressed our belief that any approach to natural resource management cannot be implemented without taking into account the specific circumstances which reflect a location's "sense of place", we believe that this principle, especially when it relates to areas designated because of their national landscape importance, should be applied to the existing Subsection 4(1) (b) of Clause 5

2.23 We therefore suggest this subsection should be amended to cross reference to our suggested additional Clause 4(2)

**2.24 Proposed Amendment  
Clause 5 (2) Article 4 (2)**

To read

Apply the principles of sustainable management of natural resources "***in a manner which reflects the integrity of a location's distinctive "sense of place"***"

**Clause 6**

**Biodiversity and resilience of ecosystems duty**

2.25 Whilst supporting the desire to ensure that biodiversity interests are enhanced as a result of natural resource management, we are conscious that public authorities should have a broader responsibility than simply biodiversity enhancement. As part of their remit and statutory responsibilities they should all be expected to view natural resource management as the means of delivering a much wider range of public benefits pursuant with the achievement of the Goals and Objectives of the Wellbeing Act.

2.26 For consistency we therefore believe that the intentions of Clause 3(2) should be mirrored in the provisions of Clause 6 (1) so that all the relevant public Authorities, local authorities and statutory should be required to fulfil this wider responsibility.

2.27 **Proposed Amendment**

**Clause 6(2)**

After the phrase “... must take account of the resilience of ecosystems ...”  
add the phrase

**“...and the benefits they provide in a manner which reflects the integrity of a location’s distinctive “sense of place” ... in particular the following aspects”**

2.28 Similarly Ecosystem resilience is dependent on more than just the maintenance and enhancement of biodiversity. In welcoming the recognition afforded to wider ecosystem benefits in Clause 3(2), for consistency we believe Clause 4(g) and Clause 6(2) should be worded similarly

**Clause 8**

**Duty to prepare a Natural resource report**

2.29 CPRW supports the duty and requirement for NRW to prepare a State of Natural Resources report on the proviso that this includes a section outlining the State of Welsh landscapes and seascapes and in particular those within designated Protected Landscapes.

**Clause 9**

**Duty to prepare, publish and implement a national resources policy**

2.30 CPRW again supports this approach as a means of ensuring that the importance of those resources which create opportunities to deliver public benefit, are fully recognised and accounted for.

2.31 We would also however expect the role and status of all areas of national landscape importance (and any proposed for designation in the future) to be fully recognised as critical components of Wales’ national natural resource infrastructure.

2.32 In addition their future role and that of their respective Management Plans (as the vehicles for delivering any national agenda and policy priorities for these areas), should be fully articulated in this statement.

2.33 We would likewise anticipate that the outcomes of the Independent Review of the Designated Landscapes of Wales and any recommendations relating to a potentially refreshed or revised national role for Designated Landscapes, should be fully reflected in and accounted for in this National Natural Resource policy document.

2.34 **Proposed Amendment**

After Para 9(3)

add the additional phrase

*“ .. but in particular the role of any area of land or sea designated because of its national importance”*

## **Clause 10**

### **Area Statements**

2.35 We presume that the intention of the Area Statements is to deliver locally, the priority themes of the proposed National Natural Resource Management Policy.

2.36 We are concerned however that 10(1) as currently written does not provide any assurances that the proposed suite of Area statements will cover the whole of Wales, given that their coverage will be at the discretion of NRW.

2.37 We believe if the production of these statements is to achieve the integrated and holistic approach anticipated for natural resource management, they must cover all of Wales.

### **2.38 Proposed Amendment Clause (10i)**

Delete “...for the areas of Wales that it considers appropriate..”

And replace with

*“ ....covering all territorial areas of Wales on both land and at sea”*

2.39 With this in mind we are concerned as to how the geography of these Area Statements will be determined given that is NRW’s responsibility to decide this.

2.40 We are not convinced that the oft suggested subdivision of Wales on a River Catchment basis is necessarily the correct approach to adopt especially where the character or distribution of those natural resources identified in Clause 2, does not easily or necessarily coincide with the geography of river basins or catchments. We would therefore expect any further Explanatory Guidance to indicate not only the scope of these Area statements, but also how their geography will be determined.

2.41 As highlighted in the paragraphs that follow, we believe there is considerable merit in extending the scope and role of existing Protected Landscape Management Plans. They have the ability to deliver a consistency of approach to natural resource management across large areas and within the special circumstances which make these nationally designated landscape entities different from other areas.

2.42 We are also concerned that the Bill provides no indication of the status or role of these Areas statements in relation to either the proposed Local wellbeing Plans (to be prepared under the Wellbeing of Future Generations Act) or so far as the Local Development Plan or the Strategic Plans to be prepared as a result of the provisions of the new Planning Act (Wales). These relationships should be made clear on the face of the Bill.

2.43 Likewise the Bill does not explain how these Area statements will achieve the integration of natural resource management across the land and sea divide and create effectively bridges between these two significant and very different territorial and administrative domains.

2.44 As referred to above the existing provisions of the Bill do not make it clear how the proposed Area statements will relate to existing Management Plans for National Parks and AONBs. We believe the approaches those currently responsible for the management of these nationally designated landscape areas have pioneered, should be refined and their existing Management Plans become the recognised statutory means by which the delivery of both the sustainable management of the natural resources and the promotion of public wellbeing in these areas, are achieved.

2.45 These Plans should therefore reflect not only how the special qualities of these Designated areas will be conserved and enhanced, but also how any refreshed Purposes recommended by the Government's Independent Review Panel will be pursued.

2.46 **Proposed Amendment**

**Clause 10**

Add an additional new sub section as follows

**Subsection 6(c)**

*With respect to an area designated because of its national landscape importance, a single enhanced Management Plan should be prepared and adopted as the Area Statement for that designated area; or a geographically extended area beyond its boundaries, whichever is the most appropriate.*

.....

## Appendix 1

### The relationship between Landscapes and Biodiversity enhancement in promoting creative approach to Natural Resource Management

#### 1. Why is this important?

2 Whilst any approach to natural resource management must recognise the need to manage ecosystems effectively, creating resilience and integrity in ecosystems relies on more than just an approach focussed solely on biodiversity protection and enhancement.

3. If the objective of an integrated approach to natural resource management is to ensure the long term integrity and connectivity of ecosystems and by implication biological diversity, then there is equally compelling argument that any such action should also maintain the integrity and connectivity of those landscape within which such ecosystems are located.

4. Significantly extending woodland may enhance biodiversity opportunities, but equally could lead to the multitude of human influences, imprints and associations created over time and which characterise the unique identity or “sense of place” of a location, being lost or changed dramatically.

5. The reversal of the fragmentation of landscape character is therefore every bit as important as a key outcome of sustainable natural resource management, as is the desire to achieve the recovery of species and habitats.

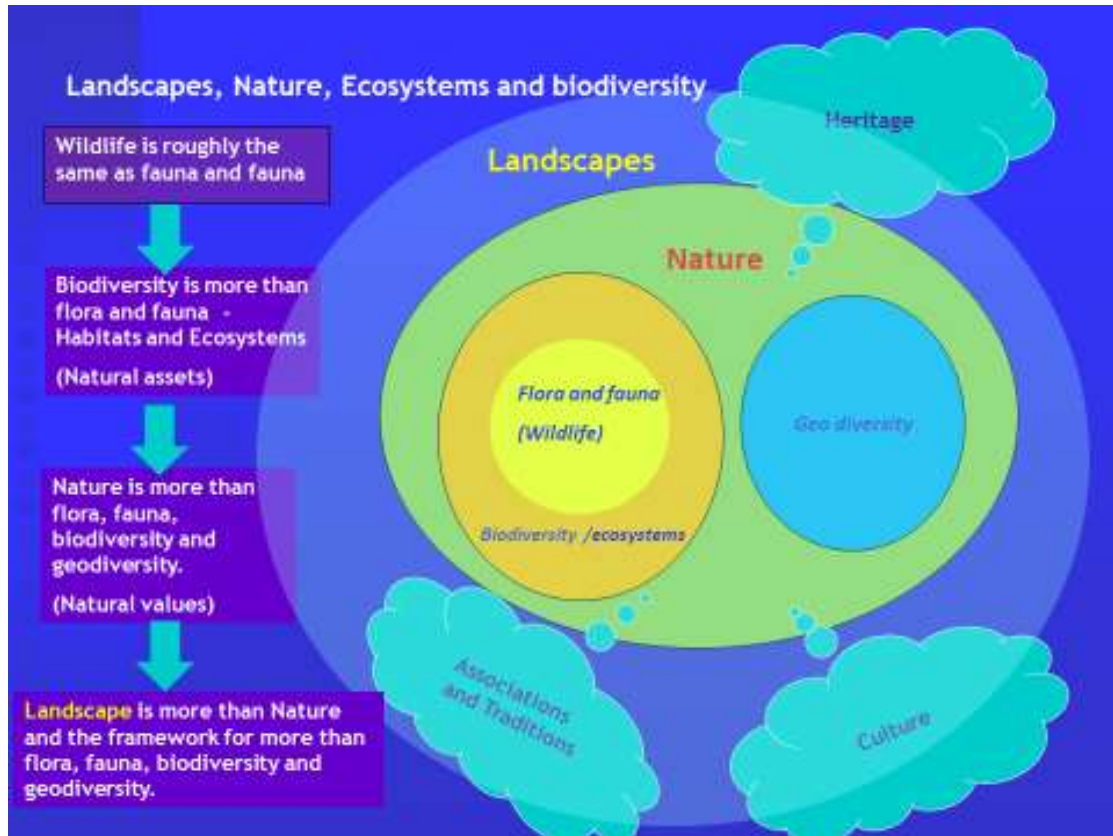
6. To suggest this relationship can be safeguarded by simply “working at a landscape scale” is inappropriate. Landscapes exist at all scales, not just on a big scale. The crucial requirement is that landscapes work in a cumulative, readable and coherent way. The main reason for biodiversity failure is in our view, the loss of the appropriate **landscape context** within which species exist and ecosystems function.

7 Natural Resource management should therefore not be confined to simply managing biodiversity any more than it should focus solely on carbon management. It must be based upon the principle of managing all those elements of the environment which define **its character and integrity and which achieve its long term functional resilience.**

8 Landscapes in general and Protected Landscapes and AONBs in particular, should therefore be the dynamos for natural resource management. The outcomes of any successful sustainable natural resource management approach should be, the reconnection of fragmented elements of our existing landscapes, enhanced biodiversity, improved heritage stewardship, increased access to the countryside, greater learning opportunities and a wider acceptance of the public’s environmental responsibility, promoted by community led approaches to landscape stewardship.

9. This is exactly why the much ignored [European Landscape Convention](#) provides such an important and sensible overarching framework for the implementation of any Natural Resource management approach. Within this approach, whilst the management of biodiversity and ecosystems is clearly a crucial constituent part, it is not the sole determinant of it.

10. The following diagram explains these relationship:



### A Landscape approach to sustainable Natural Resource management

11. It is clear from the above that no matter where they are, whatever their size or shape, landscapes are the canvas on which we build and live our lives and the pillars which underpin our national wealth. They not only link the wellbeing of Welsh people but unite us with our culture and natural heritage in so many distinctive and fascinating ways. They are the foundations on which our inheritance is built.

12. Accepting therefore that landscapes are more than just views and their qualities are the product of values accumulated over long periods of time, it is clear that the management approaches which create places with a distinctive and uplifting character and where change is responsibly directed, are those we need to duplicate.

13. Adopting a **“Landscape approach”** to the management of our natural **and** cultural resources, in ways which ensure that the long term quality of the places which surround and provide for us, are maintained, is the only way this can happen.

14. Wherever they exist therefore, landscapes and not just biodiversity must remain resilient, adaptable and the quality of their constituent assets, must be of a standard that ensures when change occurs their defining values and the resilience of the range of services they provide, are safeguarded and maintained.





Clerc y Pwyllgor  
Y Pwyllgor Amgylchedd a Chynaliadwyedd  
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*Croesawn ohebiaeth  
yn Gymraeg a Saesneg  
We welcome correspondence  
in English and Welsh*

Drwy'r e-bost, 12<sup>fed</sup> Mehefin 2015  
[SeneddEnv@Assembly.Wales](mailto:SeneddEnv@Assembly.Wales)

Annwyl Syr/Madam,

## YMGYNGHORIAD AR BIL YR AMGYLCHEDD (CYMRU)

Diolch i chi am y cyfle i gyflwyno sylwadau ar Bil yr Amgylchedd (Cymru).

Pleser gan Awdurdodau Parciau Cenedlaethol Arfordir Penfro, Bannau Brycheiniog ac Eryri yw cyflwyno ymateb ar y cyd fel 'Parciau Cenedlaethol Cymru' a nodir isod.

Dymuna Parciau Cenedlaethol Cymru longyfarch Llywodraeth Cymru ar gyflwyno'r ddeddfwriaeth hon.

### Rhan 1: Rheoli Adnoddau Naturiol

1. Mae Parciau Cenedlaethol Cymru yn cytuno â'r diffiniad o 'adnoddau naturiol' (Rhan 1, adran 2), ac yn awgrymu y gallai fod yn ddefnyddiol i gynnwys yn benodol yr adnoddau canlynol, o bosibl yn atodol i gategorïau sy'n bodoli eisoes ar y rhestr lle bo hynny'n briodol: ffynonellau ynni adnewyddadwy ac adnewyddadwy, ffynonellau carbon a sinciau; stociau a llif maetholion.

Hefyd, tra bydd golwg y dirwedd a'r morwedd, i ryw raddau, yn deillio o'r modd y rheolir adnoddau naturiol, awgrymwn eu bod hwy hefyd yn adnoddau naturiol ac y gellir eu rheoli drwy eu hawl eu hunain. Am y rhesymau hyn, ac er mwyn cyflawni Confensiwn Tirweddau Ewropeaidd, dylai tirweddau a morweddau hefyd gael eu cynnwys ar y rhestr. Byddai hyn yn cyd-fynd â diben y Confensiwn Tirweddau Ewropeaidd, sef gwarchod, rheoli a chynllunio pob tirwedd, eithriadol a chyffredin, ar lefelau lleol, rhanbarthol, cenedlaethol a rhyngwladol.

Mae Parciau Cenedlaethol Cymru yn croesawu defnyddio egwyddorion y Confensiwn ar Amrywiaeth Biolegol ar gyfer y dull o reoli ar lefel yr ecosystem. Bydd yr awgrymiadau hyn yn helpu i sicrhau bod gweledigaeth ac ymdrech yn ymestyn y tu hwnt i'r agweddau mwy iwtilitaraidd o reoli adnoddau naturiol.

2. Mae Parciau Cenedlaethol Cymru yn argymhell y gallai'r diffiniad o 'reolaeth gynaliadwy o adnoddau naturiol' (Rhan 1, adran 3) fod yn ddefnyddiol i ddiffinio



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'ecosystem' o fewn y Bil. Cytunwn â defnyddio'r diffiniad a roddir ym Mharagraff 18 o'r Memorandwm Esboniadol, o Erthygl 2 y Confensiwn ar Amrywiaeth Biolegol: "casgliad deinamig o gymunedau planhigion, anifeiliaid a micro-organeb a'u hamgylchedd anfyw yn rhyngweithio fel uned swyddogaethol".

