

National Assembly for Wales
Environment and Sustainability Committee
WFG 21
Well-being of Future Generations (Wales) Bill
Response from RSPB Cymru's



Evidence submitted by RSPB Cymru to the Inquiry of the Environment and Sustainability Committee into the general principles of the Well-being of Future Generations (Wales) Bill
September 2014

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 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.

1. Introduction

- 1.1 RSPB Cymru welcomes the Well-being of Future Generations (WFG) Bill as an important further step on the road to a more sustainable Wales. However, as it stands the Bill needs strengthening and greater clarity before it can be read with confidence as a legal delivery mechanism for sustainable development (SD). We therefore welcome this opportunity to submit evidence to the Environment and Sustainability Committee stage 1 scrutiny of the legislation. We would welcome the opportunity to elaborate on the issues outlined in this paper in oral evidence sessions.
- 1.2 This legislative approach to moving forward with SD in Wales helps build on *One Wales: One Planet*. It is indisputable that the pace of movement towards sustainable living has been slow; the introduction of a legal requirement for public bodies should help to accelerate the overall pace of change. Whilst business (including commercial, agriculture, fisheries, etc), industry and individuals will not be directly governed by the Bill, it is to be expected that their links to government and public bodies will ensure that the principles of thinking and living sustainably will have a broader reach.
- 1.3 Sustainable development is recognised in *One Wales: One Planet* as the 'central organising principle' for government in Wales, not only for now but indefinitely into the future. The wording and provisions within the WFG Bill must therefore be sufficiently robust to ensure continued delivery of SD despite external changes in the future. We must also ensure we have a robust and considered set of well-being goals which meet the future aspirations we have for our country.
- 1.4 Whilst the aims of the legislation are laudable it must inevitably lead to a change in how Government conducts its business if it is to deliver on its aspirations. For example, it is worth considering how a project such as the M4 might have been approached had this legislation already been in place. In other words what difference might the Bill make to fundamental issues of policy and decision-making? It is with this consideration in mind that we approach the Bill and in our evidence, we propose where changes may need to be made to truly achieve SD for the well-being of the current and future generations of Wales.
- 1.5 We are not clear what the date for full commencement of the provisions are within the legislation and would recommend a commitment is included in the text of the Bill itself.

2. Well-being Goals – A Resilient Wales

2.1 Under the new legislation, public bodies are required to seek to achieve six well-being goals, which, taken together, represent in effect the sustainable development duty. The goals are fundamental to the general principles of the Bill as they set out the general direction towards our vision for a sustainable Wales. It is therefore vital that we ensure the goals reflect a truly sustainable Wales.

2.2 The ‘common aim’ referenced in Part 1 Section 2 of the Bill rightly lists the environment alongside the economy and society, as is fundamental under the SD principle. The health of the environment is central to human well-being (social and economic) – sustainability, therefore, starts with the environment.

2.3 In particular, we are pleased to see the goal relating to the natural environment: “A resilient Wales”. In order for ‘A resilient Wales’ to fully meet the requirement set out in Part 1 Section 3 for the ‘sustainable development principle’, ie meeting the needs of future generations as well as of present generations, we believe a small addition to the present text is required to strengthen it.

2.4 The wording in the current descriptor of the goal requires improvement to clarify that we wish to see a restored and thriving natural environment in the future. We would therefore recommend that this is made explicit in the text that we are seeking “restored and enhanced,” biodiversity and, to this end, we propose the insertion of the wording as follows (additions in bold) : ‘A biodiverse natural environment is **restored and enhanced**, with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change...’. This qualification is consistent with the comparative wording used for ‘A healthier Wales’ and ‘A more equal Wales’ well-being goals.

2.5 The Explanatory Memorandum to the Bill (paragraph 81) acknowledges the findings of the *State of Nature* report. This health check of UK wildlife which was published last year, highlighted the serious extent to which biodiversity in the UK and Wales has declined in recent decades. Of more than 3,000 species assessed across the UK, 60% were found to have declined over the last fifty years, with 31% having declined strongly.

