



**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 futher 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