3. I ni mae Rhan 1, adran 3 (2) braidd yn aneglur ac o bosibl yn gamarweiniol: mae'n ymddangos fel petai'n awgrymu bod gwytnwch yn nodwedd annibynnol o'r ecosystemau y gellir ei addasu, ond awgrymwn ni bod hyn yn gynhenid i raddau helaeth. Awgrymwn felly bod angen aralleirio'r amcan, gan amlygu diben o leihau pwysau dynol ar ecosystemau fel nad yw eu gwerthoedd a'u swyddogaethau cynhenid yn cael eu cyfaddawdu.
4. Awgrymwn bod Rhan 1, 4 (b.) yn cael ei newid i ddarllen "...gweithredu priodol unrhyw le **ac ar unrhyw adeg.**"
5. Tra'n cytuno bod rheolaeth sy'n seiliedig ar dystiolaeth yn bwysig, mae Parciau Cenedlaethol Cymru yn awgrymu y dylai 'Egwyddorion rheolaeth gynaliadwy o adnoddau naturiol' (Rhan 1, 4 (d.) a 4 (e.)) hefyd ymgorffori'r egwyddor ragofalus a'r angen i ystyried a oes modd dadwneud yr effeithiau ar ecosystemau neu beidio. Dylai sail y dystiolaeth gynnwys diffinio statws cadwraeth ffafriol ar gyfer yr holl gynefinoedd pwysig iawn yng Nghymru.
6. Mae Parciau Cenedlaethol Cymru yn awgrymu y gallai'r eitemau a rifir o dan Rhan 1, adran 4 (g.) ystyried deinameg a datblygiad neu esblygiad ecosystemau (gan gynnwys newid o dan newid yn yr hinsawdd).
7. Mae Parciau Cenedlaethol Cymru ar y cyfan yn croesawu'r cynigion ar gyfer pennu Polisi Cenedlaethol ar Adnoddau Naturiol. Mae ffactorau dynol arwyddocaol sy'n effeithio ar fioamrywiaeth a iechyd ecosystemau yn ymwneud â rheoli tir a'r defnydd a wneir o adnoddau morol, ac mae'r prif fuddiannau yn debygol o gael eu gwireddu drwy sicrhau mai'r ffactorau hyn yw ffocws y Polisi. Gallai effeithiau'r Polisi wrth liniaru'r ffactorau hyn gael eu cynnwys ym mesurau llwyddiant adrannau 3 a 4 o'r Bil. Fel arall, neu yn ogystal, gellid eu nodi yn benodol yn y Cynllun Adfer Natur Cymru.
8. Rhan 1, adrannau 9 a 10. Awgrymwn y dylai polisi a chynllunio fabwysiadu ymagwedd sy'n seiliedig ar adnoddau naturiol ac y bydd 'ardaloedd' yn naturiol yn dod i'r amlwg o hyn, fel arteffactau o weithredu polisi yn bragmatig. Er enghraifft, mae dalgylchoedd ac unedau dŵr daear yn sail amlwg ar gyfer penderfyniadau rheoli dŵr. Mae adnoddau eraill yn naturiol yn dameidiog (megis mathau o bridd, coetir), a rhagwelwn y gellid cael polisiâu Cymru gyfan, rhanbarth-gyfan neu drawsddalgylch ar gyfer y rhain - hynny yw, ymagwedd thematig.

Nid yw hyn yn dweud na allai ardaloedd hefyd gael eu defnyddio ar gyfer gweithredu cynlluniau thematig. Er enghraifft, gallai cymeriad tirwedd gael ei ddefnyddio i osod ffiniau ardal, yn debyg iawn i'r modd y mae cynlluniau tirweddau gwarchoddedig yn cael eu gweithredu ar hyn o bryd. Yn amodol ar unrhyw sensitifrwydd data, dylai monitro a data arolygon y Sefyllfa Adnoddau Naturiol, yn ddelfrydol, allu dadgyfuno a graddio unrhyw ardal er mwyn gallu targedu mesurau ymyrryd i ychwanegu'r gwerth mwyaf ac er mwyn lleihau costau monitro.

Bydd Canolfannau Cofnodion Lleol yn allweddol i goladu, gwirio a dosbarthu data.

Awgrymwn y byddai'r Adroddiad ar Sefyllfa Adnoddau Naturiol yn fwy priodol fel Adroddiad ehangach ar Sefyllfa Natur i amlygu'r rhestr ehangach o adnoddau naturiol a awgrymir yn ein sylwadau, ac i amlygu bwriad y Confensiwn ar Amrywiaeth Fiolegol. Mae sefydlu data sylfaenol a data ynghylch tueddiadau, a darparu adnoddau ar gyfer y rhaglenni hyn o fonitro arolygon yn ddelfrydol i'w reoli a'i werthuso.

Er ein bod yn cydnabod bod ystod eang o wybodaeth yn cael ei gasglu ar hyn o bryd, nid yw bob amser yn gyflawn nac yn ddigon amserol i allu gwneud penderfyniadau rheoli ar sail gwybodaeth lawn, ac mae adolygu yn ddymunol er mwyn gwasanaethu gofynion statudol a gofynion eraill yn well.

9. Rydym yn croesawu'r cyfeiriadau at y parciau cenedlaethol fel manau lle mae materion ecolegol, economaidd, cymdeithasol a diwylliannol yn effeithio'n uniongyrchol ar y broses o wneud penderfyniadau ar y raddfa briodol (para. 41 o'r Memorandwm Esboniadol).
10. Mae Rhan 1, adran 10(6) (a.) a (b.) yn darparu ar gyfer ystyried cynlluniau tirweddau gwarchoddedig, ymhlith cynlluniau eraill, yng nghyd-destun cynlluniau adnoddau naturiol, ac mae Parciau Cenedlaethol Cymru yn croesawu hyn. Mae Rhan 1, adran 12 yn darparu ar gyfer rhoi'r hawl i Weinidogion Cymru roi cyfarwyddyd i gyrff cyhoeddus fynd i'r afael â materion o fewn Datganiad Ardal. Mae Parciau Cenedlaethol ac Ardaloedd o Harddwch Naturiol Eithriadol â phrofiad o reoli adnoddau naturiol, ond mae ganddynt swyddogaethau ychwanegol, yn enwedig cadwraeth y dreftadaeth ddiwylliannol a'r amgylchedd hanesyddol, hybu mwynhad a dealltwriaeth o nodweddion arbennig, y mae'n rhaid eu cymryd i ystyriaeth mewn unrhyw gynlluniau ar gyfer neu sy'n effeithio ar y dirwedd warchoddedig. Ar ben hynny, mae Parciau Cenedlaethol Cymru yn awgrymu na fyddai'r swyddogaethau ychwanegol hyn yn cael eu gwasanaethu'n awtomatig gan gynllun adnoddau naturiol. Fodd bynnag, gallai'r rôl o gynllunio adnoddau naturiol gael ei ymestyn er mwyn cynnwys y swyddogaethau hyn, gan ddefnyddio cynlluniau tirweddau gwarchoddedig fel model, a thrwy hynny sicrhau rheolaeth integredig o dirweddau Cymru. Gallai'r cynlluniau hyn hefyd gynnwys ymrwymïadau'r Ddeddf Llesiant Cenedlaethau'r Dyfodol. Yn fyr, awgrymwn y gallai Cynlluniau Rheoli y Parciau Cenedlaethol ac Ardaloedd o Harddwch Naturiol Eithriadol ymgymryd â rôl Datganiadau Ardal ar gyfer eu hardaloedd, gan gwmpasu 25% o arwynebedd tir Cymru. Gofynnwn i'r Pwyllgor argymhell gwelliant fydd yn galluogi Llywodraeth Cymru neu Gyfoeth Naturiol Cymru i ddirprwyo'r cyfrifoldeb am baratoi Datganiad Ardal i gorff arall. Byddai hyn yn galluogi Awdurdod Parc Cenedlaethol i arwain y gwaith o baratoi Datganiad Ardal gyfer y Parc Cenedlaethol ac os yn briodol yr ardal o gwmpas.
11. Byddem yn croesawu eglurhad ar sut y byddai Datganiadau Ardal yn ymwneud â'r cynlluniau cenedlaethol megis y Cynllun Adfer Natur, a phrosesau megis dynodi safleoedd a warchodir. Byddai Parciau Cenedlaethol Cymru yn falch i drafod ymhellach y dulliau cynllunio a'r cynnwys. Roedd ymateb Parciau Cenedlaethol Cymru i Gam 1 yr Adolygiad o Dirweddau Dynodedig yng Nghymru yn awgrymu bod angen adolygu adran 62ii o Ddeddf yr Amgylchedd 1995, sef dyletswydd ar gyrff cyhoeddus i roi sylw i ddibenion Parc Cenedlaethol, i'r perwyl "Wrth ymarfer neu gyflawni unrhyw swyddogaethau mewn perthynas â, neu sy'n effeithio ar, dir mewn Parc Cenedlaethol, rhaid i unrhyw awdurdod perthnasol gefnogi Cynllun Rheolaeth y Parc Cenedlaethol a fabwysiadwyd o dan adran 66 (2) o Ddeddf yr Amgylchedd 1995 ac adrodd yn flynyddol ar sut y mae hyn wedi cael ei gyflawni". Awgrymwn y bydd angen gofyniad tebyg mewn perthynas â chymorth i gefnogi Datganiadau Ardal a gwella sefyllfa byd natur.
12. Rhan 1, adran 6. Mae Parciau Cenedlaethol Cymru yn croesawu'n gynnes y cynnig i gryfhau'r ddyletswydd bioamrywiaeth, a hyrwyddo gwytnwch ecosystemau, ar awdurdodau cyhoeddus ac ymgymerydd statudol yng Nghymru a'i bod yn ofynnol i ddangos y cydymffurfir â'r Confensiwn ar Amrywiaeth Fiolegol. Awgrymwn bod y diffiniad o "bioamrywiaeth" a roddir ym mharagraff 56 o'r Memorandwm Esboniadol yn cael ei gynnwys yn y Bil. Mae Parciau Cenedlaethol Cymru yn croesawu'r flaenoriaeth a roddir yn y Memorandwm Esboniadol i'r rhyngberthynas rhwng bioamrywiaeth ac ecosystemau a'r ddealltwriaeth a ddangosir ar sut y mae'r berthynas hon yn llywodraethu'r holl faterion.

Awgrymwn bod angen gofal gyda rhai termau: mae i "amrywiaeth" ecolegol a "chyfoeth" ystyron penodol.

13. Rhan 1, adran 16. Mae Parciau Cenedlaethol Cymru yn cefnogi'r cynigion bod Cyfoeth Naturiol Cymru yn cael pwerau ehangach i wneud cytundebau rheoli tir a chael pwerau arbrofol ehangach y tu hwnt i'r rhai sydd ganddynt ar hyn o bryd. Awgrymwn y bydd Cyfoeth Naturiol Cymru angen adnoddau ariannol a staffio digonol i dyfu – ac yn bwysig, i gynnal – portffolio o gytundebau rheoli yn y tymor hir, ac i fynd ar drywydd dulliau arbrofol, gan gynnwys, lle bo hynny'n berthnasol, mentrau trawsffiniol. Mae profiad ym mharciau cenedlaethol Cymru yn dangos bod cryn le i ategu ac ychwanegu gwerth yn lleol at y cynlluniau cenedlaethol amaeth-amgylcheddol (sydd o anghenraid yn strategol), a hefyd i annog rheolwyr tir i ymuno â chynlluniau cenedlaethol drwy ddarparu dulliau lleol gam-wrth-gam. Ymhlith yr enghreifftiau mae'r Prosiect Adfywio Ucheldir y Mynydd Du ym Mannau Brycheiniog, y prosiect Gwarchod y Parc ym Mharc Arfordir Penfro, a ffermio sensitif i ddalgylch afon yn nalgylchoedd Llyn Tegid yn Eryri.

Bydd gallu Cyfoeth Naturiol Cymru i ddatblygu Datganiadau Ardal a'u rhoi ar waith gyda phartneriaid, angen adnoddau. Mae'r rhain yn dangos yr hyn y gellir ei gyflawni drwy gydweithio a phartneriaethau: nid yw'n ofynnol cael pwerau newydd bob tro. Roedd cydweithio ardderchog gyda phartneriaethau lleol a rhanbarthol yn swyddogaeth uchel ei gwerth y cyrff a unwyd i ffurfio Cyfoeth Naturiol Cymru, ac mae parhau â hyn yn hanfodol os yw Datganiadau Ardal i ychwanegu gwerth o ran arbrofi, cael mynediad i gyllid strwythurol, partneriaethau ac yn y blaen.

## **Rhan 2: Newid yn yr Hinsawdd**

14. Rhan 2, adran 29. Mae Parciau Cenedlaethol Cymru yn croesawu'r cynigion ar gyfer y targed 2050 a chyflawni gofynion Deddf Newid yn yr Hinsawdd 2008. Awgrymwn y dylai holl allyriadau yng Nghymru gael eu cynnwys; bydd hyn yn fodd i Lywodraeth Cymru roi pwysau i geisio gostyngiadau mewn allyriadau lle nad yw cymhwysedd wedi ei ddatganoli. Cymerwn y bydd allyriadau o fewn cymhwysedd sydd wedi ei ddatganoli yn cynnwys y rhai a gynhyrchir yn annomestig, h.y. y tu allan i Gymru.
15. Mae Parciau Cenedlaethol Cymru yn cytuno â'r darpariaethau a nodir yn Rhan 2, adran 42(2). Byddai rhestr strategol o ffynonellau carbon, sinciau a fflycsau yng Nghymru yn gymorth i sefydlu lle gellir cael y budd mwyaf, a lle mae angen cael mesurau diogelu ychwanegol.
16. Ni all Parciau Cenedlaethol Cymru gymharu cyllidebu carbon yn erbyn dulliau targedu 3% o ostyngiad blynyddol mewn allyriadau. Fodd bynnag, awgrymwn bod y dull o leihau 3% â'r fantais o roi eglurder a chysondeb ar gyfer cynllunio i'r dyfodol ac yn gwneud datganiad o fwriad clir ac estynedig.
17. Rhan 2, adran 42. Mae Parciau Cenedlaethol Cymru yn cytuno â'r cynigion i fynd i'r afael â methiant i gyrraedd targedau.
18. Rhan 2, adran 44. Mae Parciau Cenedlaethol Cymru yn croesawu'r cynigion ar gyfer corff cynghori annibynnol ar newid yn yr hinsawdd. Awgrymwn bod ganddo nifer o dasgau, gan gynnwys pennu targedau ar gyfer lleihau allyriadau a chyfyngiadau ar newidiadau derbyniol ar gyfer pob sector perthnasol, cynghori Llywodraeth Cymru a Chyfoeth Naturiol Cymru ar gyfleoedd masnachu allyriadau, a chynorthwyo Cyfoeth Naturiol Cymru i ddatblygu prosiectau masnachu allyriadau, megis Taliadau sy'n seiliedig ar dir ar gyfer prosiectau Gwasanaethau Ecosystemau.

