

Consultation on Proposals for a Sustainable Development Bill

Index of Responses 4

<b>Name/Organisation</b>
Mid and West Wales Fire and Rescue Service
NHS Wales Shared Services –Procurement
Willmott Dixon
WWF Cymru
Cardiff Council
South East Wales Economic Forum
City and County of Swansea
Steve Smith – Private Individual
Wildlife Trusts Wales
Hannah Scrase – Private Individual
Monmouthshire Environmental Partnership Board
Campaign for National Parks
UK Environmental Law Association - Wales Working Party
Jones Lang LaSalle
National Parks Wales
Sustainable Development Co-ordinators Cymru
Oxfam Cymru
Mariana Lagoa – Private Individual
CLT Envirolaw
NUS Wales
Mandi Abrahams – Private Individual
Equality & Human Rights Commission in Wales
Cymdeithas Eryri Snowdonia Society
Neath Port Talbot Council for Voluntary Service
Consumer Council for Wales
Plaidd Werdd Cymru/Wales Green Party
Wales Environment Link
Dwr Cymru Welsh Water
Federation of Small Businesses
Christian Aid

	<b>Welsh Government Consultation – Proposals for a Sustainable Development Bill.</b>
	<b>Response from Mid and West Wales Fire and Rescue Service 11 July 2012.</b>
	<b>Q1 – What are the principal barriers you face to taking more long-term, joined-up decisions?</b>
	Financial Reporting Requirements –leads to unsustainable decisions and encourages full spend to ‘protect’ future years budget
	Lack of awareness of SD and SD as ‘central organising principle’ within organisations
	Too little guidance available on how to adopt SD practices.
	Institutional – Departments working in silos
	Local/Political agenda
	Parliamentary cycle/local elections does not engender long term thinking
	<b>Q2 - What actions need to be taken, and by who, to reduce or remove these?</b>
	A formal lead for sustainable development from the Welsh Government, supported by structures, staff and mechanisms to support the SD Strategy.
	Staff Training to raise awareness of SD throughout the organisation.
	<b>Q3 – What other evidence is there about the extent of progress in relation to the SD agenda and making SD the central organising principle?</b>
	Welsh Government SD Charter;
	WLGA SD Framework;
	A4S Wales – Sustainability Accounting.
	<b>Q4 Have we identified the most appropriate level of organisational decision making at which the duty should be applied?</b>
	<b>Q5; Would this approach risk capturing some decisions which should not be subject to the duty?</b>
	<b>Q6: Are there any decisions that are not captured by this approach which should be subject to the duty?</b>
	<b>Q7: Should we include decisions which govern an organisation’s internal operations?</b>
	<b>Q8: Should budget proposals be subject to the duty?</b>
	We agree that the duty should focus on high level decisions that have greatest

	influence over organisational behaviour e.g. long term strategies, or where decisions are over a certain size threshold, determined at local level.
	The duty should be introduced in a stepped or phased approach e.g. Strategic plans in the first instance before integrating into business/financial plans at a later date.
	If the duty is to be applied to general or subject-specific policies, with the aim of ensuring greater consistency across the public sector, then further guidance will need to be given as to which 'individual' policies and/or decisions are included by the duty.
	It is unclear from the proposals how Procurement decisions will be affected – these are subject to European legislation (and often barriers) and there is a need to clarify how the SD duty would impact on local procurement.
	<b>Behaviours</b>
	<b>Q9: Are all of the behaviours we identify critical to acting in a way that reflect SD thinking?</b>
	<b>Q10: Are there critical behaviours that we have not identified?</b>
	<b>Q11: What are the advantages and disadvantages of designating behaviours as the SD factors that must influence high level decisions?</b>
	<b>Q12: How much influence should SD behaviours have over high level decisions?</b>
	The behaviours identified (Long term thinking, integration, working across organisational boundaries, focus on prevention, Engagement and Involvement) are already ways in which MWWFSR works and are already established elements of SD.
	With the 'behaviours' suggested it would seem very difficult to measure or audit how these are being considered through decision-making.
	<b>Objectives</b>
	<b>Q13: Are there core sustainable objectives that we have not identified?</b>
	<b>Q14: What are the advantages and disadvantages of designating sustainable objectives as the factors that must influence higher level decision making?</b>
	<b>Q15: How much influence should the objectives have over high level decisions?</b>
	With the 'objectives' (well being of people, vibrancy of economy) – there would need to be recognition of local priorities, although emphasis should be on considering all of these (integration).

	The objectives by their very nature are long term and difficult to assess.
	<b>Q16: What are the advantages and disadvantages of basing a duty on SD behaviours and SD objectives?</b>
	Our preferred option would be a combination of both behaviours and objectives. This would ensure that objectives are set to complement SD behaviour.
	<b>Q17: What are your views on basing a duty around a single SD proposition?</b>
	Our opinion is that a single SD proposition is too vague and additional guidance would be required to explain how this could be delivered and measured.
	<b>Q18: How much time should organisations be given to make these changes?</b>
	<b>Q19 Would it be helpful to issue formal guidance to organisations subject to the new duty?</b>
	<b>Q20: Should any such guidance be issued by the Welsh Government or the new SD body?</b>
	The duty should be introduced in a stepped or phased approach e.g. Strategic plans in the first instance before integrating into business/financial plans at a later date.
	Our opinion is that guidance on the new duty will be absolutely essential to inform organisations on how to comply with the new legislation.
	The guidance should come for the Welsh Government supported by the SD Body.
	<b>Q23: Should organisations be required to report back on compliance with the duty through their existing annual reporting arrangements?</b>
	Reporting and monitoring will be vital to the success of the SD bill. We are already working towards 'accounting for sustainability' which would seem to be the most appropriate route to follow in terms of reporting. Other performance reporting requirements already exist which could incorporate SD reporting.
	It is important that reporting is integrated with existing mechanisms and procedures e.g. annual reporting arrangements – these should be used to report on progress with mainstreaming sustainable development to ensure that SD is not seen as an 'add-on' but is central to the way organisations work.

	<b>Q24: Are there organisations on this list that should not be subject to the duty?</b>
	<b>Q25: Are there any organisations that are not listed above but which should be subject to the duty?</b>
	The list of organisations provided in the consultation document should not be limited and should allow the inclusion of third sector and voluntary sector organisations. Organisations (e.g. third sector) and businesses which contract with public bodies should be expected to contribute to sustainability principles.
	The Welsh Government should provide clear leadership to ensure that sustainable development is at the heart of each organisation.
	<b>Q26: Are there other advantages or disadvantages to defining 'SD' and if so, what are they?</b>
	<b>Q27: if we were to define SD do you think that the above definition would be suitable and why?</b>
	A clear definition of 'sustainable development' is important to ensure clarity and consistency of approach. A high level definition supported by guidance would be most appropriate. The definition needs to be broad and embrace the economy, society and the natural environment, alongside the use of good governance. It needs to be well-communicated so that people at all levels understand what sustainable development really means.
	<b>Q28: What should be the overall purpose for a new SD body?</b>
	<b>Q29: Do you have any views on the preferred approach regarding the main functions of the new body?</b>
	<b>Q30: Are there significant disadvantages to establishing a new body on a statutory basis?</b>
	<b>Q31: Do you agree with the proposed functions for a new body established on a statutory basis?</b>
	<b>Q33: Do you have any particular views on the independence of a new body?</b>
	<b>Q34: Do you have particular views on the accountability arrangements for a new body?</b>
	In light of the lack of understanding about what SD and SD as a central organising principle for organisations actually means an independent SD body should provide expertise and guidance to organisations.
	The body needs to be independent, not bound by political cycles, and be able to take the long-term view.
	The new body should encourage and share best practice between

	organisations.
	The new Body will also need a close relationship with the AGW/WAO to ensure that there is sufficient capacity and expertise here to deliver their new role. They will also need to make sure that any reporting and auditing is done in a positive way, to avoid any potential duplication, and to take any learning from current practice.
	Prepared by H Rees-Byrne
	Sustainability Manager

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What are the principal barriers you face to taking more long-term, joined-up decisions?:

In terms of our own Organisation the sustainability agenda for Procurement is not insignificant covering a wide range of areas including Climate Change (packaging, waste, transport), SME engagement, Supported businesses and the 3rd Sector, Social and Ethical issues as well as Equality & Diversity. Getting support from the Health Organisations to consider some of these aspects is mixed and whilst we have had some successes there is some way to go. We have found that the requirement for Health Organisations to achieve ISO14001 has had a positive impact as we are now seeing more engagement as a result. The Environmental aspects are of course only one part of the overall agenda. In the current financial climate the focus for many NHS Organisations is on balancing the books. This is resulting in a short term consideration of issues. Often the level of interest and enthusiasm for the sustainability agenda from stakeholders within the Health Organisations is poor. This could be attributed to several issues: lack engagement from stakeholders, patchy support for the SD agenda from the board, conflicting priorities (e.g. cost pressures) resources, lack of knowledge or understanding.

What actions need to be taken, and by who, to reduce or remove these barriers?:

If sustainability is going to be fully integrated then its importance needs to be placed firmly at Exec level within the Health Organisations. Targets should be in place that cascade throughout and each Health Organisation should have a lead/team for the whole SD agenda (not just the environmental aspects). In the private sector the importance of sustainability has been translated into financial terms e.g. the PR risk to the Organisation for issues such as child labour (examples such as NIKE). The messages maybe need to be focused

on the cost and impact of not addressing the sustainability issues and the benefit of addressing these issues be presented in a way that is compelling to a CEO of the Health Organisation? The challenge of raising awareness, changing behaviours and supporting staff to understand what their contribution might be should not be underestimated. Part of the reporting into WG should include SD and perhaps a section on SD should be required to be included within the Annual report?

From the Procurement perspective we are aware from work undertaken across the NHS on Carbon Footprints that the supply chains we establish for the delivery of goods and services into NHS Wales have a significant impact in terms of Carbon Emissions. We have a CSR policy in place that has a focus in a number of key areas including Carbon Reduction (packaging, waste and transport), SME engagement, 3rd and voluntary sector, Ethical Issues and Equality and Diversity. All contracts with a value of £25k+ are required to have a Sustainable Risk Assessment undertaken that will identify the key areas to be addressed through a procurement. We use the Value Wales Sustainable Procurement Assessment Framework (SPAF) to measure our progress as an Organisation. We can point to a number of successful areas such as a reduction in delivery mileage for provision of continence care, the inclusion of Social and Ethical audits in the nurses uniform contract and improvements in internal operations such as the use of E tendering, E ordering and so on. There is however much more to do. We have a working group that is reviewing our approach in all areas to improve on our current approaches and we have a link on the Environmental side with colleagues through NHS Wales via the Welsh Health Environmental Forum. As one of the Senior Managers within the Organisation I have responsibility for the CSR agenda. I am also a member of the British Medical Association's Medical & Ethical Fair Trade Group who have been heavily involved in looking at issues around Social and Ethical Procurement.

What other evidence is there about the extent of progress in relation to the Sustainable Development agenda and making Sustainable Development the central organising principle of public bodies? :

Yes, mostly key decisions are made at executive level. There needs to be a clear message around the issue of UEU procurement vs Policy. Whilst it is noted that any Act established by WG would not entitle Organisations to disregard its EU duty we do come across regular examples where aspirations of Policies are used to try and influence our approach to Procurement. Clearly this leads to conflict when we cannot act in conflict with the Law. Perhaps the Bill will clear some of this up for us?

Have we identified the most appropriate level of organisational decision making at which the duty should be applied? Please explain:

Would this approach risk

Q5 .



capturing some decisions  
which should not be subject  
to the duty? What would  
these be?:

Are there any decisions that  
are not captured by this  
approach which should be  
subject to the duty? Again,  
what would these be?:

The inclusion of Procurement in the Health  
Organisations consideration to purchase goods or  
services is essential to ensure the right outcomes in  
terms of product, specification, and value for money. It  
is essential that Procurement is engaged at the earliest  
opportunity so that considerations around all areas  
including sustainability are discussed and agreed so that  
they can be included at the earliest opportunity. As  
Estates Management in a number of Health  
Organisations also negotiate contracts for their own  
areas this would apply to them too.

Should we include decisions  
which govern an  
organisation's internal  
operations? If so, which  
internal operations should  
we include?:

Yes, potential for Travel Management, Estates  
management.

Should budget proposals be  
subject to the duty? Please  
explain:

8

Are all of the behaviours we  
identify critical to acting in  
ways that reflect sustainable  
development thinking?  
Please explain:

Yes - we can apply these behaviours from a  
Procurement context and cannot identify any gaps

Are there critical behaviours  
that we have not identified?  
Please explain:

NO

What are the advantages and  
disadvantages of designating  
behaviours as the  
sustainable development  
factors that must influence  
high level decisions?:

Behaviours aren't as tangible as objectives and take  
longer to embed within an organisation.

is consistent with one, some  
or all of the behaviours:

yes \*see note

broadly reflects the  
behaviours:

yes \*see note

is not inconsistent with the  
behaviours?:

yes \* You document points to the complexities in this  
area and it is difficult to feel confident about the impacts  
that may arise from decisions made here.

are there other options?:

Are there core sustainable

13

development objectives we have not identified above?:

What are the advantages and disadvantages of designating sustainable objectives as the factors that must influence higher level decision making?:

14 More goal orientated and possibly easier to manage and determine.

only if they actively contribute to one or more of those objectives:

Q18. Difficult to offer a timescale as local issues remain around available resources and support. As you indicate in your document the objectives would need to come with support material to explain what is meant by the definition - very difficult to respond to this section but I found it more difficult to relate to these areas than the behaviours

if they do not detract from any of the objectives:

As you indicate in your document the objectives would need to come with support material to explain what is meant by the definition - very difficult to respond to this section but I found it more difficult to relate to these areas than the behaviours

even if they detract from some of those objectives, as long as they actively promote others?:

As you indicate in your document the objectives would need to come with support material to explain what is meant by the definition - very difficult to respond to this section but I found it more difficult to relate to these areas than the behaviours

are there other options?:

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What are the advantages and disadvantages of basing a duty on sustainable development behaviours and sustainable development objectives?:

We recognise this part of the consultation is complex. The key is having something in place that actually means something to people so that they do engage. The objectives should by their nature be more tangible although I think the areas quoted are very loose and open to a lot of interpretation.

What are your views on basing a duty around a single sustainable development proposition?:

We think this may be too broad a statement and therefore open to too much interpretation

How much time should organisations be given to make these changes?:

Based on our own experiences in this area I would suggest 3 years with a 2 year audit period thereafter to ensure compliance. This will of course be dependant on resource issues which will have to be resolved locally in order to ensure this timescale is met.

Would it be helpful to issue formal guidance to organisations subject to the new duty?:

Yes this would be very helpful

Should any such guidance be issued by the Welsh Government or the new

WG led with support from new body.

sustainable development  
body?:

Are there any particular  
statutory duties which it  
would be appropriate to  
repeal, in light of the 21  
approach we are proposing  
under the Sustainable  
Development Bill?:

Are there legal barriers to  
delivering in line with the  
sustainable development  
factors we have set out, 22  
which the Sustainable  
Development Bill could  
remove?:

Should organisations be  
required to report back on  
compliance with the duty  
through their existing annual  
reporting arrangements?: Yes, there should be a requirement to report back to  
enable monitoring of progress.

Are there organisations on  
this list that should not be  
subject to the duty? Please  
explain: 24

Are there organisations that  
are not listed above but  
which should be subject to  
the duty? Please explain: 25

Are there other advantages  
or disadvantages to defining  
“sustainable development”  
and if so, what are they?: Definition would provide clarity

If we were to define  
“sustainable development”  
do you think that the  
working definition above  
would be suitable and  
why?: The current definition is sufficiently broad to capture the  
areas we believe we need to include from a CSR  
perspective - if the definition is too refined there is a  
danger that it will not meet all needs.

What should be the overall  
purpose for a new body?: Support and advise

Do you have any views on  
the preferred approach  
regarding the main functions  
of a new body?: Agree that the Body should have a combination of roles  
which will support the current position and evolve with  
the Organisations as they move their agendas forward

Are there significant  
disadvantages to  
establishing a new body on No

a statutory basis?:

Do you agree with the proposed functions for a new body established on a statutory basis?:

Yes and agree with the additional possible functions as a part of this

Are there other functions which should be considered?:

32

Do you have particular views on the independence of a new body?:

33

Do you have particular views on the accountability arrangements for a new body?:

Not clear who the Organisation would be accountable to?

Do you have any other related queries or comments?:

Will there be a high level committee that will bring together key areas to review progress and share best practice and knowledge?

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What are the principal barriers you face to taking more long-term, joined-up decisions?:

Primarily, as with all organisations, not just the public sector, there is a lack of understanding about what sustainable development really means and how it should be applied in a business context. Unfortunately too many people still think that sustainable development is about being 'green'. While many organisations have a formal environmental or corporate responsibility policy, there is a definite lack of understanding at every level of how sustainable development should shape and influence the business. Policies and procedures are often issued without a comprehensive review of a business's sustainability; rather they simply fulfil a requirement of a client or management system. Often organisations talk about sustainable development in a global or national context, such as climate change and food poverty, issues that most people really cannot comprehend, it does not connect with their everyday work of life. In order to make sustainable development a part of everyday life whether at work or at home, people will need to understand sustainable development at its most basic, local level; it needs to be more 'real' to everybody. This lack of awareness and understanding can cause friction between and within organisations as their very separate entities, e.g. finance and facilities management, will inevitably have a very differing idea of what 'sustainable' means to their own area of work. Communication between departments and between individual bodies is often perceived as one of the biggest barriers to joined up thinking and decision making, each will believe their own definition of sustainable development is correct for their business or area of work. This lack of understanding permeates beyond the organisation as clients, suppliers and the public can find it difficult to meet the very different demands and

expectations of various organisations in the name of sustainable development. It can also be difficult to learn from either your own experiences or those of others as we rarely communicate successes and failures of decision making within our own organisations, let alone between organisations. Organisations that have implemented effective sustainable development procedures, policies and practices need to be more open and willing to share their experiences with other organisations seeking to follow their example. While many organisations will publically report their successes through their own reporting procedures or media, it is often the case that such information will not contain enough detail about whole life costs, problems that arose or alternative solutions that were not adopted. We need organisations to be able to be more open, more accountable and more approachable about implementing sustainable development practices. At the present time we would also be keenly aware of the economic climate that may be a key factor to preventing sustainable development being a key factor in decision making. For many organisations the short term financial gain will often, in the current climate, outweigh the longer term environmental, economic and social benefits.

A high level definition of sustainable development will help all organisations, regardless of size or sector as it will provide a single reference for all. This single definition should make it easier for organisations to understand what sustainable development really is and how it can be applied to their business practices.

Unfortunately too many people still think that sustainable development is about being 'green', a single definition for all should help foster a more robust and realistic approach to sustainable development in Wales.

What actions need to be taken, and by who, to reduce or remove these barriers?:

Where lessons can be learnt from other organisations and more open communication can be encouraged, all organisations should be responsible for breaking down the barriers. However, moves should be made at the highest level to ensure that these barriers can be overcome. Many private sector organisations are leading the way in terms of embedding sustainable development and communication with those businesses should be encouraged. In order to foster a more open and honest communication forum, whether it is publicly or privately between organisations, there may need to be some investment in technology such as media platforms and awareness raising/training. People will need to learn to adapt to more open ways of working and be encouraged to be active in the sustainability of their organisation, they absolutely must be able to have a 'connection' to

sustainability if it is to be successful at every level.

What other evidence is there about the extent of progress in relation to the Sustainable Development agenda and making Sustainable Development the central organising principle of public bodies? :

NA

Have we identified the most appropriate level of organisational decision making at which the duty should be applied? Please explain:

The consultation paper states that the duty should primarily focus on those higher level decisions that have a key role in influencing decision making behaviour. We would agree that this is the appropriate focus for the new Duty, specifically the long term strategies, annual plans and policies that govern how public funds are used. These are the levels at which sustainable development can be most readily applied as they take a more holistic approach and are not governed quite as rigidly by time limits. They would allow more flexibility and give an organisation more freedom to alter ways of working when faced with short term issues, such as infrastructure breakdown, economic instability and weather for example.

Would this approach risk capturing some decisions which should not be subject to the duty? What would these be?:

We do not believe that the approach would capture decisions that should not be subject to the duty. The idea of the duty is to encompass those decisions that influence service delivery, resource allocation, procurement and management of its facilities.

Are there any decisions that are not captured by this approach which should be subject to the duty? Again, what would these be?:

NA

Should we include decisions which govern an organisation's internal operations? If so, which internal operations should we include?:

Internal operations should also be covered as the idea of the duty is to encompass those decisions that influence service delivery, resource allocation, procurement and management of an organisation's facilities. Setting budgets, appointing and training staff and customer services for example should all be covered under the duty. Many of the organisations proposed to be subject to the duty are already implementing a number of management systems or procedures in isolation of each other. Internal decisions are just as important in this instance as those made for or on behalf of external parties.

Should budget proposals be subject to the duty? Please explain:

Yes we would support the view that budget proposals should be subject to the duty where budgets are set within a Welsh context. Internal and external budget proposals should be considered as the public sector

should be accountable for all of the money it spends on procuring services or providing funding. Those decisions must be made with sustainable development at its core.

Are all of the behaviours we identify critical to acting in ways that reflect sustainable development thinking?  
Please explain:

The key behaviours documented are critical if we are to embed sustainable development in the decision making of organisations. Sustainable development by its very nature should be focused on the longer term approach to decision making, adequately addressing the longer term benefits and opportunities rather than focused on the short term gains. In order for a sustainable development to be successful, it will be critical to engage and involve stakeholders over a longer period as well as working across organisational boundaries. The focus on prevention will require a longer term thought process, in order for there to be appropriate early interventions and if cost savings are to be realised. Tied into these behaviours are those identified at national level by the UK 5 Principles and at the Welsh level under the One Wales:One Planet strategy. Each of the principles identified in the two strategies at national level would require the behaviours documented under this duty in order to be successful and vice versa.

Are there critical behaviours that we have not identified?  
Please explain:

The behaviours can be readily correlated with those principles set out in the UK and Wales context; therefore we do not feel that there would be any scope for not encompassing any critical behaviour, as they would inevitably be covered at some level.

What are the advantages and disadvantages of designating behaviours as the sustainable development factors that must influence high level decisions?:

Behaviours are subject to such a range of influences, including education, affordability, skills, personal beliefs and availability of time that it could be difficult to define behaviour that would fit all situations at all times. It may also be difficult to assess how such behaviours impact on the behaviours of others, i.e. how will our decisions affect the decisions of others, where integration and partnership working within and between organisations is not being practiced or supported. The main benefit however in designating a behaviour based approach is that the individuals and organisations involved in decision making can comprehend a 'behaviour' more readily than they could perhaps comprehend a principle. The principles set out in the UK and One Wales strategies are perhaps more 'aspirational' and less directional than a behaviour based approach. In order for sustainable development to be successful people need to understand it in its entirety, and a behaviours based approach would enable people or organisations to 'connect' their actions to an impact more readily.



is consistent with one, some or all of the behaviours:

The idea of a new duty regarding sustainable development is that all factors should be considered in order for it to have been a properly sustainable decision. Therefore the decisions should only be lawful where they can be proved to be consistent with the behaviours. Indeed each of the behaviours listed will only be successful where they have been implemented alongside one of the other behaviours, such as integration and engagement.

broadly reflects the behaviours:

is not inconsistent with the behaviours?:

are there other options?:

Are there core sustainable development objectives we have not identified above?:

We would agree that the objectives listed in the consultation document are the most basic level objectives and that there is an agreement for making additions and amendments to this list, in particular making more reference to the long term financial benefits of sustainable development.

What are the advantages and disadvantages of designating sustainable objectives as the factors that must influence higher level decision making?:

As indicated above, objectives may be viewed in less real terms and the danger of this is that decision makers feel less connected to a high level objective than a behaviour. They could also be perceived as a long 'list of aspirations' rather than a decisive action plan for embedding sustainable development into decision making. Equal weight would need to be given to the three pillars of sustainability, and as they stand in their most basic form in the consultation document, these pillars are not represented equally, weighted more to the social aspect of sustainable development.

only if they actively contribute to one or more of those objectives:

if they do not detract from any of the objectives:

The idea of a new duty regarding sustainable development is that all factors should be considered in order for it to have been a properly sustainable decision. Therefore the decisions should only be lawful where they do not detract from any of the listed objectives, or where they can justifiably detract from one or more of the objectives.

even if they detract from some of those objectives, as long as they actively promote others?:

The idea of a new duty regarding sustainable development is that all factors should be considered in order for it to have been a properly sustainable decision. Therefore the decisions should only be lawful where they do not detract from any of the listed objectives, or where they can justifiably detract from one or more of the objectives.

are there other options?:

We think that a combined approach encompassing behaviours and objectives would be more helpful, especially in the short term where organisations will perhaps be implementing sustainable development for the first time. Objectives, as with many management systems are designed to be aspirational therefore a more comprehensible set of 'achievable' or 'managed' actions or behaviours should be adopted alongside. One of the difficulty in setting 'objectives' is that while they can appear too aspirational by their very nature, people forget about the very high end goals as there have little or no relevance to their everyday lives and decisions. They can also appear 'fixed', i.e. the end goal, when in fact they can be no end to sustainable development. Perhaps by referring to them as 'objectives' gives the wrong impression of how decisions are to be made.

