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Arwydd Alun

The Well-Being of Future Generations (Wales) Bill: Consultation on General Principles

Thank you very much for the opportunity to provide evidence to the Committee on the general principles of the Well-Being of Future Generations (Wales) Bill. I enclose a response to your specific questions. I also enclose an annex that provides some further comments on the Bill's clauses and its Explanatory Memorandum.

As the Bill raises some issues in relation to my functions, including the reporting that I provide to PAC, I am copying this response to Darren Millar. And as there are consequential implications for the funding and performance of such work, I am also copying to Jocelyn Davies given the Finance Committee's responsibility for scrutinising my exercise of functions.

I look forward to providing oral evidence on 1 October 2014.

Huw Vaughan Thomas

HUW VAUGHAN THOMAS
Auditor General for Wales

Cc *Mr Darren Millar AM*
 Ms Jocelyn Davies AM

Response of the Auditor General for Wales to the Environment & Sustainability Committee consultation on the general principles of the Well-being of Future Generations (Wales) Bill

Summary

1. I welcome the stated general purpose of the Act, i.e. that it is “to ensure that the governance arrangements of public bodies for improving the well-being of Wales take the needs of future generations into account”. This provides an opportunity to address issues raised in some of my reports, such as, Sustainable development and business decision making in the Welsh Assembly Government (2010), and in the Williams Commission report. I think the provision for a “common aim” (improving the economic, social and environmental well-being in accordance with the sustainable development principle) is appropriate, though I do think that the matters to be taken into account in applying the sustainable development principle should include living within environmental limits. I also think a more clearly principle-based approach, rather than one that is mixed with a goals and objectives approach, as set out in the Bill, would be more streamlined and probably more effective.
2. I am disappointed that the Bill misses the opportunity to address some potential barriers to its implementation. These include omission of reform of the Local Government (Wales) Measure 2009, which provides an improvement planning approach that is at odds with the Bill’s concept of sustainable development as the core principle for public bodies’ operations. Similarly, the lack of a specific review function for the Auditor General within the Bill will lead to an expectation gap in relation to review arrangements, which I believe will prove unhelpful to the achievement of the Bill’s purposes.

How the Welsh Government should legislate to put sustainability and sustainable development at the heart of government and the wider public sector

3. I think it is appropriate that the Welsh Government should seek legislation to put sustainable development at the heart of government and the wider public sector. That said, the principle-based approach set out in the Welsh Government’s White Paper, *A sustainable Wales: better choices for a better future* (2012), rather than the goals and objectives approach, as set out in the Bill, would be both a more streamlined and probably more effective approach. I provide further detail on this point below.

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

- **The “common aim” and “sustainable development principle” established in the Bill and the “public bodies” specified**
4. The combination of the “common aim” (clause 2) and the “sustainable development principle” (clause 3) is, in my view, a well-considered and practical approach to establishing sustainable development as the central organising principle of the public sector in Wales. It resets the frame of reference for public administration in Wales. Given robust and proportionate implementation, this has the potential to have a positive impact on the quality of decision-making and governance in the specified public bodies in Wales.

5. In 2005, the OECD stated that the effective implementation of sustainable development required, among other things, a common understanding of sustainable development. The “common aim” and the “sustainable development principle” should be conducive to establishing such a common understanding.
6. To provide an effective and practical steer to influence decision making behaviour, it is helpful that the Bill sets out a limited number of matters to be taken into account so as to meet the sustainable development principle (clause 8(2)). However, I consider that a key matter that is missing is improving well-being within environmental limits.

- 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. The Bill unhelpfully mixes a management by objectives approach with a principles- based approach. I recognise that setting national goals appears attractive and reflects the United Nations process of establishing Sustainable Development goals. Effective goal setting at a national level is very challenging. It raises the following particular risks:
 - the goals may not be effective drivers for the change that the Bill seeks to bring about, as public bodies may assign their existing activities under these goals, but
 - more specific goals amount to target setting, which can lead to the inefficiencies of micro-management and gaming (playing to the rules, but not actually achieving good outcomes)¹.
8. A key advantage of a principles-based approach is that it can be applied at all levels, and to a range of bodies, in a meaningful and proportionate way. It can be applied proportionately to key decisions, such as, corporate planning, budget setting and procurement. Such proportionate application can help minimise the risk of increased bureaucracy. Indeed, in my view the more clearly principles-based approach of the 2012 White Paper would have enabled public bodies (and their stakeholders) to apply the sustainable development principle to agreeing the outcomes that they seek, and to agreeing the way in which they seek to achieve those outcomes. I fear that, unfortunately, the combination of a prescribed objective-setting approach will engender more mechanistic behaviour, leading to the drawbacks identified above.
9. While the criteria for selecting the goals, as set out in para 71 (page 18) of the Explanatory Memorandum, seem well-considered, it is not clear that the goals as set out in the Bill “collectively result in a sustainable Wales which respects environmental limits”. There is no mention of environmental limits in the goals or their descriptions. A wide range of international research² notes that it is reference to environmental limits that distinguishes sustainable development from “business as usual”.

