

National Assembly for Wales

Environment and Sustainability Committee

WFG 69

Well-being of Future Generations (Wales) Bill

Response from Welsh Local Government Association



Well Being of Future Generations (Wales) Bill

September 2014



WLGA • CLILC

INTRODUCTION

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales. The three national park authorities and 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. WLGA welcomes the opportunity to submit comments to the Environment and Sustainability Committee's inquiry into the general principles of the Well Being of Future Generations (Wales) Bill.

On a general note, WLGA is supportive of the overall aim of the Bill of ensuring public bodies make sustainable development their central organising principle. With some financial support from the Welsh Government, the Association has been running a Sustainable Development Framework for a number of years to support local authorities in developing their understanding of sustainable development (SD). We have piloted work with the City and County of Swansea to help them in their efforts to mainstream SD. In the current year we are working with eleven 'early adopter' local authorities and the three National Parks to work through the implications of the Bill and ensure that necessary preparatory work is being undertaken. The learning from Swansea and the 'early adopters' has been, and will continue to be, shared with the other local authorities (for further detail see [Sustainable Development Framework : Environment and Regeneration : TOPICS : Welsh Local Government Association](#)).

COMMENTS ON SPECIFIC TERMS OF REFERENCE

(i) How the Welsh Government should legislate to put sustainability and SD at the heart of government and the wider public sector

4. Sustainable development is an all-embracing concept which relates fundamentally to the way we think about and do things we are already planning or doing. As subject matter for legislation this is quite unusual and challenging. Most legislation involves the introduction of a discrete set of actions or prohibitions.
5. SD requires public bodies to think differently, weighing up social, economic and environmental factors before coming to a (political) decision. Invariably there is not a clear 'right' or 'wrong' answer. Instead, following an assessment of all available evidence (including likely future trends) a decision has to be taken which is felt to be in the best interests of not only today's but also future generations. This makes it a very difficult subject to legislate upon. However, the introduction of legislation will

force public bodies to take the matter seriously and the approach taken in the Bill does have the potential to change practice. There are some caveats to this general support which are included in paragraphs 9 and 10 below.

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

(a) The 'common aim' and 'sustainable development principle' established in the Bill and the 'public bodies' specified

6. There is a need for a clear definition of SD in the Bill. The 'common aim' and the 'SD principle' together provide a definition. It is questionable, however, whether the introduction of the additional terminology about common aims and principles is necessary or even (un)helpful in this respect. The public bodies listed, coupled with the ability to involve 'other persons' who exercise functions of public nature, appears a sensible approach given current arrangements under the devolution settlement.

(b) The approach to improving well-being , including setting of well-being goals, establishment of objectives by public bodies and the duties imposed on public bodies.

7. By providing an overarching framework of goals and objectives for Wales the Bill provides useful context and a much needed single point of reference and source of co-ordination for *all* areas of activity. This should help to break down 'silo' approaches both within and between organisations as links and interactions (positive and negative) between different activities start to be thought through and addressed 'upstream', at the planning stages.
8. While generally the WLGA support the Welsh Government's approach to improving well-being in Wales, there are some caveats to this though. First, it is important that the legislative requirements around goals and objectives do not degenerate into a bureaucratic and burdensome exercise – especially at a time of severe financial pressure for all public bodies. SD thinking has the potential to drive out waste and duplication and encourage a focus on prevention and demand management – all of which can help public bodies in the current climate. However, if too much time has to be spent documenting evidence and undertaking audits and assessments these benefits will be undermined. Secondly, the Bill should be amended to secure clarity about the implementation of the goals set up in the Bill. As they stand, the goals are too high level. While the description of the goals in the table is very useful, a further

level of explanation would be needed. It would be very useful if the Welsh Government were to bring down the description one level and if the Bill were amended to ensure the Welsh Government issues guidance on the meaning of the descriptions of the goals, for example on what is meant by 'proportional use of resources' under the description of the first goal.

9. Thirdly and related to this, there needs to be greater clarity over the ability and power of Welsh Ministers to change goals. The Bill provides for Ministers to add, remove or amend the title or description of a goal and, if necessary as a result, to revise their objectives. Clarification is needed as to how often this could take place to ensure that this does not happen too often. Such changes would have significant implications for public bodies in reviewing their objectives and subsequent collaboration with other persons. The procedures (other than consultation) that would need to be followed need to be set out more clearly (e.g. would such a significant change demand use of the super affirmative procedure in the Assembly?). Fourthly, in circumstances where one public body's objectives will impact on another's, there is the question of 'who goes first?' It is not clear how this should be achieved if each public body determine its own objectives and then meet with others to consider the implications and come to a consensus; (there are implications for Scrutiny involvement in the initial objectives, the revised consensus objectives both for the Local Authority and the Public Services Boards) or should they meet before determining their objectives to discuss integration and co-operation? Timescales will be critical here, with the potential for delay (allowing for arrangement of meetings etc.) The Bill should be amended to clarify each of these elements. Finally, the requirements in the Bill must facilitate open discussion between organisations – including with the Welsh Government if there are instances where the various demands the Welsh Government places on public bodies are felt collectively by the organisations to work against or prevent an SD approach in the exercise of their functions or are considered to not be based upon Sustainable Development principles

(c) The approach to measuring progress towards achieving well-being goals and reporting on progress.

