

September 2014



**Consultation on the Well-being of Future Generations (Wales) Bill  
Response by Friends of the Earth Cymru**

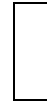
**Introduction**

1. 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.
2. We welcome the opportunity to respond to the general principles of the Well-being of Future Generations (Wales) Bill and hope that we can assist the committee in developing this draft legislation into a truly ground-breaking, strong and effective law.
3. Despite an ever increasing recognition of sustainable development and sustainability since the original Rio Earth Summit in 1992, there has not been a step change in our behaviour, legislation or institutional structures, and the global actions of the past 22 years have created a state of unprecedented planetary emergency. There is an urgent need for humanity to shift course, and put the needs of the Earth and future generations above short-term gain. This will mean charting a course away from current values and expectations, developing societies and economies that support life and the Earth beyond the end of this century.

**Consultation questions**

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

4. We strongly support having legislation to embed sustainable development and welcome the original intention and ambition of the Welsh Government to *“Legislate to make sustainable development the*



*central organising principle of the Welsh Government and public bodies in Wales.”<sup>1</sup> and for Wales “To become a ‘one planet nation’, putting sustainable development at the heart of government”<sup>2</sup>.*

5. The Welsh Government’s commitment to the international Rio+20 process going forward, and the UN Sustainable Development Goals, is a clear indication of the political will to set ourselves at the forefront of the international context and we fully support the Environment Minister’s original aim of achieving “*ground breaking legislation on Sustainable Development*” and to “*make our legislation as strong and effective as possible*”<sup>3</sup> and continue to hope that this is what will be accomplished.
6. We are part of the Sustainable Development Alliance who set out its own proposals on how this could be done last year<sup>4</sup> and continue to believe that a simple structure of setting a clear definition of what sustainable development means in Wales, a substantive duty on public bodies to exercise their functions so as to achieve sustainable development, and an independent Commissioner to hold them to account should be the basis for legislation.
7. However as we are now dealing with a published Bill we will primarily comment on the proposals in front of us and how we can move from where we are to a strong and effective piece of legislation relating to sustainable development.
8. It is of concern that the scope of the Bill seems to be limited to governance arrangements and impacts on well-being solely within Wales.
9. Despite Sustainable Development being the central organising principle of the Welsh Government, and a duty since its inception, the Wales Audit Office assessed in 2010 that it has not been integrated into financial and business planning: “*Sustainable development principles have not been consistently embedded in the Assembly Government’s strategic and operational decision making. The Government of Wales Act 2006 commits the Assembly Government to ensuring that all its funding works for sustainable development. However, sustainable development is not driving resource allocation nor is it integrated into all financial and business planning processes. The Assembly Government has not ensured that all its grant giving underpins its vision of a sustainable future.*”<sup>5</sup>
10. To address this failure, the Wales Audit Office recommended to “*Embed sustainable development in the Assembly Government’s governance procedures, financial planning, core business planning processes, change programmes and human resources processes.*”<sup>6</sup>.
11. This underlines our belief that the Bill should be about all the functions of public bodies, not only governance. There has to be an impact on decision making, particularly financial decisions and procurement for sustainability to be at the heart of the public sector. The duty must apply to public

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<sup>1</sup> Welsh Government (2011), ‘Programme for Government’ p.43

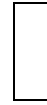
<sup>2</sup> Ibid, p.42

<sup>3</sup> Written Statement by the Welsh Government, ‘Visit to Rio+20’, Minister for Environment and Sustainable Development, 29 June 2012

<sup>4</sup> <http://www.shapingfuturewales.org/en/our-proposal/>

<sup>5</sup> Welsh Audit Office (WAO), (2010), ‘Sustainable development and business decision making in the Welsh Assembly Government’, p.11

<sup>6</sup> Ibid, p.13



authority functions so as to capture the way a public authority delivers its services and its procurement activities.

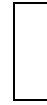
12. Our concern for well-being should not stop at Wales' borders and it is vital that Wales acts as a global citizen to promote justice and drive down extreme inequality in the world, in so far as public bodies in Wales have an impact on people outside our borders through our actions. We will expand on this in response to subsequent questions.
13. Welsh Government Ministers have said that the intention of this legislation was to set an over-arching duty on public bodies, rather than an additional duty that's considered as one of many competing duties. Currently we have a piecemeal approach towards considering sustainable development in decision making with, for example, projects going ahead on economic grounds despite overwhelmingly negative environmental impacts. Therefore the Bill must be clear that all elements of sustainable development must be met, and that the duties in this legislation are the framework within which all other duties are considered.
14. Although there are positive components to this Bill, we believe that the Bill as a whole as it currently stands has too many pitfalls and weaknesses to stand up to the claim of being ground-breaking or truly ambitious.