¹ See, for example, *The nature of planning constraints*, Report to the House of Commons Communities & Local Government Committee, University of Cambridge, March 2014. Also, *Systematic side effects of over-prescribing goal setting*, Working Paper, Ordóñez et al, Harvard Business School, 2009.

² For example, *Governance for sustainable development: the challenge of adapting form to function*, edited by William M. Lafferty, Edward Elgar, Cheltenham UK, 2004

- The approach to measuring progress towards achieving well-being goals and reporting on progress

10. I consider the Bill's provisions for national indicators and an annual well-being report appropriate. Such indicators and reporting are important for increasing the ability of people and government to track progress, even if only in broad terms. It is, however, important to be realistic about these indicators: establishing useful and appropriate indicators is a difficult task, and the Bill's provisions cannot in themselves guarantee their relevance, measurability and accuracy. It is encouraging to see that the Welsh Government has engaged with the Office of National Statistics and drawn upon international good practice to inform its approach.
11. It is also important to bear in mind that the goals, as currently framed, cannot be achieved by the public sector alone. This is unavoidable. (Reframing them in terms of achievement by public sector alone would not be realistic or appropriate, as it would be unlikely to lead to goals that represent broad improvement of economic, social and environmental well-being.) Related to this, it is likely to be very difficult to disaggregate the public sector contribution from that of other sectors. Indicators can therefore generally only be used to track the progress of Wales, or, in some cases, parts of Wales. For the most part, it will not be possible to rely on indicators to assess the performance of particular public bodies in achieving goals.
12. I should at this point note that it is not necessary to have goals in order to have useful indicators. Indicators can be used to track progress towards desired outcomes without such outcomes being set as specific goals (or targets). As mentioned above, setting specific goals risks perverse behaviour, such as gaming, because of the particular emphasis on particular changes and the expectation that organisations are seen to contribute to those changes. Indicators can allow broad progress to be tracked with less risk of such perverse behaviour.

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

13. I supported the approach for establishing a Future Generations Commissioner as set out in the 2012 White Paper. The approach proposed a role which combined a convening role across civil society, with communicating and building an understanding of what the application of the sustainable development principle means in practice, commissioning and drawing upon research and good practice from within and beyond Wales, providing support and advice, and providing a "state of the nation report". A Future Generations Commissioner undertaking this role would have provided valuable expertise on sustainable development for public bodies to draw upon. As set out in the 2012 White Paper, the roles of the Future Generations Commissioner and the Auditor General were complementary in strengthening accountability for implementing the duty.
14. As proposed in the Bill, the Future Generations Commissioner will have a role in monitoring and assessing the achievement of well-being objectives by the public bodies. This raises two problems: limited capacity and a conflict in roles. In terms of capacity, if the Commissioner has to devote resources to monitoring and assessing achievement, the Commissioner will have fewer resources to devote to promoting knowledge. The conflict of roles issue is that combining monitoring with promoting knowledge is likely to make public bodies less open to seeking advice and discussing problems with the Commissioner. Such a problem is evident from our own experience of developing materials for our Good Practice Exchange. Audited bodies are often

reluctant to discuss their experiences for fear of providing material that might be subject to public criticism. I am therefore concerned that the Commissioner's ability to undertake an effective convening role, and so be the hub for expert knowledge in sustainable development, will be compromised by the procedural pressures of monitoring and assessing.

15. However the role of the Commissioner is defined, it would be better if the Commissioner were appointed by the National Assembly, rather than the Welsh Government. Appointment by the National Assembly would give the Commissioner greater independence, and it would better convey the importance of the role.