What are the advantages and disadvantages of basing a duty on sustainable development behaviours and sustainable development objectives?:

What are your views on basing a duty around a single sustainable development proposition?:

There are difficulties in the single sustainable development proposition, primarily in that it does not provide a clear explanation of how this is to be implemented in order to inform higher level decision making. There would need to be further information given as in the combined approach to ensure that every organisation subject to the duty could report compliance.

How much time should organisations be given to make these changes?:

We do not believe it unreasonable to expect organisations to be compliant within two years from the introduction of the Bill. Expecting organisations to have embedded sustainable development as the guiding principle as well as produce compliance reports after just one year is unlikely to be realistic. Too short a timeframe will also not allow all organisations to provide a comprehensive and true account of compliance, and will not allow the organisations time enough to implement robust reporting mechanisms. The organisations likely to be subject to the new Duty are Too long a timeframe would also be detrimental to the effectiveness of any new statutory requirement, leaving organisations free to continue to pursue unsustainable development in the worst case.

Would it be helpful to issue formal guidance to organisations subject to the new duty?:

While many of the organisations likely to be subject to the Duty are currently producing corporate responsibility reports and environmental statements, they differ in scope, detail and format. It is important that all organisations report compliance in the same manner, to allow a full and accurate account of how the Duty is being implemented, its successes, and failures where necessary. To allow for standardised reporting it will be imperative that organisations have access to formal guidance from a single source.

Should any such guidance be issued by the Welsh Government or the new sustainable development body?:

The new body must be ultimately responsible for information and guidance from the outset in order to be instantly recognisable as the single point of contact for all organisations seeking information and guidance. Where information comes from a range of sources, it may be difficult to keep track of its accuracy or relevance; therefore it would be sensible to have a standard and central information point. As the Welsh government is likely to be subject to the new Duty itself, it would be prudent to 'distance' itself from the publication of any such information. Being responsible for producing such information and guidance may give the 'wrong impression' to other organisations. The new body should be seen to provide standalone independent guidance from the outset.

Are there any particular statutory duties which it would be appropriate to repeal, in light of the approach we are proposing under the Sustainable Development Bill?:

Repeals or revisions to a number of existing requirements would be beneficial, especially in terms of economic and environmental duties currently in place. We would question how this would be managed and who would be ultimately responsible, in particular where the statutory duty is a UK wide requirement, such as carbon reporting and waste.

Are there legal barriers to delivering in line with the sustainable development factors we have set out, which the Sustainable Development Bill could remove?:

There are bound to be some legal barriers in delivering in line with the sustainable development factors indicated in the consultation document and we would agree that the Welsh Government will need to review these prior to introducing the Duty as a legal requirement. While the Welsh Government may readily overcome such barriers in the case of devolved responsibilities, it may be more difficult where legal barriers arise at a UK or international level. There may also be difficulties where organisations delivering public services in Wales are partially or fully privately owned or where their operational head quarters are not based in Wales or indeed the UK.

Should organisations be required to report back on compliance with the duty through their existing annual reporting arrangements?:

It would be prudent for such organisations to include information on their compliance with the Duty in their current reporting procedures. Many of the organisations that are likely to be subject to the Duty are already reporting on their performance against a range of requirements and to request a separate report would not prove an effective or efficient use of resources, especially in the public sector. While it would be a more effective use of resource to include compliance reporting within existing reporting procedures, it is important that such compliance reports take the same format regardless of organisation or reporting procedures. Information must be standardised across the organisations required to report compliance if an accurate assessment of

	<p>compliance is to be made annually for the public sector in Wales.</p> <p>No; we would agree that those organisations listed should be subject to the Duty as they have such an important role to play in the delivery of services to the people of Wales. Such organisations should also be seen to act as a leader in sustainable development and both private organisations and individuals should see them as such.</p> <p>Any organisation in receipt of public funding or whose services are deemed ‘public services’ should be subject to the new Duty. This should include all emergency response services such as the police and ambulance service as well as the courts and prison service. Those private organisations who deliver public services should also be accountable for sustainable development where such services are publically funded and/or powers are devolved to Wales. We are seeing increasing numbers of public sector services being delivered by private sector organisations, and these figures are likely to increase at a rapid rate in the future. Therefore it would be prudent to ensure that there is provision made for such organisations to be subject to the Duty either in full or partially depending on the type of service and funding being provided.</p> <p>In the modern world, most people have an awareness of the term ‘sustainable development’ or ‘sustainability’. It has become a commonly used expression in the media, advertising, education and as such has probably lost some of its original meaning. While many people are now more aware of the term ‘sustainable development’, there is still an underlying common perception that it refers specifically and exclusively to environmental best practice. The focus of any definition must give equal weight to the ‘three pillars’ of sustainability, ensuring that decisions can be made holistically and with equal regard, where appropriate, to environment, society and economics. Giving a national definition of sustainable development in the Welsh context would help to refocus attention on the original concept of a sustainable development. It would also bring the term into ‘view’ of the entire population rather than seeing it as a high level ‘nice to have’ and would give weight to the Welsh Government’s One Wales-One Planet document. Most public and private organisations now publish or claim to have an environmental or corporate responsibility policy. If the Welsh public had a national, legal and clear definition of sustainable development they could make more sense of such claims and aspirations when</p>
Are there organisations on this list that should not be subject to the duty? Please explain:	
Are there organisations that are not listed above but which should be subject to the duty? Please explain:	
Are there other advantages or disadvantages to defining “sustainable development” and if so, what are they?:	

accessing public services. In legally defining the term ‘sustainable development’ it also may give the impression that its scope is fixed, it may not allow for a more flexible approach to be taken when assessing its relevance to emerging and evolving issues. The nature of sustainability means is that it is not fixed, it will change and evolve as technologies, attitudes and opportunities change and there may need to be regular reviews and alterations/amendments as necessary to ensure this evolution is encompassed in a legal definition. The term ‘sustainable development’ is also often viewed as an oxymoron – in order to develop and continue to develop, it is difficult to then also be seen to be sustainable in terms of economics and environment. Continued development means a requirement for resources; a growing population need a larger resource base for basics such as food as well as more complex requirements such as medicine and energy. It would be inherently difficult to promote the benefits of a less ‘developed’ world to a generation of people who would undoubtedly expect their current standard of living to be matched or exceeded in a world where ‘sustainability’ was fundamental to their everyday living. The NIMBY culture, particularly in the western world is an increasingly difficult hurdle to overcome, especially where the promotion of localised self sufficiency would need to include energy generation and waste management.

If we were to define “sustainable development” do you think that the working definition above would be suitable and why?:

The definition of sustainable development as given in the consultation document would be suitable for the new Duty. It is unambiguous and takes into account the three ‘pillars’ of sustainability as previously defined at international level, addressing the concept of ‘needs’ and giving consideration of ‘legacy’ for future generations.

What should be the overall purpose for a new body?:

We believe that the purpose of the new body should be to support and foster the delivery of the economic, social and environmental wellbeing of existing and future generations.

Do you have any views on the preferred approach regarding the main functions of a new body?:

We would support the preferred approach in the establishment of a new body. We agree that there needs to be elements of the ombudsman, scrutiny and expert models combined into an integrated offering so as to provide the most accomplished and effective body possible. The new body should act as an independent advocate for sustainable development and one that reports regularly to its ‘customer’, i.e. the people of Wales. There is a case for a more formal role for the new body to act as a statutory consultee in certain cases,

in particular where large scale decision making or budget setting is required or in the case of planning and development where masterplanning is required. Rather than act as a separate consultee, it may be that the new body assesses the responses of the main consultees, such as the local authorities and Environment Agency in order to formulate a high level overview in terms of sustainability. Where the new body should have the role of providing expert advice and guidance, it should ensure that its employees and consultants have the necessary skills, experience and attitude to carry the role out effectively. Where organisations are required to report to this new body, they have to be assured that the information they provide is being reviewed by the most appropriate person, not simply a department within Government with no real authority or knowledge about the subject. They must also be assured of the best expert advice and guidance in a timely and effective manner to ensure that the new body develops and maintains a reputation of being 'the' place to go for such information from the outset.

Are there significant disadvantages to establishing a new body on a statutory basis?:

The primary disadvantage in establishing a new body on a statutory basis is that where previously the arrangements were flexible and could respond effectively to some extent as required as changes occurred, a statutory duty may not have the same flexibility. Where organisations subject to the duty are found to be in breach of the requirements, the new body will also have to be responsible in bringing about legal proceedings. How will this be funded and to what extent will the penalties be enforced? However it is imperative that the new body is established on a statutory basis as it will help to ensure independence from political changes and attitudes as well as demonstrating leadership, responsibility and commitment in the longer term.

Do you agree with the proposed functions for a new body established on a statutory basis?:

We would agree that the seven functions listed in the consultation document are appropriate to the establishment and operation of a new statutory body. There are however a number of points we would like to note, primarily that the duty to produce its own annual report is carried out in a timely fashion. Too often the public sector report data a year-in-hand and thus such information loses its importance and relevance. Producing a report based on 2012 data in the latter half of 2014 once they have collated and analysed the data is simply not appropriate. In order to provide leadership and demonstrate that sustainable development has been embedded within the organisation such information should be readily accessible and published within a

reasonable timeframe, e.g. by the end of the first quarter. The performance and wellbeing reports should not be produced independently of one another. Providing people with an accurate report of the current state of play alongside an analysis of what ‘might have been’ would give a better understanding of sustainability in a Welsh context and using this background information to demonstrate how well the new body is doing would make it ‘real’ in a business sense.

Are there other functions which should be considered?:

n/a

Do you have particular views on the independence of a new body?:

The new body should most definitely be independent of the Government at every level, not affiliated with any political parties to ensure that it can be seen to be independent and standalone. Changes to Governments, ministers and policies could mean that the body loses its effectiveness and focus and is not given enough of an opportunity to perform to its potential.

Do you have particular views on the accountability arrangements for a new body?:

AGW would be the preferred body to undertake examinations of sustainable development in the public sector as it would make the case for sustainable development in economic terms more clearly, stepping slightly away from the view that it is purely an environmental principle. The new body should report on compliance with the Duty to ensure that it is not seen instead as the ‘Government’s sustainability police’.

Do you have any other related queries or comments?:

n/a



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## **WWF CYMRU RESPONSE TO CONSULTATION 'Proposals for a Sustainable Development Bill'**

WWF Cymru is the Welsh office of WWF-UK, which in turn forms part of the world's largest environmental network.

Please note that this consultation is in addition to our joint response submitted with Wales Environment Link. The two responses should be read in combination to gain a full understanding of our position.

### **Key issues in summary**

WWF is seeking a strong SD Bill, which can be an exemplar for other countries, on what is required to make progress on sustainable development. In our view, a strong Bill is one which

- Strengthens the existing duty on Welsh Government and extends this to the rest of the public sector.
- Creates certainty, for the long term on the direction/ goals of Welsh Government policy by legislating for these intentions and receiving cross party support
- Provides clarity to all those subject to the duty on what is intended by SD
- Includes binding legal procedures and processes for dealing with non- compliance
- Creates a statutory body or commissioner, independent of Government, to champion sustainable development and ensure progress on this agenda

WWF considers that changes are needed to ensure that the Bill makes sustainable development the central organizing principle of government. It should require Welsh Ministers and public sector bodies *to exercise their duties and powers in order to achieve sustainable development*, require Government to adopt a sustainable development strategy, and to enact the precautionary principle.

To do this, the Bill should expressly define SD. It should also acknowledge the existence of environmental limits expressly, and create obligations for the Welsh Ministers and public sector bodies requiring them to respect the need to operate within acceptable limits.

The Bill should also put the Commissioner for Sustainable Futures and/ or the SD body on a statutory footing as a strong and independent champion of the environment and future generations, with significant powers and duties.



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Chairman: Ed Smith, Chief Executive: David Nussbaum



The scope of the Bill must include a *substantive* duty regarding SD, binding legal procedures and a definition of SD.

**WWF does not believe that the proposals in the consultation are sufficient to achieve these aims.**

**We do not believe that the proposed approach of defining ‘sustainable behaviours’ for embedding SD in decision making is sufficient *alone* to achieve these aims.**

**WWF makes the following key proposals in order to strengthen the Bill:**

- Explicitly state that “Sustainable development (the process that leads to Wales becoming a sustainable nation) will be the central organising principle of Government,”
- Place a substantive duty on Welsh Ministers and all relevant public sector bodies, (including any new SD body,) to exercise all of their functions in order to achieve sustainable development
- Create binding legal procedures vital to implement SD fully e.g. a duty for WG to produce a strategy to deliver SD, consultation and reporting processes
- Define SD in such a way that adds clarity and priority to the implementation of SD. This is also where the importance of recognising environmental limits can be clarified, alongside the interests of future generations and the global impacts of our actions.

The current consultation is only partially addressing these issues. The approach in the legislation must be more holistic in order to be effective.

Further detail of our general proposals follows.

## **1. Scope and Purpose of the Bill**

Despite being established with a duty to promote sustainable development, the Welsh Assembly and the Welsh Government have failed to make significant progress towards sustainable development, as measured by the SD indicators. All political parties claim to be supportive and proud of this duty. Therefore it is now critical that all parties agree that sustainable development is the priority and support legislation which clarifies what sustainable development means for Wales and outlines the roles and responsibilities of the Welsh Government and Public Sector bodies in achieving it.

Achieving sustainability is a long term task and will require the commitment of successive Governments. Certainty for the long term is also necessary to attract investors and businesses and to ensure credible leadership with the public. It is therefore important that as much of the areas of agreement are captured in legislation as possible. Programmes for Government then become the implementation plans for sustainable development, which is where the differentiation of approach between political parties will no doubt become clear.

It is welcome that the Government has decided to extend the scope of the Bill to other public bodies. This has added to the complexity of the legislation and will necessitate review of existing legislation and duties as they apply to those bodies to ensure coherence with and primacy for the SD objective.

It seems likely that stating that “Sustainable development (the process that leads to Wales becoming a sustainable nation) will be the central organising principle of Government,” will be non-contentious between parties. However, WWF believes that this statement alone. Along with the proposals in the current consultation fall short of key elements required for effective action on SD. WWF considers that the Bill must also contain a *substantive* duty, binding legal procedures and a definition of SD.

## **2. Strength and nature of the duty**

Despite the stated intent of the consultation being ‘A new SD Duty’, WWF considers that there is no real, substantive duty suggested in the consultation.

The Government should take this opportunity to strengthen the existing duty on themselves to promote sustainable development, as well as extending it to the rest of the public sector. The current WG duty in the Government of Wales Act, which only requires the production of a scheme, has not been sufficient to achieve the changes required to move towards a sustainable Wales.

Andrea Ross,<sup>1</sup> in her recent conference paper, lays out the advantages of a *substantive* duty:

- enhances the status of sustainable development by clarifying that SD is not just “a material consideration, or one objective to be balanced against others.”
- provides a clear point of reference for those bodies with obligations relating to sustainable development
- generally, improves the understanding of the term
- ensures more consistency in its use and application.

The duty can be strengthened by having provisions with wording along the lines of “*requiring the government/ the body/ the local authority, to exercise its functions with the objective of achieving sustainable development.*”

In addition, to give greater clarity to the substantive duty, it should be phrased to include commitments for achieving clear goals, such as precise deadlines for producing documentation. The duty could also require identifying specific sustainable development indicators that are essential to drive forward progress, and monitoring progress on these against benchmarks. To create a robust and effective framework to aid decision making the sustainable development duty must be more than symbolic. Ideally, there should be some statutory means to monitor and review compliance using administrative, political, legal or other mechanisms. Further, the duty must provide a mandate for public sector bodies to direct their activities towards achieving positive sustainable development outcomes. The Bill needs to be explicit about the role of a sustainable development duty to ensure legal recognition and greater consistency. The nature of the duty is the crucial heart of this Bill and the current proposals do not give this sufficient attention.

The consultation document in various places gives the impression that organisations should use SD “to inform their decision making”. WWF believes that informing decision making is insufficient. Decision making must be *intended* to achieve SD.

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<sup>1</sup> Ross, A. ‘Why legislation is needed’.2012. IWA Legislating for sustainable development

#### 4. Binding legal procedures and the central organising principle

WWF agrees that to achieve real cultural change the legislation must make SD the central organising principle of governance. We reiterate however, that the consultation proposals which state that SD is the central organising principle and then focus on defining good governance for SD, through 'behaviours for decisions making' and, specifying which decisions it will apply to, is insufficient alone to truly embed SD. These procedures, must combine with a substantive duty, purpose and definition.

However, to become a reality, attention needs to be paid to the principles and objectives for decision making. We will comment further on this in Q9-16.

In addition to the legal procedures proposed, WWF are still of the view that there needs to be a requirement for Government to publish a strategy as to how it will fulfil its objective of SD. Provisions should require the Ministers to draw up a sustainable development strategy setting out how they propose to perform their duty to achieve sustainable development. This would, superficially, be a similar document to the current sustainable development scheme, and could have similar associated provisions relating to review, remaking, revision, consultation, reporting and post-election assessment as are set out in section 79 in relation to the scheme.<sup>2</sup> This would then satisfy the requirements of section 79.

But there would be several potential differences, such as:

- the strategy document would be the main mechanism for taking forward the substantive duty in relation to achieving sustainable development, whereas there is no substantive duty at present;
- the Act could include provisions setting out what should be included – or at least considered for inclusion – in the strategy, such as objectives, indicators and targets;
- the strategy could be given specific legal consequences, such as requiring specified public bodies to frame their sustainable development objectives by reference to it.

Moreover, the strategy could also become the lynchpin of provisions relating to making sustainable development the central organizing principle of government. This could be done, for example, by requiring the strategy:

- to set out the processes that would ensure that the Welsh Government's policies in relation to sustainable development are coordinated, consistent and coherent, including processes for the resolution of conflicting priorities;
- to be presented to the Assembly by the First Minister, as well as the annual reports;
- to be monitored and audited, independently, for example by the Commissioner for Sustainable Futures and the Auditor General. The Act could include specific provisions requiring the First Minister to respond to recommendations made by the Commissioner

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<sup>2</sup> An Assembly Act cannot modify section 79, so the associated provisions for a sustainable development strategy in an Assembly Act could follow those set out in GOWA sections 79(2)-(7). An Assembly Act could then provide that drawing up the strategy and following associated provisions in relation to the strategy would also be regarded as compliance with the duty to make the sustainable development scheme in section 79(1) and with the associated provisions in section 79(2)-(7). In this way, a sustainable development strategy would build on and take forward the current scheme, and would avoid duplication whilst respecting the inability of the Assembly to modify the provisions of that section. In time, section 79 could be repealed by an Act of the Westminster Parliament, as it would become unnecessary.

and Auditor General, setting out those recommendations that are accepted and those which are not accepted.

It may be argued that embedding SD in every strategy renders a specific SD strategy unnecessary. WWF considers that this may be so at some point in the future when the cultural change is thoroughly embedded across the public sector and Government. In the short term, there will remain a need to be clear on how SD is being pursued and to monitor and report on progress. It may therefore be that in 5-10 years, the recommendation from the independent audit is that this strategy is no longer required (it would still be necessary to monitor SD indicators and to comment on overall progress on SD). At that point, the Programme for Government itself may have become, as it should be, the strategy for SD.

## **5. Definition**

WWF strongly believes that it is essential that the Bill includes a definition of sustainable development and we agree with the statement in the consultation (Para 124) that having a definition would *'bring consistency and coherence to ... sustainable development law in Wales and to the public sector's efforts to comply with it'*.

In our view the advantages of defining SD far outweigh any disadvantages. (see response to q 26 for further detail). One of the main criticisms regarding the role of the law in helping to deliver sustainable development is the lack of clarity around what the term means. In practice, this often results in many different meanings being used, a focus on just one element of SD, or a view that objectives are competing and need to be 'traded off' rather than integrated in their consideration and delivery. This leads to widespread inconsistency and a sectoral approach.

Given the range of potential definitions, WWF considers it would be helpful for the Welsh Government to provide a definition of SD within the SD Bill.

In summary, we believe that a definition will

- provide consensus on the exact meaning of SD, reducing uncertainty for public bodies whose activities will impact on delivering SD and addressing previous Wales Audit Office criticisms about a lack of clarity and common understanding around SD
- ensure coherence, integrated delivery of sustainable development outcomes and remove conflicts with other legislation
- provide precision within the legislation, including by being clear on what terms mean, making it easier to implement and to enforce in a way that is consistent with what was originally intended.

The consultation document itself demonstrates that there is not a clear view on what SD means even within the Welsh Government. The expressions used vary both in wording and focus – for example see pg 3, first para; pg 9, para 11; pg 10, para 12; pg 15; para 28. This must be rectified. An imprecise approach to SD will merely introduce (or continue) a lack of consistency both internally and externally within and among the Welsh Government and public bodies. There is likely to be a lack of continuity in the meaning of SD over time, and this will result in confusion regarding the meaning and the expectations for both those implementing the legislation and for those subject to it.

In addition, because there is no definition proposed, WWF believes it is making the entire methodology of 'sustainable behaviours' and/or objectives, very complex, cumbersome and fraught with uncertainty. In previous UK strategies, it has been normal practice to use the

Brundtland definition, accompanied by agreed principles to add clarity on the type of 'behaviours' or decision making processes and measures necessary for SD. One Wales One Planet, and previous SD schemes, have also employed the principles in this way. In the current proposals, the methodology seems to be trying to replace these principles with behaviours, using simplified language that is in danger of removing SD from its true meaning. We recommend that WG reconsider this approach, looking to more clear legal definitions. However, if the Bill does take the behaviours approach then it should establish behaviours and/or objectives for *each* principle of SD currently contained in the UK Sustainable Development Strategy<sup>3</sup>. WWF considers that there is some merit in this approach, as it will translate the principles into action but WWF still considers that the defined behaviours should be underpinned by a definition.

WWF believes the following criteria should be employed when proposing a definition. The definitions should:

- Remain firmly linked to existing , internationally recognised definitions;
- Restore clarity to the meaning and focus of SD. Right from the Brundtland report and the Rio declaration (to which UK Government is a signatory) the intention is that Sustainable Development should be focussed on two key concepts - Needs and Limitations (particularly environmental).

It appears to WWF that WG's laudable attempts to raise awareness and interest in SD have led them towards use of words that has strayed a considerable distance from the overarching aims of SD. This is demonstrated, in particular, by the repeated use of 'wellbeing' as interchangeable with sustainable development.

WWF fully supports the use of language such as well being and quality of life as being appropriate for policy documents and public communications. However, we are less convinced that such language is appropriate in legislation.

WWF queries the strong reliance on framing the definition with the key driver as wellbeing. This does not appear to be consistent with the original Brundtland definition, which was strongly framed by needs and limits, as we have mentioned above. Whilst wellbeing is an essential part of achieving SD and we agree that wellbeing is an appropriate indicator or measure for the state of people and communities that should be achieved as part of achieving SD, WWF does not agree that it should be the sole focus or outcome to be achieved. However, it is also not clear to us what environmental or economic wellbeing means and how it is meant to be measured. It is even less clear where it is stated to be the 'economic, social and environmental wellbeing of people', which seems to prioritise the state of humans without acknowledging or respecting the state of the environment.

WWF is concerned that use of wellbeing in this way may limit the meaning of sustainable development, and only require consideration and measures that are related to matters that contribute to human wellbeing. This misses the important intrinsic values of the natural environment and the need to protect nature for its own sake. The need for conservation of the environment in this way was acknowledged by Brundtland as an integral part of SD:

*"If needs are to be met on a sustainable basis the Earth's natural resource base must be conserved and enhanced. ... However, the case for the conservation of*

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<sup>3</sup> 'Securing the Future: delivering UK sustainable development strategy. The UK Government Sustainable Development Strategy', 2005; <http://www.defra.gov.uk/publications/files/pb10589-securing-the-future-050307.pdf>

*nature should not rest only with development goals. It is part of our moral obligation to other living beings and future generations.”<sup>4</sup>.*

If wellbeing is to be used at all, it will require considerable definition within the Bill which may render it less simple to understand by the individuals required to implement this, as they are likely to easily confuse the legal meaning with the common parlance.

The Brundtland report<sup>5</sup> used the following as its “definition” of sustainable development. *“Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:*

- the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and
- the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs. “

The first sentence is the one that is most often quoted as an SD definition. However, the second section, which is often forgotten in quotes, makes quite clear the two key concepts at the heart of this i.e.- ‘Needs’ and ‘Limits’.