### **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;**
15. The Bill does not contain a definition of sustainable development as such, and has separated various elements into the common aim, sustainable development principle, well-being goals and elements that public bodies should “take into account” (Section 8(2)).
  16. We continue to believe that having a definition in law is essential for clarity, longevity and certainty. It will give direction to public bodies relating to this Bill and to ensure consistent interpretation of terms across the body of Welsh legislation.
  17. We would seek clarity whether the “common aim” is an overarching aim for public bodies, as was the original intention of the government, rather than one of many competing aims. We also believe that all four pillars of sustainability – economic, social, environmental and cultural – should be included in this section.
  18. The “common aim” proposed in Section 2 and indeed the purpose of the Act in Section 1 only allows for consideration of the “well-being of Wales”, not the impacts Wales has on the wider world. We believe that this must be amended.
  19. The wording of Section 3 is a short and weakened version of the definition of sustainable development from the 1987 Brundtland Report<sup>7</sup>. It is essential that it is strengthened and the use of limiting language

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<sup>7</sup> World Commission on Environment and Development (1987). *Our Common Future*.



such as “seeking to” as opposed to achieving must be avoided. We also believe that the concept of sustainable development has moved on substantially since this time, not least with the UK Sustainable Development Strategy’s five guiding principles of sustainable development<sup>8</sup> and in Wales with the definition in the current Sustainable Development Scheme “One Wales: One Planet”<sup>9</sup>. This is therefore a backwards step from having a comprehensive definition relevant to Wales and the world in the 21<sup>st</sup> century.

- **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;**

20. The approach taken in the Bill seems a convoluted multi-layered process which overcomplicates what is required from public bodies and is likely to weaken implementation. There is no clear single and substantive duty on public bodies, and elements that have to be considered include the purpose, common aim, sustainable development principle, well-being goals and the elements in section 8(2).

21. The wide range of limiting and conditional terminology in different sections such as “seeking to ensure”, “pursue”, “seeking to achieve”, “take all reasonable steps” and “take into account” further dilutes and complicates the approach. Clarity, and the effectiveness of the legislation, is reduced with every section.

22. We would prefer to see a simpler architecture - a clear and substantive duty on public authorities to achieve sustainable development in all their functions, which is backed by stated outcomes and measurable targets, as previously set out in paragraphs 6 & 11.

### Goals

23. We welcome the intention to lay out clear outcomes within legislation through the goals, and welcome the National Conversation ‘The Wales We Want’ which was intended to contribute towards the formulation of these goals.

24. We believe some changes are necessary for the goals to be comprehensive and to fully reflect what a sustainable Wales would entail.

25. Comparative and relative wording for goals such as “a more equal Wales” are too weak and should be replaced by wording which is specific and measurable.

26. The global climate, environmental limits and global resources are surprisingly absent from the goals and descriptions of the goals. This should clearly be amended for the Bill to be meaningful.

27. Tackling climate change is vital to ensuring the well-being of present and future generations. The interim ‘The Wales We Want’ report identified climate change as being the most critical issue for the well-being of future generations<sup>10</sup>.

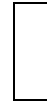
28. In a survey of public perceptions of climate change in Wales published by the Climate Change Consortium of Wales in 2013, 84% of respondents were concerned about climate change, 73% of respondents agreed that Wales should aim to set an example to the outside world when it comes to

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<sup>8</sup> <http://www.defra.gov.uk/publications/files/pb10589-securing-the-future-050307.pdf> p.16

<sup>9</sup> <http://wales.gov.uk/docs/desh/publications/090521susdev1wales1planeten.pdf> p.8

<sup>10</sup> An interim Report from the pilot National Conversation on ‘The Wales We Want’, July 2014, p.25 & 26



addressing climate change, 80% were concerned about the effects of climate change in developing countries and 90% were concerned about the effects on wildlife and the natural world. A clear majority of respondents also said they would be willing to vote for politicians committed to climate change.<sup>11</sup>

29. Successive global summits, academic reports and all parties in the Assembly agree that climate change is one of the biggest challenges facing the world in the 21st century and we must take immediate action to tackle this. Otherwise we face environmental, economic, cultural and social impacts which will affect future generations, and disproportionate impact on people in poverty within Wales and across the globe. The recent IPCC reports confirm not only unequivocally the science of climate change "warming of the climate system is unequivocal", and "most of the observed increase in global average temperatures since the mid-20th century is very likely due to the observed increase in anthropogenic greenhouse gas concentrations"; it tells us what we need to do to keep us within safe temperature rise of 2 degrees Celsius to mitigate against some of the worst impacts of climate change.
30. Although sustainable development is of course wider than climate change any development we achieve will not be sustainable unless we tackle climate change. A key test of the efficacy of the Well-being of Future Generations Bill will be how it will drive the reduction of our emissions in Wales - both our territorial and consumption emissions.
31. The goals do not recognise or address our international impacts. This issue is not confined to the goals but must be included throughout the Bill to make clear that those issues which public bodies can impact such as fairtrade and ethical procurement of goods and services will be addressed. In the goals a reference could be made to Wales using only its fair share of resources and avoiding adverse international impacts.