- **The establishment of statutory Public Services Boards, assessments of local Well-being and development/implementation of local well-being plans**

16. I welcome the Bill's provision that the "local aim" of public service boards is to "improve the economic, social and environmental well-being" of their areas in accordance with the sustainable development principle and that public service boards are to contribute to the pursuit of the "common aim" (clause 34). The provisions concerning Public Service Boards are, however, very detailed, prescriptive and focused on process. Furthermore, they seem to indicate a heavy emphasis on the social aspect of the local and common aims at the expense of the economic and environmental aspects. Clause 36(3) exemplifies this. In listing seven specific social assessments that must be taken in to account in preparing assessments of local well-being, the clause seems to be at odds with the balance of the "common aim"—there is no provision requiring account to be taken of assessments that are directly relevant to economic and environmental well-being. A more balanced and enabling approach would be to require the board to take account of a range of economic, social and environmental assessments, in a balanced and integrated manner.

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

17. As I understand the situation, strictly speaking, Wales does not itself have international treaty or protocol obligations in relation to sustainable development. Such obligations fall to the UK Government, and accordingly the Welsh Government and other public bodies in the UK are required to comply with the Climate Change Act 2008, which is the UK Government's principal means of meeting commitments agreed at the 1992 UN Conference on Environment and Development. Despite this, practically and more broadly, Wales clearly has its part to play in meeting generally accepted international obligations.
18. The Bill goes some way towards an appropriate contribution. This is evident from the Bill's definition of sustainable development being essentially the same as that produced by the World Commission on Sustainable Development. However, the absence of emphasis in the Bill on living within environmental limits undermines this contribution. This is because the consequences of not living with environmental limits have strong international implications.

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

19. As I noted in my response to the 2012 White Paper, the Local Government Measure (Wales) 2009 places sustainability as one of seven "aspects of improvement", and it places extensive

improvement planning and reporting duties on local authorities in terms of those seven principles. In effect, the 2009 Measure makes sustainable development one of seven competing priorities, which is incompatible with the Bill establishing sustainable development as the core principle for public bodies' operations (see para 408 of the Explanatory Memorandum). This conflict between the two pieces of legislation is likely to lead to confusion in local government, and so the 2009 Measure will act as a barrier to implementation of the Bill.

20. The 2009 Measure also places duties on the AGW to audit and assess authorities' compliance with improvement planning and reporting duties. In my response to the 2012 White Paper, I suggested that it would be appropriate to reform the 2009 Measure so that it was made more compatible with sustainable development as the central organising principle. Among other things, reducing the extensive assessment requirements placed on the Auditor General by the 2009 Measure and replacing them with a duty to undertake sustainable development examinations (such a duty was proposed in the White Paper) would mean that the Auditor General could appropriately focus on collaboration between authorities, rather than being tied to assessment of individual authorities.
21. As noted above, the 2012 White Paper proposed "to place a duty on the AGW, to include an examination of how organisations have embedded sustainable development as their central organising principle in relation to the duty". The Bill does not, however, place such a duty on the Auditor General, despite provision for such a duty being within the Assembly's legislative competence. Para 390 of the Explanatory Memorandum inaccurately (in effect) says that sections 17 and 61 of the Public Audit (Wales) Act 2004 mean that the "AGW is under a duty to consider the effectiveness and efficiency of the use of resources for the majority of bodies covered by the Bill in undertaking the FG Bill duties (amongst other functions) – namely the setting of well-being objectives and taking all reasonable steps to achieve the objectives in a manner consistent with the sustainable development principle – on an annual basis as an integral part of the audit of accounts."
22. I regret that I must advise the Committee that this is not correct. The duties in sections 17 and 61 of the 2004 Act require the review of arrangements for securing value for money, not the testing of whether resource utilisation has itself proved, or not proved, effective. Furthermore, as section 17 of the 2004 Act only applies to local government bodies, and section 61 of the 2004 Act only applies to NHS bodies, reliance on these sections would leave central government bodies (the Welsh Government and its sponsored bodies) without review. While sections 17 and 61 of the 2004 Act are useful, they do not in themselves provide for the kind of review that the Welsh Government appears to consider they provide.
23. My current study powers, particularly those under section 41 of the Public Audit (Wales) Act 2004 and section 145A of the Government of Wales Act 1998, are capable (but potentially only on an occasional basis) of providing the kind of review that the Welsh Government has in mind. I say potentially only occasionally because such studies are at my discretion. While I might consider reviews of sustainable development progress important, my successor might not, and, in any event, such a review would need to be considered against other study topic areas. Furthermore, in deciding on what studies to undertake, I must also take account of the views of the Public Accounts Committee (or for local government studies, associations of authorities), and it is entirely possible that other studies would find greater support. As the Welsh Government does not have the power to insist that particular studies are undertaken, if it is

indeed the Welsh Government's policy intent that such studies should be undertaken in future, then explicit provision for this should be made in the Bill.

