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Wales Environment Link evidence to the Environment and Sustainability Committee of the National Assembly for Wales

Well-being of Future Generations Bill: Stage 1 consideration of general principles of the Bill

As the officially designated intermediary body between the Government and the environmental NGO sector in Wales, Wales Environment Link (WEL) values the opportunity to contribute to this potentially ground-breaking and world-leading Bill.

The cross-cutting nature of this Bill provides a real opportunity to truly mainstream environmental sustainability into all Government and public body decision-making. As such, we welcome the invitation to engage with this scrutiny process.

In the interest of aiding the Committee's scrutiny, we have addressed our concerns according to the Terms of Reference of the Committee's considerations.

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

1.1 The Government's intention to legislate for sustainable development is welcome. WEL believes there are a number of essential key elements required to make the legislation effective:

- A **strong duty**, so that public bodies "must exercise their functions in order to achieve sustainable development"
- A **definition that gives clarity on the meaning of sustainable development**, including the principles and objectives it seeks to achieve
- An **independent Commissioner** accountable to the Assembly who would promote and facilitate the achievement of sustainable development
- A **commitment to restoring the diversity and functioning of the natural environment** underpinning our society and economy

1.2 This last point was recognised by the Welsh Government, in commenting on Dubai's green economy strategy, when the then-Natural Resources Minister said, "*After all, our*

natural resources are [our] most valuable asset and this is true of countries right across the globe.”¹

1.3 Without the sustainable use of natural resources, we undermine our ability to continue to provide the food and water we need to survive, or the raw materials we need to make the products that our economy relies on. Similarly, it is the overuse of resources which damages ecosystems and the biodiversity within them globally. A Welsh law for sustainable development must reverse this damage, halt biodiversity decline, then restore and enhance the habitats in Wales which provide us with the ecosystem services we need to survive. It must also account for Wales’ share of global consumption and resource use and all public bodies should take into account the international impacts of their decisions, including procurement, and not ‘export’ either environmental or social problems. We also believe that one of the requirements of a healthy natural environment is that our special landscapes and seascapes are cherished and protected from inappropriate development.

1.4 An excellent approach may be seen in Sweden, which has an over-arching goal in its Environmental Code, containing national environmental quality objectives to guide environmental action at every level.

“The purpose of this Code is to promote sustainable development which will assure a healthy and sound environment for present and future generations. Such development will be based on recognition of the fact that nature is worthy of protection and that our right to modify and exploit nature carries with it a responsibility for wise management of natural resources.”

1.5 **The goal is to pass on to the next generation a society in which the major environmental problems have been solved**, without increasing environmental and health problems beyond Sweden’s borders². A Welsh law should set out to do the same, or better; for instance, whilst the Swedish system works through evaluations and agreeing strategies with targets, milestones and activities to support its national environmental quality objectives, it is not legally binding.

1.6 Furthermore, the UN is progressing work on its Sustainable Development Goals and the Bill should contain a commitment to review the goals in light of these to ensure they are complementary.

2. The general principles of the Well-being of Future Generations (Wales) Bill and the need for legislation in the following areas [... sustainable development principle... public bodies specified... well-being goals... duties imposed on public bodies... measuring progress... Commissioner... Public Service Boards...]

2.1 WEL reiterates some key points here but would also like to refer the Committee back to its position paper on the proposed FG Bill Goals (April 2014)³

2.2 We need a **strong definition**, as opposed to a ‘principle’, which provides clear and unambiguous direction to public bodies when considering how they should work towards achieving the national well-being goals. The sustainable development principle is the core of a definition, but it is weak, lacks ambition, and uses limiting language such as ‘*seeking to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.*’ [Emphasis added].

¹ Alun Davies, <http://wales.gov.uk/newsroom/environmentandcountryside/2014/140228dubai/?lang=en>

² Sweden Environmental Code, Part 1, Chapter 1 provides s.1.