## **Rhan 4: Casglu a Gwaredu Gwastraff**

19. Rhan 4: Mae Parciau Cenedlaethol Cymru yn cytuno y dylai fod yn ofynnol i eiddo annomestig roi eu gwastraff allu i'w gael yn ymuno a'r unrhyw ofynion gwahanu a

nodir gan Lywodraeth Cymru a bod angen i Lywodraeth Cymru gael pwerau ehangach i wahardd peth gwastraff y gellir ei ailgylchu rhag cael ei losgi.

20. Rhan 4: Mae Parciau Cenedlaethol Cymru ar y cyfan yn cefnogi'r cynigion i gynyddu'r cyfraddau ailgylchu ac adfer ynni o wastraff a lleihau tirlenwi. Fodd bynnag, dylid cymryd i ystyriaeth yr hierarchaeth gwaredu gwastraff gyda mwy o ffocws ar leihau gwastraff.

### **Rhannau 5 a 6: Trwyddedu Morol a Physgodfeydd ar gyfer Pysgod Cregyn**

21. Rhan 5. Mae Parciau Cenedlaethol Cymru yn croesawu'r cynigion i ddiwygio Rhan 1 o Ddeddf Pysgodfeydd Môr (Pysgod Cregyn) 1967 ac o'r farn bod eu cynnwys yn y Bil yn werthfawr.
22. Rhan 6: Mae Parciau Cenedlaethol Cymru ar y cyfan yn cefnogi'r egwyddor o adennill costau mewn perthynas â thrwyddedu morol.

### **Rhan 7: Llifogydd ac Erydu Arfordirol a Draenio Tir**

23. Rhan 7, adran 82. Mae'n ymddangos bod y cynigion mewn perthynas â Phwyllgor Llifogydd ac Erydu Arfordirol ar gyfer Cymru yn symleiddio ac yn ehangu'r trefniadau presennol.
24. Rhan 7, adran 85. Mae Parciau Cenedlaethol Cymru yn cefnogi'r cynnig bod asiantau Llywodraeth Cymru yn cael pwerau mynediad i lefydd lle mae mynediad wedi ei wrthod fel modd o benderfynu a gydymffurfir â gorchmynion y Tribiwnlys Tir Amaethyddol. Mae Parciau Cenedlaethol Cymru yn gweld y cynnig hwn fel modd o sicrhau gwell mesurau o ddiogelu adnoddau pridd, ansawdd dŵr ac eiddo yr effeithir arnynt.

### **Cwestiwn Cyffredinol**

25. Mae Parciau Cenedlaethol Cymru ar y cyfan yn croesawu'r gyfres o ddeddfwriaeth sy'n cael eu cynnwys yn y Bil Amgylchedd (Cymru), Bil Cynllunio (Cymru) a Deddf Llesiant Cenedlaethau'r Dyfodol 2015.
26. Mae Parciau Cenedlaethol Cymru o'r farn bod y cysylltiadau rhyngddynt yn glir. Fodd bynnag, awgrymwn bod cysylltiadau ychwanegol i gael eu gwneud rhwng adroddiadau Datganiadau Ardal / Sefyllfa Adnoddau Naturiol a Pholisi Cynllunio Cymru / cynlluniau lleol (gan gynnwys cynlluniau datblygu lleol). Dylai hyn alluogi integreiddio a symleiddio.

Diolch i chi unwaith yn rhagor am y cyfle i gyflwyno sylwadau. Os oes angen unrhyw eglurhad arnoch, cofiwch gysylltu â mi.

Yn gywir,



Tegryn Jones  
Prif Weithredwr Awdurdod Parc Cenedlaethol Arfordir Penfro

Ar ran **Parciau Cenedlaethol Cymru**: Awdurdod Parc Cenedlaethol Bannau Brycheiniog, Awdurdod Parc Cenedlaethol Arfordir Penfro ac Awdurdod Parc Cenedlaethol Eryri.

National Assembly for Wales  
Environment and Sustainability Committee  
EB 22  
Environment (Wales) Bill  
Response from **Welsh Local Government Association**



RESPONSE TO WELSH  
GOVERNMENT CONSULTATION  
ON THE ENVIRONMENT BILL

12<sup>th</sup> June 2015

Tudalen y pecyn 72



WLGA • CLILC

## INTRODUCTION

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

### General

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

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

## **Part 1: Natural Resources Management**

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

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



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

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

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

**Do you agree with the proposals for area statements? What should these cover and is the process for their development clear enough in the Bill**

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

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

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

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

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

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

32. Insufficient expertise/knowledge to comment.

**Part 2: Climate Change**

**Do you agree with the proposals for the 2050 targets?**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Part 3: Carrier Bags

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

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

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

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

### **Part 4: Collection and disposal of Waste**

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

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



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

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

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

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

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

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

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

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

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

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

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

## **Part 5 & 6: Fisheries for Shellfish and Marine Licensing**

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

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

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

68. Insufficient experience/knowledge to comment

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

69. Insufficient experience/knowledge to comment

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

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

## **Part 7: Flood and Coastal Erosion and Land Drainage**

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

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

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

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

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

## **Overarching Question**

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

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

- i. The Planning (Wales) Bill contains provisions to introduce a National Development Framework (NDF) and in some areas of Wales a Strategic Development Plan (SDP). Together with the existing Local Development Plan tier, these plans comprise the development plan for areas of Wales. These plans are subject to a level of public scrutiny and therefore we would expect that the development plan would be a mechanism for delivering the planning and management of natural resources at a national and local level. Locally, we would expect the Local Development Plan and SPG (Supplementary Planning Guidance) to be a vehicle for delivering against an Area Statement.
  
- ii. The Planning (Wales) Bill has a provision that in preparing a SDP, the strategic planning panel must have regard to current national policies, therefore we would expect this reference to incorporate the NNRP and Area Statements. With regards to the preparation of the National Development Framework, the Bill is not so specific; the Bill should be amended to confirm that Welsh Ministers should have due regard to the NNRP during the preparation of the National Development Framework particularly when we expect that the NDF will consider renewable energy schemes.

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### NFU Cymru submission to Environment & Sustainability Committee Scrutiny of the Environment Bill

1. NFU Cymru welcomes the opportunity to respond to the Environment & Sustainability Committee Scrutiny of the Environment Bill which is broad and far reaching. We would highlight that the Environment Bill through its impact on how Natural Resources Wales (NRW) will operate in future has the potential to have a profound impact on farm businesses, regulating activity across a broad range of land management functions. For this reason, the views of the farming community are highly relevant to the Environment Bill and its implementation.
2. In our response, it is our aim to comment on those elements relative to agriculture and land management only.

#### Part 1 Sustainable Management of Natural Resources

3. NFU Cymru notes Part 1 of the Bill aims to promote the sustainable management of natural resources and we would make the following comments:

##### *Revised general purpose*

4. We observe that the revised general purpose appears to de-emphasise the social and economic aspects of sustainability with the '*used for the benefit of the people, environment and economy of Wales today and in the future*' revised to '*meeting the needs*'. Whilst we acknowledge the clear links between the Environment Bill and the Well Being of Future Generations Act (2015) we foresee potential tensions existing between this revised general purpose and the seven well-being goals which places a strong duty for all public bodies to carry out sustainable development reflecting the need to improve the economic, social, environmental and cultural well-being of Wales. It is not clear how these tensions can be resolved and which duty would take precedence where they appear to be in conflict.
5. In our view, it seems somewhat counter-intuitive that environmental considerations are to be provided for in the Environment Bill and the social, economic environmental and cultural aspects for in the Well Being Act. Overall we remain concerned that the revised purpose

challenges the definition of sustainability in the Well-being Act and will have implications for wider Welsh Government policy including the 'Green Growth' agenda.

6. We strongly believe that given the close relationship between farming, food production and environmental protection it is vital the Bill provides a clearer duty to contribute towards promoting sustainable food production.
7. With respect to the principles of sustainable management of natural resources detailed in section 4, we would emphasise the need for this section to include specific reference to farmers and landowners who own and manage much of the land area of Wales.

### *Biodiversity and resilience of ecosystems duty*

8. We note that this will change from the requirement for public bodies to '*have regard to*', and they will now be required to '*seek to maintain and enhance biodiversity*'. There will also be a new reporting requirement on how the duty is being met. Whilst it is clear how this revised duty is appropriate to some public bodies for others its relevance is less clear; the cost-benefit of applying such a duty together with the reporting requirement is not clear, particularly when the Well-Being Act will place a strong duty for all public bodies to carry out sustainable development, reflecting the need to improve the economic, social, environmental and cultural well-being of Wales and report annually on their progress.

### *Biodiversity lists and duty to take steps to maintain and enhance biodiversity*

9. We note that Welsh Ministers must prepare and publish biodiversity lists and have a duty to take steps to maintain and enhance biodiversity. The list will reflect the living organisms and types of habitats which are, '*in the opinion*' of Welsh Ministers, of principle importance following consultation with NRW. We would highlight that 'opinion' may be interpreted as allowing for an element of subjectivity through this process.

### *State of natural resources report*

10. With respect to the duty on NRW to prepare and publish a state of natural resources report, we would highlight the need for this to be based on robust, empirical evidence.
11. We note that Welsh Ministers must have regard to the most recent state of natural resources report when preparing or revising the national natural resources policy and have concerns that para 50 of the Explanatory Notes states that in preparing the state of natural resources report, NRW must be guided by its general purpose. We would re-iterate that the revised purposed has de-emphasised the social and economic strands of sustainability leading us to have some concerns that these elements will be not adequately considered in the report, which will be a key driver of future policy.
12. It is vital that reporting is oriented towards the ability of ecosystems to meet the needs of society, economy and environment now and in the future and we would also highlight the need, given the predicted challenges to the global food production system, for adequate assessment and indicators relating to agriculture productive capacity and extent to be included as a vital ecosystem service that is likely to be increasingly important in coming decades. This will be necessary if the Bill is to align itself to the Well-being of Future Generations Act (2015) and in particular the seventh goal of a globally responsible Wales.

### *National natural resources policy*

13. From the information provided it is not clear how the duty to prepare, publish and implement national natural resources policy will operate in practice and whilst we note this policy will be aligned to the electoral cycle we foresee that the 'measures' that Welsh Minister will take to implement the policy may well not be.
14. We cite the Glastir Scheme as one such example. This will be viewed as a key method of achieving the aims of the national natural resources policy on farms in Wales, however, this

scheme is funded via the Rural Development Programme which operates in a seven year framework and currently offers contracts extending to five years. The national natural resources policy could result in a shifting of objectives at differing timeframes to the measures that operate to deliver on the policy and it is possible that we could see farmers under contract no longer aligning with the latest policy.

15. We would further highlight that the aims, priorities and focus areas for EARDF are established by the Commission and whilst we acknowledge the flexibility that does exist, no account is taken of this within the Bill.

## *Area statements*

16. We note that NRW will be required to prepare and publish statements for the areas of Wales it is considers appropriate for the purpose of facilitating the implementation of the national natural resources policy. The Bill does not appear to define the appropriate spatial scale, nor does the Bill specify the approach that will be adopted in their development. We have concerns that this could lead to a variation in approach in development and implementation which could, in effect, lead to a post code lottery approach for farmers, who after all own and manage much of the land falling under the national natural resource policy.
17. The process of area planning described appears 'inward looking' and we ask how wider considerations such as the provisioning of services required beyond the area boundary can be adequately taken into account.
18. We ask for information on the process by which area statements (both development and implementation) will be monitored and evaluated and more importantly benchmarked against each other. Crucially, in our view, this assessment should consider their performance in environmental, social and economic terms.
19. We note the role of NRW and other public bodies are set out within the Bill but there is no reference to how private sector businesses particularly farmers will be engaged in the development of area statements.
20. Nor does this section of the Bill acknowledge that many of the policy tools and levers relating to the environment and more broadly impacting on farm businesses are determined in Brussels or Cardiff and not at the level of the area statement so we foresee a situation where much of the action in taking forward the implementation of the area statements will take the form of smaller projects with varying degrees of success.
21. We request further information on what analysis has been undertaken on the range of plans public bodies are under a duty to prepare and ask which plans will have higher priority and how, ultimately, they can be reconciled into a coherent plan of action.
22. Finally we refer to the three pilot areas in Rhondda, Tawe and Dyfi and ask what assessment has been undertaken of the impact of this work so far? How have landowners been engaged in the preparation of the area statement for each respective area and what action has resulted? How have the area plans for each pilot area engaged with the existing policy levers such as Glastir? Has a 'blueprint' of an area statement been developed as a result of the pilots that can be shared with stakeholders so that we can better understand how the process will operate?
23. Our observation, at this stage, would be that we are no clearer of how Natural Resource Management will operate at the ground level and would stress that for the area statement model of working to move forward, there is a need to establish:
  - Clearly presented, locally relevant ambitions for environmental protection or enhancement which have been developed in a participatory way with those farming businesses concerned.
  - The development of voluntary, partnership approaches that deliver the shared ambition
  - Dedicated officers who understand the sector, and are able and willing to make pragmatic decisions based on what is practically and economically achievable.

## *Land management agreements*



24. We note Section 16 (1) which gives powers to NRW to make an agreement with a person who has an interest in land in Wales about the management or use of the land. Whilst the Explanatory Note describes that the agreements will be voluntary, Section 16 (2) (a) of the Bill states that a land management agreement 'may impose on the person.....obligations in respect of the use of the land'. We would emphasise that land management agreements **must always be voluntary** and this should be clearly stated on the face of the Bill.
25. With respect to the registration of management agreements with the Land Registry we seek clarification that this registration will only be applied for the duration of the contract and will be removed thereafter. Management Agreements require a landowner to manage their land in a particular way for which they receive compensation for the duration of the contract. Once that contract has elapsed and compensation has ceased to be paid it is unrealistic to expect the landowner to be bound by the requirements of the contract in perpetuity.

## *Powers to suspend statutory requirements for experimental schemes*

26. In terms of powers to suspend statutory requirements for experimental schemes and powers of NRW to conduct experimental schemes, NFU Cymru can see the merit of having this provision. These powers must not, however, be used as a mechanism to impose or trial yet another layer of regulation which will lead to a further increase on the regulatory burden on farmers which adds costs and impacts on the ability of farmers in Wales to be competitive with farmers in other nations. Rather NRW must be a body that works in partnership with business to deliver better outcomes for the environment, economy and society. We would reiterate that NFU Cymru is not in favour of General Binding Rules and advocate voluntary, partnership approaches to deliver environmental outcomes.
27. Finally, with respect to Section 1, we would acknowledge that managing the environment is a complex process, however, the Bill is vague in how it will interact with legislation and suite of actions already in operation. We are unclear and remain unconvinced about the capacity to deliver on the ambition of the Bill, particularly within NRW.