24. The absence of such specific provision for appropriate review means that review and scrutiny arrangements that are needed to help ensure successful implementation are not as strong as they could be. This omission is therefore another barrier to successful implementation.
25. I would also note that the specified public bodies include the majority of those Welsh public bodies who would be expected to play a key role in respect of the Bill. However, the omission of any need for regard to the "common aim" or the sustainable development principle on the part of review bodies, such as Estyn and myself, would seem to be a potential weakness. Providing for the common aim and the sustainable development principle to apply to review bodies would help ensure that review functions give due consideration of whether other bodies are exercising their functions in accordance with the Bill.

Whether there are any unintended consequences arising from the Bill

26. The barriers identified under the previous question may be unintended consequences of the Bill as drafted.

The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum and Regulatory Impact Assessment, which estimates the costs and benefits of implementation of the Bill)

27. I recognise that, as stated in para 326 of the Explanatory Memorandum, it is not possible to quantify the costs and benefits of the activities and changes that result from public bodies' objectives, which are yet to be set. I do, however, consider that it is appropriate that the Explanatory Memorandum attempts to set out an indicative cost for the administrative activities that will result from the Bill, such as the setting of objectives, annual reporting against objectives, consequential additional audit work, the work of the Future Generations Commissioner and the work of Public Services Boards.
28. The cost indications for such administrative arrangements appear, however, to be somewhat underestimated, for the following reasons:
 - a. There appears to be no allowance for work that will be needed to make the change from existing corporate objective setting and reporting processes to objective setting and reporting in compliance with the Bill. (For example, local authority costs for corporate objectives in 2015-16 in table 17 on page 91 (i.e. with the Bill in effect) are the same as those costs in table 14 (i.e. with no Bill).) At the very least, relevant staff of public bodies will need to undertake some additional work in the first two years so as to understand the new objective-setting and reporting requirements of the Bill. Furthermore, given the conflict between the seven aspects of improvement of Local Government (Wales) Measure 2009 and the Bill's sustainable development principle, as noted in para 19 above, the staff of authorities will have to spend some time working through how these differing requirements can be reconciled (if indeed they can be).
 - b. Throughout the Regulatory Impact Assessment, where the Government has sought to calculate costs based on time of staff and their salary (for example, table 3 on page 75), it appears that it has used gross salary costs but has not applied unavoidable oncosts,

such as National Insurance and employer pension contributions. If this is the case, then such cost indicators are understated by about 30 per cent.

- c. The local authority annual salary rates appear in many cases to be understated. For example, the annual director salary for a large local authority in table 3 on page 75 is given as £75,000. The pay policy statement 2014-15 for City & County of Cardiff, however, states that director salary from 1 April 2013 is £120,000, and that for the City & County of Swansea gives a scale of £95,000 to £110,000 from 1 April 2014. (The Memorandum says that table 3 also applies to Rhondda Cynon Taf, for which an equivalent pay policy statement is not available.)
- d. The extent of work required by some of the work processes that are identified seems underestimated. For example, para 464 of the Explanatory Memorandum states that Local Service Boards meet on average six times a year for two hours, but no time is taken into account for preparing for meetings or travel. The two hour average meeting duration also seems somewhat short. While I have not undertaken a review of the length of such meetings, I gather from general experience that they usually take about five or six hours.
- e. As mentioned in the Chair of the Wales Audit Office's submission to the Committee, the cost estimate included for the Auditor General (for work in all sectors, not just local government) in the Explanatory Memorandum is not appropriate and is probably understated.
- f. Also as mentioned in the Chair of the Wales Audit Office's submission (and above), the discrepancy between the Welsh Government's expectation of the kind of review that can be provided within the Auditor General's existing functions and other interpretations of those functions may cause debate about fees and other resourcing. Such debate will itself consume resources.