2.6 Species declines in Wales, include:

- Numbers of breeding upland wading birds, such as curlew, lapwing and golden plover, have declined by more than three-quarters in recent decades.
- More than one in seven plants in Wales are considered threatened. Wildflowers, especially arable flowers such as the small-flowered catchfly and corn buttercup, continue to decline and have a smaller range now than at any other time in recent decades.
- 63% of Welsh butterflies are declining. More than three-quarters of Welsh pearl-bordered fritillaries have been lost. While a third of all widespread Welsh moths are severely declining.

2.7 The primary cause for the decline in species is down to habitat decline as a consequence of our unsustainable way of life, the impact of climate change on the location and range of species will also grow as we move forward into the century. **The scale of current and continuing loss of both species and habitats is unsustainable, and only serves to point up the need for a clear and unambiguous commitment in the WFG Bill to restoring and enhancing biodiversity in the context of healthy ecosystems**; this will be an important feature of a sustainable future for our children and grandchildren. In turn, such a provision can form the basis for appropriate measures to be included in the forthcoming Environment Bill, and ensure Welsh Government meets its international commitments to halting the loss of and restoring biodiversity.

2.8 Moreover, the suggested amendment, reaffirms the key point that biodiversity has an intrinsic value for itself that is over and beyond its sometime value as a ‘service’ to the human species.

3 National Indicators

3.1 We note the commitment in the Bill (Part 2 Section 11) to publishing national indicators designed to measure progress towards the delivery by Welsh public bodies of the well-being goals, with the findings of the various measures to feature in annual well-being reports. **It is vital that such indicators include appropriate measures of progress in the recovery of biodiversity, in support of the resilient Wales goal.** In the development of such indicators Government will need to consult with, take advice from and use the expertise in the sector. We would expect appropriate species and habitats indicators to be developed in relation to the resilience goal and the appropriate links made with the forthcoming Environment Bill.

3.2 We would also expect to find indicators that measure carbon emissions from Welsh sources – and from global, non-Welsh sources, where such emissions are the product of consumption in Wales – the Welsh Ecological Footprint, current details of which, though promised, to date remain unreported. The commitment in ‘A prosperous Wales’ to the use of resources will also require appropriate indicators.

4 Powers of Ministers to amend the Well-being goals by regulation

4.1 We note that the Bill – in various sections – includes provision for Ministers to amend this legislation in the future by subordinate legislation. This includes a proposal in Part 2 Section 6 (3), that Ministers can make changes to the well-being goals in the future by regulation. The Explanatory Memorandum clarifies that this would be through the affirmative procedure. However, we consider that **any changes (amendment, addition or removal) to one or more of the six well-being goals should be conditional upon detailed Assembly scrutiny akin to that of primary legislative procedure to ensure democratic accountability.** As noted above, the well-being goals are, in effect, the sustainable development ‘duty’ on public sector bodies and therefore underpin the legislation. Full debate and detailed consideration in the Assembly should therefore be required before any significant changes to goals could be made in the future. Great care is needed, therefore, in relation to the provision for Government to add to, change or remove altogether any of the well-being goals. An appropriate level of scrutiny should precede any decision as this could indicate a significant policy departure for the legislation.

4.2 As in the Explanatory Memorandum, it would be helpful if the Bill clearly stated in each case which procedure the regulatory changes would follow.

5 Objectives and Actions

5.1 Part 2, Sections 7, 8 and 9 set out requirements and procedures concerning the objectives and associated actions that public bodies will be required to follow in order to maximise their contribution towards achievement of the well-being goals. However, it is unclear whether this provision will succeed in capturing every decision and action that public bodies might be required to take over a five year period. These sections provide for public bodies to amend their objectives; however it is not clear whether a public body could then decide to act outside of the provisions in the legislation if the matter in question is not included in its objectives. If this is the case, this would fundamentally undermine the aims of the legislation to achieve a more sustainable Wales. **There is a need for the Bill to include a general statement that all governance decisions and actions of a listed public body should be consistent with the sustainable development principle and with the common aim,** and not just with the published objectives. This proposal is especially important in relation to the policies and decisions of the Welsh Government.