10. There has to be a balance between measuring progress towards delivery of goals (outcome –focused) and measuring the extent to which SD principles have been embedded in the governance of public bodies (inevitably process-focused). The achievement of goals will take time to evidence – e.g. becoming a healthier nation will

not happen overnight. Annual reports therefore may reveal little progress in terms of outcomes for some time. Moreover, any changes in Welsh Government goals/objectives will impact on reporting and the ability of public bodies to demonstrate progress.

11. It will therefore be important to have some measurement/reporting of improvements in governance arrangements which are flexible and proportionate. The Bill drives a change of culture which cannot be measured with traditional auditing systems. The Bill currently only requires the production of annual reports to enable some sort of measurement of progress. This is an appropriate system as long as it is not only a quantification exercise and that demonstration of change in practice, culture and behaviour is made. The Bill could make provision for guidance to be produced in collaboration with the public service to detail this a bit further.

(d) The establishment of a Future Generations Commissioner for Wales, the Commissioner's role, powers, responsibility, governance and accountability

12. WLGA has previously indicated its support for the establishment of an independent Commissioner role. It is important that the Commissioner post has a basis in law and cannot easily be amended or deleted following a change of Government/policy.
13. The powers and responsibilities outlined in the Bill appear to be largely advisory though. Indeed, where the Commissioner makes a recommendation to a public body Section 20(1) suggests that it can be ignored (if it thinks there is good reason not to follow the recommendation or decides on an alternative course of action). Section 20 might need tightening up to clarify for example what is meant by 'good reason' allowing the departure from the Commissioner recommendation. This is indeed a very subjective concept which if interpreted very liberally could undermine the status of the recommendations and even the credibility of the Commissioner.
14. Sections 23 and 24 refer to work with other Commissioners but there is no reference to the Wales Commissioner for the Equality and Human Rights Commission. Whilst the Bill provides for the Commissioners to work jointly it is not clear how and if this would happen in practice. The Bill identifies the need for the public bodies to collaborate and have an integrated approach the Advisory Panel members must be required to do likewise. The Bill needs to be amended to this effect. A co-ordinated approach is, however, essential if public bodies are not to have multiple requirements being placed upon them. Furthermore, it would be worthwhile considering whether there would be merit in integrating or aligning certain aspects of the Wales specific equality duties, as

well as other statutory planning and reporting requirements, with the needs assessment and well-being plan.

15. The provisions in Schedule 2 appear broadly adequate to enable the Commissioner to be held to account. However, it must be remembered that there will always be differences in opinion on what is the 'most sustainable course of action' and that local democracy has a role to play in balancing considerations. It is not clear if the Commissioner would be seen as the ultimate arbiter on such issues or if, for example, the complaints procedure they have to produce would allow for some form of dispute resolution. The Bill should be amended to address this issue and the scenario when the Commissioner is party to the dispute.

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

16. The WLGA and local authorities have previously questioned the need to make Local Service Boards (now Public Services Boards (PSB)) statutory. The WLGA also emphasised that the strength of LSBs is the cooperation and collective commitment between partners and that the Board itself is merely a means to an end. Therefore, making a Board statutory risks legislative prescription with accompanying bureaucratic duties of reporting and regulation and risks shifting the focus away from relationships, flexibility and creativity to process and compliance.
17. Unfortunately, these concerns appear to have been realised in the Bill as currently drafted. Much of the prescriptive detail is inappropriate for inclusion on the face Bill (such as specific assessments required) and could be more effectively incorporated into supporting guidance, not least because it is likely to be superseded by future legislative impacts and would provide flexibility to consider reports and assessments relating to the economy and the environment.
18. The role of the Welsh Government and relationship with local PSBs is likely to confuse accountability. In the current LSB model, the Welsh Government (represented by senior officials) plays a clear and constructive role in a locally-led process. Whilst the Bill sets out continued Welsh Government membership of the PSB, the Bill allows Welsh Government to prescribe the role and processes of the PSBs and confers powers on Ministers (such as the power to over-turn local plans). There is an obvious tension between Welsh Government membership of the Board and participation in decision-making and these new powers. This changes the dynamic of the Board and potentially undermines what has been a positive and productive relationship between WG officials and other partners.
19. Perhaps even more importantly, these duties and the Ministerial powers which make the PSBs and Well Being Plans less 'local' both in name and status, undermining the

fact that they should be owned by those organisations and communities. It is unclear why Ministers should effectively have powers to veto locally approved plans which have been informed by community engagement and needs analysis. The provisions of the Bill relating to the oversight of the plans by the Welsh Ministers should be removed from the Bill to protect the democratic element of the process