Whilst at a later point the Report also recognises that *“Sustainable development requires meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life.”* this must be clearly viewed in the global context and priority for the poorest that was intended. At later points, it is quite explicit, that industrialised or developed nations must make space for this development, for example by reducing our per capita consumption of energy.

So in the consultation paper, there is much suggested use of language and ‘behaviours’ which have been removed from the concept of meeting the needs of the poorest and making space for this through the reduction in resource use by the more affluent and developed countries. In WWF’s report One Planet Wales we calculated the increase in resource efficiency required to only use our fair share of the earth’s resources at 75%. Yet the current consultation paper seems to propose that such clarity of purpose has no place in an Act, not even in a definition, much less in some clear goals, or objectives

The language of the Brundtland report and its recommendations are as relevant today as they were in 1987 and it would give more international relevance and recognitions, improving the stature of the Bill, if this Act gave explicit legal form to the concepts of Brundtland and Rio.

There is little in the Brundtland report about *balancing* economic, social and environmental factors. Instead its focus is on ensuring development meets people’s *needs* with priority to the poorest, whilst operating within safe environmental limits. In order to achieve this it is clear that more equitable access to the benefits of resources is required.

- *“Even the narrow notion of physical sustainability implies a concern for social equity between generations, a concern that must logically be extended to equity within each generation.*
- *sustainable development requires the promotion of values that encourage consumption standards that are within the bounds of the ecological possible and to which all can reasonably aspire.*

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<sup>4</sup> ‘Our Common Future, Chapter 2: Towards Sustainable Development’; A/42/427. Our Common Future: Report of the World Commission on Environment and Development, 1987 See paragraphs 13 and 55; <http://www.un-documents.net/ocf-02.htm#I>

<sup>5</sup> *ibid*

- *it can be consistent with economic growth, provided the content of growth reflects the broad principles of sustainability and non-exploitation of others. But growth by itself is not enough. High levels of productive activity and widespread poverty can coexist, and can endanger the environment. Hence sustainable development requires that societies meet human needs both by increasing productive potential and by ensuring equitable opportunities for all.*
- *sustainable development must not endanger the natural systems that support life on Earth: the atmosphere, the waters, the soils, and the living beings.*
- *But ultimate limits there are, and sustainability requires that long before these are reached, the world must ensure equitable access to the constrained resource and reorient technological efforts to relieve the pressure.”*

So overall, revisiting the international basis of SD would challenge some of the SD factors or behaviours laid out and whether they truly are coherent with the recommendations above.

## COMMENTS ON SPECIFIC CONSULTATION QUESTIONS

WWF do not agree with the policy objective proposed for a statutory duty. As we explain, we believe the overall approach laid out is insufficient because it lays no duty to achieve SD. When this section refers to decision making processes alone, then it may be appropriate to suggest that the objective is to “*compel organisations delivering public services to act consistently with sustainable development as the central organising principle*”.

In our view, the objective of the Bill is to ensure that all public bodies exercise their function, with a view to achieving sustainable development. The overall goal being a sustainable Wales.

Therefore, we welcome the statement in paragraph 73, that Government does not wish an approach which consists *solely* of a general duty, such as ‘have regard to SD’. However, WWF reiterates the methodology suggested in this section *alone* is insufficient to meet the challenge of systemic change in the public sector to SD.

WWF does, however, welcome the recognition within paragraph 70 of the need to resource more effectively the ‘engage’ and ‘enable’ functions in order to improve common understanding and better compliance with a statutory duty. WWF believes the legislation itself is not sufficient to ensure SD is achieved. Effective implementation will be crucial, and measures to ensure this happens must be adopted separately, but in addition, to the Bill.

### **Q4 Have we identified most appropriate level of decision making?**

Although these decisions are very significant, WWF is unconvinced that these will be sufficient to ensure that all decisions with significant effects on SD are realigned. This is mainly because there is little evidence of action being taken when decisions are not compliant with Government guidance, or in instances of policy incoherence. It is usually left up to legal measures, whether through ombudsman, planning appeals etc. to rectify problems. If this law does not provide robust enforcement mechanisms for where unlawful decisions are made that are inconsistent with achieving SD at any level, for example, where a development control decision clearly contravenes sustainable development duties and policies, then there will be no redress. Legislation should introduce penalties for non-compliance, as happened in the case of waste regulations, in order to be fully effective. At the moment, the consultation does not even propose that performance measurement frameworks are amended to measure compliance and to make the monitoring of key indicators of SD mandatory.

As a result, WWF would challenge the logic outlined in paragraph 85. WWF would suggest that the approach outlined may well lead to business as usual, but with some justifications added on, based on the decision makers *own* interpretation of what SD means and what they should be setting out to achieve.

WWF notes that paragraph 75 of the consultation advises that WG is not interested in seeking to develop a duty that requires authorities to apply SD principles to each and every decision. WWF would appreciate more information on why WG sees this as an overly burdensome task, and the evidence to support this. WWF considers that the use of SD principles, within either the definition of SD and/or to aid the formulation of behaviours and objectives, may greatly assist because they provide a useful guide on what considerations should be taken into account for understanding what it means to achieve SD. Perhaps it may not be appropriate to apply the principles to every decision, but they should not be disregarded altogether. There should be greater consideration given to when the principles might be relevant and how they can be applied in particular situations.

WWF is concerned that the level of ambition for the duty is for decision making to simply be ‘*informed*’ by SD factors, which is simply not a strong enough duty. Decisions should be *consistent* with SD factors and the principles of SD contained within the UK SD Strategy (or a new Wales SD Strategy). Merely giving considerations to something may not be sufficient to



change behaviour. There should be action required, something which is measurable and enforceable to ensure that the (inadequate) status quo is not reinforced.

WWF agrees that authorities should be allowed to exercise discretion and flexibility in their approaches to an SD duty, to enable specific circumstances and characteristics to be taken into account and appropriate approaches and responses development. However, this must be set within a consistent framework where the end goal (achieving SD) and the key principles applied are the same so that there is clarity, certainty and common understanding on what collective action is trying to achieve.

WWF believes that there is a misconception that if you apply an SD duty to lower level decision making, this will become too burdensome and onerous for decision makers. For example, if you required every planning application to be measured against the principles of SD, this would be a very difficult task for developers and planners alike. However, WWF submits that there can be various forms of SD duties that can apply to different levels of decisions to ensure that the duty is appropriate for the specific type of decision. Consideration may need to be given to the nature of the decision being made, the type of actions that could be taken to ensure that SD is properly factored into that decision and how that could be translated into a positive duty or obligation. At the very least, a lower level decision must be *required* to be made in accordance with any high level plan, strategy or policy to ensure that the authority's approach to SD is filtered down throughout the activities and functions of the authority. It is essential that lower level decisions are influenced and required to be consistent with higher level strategies - otherwise the impact of the Act would be rather limited.

If the duty is to apply to high level decisions, WWF strongly recommends that a clear definition of what decisions are included is provided in the Bill for clarity.

WWF agrees that any SD duty must be measurable and enforceable. There needs to be review and reporting mechanisms, public accountability, and robust enforcement measures for non-compliance.

#### **Q.5 Would this approach risk capturing some decisions which should not be subject to the duty? What would these be?**

WWF is concerned at the language used in paragraph 87 to justify some exceptions to the scope of the Bill. The idea that independence of mind would be disturbed by SD seems to encapsulate some unjustifiable fears and misunderstandings about the meaning of the term. The idea that the rights of children is in some way antipathic to SD suggests a profound misunderstanding of the social justice aspects of SD.

This seems another good reason why a definition of SD is necessary, which will need to be accompanied by guidance as well as training to ensure people unfamiliar with the concept understand its true scope.

#### **Q.6 Are there any decisions that are not captured by this approach which should be subject to the duty? Again, what would these be?**

Financial/ operational decisions do not seem to be captured by this approach. Yet in the Wales Audit Office report in 2010<sup>6</sup>, one of the criticisms was about the lack of embedding of SD principles in *operational* decisions. *“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.”*

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<sup>6</sup> Auditor General for Wales, Sustainable development and business decision making in the Welsh Assembly Government. 2010, Wales audit office

One of its main recommendations is “*Embed sustainable development in the Assembly Government’s governance procedures, financial planning, core business planning processes, change programmes and human resources processes.*” it also recommends “*Ensure that all Assembly grant aid supports and promotes sustainable development by:*  
*i. setting terms and conditions that support sustainable development for all grants;*”

These recommendations seem to be ignored by the current proposals. The Audit showed that it was not the case that setting high level strategies ensured that decisions were made in accordance with these.

In WWF’s view one of the biggest impacts that the public sector can have on SD, is through its billions of pounds of expenditure. Sustainable procurement is not embedded in the sector. There has been much very useful research by Professor Kevin Morgan of Cardiff University establishing reasons for this and suggesting improvements to the systems. Illusory views that this will not be possible under EC regulations are apparently repeated in this consultation. In fact the EC is reviewing its directives and regulations with a view to encouraging more sustainable procurement.

Paragraph 82 advises that a domestic SD duty may not be consistent with EU or international regulation in the way in which authorities deliver services and spend public money. Procurement is given as a good example of this. WWF would welcome further information on this, and why in particular procurement is seen as an example regulatory area that could not be influenced by SD. We would argue that actually SD principles should be embedded within procurement regulations to improve the sustainability of production and consumption practices. In paragraph 83, there is a suggestion that the duty to invite tenders is somehow inconsistent with an SD duty, or a need to take into account sustainability factors when considering an application for tender. However, questions why these different obligations would be inconsistent when in fact they could be applied in parallel. We do not understand why a duty to invite tenders would stop an authority from requiring certain sustainability criteria (such as sourcing, emissions, efficiencies) to be met as part of the specification for the work, which would contribute to fulfilling the SD duty.

**Q.7 Should we include decisions which govern an organisation’s internal operations<sup>33</sup>? If so, which internal operations should we include?**

**Q.8 Should budget proposals be subject to the duty? Please explain.**

As outlined in Q6, if budgets and associated financial decisions are not included in the Bill, then it will fail to address some key criticisms from the Audit office. Public expenditure is a major incentive which will encourage change in the private and other sectors. (see table in section 5). Through these means, Government can drive markets and reward companies who are operating sustainably and producing the most sustainable goods and services. It would be very foolish to ignore such a potent weapon in this legislation.

### **Questions on the behaviours approach**

We need to preface our response to these questions with reference back to our previous comments. The several approaches outlined here are extremely complex to understand. This seems to WWF to be partly a result of having avoided outlining a substantive duty and definition. In our view, the ‘behaviours’ approach, is addressing one aspect of effective legislation for SD i.e. organisational decision making. There is clearly a need to ensure the type of cultural change that this is outlining if we are ever to achieve sustainability. However, this is a process which is a necessary component of change. The extent to which these ‘behaviours are demonstrated’ is a good basis for the monitoring and evaluation of the progress of the bodies concerned in embedding SD. Perhaps therefore this belongs in statutory guidance and in performance management frameworks, rather than substantially in law.

**Q.9 Are all of the behaviours we identify critical to acting in ways that reflect sustainable development thinking? Please explain.**

The thinking is not clearly enough related to the definition of SD. For example, long termism, is of course critical to SD. But it is not sufficient, in that the crucial SD principle here is about recognising the interest of future generations and operating in a way which does not negatively impact their ability to meet their needs. Just thinking long term will not achieve this.

WWF believe this is an example of why this approach alone is insufficient. The legal definition of the behaviours would need to be extremely complex to ensure SD without reference to a substantive duty and a definition of SD

WWF is concerned that the explanation of long term thinking in Para 23 implies that this will only be a behaviour applied to organisations that have an impact on human wellbeing. How will this be defined, and would this limit the application of this behaviour?

Whilst WWF welcomes the recognition of how important integration is, we are concerned that the focus is on wellbeing rather than SD overall. As mentioned above, this could be interpreted as placing priority on the social element of SD rather than a truly integrated approach and strong sustainability where a healthy environment is seen as necessary for the economy and society. A truly integrated approach takes into account all needs, be they human-centric or otherwise, and tries to meet the different objectives while delivering multiple benefits. If the end goal is merely human wellbeing, then we are concerned that the benefits for the environment will be focused on sustaining resource use and not conservation of nature for its own sake. In addition, while there is mention of the potential for there to be trade offs, there is no clear statement of how trade offs are to be identified or addressed. Whilst this may not be something for legislation to cover, it would be something useful to provide guidance on.

WWF strongly agrees with behaviours focused on improving the collaborative working across boundaries and focusing on prevention. Achieving SD should not be limited by boundaries, as an ecosystem based approach requires more holistic and joined up thinking and working to ensure that the best outcomes can be achieved. We also welcome the system based approach, where the root causes are found and addressed because this will ensure a much greater impact can be achieved overall.

WWF is concerned that the behaviour that relates to engagement and involvement is not all encompassing of the types of behaviour that would be needed. We feel that this should also include measures for transparency, accessible and fully accountable decision making, participatory democracy, devolution and empowerment of local communities to make their own decisions.

Overall, it is not clear to WWF how exhibiting the stated behaviours will actually demonstrate that SD is being achieved. We can see that this may be a way of demonstrating that organisations are taking necessary action to make SD the organising principle and embed SD within their decision making frameworks, but that is different to actually achieving SD. It appears that there is an assumption that if SD is the central organising principle, then SD will automatically be achieved, but how will this be measured?

**Q.10 Are there critical behaviours that we have not identified? Please explain.**

The problem here is that in the absence of a definition of SD, which includes the SD principles, there are many 'behaviours' that one expects but which are not made explicit.

For example *using sound science responsibly* is probably intended to be covered by 'supported by evidence' but it is not quite explicit enough. The sound science version has been used in many agreements, schemes etc. and has agreed meaning. Using integration in its place means there will have to be detailed guidance explaining what this means in full.

Similarly, the precautionary principle, *must* be applied, at least as strongly as it is in the current scheme. There are good arguments as to why it needs a stronger wording than this, more in line with the wording of the OSPAR convention which states:

*"The Contracting Parties shall apply:  
(a) the precautionary principle, by virtue of which preventive measures are to be taken when there are reasonable grounds for concern that substances or energy introduced, directly or indirectly, into the marine environment may bring about hazards to human health, harm living resources and marine ecosystems, damage amenities or interfere with other legitimate uses of the sea, even when there is no conclusive evidence of a causal relationship between the inputs and the effects;"*

It would be more satisfactory if the behaviours were linked to *all* of the SD principles.

The behaviours outlined all appear to be elements of a good governance structure, which purely relate to decision making and do not relate to action by authorities themselves that could result in adverse impacts on the achievement of SD. Paragraph 91 advises that WAG believe these behaviours to be consistent with the SD principles. However, WWF considers this approach only really covers one of the SD principles – good governance. In addition, WWF considers that if behaviours are to be part of the statutory approach, there must be included a behaviour to reduce their own impact. For instance, this would include action such as efficient resource use, reducing waste and pollution, reducing carbon footprint, application of sustainability standards in procurement, sustainable and ethical sourcing of products, reducing environmental impacts of activities, recognition and application of environmental limits. Perhaps this could be covered through a behaviour such as leading by example - i.e. do at home what you want others to do, get your own house in order.

#### **Q.11 What are the advantages and disadvantages of designating behaviours as the sustainable development factors that must influence high level decisions?**

On their own, behaviours do not make clear to public bodies, *the purpose*, or the goals of their decisions. To refer again to Andrea Ross conference paper, she notes that little priority is usually given to long term concerns or to the Earth's limits or carrying capacity. These 'behaviours' do put great emphasis on long term thinking, which is very welcome. However, it is not accompanied by an equally strong emphasis on thinking which recognises that there are environmental limits, which humanity must operate within in order to have a safe and healthy future. This is despite the fact that this has been fundamental to what SD means since Brundtland and is fundamental to the Rio declaration of which UK government is a signatory. More recent scientific understanding is adding clarity to what these environmental limits may be. The recognition of these limits, and commitments to make decisions which will enable us to stay within them is crucial for the success of this legislation. Given that scientific knowledge in these matters continues to develop, the Bill must make some provision to explain them in statutory guidance and update that knowledge, at least every 5 years.

In this behaviours section, it is vital that priority which must be given to ecological sustainability. Given that this is an area where decision making has been a failure thus far, its omission from this section is very surprising.

This whole approach is intended to force hard choices. Without due consideration of the long term and environmental limits then those choices are not so hard. And it is likely that the wrong choices will continue to be made.

**Q.12 How much influence should sustainable development behaviours have over high level decisions – for example, should those decisions be lawful if they have been reached in a way that:**

- **is consistent with one, some or all of the behaviours;**
- **broadly reflects the behaviours;**
- **is not inconsistent with the behaviours?**
- **are there other options?**

These questions effectively represent the weakness of this approach. It is extremely complex to design and explain how SD behaviours must influence decisions and how these can be enforceable! Please refer to the answer to beginning of this section and the proposal that perhaps SD behaviours belong in guidance

### **Questions on the objectives approach**

Although the objectives listed are the sort of outcomes you would expect if SD is being delivered there is no sense of the scale of change sought. Enhanced by how much would be the obvious question. However, if the approach we suggest where SD is defined as per One Wales One Planet and a substantive duty exists to achieve this, then the detail about the amount of change required on any objective would be detailed in the SD strategy! The strategy would have statutory status and it would be clear that it had primacy over other Government plans. It would be desirable to set statutory goals and targets if this were possible. At least for the long term, as the Climate Change Act does. It would then be the duty of government and the public sector to make their plans and decisions consistent with achieving these long term outcomes. There will need to be some enforcement possible if plans were not consistent with these goals. The objectives as written in this section are too general to be enforceable.

**Q.13 Are there core sustainable development objectives we have not identified above?**

WWF would challenge whether the objectives listed are appropriate for SD in Wales. We would also challenge their relationship to the desired outcomes in section 2.

For example, the long term outcome of ‘ a more prosperous, vibrant and innovative *resource-efficient* economy’ has become ‘ the vibrancy of the economy should be promoted’ . It is very hard to relate this to a genuine outcome necessary for SD.

Again Brundtland is quite clear that “The most basic of all needs is for a livelihood: that is, employment.” Therefore, it is clear that an economy that contributes to people’s ability to provide employment, income and the necessities of life is important to Wales. However, Brundtland goes on to lay out some new principles for a sustainable economy and how growth might be sustained. These have been much developed over the years but are still remarkably absent from any economic development strategy produced by any Welsh Government. There is lack of recognition that “*The process of economic development must be more soundly based upon the realities of the stock of capital that sustains it.... economic development must take full account in its measurements of growth of the improvement or deterioration in the stock of natural resources.*”

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<sup>7</sup> Author’s italics

Most of this important detail is lost in the approach being suggested here of reducing such complex objective to one short phrase. This again may be a good reason why the Act should contain the high level strategic goals for SD and that the detailed objectives are required to be laid in an SD strategy and/ or in statutory guidance.

Para 13 of the consultation document outlines the key long term outcomes that WAG wish to see. WWF would like clarification on whether these outcomes will be specified within the Bill, the Scheme or a separate strategy. In relation to the specific outcomes:

- ‘A sustainable economy’ – this appears to be focused on resource efficiency, but this should go further. In particular, it should require the use of renewable resources and that these should not be used at a rate which exceeds their ability to regenerate. There is no mention of progressing towards a zero carbon and 'green economy', or sustainable economic growth.
- ‘A sustainable society’ – WWF is not sure that a 'sustainable' society is the right way of describing the outcome that should be achieved. The UK SD Strategy refers to a ‘strong, healthy and just society’, which WWF considers encompasses all the right elements including equity, accessibility, inclusion and wellbeing. Merely referring to a society as sustainable does not help to provide clarity or certainty on what that kind of society would look like.
- ‘Sustaining the natural environment’ – Again, WWF does not believe this is the best way to describe this outcome. The use of 'sustaining' indicates a very low level of ambition. There should be aspiration to protect and enhance the environment - not just sustain it so that it continues to exist purely to provide resources for humans.
- ‘Sustainable resource use’ – WWF considers that this outcome is quite limited in application, as resources and resource use are much broader than just energy and water. We are pleased to see that this outcome recognises using a fair share of resources, but there is no statement on recognising and applying limits. Perhaps more consideration should be given to the types of resources that are needed, to include resources such as food, minerals, air, wood and soil, as well as the different types of resources that could be supplied as ecosystem goods and services.

Paragraph 93 suggests that if the objectives approach is used, then examples may be provided for when each of the stated factors is met. WWF considers that this would be helpful, subject to ensuring that this does not become a tick box exercise. Such examples may be usefully provided within best practice, or interpretation, guidance.

#### **Q.14 What are the advantages and disadvantages of designating sustainable objectives as the factors that must influence higher level decision making?**

The aim must be that the long term goals of SD are agreed by the Assembly. It will then be up to succeeding administrations in Government, local authorities etc. to set out their plans to achieve these long term goals. ( The SD strategy). These are the basis for their democratic mandate.

There should be independent scrutiny of the effectiveness of these plans and their implementation in meeting the long term goals, with the First Minister, for example, reporting to the Assembly on this, with the Commissioner and the Auditor general providing an independent review.

In WWF’s view, it would be ideal if the Bill were to make provision for statutory targets to be laid out in guidance. It should also agree the SD indicators that will be pursued for the long term to determine progress towards SD. These will not replace performance monitoring frameworks which will still be required in detail for individual bodies, which will all have

different emphases. However, there should be some consideration to a core of these being mandatory in order to be consistent with the SD indicators.

Para 103 states one of the problems with this approach. Laying out a list of objectives, isolated from one another, would indeed make it difficult to require decisions to be consistent with them all. It is the lack of the inter-relatedness that is the fault here. SD is not a list of unrelated objectives which can be pursued singly or single mindedly. The whole need here is for integration. As these various quotes from Brundtland report recognised over 25 years ago:

*” Hence sustainable development requires that societies meet human needs both by increasing productive potential **and** by ensuring equitable opportunities for all..... sustainable development can only be pursued if demographic developments **are in harmony** with the changing productive potential of the ecosystem.”*

*“In essence, sustainable development is a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development; and institutional change **are all in harmony** and enhance both current and future potential to meet human needs and aspirations.”*

The whole consultation in its avoidance of giving due weight to the need to respect environmental limits and the issues of equity between and within generations is failing to make clear what is required by an integrated approach to social , economic and environmental outcomes.

**Q.15 How much influence should the objectives have over high level decisions – for example, should those decisions be lawful:**

- **only if they actively contribute to one or more of those objectives;**
- **if they do not detract from any of the objectives;**
- **even if they detract from some of those objectives, as long as they actively promote others?**
- **are there other options?**

See q17 for response

**Question on the combined approach**

**Q.16 What are the advantages and disadvantages of basing a duty on sustainable development behaviours *and* sustainable development objectives?**

It might be appropriate for high level decisions to be developed consistently with SD objectives, and the way to meet objectives is through demonstrating SD behaviour. Then there would need to be clear links between behaviours and objectives, i.e. how do they fit together, what is their influence on each other, can specific behaviours be categorised under the objectives or vice versa?

**Question on the single sustainable development proposition**

**Q.17 What are your views on basing a duty around a single sustainable development proposition?**

There must be a duty but basing it around the type of proposition suggested would be entirely inadequate.

The duty must be substantive and require all functions and powers to be exercised to achieve SD.

A duty must make it clear that the interests of future generations must be taken into account.

A duty must ensure respect for environmental limits.

A duty should insist on the integration of social, environmental and economic factors in decision making.

Please note this does not require that any one factor may not be given primacy in certain situations. However, the impacts of the decisions on all aspects of SD must be considered. We would also suggest that if there are significant negative impacts likely (bearing in mind the precautionary principle) on key SD goals, then this should be explicitly justified and mitigation of those impacts should be required. (This type of decision making is already required if damage is expected to key designated environmental sites and some similar approach could be included).

The proposition in the consultation is unacceptable because it appears very human centric, very focused on one element of SD and doesn't recognise the interactions between society, economy and environment. Enhancement suggests a possibility for overconsumption, and does not really recognise equity and the need to live within environmental limits.

### **Question on the time organisations may need to comply with the duty**

#### **Q.18 How much time should organisations be given to make these changes?**

WWF would favour recognition of a reasonable phased approach to compliance. However, this must be balanced by ensuring that key decisions, particularly around infrastructure do not lock us in to unsustainable behaviours in the future. Therefore there may need to be some consideration given to prioritising the compliance of decisions with long term impacts. Overall, a timetable should be considered which will enable the organisations and the Auditor general to recognise whether progress is sufficient. Clearly statutory plans and strategies have between 3 and 5 year lifespan. It should be required that the next edition of such plans is compliant

### **Question on the provision of guidance**

#### **Q. 19 Would it be helpful to issue formal guidance to organisations subject to the new duty?**

Yes

#### **Q. 20 Should any such guidance be issued by the Welsh Government or the new sustainable development body?**

There are different types of guidance required at different stages and for different purposes. Statutory guidance will be required to clarify some aspects of the Act, which should be issued by the Government.

The Government will also wish to issue guidance in relation to individual bodies to help them set appropriate goals and to comply with any other requirements put upon them by Government – for instance in their remit letters.