6 Living within environmental limits – the sustainable development principle

- 6.1 We note that the Bill does not include a definition *per se* for sustainable development. *One Wales: One Planet*, however, includes a strong wording that encompasses ‘well-being’, as well as making reference both to respecting environmental limits and to using only our fair share of the earth’s resources
- 6.2 These two objectives sit at the very core of sustainable development: the definition of SD given in *One Wales: One Planet* is that it ‘will be the overarching strategic aim’ of all WG policies and programmes. The two objectives are referenced in the Explanatory Memorandum; we would like to see them also reflected in the legislation itself.
- 6.3 At the heart of the drive to live more sustainably is the recognition that the environment and resources of the planet are finite, and yet economies and societies persist in thinking and acting as if this were not the case. We must find ways of sustaining not just ourselves but also succeeding generations, both of humans and of wildlife, as purposed by this Bill; hence the importance of including in the Bill recognition of the centrality of the finite nature of the planet.
- 6.4 The concept of ‘living within environmental limits’ has attracted debate concerning how it can best be understood and applied at the level of organisational decision-making: in some areas, such as greenhouse gas emissions and biodiversity losses from human activities, it is already demonstrably clear that environmental limits are being exceeded, but in others the existence of boundaries or potential tipping points may not yet be so clear. Hence, the fundamental importance of the precautionary principle in our approach to using and managing the environment and its resources more sustainably than we are currently.
- 6.5 **We recommend, therefore, that both ‘living within environmental limits’ and ‘Wales using only our fair share of the Earth’s resources’ be included in the section 3 description of the ‘sustainable development principle’.** Consideration is also needed to the stronger expression ‘ensuring’ rather than the current wording of the principle, which is ‘seeking to’.
- 6.6 We also recommend that space in the Bill be found for referencing **the importance of the precautionary principle** in the governance of public bodies: a separate section might be the best way to give it expression, say as a new section 4 after current section 3.

7 Other public bodies

- 7.1 We query why the National Assembly for Wales itself and Further and Higher Education institutions are not listed on the proposed list of public bodies in Part 1 Section 5, to which the Bill is intended to apply.

8 The Future Generations Commissioner for Wales

- 8.1 RSPB Cymru welcomes the appointment of a Future Generations Commissioner, but proposes a strengthening of his/her powers and responsibilities beyond those provided for in the Bill. In a number of instances through Part 3, we would suggest the replacement of ‘encourage’ with ‘require’ in the general duty of the Commissioner to promote the sustainable development principle among the public bodies concerned. If legislating for sustainable development and the well-being of future generations is to mean anything then voluntarism must be replaced by obligation and duty. If public bodies believe in particular instances that they cannot comply in their governance with the legislation, they can take this up with the Commissioner. But for the Act to have teeth, **it will be important for the Commissioner to be empowered to overrule a public body, having considered its representations, and require it to act in accordance with the legislation.**
- 8.2 The provision in Part 3 Section 20 of the Bill for a public body (other than an elected body) to choose not to follow the Commissioner’s recommendation on a particular matter, we believe to be flawed. If such a public body believes that it has ‘good reason’ not to follow a recommendation made by the Commissioner, its duty must be to persuade him/her of its case, and be required to

publish the rationale for their decision. **The Bill should not give allowance to a public body to ignore the Commissioner's recommendation whenever it so chooses.**

8.3 Preparation of the Future Generations report will clearly form a major part of the Commissioner's proposed responsibilities, and will be a fundamental document in guiding public bodies in the mainstreaming of SD in their governance. Part 3 Section 22 lists persons and bodies to be consulted by the Commissioner in his/her preparation of the report, and we welcome the inclusion of representatives of Welsh business, trade unions and voluntary organisations, extending views, therefore, beyond the public sector itself. It is to be hoped that the Bill will help to change decisions and behaviour beyond just the listed public bodies, with Government and other public bodies setting sustainability conditions in relation to procurement, contracts and funding. The Commissioner's report will be a major piece of work, and it is welcome that the full report will be debated in the Assembly.

8.4 An apparent oddity in Part 3 Section 18 concerning the Commissioner's functions is the provision in sub-section (1) (a) for him/her to provide advice to Welsh Ministers on climate change. Climate change and its human causes are arguably a core reason for sustainable development, yet this is the only reference made to the issue anywhere in the Bill. We question why climate change been identified here and nowhere else. What are the Government's intentions concerning the future of the Welsh Climate Change Commission and the role in relation to it of the Commissioner? Arrangements will be needed for the Commissioner to seek information and advice from the UK Committee on Climate Change, possibly via the Welsh Government.