## **Part 2 Climate Change**

28. NFU Cymru notes Section 2 of the Bill relating to climate change and the requirement to achieve the 2050 emissions target that is at least 80% lower than the baseline; interim emissions targets; and the establishment of carbon budgets for each budgetary period. We would make the following comments:
29. It is important that Welsh Ministers utilise the latest scientific and technical evidence. We would highlight that results from the UK GHG Research Platform suggest that emissions from some agricultural sources may be significantly lower than currently estimated
30. It is also important that estimates of potential emissions reductions are made at the most economically effective rate, particularly for agriculture, reflecting the realities and practicalities of implementation at the farm scale.
31. We believe that agriculture is one sector where some changes to deliver mitigation will require a long lead-in time e.g. livestock breeding.
32. It is not clear why the proposed timings of the carbon budgets are not aligned with those in the UK Climate Change Act
33. We believe that the proposal to provide the Welsh Ministers with the power to amend, add or modify the list of greenhouse gases or the baseline targeted by the Act should be in line with international reporting guidelines.
34. Climatic impacts may also limit abatement by both agriculture and land-use, land-use change and forestry (LULUCF). We highlight there is limited understanding of the mitigation potential for both 'sectors' under the range of potential future climates at this stage.
35. We ask what consideration has been given to the EU discussions on agriculture as part of the Climate and Energy 2030 package

36. With reference to the Advisory Body is it not clear how a sectoral balanced representation can be achieved to provide guidance to Welsh Ministers, also the extent to which the Advisory Board will be required to take into account the Well-being of Future Generations Act (2015) and, in particular, the seventh Well-being goal has not been specified. We would emphasise the need for the Advisory Body to consider our global responsibilities in providing advice to Welsh Ministers.
37. We identify that a key challenge will be ensuring that in meeting reductions targets in Wales, the emissions of another nation are not increased through displacement of production. This challenge has not been adequately considered in the Bill.
38. Recent research by the JRC which demonstrated the potential risk of setting unrealistic mitigation targets for the agricultural sector. [An economic assessment of GHG mitigation policy options for EU Agriculture](#) considers a range of policy options to reduce emissions from EU agriculture by up to 28% by 2030. The report highlights that mandatory targets reduce herd size, yield and crop acreage (for fodder) with the beef sector hit hardest. In addition the EU's trade balance is projected to worsen for almost all products. However increases in productivity make up some of the difference between supply and demand. The report's conclusions include the statement that "the more flexible the mitigation policy instruments are implemented, the less are the production effects on an aggregated EU level and hence also any potential emissions leakage effects".
39. Finally we would highlight that 'decarbonisation' and green growth relies on the development and implementation of an 'enabling' regulatory and planning framework and the Bill appears to have missed the opportunity to adequately consider and address the very real barriers to uptake that are experienced by those wishing to take forward renewable energy projects across a range of scales.

## Part 4 Collection and Disposal of Waste

40. We highlight the need for 'rural proofing' this aspect of policy and it is vital that the costs of collecting different waste types separately must not be pushed onto farmers and/or residents within rural communities. We stress that costs are often much higher in rural areas when compared to urban areas where transport costs are lower and where it is cheaper and easier for waste separation facilities to exist.
41. In terms of waste separation there is a need to recognise that if some waste types are banned from going for incineration, options must be available for these waste types to go to other facilities with similar gate fees. If incineration is not permissible for some waste types but the costs of sending the waste to other facilities is higher this may increase the rates of fly-tipping as there is disincentive for waste carriers to dispose of the waste responsibly.
42. We would highlight that fly-tipping is an issue for many farmers and landowners and there is very little support available to assist them as there is no statutory duty placed on local authorities to investigate fly-tipping on private land. This omission from the Bill is disappointing and we foresee that taking action to address fly-tipping on private land could be an increasing problem in coming years as the public finances become ever-more strained.

## Part 7 The Flood and Coastal Erosion Committee

43. NFU Cymru notes Section 82 of the Bill which provides for the establishment of Flood and Coastal Erosion Committee for Wales (FRMW). This will remove and change some of the statutory functions of the current Flood Risk Management Wales Committee from that of scrutiny committee to a committee with a wider advisory/consultative role.
44. We understand that this is in response to the recent review carried out by NRW on FRMW which expressed concern about dual accountability and overlap between this committee and the NRW Board. We also note the review identified that FRMW Committee members displayed varying levels of understanding of flood risk management issues and we ask what assessment has been made on the levels of understanding of flood risk management issues

held by members of the NRW Board. Overall NFU Cymru would stress the need for agricultural representation on both the Flood Risk Management Wales Committee and the NRW Board.

## **Part 8 Power of entry: compliance with order for cleansing ditches etc**

45. We note the clarification of the law under Section 85 of the Bill which gives powers of entry to ensure that an order from an Agricultural Land Tribunal under Section 28 of the Land Drainage Act 1991 has been complied with. This has the potential to benefit members who suspect that a landowner has not undertaken works set out in the Order. We would highlight the need, in the first instance, to make efforts to establish dialogue with the landowner prior to powers of entry being used – it may be possible that there is a good reason why the work specified in the Order had not yet been undertaken.

NFU Cymru would conclude by observing that this Bill is part of a series of Bills put forward by Welsh Government and we would reiterate that it is not entirely clear where the Environment Bill fits in with the other Bills – the need to balance environmental with the social and economic needs of Wales cannot be overstated. NFU Cymru looks forward to attending the Environment and Sustainability Committee Scrutiny session in the coming weeks.

**National Assembly for Wales  
Environment and Sustainability Committee  
EB 50  
Environment (Wales) Bill  
Response from Farmers' Union of Wales**



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Part 1: Natural Resources Management

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

*Whilst the definitions of 'natural resources' and what constitutes 'sustainable management of natural resources' appear superficially to be sensible, there are significant concerns as to the how these will be interpreted, and the environmental and economic implications of those interpretations.*

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

*Any such National Natural Resource Policy must:*

- (a) Be based upon firm evidence, as some natural resource policies implemented to date have been based upon misapprehensions and weak or incorrect evidence, thereby causing damage rather than benefits.*
- (b) Take account of economic impacts for private businesses, public authorities, public bodies and all others potentially affected by such a policy*
- (c) Ensure that such a policy does not place Welsh businesses at a competitive disadvantage to those in other countries by enforcing restrictions and targets over and above those agreed at an international level*
- (d) Ensure that any policy does not result in a net adverse impact, for example by resulting in an increase in activities considered to be detrimental to the environment in countries other than Wales*

Do you agree with the proposals for area statements? What should these cover and is the process for their development clear enough in the Bill?

*The proposals in terms of area statements risk exacerbating existing differences between areas which already exist, for example in designated areas such as National Parks where planning restrictions and additional costs adversely impact on residents and businesses.*

*Any additional restrictions or guidelines introduced as part of an area statement which must be taken account of by, for example, a local authority, will add an additional layer of bureaucracy and complexity, and could perceivably lead to those authorities having to abide by and implement multiple approaches within single unitary areas.*

*There is no overt obligation to take account of the economic impact of individual area statements, nor of the pre-existing economic states and needs of areas which may be included in area statements.*

*As with all elements of the Bill which may result in additional costs and restrictions for private businesses, public authorities and public bodies, additional funding should be made available in order to compensate for such costs, not least given the current state of public finances.*

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

*The proposal risks adding to costs for local authorities which are already struggling to cope with severe funding cuts – costs which could in turn be passed on to residents and businesses – while also restricting those authorities' ability to support economic development within the areas for which they are responsible.*

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

*The Farmers' Union of Wales objects to any additional powers being granted to public bodies, including National Resources Wales, where the owners of land and rights do not have a veto on entering agreements which have an impact on their businesses and may devalue their property.*

*Notwithstanding this, where agreements are entered into the owners of land and rights must be compensated for their losses, both in terms of losses to their businesses and reductions in the value of their land. Such losses would accrue, for example, where agricultural use of land is restricted, and as a result the agricultural value of the land is degraded, and where such an agreement remains binding following the sale of such land.*

## Part 2: Climate Change

Do you agree with the proposals for the 2050 target?

*The proposals for all climate change targets should not be over and above those agreed at an international level, otherwise the economic development of Wales would be placed at a competitive disadvantage compared with those in other countries not subject to such targets.*

What should the role of an advisory body on climate change be?

*To advise the Welsh Government on ensuring targets and actions are realistic and proportionate in an international context; attainable without compromising the ability of Welsh businesses to compete against equivalent businesses in other countries; and that restrictions and targets in Wales do not have a net adverse impact by displacing emissions to countries which have lower standards.*

#### Part 4: Collection and Disposal of Waste

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

*Notwithstanding concerns regarding the implementation of other elements of Part 4 of the Bill, there is concern that in the absence of Welsh Government controls over waste labelling (plastic container labelling etc.) the requirement to separate waste may lead to unfair actions being taken against those who inadvertently fail to separate waste which is poorly labelled.*

#### Part 7: Flood and Coastal Erosion and Land Drainage

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

*In the context of this question and the wider issue of cleansing ditches, the only comment we would make is that in the overwhelming majority of cases dealt with by the FUW it is restrictions introduced by the authorities which reduce the degree to which ditches are cleansed, and failure by the same to cleanse ditches, dredge etc. as a result of misguided environmental pressures which have led to problems such as flooding.*

#### Overarching Question

What are your views on the relationship between this Bill and the Well-being of Future Generations Act 2015 and the Planning (Wales) Bill? Are the links and connections between them clear?

*Whilst the purpose and implications of the Well-being of Future Generations Act 2015 may be clear to those involved in its drafting and progress through the National Assembly, this is certainly not the case for members of the public who will be affected by this suite of legislation.*

*Whilst some links and connections between the Act and Bills are relatively clear, others are not. Above all else, the complexity and nature of this suite of legislation makes predicting outcomes, positive or otherwise, impossible.*

*However, as already indicated, there is a general concern that the overwhelming impact will be an additional layer of costly bureaucracy with adverse impacts for Welsh administrations, Welsh businesses and Wales' economy as a whole.*

*As such, it is essential that the Welsh Government and National Assembly for Wales ensure proportional implementation and appropriate funding which negates such adverse impacts.*

### Finance Questions

What are your views on the costs and benefits of implementing the Bill? (You may want to consider the overall cost and benefits or just those of individual sections)

*We note that the 61 page document entitled "Environment (Wales) Bill Impact Assessments" refers to page 215 of the Environment Bill Regulatory Impact Assessment, but does not include this document. Moreover, the latter document does not appear to have been made available either on the Welsh Government website or elsewhere.*



Confor response to the consultation on the General principles of the Environment (Wales) Bill

Part 1:

Sustainable Management of Natural Resources Management

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

In 1.3 subsection (2) we believe that natural resources should be specifically mentioned, "The objective is to maintain or enhance the resilience of ecosystems to sustain the natural resources and the benefits they provide and, in doing so ....."

Section 4. The Principles of Sustainable Management of Natural Resources.

Sub section (c) seeks to promote collaboration and co-operation, this should carry specific references to private and public sectors and NGO's to require WG and others to consult with them.

Sub section (d) the reference to "evidence" is too vague, the principles should take account of all existing relevant evidence, including statutory legislation, existing standards and guidance or best practise, both national and international incorporating specific references to them. In the case of management of forests the UK Forestry Standard (UKFS) is the overarching reference standard for sustainable forest management in the UK, it is an internationally agreed standard which the UK has a duty to report on and applies to all UK forests and woodlands. UKFS enshrines the UK's commitment to implementing the MCPFE Pan-European criteria and indicators for sustainable forest management.

The UKFS and the associated guidelines encompass the entire forest environment including open areas and water bodies, the Environment bill, as it applies to forested land areas, should not seek to undermine the UKFS, duplicate it or impose additional burdens on forested areas which already operate under wide ranging constraints.

UKFS states;

"Sustainable forest management is 'the stewardship and use of forests and forest lands in a way, and at a rate, that maintains their biodiversity, productivity, regeneration capacity, vitality and their potential to fulfil, now and in the future, relevant ecological, economic and social functions, at local, national, and global levels, and that does not cause damage to other ecosystems'. (MCPFE, 1993)"  
Source UKFS 2011.

Sub section (e), states "take account of the benefits" as a principle. The UN Convention on Biological Diversity (UN CBD) describes the Ecosystems approach as "a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way". To be equitable the "benefits" in section (e) should be stated as economic, social

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and environmental in accordance with UN CBD and the sustainable development principle (the common aim) contained in the Wellbeing of Future Generation (Wales) Act.

(g) Recognise that whilst genetic diversity may be a desirable trait, natural afforestation usually happens without it, forests would, if left alone, go through a cycle of pioneer species followed by others later and many of these “natural” ecosystems, such as boreal forests, have evolved without genetic diversity and actually thrive due to the lack of it. 1

In general, section 4 should make specific reference to protecting and enhancing the productive potential of the natural resources.

The Principles of Sustainable Management of Natural Resources (section 4) and the Objectives of Sustainable Management of Natural Resources (section 3) should not seek to add further to the burden of regulation nor should it impose significant extra responsibilities over and above the existing statutory regulation, guidelines and best practise which our industries already operate under, to do so could reduce the ability and capability of our rural industries in Wales to be competitive on the world markets. Reducing the viability of Welsh businesses would have unintended consequences as more of the products society demands would have to be imported from around the world with all the undesirable consequences that has of increased carbon footprints and using resources from areas of the world with less stringent environmental standards than our own.

Section 5 & 6 should carry a specific requirement for NRW and other public bodies to consult with the private sector and NGO's, (N.B. this would be covered if the requirement to consult was in section 4, the principles.)

Section 8. The duty to prepare, publish the State of Natural Resources Report (SoNRR).

NRW should be required to consult with, and take full consideration of the views of, the private sector before they prepare and published the SoNRR and, include in the report information on the sustainability of the resources and the progress towards protecting and enhancing the productive potential of natural resources, as required by UKFS, Woodlands for Wales, (WfW), Wellbeing of Future Generation (Wales) Act, Timber Standard for Heat & Electricity etc.

Section 9. The duty to prepare, publish and implement national natural resources policy.

The WG should be required to consult with, and take full consideration of the views of, the private sector before they prepare, published and implemented the National Natural Resources Policy. The policy should provide clear and concise statements to spell out the priorities and opportunities for sustainable management of natural resources.

*Do you agree with the proposals for area statements? What should these cover and is the process for their development clear enough in the Bill?*

Section 10. Area Statements.

We believe Area Statements will be divisive, parochial, narrow minded and often counterproductive, many natural resources do not respect artificial man made boundaries and area statements will not take account of the requirements of other areas, the reason for their proposal is to “specify the priorities, risk and opportunities sustainable management of natural resources which NRW considers need to be addressed in the area”. This will lead to a blinkered, restricted process whereby each area is considered as a separate unit which directly conflicts with section 3(c) of the Bill and will hinder achievements of the objectives (subsection 2) in other areas. For instance, the productive capacity of an area would be linked to the demand in that area and not take account of the requirements or demands in other areas, examples would be food or timber production may not be a priority for an individual area if they have a small populations with low demand and no processing capacity in the area, whereas food or fibre production may be a high priority for an urban area which has no capacity to produce the commodity and therefore no influence on areas that do produce it.