At some stage the Commissioner / new body will be able to issue guidance, perhaps clarifying particular aspects, such as meeting the needs of future generations. Guidance issued by the new body may be more focused on best practice, model behaviour, and procedural aspects.



**Q.21 Are there any particular statutory duties which it would be appropriate to repeal, in light of the approach we are proposing under the Sustainable Development Bill?**

WWF believes that the Bill will have to make provision for the review of the coherence of other legislation and appropriate amendments. In the meantime, there will have to be provision for the resolution of any apparent conflict of interest and which statute has primacy.

**Q.22 Are there legal barriers to delivering in line with the sustainable development factors we have set out, which the Sustainable Development Bill could remove?**

**Reporting**

**Q.23 Should organisations be required to report back on compliance with the duty through their existing annual reporting arrangements?**

Yes. There are 2 separate aspects of reporting.

Firstly is monitoring progress towards SD objectives, through reporting on targets etc. these should be included in existing performance management frameworks

Secondly, there should be reporting on progress in embedding SD, in the sense of the culture change process and its success.

Different reporting requirements need to apply to Government than the other bodies. WG has an overall responsibility for reporting on progress towards a sustainable Wales and there should be requirements on the First Minister to report to the Assembly on this, in particular formats and regularity.

Our suggested structure for this takes into account the continuing requirement of section 79 of GOWA Act which requires a scheme, its making revision, consultation, reporting etc<sup>8</sup>.

We suggest this duty is met by requiring Ministers to draw up a SD strategy setting out how they intend to perform their duty to achieve SD. The SD Act could include provisions about what should be included e.g. objectives, indicators and targets. It should also

- set out the processes that would ensure that the Welsh Government's policies in relation to sustainable development are coordinated, consistent and coherent, including processes for the resolution of conflicting priorities;
- be presented to the Assembly by the First Minister, as well as the annual reports;
- be monitored and audited, independently, for example by the Commissioner for Sustainable Futures and the Auditor General. The Act could include specific provisions requiring the First Minister to respond to recommendations made by the Commissioner and Auditor General, setting out those recommendations that are accepted and those which are not accepted.

**The organisations that might be subject to the duty**

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<sup>8</sup> Roderick, P. The National Assembly for Wales and Taking the Longer view. "An Assembly Act cannot modify section 79, so the associated provisions for a sustainable development strategy in an Assembly Act could follow those set out in GOWA sections 79(2)-(7). An Assembly Act could then provide that drawing up the strategy and following associated provisions in relation to the strategy would also be regarded as compliance with the duty to make the sustainable development scheme in section 79(1) and with the associated provisions in section 79(2)-(7). In this way, a sustainable development strategy would build on and take forward the current scheme, and would avoid duplication whilst respecting the inability of the Assembly to modify the provisions of that section. In time, section 79 could be repealed by an Act of the Westminster Parliament, as it would become unnecessary"

**Q.24 Are there organisations on this list that should not be subject to the duty? Please explain.**

**Q.25 Are there organisations that are not listed above but which should be subject to the duty? Please explain.**

The Auditor General and Wales Audit office are not included. There should be a duty on them to examine SD. They should also be required to collaborate with Commissioner for Sustainable Futures and Public Services Ombudsman to provide appropriate scrutiny of progress. They also can provide redress to citizens in some instances.

The situation of the Children's and Older people's and Welsh language Commissioners also needs to be considered. Provision should be made in future for a review of the relationship and powers of these commissioners and what duties they have in regard to SD. Also how their roles might enable better scrutiny and redress on aspects of SD.

It will also be important to clarify the distinct roles between the Auditor-General and the new SD body. It is not clear what a sustainable development examination to be carried out by the Auditor-General may encompass. WWF would be concerned if this was purely related to procedural performance relying on statistical data as this would not really evidence whether changes in behaviour are influencing impact and benefits on the ground. There needs to be some mechanism for reviewing the effectiveness of policies, plans and strategies adopted by councils and how they are implemented to measure whether progress towards achieving SD is being made.

Local service boards are not included nor are quasi public bodies such as Heads of Valleys regeneration. These are key deliverers and commissioners of public services and should be included.

Heritage, archaeological and cultural authorities (such as Cadw) should also be included. These are responsible for managing historical and cultural assets which are important elements of our environment and society.

### **Defining sustainable development**

**Q.26 Are there other advantages or disadvantages to defining “sustainable development” and if so, what are they?**

It is essential, as the consultation states in Para 124 that a definition is made to *‘bring consistency and coherence to ... sustainable development law in Wales and to the public sector’s efforts to comply with it’*.

In our view the advantages of defining SD far outweigh any disadvantages.

A report from Wales Audit Office in 2010 identified *“the lack of an agreed, clearly communicated understanding of what SD means for Government in Wales”* as one the themes which limited the ability to support the embedding of Sd. They also identified that staff thought *“a simple definition of SD is needed...”* This also provided examples where policy staff misinterpreted sustainability as financial viability. It was also clear in a previous audit of local government in 2006 that the same was true of local Government in Wales.

The fact that many measures and other pieces of legislation may refer to SD is another important reason why coherence must be achieved between them. Conflicting requirements on public bodies even more than on Government, will make the achievement of SD impossible. Although there is a perception in WG staff (and no doubt elsewhere) that SD is about greening the way we do things, WWF would contend that this is not the same as understanding the fundamental and crucial nature of the basis of SD as ensuring we live within the environmental limits of our planet. After all, the short form of the Brundtland definition makes no explicit mention of environmental limits. It is clear from talking with many WG and local authority staff that their understanding of ‘*not compromising the ability of future generations to meet their own needs*’ has only a hazy connection to the ideas of limits to availability of natural resources and virtually no understanding at all of the concept of planetary boundaries and their thresholds. The concept of a ‘safe operating space’ for humanity as recently outlined by Kate Raworth<sup>9</sup> seems to have had no traction at all in the current debate.

Both the definition and the other provisions of the Bill could make this meaningful and beyond doubt, without being tied to specifics which may change as science or evidence accumulates.

A stated disadvantage is that our understanding of what constitutes SD may change so we may wish to change the definition. WWF would argue that the Brundtland report and its definition has stood for 25 years and the issues raised in the Rio Declaration in 1992 are still relevant today. Better understanding of the exact nature of environmental limits and how to measure human well being will no doubt develop. This is unlikely within the next 25 years to fundamentally alter the principle of what SD is. What will alter are the boundaries of that ‘safe operating space’ and our knowledge of what affects it. Therefore, it is right that detailed targets and plans can be developed in strategy and guidance and amended accordingly, a process of this should be laid down in the Bill.

Wales will be in a stronger position if there is clear cross party support for this legislation and agreement on its scope and meaning. Therefore, it is right that it is the Assembly which will pass this Bill, hopefully with cross party support. If the Government is minded to change this purpose of Government in Wales then it is also right that the Assembly should be able to debate the need for this. It would be a very serious step to take for an organisational duty on SD.

In our view, the need for flexibility to change the definition is not the same as the point that the definition needs to be flexible. The point that the definition needs to be flexible is in principle a valid one – especially as many public bodies will be covered.

However, it seems possible to have a definition that maintains the basic principles and then focuses down on the specifics of the Ministers' and public bodies' functions and roles (within the Assembly's legislative powers) and then uses guidance from the point at which those functions diverge to tailor-make it to their roles in order to allow some flexibility.

It may also be helpful to deconstruct SD sequentially – there is a general definition, such as the Brundtland, then there are the principles, then there are specific goals/targets/indicators which flow from the principles.

**Q.27 If we were to define “sustainable development” do you think that the working definition above would be suitable and why?**

WWF still believes that the definition used in One Wales One Planet is a useful basis for any definition in the Bill. It should be considered the default definition for any legislation, whilst recognising it is not ideal. It, of course, needs examined in the light of the powers of Assembly, Government and other public bodies. This will be a lengthy task and should be underway now to ensure its completion by the introduction of a Bill in 2013. Please see Annex 2 for some initial ideas.

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<sup>9</sup> K.Raworth (2012) ‘A Safe and Just Space for Humanity’. Available at <http://www.oxfam.org.uk>

WWF has considered several different definitions, including the one in the consultation. It may be worthwhile to consider the strengths and weaknesses of various definitions prior to the White Paper.

WWF has considered some other possible definitions. They are attached in an **Annex, 1** along with some initial thoughts on their appropriateness.

### **An independent sustainable development body (section 7) The purpose of the new body**

Throughout this section of the report the role, functions etc are all related to the body, rather than the Commissioner. Whilst this is understandable, what is not clear is the relationship of the body with the commissioner and how s/he would be appointed/ elected. Is it intended the Commissioner is the chair of the new body? Does he have stronger powers of direction over it than, say Welsh Ministers?

#### **Q.28 What should be the overall purpose for a new body?**

##### **ROLE OF THE COMMISSIONER/ Body**

It would be preferable that the Commissioner had some statutory duties as well as some powers. A statutory duty to protect the environment and to safeguard the interests of future generations would be recommended.

It would be as well to link his/her role specifically to international instruments, as is the case with the other Welsh commissioners. This would be particularly apt as SD is an international concept and explicit recognition that his/her role is specifically linked to global issues and impacts would be logical as well as setting the appropriate framing for the role. His/her powers could be linked to the 1992 Rio Declaration, and to require him or her to have regard to international Conventions concerning the environment that the UK has signed and ratified, including the 1998 UN ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention).

It is extremely important that there is a champion for future generations who can intervene to ensure their interests are respected. This role must not end up as a commissioner for public services in some form. Its primary duty must relate to the interests of people, present and future, and nature and must be a champion for these being addressed sustainably.

Para 106 advises that any contravention of an SD duty will be dealt with through the courts in the usual way. However, WWF queries whether there could be alternative mechanisms for review introduced, such as administrative reviews that could be undertaken either by the Auditor-General exercising its scrutiny role or the new SD body exercising a watchdog/ ombudsman type role. Often legal enforcement of contraventions is complex, time consuming, costly and inaccessible to a lot of people. Different mechanisms for review will allow for greater public involvement and participation in decisions that affect them, ultimately contributing to the overall achievement of SD

By working collaboratively with AGW, PS Ombudsman and the Commissioners for Welsh language, older people, children and the Equality and Human rights Commission, the Commissioner can ensure the interests of the public are protected.

Express statutory duties must be placed on AGW and PS ombudsman to scrutinise compliance and offer redress to citizens. However, unless the commissioner has an explicit right of

challenge on behalf of future generations then it is unclear who can provide this function. It would seem unlikely that PSO would hear complaints on behalf of unborn grandchildren?

There should be explicit provision made for the relationship between the UK committee on climate change and this body. The committee currently scrutinizes and advises Welsh Government on one important component of sustainable development. The powers of the commissioner should give him access to all such advice, whether published or not. Should it also give him rights to request their help in scrutiny. They have more expertise in this limited field than the AGW will have and their role could be very helpful.

However, it would seem that the current proposals do not provide for support to the non- public sector, both organisations and individuals. (see Para 155) For organisations, many, particularly in the third sector, will be supplying services to the public bodies. They will also need support and guidance on their roles in SD. Similarly, it was recognised in the Rio declaration and elsewhere since that all sectors and individuals need to be engaged to make SD happen. This Bill is currently not making provision for this. As Agenda 21 was abandoned post 2006, then only bodies such as Cynnal Cymru provide such support and guidance. They are currently closely entwined with Commissioner. If the new body does not take on these functions then how is it to be achieved?

### **The preferred approach for the new body**

#### **Q.29 Do you have any views on the preferred approach regarding the main functions of a new body?**

If there is clarity on the commissioner's role, as we suggest above then the preferred approach for the body is acceptable, with some improvements as suggested. A critical friend role alone is insufficient for this.

There should be provisions in the Bill which expressly ensure that advice is made public. In the way that the Committee for climate change, publishes its advice to Governments on meeting the targets in the climate change act. Such transparency is important for the body to have the trust and confidence of all sectors of society – not just of the public sector bodies themselves.

### **A statutory body**

#### **Q.30 Are there significant disadvantages to establishing a new body on a statutory basis?**

We agree that establishing the commissioner and the body as statutory roles and bodies is a good idea and can see only advantages to this approach. Having a statutory basis provides clarity on the role and purpose of the body, its functions and powers and how other bodies and people are meant to engage with it. It also allows for proper accountability and ensures the longevity of the new body, reducing the ability for successive governments to withdraw support without proper debate and agreement across the Assembly (as happened with the SDC). True independence would be guaranteed if the role were appointed or elected by the National Assembly for Wales, rather than the Government. The public's interest could be guaranteed from any undue influence of the public sector bodies or Government in the selection process.

### **Proposed functions for the new body**

#### **Q.31 Do you agree with the proposed functions for a new body established on a statutory basis?**

The Children's Commissioner and Commissioner for Older People appear to have extensive powers to obtain information, though these do not seem to extend to having proactive physical access to property in order to obtain information.

### **Q. 32 Are there other functions which should be considered?**

In terms of implementing the cultural change required WWF agrees with the 4 Es approach adopted. We concur that leadership commitment is key. Therefore there must be support to leaders and encouragement. However another driver of leader engagement is scrutiny and concern about public response/ reputational issues. Whilst we appreciate the role the AGW may have in this, there are other key weaknesses in the situation in Wales (and UK) currently, with respect to the rights and difficulties of applying the rights of individuals for access to information and justice in environmental matters.

The UK has recognised the existence of a substantive environmental right in the preamble and in Article 1 of the Aarhus Convention:

*"Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations..."*

#### *Article 1 - OBJECTIVE*

*In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention."*

This substantive right, however, has not been operationalised in the UK. An Assembly Act could and should make it so. (See previous comments on role of commissioner). However, in pursuance of this the Commissioner for Sustainable Futures' function should be empowered to receive complaints and representations concerning possible violations of the substantive right or non-compliance with such a duty. If the commissioner does not have this right then, who will? The Public services Ombudsman? If so, then this Act should ensure that is clear.

The new body, if the Bill cannot provide a definition of SD, could be charged with advising on a definition of a sustainable Wales and measures for this i.e. SD indicators

The body could be charged with reviewing any SD strategy, or in its absence the Programme for Government and advising on its consistency with the SD Act and goals and identifying any areas for attention – as the Committee for climate change does in relation to carbon budgets to meet the Climate change act goals.

There's no mention in the functions of providing advice to other bodies on implementation of SD duties, or measures to achieve SD generally. This could also be extended to providing advice to individuals/communities on what they should expect from public bodies and how they can contribute to a community to help it achieve SD.

Agree that the other possible functions outlined in paragraph 166 should also be included, as these will help to provide a more proactive and influential body that is fit for purpose.

### **Independence and accountability**

### **Q.33 Do you have particular views on the independence of a new body?**

WWF agrees that the new body should be independent from Government. This will enable it to provide impartial and robust advice and guidance which is not influenced by the politics of the day, as well as allowing it to be fully accountable when reviewing actions of other bodies.

**Q.34. Do you have particular views on the accountability arrangements for a new body?**

It is important that the structure of the body is representative – i.e. includes expertise and skills from across the different sectors and SD overall. This includes the means by which the Chair is appointed. The body should be publicly accountable with full transparency and reporting, subject to FOI, etc.

**Conclusion**

In many ways, the consultation has failed to clearly answer the key question ‘What do you want to make illegal?’ That is what the law is designed to do in general. In this case the consultation seems to be trying to avoid any such prescriptions. Without this rigour, then much of the aims could be contained in policy.

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Please note that this consultation is in addition to our joint response submitted with Wales Environment Link. The two responses should be read in combination to gain a full understanding of our position.

**(Annexes follow)**

## **Annex 1. Potential definitions of SD**

1. *In Wales, sustainable development means enhancing the economic, social and environmental wellbeing of people and communities, achieving a better quality of life for our own and future generations:*

- *in ways which promote social justice and equality of opportunity; and*
- *in ways which enhance the natural and cultural environment and respect its limits - using only our fair share of the earth's resources and sustaining our cultural legacy.*

*Sustainable development is the process by which we reach the goal of sustainability.*

### Strengths and weaknesses:

Already in use in Wales and supported by government. However, it contains a lot of language that will need further definition for clarity for example how you interpret some of the words legally - like 'enhance', 'promote' and 'fair share'.

This definition does not clearly relate to the internationally understood Brundtland concept, which refers to meeting the *needs* of people rather than enhancing their well being. It also fails to reflect the present / future generations relationship effectively.

2. *“sustainable development” means development that meets the social, economic and environmental needs of the present without compromising the ability of future generations to meet their own need including the application of the following principles:*

- (a) living within environmental limits;*
- (b) ensuring a strong, healthy and just society;*
- (c) achieving a sustainable economy;*
- (d) promoting good governance;*
- (e) using sound science responsibly.*

### Strengths and weaknesses:

WWF considers that a Brundtland type definition in itself is a bit too high level, that there would be difficulties in applying it in practice because the wording is quite loose and could be open to interpretation. So, it needs additional detail to help with interpretation of the scope of the definition. We suggest using the SD principles from the UK SD Strategy to provide a broad framework to be interpreted locally - plus there is the Strategy itself which can then be referred to understand what the principles mean and how they can be applied in practice.

The strengths here are that this is a definition already recognised and understood internationally and applied previously at UK level. This definition is not too prescriptive and would allow flexibility for local authorities and communities to adapt the definition as necessary to meet their local circumstances. It accords with Brundtland concept on needs (particularly around future generations) and limits.

3. When the House of Lords debated the Localism Bill, a suggested definition was offered by Liberal Democrat peers giving more detail to the principles:

*“sustainable development” means development that meets the social, economic and environmental needs of the present without compromising the ability of future generations to meet their own needs, based on the following guiding principles—*

- (a) living within environmental limits, namely respecting the limits of the planet's environment, resources and biodiversity, to improve our environment and ensure*



that the natural resources needed for life are unimpaired and remain so for the future generations,

(b) ensuring a strong, healthy and just society, namely meeting the diverse needs of all people in existing and future communities, promoting personal wellbeing, social cohesion and inclusion, and creating equal opportunity for all,

(c) achieving a sustainable economy, namely building a strong, stable and sustainable economy which provides prosperity and opportunities to all, and in which environmental and social costs fall on those who impose them and efficient resource use is incentivised,

(d) promoting good governance, namely actively promoting effective, participative systems of governance in all levels of society and engaging people's creativity, energy and diversity,

(e) using sound science responsibly, namely ensuring policy is developed on the basis of strong scientific evidence, whilst taking into account scientific uncertainty (through the precautionary principle), as well as public attitudes and values.

Strengths and weakness:

This amendment provides much greater clarity than just using the high level principles. It could be amended to fit more with the OWOP definition of 'sustainable economy'

## **Annex 2: Possible development of the SD definition from One Wales One planet and related provisions in an Act**

1. Use a simple definition of sustainable development, that builds on the powers of Welsh Ministers under s.60 of the Government of Wales Act and reinstates the present/future generations' relationship envisaged by the Brundtland Report but which is missing from the OWOP definition. It is essential to include within any final definition the words of "in accordance with this Act" - for linking the definition to the provisions of the legislation, which will make clear what it is that Ministers and other public bodies must do in order achieve sustainable development so defined.
2. In the body of the Bill, state that Ministers must prepare a sustainable development strategy, which must be approved by the Assembly and which must set out targets and timetables for:
  - achieving a sustainable economy;
  - promoting social justice and equality of opportunity;
  - enhancing and restoring the natural environment and respecting its limits;
  - enhancing the cultural environment and sustaining Wales' cultural legacy;
  - promoting good governance;
  - using sound science responsibly; and
  - using Wales' fair share of the earth's resources.

These could be referred to as the strategy's "seven principles", using the term from the 2005 UK Sustainable Development strategy definition and incorporating the principles from that definition that are missing from the OWOP definition.

The Bill would then identify the powers and duties of Welsh Ministers (and, where necessary, of other public bodies) which will be exercised for the purposes of meeting those targets and timetables, along with a process for meeting the targets and timetables. In this way, the current functions of Ministers and public bodies would be aligned with each of the seven principles – and the targets and timetables linked accordingly.

3. The Bill will contain a duty on Welsh Ministers (and, where necessary, other public bodies) to exercise their duties and powers for the purposes of meeting those targets and timetables.
4. A provision in the Bill that states that in developing the strategy in relation to enhancing and restoring the natural environment and respecting its limits, Welsh Ministers shall:
  - identify those Earth-system processes necessary for achieving sustainable development; and
  - use scientific advice and information to understand their thresholds at relevant scales; and
  - on the basis of that understanding, consider the feasibility of establishing in relation to Wales, quantified boundaries transparently on the basis of scientific advice, having taken into account social and economic considerations, public opinion and having assessed the risk of crossing the boundaries.

The purpose of the above provision would be to begin a process of recognising and respecting Earth-system processes necessary for achieving sustainable development in Wales.

5. A provision in the Bill to have regard to the advice and recommendations of the Commission on Sustainable Futures in developing the sustainable development strategy,

and to publish its reasons for not adopting any of the Commission's recommendations at the same time as publishing the draft sustainable development strategy.

## Welsh Government Proposals for a Sustainable Development Bill (WG15440)

### - **Cardiff Council consultation response**

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### **A. The Policy Context**

The Local Government Act 2000 provides a legislative context for local authorities to promote economic, social and environmental well-being. The Act also provides every local authority with a duty to prepare a long term strategy (community strategy) for promoting or improving the economic, social and environmental well-being of their area and contribute to the achievement of sustainable development in the United Kingdom.

The Local Government (Wales) Measure 2009 also gives local authorities a general duty to ‘...improve the exercise of its functions in terms of ... *strategic effectiveness and sustainability.*’

As a consequence, Local Authorities and its partners are already compelled to undertake a long term approach to local development, and are monitored on their progress.

Whilst these laws are directly applicable to local authorities, it is accepted that they do not encompass all the public sector. Additionally neither the Act nor the Measure explicitly provide a legal duty to deliver and promote sustainable development (SD) as defined by the “Brundtland Commission” or “One Wales: One Planet”.

The upcoming White Paper therefore needs to be clear on how existing powers and duties are complimented, and where the added value of any new legislation in this area is.

The Council would require confidence that the Bill, in the main will itself be sustainable and not likely to change.

### **B. Promoting sustainable development – barriers to taking more long term joined up decisions (Q1-2):**

Barriers:

Financial barriers to long term decision making are understandable, especially in the current economic climate. This, however, is compounded by the annual approach to budget setting within local government that does not lend itself to long term planning. This is particularly relevant if Welsh Government is serious about encouraging a preventative approach to policy making. Allowing any funds to be rolled over into future year’s

budgets could unlock funding for early intervention, which is recognised as forming a key part of the sustainable development approach.

Though there is compelling evidence to suggest that early intervention is a sustainable way of deploying resources as it mitigates against having to invest even greater resources in the future, it is not always possible to quantify the exact amount of saving that will accrue. This represents a significant barrier if we are to manage resources effectively, and governance structures should encourage early intervention to pre-empt the potential escalation of social, economic and environmental issues.

Public sector organisations have several competing demands to contend with and, by nature, have to be reactive to public demands. This is linked to the well rehearsed argument that the 4 years political business cycle does not allow longer term planning. However by-partisan consensus around some key priorities can help negate some of these issues.

A lack of understanding as to what sustainable development means, both in policy terms and in relation to service delivery is a key barrier. SD is frequently misused and is often seen as synonymous only with the “green agenda”, or used to convey longevity. A clear discourse around long term resource planning needs to be developed and communicated effectively if this is to be resolved.

#### Solutions:

Some of these barriers could be resolved by making SD the central organising principle of all public sector organisations (including Welsh Government) along with scrutiny based on SD principles, as per the proposed SD Bill. This would hopefully assist in resolving the issues around short term decision making highlighted previously.

Clear governance arrangements are needed around sustainable development issues. A case in point relates to the need for the regional coordination of planning, transport and economic development policies around the South East City region. On issues that fall outside individual local authority boundaries, or are likely to roll beyond the term of successive administrations, broader governance structures are needed to ensure SD feature at the strategic level.

A clear definition of SD is needed if we are to develop an enduring shared understanding of the issues.

Training for decision makers is also vital due to the complex nature of the subject. As a consequence both decision makers and policy makers must have access to training highlighting the connectivity between different areas, such as planning, sustainable travel, equality and healthy lifestyles. This training needs to be ongoing to reflect the maturing understanding of how SD principles influence policy and decision making.

### **C. Evidence in relation to sustainable development (Q3):**

Generally most public sector organisations are very good on SD policy and strategy, but the emphasis can be lost at a programme and project level. In some organisations SD is still on the periphery and remains seen as a 'green agenda'.

It should be noted that the community strategy for each local authority area makes a laudable statement on sustainable development. The integration in Cardiff of the Community Strategy, Children and Young People Plan, Community Safety Strategic Assessment and Health, Social Care and Well being Plan into one document reflects the understanding that sustainable development impacts all aspects of policy making.