20. While there are references to consultation (following the completion of an assessment of plan), reference to engagement is notably absent from the proposals. This does not reflect LSBs' efforts to establish effective engagement processes at the heart of planning in order to ensure their collective priorities reflect and meet the needs of the communities they serve. This reinforces the impression that these provisions in the Bill are process-focused and reorient the Well Being Plan further towards the delivery of national goals. Provision for engagement should be inserted into the Bill.
21. In recognition of the value of the voice of local communities, there should be a consequential duty on Welsh Ministers to have regard to local intelligence, needs assessments and wellbeing plans to inform its own national evidence and policy development; this has been a missed opportunity during the past 14 years of community strategies and, subsequently, single-integrated plans.
22. The proposals around scrutiny of PSBs should allow for local discretion in terms of how the scrutiny process is managed so that local authorities can use their resources and expertise to best effect and ensure sufficient democratic engagement. Furthermore, the proposed relationship between the scrutiny committee/s, the PSB and Welsh Government clouds accountability. The Bill describes a quasi-regulatory role for the scrutiny committee, with recommendations being reported to Welsh Ministers and the Auditor General for Wales (in addition to the PSB). The Bill also effectively provides Ministers with a power to call-in plans or needs assessments for consideration to local scrutiny. This undermines the essence of scrutiny, which is about local accountability and a clear inter-relationship between the body being scrutinised and the scrutineers. The Bill should be amended so that these powers are only used in exceptional circumstances - such circumstances being defined in guidance subject to affirmative resolution procedure.
23. With regards overview and scrutiny, neither Section 33 of the Bill nor the Explanatory Memorandum refers to Section 61 of the Local Government (Wales) Measure on 'Scrutiny of Designated Persons'. The two pieces of legislation describe similar but overlapping powers, duties and processes for the scrutiny of public service partners. It is therefore not clear whether Section 33 of the Bill repeals Section 61 of the 2011 Measure.
24. Section 46(3)(a) of the Bill should be amended to give freedom of choice to local authorities to voluntarily merge regardless of whether or not they are served by the same LHB. Such amendment would guarantee consistency with the current White Paper out for consultation 'Devolution, Democracy and Delivery White Paper – Reforming Local Government'

(iii) How effectively the Bill addresses Welsh international obligations in relation to sustainable development

25. The WLGA welcome the fact that the Welsh Government has taken into account both the UN and EU perspectives when preparing this Bill

(iv) Any potential barriers to the implementation of these provisions and whether the Bill takes account of them.

26. The Bill is planned to come into force for public bodies from 2016. Because the new system proposed in this Bill will replace and regroup existing processes there should be no major barriers to the implementation of the Bill. Saying that, for local authorities the prospect of imminent reorganisation will be a significant influence on their forward plans. It will be difficult for authorities to invest in long term plans for their areas when their short term futures are uncertain and a merger with neighbouring authorities might result in a change in priorities. The Bill is different to many others in that what it is really seeking is a change in culture which takes time and has capacity implications (such as training). Whilst there is merit in seeking to progress this as soon as possible, staff changes as a result of reorganisation are likely to cause disruption and some loss of expertise.
27. Cuts in local government funding will also reduce their capacity to undertake preventative areas of work that are likely to be identified as priorities arising from their longer term thinking and planning. Further down the line, while local authorities and their partners might have identified a preferred course of action, in line with SD principles, external constraints such as this are likely to pose significant challenges that may prevent them from being able to pursue such preferred course of action in every instance.
28. That said, there is value in maintaining momentum as SD thinking will need to be at the forefront in the planning to establish the new, merged authorities. In addition, the more people who join the new authorities who are already 'thinking SD' the easier it will to embed necessary practices. Any work undertaken in this respect can help to inform plans of the new authorities.
29. A key factor to the success of the implementation of the Bill will be the extent to which the Bill's provisions lead to changes in the way Welsh Government operates itself. If it helps to join up the work of the different departments then a more co-ordinated framework and approach by the Welsh Government will help LAs break down their

own 'silos' of activity, often built up in response to specific Welsh Government policies, funding systems or internal organisation.