There is no definition on the size or location or boundaries of these areas, we find it difficult to comment with this detail missing, will they conform to local authority boundaries? Natural resources are not specific to any boundary and creating another different boundary would mean that the area statements would cross local authority administration areas, this would be chaos. Much better to look



at this at a wales level, the National Natural Resources Policy will be at a Wales level so the area statements should also define the priorities at a national scale.

2

Woodlands for Wales (WfW) is the Welsh Governments aspirational 50 year standard for “all the woodlands that exist in Wales now, and those that will be created in the future, irrespective of size, location or ownership”. The strategy foreword states “our intention that all the woodlands of Wales should collectively act as the Welsh national forest”. The requirement to produce area statements that “specify the priorities, risks and opportunities” in small specific areas is in direct conflict to the WfW aspirations which requires all the forests in Wales to act collectively, policy must be more joined up in this regard, there is no precedent, requirement or basic sense in dividing the forest asset into small unconnected units.

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

Section 16. Only if they are required to consult and take the views of the private sector on board

Part 2: Climate Change

*Do you agree with the proposals for the 2050 target?*

Section 35 (1) replace the word “may” with “should” “the Welsh minister SHOULD by regulation...”

The section should require WG to specifically include greenhouse gas emissions (GHGE) from transporting the goods or activities purchased or received by Wales that could have been produced by Wales had it not been for a reduction in the productive potential of the welsh natural resources. To get an accurate picture of carbon and other greenhouse gas emissions attributable to Wales we should account for all forms of transport including shipping, aviation and including road and rail transport of the goods and services received by Wales, even if, especially if, these goods and services are produced elsewhere in the UK as well as internationally and count those emissions as Welsh emissions

Part 2

Climate Change

*Section 31. Do you believe that the introduction of carbon budgets is a more effective approach than the 3% annual emissions reduction target that is currently in place in Wales?*

No, the process of defining, measuring and recording the GHGE and attributing these to Wales is hugely complicated, the same holds true for the many methods we may use to mitigate against, and reduce, the GHGE attributable to Wales. Carbon budgets would be a moving target which adds another further level of complexity to an already tortuous process which is begging for simplification now. Whilst reducing the carbon budget in future years by carrying some of it forward is a laudable aim the prospect of adding to future years carbon budget is just kicking the can down the road, better to have annual targets that can be judged every year and in the event of failure be acted upon in good time, a simple principle of less moving targets to hit.

The bill is very clear about the end date for the target as being 2050 and that the target is 80% lower than the baseline, it is however very confusing on the interim targets and dates for these interim targets, there seems much confusion between "interim target years" and "budgetary periods" which is unnecessarily complicated.

3

We believe the 2050 Emissions target should be divided equally between the total number of years between the enablement of the act and 2050 with a proviso of being able to move a limited amount between years as provided for in section 40, 41 and 42 of this bill. This would enable the judging of the WG progress towards achieving the 2050 emissions targets to be much simpler.

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

Yes, but section 42, (2) should stipulate a set time limit for ministers to lay the report before the National Assembly not be left to "as soon as reasonably practical".

*What should the role of an advisory body on climate change be?*

To advise and to audit the final statement eluded to in section 41 and to call WG to account in the event of any failure reported in the statement. The advisory body should not be an individual but should be comprised of the minimum number of individuals required to be truly independent and objective, the "Committee on Climate Change" would be a suitable advisory body.

As a general point on the whole Environment (Wales) Bill with regards to forestry, much that is contained in the Environment (Wales) Bill as introduced is already legislated for under often many other international and UK standards, Acts, Bills and Best Practise Guidance and we feel inclusion in the Environment (Wales) Bill contributes nothing extra and only serves to complicate matters further.

*For your views on the relationship between this Bill and the Well-being of Future Generations Act 2015 and the Planning (Wales) Bill? Are the links and connections between them clear?*

It is very easy to make connections and links between the individual bills, the difficulty is in interpreting those links and acting on that. There is a real danger that connecting the three bills will lead to indecision and stagnation by individuals and organisations that will not, or cannot, make an appropriate decision due to lack of guidance on the priorities within each of the bills.

The bill should make clear who is responsible for establishing the priorities and where they would be published.

*Finance Questions; What are your views on the costs and benefits of implementing the Bill? (You may want to consider the overall cost and benefits or just those of individual sections)*

The costs alluded to in the explanatory memorandum deal, as far as it is possible to tell, with the cost to the public sector of implementing the environment bill, there is no mention or prediction of the likely costs to the private sector in Wales.

There may be small one off costs to the private sector associated with producing and publishing a NNRP in Wales, which will be limited to the costs of WG consulting with them.

Preparing and publishing a SoNRR by NRW will entail further costs to the private sector, again costs incurred in consultation but in addition there will be costs incurred in collecting and collating information on the resources owned by **Tudalen y pecyn 101** 51% of the forested land area in

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Response from Confor**



Wales is under private ownership, to achieve a realistic figure of the resources contained in these areas will lead to some cost incurred by the owners.

Area Statements will be potentially the largest cost to the private sector, again contributions to the initial data collection will incur some costs but the concept of managing the forest resource on an area by area basis will drastically increase the ongoing costs of management. Specifying the priorities, risks and opportunities of the sustainable management of natural resources which NRW considers need to be addressed in the area will inevitable mean that land managers will have to interpret the priorities in each area statement and have different management prescriptions in each one, this is an ongoing, undefined cost.

Not knowing the intended boundaries of the areas is also not helping, it may be that some forest holdings may be located in several different areas and possible in several different local authority areas as well, the potential costs for consulting with each is huge and with the possibility of different priorities in each multiplies this enormously.

4

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## **Environment (Wales) Bill**

### **Evidence to the Environment and Sustainability Committee**

Date: 12 June 2015

#### **A. Summary**

1. CLA Cymru represents the interests of over 3500 owners and managers of rural land, accounting to approximately half the land mass of Wales. The vast majority of our members live and work in the countryside with businesses dependent on the natural environment.
2. CLA Cymru recognizes the importance of the Environment Bill and makes the following comments and recommendations:
  - (i) CLA Cymru has concerns with the range of powers conferred to Welsh Ministers in this Bill. Natural Resource Management is a long-term endeavour and must be removed from the short term nature of politics if sustainable management is to be achieved. As an issue the environment is too important to allow for a democratic deficit.
  - (ii) The Bill, as drafted, has a wide scope with regard to the sustainable management of natural resources. Long-term sustainability is dependent on the three pillars: economic, environmental and social. Society cannot afford to have one pillar elevated above the others.
  - (iii) CLA Cymru has concerns over the robustness of the evaluation of cost with regard the new reporting regime for Natural Resources Wales and their ability to deliver within their budgets.
3. CLA Cymru are disappointed that the draft Environment Bill does not appear to provide the robust framework for Natural Resources Wales (NRW) to take forward Natural Resources Management as envisioned by the White Paper.
4. Furthermore, CLA Cymru would suggest that this purpose is diluted by the disparate range of issues covered by the Bill.

## B. Natural Resources Management

5. The Bill as it currently reads is more wide-reaching than was previously indicated in consultation and discussion. Although section 1 of the Bill gives a purpose of promoting the sustainable management of natural resources, section 3 (1) offers a very wide definition of what this entails and provides no context for who should have regard for these provisions.
6. Whilst the wording of the objective outlined in section 3 (2) has synergy with the Well Being of Future Generations Act (Wales) 2015, that Act is framed by a focus on public bodies. CLA Cymru suggests that the draft Environment Bill should have the same scope.
7. As outlined above, sustainability has three pillars and cannot be achieved if one pillar is given precedence over the others.
8. NRW received funding from the Nature Fund to trial the area-based land management approach in three catchments. To date there have been no reports of the benefits or challenges of this approach. CLA Cymru are concerned that the timescale and duration of these projects have not allowed for the collection of robust evidence and question whether this approach should be enshrined in law before we have a sufficient evidence base and appropriate time to undertake cost benefit analysis of results..
9. There has been no substantive consideration or engagement with private landowners on how the area based approach will be implemented.

## C. Reporting

10. CLA Cymru is concerned that the requirement in section 6 (5) for public bodies to report on compliance with the Environment Bill is duplication of provisions already enacted in the Well-being of Future Generations Act (Wales) 2015.
11. Although this provision is framed as an update of requirements in section 40 of Natural Environment and Rural Communities Act 2006, CLA Cymru considers that reporting requirements are already being addressed by the Well-being of Future Generations Act (Wales) 2015, and that the need for more extensive information should be clarified in that Act as opposed to with a separate provision in the Environment Bill especially considering the financial and wider resource constraints faced by the public sector in Wales.
12. Currently, NRW is required to produce a wide range of reports and maps in accordance with a wide range of European and domestic directives, laws and regulations. Many of these are statutory with requirements and goals removed from Welsh Government influence. Further clarification is needed on the hierarchy and prioritisation of existing reports in relation to new ones.

13. CLA Cymru welcomes the analysis of cost to NRW but questions if this was completed with consideration for the projected budgetary decrease. NRW is not solely a reporting body and its' wider services should not be constrained by this duty.
14. CLA Cymru questions to what extent the new layer of reporting introduced by the Environment Bill is integrated with existing requirements. The Explanatory Memorandum does not adequately explore the issue. More work needs to be done to integrate reporting requirements so that the Environment Bill does not just become another layer of bureaucracy.
15. It is widely understood and agreed that area statements and landscape scale land management will, logically be water basin or catchment based. CLA Cymru suggests that these existing reports and maps statutorily produced by NRW would be a good starting point.
16. The Bill, as drafted, makes several references to reports and actions that "must" be completed. There is no indication of the repercussions on NRW of failure to do so and, considering the bills lack of scope for who is affected by its provisions, the consequences this would have on the wider rural community and economy. Austerity may necessitate prioritisation.
17. The list of public bodies in section 11 does not align with the list used in the Well-being of Future Generations (Wales) Act 2015. The exclusion of NRW from the list causes concern as they are both land managers and regulators.
18. This point is of particular note with regard to section 12. CLA Cymru recognises the importance of a mechanism whereby Welsh Ministers can direct public bodies to address issues identified in an area statement but how much regard has been given to failure to comply with such requirements.
19. CLA Cymru would caution that this power should only be used in extreme circumstances. Such a wide reaching provision could be viewed as the first step to compulsory purchase by the back door.
20. Section 12 (5c) provides Welsh Government with the ability to make direction around under this section enforceable by mandatory order but makes no provision for public bodies to appeal such orders.
21. Finally, CLA Cymru would like to highlight that to be effective, information such as area statements will need to be easily accessible to all. Complex interactive maps are problematic in the face of slow rural broadband.

## C. Land management agreements

22. CLA Cymru acknowledge the benefits of landscape scale land management and that there are examples of beneficial work, especially around flood risk alleviation, where more flexible land management agreements would be useful.
23. This section, as drafted, seeks to extend the conservation covenant beyond its current use on designated land only. It should be acknowledged that no environmental benefit is a free good and the bill or supporting documentation does not provide adequate cost benefit analysis of this provision.
24. Depending on their nature, land management agreements enforceable in perpetuity could have a significant effect on the capital value of the land. The Bill makes no provision for financial reimbursement and the inexplicit wording opens the door to using land management agreements as a regulatory tool.
25. As drafted, the provision for land management agreements opens the door to further erosion of private landowner rights.
26. Section 16 (3) which outlines who can enter into an agreement has a wide scope. Whilst land management agreements would be straightforward in an owner-occupier context, not enough regard has been given to the issue of how much control an individual would need to exercise over land to be able to enter into an agreement considering the intent to have such agreements enshrined as a land charge under the Land Charges Act 1972.
27. In the case of a 100 year, peppercorn rent agreement, who would have the ability to enter into a land management agreement? If it's the owner, would consideration be given to the activity being carried out on the land by the person utilising it? If it's the renter, they could potentially be diminishing the value of an asset not their own.
28. CLA Cymru suggest this could be a significant issue with regards to common land? The Bill makes specific reference to people with sporting rights implying that the Lord of the Manor would have the power to enter into a land management agreement but CLA Cymru would question the extent to which this is possible in instances where the agreement would affect the registered rights of a commons grazier.
29. Section 17 has no regard for change of land use or change of policy. For example, NRW have introduced new shoreline management plans which, due to new priorities and funding cuts, have decreased the number of sea defences that will be maintained. If a landowner has entered into a land management agreement that requires them to maintain a sea



defence, would the land owner have to maintain his defence as per his agreement, even though it has become redundant?

30. The provisions around land management agreements confer significant and wide-reaching powers to NRW. Whilst such agreements have been possible on protected sites, we do not feel that sufficient regard has been paid to the nature of private land ownership and management in extending these provisions to non-designated land.
31. CLA Cymru suggests that a sensible approach would be to trial the idea with a specific area, such as agreements for flood alleviation. The process and benefits could then be analysed and further consulted upon before the provision is introduced wholesale.
32. CLA Cymru are broadly supportive of the experimental schemes as introduced in the Bill but emphasise that robust cost benefit analysis and consultation with the appropriate individuals and stakeholders is essential for each individual scheme.

#### **D. Climate change**

33. Climate change targets need to be addressed and the setting of interim targets to measure progress is evidence of Wales' ambition to be a forerunner in taking action to manage climate change. However, CLA Cymru questions to what extent this can be addressed by Welsh Ministers alone considering that climate change is a global issue.
34. Furthermore, many climate change targets and data are held on an international or UK level and it is difficult to see how Welsh Government can be held responsible for targets considering that baseline data cannot be regionalised to this level. Additionally there are uncertainties with regard to the evolving devolutionary settlement and the control that Wales holds over its own affairs.
35. In the setting of interim targets and goals, it is important that these factors are taken into consideration so that what is put in place is achievable.
36. The 100,000 hectare target for tree planting derived from the Land Use and Climate Change group has been widely denounced as unachievable by industry and professional bodies yet it remains as a key climate change target. It would require 5,000 hectares of planting per annum to 2050. At present, there have been 2,400 hectares of planting since the target was set. Setting interim targets for this goal would only result in continual failure to meet them.
37. In context of powers devolved to Welsh Government, CLA Cymru is concerned that agricultural industry will unfairly bear the brunt when addressing climate change targets. This is already evident in discussions around water pollution where agricultural diffuse pollution

accounts for only 15% of failing water bodies under the Water Framework Directive yet is receiving a disproportionately high level of interest from water companies and Welsh Government.

- 38. A core theme for the Rural Development Programme 2014 – 2020 is climate change impact yet funding for renewable energy is for on-farm use only, whilst grant funding will be available for capital assets that improve climate change impact such as slurry stores. Historically, the application processes and requirements have been burdensome and place too many barriers in the way of a farmer wanting to access funding.