When balancing the sometimes competing objectives of SD (economy, society and environment) the environmental objective often loses out. A better way of looking at SD is to include the environmental limits concept – that is that economic activity should work towards social progress and that this must be achieved within environmental limits. Equally, economic development within environmental limits can be one of the most powerful means of dispersing social benefits. It is important that all decision makers understand the interaction between social, economic and environmental factors and take decisions with the availability of resources in the long term in mind.

There is evidence across the public sector of improved consideration of environmental and social issues in decision making, however this concept could be further embedded in the decision making progress.

In Cardiff Council the SD agenda is maturing with:

- SD as a cross cutting issue in both the Integrated Partnership Strategy and Corporate Plan;

- Cardiff Council and its partners working towards 7 high level outcomes that represent a balance of economic, social and environmental well-being.

- A corporate SD Policy, with a newly developed vision, Cardiff: One Planet City, currently out for public consultation;

- Signatory to the Welsh Governments SD Charter and EU Covenant of Mayors;

- Undertaking sustainability appraisal of key projects and policies including the LDP; and

- A corporate network of Sustainability Advocates and Green Teams.

We are also working on education and communication around SD principles, to fully embed in the organisation and develop consensus on the meaning of SD, which will be significant issues for the SD Bill itself.

### **A new sustainable development duty**

#### **D. The level of decision making to which the duty applies (Q4-8):**

The duty should apply to higher level decisions, impacting strategies, policies and plans as these represent the areas of most influence. If decisions are

correct at the higher level then this should, through effective implementation, cascade down to lower level decisions.

Based on this, only the higher level decisions should be audited ensuring that the auditing process is not burdensome or onerous. This also ensures a focus on scrutinising appropriate decisions and activities. There would also be the potential to broaden the 'net' to capture lower level decisions as necessary as well as capturing the cumulative effects of minor decisions on higher level decisions via a scrutiny approach. If SD is to be the central organising principle, then, in time, no decision should be out of scope as SD needs to be considered at all levels.

There is potential for a named individual to have specific responsibility for the duty within an organisation. Within local authorities this could be the CEO or Leader for example, but all staff should have due regard to SD encouraged through appropriate training opportunities.

Higher level decisions that relate to internal operations should be subject to the duty. As local authorities are leaders in their local communities, and in many instances the largest employers in the area, they need to be seen to be leading by example. To stop the legislation becoming too onerous this could be limited to internal operational decisions made by senior managers and elected members.

Budget proposals should also be included within the legislation as this is one of the key strategies covered by the high level decision making approach advocated; although this may not initially be scrutinised in detail to enable organisations to get up to speed on issues. There is currently a requirement that all budget related decisions undergo an equality impact assessment. Though there is an inherent risk of proliferating "tick box exercises", there may be some opportunity to consider SD in the context of budgetary decision, particularly significant investment decisions.

## **E. The behaviours approach (Q9-12):**

The behaviours identified are consistent with UK level policy on SD in that they incorporate the UK Shared Principles on SD, plus appropriate others. The behaviours approach clearly shows organisations what is required of them, and understanding this is critical to achieving behavioural change.

However there are issues around interpretation of the behaviours and also monitoring of these behaviours. Guidance would be required with this approach to ensure correct interpretation (e.g. how long is long term?). Measurement and auditing of these behaviours could be problematic as they are subjective (i.e. how would they be evidenced?). Additionally sustainable behaviours do not necessarily achieve sustainable outcomes for an organisation or area.

If this approach is to be considered then decisions should demonstrate how they utilise all behaviours broadly. To be sustainable behaviour/s should not be weighted preferentially to suit the decision.

#### **F. The objectives approach (Q13-15):**

Again the objectives approach is consistent with the UK policy on SD as they incorporate the UK Shared Principles on SD. The objectives are easy to relate to public sector priorities and could potentially be measured via key performance indicators.

However there is potential for the objectives to be in conflict (e.g. vibrancy of the economy against a healthy ecosystem), and concern that the objectives proposed may be too broad and long term to show change in the short term. Again guidance would be required to ensure this approach is correctly interpreted (i.e. what is included in cultural legacy, value of ecosystems?).

Again to be sustainable, decisions should contribute actively to all of the objectives and not be weighted preferentially to suit the decision.

#### **G. The combined approach (Q16):**

The advantages of this combined approach are that it encapsulates all the UK Shared Principles on SD, and checks that sustainable behaviours actually result in sustainable outcomes. It combines the longer term behavioural change with more tangible and related objectives, and should achieve more sustainable outcomes for organisations / areas.

The disadvantages are that this would be a very complex approach, both to embed in organisations and to measure and monitor in law. If these issues can be resolved then this is the preferred option.

#### **H. A single sustainable development proposition (Q17):**

A single proposition on SD would be a broad statement, potentially commensurate with the high level outcomes that partners in Cardiff have already adopted. However, it is important to ensure that what an organisation is doing to achieve a single proposition, is grounded in SD principles.

Simpler, more definitive definitions would help with all of the above approaches, in order to achieve good quality decision making.

It should be noted that none of the above approaches consider the global aspects of SD; that our actions at a local level have consequences at a global level and the concept of global equity.

#### **I. The time organisations may need to comply (Q18):**

This would need to take into account the overall planning cycle of organisations. Once the Act is in force this would be a minimum of one year to get basic processes and reporting mechanisms in place for a light touch



audit, and at least 3 years to embed fully for a complete audit. A phased approach enables organisations to plan and adapt their working practices.

#### **J. The provision of guidance (Q19-20):**

In order to make SD the central organising principle of all public sector organisations it will be necessary to issue clear guidance for all professions within the sector. If organisations are to comply then this guidance would need to be statutory. Statutory guidance sends a clear signal to sector leaders that SD needs to be the central organising principle. Guidance would need to be developed in tandem with the Bill and issued as soon as the duty comes into force to enable organisations to plan and react. Equally, provision should be made to highlight how SD principals could be integrated within partnership planning.

Guidance should be prescriptive, where possible, on key issues to ensure compliance and consistency, but also allow for the flexibility of local level interpretation and priorities. It should include approaches to implementation along with practical examples.

Guidance would be best developed and issued by the new SD body jointly with Welsh Government.

The guidance should be a living document that can be updated as lessons are learnt, technology changes etc (eg as per Planning Policy Wales).

Any guidance should also consider the correlation with other key strategic documents such as the innovation strategy for Wales.

#### **K. The repeal of duties (Q21-22):**

Welsh Government need to take stock of what duties already contribute to the SD agenda and that could be repealed in the light of the new duty. There is a need for a clear and coherent position since new legislation is being imposed in an area where there are already statutory documents. As Welsh Government will also be subject to the SD Bill, does this mean that the Welsh Government SD Scheme will be relinquished once the SD Bill comes into force to avoid duplication of legislation?

However there may be alternative opportunities to build upon the SD component of the Local Government (Wales) Measure 2009 which already takes account of economic, social and environmental well-being.

#### **L. Reporting (Q23):**

Organisations should be required to report back via existing mechanisms where these exist so as minimise additional burden. For local authorities this should be delivered through the Improvement Plan required under the Local Government (Wales) Measure 2009, Part 2.

## **M. The organisations that might be subject to the duty (Q24-25):**

The list of public sector organisations appears broadly correct. We are pleased to see that Welsh Government is to be subject to the duty.

The inclusion of Town and Community Councils may be placing requirements at too low a level. Such organisations could be made aware of aims in this area if they are not to be subject to a legal duty.

Below are some suggestions of additional organisations:

- Police – whilst not devolved to the Welsh level they are heavily involved in local partnership work and as such it should be investigated as to how they can be engaged in the duty.
- Wales Audit Office – if they are to potentially audit public bodies on compliance with the duty then they should in turn be subject to it.

It is appreciated that the dividing line between public and private sector organisations is sometimes blurred. If such organisations are to be included in the duty then it is suggested that both utility companies and public transport bodies, especially Network Rail, are included.

## **N. Defining sustainable development (26-27):**

Defining SD offers consistency and legality, and has the potential to reduce personal bias of the term. It may not give consistency in interpretation, but this is the role of guidance to ensure the meaning is clear and understandable.

There are advantages and disadvantages of placing the definition of SD in the Act or the associated guidance. If included in the guidance then it would be easier to amend further if necessary. If defined by the Act then this flexibility would be lost, but equally the definition could not be easily watered down.

Several recent Welsh Government consultations have referred to SD and each time a slightly different definition of SD has been given. This is confusing and potentially problematic. The definition of SD contained in One Wales: One Planet is suitable for use in the new duty as it ties in directly with the long established international Brundtland definition, but at a local Welsh level.

Any definition needs to be used in its entirety in further publications and legislation, rather than just the pertinent bits to any subject – e.g. economic wellbeing being referred to in regeneration activities without the complementary social and environmental aspects.

Additionally key criteria for an organisation with SD as its central organising principle also need to be defined.

## **An independent sustainable development body**

### **O. The purpose of the new body (Q28-29):**

The purpose of the new body should be to support and foster delivery of the SD Bill across Wales.

The function of a new SD body could include:

- Research and evidence gathering around SD challenges and solutions;
- Production of guidance to support public sector organisations;
- Monitoring, scrutiny and challenge of public sector performance on SD – although this may become a role for the Auditor General for Wales / Wales Audit Office;
- Training for those involved in scrutiny and monitoring;
- Organising peer review of organisations to identify good and bad practice and share learning;
- Ensuring consistency of approach; and
- Investigating complaints and violations of the duty – although other channels already exist for this ombudsmen type role which may be better utilised.

If the new SD body is to incorporate aspects of audit then there is a question as to how this will link with the Auditor General for Wales to avoid duplication and embed SD into audit principles. It would also need to be ensured that Wales Audit Office has suitable resources, capacity and expertise to undertake this function.

### **P. A statutory body (Q30):**

If there is a legal duty upon public sector organisations regarding SD then the SD body also needs to be statutory in order to offer certainty of support. As SD is such a broad issue it would be unacceptable to add this function onto an already existing body (e.g. the soon to be formed Single Body).

The role of the body would need publicising well so that stakeholders are clear as to its remit and how / who to approach with SD related issues.

### **Q. Proposed functions for the new body (Q31-32):**

The proposed duties and powers are broad enough to still be applicable in the future as SD progresses in Wales. It would be useful to include a specific function of consulting with public bodies so that work is informed by feedback from those supported.

### **R. Independence and accountability (Q33-34):**

The new SD body needs to be impartial to Welsh Government, yet still maintain close working. Partly as the SD Bill will apply to Welsh Government who will need to be audited, and also an impartial body will not be as affected by political changes.

The new body needs to be accountable for its actions to all stakeholders in Wales, as well as operating transparently. A Board could be established (similar to the Commissioner for Sustainable Futures Advisory Panel) to oversee the work of the body, with representation from different sectors and areas.

## WELSH GOVERNMENT CONSULTATION ON PROPOSALS FOR A SUSTAINABLE DEVELOPMENT BILL

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The South East Wales Economic Forum (SEWEF) is a unique partnership in South East Wales bringing together the region's ten local authorities, the Welsh Government, the private sector, universities, further education and the third sector to address regional economic matters. SEWEF's geographical area encompasses what is becoming known as the 'South East Wales City Region' including Cardiff and reaching from the local authority areas of Bridgend County Borough Council in the west to Monmouthshire County Council and the English/Welsh border in the east, and north to the Heads of the Valleys authority areas.

SEWEF welcomes the opportunity to contribute to this important debate. Rather than answer all 35 questions posed in the consultation document, we have chosen to respond using a selection of the headings under which the questions have been grouped.

### **Promoting sustainable development**

SEWEF commends the Welsh Government on:

the continuing commitment to making sustainable development its central organising principle considering the long-term – an approach required for development of a City Region in south east Wales

recognising the need to minimise as much as possible the burdens – both procedural and financial – that may be associated with instigating its sustainable development proposals, something that will be of particular concern to our private sector membership

SEWEF also acknowledges the challenge of the current undertaking, and the Welsh Government's recognition of associated complexities (the Welsh Government will be aware of the danger of negative perceptions about the costs involved in setting this system up, especially if the proposed independent body is perceived as 'yet another quango').

A reading of the consultation document reveals that numerous issues need to be worked through and SEWEF endorses the intention to effectively engage in further consultation upon release of a White Paper later this year. As such, while the points made in this response are clearly intended to constitute a constructive contribution to the debate, SEWEF will reserve definitive judgement.

SEWEF is well placed to recognise the scale of the challenge of balancing potentially conflicting developments. Recently, for example, it has considered how best to address the decline in the traditional retail sector: while there may be obvious benefits associated with the growth of online shopping, at the same time the economically detrimental effects on our town centres – and on a more purely social level how we interact with each other through frequenting them – are equally clear. SEWEF is also encouraging its member Local Authorities to provide instances where activity like town regeneration can be better coordinated with broadband infrastructure works, and endorses, through the Wales Infrastructure Investment Plan, engagement with utilities in the context of understanding better when they plan to ‘dig up roads’ in order to maximise potentially associated efficiencies.

SEWEF’s commitment to sustainable development is also demonstrated in its role in lobbying for electrification of the Valleys railway network which has the potential to be transformative in the context of developing the Valleys Metro, around which support for the nascent South East Wales City Region can coalesce.

The consultation clearly focuses on ‘organisations delivering public services’; although it is alluded to, SEWEF would appreciate greater clarity on how the private sector – particularly in terms of letting public sector contracts – will be impacted.

We would endorse the suggestion (on P24) that the single most important factor in driving organisational approaches to sustainable development is considered to be management leadership and that other important issues include the mechanisms in place to scrutinise delivery of the sustainable development duty; external stakeholder pressure; and the presence of guidance on interpretation and implementation.

### **Evidence in relation to sustainable development**

Given the consultation document notes (on P23) that within the Welsh Government ‘innovative silos’ exist in relation to sustainable development, it is reasonable to assume that similar circumstances exist across the Welsh public sector.

It would seem that the analysis of the indicators table on P25 of the consultation document is over-optimistic; a more accurate analysis would be that progress is uneven – which strengthens the case for attempting to speed the embedding process up.

### **The level of decision making to which the proposed sustainable development duty applies**

Paragraph 75 (P29) encapsulates the fundamental dilemma of needing to progress the sustainable development agenda while being acutely aware of avoiding overburdening organisations with regulation – and associated cost/resource implications; the Welsh Government deserves credit therefore for suggesting targeting those higher-level decisions organisations make that have the greatest influence over behaviour (P30).

SEWEF acknowledges the need to consider carefully how sustainable development legislation will fit with other bodies of law – UK, European, international etc.

In response to the question posed on whether to include decisions which govern an organisation’s internal operations, we would suggest the answer should be yes, particularly given the currently accepted popular understanding of organisational culture being defined by what people within organisations do and how they behave when ‘nobody is watching’.

### **The behaviours approach & the objectives approach**

Getting the legislative balance right will be pivotal. Legislation has an important role but it should not necessarily be the only focus of this whole initiative – especially if it is more than anything about changing a collective mindset/attitude; how precisely can engendering changes in attitudes and behaviours in this context be enshrined in law? Also, as with any legislation that is not fully understood (or badly written) the scope for unintended negative, counter-productive, effects – for instance of potentially endless legal challenge – and therefore ‘half-baked’ compromise is enormous.

Given this, perhaps the objectives approach would be more appropriate within a legislative framework since, as laid out in the consultation document, they appear more tangible and ‘measurable’ in legal terms.

### **The combined approach**

However, there is a clear imperative to change behaviour, so efforts could be made to combine the two approaches (perhaps with the objectives embedded in legislation, the behaviours tackled in the guidance). SEWEF looks forward to considering other views in the White Paper consultation.

### **A single sustainable development proposition**

This option, as framed in the consultation document, would appear to be unworkable in legal terms; it appears too vague.

### **The provision of guidance**

It would be helpful to issue formal guidance to organisations subject to the proposed new duty (see above regarding the combined approach).

### **Reporting**

Organisations should be required to report back on compliance with the sustainable development duty through their existing annual reporting arrangements.

### **Defining sustainable development**

SEWEF is currently unaware of a more appropriate definition than that used by the Welsh Government.

### **The purpose of the new body**

SEWEF would welcome more clarity regarding the proposed relationship of any new independent sustainable development body to that with the proposed new environment body incorporating the Countryside Council for Wales, Forestry Commission Wales and Environment Agency Wales. This will presumably need careful thought (and/or clear presentation/explanation) in order to avoid institutional confusion – at least in terms of public perceptions.

Of the three models outlined, *“a body focused on scrutinising and holding organisations delivering public services to account on sustainable development”* would be an interesting option.



SEWEF notes with interest the discussion of the role of the Auditor General for Wales' Office in the sustainable development context. It appears that the Welsh Government is reluctant to consider the Auditor General for Wales taking on fully the sustainable development scrutiny function without the institution of a brand new body but there may be merit in doing so. Rather than create a new body why not, as perhaps implied in the consultation document (P46-7), expand the role of the Commissioner for Sustainable Futures – in terms of provision of tailored support, dissemination of case studies, the undertaking of research and the provision of progress reports on issues relevant to wellbeing – beyond the Welsh Government?

### **Conclusions**

The Welsh legislature is unique in having its duty on sustainable development enshrined in its founding Act. SEWEF suggests that a guiding principle of the new Sustainable Development Bill should be to ensure this duty attracts rather than repels investment, as recommended in the City Regions Report submitted to the Welsh Government in July 2012.





## **Welsh Government's Sustainable Development Bill Proposals Paper- City and County of Swansea Response.**

The City and County of Swansea welcomes the opportunity to respond to the Proposals Paper for the new Sustainable Development Bill for the Devolved Public Sector in Wales. This consultation response was drafted in consultation with services across the Council to take account of a range of perspectives and view points within the Authority.

### **1. Barriers to promoting sustainable development**

- 1.1 The City and County of Swansea recognises that the system of public services needs to radically change in order to meet future demand and to deliver sustainable outcomes for our communities. For example, as the ageing population increases by over 70% in future years, existing arrangements for social care need to be radically reformed to ensure that well-being in our communities is maintained and enhanced, but within available resource limits.
- 1.2 A range of barriers exist making it difficult for local government to take more long-term, joined-up decisions. Sustainable development is a complex concept requiring members and officers to think laterally and understand the wider implications and repercussions of their decisions and actions, often outside of their professional area of expertise. Across organisations, knowledge on these issues exists but is patchy, and there is a lack of awareness and engaged thinking on these issues consistently across many public sector organisations.
- 1.3 This is not helped by a lack of a consistent definition, interpretation and application of sustainable development used by Government.
- 1.4 Current national policy and regulatory frameworks for a range of services, for example finance, social services and education, and interpretation of these regulations also impede local government's ability to make decisions that are longer term and joined up. Compliance with these frameworks can lead to unsustainable decisions on occasion and has resulted in a risk adverse culture across public sector.
- 1.5 Short term budget timescales and funding arrangements and traditional financial models can also place barriers to long-term, joined up thinking. The benefits of a sustainable approach are often realised years after the initial investment. Twelve monthly budgets, short funding timescales, traditional approaches to finance and relatively short invest to save cycles work against these long term benefits.
- 1.6 Individual organisations' self interests, organisational values and individuals' own values and ethics can influence their decision making behaviours to protect what they have which may not be the more sustainable option.
- 1.7 The move towards more sustainable decision-making will require a systematic culture change in the public sector and requires capacity building in the systems and frameworks that local government and the public sector work and the skill, knowledge and values of individuals.

- 1.8 Building a level of understanding and awareness across the public sector in all areas and at all levels is important. This is a necessary first step in building capacity in an organisation to make sustainable development its central organising principle. To be effective this will require resourcing.
- 1.9 Implementing the Sustainable Development Bill and making sustainable development the central organising principle will require resourcing and financing, particularly in the short term to develop and implement new systems and build internal capacity. As the aim of the Sustainable Development Bill is to drive decision making that takes account and is accountable to the longer term, this will result in decisions that are likely to be more costly in the short term. At a time of contraction in public spending these additional costs will be difficult for local government to bear.
- 1.10 Welsh Government has to provide strong leadership in taking forward the principles and commitments in the Bill, demonstrating by example and consistently across all its areas of responsibility. Currently some decisions, such as the recent cuts to the Local Transport Support Grant to the City and County of Swansea, do not support local authorities in the challenge to improve environmental, social and economic well-being and to deliver sustainable outcomes in our communities.

## **2. The level of decision making to which the sustainable development duty applies**

- 2.1 The level of decision making set out in the proposal paper should capture the majority of high level decisions of greatest impact. However there are some fundamental problems with this approach. By the time the majority of these decisions are placed in front of decision makers, many options will have been considered and scoped out for a variety of reasons, such as regulatory constraints, timescales, political cycles and individual's professional opinion. These may include more sustainable options that take into consideration longer term, inclusive solutions that could provide better sustainable outcomes. Debate about why some of these options have been dismissed, the potential wider long term impacts and potential for mitigation are not necessarily made visible or transparent to key decision makers.
- 2.2 For sustainable development to be made the central organising principle for an organisation, then sustainable development factors should form the basis on which any particular policy, strategy, plan is being scoped and developed, not as part of a decision making assessment at the end of the process. The quality of the decisions being taken also will depend on the knowledge and awareness of key decisions makers.
- 2.3 Audit reviews that show that sustainable development is often addressed and understood at a high level in the public sector but it tends to be patchy in its implementation. A sustainable development bill that looks at high level decisions as the only mechanism for making sustainable development the central organising principle runs the risk of an uneven implementation. Local authorities could particularly be at risk as services are delivered in different departments operating to different regulatory regimes.

- 2.4 There are potentially some decisions that would not be covered by this bill. As local governments move to greater regionalisation of services this may result in decisions or services not being fully subject to this duty. Some procurement decisions maybe not fit the description of a decision as outlined in the Proposal Paper but could have a significant long term impact.
- 2.5 If Welsh Government wants to make sustainable development the central organising principle for the public sector then decisions around internal operations will need to be covered by the Bill. Some of these operations can and will have a significant impact on sustainable outcomes for communities in Wales, for example decisions on selling land or keeping land in public ownership say for potential future flood defences. These and other back office operations will also have an indirect impact that may have significant impacts down stream through their supply chains. For example decisions on investments and pension funds could potentially fund activity that does not support sustainable outcomes but also could offer huge opportunities for promoting activity and investment that supports sustainable development.
- 2.6 Recent work at the City and County of Swansea has shown the importance of budgetary decisions in promoting sustainable development but have also highlighted the tension that exist between existing regulatory frameworks, limited financial resource and decision making for sustainable outcomes. Lessons learnt from Equality Impact Assessing our budget proposals have also shown that clear guidance and advice will be needed to ensure consistency.

### **3. Sustainable Development Factors: which approach?**

- 3.1 The sustainable behaviours identified by the proposal paper are critical but in themselves will not necessarily result in sustainable outcomes for communities. Organisational behaviours will be strongly prejudiced by an organisation's values and current behaviour models as well as the personal knowledge, values and attitudes of individuals who make up that organisation, especially managers and decision makers.
- 3.2 Behaviours will be influenced by locality. The behaviours as described in the proposals paper lack a global perspective and the protection of natural resources is weakly acknowledged. They will also be influenced by other constraints and barriers. There is no outcome associated with this approach and may prove difficult to measure. In order to be operational and effective, challenging goals need to be part of the process.
- 3.3 Having said that, the behaviours approach is most likely to drive the innovation that will be needed to deliver the sustainable outcomes that Welsh Government are looking for over the outcomes approach.
- 3.4 Sustainable development factors based on outcomes give a framework for the development of long term goals but could result in reinforcing the silo approach to organisational management. This is one of the key issues in local government that work as a barrier to sustainable development. Decisions based on this approach would need to acknowledge the wider impacts of each of the objectives, transparent in highlighting these impacts and setting out how

these impacts are going to be managed, negative impacts mitigated and positive impacts maximised.

- 3.5 A single sustainable proposition would allow for the most flexibility. It would give the position from which the decisions and actions of a public sector organisation would be measured. However clear guidance would be required for organisations to understand exactly what this means as this is the option that is open to the most interpretation. It could also be the option that results in the least integration of sustainable outcomes. A decision or action that supports one element of well-being for example could purport to be 'sustainable', even if it has a negative impact on other elements of well-being.
- 3.6 The proposals paper is not clear about who will be held responsible for compliance with the duty in an organisation. In other similar duties it is clear who is responsible, whether this is one individual or a group of individuals. Is Welsh Government going to consider this issue in the White Paper?

#### **4. Defining Sustainable Development**

- 4.1 A consistent definition and interpretation regarding the principles and outcomes of sustainable development is fundamental. This will mean that organisations across the public sector will be working towards the same measure of sustainability. An overarching definition still allows organisations to interpret the definition for their own business needs whilst ensuring that the key principles and outcomes remain consistent for the whole of the devolved public sector in Wales. This could also bring consistency across other legislative frameworks that purport to promote sustainable development but do not seek to offer a definition.
- 4.2 The definition needs to focus on sustainable outcomes for communities. It needs to explain in accessible and easily understood terms what sustainable development means to people living and working in Wales.