³ http://waleslink.org/sites/default/files/WEL_Views_on_the_FG_Bill_Goals_Final.pdf

- 2.3 WEL is concerned that the **scope of the duty** is unclear, for example, whether it applies to financial and procurement decisions, which we believe it should. We also reject the use of limiting words such as ‘*seek to*’ and recommend ‘*to achieve*’ instead.
- 2.4 The Minister in charge of this Bill, Jeff Cuthbert, told WEL in October 2013 that the Bill would ‘set over-arching obligations on public bodies, delivery boards, etc.’ to show how they’ve brought SD into their decision-making. We would therefore expect Government departments and public bodies to be more effectively required to consider whether their decisions can be made in a more environmentally friendly and more cost effective way whilst considering social impacts. Currently we have a piecemeal approach towards sustainable development, where we see environmental objectives being dropped in favour of social and economic ones. The current conflict over the Government’s intention for an M4 relief road, despite significant environmental damage, may be considered an example. Therefore, we need a **strong duty** which applies to **all** public bodies across **all** their functions. We consider this necessary to truly achieve sustainable development.
- 2.5 The lack of commitment to environmental objectives has led to the irrecoverable loss of some species and habitats and severe damage to others. This makes it all the more important to repair, restore and maintain what remains. Furthermore, it must be recognised that, in order to function properly, ecosystems must continue to sit within coherent and well-protected landscapes and seascapes. Lessons can be learned from biodiversity legislation in other countries such as in Minnesota, USA, which emphasises the enhancement of natural resources:⁴
- “The legislature finds and declares that each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state and that each person has the responsibility to contribute to the protection, preservation, and enhancement thereof. The legislature further declares its policy to create and maintain within the state conditions under which human beings and nature can exist in productive harmony in order that present and future generations may enjoy clean air and water, productive land, and other natural resources with which this state has been endowed.”
- 2.6 In this light, WEL believes that the **national goals** do not adequately reflect the need to **restore Wales’ damaged biodiversity**, the extent of which was highlighted in the *State of Nature* report and acknowledged in the Explanatory Memorandum to this Bill. In this vein, WEL believes the Resilience descriptor should be improved to make this clear, reading: “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.”
- 2.7 Other goals are more weak and less ambitious than those in *One Wales One Planet* in terms of reducing the economy’s use of natural resources, our contribution to climate change and to use a ‘fair share of the earth’s resources’; compared to ‘proportionate use’ as stated in the Bill (more below).
- 2.8 WEL remains concerned about the powers and duties of the **Commissioner**, which are inadequate. The role is not independent enough, which is made clear in the appointment process, term of office and the advisory board appointments. The role should have a much stronger purpose so as to hold Government and public bodies to account, not to simply advise them. This presents the risk of advice being ignored. To

⁴ Minnesota Environmental Rights Act Statute 116B.01 (2006)

properly scrutinise the Government, we believe the Commissioner should be independent and appointed by the Assembly, not by the Government.

- 2.9 WEL is also concerned about the composition of the **Public Service Boards**. We believe that having NRW as the sole environmental representative is insufficient. Furthermore we question whether NRW currently has the capacity to fully address environmental issues across all of the local level Boards which will require significant resource requirement in terms of staff time. This includes providing evidence on the international aspects of global systems and environmental limits. How this will be addressed in practice needs further consideration.
- 2.10 The Bill does not seem to be specific about the Auditor General for Wales' role in auditing the progress of public bodies in achieving their well-being objectives, other than receiving their annual reports or, in the case of the Public Service Boards, their local well-being plans and reports on progress with those.

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

- 3.1 The Bill's **national goals** do not address international obligations. The 'principle' in the Bill makes no mention of considering impacts outside of Wales or of the important concept in Brundtland of 'living within **environmental limits**'. This is a significant omission which threatens and undermines the credibility of the legislation. Our global impact needs to be included effectively – either in the goals or elsewhere. Wales cannot be a sustainable nation without recognising and reducing its impact beyond its borders. Therefore the Bill needs to enshrine living within environmental limits and using a fair share of the Earth's resources, as in *One Wales One Planet*. Not doing so to date has led to Wales failing to meet its international obligations to halt the decline of biodiversity by 2010 and must now ensure it has systems in place to meet the new 2020 deadline⁵ for "halting the loss of biodiversity and the degradation of ecosystems in the EU".
- 3.2 Another glaring omission is the failure to mention or act on **climate change**. This is despite it being one of the biggest priority issues for the world, a symptom of living beyond environmental limits, highlighted as a priority issue in 'The 'Wales We Want' National conversation and one that is consistently raised by Welsh Government.