**E. Land Drainage**

- 39. CLA Cymru recognises the benefits of the power of entry provision in section 85 but there must be recognition that non-compliance is sometimes due to licensing barriers or exceptional circumstances., e.g unfavourable climatic conditions, hence these measures should only be employed in extreme circumstances.

**F. Linkages with Well-being of Future Generations Act 2015 and the Planning (Wales) Bill.**

- 40. CLA Cymru are concerned that the new reporting requirements for public bodies are duplications of requirements in the Well-being of Future Generations (Wales) Act 2015. As currently drafted, the Environment Bill essentially doubles the bureaucratic burden.
- 41. More clarity is needed between these three areas of legislation so that stakeholders and business engagement is not impeded. Lack of consistency in application would be extremely detrimental.
- 42. Finally, we would like to reiterate that sustainability must have regard for the economic and social repercussions as well as environmental ones. The Environment Bill cannot be given preference if sustainability is to be achieved.

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**For further information please contact:**

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Mae cyfyngiadau ar y ddogfen hon

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**Mae cyfyngiadau ar y ddogfen hon**

Committee Clerk  
Environment and Sustainability Committee  
National Assembly for Wales  
Cardiff Bay, CF99 1NA

12 June 2015

Dear Sir or Madam,

**Re: Environment and Sustainability Committee inquiry into the Environment (Wales) Bill**

The Committee on Climate Change welcomes the Committee's enquiry into the Environment Bill. We would like to offer some initial observations from our experience as advisors to the UK Government on carbon budgets and to the Scottish Government on annual targets. We are ready to act as the advisory body as outlined in the Bill, and will provide more detailed advice to the Welsh Government when requested to do so.

From our UK experience, we recommend the use of carbon budgets. They have ensured that continuous progress is being made towards the UK's legislated target to reduce emissions by at least 80% by 2050.

For carbon budgets to provide an effective signal of requirements for emission reduction it is necessary that they should be set some time in advance. This provides a level of predictability for firms and households to plan and invest for a low-carbon economy.

The implication for the proposed first budget (2016-2020), which would not be set until 2018, is that it can only function as a baseline. It would describe the business as usual level of emissions to 2020 based on the current Welsh targets and primarily rely on existing proposals and policies.

For subsequent budgets, it is important to provide long-term visibility. Countries are meeting in Paris in December to agree on targets out to 2030 and the UK Government will set the Fifth Carbon Budget for the period 2028-2032 in 2016. We would suggest that the Bill provides for the first three budgets to be set by the end of 2018.

Setting budgets to 2030 would allow for reports on proposals and policies to cover a 12 year period, allowing greater visibility and in line with other international and national efforts. In Scotland, for example, the government will publish their third report on proposals and policies in 2016 which will cover how they plan to meet their 2028-2032 annual targets.

We note that the proposed budget periods are not in line with the UK's carbon budget periods. We understand that this is to coincide with the Welsh legislative cycle and the Well-Being of Future Generations Act reporting periods. That seems sensible but officials will have to coordinate to ensure they understand the implications of UK-level policy for meeting the Welsh budgets and, similarly, the impact of the Welsh targets and policies for the overall UK commitments under the Climate Change Act and international agreements.

Finally, progress reporting is an important aspect of the UK carbon budget system, helping governments to revise policies to meet budgets when necessary. This reporting needs to take place at sufficiently regular intervals. It should also be timed to occur at a point in the policy-cycle where, should the Government wish to accept recommendations, there is time for action that will have an impact on emissions.

I look forward to meeting the Committee and answering any questions when I provide oral evidence on the 2nd of July.

Yours,



Matthew Bell

Chief Executive



Climate Change Commission for Wales:

June 2015

**Response to National Assembly for Wales Environment & Sustainability Committee inquiry -  
Environment Bill**

The Commission was established in 2007 as an important independent forum for developing and driving forward the Welsh programme of action to tackle the causes and effects of climate change. It brings together leaders and representatives from all sections of Welsh society (business, academia, the voluntary sector, environmental groups, political parties, public sector and local government), and seeks to advise Welsh Government on climate change, mobilise action and build consensus across sectors.

The Commission welcomes the introduction of the Environment (Wales) Bill, and particularly the focus on climate change, the creation of a statutory framework for action on climate change including targets for reducing emissions of greenhouse gasses, and setting carbon budgets.

Our response specifically addresses Part 2 - Climate Change, and the following questions:

*1. Do you agree with the proposals for the 2050 target?*

The Commission has for some time been calling for a **stronger framework** for climate change and emission reduction in Wales, and in [our response](#) to Welsh Government's Climate Change Policy Refresh last year we called for

- a much clearer structure of responsibility, accountability and reporting across Government and the public sector to enable monitoring of progress against climate change objective, and
- the introduction of statutory targets (within forthcoming legislation) for public bodies to monitor and report on emissions and adaptation performance.

The current 2050 target is in line with the existing UK Climate Change Act (2008), so there is a question about whether it should be going beyond this. What is critical is that these targets are based on the **latest scientific evidence** and any developments in international negotiations. The current Welsh targets (40% and 3% per annum) are also based on analysis undertaken for the 2010 Strategy, so again we would recommend that these are brought up-to-date and based on the latest evidence as presented by the IPCC in 2014.

In addition the Environment Bill has to clearly link to, and strengthen, the requirements of the **Well-being of Future Generations (Wales) Act** and the indicators, milestones and measures that are being developed to support the delivery of the seven wellbeing goals.



2. *For your views as to whether the interim targets should be on the face of the Bill?*

With such a complex issue as climate change we understand the difficulty of placing targets on the face of the Bill. Not including a target would allow for a greater degree of flexibility, however there could be arguments for including something (perhaps the 40% by 2020 target) to reinforce the Welsh Government's commitment.

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

Yes – it will set the route map for reducing emissions across all Government departments over appropriate time periods, and is also in line with the UK's approach. We agree that the timing for the budget should be aligned to the electoral cycle and also to the requirements under the Well-being for Future Generations (Wales) Act and development of local Wellbeing plans.

We are slightly concerned that the progress reports will only be undertaken every five years – this may not be sufficiently frequent to hold Welsh Government to account. Currently the Welsh Government reports annually on their climate change targets, and this is the main way that the Commission is able to scrutinise progress and provide advice on areas for improvement. Would the carbon budgets replace the current annual targets, and if so how will progress against emission reduction be reported?

The Commission recently funded the **Tyndall Centre** to carry out a study on carbon budgets for Wales – **copy attached**. This provides an in depth analysis of the evidence for targets and budgets, including what would be a 'fair' budget allocation for Wales, so should be considered as part of the evidence base for the Environment Bill.

We would like to see how the carbon budgets will extend to an analysis of the carbon impact of financial budget setting similar to the emission impact assessment of the fiscal budget that is undertaken in Scotland.

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

To allow for consistency with the United Nations Framework on Climate Change (UNFCCC) reporting guidelines, we advise that all Welsh emissions should be included. The Scottish Government has adopted this approach, although when assessing performance against the targets it allows for the sale and purchase of relevant carbon units (tradable emissions allowances), through the European Union Emissions Trading Scheme (EU ETS). In effect, this means that, when assessing performance against targets, the emissions attributed to the traded sector are those allowed within their annual cap, as opposed to the emissions actually made (see <http://www.gov.scot/Publications/2014/06/5527/4>). The issue of devolved competence (which

may change over time) is probably best addressed when setting the particular value of each target or budget.

It is also worth noting that all Wales emissions are provided on a yearly basis by the National Atmospheric Emissions Inventory report. The latest figures, published on June 9<sup>th</sup>, shows that although emissions have reduced by 12% compared to base year, they have increased by 10% between 2012 and 2013. This increase is largely driven by emission from the production of heavy industry and a shift from natural gas to coal use in power stations. It would therefore appear that the generation and reporting of all Wales emissions would not require much additional work for the Welsh Government for either the budget period report or the annual update.

As well as considering the devolved / non-devolved issue, it's also worth considering reporting on consumption-based emissions particularly as Wales is a net exporter of energy. This would support action in relation to personal behaviour change and individuals taking greater responsibility for supporting actions that lead to emission reduction.

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

Yes we welcome a **framework for stronger accountability across Welsh Government**, and the emphasis on the need for a **cross-departmental approach** to deliver emission reduction. We would welcome further consideration of accountability outside Welsh Government across the public and private sector bodies – for instance the Scottish Act has a requirement on all public sector bodies to contribute to their climate change targets and this would seem a sensible approach for Wales.

Again we feel that any requirements on the public sector would need to build on and complement the requirements in place through the **Well-being of Future Generations (Wales) Act**.

*6. What should the role of an advisory body on climate change be?*

We feel that there is a need to clarify the role of the various bodies here. The UK Committee on Climate Change, who already advise the UK Government on setting carbon budgets and have significant analytical and scientific capacity, are well placed to advise the Welsh Government on the technical detail e.g. setting initial carbon budgets for Wales.

The Well-being of Future Generations (Wales) Act sets out a clear role for the **new Future Generations Commissioner** in relation to providing advice on climate change (Part 3, Section 19 1a) – the Environment (Wales) Bill should seek to strengthen and clarify this role and not undermine it. A review of the Climate Change Commission for Wales is currently taking place and the findings will inform the future role of the new Commissioner.

## ADAPTATION

We note that Part 2 focuses entirely and in much detail on emission reduction. There is no explicit reference to **Adaptation**. This is in marked contrast with legislative frameworks in other home countries. The Climate Change Act 2008 places a duty on the UK Government and the Northern Ireland Administration to place plans before their respective Parliament and Assembly, outlining how they are addressing the risks identified in the most recent UK Climate Change Risk Assessment (which is undertaken every five years). The Climate Change (Scotland) Act 2009 places a similar requirement on the Scottish Government. There is, however, no corresponding legal requirement placed on the Welsh Government.

The **Well-being of Future Generations (Wales) Act** stipulates that Welsh Ministers must take account of the UK CCRA when producing their Future Trends Report, and that Public Service Boards should do so when preparing their Assessments of Local Well-being. Presumably, actions arising from taking account of the UK CCRA will be embedded within Welsh Ministers' Well-being Objectives, and within Local Well-being Plans, and would encourage action to support the Resilient Wales goal. Similarly the Environment (Wales) Bill, as introduced, places a duty on Welsh Ministers to "prepare, publish and implement national natural resources policy ... including what they consider should be done in relation to climate change".

As things stand, therefore, actions to adapt to climate change will be embedded within a range of mainstream programmes – as is appropriate for effective integration. The question is whether Welsh Government is content that, if challenged, they could extract from these programmes the actions that when collated would constitute an "Adaptation Programme for Wales". In this situation we think it may be appropriate for this Act to consider placing a specific duty on Welsh Ministers to prepare a National Adaptation Programme for Wales which takes account of the most recent UK CCRA. It would be helpful to look at lessons from the UK National Adaptation Programme and the Scottish Adaptation work to develop the most appropriate response for Wales.

The Commission's **Adaptation sub-group** would be happy to provide further information and insights about this. Further the Commission's **Land Use sub-group** wishes to emphasise the role of land management in adaptation – protecting us from the extremes of storms, flood and drought as well as retaining carbon stocks in peat and other organic soil. The ability of land to sequester more carbon will contribute very little to the overall budget and our land management policies should reflect this.

June 2015



**Consultation on the General Principles of the Environment (Wales) Bill  
Response by Friends of the Earth Cymru**

**Introduction**

Friends of the Earth Cymru is part of Friends of the Earth England, Wales and Northern Ireland, and supports a unique network of local campaigning groups working in communities throughout Wales. Friends of the Earth Cymru inspires the local and national action needed to protect the environment for current and future generations, and believe that the well-being of people and planet go hand in hand.

We welcome the opportunity to respond to the general principles of the Environment (Wales) Bill and hope that we can assist the committee in developing this draft legislation. We will be focusing our response primarily on Part 2: Climate Change, with some comments on parts 3 and 4, and the committee's overarching question.

**Summary of recommendations**

- Strong support for a statutory framework on climate change and the approach taken in general, support for proposals on carrier bag charging and waste.
- Concerns regarding the criteria for setting the long term target and lack of information on interim targets.
- Questions regarding the emissions included, and how all emissions from Wales can be reported upon.
- Strong concerns regarding scrutiny, accountability and regular reporting.
- Clarity needed on how processes fit with the Well-being of Future Generations Act (WBFG Act) and current policy commitments.

**The need for legislation in the following areas;**

**Creating a statutory framework for action on climate change**

1. We strongly support having a legislative framework for tackling climate change and have long called for this in Wales. We are part of Stop Climate Chaos Cymru and endorse its submission. We believe that a binding long term 2050 target gives a clear message of commitment to deliver and provides a certainty which is necessary to inspire investor confidence and drive decarbonisation. This is the approach taken in other European countries and states which have or are planning climate change legislation such as Finland, Scotland, the UK and Denmark and has been cited by the environmental law organization ClientEarth as an essential component of good governance that drives a climate transition.
2. Despite currently having agreed targets in policy to reduce emissions the non-binding nature of these targets, and that all government departments have not taken responsibility for delivering the changes necessary,

have been barriers to their achievement. There's also been a lack of systematic planning to achieve these cuts such as a detailed regular report on proposals and policies, and a lack of scrutiny on progress by an independent body. A statutory framework can help deal with these weaknesses.

3. However there are positive elements that we currently have in Wales and are not included in the legislation, such as annual reports on progress, annual targets and an interim target of 40% by 2020. It remain to be seen whether the legislation adequately replaces these elements, as outlined further in this response.

#### **Reforming the law on charges for carrier bags**

4. We agree that Welsh Ministers should have powers to raise a charge on all types of carrier bags, and that differential rates be chargeable if that achieves the policy aim (reducing waste).
5. However we disagree with the proposal to extend the remit of carrier bag revenue being directed to all charitable causes. Firstly, we see no evidence – and none is provided – that the current designation to environmental charities fails to fulfil a useful purpose. Secondly, there are many charities to which funding could be diverted under this new definition but which might not conform with the Government's intentions. For example Eton College would fit the criteria proposed.

#### **Powers to Welsh Minister in relation to waste recycling; food waste treatment and energy recovery in business**

6. The Welsh Government has concluded that separate collection of certain types of waste provides the best outcomes, but this does not currently take place, which lends credence to the view that Welsh Ministers need further powers to require separate collection.
7. We agree that non-domestic premises should be bound by legislation on separate collection of waste because they are a significant source of waste. The most recent figures (2007) indicate 3.6 million tonnes of waste arose from industrial and commercial sources, which is more than double the amount of domestic waste in the same year (1.6 million tonnes).
8. We agree that the Welsh Government should ban recyclable waste from incineration. However, we would prefer to see this power on the face of the Bill rather than through further regulation. This would be quicker and easier.
9. We also suggest that there should be a tax on waste sent for incineration as a further incentive for waste authorities to concentrate on reduction of waste, reuse and recycling. At present the landfill tax fulfils that purpose for landfill, but the commissioning of incinerators simply provides an avenue for waste authorities to send that same waste to incineration with no financial penalty. Careful analysis would determine the level of the incineration tax vis a vis the landfill tax. For further information, read Dr Chris Edwards' submission to the Environmental Audit Committee<sup>1</sup>.