#### **5. The provision of guidance**

- 5.1 The provision of guidance is going to be essential. Guidance from the Welsh Government is likely to have the most regard from other public sector organisations although if the new Duty is also going to apply to Welsh Government then there is a potential conflict of interests. The effectiveness of guidance from the new Sustainable Development Body will depend on its role and purpose.
- 5.2 Lessons from the delivery of similar duties such as the Equalities Duty should be drawn on when considering appropriate guidance.

#### **6. The repeal of duties**

- 6.1 Local government services are subject to a wide range of regulations and duties. These duties have the potential to support Welsh Government's approach to sustainable development but some in their current form place barriers to this approach. A review of all duties and regulations devolved to the Welsh Government is needed to ensure that they are consistent with

sustainable development principles. A legal definition of sustainable development could be used as a measure against other regulatory frameworks devolved to the Welsh Government should be assessed to ensure consistency across decision making in the devolved public sector. A review of these frameworks could be a role for the Welsh Government or the new sustainable development body.

## **7. Reporting**

- 7.1 Reporting on sustainable development is an important tool in ensuring that organisations are working towards a sustainable approach. However, work at the City and County of Swansea on sustainability reporting with the WLGA has shown that reporting on compliance would place an additional burden on local authorities where it is not fully integrated with existing reporting arrangements. Currently reporting arrangements are not able to fully comply with this requirement without a period of development and capacity building that identify appropriate measures and improving systems and processes to collect, collate and assure information contained in a sustainability report.

## **8. An independent sustainable development body**

- 8.1 The new body is an opportunity to look differently at a role to support Wales to a more sustainable future. It should be established with key stakeholder interests at its heart. The Welsh Local Government Association representation on the new Body would be able to represent the interests of local government.
- 8.2 A full ombudsmen role may not be appropriate but for the new body to be effective it will need some powers. There is a clear need to develop expertise and advice in Wales particularly in some areas of public policy. This is a key role for the body especially if it is able to draw organisations together to address some of the inevitable issues/problems that are going to emerge as the duty takes effect. There are obvious benefits of placing the scrutiny role in the Auditor General's Office and support joined up thinking through audit and assurance processes. However there is real risk that this could result in the scrutiny process becoming a tick box exercise. Capacity within the Welsh Audit Office will need to be addressed and here is a role for the new Body. The new Body could set the Framework for scrutiny and assess the WAO and potentially the Welsh Government's performance, providing an element of independence without the need for taking on new powers to scrutinise all the public sector.
- 8.3 The Body needs to be independent from Welsh Government but also accountable to stakeholders.

Page used to send this email: /consultations/forms/sdbillresponse/

Responses to consultations may be made public - on the internet or in a report. If you would prefer your response to be kept confidential, please tick here: (Unchecked)

Your name: Steve Smith

Organisation (if applicable):

Email Address: hello@stevesmith.org

Address: 71 Llanover Road Blaenavon Torfaen

Postcode: NP4 9HR

What are the principal barriers you face to taking more long-term, joined-up decisions?:

What actions need to be taken, and by who, to reduce or remove these barriers?:

What other evidence is there about the extent of progress in relation to the Sustainable Development agenda and making Sustainable Development the central organising principle of public bodies? :

Have we identified the most appropriate level of organisational decision making at which the duty should be applied? Please explain:

Would this approach risk capturing some decisions which should not be subject to the duty? What would these be?:

Are there any decisions that are not captured by this approach which should be subject to the duty? Again, what would these be?:

Should we include decisions which govern an

organisation's internal operations? If so, which internal operations should we include?:

Should budget proposals be subject to the duty? Please explain:

Are all of the behaviours we identify critical to acting in ways that reflect sustainable development thinking?

Please explain:

Are there critical behaviours that we have not identified?

Please explain:

What are the advantages and disadvantages of designating behaviours as the sustainable development factors that must influence high level decisions?:

is consistent with one, some or all of the behaviours:

broadly reflects the behaviours:

is not inconsistent with the behaviours?:

are there other options?:

Are there core sustainable development objectives we have not identified above?:

What are the advantages and disadvantages of designating sustainable objectives as the factors that must influence higher level decision making?:

only if they actively contribute to one or more of those objectives:

if they do not detract from any of the objectives:

even if they detract from some of those objectives, as long as they actively promote others?:

are there other options?:

What are the advantages and disadvantages of basing a duty on sustainable development behaviours and sustainable development objectives?:

What are your views on basing a duty around a single sustainable development proposition?:

How much time should organisations be given to make these changes?:

Would it be helpful to issue formal guidance to organisations subject to the new duty?:

Should any such guidance be issued by the Welsh Government or the new sustainable development body?:

Are there any particular statutory duties which it would be appropriate to repeal, in light of the approach we are proposing under the Sustainable Development Bill?:

Are there legal barriers to delivering in line with the sustainable development factors we have set out, which the Sustainable Development Bill could remove?:

Should organisations be required to report back on compliance with the duty through their existing annual reporting arrangements?:

Are there organisations on this list that should not be subject to the duty? Please explain:

Are there organisations that are not listed above but which should be subject to



the duty? Please explain:

Are there other advantages or disadvantages to defining “sustainable development” and if so, what are they?:

If we were to define “sustainable development” do you think that the working definition above would be suitable and why?:

What should be the overall purpose for a new body?:

Do you have any views on the preferred approach regarding the main functions of a new body?:

A proper, resilient definition of Sustainable Development is vital to the success of legislation. The definition from "One Wales: One Planet" acknowledges the importance of future generations when considering opportunities in Wales. However it completely fails to recognise that while creating a better future for Wales and our people, we must do so while considering the economic, social and environmental issues affecting people elsewhere around the world. One of the driving forces behind adopting SD legislature quite rightly is to enable our country to be a global leader in sustainability, which was shown most wonderfully by John Griffiths' contributions to Rio+20. How can we legitimately claim to be a world leader when our definition of SD does not acknowledge our impact on communities elsewhere - particularly in developing countries? This makes the SD Bill appear so inward-looking, inadequately representing the amazing work done by the Welsh Government through your Wales for Africa programme. Furthermore, the definition refers to "wellbeing", which appears to set the tone for the entire consultation document. Improving the wellbeing of our country's people is an important goal. It is vital that the Welsh Government shows leadership to service providers to ensure they deliver improved wellbeing in a manner that is sustainable. The document emphasises the importance of developing "wellbeing" services in a way that is sustainable in the sense that we are able to continue to deliver those services to our people in the future without running out of resources. However it totally neglects to acknowledge that by providing an increased state of wellbeing to people in Wales, we could inadvertently be reducing wellbeing for people in other countries. For example by failing to consider supply-chains of resources purchased in developing countries. How can the document repeatedly refer to SD as a "central organising principle", yet not take a lead on joined-up thinking in this way?

Are there significant disadvantages to establishing a new body on a statutory basis?:

Do you agree with the proposed functions for a new body established on a statutory basis?:

Are there other functions which should be considered?:

Do you have particular views on the independence of a new body?:

Do you have particular views on the accountability arrangements for a new body?:

Do you have any other related queries or comments?:

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17th July 2012

Dear Sir/Madam

### PROPOSALS FOR A SUSTAINABLE DEVELOPMENT BILL

Thank you for consulting Wildlife Trusts Wales (WTW) on the above document. Our comments are summarised below, with detailed comments in Annex 1.

Due to the complexity of the document and the new approach proposed, WTW does not think it appropriate to answer the specific questions posed; rather our response is a general reflection on the consultation.

We are at a pivotal moment. Unsustainable practices have caused dramatic declines in habitats and species outside protected sites leading to the loss of ecosystem services over vast swathes of the Welsh countryside.

Therefore, in general, **WTW welcomes the approach the consultation advocates** and the aim to further embed Sustainable Development (SD) principles into decision making processes.

However, there remain a number of areas of concern/clarification that we require before we can fully support such an approach such as;

- In order to have an effective Bill, **the definition of SD must be clearly defined within the Bill and not with the subsequent guidance**. We advocate the adoption of the Welsh Government accepted definition within 'One Wales, One Planet' report.
- Without a strong, legal, definition, **there are inherent risks that the framework will be misused as 'business as usual'** or for 'Sustained Development', not 'Sustainable Development' for example, the 200ha of Gwent Levels SSSI land allocated within the Newport Local Development Plan (LDP)(see Annex 2).
- **The SD Bill should be the over-arching Act** that will strongly influences forthcoming Planning and Environmental Bills.
- The forthcoming Act must go beyond producing a scheme, "having regard to...". There should be **obligations** on public bodies to adopt sustainable development practices. This **approach extended to all relevant levels within organisations** and not be confined to high-level policy.
- It is essential for **budget proposals to be subject to the duty** as funding is a major driver of behaviour change.
- There is an urgent need to ensure a presumption in favour of sustainability rather than development.



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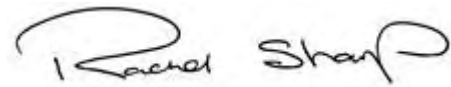
Gwarchod **Bywyd Gwyllt** ar gyfer y Dyfodol  
Protecting **Wildlife** for the Future

- The ‘**Sustaining A Living Wales**’ agenda would provide a robust solution to ensuring that SD decision-making is deeply embedded in all functions of public bodies.
- The role of the **Sustainable Development Commission** should be independent of Welsh Government, and should **audit, enforce and hold public bodies to account** in an Ombudsman-like manner.

We now look to the Government to show leadership, remove obstacles and siloed mentality, to take bold steps and make brave decisions to help society create a **Living Landscape** and **Living Seas**.

Once again, thank you for the opportunity to comment on this document.

Yours sincerely,

A handwritten signature in black ink that reads "Rachel Sharp". The signature is written in a cursive, flowing style.

Rachel Sharp  
Chief Executive Officer  
Wildlife Trusts Wales

**ANNEX 1**  
**PROPOSALS FOR A SUSTAINABLE DEVELOPMENT BILL**

**INTRODUCTION**

1. Wildlife Trusts Wales (WTW) is the umbrella organisation for the six Wildlife Trusts in Wales – Brecknock, Gwent, Montgomeryshire, North Wales, Radnorshire and South and West Wales (hereafter referred to as the ‘Wildlife Trusts’) working together in partnership to achieve a common aims. The Wildlife Trusts collectively speak on behalf of more than 28,000 members and manage over 200 nature reserves, covering more than 6,000 hectares of prime wildlife habitat, from rugged coastline to urban wildlife havens.
2. Wildlife Trusts strive for a ***Living Landscapes*** and ***Living Seas***, recognising this as an inspirational end point where our environment, society, and economy coexist for the benefit of wildlife and people. We want to foster the connectivity that links our urban and rural areas, our freshwater and coast, our land and sea. We aim, along with our partners, to create;
  - ecologically functioning areas that can adapt to climate change; providing resilience and connectivity for wildlife,
  - access and enjoyment for people
  - a population that is inspired by the natural world and value our environment for the many ways in which it supports our quality of life;
  - a sustainable, low carbon contribution to the economy;
  - areas that provide a suite of essential ecosystem goods and services.
3. Our interests therefore lie in people and communities, wildlife, and their interaction.
4. We are at a pivotal moment. Unsustainable practices have caused dramatic decline in habitats and species outside protected sites leading to the loss of ecosystem services over vast swathes of the Welsh countryside.
5. Therefore, in general, **the Wildlife Trusts welcomes the approach the consultation advocates** and the aim to further embed Sustainable Development (SD) principles into decision making processes.
6. However, **there remain a number of areas of concern**/clarification that we require before we can fully support such an approach.

**DEFINITION**

7. The Wildlife Trusts recommend that, in order to have an effective Bill, the **definition of SD must be clearly defined within the SD Bill**. Otherwise, the definition open to interpretation, will vulnerable to legal challenge and ultimately decided by the courts rather than Welsh Government (WG). The definition must be meaningful and accessible enough to drive and guide effective action.
8. **We would object to the definition being placed in the subsequent guidance as this could be change and would weaken potential legal positions in the future.**
9. We need a clear definition that is relevant to Wales. Therefore, the Wildlife Trusts strongly advocate the **adoption of the WG accepted definition within ‘One Wales, One Planet’** report.

10. Without this, there are inherent risks that the framework will be misused as **'business as usual'** or for **'Sustained Development', not 'Sustainable Development'** with the emphasis on business and economic delivery rather than a fully integrated approach.
11. The definition will be vital in order to allow public bodies to demonstrate that their activities fully contribute to the principles of sustainable development or where they have failed to make significant headway.
12. The Bill must draw a line in the sand about what is unsustainable and thus unacceptable – it cannot be 'all things, to all men'.
13. In addition, we are concerned that, without guidance regarding interpretation, the environment is at risk of being compromised in favour of 'sustainable' economic development.

### **SCOPE OF THE SD BILL**

14. As acknowledged by the consultation, the WG's 'central organising principle', **SD appears to be only one of many competing priorities within the WG rather than the overall guiding principle** that sets priorities for all departments.
15. The introduction of a SD Bill represents an important opportunity for WG to clearly **define SD** and establish a **substantive legal duty on all public bodies to adopt a sustainable approach across the full range of their functions**.
16. **The SD Bill must be the over-arching Act** that strongly influences forthcoming Planning and Environmental Bills.
17. The Wildlife Trusts believes that WG needs to use this opportunity to make **a firm commitment to reversing the decisions that lead to unsustainable practices, which continue to have negative impacts to the people, environment and economy in Wales and outside its borders**.
18. There should be obligations on public bodies to adopt sustainable development practices. The Wildlife Trusts would like to see this **approach extended to all relevant levels within organisations and not be confined to high-level policy**.
19. However, WG must work with stakeholders to help explain the reasons why we need to live in and develop our world sustainably and develop a **'values shift'** (both with and outwith Government). Therefore, when the Bill's is enacted, it should be accompanied by statutory guidance similar to Technical Advice Notes (TANs) in the Planning System.
20. There should also be reference to Westminster. How will WG ensure that Westminster co-operates on matters not devolved to the Welsh Government such as such as nuclear, military etc. Similarly there must be linkage and influence on English schemes and projects that affect Wales to ensure they are sustainable – e.g. Severn barrage and rail electrification.

### **STRENGTH AND NATURE OF THE DUTY**

21. The forthcoming Act must go beyond producing a scheme, "having regard to...", or making sustainable development simply a "central organising principle".
22. For example, the **NERC duty**, 'to have regard to' is rarely applied or audited and not enforced – the wording is so 'woolly' that there is rarely sufficient grounds to challenge, and when highlighted, organisations such as the WG's **Highways Agency state that it does not apply to them as the Highways Acts trumps NERC Act**. This is unacceptable.

23. Therefore, **the Bill must constitute a legal duty on all public bodies** with no aspect of the governance of Wales exempted from appraisal under the Bill.
24. The Wildlife Trusts believe that it is essential for **budget proposals to be subject to the duty** as funding is a major driver of behaviour change, and a direct consequence of bringing budgeting under the duty will be to ensure that all those seeking funding will take sustainable development sufficiently into account in their proposals.
25. In addition, the budget is what drives large infrastructure decisions, which will themselves be subject to the duty. It is therefore vitally important that the budget and the duty are inextricably linked.

### **DELIVERING SUSTAINABLE DEVELOPMENT**

26. The **three pillars of sustainable development** (environmental, social and economic sustainability) **must be integrated together rather than traded off against each other**. However, given the decades of environmental degradation and loss of biodiversity and key ecosystem services such as flood prevention and carbon safeguarding, **there must be a presumption in favour of environmental sustainability**.
27. For example, WG recently consulted on number of options to look at **tackling congestion on the M4**, including the creation of a new two land, dual carriageway, through the **Gwent Levels Sites of Special Scientific Interest** (and an area targeted for Large Scale Restoration by a partnership of the Gwent Wildlife Trust and RSPB).
28. This option, at £830m, was substantially more expensive than the next option. In addition, the appraisal of this option (which includes the Welsh Transport Planning and Appraisal Guidance (WelTAG)) did not take account (or even mention) the ecosystem services provision that the Gwent Levels provides (flood regulation, carbon storage) or the associated benefits of green space and tourism. However, utilising the UK National Ecosystem Assessment default figures, the ecosystem service provision equated to £67million per year. This figure is too large to just ignore.
29. The Wildlife Trusts believe that true SD would have meant not taking forward this option to public consultation and a recalibration of the WelTAG system.
30. Therefore, in order to deliver SD within all public bodies, and supply chains, **SD cannot just be a 'tick box' exercise**. However, **SMART targets, defined processes, auditable procedures, compliance and enforcement of specific regulations are a direct means of delivering defined results**.
31. For example, the 'Sustainability Appraisals' for Local Development Plans (LDP) are little more than tick box exercises as land allocations for development within **LDPs** are made before any full assessment of ecological impact. Therefore the subsequent Environmental Impact Assessment (EIA) is irrelevant from the perspective of conservation. This follows the historic paradigm, where wildlife was the point of least resistance.
32. As environmental champions, the Wildlife Trusts respond to planning applications and Development Plans and we are constantly told to 'compromise'. But, compromise, is not equally distributed between the three pillars of SD. Even in this new era, the environment always seems to lose out to economic development even though it underpins the economy.
33. The current system with SSSIs (let alone 'lesser' designations) is predicated on the fact that, as you face conflict, **one pillar of SD starts to be prioritised over another, inevitably to the**

**detriment of the environment.** For example, currently Newport City Councils draft LDP allocates over 200ha of SSSI land towards (see Annex 2 – Letter to Newport City Council Leader by the CEO of Gwent Wildlife Trust and RSPB Cymru).

34. **This needs to be rebalanced in order to achieve a sustainable ‘ecosystem’ approach.** For example, regulation could be simplified, and made stronger, in terms of environmental delivery. Currently SSSI guidance is interpreted differently by different local authorities as there is no legally prescriptive methodology (except to consult CCW).
35. However, if a similar process was put in place for Sites of Special Scientific Interest (SSSI) as for Natura sites (**the Habitats Directive is a sustainable development instrument**), this would simplify and strengthen the protection afforded to SSSIs, thus securing biodiversity and ecosystem services. This would only require a change in guidance such as updating Planning Policy Wales and Technical Advice Note (TAN) 5.
36. Therefore, the Wildlife Trusts recommend that **‘Sustaining A Living Wales’** agenda would provide a robust solution to ensuring that sustainable development decision-making is deeply embedded in all functions of public bodies.
37. Developing the **ecosystem approach methodology** (in line with the Convention on Biological Diversity definition) will serve to place values (both monetary and non-monetary) on the natural environment and the ecosystem services it provides.
38. The significance of these services would be universally recognised and would serve to impart a clear understanding of the environment’s role in supporting humanity, especially to those who do not currently value it. **This would then help to prevent unsustainable practices** such as putting an unsustainable option to ease perceived M4 traffic issues or allocating over 200ha of nationally important and ‘protected’ land.
39. Therefore, there is a need for public bodies to demonstrate that their activities, **not just high-level decisions**, fully contribute to the principles of sustainable development.
40. WG and all public bodies must integrate environmental concerns into all decision making (e.g. re-appraising WelTAG to reflect ecosystem approaches, LDPs, planning applications, strategic plans, budgets etc). However, given the declines in biodiversity and thus effects of ecosystem service provision which have been as experienced recently (i.e. flooding in mid-Wales), there is an urgent need to ensure **a presumption in favour of sustainability rather than development.**

#### **SUSTAINABLE DEVELOPMENT COMMISSION**

41. The Wildlife Trusts believes that the role of the **Sustainable Development Commission should be independent of Welsh Government, and should audit, enforce and hold public bodies to account in an Ombudsman-like manner.**
42. However, if this option is not pursued, the Government must clarify the relationship between Auditor General, Public Services Ombudsman and Sustainable Development Commissioner. This relationship will be critical, as they must work together to ensure that sustainable development approaches are correctly adopted by public bodies. For example,
  - the Sustainable Development Commissioner will be responsible for safeguarding the interests of future generations by monitoring and analysing the functions of public bodies in response to sustainable development policy.
  - The Auditor General, under the direction of the Commissioner, could undertake a review, of public bodies.



- Following that review, the Public Services Ombudsman should have the power to hold public bodies to account on behalf of the public.
43. Either way, the Commission or the Public Services Ombudsman needs to have powers to prevent unsustainable action (e.g. like the 'call-in' system the Welsh Government has over planning applications) and to penalise departments or bodies that fail to implement sustainable development practices or pursue unsustainable policies. Therefore a robust definition is vital.
  44. The Commission and Commissioner adequate funding to achieve what they are tasked to do. It should also give advice and support and provide recommendations were necessary.

## ANNEX 2:

### LETTER TO NEWPORT CITY COUNCIL LEADER BY THE CEO OF GWENT WILDLIFE TRUST AND RSPB CYMRU



#### Return Address:

Tom Clarke,  
Chief Executive  
Gwent Wildlife Trust  
Seddon House  
Dingestow  
Monmouth  
NP25 4DY

15<sup>th</sup> June 2012

#### **FAO: Council Leader Bob Bright**

#### **Impacts on the Gwent Levels resulting from the Newport Deposit Draft Local Development Plan (LDP)**

Dear Sir

We are writing to you to express our deep concern relating to a number of proposed allocations on the Gwent Levels in the Deposit Draft Local Development Plan. These are mainly Policy EM1 (i) and EM1(ii), where you are proposing allocations for development on the SSSI.

The Gwent Levels is an important area for wildlife – it is designated as a Site of Special Scientific Interest, includes the Newport Wetlands National Nature Reserve, and is connected to sites of European and International Importance – the River Usk Special Area of Conservation (SAC) and the Severn Estuary SAC, the Severn Estuary Special Protection Area and Ramsar site. It is an important habitat for otters, water voles, wading birds, and rare invertebrates.

The Wales Spatial Plan excludes development on the Gwent Levels SSSI, and the Gwent Levels Networked Environmental Region focussed on strengthening the protection of statutory and non-statutory designated sites. With such clear policy objectives from Welsh Government, and the 'ecosystem approach' driving the Living Wales agenda nationally, the allocations in this Deposit Draft LDP substantially contradict the direction of planning policy in Wales.

The Gwent Levels is also a unique wetland landscape – the largest of its type in Wales. It is a registered Landscape of Outstanding Historic Interest, and the Countryside Council for Wales classifies it as 'outstanding' for its historic, cultural, visual and natural criteria.

The RSPB and Gwent Wildlife Trust have recognised this exceptional area through our respective Gwent Levels Futurescape and Living Landscape schemes, demonstrating our commitment to protecting the wildlife of the area, and our desire to encourage local people to engage and connect with nature. In doing so, both of these large conservation organisations want to show the intrinsic value of this part of Newport.

Gwarchod **Bywyd Gwyllt** ar gyfer y Dyfodol  
Protecting **Wildlife** for the Future

The Newport City Council Deposit Draft LDP proposes to allocate over 200ha of development on the Gwent Levels SSSIs. This would cause irreversible damage to biodiversity through pollution, habitat loss, disturbance and loss of ecological connectivity, and does not adhere to any principles of sustainable development. The development plan would still be able to meet its employment provision target of 11.4 ha/year if these proposed allocations were removed. Newport has the largest brownfield resource in Wales, and Welsh Government policy is that this should be developed before greenfield land such as the Gwent Levels.

The Gwent Levels provide a great number of ecosystem services (benefits from the natural environment) for Newport. These include essential functions such as water cycling and pollination, air quality regulation and flood alleviation. Additionally, the Gwent Levels provide social and economic benefits such as recreation, education, tourism and employment opportunities, e.g. Newport Wetlands Education & Visitor Centre, which employs 16 staff.

We believe that the impacts on nationally and internationally important nature conservation interests are so serious and irreversible that these damaging proposed allocations should be removed from the plan. Built development on the Gwent Levels threatens the valuable ecosystem services referred to above, and would be a permanent loss to the people of Newport.

We therefore urge you to reconsider allocating these sites, examine the wider picture and consider what damage these developments could do to the long term prospects of Newport. Please choose a sustainable future for your constituents.

Yours faithfully,

Tom Clarke  
Chief Executive  
Gwent Wildlife Trust

Katie-jo Luxton  
Director  
RSPB Cymru

cc. John Griffiths AM, Minister for Environment and Sustainability (by email)  
Cllr Allan Morris (be email)

Dear Sir / Madam

I am submitting this response in a personal capacity not as Director of Size of Wales. I am only answering some of the questions where I have something to say. At a general level I want to be really excited about this bill – it has potential to be game changing (an end to short term political and financial expediency and to pleasing today's voters over tomorrow's voters) but are the Welsh Government really ready to enter into something that should mean we build railways instead of roads? If so I congratulate you. If all it means is that the bus and train timetables are co-ordinated across Wales then it shouldn't need a bill but sadly it seems it does.

Q4. It does need to be applied at high level but probably needs to function or at least be audited against at more operational or outcome levels otherwise it risks becoming aspirational but not reflected on the ground which is where impacts happen. It won't work if Directors know all about it but transport engineers and hospital procurement officers don't understand what it means for them.