29. I should make clear that my observations are based only on a reading of the Explanatory Memorandum, rather than an audit of the underlying working papers. (Such an audit would be possible, but would need to be arranged, including in terms of PAC views on such work and, in practical terms, administrative access arrangements with the Welsh Government during the legislative process.)

The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum, which contains a table summarising the powers for Welsh Ministers to make subordinate legislation).

30. Generally, the powers to make subordinate legislation seem appropriate to the content of the Bill. However, given the importance of the Future Generations report (clause 21), it would seem more appropriate for the provision for amending the definition of the reporting period to require affirmative procedure, so that such changes are approved in Plenary.

Annex: Other comments of the Auditor General for Wales on the Well-being of Future Generations (Wales) Bill and its Explanatory Memorandum

The Bill

Clauses 13 and 14, Annual reports by the Welsh Ministers and annual reports by other public bodies

1. There is no provision in the Bill for any external review of annual reports so as to verify their accuracy. Without such review, bodies may publish annual reports that mislead the public and others. Such review appears to fall outside the Future Generations Commissioner's duties, including the duty under clause 17(b) to "monitor and assess the extent to which well-being objectives set by public bodies are being met". Such review also falls outside the Auditor General's current duties. It would be open to the Auditor General to undertake reviews of annual reports under current Auditor General study powers, but, given competing demand for study resources, such work would not necessarily be of sufficient relative priority as to be selected for delivery.

Clause 23, Joint working

2. Clause 23 provides joint working provisions that apply where the Future Generations Commissioner intends to provide advice or assistance relating to a matter that is similar to the subject matter of a review by the Children's Commissioner, the Older People's Commissioner or the Welsh Language Commissioner. It may be appropriate to make similar provision in relation to matters that are subject to review by the Auditor General.

Clauses 33(2)(c), 35(6)(c), 37(8)(c), 43(6)(c) and 44(5)(c)

3. These provisions require a raft of documents concerning public services boards to be sent to the Auditor General:
 - a) Local authority overview and scrutiny committee reports and recommendations with respect to the public services boards;
 - b) Public services boards' assessments of local well-being;
 - c) Public services boards' local well-being plans;
 - d) Public services boards' amended local well-being plans;
 - e) Public services boards' annual progress reports.
4. While this material may be useful contextual information for the Auditor General's studies and other work, as the Auditor General has no functions in respect of public services boards *per se*, it is not clear what specific purposes these requirements to send documents serve,

nor what the Auditor General would be expected to do with them. The absence of provision concerning what functions the Auditor General should undertake in relation to the documents raises the risk of a gap between the expectations of the Welsh Government (and perhaps others) and what the Auditor General provides.

Clauses 37 and 44, publication of well-being plans and annual progress reports

5. Clause 37 requires public services boards to publish their first well-being plans no later than one year after the next ordinary election (and clause 43 allows well-being plans to be amended at any time). Clause 44 requires public services boards to publish annual progress reports no later than one year after the publication of their well-being plans and subsequently no later than one year after the publication of the previous report. Consequently, well-being plans and progress reports for different public services boards will cover different 12 month periods, which will inhibit or prevent fair comparison between public services boards. Well-being plans and progress reports that do not align with financial year reporting risk not being regarded as part of mainstream business reporting.

Para 5(3) of Schedule 2 (Future Generation Commissioner pension provision)

6. Para 5(3)(b) of Sch 2 appears to either provide for the Welsh Ministers to pay pension contributions in respect of former Commissioners (instead of current Commissioners), or provision for the payment of pension contributions in respect of current Commissioners has been omitted.

Para 9 of Schedule 2, Future Generations Commissioner's staff

7. Para 9(5) requires the Commissioner to obtain the approval of the Welsh Ministers for the numbers, terms and conditions, and payment of staff. The Commissioner would be more independent if his resourcing were instead subject directly to National Assembly oversight.

Paras 11 and 16 of Schedule 2, Future Generations Commissioner complaints procedure and annual report

8. It seems somewhat excessive for the Bill to prescribe that the Commissioner must establish complaints procedures (para 11). It seems excessively bureaucratic to require the Commissioner to summarise complaints in his annual report (para 16).

The Explanatory Memorandum

9. **Para 316** – This refers to Auditor General's reports in the public interest with regard to Caerphilly, Carmarthenshire and Pembrokeshire. It should be noted that these reports were from the appointed auditor and not the Auditor General.