"It is quite clear to me that climate change is happening and that it is influenced by the way in which we live our lives. It strikes me that the overwhelming scientific evidence supports that conclusion." Carwyn Jones, 11 February 2014, the Record

"Tackling climate change also presents us with the opportunity to create jobs, stimulate green growth and tackle poverty, but to do this we need to adapt and do things differently to ensure the best possible future for Wales." Ex-Minister, Alun Davies⁶

- 3.3 Climate change is an example of a global system impacted by all peoples and nations which is reaching its environmental limit. Increasingly in the future climate change will have a significant impact on public bodies' ability to deliver on their well-being objectives, therefore WEL believes the Bill must recognise this and provide for public bodies to address both **climate change mitigation and adaptation** as part of the national goals. We recommend a requirement or specification for emission reduction targets, either in this Bill or the Environment Bill. It is worth noting that Welsh local

⁵ <http://ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm>

⁶ <http://wales.gov.uk/newsroom/environmentandcountryside/2014/141303climate/?lang=en>

authorities *would already be* considering climate change measures had the Welsh Government activated its duties under the Climate Act (2008).⁷

- 3.4 Furthermore, a strong duty would provide the drive and guidance necessary for public bodies to scrutinise their supply chains and limit or stop the use of products adversely connected to threatened species and habitats such as rainforests.

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

- 4.1 A key barrier to the implementation of these provisions is a lack of targets. We are concerned that the goals are very general and fail to convey a sense of scale or urgency to meet them, such as how much healthier does Wales need to be and how soon? We believe the Bill should require Government to set targets in relation to the national goals and not limit it to 'indicators of progress'. These targets can enable public bodies to set SMART objectives for themselves, provide the Commissioner with evidence of compliance and provide incentives for business innovation.
- 4.2 Another often raised concern is around a lack of data and evidence at the appropriate scale in Wales. This applies from local data all the way to providing updates on emerging scientific knowledge and its significance for any particular public body in Wales. The Bill should provide clarity on whose responsibility it is to provide this advice.

5. Whether there are any unintended consequences arising from the Bill;

- 5.1 The architecture of the Bill is very complex. The duty sitting on public bodies is mainly to develop objectives which will contribute to meeting the goals in the Bill. There is a danger that the public bodies will focus their efforts on goals singly and therefore not challenge current practice and try to integrate deliver across all the goals (as Clause 8 asks). If they do try to integrate they will face the perennial problem of apparent conflicts between goals and between short and long term consequences. If the Bill (and subsequent guidance) is not clear on how to resolve these issues then the current situation will prevail where short term provisions will win and the environment will be given insufficient weight.
- 5.2 Additionally, a clear definition of what is meant by sustainable development is necessary to help in the interpretation of any apparent conflicts and to clarify the context for the decision making requirement in clause 8. So a weak duty and an unclear (or insufficient) definition will not drive any change from business as usual.

7. 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).

- 7.1 There is some concern with regard to how long-lasting the goals will be, if Ministers are able to change them via subordinate legislation. For something so fundamental we consider that any changes should be made via a process which requires detailed consideration by the Assembly akin to that of primary legislation.

⁷ Part 5, Section 81 of the Climate Change Act (2008) states that "Welsh Ministers must from time to time publish a **climate change measures report**". In turn, a local authority in Wales must, in exercising its functions, have regard to any current climate change measures report.

Wales Environment Link is a network of environmental, heritage and countryside Non-Governmental Organisations in Wales, most of whom have an all-Wales remit. WEL is officially designated the intermediary body between the Government and the environmental NGO sector in Wales. Its vision is to increase the effectiveness of the sector in its ability to protect and improve the environment through facilitating and articulating the voice of the sector.

The following WEL members support this document:

Afonydd Cymru

Amphibian and Reptile Conservation Trust

Bat Conversation Trust

Butterfly Conservation Wales

Campaign for National Parks

Coed Cadw – Woodland Trust

Keep Wales Tidy

Llais y Goedwig

National Trust

Open Spaces Society

Oxfam Cymru

RSPB Cymru

WTW Wales

WWF Cymru