#### Sustainable Development Principles (Section 8(2))

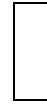
32. Section 8(2) sets out some very important principles, many of which stem from the 1992 Rio Declaration on Environment and Development<sup>12</sup>, such as the preventative principle and long termism. These are a crucial part of taking a sustainable development approach to decision making and form part of the definition of sustainable development agreed by the Sustainable Development Alliance<sup>13</sup>. If these are to remain in a separate section from a definition or the goals there must be a clearer link than for public bodies to "take into account" – these are key principles which have to be central to the application of sustainable development.
33. We believe the principles outlined in this section are incomplete but can be built upon and further clarified – a basis of sound science or evidence base for decision making, the precautionary principle, the polluter pays principle and a stronger emphasis on good governance should be added. The Bill should also reflect and enhance the provisions within the Aarhus Convention on access to information, public participation and access to justice in environmental decision-making. This is an ideal opportunity to embed widely recognised principles into Welsh legislation.
34. "Long term needs" must also relate to global ecosystems and impacts outside Wales.

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<sup>11</sup> Capstick, S.B., Pidgeon, N.F., and Whitehead, M.S. (2013). 'Public perceptions of climate change in Wales: Summary findings of a survey of the Welsh public conducted during November and December 2012'. Climate Change Consortium of Wales, Cardiff.

<sup>12</sup> <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>

<sup>13</sup> <http://www.shapingfuturewales.org/en/our-proposal/> clause 2



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

35. There is quite a gap between public bodies writing their own well-being objectives designed to “maximise its contribution to the achievement of the well-being goals” based on the multi-layered set of considerations previously outlined, and the actual achievement of those goals.

36. It should not be up to public bodies to decide not to follow a Commissioner’s recommendation because they are satisfied there is good reason not to do so (Sections 19-20). As well as undermining the Commissioner’s role this is not an approach that will lead to the goals being met or set the right culture for public bodies.

37. It is not at all clear how progress will be achieved or ensured, with no legal redress and a lack of effective scrutiny mechanisms.

38. Whilst national indicators in themselves are useful for showing progress, or lack of, it is not in itself a way of ensuring progress is made, as we know from the current Sustainable Development Indicators.

39. One way of measuring progress on the well-being objectives is if there is a requirement in the Bill for public bodies and Welsh Ministers to set targets (in Sections 7 & 9). The Bill should set out some key areas that must be measured and timeframes for progress, such as targets for reduction in climate change emissions.

40. In January 2013, the UK Committee on Climate Change published a report on ‘Progress reducing emissions and preparing for climate change in Wales’<sup>14</sup> which stated, “Our conclusions from this analysis are setting a statutory underpinning to Wales’ climate change targets could help to provide certainty to policy-makers, businesses, investors, and wider society in Wales and strengthen incentives to reduce emissions”. It saw the forthcoming Well-being of Future Generations Bill as a key opportunity to achieve this. We support this conclusion and recommend that the Bill would be an opportune and appropriate place to include statutory climate change targets.

41. The One Planet approach of measuring ecological footprints, in line with the current sustainable development scheme and including assessing the use of land, materials, water and carbon, should be part of annual well-being reports or other systems for monitoring and reviewing.

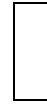
- **The establishment of a Future Generations Commissioner for Wales, the Commissioner’s role, powers, responsibility, governance and accountability;**

42. We strongly support the establishment of an independent Commissioner who should be a powerful champion for future generations, people in developing countries and those living in poverty in Wales – all of whom are impacted by unsustainable development.

43. The independence of the Commissioner’s role as outlined in the Bill and Explanatory Memorandum is questionable on a number of levels under the current proposals. In particular we would highlight the following issues;

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<sup>14</sup> [http://www.theccc.org.uk/wp-content/uploads/2013/01/1673\\_Welsh-Rep-2013FINALWEB.pdf](http://www.theccc.org.uk/wp-content/uploads/2013/01/1673_Welsh-Rep-2013FINALWEB.pdf)



- Appointment – In order to hold the Government and public sector in Wales to account the Commissioner should be appointed by the Assembly and not the Government.
- Workplan, budget, and staffing of the Commissioner’s office – it is not appropriate for such operational areas of the Commissioner’s office to have to be agreed by Welsh Ministers.
- Advisory panel – it is not acceptable that Welsh Ministers would appoint any additional members.