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

10. In order to implement the process of carbon budgeting, setting interim targets and reporting on progress in Part 2, the advisory body, whether it be the UK Climate Change Committee or another body, will need to give sufficient attention to policies, structures and data from Wales, including collecting new data.

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<sup>1</sup> <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmenvaud/328/328vw05.htm>

### **Whether there are any unintended consequences arising from the Bill;**

11. The Bill and Explanatory Memorandum (EM) do not explain the intention regarding the current policy targets of 3% annual emission reduction and 40% by 2020 target, or whether the current Climate Change Strategy would continue. The first carbon budget (2016-2020) would only have to be set by the end of 2018 (Section 31(4)(a)) and in order to continue progress in the meantime the 40% by 2020 target should be included in the Bill or the Minister should commit to its continuation as a policy target otherwise there is a risk of going backwards in the short term.

### **The financial implications of the Bill;**

12. As mentioned in paragraph 10, the advisory body will need to be adequately funded. Due to additional work in preparing reports and plans and meeting the requirements of the Bill the climate change division of the Welsh Government is also likely to need additional capacity and resources.

### **The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation.**

13. The process of setting interim targets and carbon budgets must be transparent and based on best available evidence. Although we accept that it is the Minister who ultimately has the power to set these, it must be based on science and the principle of fairness and equity, and follow the advice given by the advisory body.

14. The Welsh Government's Statement of Policy Intent (SoPI) is full of references to the need for flexibility. Whilst we accept and believe it is desirable for regulations to respond to the latest science and the need to cut emissions quicker or deeper, a system of checks and balances and high level of accountability and scrutiny is necessary in order to counter-balance these Ministerial powers. Where flexibility is given there could for example be provision in the Bill that it is only to strengthen or speed up emission reduction that they should be used rather than the current possibility of weakening or slowing down progress if this is left too open.

## **Consultation Questions**

### **Part 2 – Climate Change**

- **2050 Target**

15. The target for 2050 is set out as “at least 80%” and we would emphasise that this is indeed a bare minimum requirement. This is consistent with the UK Climate Change Act 2008 but the evidence and science of climate change has progressed significantly in the past 7 years and the latest IPCC report warns that climate change is happening with greater speed than previously thought. Bodies such as the Tyndall Centre for Climate Change and the Stockholm Environment Institute now advocate higher targets and for developed countries to base targets on a fair global contribution. We would recommend that the committee take evidence from these organisations.

16. The basis for the UK's fourth carbon budget was a global carbon budget with a greater than 50% chance of exceeding two degrees warming. We believe that this is too risky and that targets and budgets should be set in line with IPCC projection for an “unlikely” 2 degrees warming (33% risk). We therefore recommend that the advisory body for setting carbon budgets for Wales draws primarily on the latest work of the IPCC and properly reflects the global trajectory towards an unlikely risk of going beyond two degrees.

17. In addition, the issues of global equity and fairness is increasingly centre stage in climate change discussion and international negotiations, and this long term framework for tackling climate change from Wales' perspective should reflect those concerns. Developed countries are now acknowledging their historical responsibility for emissions, and targets should be based not only on a safe global carbon budget but what is a fair contribution from different countries – the UNFCCC's core principle of “differentiated responsibility”. The Stockholm Environment Institute and EcoEquity have developed an interesting project and tool for assessing climate equity<sup>2</sup>.
18. In light of these principles, and Wales' role as a global leader in sustainable development, we believe that Wales should adopt a tougher 2050 target than proposed, and we recommend that an appropriate and fair target for 2050 is 95% reduction.
- **Interim targets;**
19. We believe that the current policy target of 40% by 2020 should sit on the face of the Bill, and the proposed dates for other interim targets should be included, possibly to be set by regulation but with a level of ambition signified by the Minister during the progress of the Bill and based on the principles outlined above and a steep trajectory towards the long term target.
20. In Wales we currently have policy targets for 3% annual cuts and 40% cuts by 2020 and are moving significantly away from this approach in this Bill. Jumping straight to a 2050 target without identifying any milestone in legislation is concerning and does not give indication of the speed required to achieve the long term target nor give decision makers an opportunity to set ambitious objectives in legislation. This differs from the approach taken in both the UK and Scotland's Climate Change Acts.
21. It is the total greenhouse gas emissions over the whole period from now to 2050 that matters, not solely the end point. A steep trajectory to 2050 is required in order to avoid 2 degree warming. We would propose an 80% target for 2030 based on risk and equity as outlined in paragraphs 17-18. This is ambitious but achievable with electrification of heating and transport, decarbonising electricity and cutting energy demand with energy efficiency.
22. The Statement of Policy Intent (SoPI) suggests that only one interim target will be set by Welsh Ministers, does not indicate the intended date for the target and states that it will be based on the latest scientific and “technical evidence” in order to make cuts at the “most economically effective rate”<sup>3</sup>.
23. This language raises concerns regarding what is considered “economically effective” and why this has been highlighted in particular. Questions should be raised to ensure that this and the repeated statement in the SoPI of needing a long lead in time and taking time to change does not mean that interim targets will be driven by a slow transition and risk more emissions overall as well as leaving us at risk of not hitting the 2050 target<sup>4</sup>.
24. Early intervention and front-loading emission reduction is both desirable and is the only way to achieve decarbonisation cost effectively, as shown by evidence from the Stern Review, the IEA World Outlook reports and UNEP Emissions Gap reports.
25. There could be provision inserted that an interim target proposed by the advisory body cannot be lowered by Welsh Ministers, but could be increased.

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<sup>2</sup> <http://climateequityreference.org/the-climate-equity-reference-project/>

<sup>3</sup> SoPI page 8-9

<sup>4</sup> SoPI pages 8 & 10

- **Carbon budgets approach as compared to 3% annual target;**

26. We support the proposal for 5-year carbon budgets and agree that they are a sound way to progress with emission reductions, combined with targets and scrutiny.
27. Ministers should accept the independent advice of the advisory body and should not be allowed to derogate from the budgets proposed.
28. As set out in paragraph 16 and 17 the basis of setting the carbon budget must be avoiding two degrees warming, planning a steep pathway to meeting long term targets, awareness of the benefits of early intervention, and global fairness and equity.
29. Both the Scottish and UK Acts have an annual check on the direction of travel. The Scottish framework has gone in a different direction with annual targets rather than carbon budgeting in this respect and therefore might not be as comparable as this proposal, but the UK Act (Section 12) includes indicative annual ranges of targets as well as carbon budgets. The issue of fluctuation due to weather or market forces can be overcome by instructing the advisory body to take this into account in their assessments so that it is their independent judgment of whether the targets have been met takes those factors into account. We are concerned that without anything sitting below the 5 year carbon budget that there is a risk of unwittingly falling behind on progress.
30. With no provision outlined for annual reports we are concerned at the loss of regular reporting and scrutiny by the Assembly and the public. We would like to see as a minimum a requirement for an annual statement on progress made towards the budget and targets. Ideally we would like to see indicative annual ranges of targets as well and are open to considering other options for achieving this aim.
31. As part of Stop Climate Chaos Cymru we have long called for carbon assessments of the annual fiscal budget and major strategies and infrastructure. This work should be carried out under these proposals through the Welsh Government's decision-making procedure as part of the ongoing assessment to meet the carbon budget, as well as requirements under the WCFG Act, therefore no additional work should be necessary. However we would like to see a requirement for these to be made public and part of scrutiny of proposals and budgets not only retrospectively at times of reporting (as far ahead as 7 years later).

- **What emissions should be included;**

32. This is a complex and technical area of climate legislation and we will be seeking further advice on the detail of the proposals set out.
33. However our starting point is that all emissions from Wales should be included, but that we should also be able to evaluate emissions within (increasing) devolved competencies, and that there is responsibility for Wales' carbon footprint or consumption and our international responsibilities.
34. One positive from the current strategy is that it does disaggregate government actions in areas of devolved competencies from wider actions. Despite not being currently effective due to a lack of detail and legal framework we do believe that it is essential to be able to assess what the contribution of Welsh Government policies and actions are, not only the emissions Wales produces overall.
35. Consumption emissions. Given the Well-being of Future Generations Act goal for Wales to make a positive contribution to global well-being. There are various ways to achieve this, from including it directly in carbon budgets, including them in the National Indicators through carbon footprinting rather than this Bill, or



Scotland's Climate Change Act has a requirement to report on emissions attributable to Scottish consumption of goods and services<sup>5</sup>. We are happy to discuss these options further.

36. Aviation and shipping. Wales' share of emissions from international aviation and shipping should be included. Our preference is for this to be on the face of the Bill from the start. Failing this there should be a clear commitment from Ministers and a timetable in the Bill for Ministers to enact this following advice from the advisory body. The SoPI does not commit to this and refers to there not being international agreement on how to allocate these emissions. We recognise that flexibility may be necessary in order to respond to any international development but urge the committee to look at the regulation on this matter introduced by the Scottish Government in 2010 as an example of how this could be carried out now<sup>6</sup>.
37. Actual emissions from the EUETS traded sectors should be included rather than the allocation of emissions whatever Wales' emissions in those sectors actually are. This has been proposed by the UK CCC to the UK Government with regard to their 5th Carbon Budget and we support this view.

- **Failing targets or budgets**

38. The Bill specifies that if a carbon budget is not met that a report must be laid setting out proposals and policies to compensate (Section 42). For any target it is up to Ministers to make a statement explaining why the target has or has not been met (Section 43 (6)). It is not clear what action should be taken if a target has not been met and this should be clarified.
39. The compensatory action for carbon budgets is to be welcomed. A similar system could be added for missing targets.
40. However the emphasis should be on planning to achieve targets and budgets and a system of checks and balances to avoid failing on either measure in the first place. Regular reporting and scrutiny is essential to this, as outlined in paragraphs 29 & 30 on the importance of having annual reporting.
41. The requirement for a report on proposals and policies (Section 39(1)) is an essential component of this process and one that is currently missing from climate change strategies. The Scottish experience in developing and using such a report (the RPP) is interesting and worth considering.
42. We are pleased that the responsibility of "each" Minister is to be set out in this report (Section 39(2)) and emphasise that sectoral plans are important to ensure that one particular sector or department of government doesn't lag behind or fail to make its contribution.
43. The statements and reporting process (Sections 39, 41, 42 and 43) seems to be an odd order in the Bill and a timeline of how it would work in reality and fit with Assembly terms and other reporting requirements would be useful.

- **Role of advisory body**

44. We welcome the sections on the advisory body and its role. It is crucial that this advisory body is fully independent of government and has the resources and expertise necessary in order to provide the information and advice required and scrutinise the Welsh Government's progress.

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<sup>5</sup> Section 37 <http://www.legislation.gov.uk/asp/2009/12/section/37>

<sup>6</sup> Scottish Government, The Climate Change (International Aviation and Shipping) (Scotland) Order 2010 [http://www.legislation.gov.uk/ssi/2010/pdfs/ssi\\_20100218\\_en.pdf](http://www.legislation.gov.uk/ssi/2010/pdfs/ssi_20100218_en.pdf)

45. We believe that currently the UK Climate Change Committee is the body that holds this expertise and could deliver this role. However we also support the ability to designate another body to carry out this role if for example a specific Welsh climate change centre of excellence is established in future.
46. We seek clarification that the wording “person” in Section 44 is legal terminology for such a body and does not mean that an individual would be designated. The SoPI seems to suggest that an individual could be appointed<sup>7</sup>, and we do not believe that this would be suitable or fit the requirements for resources and range of expertise necessary to carry out the tasks.

### **The relationship between this Bill and the Well-being of Future Generations Act 2015**

47. There is clearly a link between Part 2 of this Bill and the Well-being of Future Generations Act (WBFG Act), with the climate change framework part of implementing the requirements for milestone under Section 10(3) of the Act.
48. Goal 7 of a globally responsible Wales is not fully reflected in this Bill, and in order to align there should be reference in this Bill to consumption emissions and to carbon budgets and targets being fair and equitable.
49. The timings of the processes under both these pieces of legislation need to be set out. On the face of this Bill it seems that there is no scrutiny, answerability or reporting on progress made except for in the report on the carbon budgets which will happen every 5 years and with a lag of 18 months to 2 years after the budgetary period (due to a lag in the emissions data being available). This would mean that a government was only answerable for the actions of the last government.
50. However taken with the WBFG Act there would be annual reporting on a well-being report, which would include progress on climate change but not a full assessment. It is not currently clear what the relationship is between the reporting processes under both bills.
51. Section 46 (b) of this Bill sets a duty on the advisory body to provide advice and assistance to Welsh Ministers on matters relating to climate change, and Section 19(1)(a) of the WBFG Act states that the Future Generations Commissioner may provide advice on climate change. There may need to be a Memorandum of Understanding or other similar document between these two bodies in order to ensure that there is no conflict and that their roles dovetail one another.

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<sup>7</sup> SoPI page 15



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

June 2015

As members of WEL and SCCC, we have contributed to, and support the submissions they have made. The information provided in this response, is additional detail to the major matters raised by WEL and SCCC.

### SUMMARY of key points

- We agree with WG intention to legislate to embed an ecosystem approach at the heart of sustainable management of natural resources and to legislate on climate action in Wales. These are necessary steps to deliver the wellbeing of current and future generations in Wales, as expressed in the WFG Act 2015.
- Unfortunately, the history of failure to adequately protect Wales' biodiversity renders legislation necessary to drive a change so that these fundamental building blocks, which ultimately provide our ecosystem services, are afforded the priority necessary to ensure environmental sustainability in the long term.
- We agree that it is sensible and important to amend the purpose, powers and functions of NRW to ensure effective delivery of the WFGA and an ecosystem approach.
- In terms of coherence with WFGA, we do not feel there is anything contradictory in the Bill but the Bill could improve clarity in regard to the hierarchy of obligations between the Acts and further clarify the definition of public authorities.
- There are several instances where duties are more weakly worded than in WFGA, due to the inclusion of qualifying words and phrases. These should be removed.

- We welcome Welsh Government’s inclusion of the climate section within the Environment Bill. In general it has the potential to be deliver an effective governance framework.
- We however have concerns around some aspects of the proposals including coherence of the measurement structure including the emissions counted, lack of regular reporting and the level of scrutiny.