(v) Whether there will be any unintended consequences arising from the Bill

30. The Bill should not give legislative grounds for Welsh Ministers or indeed, members of the public, to challenge local decisions that they do not agree with. Careful consideration should be given to ensure that local decisions and plans can only be challenged against whether or not they followed a process in line with the SD principle.

(vi) The financial implication of the Bill

31. The Explanatory Memorandum outlines estimated cost implications of 'Doing Nothing' and 'Introducing Legislation' around Public Services Boards and preparation of Local Wellbeing Plans.

32. The Bill states that the local authority must provide administrative support for the PSB; the Welsh Government currently provides £50,000 per year to each authority for such purposes, yet the Explanatory Memorandum is silent as to whether such funding will continue under the current arrangements. This would be a new statutory burden on authorities and should therefore be fully funded by the Welsh Government.

33. Whilst the Explanatory Memorandum intimates that the Bill is merely legislating for the voluntary status quo around support, preparation of needs assessments, public engagement and scrutiny of public service planning, the legislation introduces new statutory expectations around those activities which will inevitably require additional cost. There will be significant new regulatory burdens and associated costs due to the range of prescribed statutory duties which do not seem to have been reflected in the estimated costs at all.

Year 1

Activity	Total per PSB	LA Contribution	LA % Contribution
Production of Wellbeing Assessment	£26,800	£23,600	88
Production of Wellbeing Plans	£28,400	£21,300	75
Public Engagement	£31,900	£18,900	59
Scrutiny Officer Support	£7,600	£7,600	100
Total 'Start-Up' Costs	£94,500	£71,400	76

Subsequent Years

Activity	Total per PSB	LA Contribution	LA % Contribution
Updating Wellbeing Assessment	£9,200	£7,100	77

Public Engagement	£18,800	£10,700	57
Scrutiny Officer Support	£7,600	£7,600	100
Producing Annual Report	£16,300	£11,800	72
Total Annual Costs	£51,900	£37,200	72

34. The Welsh Government’s estimated costs clearly show that local authorities will carry not only the administrative burden but also the financial burden of the local wellbeing planning process; however Welsh Government have underestimated the costs associated with local authority contributions towards PSB activity; not least as they do not include costs for the administrative support and organisation of (the proposed 6) meetings of the PSB (a statutory duty falling on the local authority) and the regulatory burden of the scrutiny role; the figures underestimate the actual costs on authorities, which will further distort the respective contributions from all partners.
35. It is important to note that in the Explanatory Memorandum members’ costs include only the costs of members’ attendance at meetings (estimated at 2 hours each); it does not include the time or cost of preparation for meetings.
36. The WLGA notes that the Bill does not require PSB partners to make adequate resources available to the PSB process; Welsh Government projected opportunity costs of its representatives attending PSB meetings, do not outline any further or ongoing contributory support to the PSB process. There is a risk to local government efficiency if no extra money is found to compensate these additional functions. Given the significant national capacity and resources available to the Welsh Government, notably within Stats Wales, some initial and ongoing analytical contribution in particular to the production of wellbeing assessments should be expected to support local authorities and PSBs in the creation of their plans. This would reinforce the partnership between the Welsh Government and the local authorities and make more proportionate the respective contributions to such partnership. Given the proposed value and stock being given to the well-being plans, so that they can become meaningful, appropriate funding needs to be made available beyond the amount committed in the Explanatory Memorandum. To achieve this the Welsh Government might need to regroup functions scattered across activities and align such funding on the well-being plans.

(vii) The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation

37. As referred to in 9 above greater clarity is required over the ability of Welsh Ministers to change goals. Chapter 5 of the Explanatory Memorandum [for Section 6(3)] identifies an affirmative procedure for the Minister to amend the well-being goals. We acknowledge the reason for the procedure, however because ‘any change to well-being goals could have a significant impact on the public bodies covered by the Bill.’ we recommend that this should be a **super affirmative** procedure.

38. The power to issue directions to Public Service Boards to merge s.46(2) and/or collaborate s.47(2) should be reconsidered as such decisions should only be left to local determination as the Welsh Ministers might not be in the best position to assess what would be 'beneficial in the local aim of each Board' under section 46.
 39. The proposed powers delegated to Welsh Ministers under s.21(8), s.31(1), s.39(3), s.52(1), s.55(3) and Schedule 2, paragraph 12(2)(a) are acceptable
 40. The level of Assembly control of the delegated powers to make regulations of the Welsh Ministers under section 49(1) needs to be increased to either: Option 1. Super affirmative procedure for the first set followed by an affirmative procedure for subsequent set of indicators and standards or: Option 2. An Affirmative procedure for the first set followed by negative procedure for subsequent set. Standards and indicators need to be monitored and measured, any changes to these could require changes to measurement and monitoring processes, a negative procedure is therefore not acceptable
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