Q6. Can you run some test cases to see if different things would happen if it is only applied at high level? E.g. an out of town supermarket near a small town.

Q7. Yes – eg procurement, staff recruitment (e.g. recruiting medical staff from developing countries who can't afford to train and then lose them)

Q8. Yes because where you spend money is where you have most impact.

Q11. These management and decision behaviours look like basic good housekeeping – albeit of a kind that is frequently absent –(necessary but not sufficient). They should help deliver more sustainable solutions but they could more appropriately be applied to a drive for long term cost effectiveness and budget savings which is good but falls short of sustainable development. On their own they are too subject to the political preferences of those applying them.

Q12. Prefer “Is consistent with the behaviours”. I'm not sure they are all equal in importance. For example you always need to base decisions on long term outcomes to be sustainable and focusing on prevention is part of this but possibly not everything has to be done across organisational boundaries otherwise it will be hard to do anything innovative if you have to get all govt departments on board for everything. E.g. A Welsh govt entity wanting to support Size of Wales by “taxing” unhealthy food and offering cheap fruit in their canteen can't make that simple and good decision without referring it to a much higher level which takes months.

Also can applying the precautionary principle to decisions be described as a behaviour?

Q13 – They are very weak on future generations whose needs and interests need to be **protected** from our activities not just “recognised”. Need something about local resilience – the “economy” is too broad a term. Cardiff could be doing fine but rest of Wales dying due to over centralisation. Local economies are vital – too often decisions are made to simplify procurement and save costs by reducing suppliers to a few national or multinational companies rather than investing tax payers money back into the communities it comes from by buying locally.

Also no reference to global dimension of our responsibility – no point in Wales trying to be sustainable in isolation or by externalising our most polluting activities to other countries as we do at present.

**Environmental limits to be respected and needs of future generations protected** are the overarching ones – without these none of the rest is possible in long term so they shouldn't be buried in the list.

Q15 Definitely not viable to say it's ok to comply with at least one of the objectives because – that is very unlikely to lead to sustained outcomes. Almost anything could be said to meet one of these objectives. “do not detract from any of them” is better but I do think that some are more critical than others – environmental limits and future generations are the hardest to comply with but are the ultimate arbiters of whether what we do is sustainable. If we can't keep doing it forever then it isn't ultimately sustainable.

Healthy living is a subset of wellbeing of people and cultural legacy is arguably as well – the list is a bit of a rag bag to keep all sectors happy – but ultimately, in terms of survival- there is a hierarchy - some environmental limits are non negotiable, cultural legacy is important but negotiable.

Q16. I prefer a joint approach because it defines a way of thinking more likely to lead to decisions that support the objectives – they are stronger together. But more complex to apply.

Q17. Motherhood and apple pie. On its own this is kicking it all into the long grass. It could be part of the definition but not the sum total of the proposition. Always the pressure is to bring benefits for the current generation and the onus needs to be on the precautionary principle regarding future generations. E.g. Decisions must not favour well being of current generations over well being of future generations. Too often the wellbeing of future generations is discounted in value relative to well being of current generations and without more emphasis on the future generations (who can't speak for themselves) this allows that bias to continue.

Q19. Essential to provide guidance. My experience with Forest Stewardship Council is that Principles and even Criteria will be interpreted completely differently by different interest groups – who read into them what they want to see. Continue business as usual for some and revolutionise the way things are done for others. If guidance is not given now it will have to be given in the end.

Q20. Depends on timing of new body – better by them if they will be up and running in relevant time frame.

Q21. Legislation around SSSI's and protected species can conflict with basic Sust Dev principles (with their focus on species rather than eco systems and on preserving some habitats that are man made, not resilient and require perpetual fossil fuel inputs to maintain but it's not in WG's competence to revise these.

Q23. Yes but there needs to be some critical input from outside because public bodies are expert at reporting in a positive way and glossing over the less positive. Maybe a chance for new body and civil society to ask for specific decisions to be justified in light of Sust Dev Bill without having to go to expense of a judicial review? A Q and A part of the annual report where they have to answer questions from outside and publish the answers?

Q24. Police Forces? Quangos?

Q26. We do need an agreed definition – but it could be in the guidance rather than the bill if you are worried about needing to revise it over time.

Q27. Not keen on this definition – it pushes environmental limits into the third paragraph as equal to cultural legacy (whatever that means) and it lumps future generations in with current ones when actually there are (if we get it right) infinitely more of them (future generations) and with no real voice at all so they always lose out in any decisions about well being. It needs to be stronger on both these. I prefer the simpler “meeting the needs of current generations without compromising the needs of future generations” which encapsulates resources and generations and is something that people could actually remember rather than a long woolly one that no one can remember.

Q28. It should include being an arbiter on the implantation of the bill for civil society where a judicial review is not the most appropriate mechanism. It should act as the people’s champion for the implementation of the bill. I would love to see it having a specific role and staff focused on representing the interests of future generations. If it can’t arbitrate on case work who will? Judicial review is not appropriate or affordable as the main channel for civil society to hold gov to account on this bill. Using current grievance channels will bury problems within organisations and make it impossible for the public or gov to see how the bill is performing overall – needs more openness than existing grievance channels. If its a central organising principle it needs a central reference point of accountability – that could be the Audit Office but only if they have the resources and expertise to do it properly. I am not sure how valuable a Commission would be if it doesn’t arbitrate, audit or ensure compliance. If it becomes just another think tank it won’t make much difference but will hold a lot of meetings and produce a lot of papers.

Yours sincerely

Hannah Scrase  
Oleuffynnon, Llanidloes, Powys SY18 6PJ

## **Response from Monmouthshire Environment Partnership Board to the consultation on the Draft Sustainable Development Bill for Wales.**

Prepared by Sue Parkinson Coordinator Monmouthshire Environment Partnership Board with contributions from other members. July 2012.

### **Q.1 What are the principal barriers you face to taking more long-term, joined-up decisions?**

### **Q. 2 What actions need to be taken, and by who, to reduce or remove these barriers?**

Response to Q1 & Q2

Planning is not sufficiently long term to take on the challenges of sustainable development. Where key risks on the horizon are identified, these risks can be easily overlooked or ignored as 'too far away'. Sustainability consequences of decisions are not genuinely considered – not just a problem in local government but also at Welsh Government level too. Lack of overall sustainability vision that is embedded in all organizations, so one department follows policy/activity that can conflict with others' efforts to achieve sustainability. Twenty years after Rio, Sustainable Development is still only really central to the thinking of the people and organizations directly engaged in activities that recognize the vulnerabilities that climate change will bring; others are likely to be aware but it is not at the forefront of their decision-making. Inconsistencies in policy and practice will continue until everyone understands and accepts the need to make SD central, but the principle is quite difficult to grasp and even harder to put into practice. Subjecting recommendations to sustainability audits is helpful, if rather crude, but there is a need for more tools that assist decision-making, for example measuring the economies of centralisation against the true costs of extra travel.

### **Q.3 What other evidence is there about the extent of progress in relation to the Sustainable Development agenda and making Sustainable Development the central organising principle of public bodies?**

Indicators are useful, but some are influenced by factors that are beyond the control of public bodies eg weather events and climate change variability/unpredictability that cannot be prevented or controlled. Public services could be encouraged to have due regard to national indicators when establishing long term plans, and encouraged to develop their own locally distinctive indicators which can be monitored and reported on an annual basis.

### **Q.4 Have we identified the most appropriate level of organisational decision-making at which the duty should be applied? Please explain.**

Yes this seems like the right level, where the influence over sustainability as defined will be greatest, and should not cast too large a burden on public services. It could always be re-visited later if the over-arching and most far-sighted level is not achieving results. Some training and support may be needed to help understanding of sustainability and the requirements of the

new duty. It is important to recognize the limits to current specialist local authority resources with regard to promoting sustainable development. Some public sector bodies may have even less expertise available in-house, while others have an established track record in accounting for sustainability in their work as it is more central to their functions. The danger of focusing on 'higher level' decisions is that lower level decisions will collectively be inconsistent with these. 'Higher level' needs definition and lower level decisions need monitoring for compliance.

**Q.5 Would this approach risk capturing some decisions which should not be subject to the duty? What would these be?**

**Q.6 Are there any decisions that are not captured by this approach which should be subject to the duty? Again, what would these be?**

**Q.7 Should we include decisions which govern an organisation's internal operations<sup>33</sup> ? If so, which internal operations should we include?**

This would be helpful as it would bring sustainability down to a practical everyday level too, and help in embedding the key principles of sustainability into everyday practice.

**Q.8 Should budget proposals be subject to the duty? Please explain.**

Ideally yes, as this will ensure that sustainability is built into all decisions, however as it should be implemented at a higher level, this should automatically include budgetary decision making. Perhaps it should be stipulated in order to avoid potential ambiguity.

**Questions on the behaviours approach**

**Q.9 Are all of the behaviours we identify critical to acting in ways that reflect sustainable development thinking? Please explain.**

Yes, and it is helpful to define these in the way that they have been set out in this paper. However, it is the way that they are applied that will make an activity sustainable or unsustainable, and in the context of limited natural resources.

**Q.10 Are there critical behaviours that we have not identified? Please explain.**

**Q.11 What are the advantages and disadvantages of designating behaviours as the sustainable development factors that must influence high level decisions?**

**Q.12 How much influence should sustainable development behaviours have over high level decisions – for example, should those decisions be lawful if they have been reached in a way that:**

- is consistent with one, some or all of the behaviours;
- broadly reflects the behaviours;
- is not inconsistent with the behaviours?



- are there other options?

#### Questions on the objectives approach

**Q.13 Are there core sustainable development objectives we have not identified above?**

**Q.14 What are the advantages and disadvantages of designating sustainable objectives as the factors that must influence higher level decision making?**

This is a helpful approach, but the objectives and behaviours should be seen together, rather than in isolation from one another or interpretations of them will vary from organisation to organization depending on the expertise and knowledge of the officer or group involved.

**Q.15 How much influence should the objectives have over high level decisions – for example, should those decisions be lawful:**

- only if they actively contribute to one or more of those objectives;
- if they do not detract from any of the objectives;
- even if they detract from some of those objectives, as long as they actively promote others?
- are there other options?

Ideally all of the objectives

should be met in a holistic way,

but realistically some will be in

conflict as the aim should be to

balance out sustainability

objectives.

#### Question on the combined

#### approach

**Q.16 What are the advantages and disadvantages of basing a duty on sustainable development behaviours *and* sustainable development objectives?**

The combined approach is preferred because it provides the depth and breadth of analysis in decision making that will most likely lead to more sustainable patterns of development. However, it is recognized that this approach requires a level of knowledge and expertise in sustainability that is probably lacking in most organizations, except for specialist officers who have responsibility currently for sustainability.

**Question on the single sustainable development proposition**

**Q.17 What are your views on basing a duty around a single sustainable development proposition?**

The SD proposition set out in the paper is much too generalized to help to define sustainability and guide decision making in the right direction. The combined option is preferred for the reasons set out above.

**Question on the time organisations may need to comply with the duty**

**Q.18 How much time should organisations be given to make these changes?**

Some organizations have already made considerable progress on this while others have developed this aspect more slowly as it is not 'core' to their work. As a partnership of various public and voluntary sector organizations it is difficult to judge the amount of time that should be given to make the necessary changes that will enable a more thorough approach to sustainable development to be adopted.

**Question on the provision of guidance**

**Q. 19 Would it be helpful to issue formal guidance to organisations subject to the new duty?**

This will be essential to help with understanding of what will be quite a new concept for some. Some people will find it difficult to understand the application of sustainability to their work, particularly those in the non-environmental sectors. Those in the environmental sector may need help with the social, wellbeing and economic aspects of sustainability.

**Q. 20 Should any such guidance be issued by the Welsh Government or the new sustainable development body?**

A combination of both will be the ideal solution.

**Q.21 Are there any particular statutory duties which it would be appropriate to repeal, in light of the approach we are proposing under the Sustainable Development Bill?**

**Q.22 Are there legal barriers to delivering in line with the sustainable development factors we have set out, which the Sustainable Development Bill could remove?**

**Q.23 Should organisations be required to report back on compliance with the duty through their existing annual reporting arrangements?**

Yes this would be less burdensome than establishing a new reporting regime, and help with embedding sustainability into policy and practice.

**Q.24 Are there organisations on this list that should not be subject to the duty? Please explain.**

It would be very onerous to expect town and community councils to be subject to the duty. Most Cllrs are volunteers, and in rural areas with a sparse population town and community councils have limited resources. Their influence is generally limited.

**Q.25 Are there organisations that are not listed above but which should be subject to the duty? Please explain.**

**Q.26 Are there other advantages or disadvantages to defining “sustainable development” and if so, what are they?**

**Q.27 If we were to define “sustainable development” do you think that the definition above would be suitable and why?**

A definition of sustainability will be essential to fostering a shared understanding of the concept for all public bodies. The definition provided in this document is acceptable. The point about the understanding of SD changing and evolving over time is taken however.

**Q.28 What should be the overall purpose for a new body?**

The new SD body should be there to advise and support public bodies, while the Auditor General will effectively police the new duty and ensure that reporting is done effectively. It would also be useful if the Auditor General fulfills the same function with regard to the Welsh Government as there are continuing issues with certain areas of the Government not having due regard for the full range of SD issues and creating conflicts between different policy areas.

It would be useful if there were an opportunity within the scrutiny process for members of the public to be able to challenge higher level decisions on the basis that they are not compliant with the duty, and wonder if that should be available.

**Q.29 Do you have any views on the preferred approach regarding the main functions of a new body?**

**Q.30 Are there significant disadvantages to establishing a new body on a statutory basis?**

**Q.31 Do you agree with the proposed functions for a new body established on a statutory basis?**

**Q.32 Are there other functions which should be considered?**

**Q.33 Do you have particular views on the independence of a new body?**

Independence from Welsh Government and other public bodies is an important aspect of the new body, as it can remain objective.

**Q.34 Do you have particular views on the accountability arrangements for a new body?**



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SD Bill Team  
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18 July 2012

Dear Sir/Madam

## **Proposals for a Sustainable Development Bill**

### **1. Introduction**

The Campaign for National Parks (CNP) is the charity that campaigns to protect and promote National Parks in England and Wales as beautiful and inspirational places enjoyed and valued by all. It has been in existence for over 75 years. CNP's work in Wales is informed by CNP Cymru, which includes representatives from each of the National Park Societies and other bodies such as CPRW and the National Association of AONBs. The National Park Authorities in Wales and National Parks Wales have observer status.

National Parks are the finest landscapes which have been granted the highest level of protection. The statutory purposes of National Parks are:

- To conserve and enhance the natural beauty, wildlife and cultural heritage of the National Parks
- To promote opportunities for the public understanding and enjoyment of the special qualities of the National Parks

In pursuing these purposes, National Park Authorities (NPAs) also have a statutory duty to foster the economic and social well-being of communities living within the National Park. In those cases where there is a conflict and reconciliation proves impossible, the first purpose should take precedence.

In responding to this consultation we have focused on the implications of the proposals for the long-term future of the protected landscapes (National Parks and AONBs) and associated seascapes of Wales.

In Wales, National Parks comprise about 20% of the country's land mass and therefore have a vital role to play in sustainable development. They already contribute significantly to the well-being of the nation, through protection of the landscape, wildlife and key environmental resources and services, like water provision and carbon storage in peat soils and forests, which can mitigate the effects of climate change. National Parks are inspiring spaces for people to enjoy and improve their health and well-being, whilst making a significant contribution to the economy of Wales through farming, tourism and other related businesses. CNP believes that the nationally designated landscapes of Wales should be maintained as distinctive and unique tracts of countryside, which are also adaptable and resilient to future pressures such as climate change. National Parks already make a significant contribution to the delivery of sustainable development and much of that success is attributable to the high quality of the landscape itself.

The success referred to in the previous paragraphs must be maintained and built upon and must not be put at risk by the changes proposed in the Sustainable Development Bill. To ensure that this happens it is essential that:

- The significance of protected landscapes is specifically emphasised in the proposed Bill as a key sustainable development factor; and
- The statutory framework within which they operate is maintained.

## **2. Our comments**

CNP is pleased to have this opportunity to respond to the Welsh Government's consultation on Proposals for a Sustainable Development Bill. We are broadly supportive of the intention to make sustainable development the central organising principle of the Welsh Government and public bodies in Wales, the principle of having a sustainable development duty and the creation of an independent sustainable development body for Wales. However, we have some concerns about how this new duty would work in practice, particularly with regard to the relationship between this duty and the statutory purposes of National Parks. In particular, we are concerned that:

- **There is inadequate recognition of landscapes and seascapes, especially those that are nationally protected, both in the definition and the objectives of sustainable development.**
- **Potential exists for others to call for a weakening of the statutory framework for protected landscapes because there is a misperception that the current arrangements are restrictive and act as a barrier to sustainable development.**
- **There should be a clear definition of sustainable development to ensure consistent understanding and this definition should include full recognition of the special qualities and particular vulnerabilities of protected landscapes including National Parks.**

Our detailed comments below focus on those issues of most relevance to National Parks so we have not responded to all the questions in the consultation document.

## **2.1 Promoting sustainable development (section 3, Qs 1 and 2)**

The protection afforded to National Parks can lead to a misperception that National Park designation itself is a barrier to sustainable development. We are conscious that this is an issue that others may raise in response to these questions and would like to emphasise that National Parks do not solely have a conservation role. As set out above, their statutory purposes include the promotion of the understanding and enjoyment of National Parks as well as their protection and enhancement. In addition, in pursuing these purposes, National Park Authorities (NPAs) have a **statutory duty** to foster the economic and social wellbeing of the people who live in them, so they take an integrated approach in their decision-making and already act as facilitators of sustainable development.

It is also important to recognise that protected landscapes represent significant economic assets in their own rights. Not only does the high quality environment in these areas make a significant contribution to tourism and economic development in Wales but it also contributes to a wide range of other objectives by acting as a source of health, well-being and spiritual inspiration. Research<sup>1</sup> found that the environment of the three National Parks of Wales directly supported nearly 12,000 jobs, produced total income of £177 million and generated £205 million GDP. In addition, there are further indirect economic benefits to suppliers and to the economy of Wales as a whole through the strong brand image for Welsh goods and services that the Parks provide.

**We do not believe that any actions need to, or should, be taken to change the statutory purposes of National Parks as National Parks are already managed in a way that ensures that they contribute to sustainable development.**

## **2.2 Sustainable development behaviours and objectives (section 6, Qs 9-16)**

Ensuring that sustainable development is reflected in decision-making will require a combination of the behaviours and objectives approach. However, the objectives should have more influence over high level decisions than the behaviours. The behaviours listed make a significant contribution to delivering sustainable development but it is achievement of the objectives which will actually ensure that sustainable development is delivered. In theory, an organisation could adopt the behaviours without achieving the required objectives. We also believe that each of the objectives should be judged independently and it should not be acceptable to detract from some of the objectives, as long as others are actively promoted.

**Therefore, decisions should be lawful if they have been reached in a way that:**

- **Broadly reflects the behaviours; and**
- **Does not detract from any of the objectives.**

Finally, we would like to see the reference to environmental limits in the list of objectives amended to make it clear that this also includes landscapes and seascapes.

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<sup>1</sup> Valuing our Environment Partnership, Economic Impact of the National Parks of Wales, 2006

### **2.3 The repeal of duties (section 6, Q21)**

As set out above, we are concerned that some other responses to this consultation may suggest changes to the statutory purposes of National Parks or the repeal of duties that relate to them. Currently, National Park purposes are often given insufficient weight in policy decisions as there is a low awareness among relevant authorities of their existing duty under Section 11A of the 1949 National Parks and Access to the Countryside Act to have regard to National Park statutory purposes while carrying out their activities. The statutory purposes are crucial in adding clarity to the particular circumstances of National Parks.

We have already highlighted the key role that National Parks play in delivering sustainable development and we believe that repealing any of the statutory duties which relate to this would actually detract from the Welsh Government's aim of making sustainable development the guiding principle in decision-making.

**It is critical that existing environmental protection is not weakened and eroded by unnecessary rationalisation.**

### **2.4 The organisations that might be subject to the duty (section 6, Q25)**

CNP agrees with the list of organisations in paragraph 120. However, we believe that it should also include private companies providing public services, the privatised utilities (including Dwr Cymru) and port authorities.

### **2.5 Defining 'sustainable development' (section 6, Qs 26 and 27)**

CNP believes that there should be a clear definition of sustainable development in order to ensure consistent understanding of the exact meaning of the term being used.

We believe that the agreed definition of sustainable development must recognise that the economic and social aspects of sustainable development are inextricably dependent on the environment. The definition should be based on an integrated approach which operates within the accepted boundaries of defined environmental capacities and standards and seeks to benefit all three elements, rather than a balance-based approach where the three elements are weighed against each other, producing a "winner takes all" outcome. This means that development which exceeds the 'environmental capacity' of an area or resource should be avoided. At a minimum, development proposals in National Parks should not cause adverse impact on the environmental and social elements of sustainable development, and ideally, they should benefit all three elements.

We therefore think the wording proposed in the consultation is a suitable starting point for a definition. However, we would like to see the second bullet point expanded, to make it clear that 'environmental limits' includes full recognition of the special qualities and particular vulnerabilities of protected landscapes.

### **2.6 An independent sustainable development body (section 7, Qs 28-34)**

We support the principle of a statutory sustainable development body and the preferred approach set out in paragraphs 157-159. However, we would welcome



greater clarity on the independent sustainable development body for Wales and the accountability arrangements for this new body. In particular, there needs to be greater clarity about its relationship with National Parks and the single body that is being created as a result of the merger of the Countryside Commission for Wales, Forestry Commission Wales and the Environment Agency Wales.

From the list of proposed functions for the sustainable development body set out in the consultation document, it is not clear exactly what powers it would have over decisions made by the bodies which are subject to the new duty or how much influence its representations would have over other decision-making bodies. For example, if an NPA made a decision about a National Park which the sustainable development body viewed to be incompatible with the sustainable development duty would the NPA be required to change their position even if the outcome was a decision that did not comply with the statutory purposes of National Parks.

**As we have already highlighted, we would not want to see the creation of this new body weaken the protection provided to National Parks.**

CNP trusts that these comments will be helpful in the future development of a Sustainable Development Bill. We would be pleased to continue working with the Welsh Government and other partners as the plans for this Bill progress to ensure that National Parks can continue to play a key role in delivering sustainable development in Wales.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Ruth Bradshaw', is shown on a light-colored background.

Ruth Bradshaw  
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## **PROPOSALS FOR A SUSTAINABLE DEVELOPMENT BILL – WELSH GOVERNMENT**

The UK Environmental Law Association aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.

UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared with the help of the UKELA Wales Working Party.

### **UKELA MAKES THE FOLLOWING COMMENTS ON THE PROPOSALS FOR A SUSTAINABLE DEVELOPMENT BILL**

Note: figures in square brackets relate to the paragraphs of the consultation document 'Proposals for a sustainable Development Bill (WG15440)

#### **General Observations**

The proposal document heavily favours the socio-economic aspects of sustainable development at the expense of wider, non-anthropocentric environmental considerations. There are few references to wildlife or biodiversity as elements of the putative sustainability factors. Whilst we broadly welcome this proposal, we are also concerned that the wider environment should receive greater consideration than the proposal appears to incorporate at present.

#### **A new sustainable development duty**

#### **Q.4 Have we identified the most appropriate level of organisational decision-making at which the duty should be applied? Please explain.**

It is our view that the level at which the duty is imposed in organisations is intimately connected to the nature of the duty itself. If the duty is to be composed both of behaviours and objectives, then high-level decision-makers (at the level of chief executives, leaders, directors and members - [85] of Consultation document) are the appropriate targets since they will be required to ensure that their sustainable development behaviour actually results in the achievement of

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sustainable development objectives, both at the level of decision making and, ultimately, at the level of delivery. However, if the duty comprises sustainable development behaviours only, there is a danger that the duty could be discharged by the high-level decision-makers but with no necessary guarantee that the public service is delivered more sustainably. In the latter case the duty might need additionally to be imposed at lower levels of organisational decision-making.

**Q.5 Would this approach risk capturing some decisions which should not be subject to the duty? What would these be?**

If the duty is to be the 'central organising principle' of Welsh government, then it would seem rather illogical to identify decisions that should not subject to the duty, unless they are subject to other conflicting legal requirements.

**Q.6 Are there any decisions that are not captured by this approach which should be subject to the duty? Again, what would these be?**

Again, if the duty is to be the 'central organising principle' that permeates all decision-making it is difficult to see what decisions (other than those giving rise to legal compliance conflicts) would not be subject to the duty.

**Q.7 Should we include decisions which govern an organisation's internal operations? If so, which internal operations should we include?**

**Q.8 Should budget proposals be subject to the duty? Please explain. (I'd particularly like views on this question)**

It is quite difficult to envisage a situation where an organisation is required to discharge a duty towards sustainable development in the delivery of its services which does not apply to its internal operations. The duty to deliver sustainable development through sustainable development factors should apply to an organisation's internal and budgetary operations as well, though it is recognised that the involvement of stakeholders in decisions (the fifth of the behaviours listed in para [90]) may not always be appropriate and could compromise the efficiency and cost-effectiveness of internal operations.