## **Part 1 : Natural Resources Management**

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

1. WG intention’s to legislate to embed an ecosystem approach at the heart of sustainable management of natural resources is innovative and leading the way on governance frameworks for sustainability globally, recognising in law, humanity’s dependence on and responsibility for an environmentally sustainable future.
2. The WFG Act reference group specifically looked at what was required to ‘live within environmental limits’. We agreed that decisions in regard to the environment needed to better recognise and manage the risks associated with breaching or approaching breaching such limits. Biodiversity is a fundamental building block of ecosystems and their services but the seriousness of its decline has not been addressed and given sufficient weight by public bodies. Therefore strengthening the duty through this legislation is a good idea.
3. We would make a general point that, as with the initially published WFGA, most of the duties seem unnecessarily weakened by qualifying phrases, which only serve to obfuscate what is required. There are various versions of this, which could easily be amended by addition or removal of small clauses within the existing Bill. For example,
  - a. Duties in Sections 7.3, 9.4 and 10.4 all use a phrase “take such steps **as appear to** them to be reasonably practicable to maintain and enhance....”. This wording seems unnecessarily circuitous when compared to similar qualifications in the duties under WFGA where the only requirement is ‘to take all reasonable steps’. The phrase ‘**appear to them to be**’ could be replaced by ‘**are**’.
  - b. The duty in Sec 6.1 to 'promote resilience of ecosystems' could be strengthened by changing section 6.2 from “In complying with subsection (1), a public authority must **take account of** the resilience of ecosystems," to '**have due regard** to the resilience....’.

- c. Finally, 9 (1) on publishing an NNR Policy states “their general and specific policies **for contributing to achieving**” SMNR. Given this refers to a policy setting, “contributing to” could be removed, since a policy is by its nature a statement of intent about how to reach an outcome, and can easily be qualified.

**Your views on the relationship between this Bill and the Well-being of Future Generations Act 2015 and the Planning (Wales) Bill? Are the links and connections between them clear?**

There are several areas where clarity could be improved.

4. Section 6, Biodiversity and resilience of ecosystems duty, applies to additional public authorities compared to the WFGA public bodies. We welcome this. It is important that all public bodies will be contributing to an environmentally sustainable future for Wales.
5. However, this means there are authorities here who are not subject to the WFG duty but who they are is not totally clear because the definition of a public authority includes at section 6 (6) (e) ‘ a public body’ and then gives some examples. The examples do not include bodies such as the Arts council of Wales, nor NRW which are public bodies under WFGA. However, they may be captured by section 6 (6) (f) (ii).
6. Therefore there is a likelihood of confusion in understanding and application of the duties in WFGA alongside the various duties within this Bill. We recommend some clarification be provided on this. We also think there should be a clear explanation of why NRW is *not* subject to this duty, as this seems counter-intuitive to the intention of this section.
7. Section 6 focuses on enhancing biodiversity to promote the resilience of ecosystems. In so doing, bodies need only ‘take into account’ *one* of the principles in section 4. It also seems that none of the public authorities in section 6 have a clear duty to ensure the sustainable management of natural resources (SNRM) ( section 2). Given that these bodies are expected to contribute to achieving Goal 1 of the WFGA in regard to ‘efficient and proportionate’ use of resources, this is a puzzling omission. Paragraph 42 of the explanatory memorandum states that the intended effect of section 2 includes ‘aiming to improve resource efficiency’ and para 45 talks of sustainable use of secondary resources. Therefore, clarity on why section is not an obligation on other public bodies would be useful.
8. For public bodies covered by WFGA and EB, there is no contradiction in setting objectives to contribute towards the goal and the duty here in regard to

biodiversity and ecosystem resilience. In fact, these duties should strengthen the weight given to environmental considerations in decision making. Statutory guidance can clarify still further that in setting and meeting WFGA objectives, they must maintain and enhance biodiversity and promote the resilience of ecosystems. Or put another way, they should not set objectives which are injurious to the resilience of ecosystems.

9. It would also be useful to provide specific reference in the EB in regard to the WFGA duty to set and meet objectives. This could help avoid confusion about the hierarchy of obligations in the following contexts:
  - (a) between the SD Duty (including the duty to set and meet objectives) and the General Biodiversity Duty (sec 6);
  - (b) between the SD Duty (including the duty to set and meet objectives) and the Specific WM Biodiversity Duty (sec 7);
  - (c) between the SD Duty (including the duty to set and meet objectives) and the new General Purpose Duty of NRW (sec 5.2).

## **Part 2: Climate Change**

WWF Cymru strongly supports having a legislative framework to tackle climate change. We have recommended Wales strengthen its governance framework for emission reduction including via a statutory emission reduction targets and a comprehensive action plan on how that will be achieved. We therefore welcome Welsh Government's inclusion of the climate section within the Environment Bill. In general it has the potential to be an effective governance framework in particular placing the accountability to meet GHG targets on the Welsh Ministers (clause 28) and the requirement for a cross Ministerial plan for how to meet them (Clause 39).

We however have concerns around some aspects of the proposals including:

- Coherence of the measurement structure including the emissions counted
- Lack of regular reporting and the level of scrutiny

### **Do you agree with proposals for the 2050 target?**

1. We welcome the provision for a statutory climate change target. We believe that a binding long term 2050 target gives commitment to deliver and provides a certainty which is necessary to inspire investor confidence and drive decarbonisation. In terms of the amount of emission reduction by that date, we consider the key criteria for establishing this are:
  - keeping global temperatures below 2 degrees (This objective is consistent with global environmental limits and global well being in Goals 1 and 7 of the Wellbeing of Future Generations Act)

- the UNFCCC’s core principle of “differentiated responsibility” (which requires countries emitting a proportionate share of GHG).
2. We would like to see evidence from Welsh Government on their proposed target of 80% to assess against these principles and understand why Welsh Government consider this target right for the Wales.
  3. Discussions across EU states on the 2025 decarbonisation target have produced a range of proposals of between 80-95% reduction against the 1990 base level. The Tyndall Centre has recently produced a report for the CCCW on 2 degree budgets for Wales. Have these considerations been integrated into Welsh Government's target setting?

### **Views on whether the interim target should be on the face of the Bill**

4. We would require a target on the face of the Bill for the current Welsh Government target of 40% reduction by 2020. Welsh Government has made much out of their ambitious 2020 commitments. We believe these should now be enshrined in law. It is important to ensure the momentum for ambitious reductions by 2020 is maintained and we ensure this ambition is not reduced through the process of budget setting. The Bill’s proposal not to start the budgets until 2018 leaves too long a stretch of time for uncertainty of Welsh Government’s plans for emission reduction and the 2020 target would offer certainty and momentum in the interim period.
5. The Statement of Policy Intent (SoPI) which suggests that only one interim target will be set by Welsh Ministers also uses terms which might be of concern, in order to make cuts at the “most economically effective rate”<sup>1</sup> and “some technologies or change in plant need a long lead in time and some behaviours take time to change”. This suggests that progress for some areas, for example heavy industry or power generation will be excluded and allowed slower than needed emission reduction. We recommend that the Committee explore this inclusion with the Minister for clarity of its purpose.

### **Do you believe that the inclusion of carbon budgets is more effective approach than the 3% annual emissions reduction target that is currently in place.**

6. We believe that a budget measurement system is an effective approach when accompanied by appropriate reporting and scrutiny opportunities on an annual basis and also has appropriate principles required for the setting of the budgets.

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<sup>1</sup> SoPI page 8-9

7. This is demonstrated through the provisions in the UK Climate Act which alongside the budget planning and reporting required on a 5 yearly cycle has a requirement for an annual statement of UK emissions (Section 10). This links in with a report from the CCC which is produced in advance of the Government's report to which the government needs to respond. The UK Act (section 12) includes indicative annual ranges of targets based on the budgets and these can be used as a proxy for whether the emission reduction is heading in the right direction.
8. The Scottish Act has annual targets but the other main difference is the level of reporting detail and scrutiny required alongside this. The Scottish Act requires Scottish Ministers to provide the Scottish Parliament with a report on annual targets, by the second autumn after the target year, which must state whether the annual target for the year has been met, and if not it must explain why not. Section 34 of the Act includes a list of additional information the report must also contain, including carbon units purchased, electricity generation and more.
9. The current Environment Bill proposals do not provide for any annual reporting from the Welsh Government or scrutiny by Advisory Committee or NAW which WWF Cymru believes is a critical gap in the Bill provisions. We would recommend a form of annual reporting and scrutiny – at least as strong as Scotland's- is included within the Bill. WWF Cymru has a few ideas which we can explore with the Committee in more detail. What is important when considering what form the reporting should take is the level of detail on emissions or impact of policies that stakeholders consider necessary to assess Welsh Government progress.
10. Whether Welsh Government considers the WFG Act's reporting requirements to provide this annual reporting is unclear and we would suggest this is something the Committee explores with the Minister. It is certainly not something that is specified within the Bill.
11. The UK Act sets parameters for its budget setting which is something that should be included in the Environment Bill. WWF Cymru will be considering this further and we recommend that the Committee explore this with the CCC. For example, there is no legal requirement in the UK Act for the CCC or the Secretary of State to set a '*cost effective*' budget, we suggest Welsh Government might include this as a parameter when setting their budgets in Clause 32 (3). This will not only ensure that emission reductions are along the right trajectory but are in line with the requirements of the WFGA. It provides a requirement for budgets to be set at a level which seeks to achieve the 2050 target in a cost effective manner and would ensure that the cost is not delayed and is not disproportionately loaded on future generations.



12. We would like the Committee to explore with the Minister what is meant by “most economically effective rate” in the SoPI and whether it covers the above interpretation or means something else which would be of concern (as explained in Paragraph 10). There are details in Clauses 39, 41, 42 and 43 on statements and reports for the 5 year budgets which are worth flagging up. The reporting and statement cycle appears to be an odd order of events. This means that at the start of next budgetary period, the first event will be the clause 39 report on how to meet the carbon budget for the new budgetary period with proposals and policies covering the areas of responsibilities of each Welsh Minister, then followed by the clause 41 final statement concerning the previous budgetary period to which it relates, and then finally a clause 42 report on policies and proposals to compensate for any excess emissions in the previous budgetary period. It would be a more logical order, with Clause 39 report following – and taking account of – the clause 41 and 42 reports, particularly with respect to any shortcomings they may identify as to progress with reducing Welsh emissions over the previous period.
13. Clause 39 uses the words ‘proposals and policies’. To add a sense of urgency in the process and to avoid Welsh Ministers being content to leave matters at the proposals stage without the Act requiring them to follow through with actual delivery. We would suggest adding the word ‘actions’.
14. As part of Stop Climate Chaos Cymru and CCCW, WWF Cymru has long called for carbon assessment of the annual fiscal budget and major strategies and infrastructure. This is a requirement within the Scottish Act and has led to demonstrable reprioritisation of spending. We therefore recommend that this is a requirement within Section 2 of the Environment Bill. Wales could improve on the Scottish system by requiring a life cycle assessment or at least carbon footprint assessment which would capture not just direct carbon impacts but also the indirect ones. This would be more in keeping with the integrated long term approach embedded through the Wellbeing of Future Generations Act.

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

15. This is a complex and technical area of climate legislation. WWF believes that all emissions from Wales should be included as is the case with the current cross party commitment to 40% reduction by 2020. That target can only be achieved by work from both UK and Welsh Government and also by the effectiveness of EC regulation.
16. Basing targets on all Welsh territorial emissions makes it easier to show progress towards UN-inspired targets of 40% reduction by 2020 and 80% reduction by 2050.

17. Obviously currently, many key drivers of Welsh emissions are not within power of WG, such as energy, however, this is legislation for the long term and devolved powers will change over time, with proposals already in train for this. Elsewhere in the Bill, Welsh Government has shown much foresight in future proofing the legislation and such an approach would be important here. Targets based on territorial emissions don't need to be reassessed when more things come within devolved competency.
18. Until then however the all Wales emissions tend to both obscure and hide delivery by Welsh Government itself. Energy production is not in the control of Welsh Government but makes up much of Welsh emissions movements. The all Wales figures therefore do not provide sufficient analysis of Welsh Government policy impact. Whilst the analysis of emission within devolved competence offers more insight into the impact of Welsh Government policies, the way it has been presented in the Welsh Government annual report did not offer the detail that would enable sufficient assessment of Welsh Government activity or delivery.
19. Possible alternative mechanisms could be provided in the annual reporting alongside the all Wales emissions which could draw on examples for the Scottish and UK annual reporting. We can provide further details on this to the Committee. We would welcome the Committee exploring with the Minister how they anticipate providing assessment of its programmes' impact within all Wales emissions.
20. WWF Cymru would certainly also expect to see separate assessment of carbon embedded in the products we export and also import – our carbon footprint or consumption. The Well-being of Future Generations Act Goals 1 and 7 requires Wales to make a positive contribution to global well-being and use resources proportionately so to not include this would seem at odds with existing commitments.
21. We recommend the Welsh Government formally include international aviation and shipping emissions (IAS) in its climate targets from the outset. This could initially be achieved using similar formulae to those adopted by the Scottish government<sup>2</sup>. Inclusion will underline the importance of fully accounting for IAS, enabling policymakers to make informed decisions about these sectors without imposing any restrictions on Welsh aviation that are not in practice imposed in England and Scotland. The Welsh Environment Bill could become the first piece of climate legislation in the UK to have complete credibility on international transport emissions from the outset<sup>3</sup>.

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<sup>2</sup> [http://www.legislation.gov.uk/ssi/2010/218/pdfs/ssi\\_20100218\\_en.pdf](http://www.legislation.gov.uk/ssi/2010/218/pdfs/ssi_20100218_en.pdf)

<sup>3</sup> This issue is discussed in more detail in the joint submission from the Aviation

22. Section 16(2)(c) of the Scottish Act makes this a one-way power – once shipping and aviation are brought in, then they cannot later be removed from the calculations. The Environment Bill does not do this, for reasons unknown, therefore we recommend that there are amends to that effect in line with the Scottish Act.

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

23. We are pleased to see responsibility to “each” Minister (section 39(2)) as this helps mainstream climate action across government.

24. Clause 42 requires a report on policies and proposals to compensate for an excess of emissions over the net Welsh emissions account, if the budget has been exceeded, to be published “as soon as reasonably practicable” after laying the final statement in clause 41. The compensatory action for carbon budgets is to be welcomed. However the timing of this is odd as explained above as is the apparent reporting of the Advisory Body to Welsh Government. We would seek clarity in this section from the Minister.

25. We consider that a more regular reporting and scrutiny system (as outlined above) would help reduce the possibility of missing the carbon budgets. Five years is too long to wait to make compensatory actions.

26. It is worth noting Section 28- the general purpose of the Welsh Bill - carries with it a requirement that Welsh Ministers meet ‘targets’ for reducing emissions of greenhouse gases from Wales, which is not so overtly stated in Scottish or the UK Acts. While it is hard to envisage any separate enforcement of clause 28 alone by way of judicial review, it would be helpful in such a case to have clause 28 on the face of the Bill, should any future legal proceedings challenge, for example, some detailed decision leading to the predicted or actual failure to meet emissions reductions in Wales.

**What should the role of an advisory body on climate change be?**

27. The Advisory body needs to have in-depth expertise therefore we support the involvement of the UK Committee on Climate Change as the Advisory Body. We also accept the power to appoint a Welsh advisory body in place of the UK body, if such a body can be similarly resourced and staffed with expertise in the future.

**The relationship between this Bill and the Well-being of Future Generations Act 2015**

28. This has been covered through questions above.

*I gael mwy o wybodaeth, cysylltwch â / For more information, please contact:*  
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