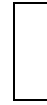
#### Lack of powers and limited remit

44. The remit of the Commissioner should be broadened to reflect the purpose of the legislation as set out in Section 1. The Commissioner should have a general duty to act in the interest of future generations.
45. The Commissioner should be both empowered and required to investigate and take action on failures by government and public bodies to comply with the provisions of the Bill, and more widely to protect the interest of future generations.
46. The Commissioner must also be adequately resourced, with a staff able to support a significant programme of work including; research, policy development, support for the public sector in developing effective objectives and investigative capacity to hold the devolved public sector to account.
47. In terms of powers we believe the Commissioner should be given the power of investigation, including requiring bodies to provide evidence for its inquiries.
48. We believe that the Commissioner should be able to take complaints and act as an ombudsperson with regard to the discharge of the Bill’s provisions by public bodies, similar to the current Children’s and Welsh Language Commissioners.
49. The Bill is not specific about the role of and relationship with the Wales Audit Office and Auditor General, and how monitoring and auditing will be carried out. As a minimum there should be a clear duty of collaboration between the Commissioner and the Wales Audit Office set out in this Bill.
50. Whilst we welcome the inclusion of giving advice to Welsh Ministers on climate change within the Commissioner’s functions, this is the only place in the Bill that climate change is mentioned, and it’s not clear how this related to the various levels of goals, aims and principles. We recommend that this function be kept but that it is made clear elsewhere in the Bill that tackling climate change is a key part of sustainable development and the duty on public bodies.
51. It’s not clear what is expected of the Advisory Panel. External expertise will be needed but it’s not evident how the proposed panel membership would cover the scope of advice required by the Commissioner, what scale of input they could have given their own existing statutory functions or what level of support would be provided.

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

52. We have no expertise in this matter therefore do not wish to comment. It does seem that this Bill has become principally about public administration rather than sustainable development.

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



53. The Bill as currently drafted does not mention our international obligations at all. This is a surprising omission, and a step backwards from the White Paper proposal that was itself criticised for being too weak a commitment to global impacts.
54. The Welsh Government's White Paper which preceded this Bill stated: *"The Welsh Government recognises the need to take into account the impacts outside of Wales given that Wales' wellbeing cannot be seen in isolation. This is an important part of a sustainable development approach. The Welsh Government will look to ensure that this element is encompassed within the framework for sustainable development in Wales, in a reasonable and proportionate manner and within the scope of the legislative competence of the Assembly."*<sup>15</sup>
55. The Bill should explicitly recognise and give regard to the positive and negative impacts that Wales has on people and the environment internationally, e.g. through consumption of resources, the supply chains of the Welsh public sector including products and services procured, the activities of Welsh businesses abroad, the impacts of carbon emissions produced in Wales and the support provided for projects overseas.
56. Wales cannot be a sustainable nation without recognising and dealing with its impacts beyond its borders. We have outlined suggested areas where this should be amended in paragraphs 12, 18, 26, 30 & 31.

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

57. We believe the complexity of the architecture of the Bill to be a barrier to effective implementation of the Bill, as we have already explained in paragraphs 20-22.
58. Some other possible barriers are;
- A lack of effective scrutiny mechanisms;
  - The lack of remedy and redress if objectives are not met, if there is insufficient progress towards meeting the goals or incorrect interpretation of a requirement;
  - An under-resourced Commissioner's office with lack of capacity and expertise;
  - A lack of data and knowledge within public bodies to carry out necessary assessments and prepare well-being objectives;
  - A Commissioner with weak powers who will not be able to hold the government and public bodies to account.

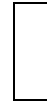
**Whether there are any unintended consequences arising from the Bill;**

59. There is a risk of confusion around the terms "well-being" and "sustainable development" in Welsh law if there aren't clear definitions in this Bill which is both consistent with existing legislation such as the Social Services and Well-being Act and will be referred to in forthcoming legislation such as the Planning Bill and Environment Bill.

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<sup>15</sup> Sustainable Development Bill White Paper, December 2012 <http://wales.gov.uk/docs/desh/consultation/121203asusdevwhitepaperen.pdf>





**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);**

60. We have no comment other than the office of the Commissioner should be sufficiently funded to meet its duty and functions, in line with comparative Commissioners in Wales.

**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).**

61. The goals set in legislation should only be amended by the Assembly rather than by Welsh Ministers. As well as providing additional scrutiny, this would ensure a level of certainty for those public bodies operating towards achievement of the goals.