8.5 The provision in Part 3 Section 25 sub-section (2) for the Commissioner's term of appointment to be for between three and five years is relatively short given the nature and responsibilities of the post; we note, by contrast, that the Children's Commissioner has a seven-year period of appointment.

8.6 This leads on to consideration of the proposed advisory panel to the Commissioner (sections 24 to 26). As well as the appointees suggested, we would have expected the membership to include specialists in the field of sustainable development, together with the Chair of the Welsh Climate Change Commission, chosen precisely for their expertise. Perhaps this is intended by the provision in (2) (f) for additional appointments to the panel, but **we would suggest that appropriate SD specialists should be appointed.**

8.7 However, a major consideration is that the Commissioner – and the advisory panel – must be seen to be independent of Government, not least because Government itself will be subject to his/her recommendations. We would suggest therefore that the Commissioner, and members of the advisory panel, should be appointed by the Assembly rather than Ministers, and would recommend appropriate amendment to this effect. The Commissioner must be demonstrably at liberty to disagree with the government of the day; this cannot be assured if the appointments procedure enables the Government to appoint someone of its choice and to its liking.

9 Public Services Boards

9.1 A major part of the Bill concerns the creation of statutory Public Services Boards (PSBs) and the designated responsibility of such Boards for preparing local well-being plans. It is understood that the new PSBs will build upon the current role of the Local Service Boards, but with an altered membership and role. RSPB Cymru has, of course, a particular interest in the environmental planning and management role that might be entrusted to PSBs and, further, how this might relate to provisions concerning area-based management of natural resources, as outlined in the Environment White Paper earlier this year for the forthcoming Environment Bill, including a reference then to a possible role for LSBs. The aim of each PSB – the 'local aim' – is said to include *inter alia* (section 34 (1)) to improve the environmental well-being of its area in accordance with the sustainable development principle. It is not clear how this role will relate to

whatever structures and processes emerge from the Environment Bill for area-based management of natural resources.

- 9.2 Further, the Explanatory Memorandum (EM) to the Bill says (paragraph 183) that PSBs will be required to address *inter alia* the 'lack of an environmental dimension' in many existing Single Integrated Plans. The EM also says (paragraph 195) that PSBs will link more closely local well-being plans with Local Development Plans, with NRW membership of PSBs to provide a link to proposed area-based natural resource management plans. There seems to be the potential here for several separate but inter-locking local plans and with, as yet, no indication of where responsibility would lie for delivery. We are concerned that what is proposed will blur lines of responsibility for environmental management and improvement. Guidance concerning what is envisaged for the enactment of the Environment Bill would clearly be welcome.
- 9.3 The proposed membership of the PSBs offers very limited representation for the environment, with only the NRW representative there to promote and defend its interests. The EM has noted the lack of an environmental dimension in the thinking, hitherto, of the LSBs, and the proposed membership of PSBs – with its heavy 'social' focus – seems unlikely to overcome this shortcoming. Enhanced representation for the environment can, of course, be delivered in the form of 'invited participants' at the behest of the established members of each board, but this will be a random process. **We would recommend the addition of at least one further environmental member as of right to each PSB, say the local authority ecologist and/or a representative of a local environmental or conservation body.**
- 9.4 The current high number of potential PSBs would put an additional duty upon NRW. In order to ensure NRW is able adequately to represent the environmental interest across all PSBs, Government must ensure the body is resourced to deliver this additional role.
- 9.5 **Non-elected Public Services Boards create a gap between local democracy and accountability for decisions**, notwithstanding provisions in the Bill for two senior local authority representatives on each PSB – only one of who, however, would be elected – and for oversight by the relevant local authority scrutiny committee. Local well-being plans will replace community strategies, and could involve major decisions with only indirect accountability back to elected representatives.

Community Councils

- 9.6 The provision in section 39 of the Bill for community councils above a designated financial size to have responsibility for meeting objectives included in the local well-being plan raises again a concern about both membership and capacity, especially in relation to environmental management. Members of such councils may or may not have the knowledge, time and capacity to take on the objectives in the local well-being plan relating to their respective areas. It is not clear whether appropriate ecological advice would be available. It is also not evident how community councils will be engaged with PSBs and others in developing the local well-being plans.