Hence, whatever approach is ultimately chosen it is essential that decisions relating to organisations' internal operations and budgeting should be included.

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**Factors reflecting sustainable development behavior**

**Q.9 Are all of the behaviours we identify critical to acting in ways that reflect sustainable development thinking? Please explain.**

The behaviours identified are necessary to achieve sustainable development thinking. The removal of any one of them would weaken the coherence and comprehensiveness of the approach.

**Q.11 What are the advantages and disadvantages of designating behaviours**

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**as the sustainable development factors that must influence high level decisions?**

The principal advantage of designating behaviours as the sustainable development factors is that this will inculcate a mind-set that will place sustainable development at the heart of decision-making at the highest levels of organisations. A significant disadvantage, however, is that it is possible to imagine a situation where the sustainable development behaviours have been observed in decision-making but they do not, ultimately, result in the operational delivery of sustainable development.

There will also be occasions (as there are now) where conflict will arise between these behaviours or between aspects of a particular behaviour (e.g. the simultaneous achievement of social justice and environmental protection is not always possible as the environmental justice movement in the US and the UK has shown). Thus judgments will need to be made as to which behaviour or which aspect of a behaviour should take precedence in a particular situation. While this might be seen as a disadvantage, it could also result in more careful consideration of the sustainable development impacts of decision making than has been the case in the past. Provided that exercise of judgment achieves the requisite Wednesbury level of reasonableness, this should not prove an insurmountable obstacle to the observance of the duty.

**Q.12 How much influence should sustainable development behaviours have over high level decisions – for example, should those decisions be lawful if they have been reached in a way that:**

- is consistent with one, some or all of the behaviours;
- broadly reflects the behaviours;
- is not inconsistent with the behaviours?
- are there other options?

The term 'duty' carries with it an expectation of something greater than 'broadly reflects' or 'not inconsistent with.' The discharge of the duty ought to be consistent with the exercise of as many of the behaviours as is reasonable in the circumstances.

**The objectives approach**

**Q.14 What are the advantages and disadvantages of designating sustainable objectives as the factors that must influence higher level decision making?**

Arguably it is easier to design metrics to assess the achievement of objectives than it is to measure the effectiveness of the exercise of behaviours and hence objectives might be a more efficient means of demonstrating, in practice, that the duty have been discharged.

On the other hand, implementing all the sustainable development objectives listed may, in practice, be very difficult even where examples of their achievement are provided. For example, asking whether social justice has been achieved in the taking of a particular decision may not yield a definite answer. For some stakeholders, the decision may represent an advance in social justice (e.g. the

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generation of new employment opportunities from the siting of a new waste to power plant); for others it will represent a diminution in social justice (another environmental burden sited in an already overburdened community.)

**Q.15 How much influence should the objectives have over high level decisions – for example, should those decisions be lawful:**

- only if they actively contribute to one or more of those objectives;
- if they do not detract from any of the objectives;
- even if they detract from some of those objectives, as long as they actively promote others?
- are there other options?

In practice it is likely that the first and third of these options will be achievable, whereas the second will not. Some of the listed objectives are mutually incompatible in certain circumstances and it is inevitable that compromises between objectives will need to be made.

**The combined approach**

**Q.16 What are the advantages and disadvantages of basing a duty on sustainable development behaviours and sustainable development objectives?**

The principal advantage of the combined approach is that both sets of factors is capable of informing the other. The incorporation of the behaviours into high-level decision making will ensure the adoption of a systemic approach to sustainable development while the observance of a set of objectives will provide a focus for the exercise of the behaviours. It is conceivable that the observance of the behaviour factors could result in the adoption of additional objectives to those that formally make up the duty. By the same token the existence of the baseline objectives could act as a focus for the observance of the behaviours. In short the whole will be greater than the sum of the parts.

The disadvantage is that the duty could be said to be more complex as a result and place a considerable additional burden on the decision-making process. There is also the danger that the inclusion of both sets of factors will result in greater legal uncertainty and a potential for frivolous challenges to decision-making which will undermine efficiency – itself an element of sustainable development.

The need for a combined approach is demonstrated by the consultation document itself. In para [93] the document discusses the need for 'an integrated approach' to promoting the achievement of objectives so that organisations do not 'focus solely on one or two issues, or to change the focus between issues year to year'. As integration is one of the behaviours listed in para [90], the combined approach would seem the most apposite.

Early experience from practitioners in the planning system suggests that the overarching 'presumption in favour of sustainable development' that now governs planning policy in the UK (with sustainable development defined in page 2 of the National Planning Policy Framework) is not very useful when dealing with individual

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development proposals. Hence we consider that a workable combined approach to the implementation of sustainable development (as described above) that can meaningfully guide not just policies but also decisions on individual cases is essential if the bill is to achieve its objectives.

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### **A single sustainable development proposition**

#### **Q.17 What are your views on basing a duty around a single sustainable development proposition?**

The problem with a single sustainable development proposition is unworkability. Sustainable development is itself a single proposition and, to the extent that it has been implemented as a global principle of environmental policy, this has been achieved by splitting the concept into conceptually more digestible principles such as the proximity principle, the polluter pays, differential but shared responsibility, and so forth. A single sustainable development proposition will simply replace one proposition with another without necessarily clarifying or achieving the first.

### **Defining sustainable development**

#### **Q.26 Are there other advantages or disadvantages to defining “sustainable development” and if so, what are they?**

#### **Q.27 If we were to define “sustainable development” do you think that the working definition above would be suitable and why?**

Defining sustainable development within the bill is essential if it is to serve the enabling function that the government envisages. However, based on members' experience at local government level, we consider that the definition incorporating 'well-being' as proposed at [127] of the proposal is too complex and risks falling foul of differing perceptions of 'well-being' between the public and the government. We propose a simpler alternative that emphasises the significance of environmental limits as follows:

Public bodies in Wales must exercise their functions in order to contribute to sustainable development i.e., **“development that provides a balance between the economic, social and environmental concerns of the people of Wales, now and in the future, whilst respecting environmental limits.”**

Deleted: Early experience from practitioners in the planning system suggests that the overarching 'presumption in favour of sustainable development' that now governs planning policy in the UK (with sustainable development defined in page 2 of the National Planning Policy Framework) is not very useful when dealing with individual development proposals. Hence we consider that a workable definition of sustainable development that can meaningfully guide not just policies but also decisions on individual cases is essential if the bill is to achieve its objectives.¶

Simplicity is central to the success of this substantive duty which should communicate the aims of the organisation clearly and concisely to all involved in the organisation and outside of it. Most of these people will be unaware of the Welsh Government's work on well-being and simply associate the term with physical health. This definition also makes it clear that a balance of economic, social and environmental considerations is important to sustainable development but also subject to environmental limits. Finally, it provides an intergenerational perspective that is central to sustainable development

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## Q.29 Do you have any views on the preferred approach regarding the main functions of a new body?

We are concerned that the functions of the new body are at present too vaguely defined. The preferred approach suggests that the body will primarily have an 'advice and guidance' role but at the same time provide a 'level of challenge' to bodies charged with the duty. It is by no means clear what the term 'level of challenge' refers to in practice. Presumably it falls short of scrutiny and compliance since this role is associated with the Auditor General of Wales. If the level of challenge amounts to being a 'critical friend' this would seem already to be encompassed by the terms 'advice and guidance'; if it implies some degree of scrutiny or compliance function then it would seem to overlap with the functions of the AGW. UKELA is of the view that such overlap of function does not foster coherence or integration in environmental law.

The proposal is also vague (or even silent) on the question of the facilitation of public scrutiny of sustainable development by the new body. It is essential to have a means of public scrutiny of the work of public bodies in Wales in addition to the proposed review carried out by the WAO. The new SD body should therefore have a duty to collate information on the progress of sustainable development in Wales.

### Issues not covered by the consultation questions

The consultation is not clear on what is meant by 'organisations delivering public services in Wales'. Is this to include private bodies that deliver public services on behalf of the government, or private utility companies such as Dŵr Cymru? The clarification of this question is important given the uncertainty that has characterised such terms in the context of Environmental Information legislation (e.g. the recent Upper Tribunal's decision in the *Smartsources v Information Commissioner and a Group of 19 additional parties* [2010] UKUT 415 (AAC)).

It is important that the proposed Bill should clarify the precise scope and application of the new duty. The credibility of the legislation in the eyes of the public will suffer if private or quasi-private companies in Wales that provide public services (either under contractual or statutory terms) are not seen to be subject to the duty. For companies contracted to deliver public services, the duty need not be imposed directly, on the basis that the awarding (and renewing) of such a contract (by a public body) is subject to the duty and that the award of the contract is predicated on the company demonstrating a commitment to the sustainable development factors. This kind of indirect duty could be promoted through guidance. Where companies deliver public services on a statutory basis (as with utility companies) and where the availability of alternative suppliers of these utilities is limited or non-existent there must be a stronger case for imposing the duty directly.

**Comment [R01]:** I've omitted this caveat – as I think clarity is important, whatever the position under EIR caselaw.

**Deleted:** If companies charged with the delivery of public utilities are not considered public authorities for the purposes of the Environmental Information Regulations 2004 then it

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16<sup>th</sup> July 2012

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17 July 2012

Dear Zoe

### **Sustainable Development Bill for Wales – Response to Consultation**

I refer to the consultation process for the Sustainable Development Bill for Wales and write to set out my observations in this regard.

By way of background, I work in the industrial and commercial property sector, and operate across Wales. In addition, on behalf of CBI Wales I have recently participated on Welsh Government appointed panels for both Planning Reform and Business Rates Policy Review.

### **Impact upon Investment**

I believe it is vital for the future success of the Welsh economy that Wales is seen to have an attractive business environment, where policy is focussed upon removing ‘red-tape’ and incentivising investment, rather than prescribing cost on development. At a time of public sector austerity the challenge for Welsh Government is to tap the bulging balance sheets of multi-national business (UK corporates have £754bn cash on their balance sheets - Ross Walker, RBS) and leverage corporate investment to create growth. Our mantra should be to ‘cut red tape and boost investment’, creating confidence and stability.

If Wales can create a business environment that is 10% more attractive to investors and employers than the major market of our neighbour, England, then we will benefit from significant investment crossing the long porous border into Wales.

Wales has a markedly different geographic border to other devolved administrations in the UK with the majority of our population and businesses in close proximity to the long border. This could create a scenario whereby there is a flight of jobs and capital if we create a business



environment which is materially less attractive than England. It was this thinking that led the Business Rates Policy Review to avoid a punitive ‘large retailers’ tax as adopted by Scotland or even to adopt a higher Uniform Business Rate for large rateable values (as is the case in England, Scotland & N Ireland).

We must therefore be careful not to introduce new layers of legislation, government or policy which inhibits investment and creates a perception of Wales being ‘not open for business’.

It is against this background that I read the proposals for the Sustainable Development Bill and I would ask why we are proposing to create a new body when we could simply continue to interpret our SD obligations internally within Government. If we create such a body then we risk corporate investors and institutional investors mis-interpreting this and simply by-passing Wales for alternative regional UK locations – which are essentially no different in many other regards.

### **Impact upon the Property Sector**

In the property sector, the experience on Wales over the past 6-7 years has been the introduction of extra SD cost prescribed on new development by Welsh Government – for example the move towards low carbon housing, new devolved Building Regulations and projects involving Government to reach certain BREEAM standards.

In a rising market it is easy to prescribe cost in development however the downturn has shown how these costs have dis-incentivised developers and investors. Indeed, next month it is 5 years since the start of the current downturn (Northern Rock) and, whilst the economy has slumped and property values have declined markedly, there is no evidence of the SD requirements being sharply re-balanced in favour of the economy – and yet that is what the SD model demands in these circumstances. Indeed, the property market’s view of SD is of a ‘line in the sand’ which is not re-drawn when the tide goes out – thereby leaving property investors and developers stranded.

Indeed, I would ask whether we are pursuing exemplar SD projects at the expense of schemes that would bring wider benefits to Wales. For example, we have piled costs on new development yet less than 1% of Wales’ building stock is renewed every year. Perhaps a less aggressive approach would bring more development and construction GDP whilst the low-carbon agenda would be better addressed towards our existing tired and obsolete stock.

Or in the area of new residential development, we have recently procured an exemplar social housing scheme (albeit with low land receipt to WG) with Principality Building Society at Ely Mill, Cardiff. The alternative scenario could have seen a 40 acre site sold to a mainstream housebuilder who would have constructed ‘standard’ family housing and a receipt in the region of £50m could have been re-invested in creating jobs through refurbishing a couple of thousand social houses in some of our more deprived communities.

In summary, I ask Wales to think carefully before taking actions that make us 'different for difference sake' and to, instead, focus on how we can make our country and economy more attractive through innovation and best practice.

I have been greatly encouraged by the level of engagement by our policy makers with the business community in the past two years and look forward to continuing to work together for the future good of Welsh business and markets.

Yours sincerely,

**Chris Sutton**  
**Lead Director - Cardiff**



NATIONAL PARKS WALES  
Britain's breathing spaces

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18 July 2012

## National Parks Wales' Response to the *Proposals for a Sustainable Development Bill*

National Parks Wales is grateful for the opportunity to respond to the Welsh Government consultation, *Proposals for a Sustainable Development Bill*. The three National Park Authorities (NPAs) in Wales work in partnership to collectively respond to policy issues with the potential to influence the management of Wales' National Parks. Legislation of this nature will undoubtedly influence the way in which Wales relates to and manages its National Parks and other protected areas.

This response has been informed by National Park Authority Members and Officers, who are able to draw from their expertise of working within the National Parks.

The proposal for a Sustainable Development Bill is welcomed in principle. National Parks Wales believes that the National Park Authorities - as a consequence of the purposes and duties of National Parks - continue to deliver sustainable development in practice.

However, we believe that for the Bill to be truly successful and relevant to the lives of everyone in Wales, and not just the protected areas, its integration with other emerging Bills (for instance the Bills for the Environment; Planning; Housing; and Heritage) will be of fundamental importance. The legislation must be complementary and not impose conflicting requirements on organisations since this will lead to confusion, a lack of transparency and ultimate failure to meet the aspirations of the Welsh Government.

The development of measurable indicators is essential to the success of this legislation. It is therefore necessary for all those involved to have ownership of this legislation and that it is legible, unambiguous, with clear end-results that are monitored, measurable and audited.



### Q.1 What are the principal barriers you face to taking more long-term, joined-up decisions?

Uncertainty and annual budget cycles make identifying and securing budgets for invest-to-save initiatives (such as energy use reduction investments) more difficult.

The lack of expertise/knowledge, in particular from investment in research, development and innovation

Short-termism at both national and local level is a persistent challenge. Elected officials, companies (and their shareholders), even the general public tend not to plan for the long term. They prefer short-term gains, even if that contributes to middle-long term challenges/problems.

There is limited appreciation at national and local levels of how society is nested within its environment, and how the economy is a means of exchange not an end in itself. Hence sustainable development often resembles, in practical terms, business as usual.

There are difficulties in engaging a full cross-section of other groups/communities in decision making.

Decision-making in itself does not deliver SD – delivery of those decisions is the key and this is often beyond the control of the public sector alone. (ie role of private sector, markets, public behaviour, trends that influence delivery). It is very difficult to predict long term trends and behavioural changes which will influence decisions and to set suitable indicators to meet these “unknown” trends, for instance who would have predicted the impact of the Internet on our lives 15 – 20 years ago?

Within organisations “Silo” & professional mentalities can affect joined up decisions and particularly where budget allocation is departmentalised and political dimensions, rather than evidence-base, influences decision making (ie specific cabinet member remits which do not cross boundaries).

### Q.2 What actions need to be taken, and by whom, to reduce or remove these barriers?

*It is difficult to prescribe an immediate solution – we work within the identified limitations.*

*For the longer term:*

*A change in behaviour is required by everyone with a continued emphasis on education. This generation of young people is more attuned to global issues than any other in history.*

*Agreement on SD principles across political divides,*

*Recognition by Government of the importance of and commitment to support scientific and engineering research and development,*

*Government, its Agencies and individuals embrace responsibility to work to improve social fabric and wellbeing of society creating vibrant sustainable communities (If people have no aspirations then there can never be sustainable development).*

*The Welsh Government’s approach to natural resource management is welcome – see also Q3.*



*Further research and analysis of future trends/behaviours and associated indicators of expected outcomes would assist – though this has to be done at all levels.*

*A statutory duty for public bodies (including the Welsh Government) to collaborate/co-operate would encourage cross boundary working and tackle the silo approach to decision making. At the very least the Government needs to request all public bodies to establish priorities and actions in a more coordinated manner and for those organisations to deliver more effectively. In a National Park context, this would provide Authorities with greater input into infrastructure and regeneration planning in particular; this would reduce public confusion, duplication whilst ensuring the delivery of the outcome outlined the Bill.*

**Q.3 What other evidence is there about the extent of progress in relation to the Sustainable Development agenda and making Sustainable Development the central organising principle of public bodies?**

*NPAs are responsible for production of the National Park Management Plan (NPMP), which requires consultation with a wide range of stakeholders across all sectors. The NPMP is the single most important document for the National Park. The Plan coordinates and integrates other plans, strategies and actions in the National Park that affect the two Park purposes and its duty. **The case study at the end of this response outlines how Sustainable Development is a central organising principle in the Plan (adopted as a guiding principle throughout the plan) and how this has been tested through Strategic Environmental Assessment.***

*The NPMPs set out a framework for sustaining some of Wales' most important social goods: opportunities to enjoy the rest of nature, get fit and healthy, enjoy great food, find satisfying employment, benefit from clean and secure energy sources, become self-reliant and build friendly, resilient communities. Linking back to Q2, sustainable natural resource management can in and of itself generate key economic and social policies, and bring about cultural change.*

Planning Policy Wales sets SD as its core principle and Local Development Plans are required to carry out a sustainability appraisal to ensure that they meet this objective. However, there is difficulty in setting indicators to measure success and for SD to be achieved a clearer idea of the objectives of SD needs to be given.

*At a local level NPAs attempt to influence Sustainable Development through Supplementary Planning Guidance such as the sustainable design guide and more directly through its planning powers by requiring the upgrading of existing properties when planning permission is sought (i.e. through a planning condition requiring energy efficiency improvements). However when appealed, for instance in cases involving Pembrokeshire Coast National Park Authority this approach has not been supported by the Planning Inspectorate. There must be a consistency in approach at all levels.*

*Support for schemes enabling sustainable development e.g. Sustainable Development Fund, Sustainable Development Charter sign up etc is evidence of progress. Currently collated data should provide a clear indication of progress.*

**Q.4 Have we identified the most appropriate level of organisational decision-making at which the duty should be applied? Please explain.**

*National Parks Wales agrees that the duty should focus on the high-level strategies of an organisation. Corporate Strategy documents as well as Strategic documents influence decision making. In the case of a National Park Authority, the duty should be based on the following three key documents – The National Park Management Plan, the Local Development Plan and the*



*Corporate Strategy or Annual Improvement Plan. For Local Authorities the duty should be focused on the Single Integrated Plan. These documents drive the decisions and activities of an organisation and by applying the duty at this level there would be an expectation that the work of the body would meet the requirements of the duty. The development of these strategic documents includes a strong element of public consultation, which would give the public the opportunity to comment on whether they consider that the plans meet the duty. In addition, these documents take a strategic view and can illustrate how an organisation adopts a holistic view to adopting the sustainable development duty.*

*It would be impractical to apply the duty to a lower level. A duty that is based on individual decisions would open up the possibility of regular challenges. It should be possible to illustrate how each decision has been taken under the framework provided by the strategic documents that meet the Sustainable Development duty.*

*There must however be realistic, clear, flexible and appropriate mechanisms for the delivery of SD at a lower level within organisations.*

**Q.7 Should we include decisions which govern an organisation's internal operations? If so, which internal operations should we include?**

*If the duty was applied to documents such as the Corporate Strategy or the Annual Improvement Plan then the duty would impact on an organisation's internal operations. This would influence the high level decision making affecting an organisation's CO2 footprint and other significant environmental impacts; i.e. procurement, travel planning & energy use.*

**Q.8 Should budget proposals be subject to the duty? Please explain.**

*National Parks Wales believes that budget proposals should be subject to the duty. Budget proposals are drawn up in support of/in order to deliver the priorities identified in high level plans. Some budget headings (eg for support services) will not in themselves be readily identifiable as in support of Sustainable Development. It is the consideration of SD behaviours & objectives in plan development and delivery of action and outcomes – and whether plans propose unsustainable activities – that will evidence whether SD has been a central organising principle.*

*Outcomes require critical assessment to correctly balance different needs including the need of sustainable development. This should then happen automatically by applying the duty through the organisation high level strategic planning process without subjecting the duty specifically to the budget proposals in their own right.*

**Q.9 Are all of the behaviours we identify critical to acting in ways that reflect sustainable development thinking? Please explain.**

*The behaviours identified appear appropriate. The challenge is to ensure these are integrated into short, medium and long term planning cycles. Of key importance is Long term thinking and this will continue to present challenges as outlined in our response to Q1.*

*Some rewording is required. For example, with regard to 'Long term thinking' should or could this read to be at the expense of the current generation? And what if prevention does not mean cost savings or in some situations there may be need to be a focus on a cure for long term sustainability.*



**Q.10 Are there critical behaviours that we have not identified? Please explain.**

*The political/cultural or professional bias of organisations can affect the behaviour of the workforce.*

**Q.11 What are the advantages and disadvantages of designating behaviours as the sustainable development factors that must influence high level decisions?**

*They are reasonable behaviours that would be expected of any organisation. We would hope that this is happening already to a large extent; that these behaviours are applied to higher level decision making - though appropriate balance is essential.*

*It seems more appropriate that behaviours are treated as factors since they may help indicate the likelihood of an outcome but may not, of themselves, define that outcome. For example, a behaviour which was sustainable when world population was 1 billion may not be sustainable when population is 10 billion. It would make more sense to look at overall impacts and outcomes, while acknowledging that changing attitudes and behaviour is one means of influencing those impacts/outcomes.*

*Clarity, transparency and well justified, evidence based justifications are required to enable organisations to be confident enough to "buy into" the behaviours.*

*However, behaviours are subjective and not easy to measure in a meaningful way. Would there be any priority or weighting of behaviours? If so this would be extremely difficult to decide.*

**Q.12 How much influence should sustainable development behaviours have over high level decisions – for example, should those decisions be lawful if they have been reached in a way that:**

- is consistent with one, some or all of the behaviours;
- broadly reflects the behaviours;
- is not inconsistent with the behaviours?
- are there other options?

*The suggestion as to whether decisions are lawful or not calls to question how a definition of SD is framed. At present, the suggested definition is open to considerable interpretation, and challenges on lawful decision making will be significant unless a more focussed outcome and indicator led approach is taken with clear, easily understood measures being set.*

*Clearly sustainable development delivery should be paramount in high level decision making; this should be reflected by the necessary balanced approach. Decisions should be consistent with one, some or all of the behaviours.*

**Q.13 Are there core sustainable development objectives we have not identified above?**

*The list at paragraph 92 is welcome but remains human-centric. The intrinsic value of the environment and future generations of other species should also be reflected. 'Vibrancy of the economy' also seems to imply that economic activity is an end in itself, rather than a means of allocation and distribution.*

**Q.14 What are the advantages and disadvantages of designating sustainable objectives as the factors that must influence higher level decision making?**



They would spell out SD objectives for higher level decisions and provide *clarity and transparency for everyone to work toward the necessary behavioural changes.*

Their wording is too subjective making it difficult to measure compliance. Would there be some priority or rating attached to each one? If not, it is difficult to see how each high level decision could apply each SD objective as well as including other factors when reaching a decision.

**Q.16 What are the advantages and disadvantages of basing a duty on sustainable development behaviours and sustainable development objectives?**

*Adv - Guides the decision making process to maintain focus on SD and keep its profile high when in competition with other important factors/pressures, therefore ensuring inclusion in high level strategies and plans.*

*Adv - Enables organisations to consider a range of key behavioural factors in the drawing up of high level actions and strategies. This should better enable the delivery of sustainable objectives and outcomes. Also facilitates a balanced approach.*

*Disadv - However, this remains too subjective, difficult to measure or enforce compliance, and no identified mechanism to differentiate priorities. Everything cannot be equal or no decisions would ever be reached.*

**Q.17 What are your views on basing a duty around a single sustainable development proposition?**

*The proposition must be achievable, yet ambitious. The areas of responsibility for National Park Authorities are outlined in two Purposes included in the 1995 Environment Act. These provide strong direction to the work of the three NPAs while at the same time providing a degree of flexibility to adapt our work to the needs of our local communities. A similar approach to the Sustainable Development duty could work effectively.*

*Another approach to this issue involves defining sustainable development 'in reverse', i.e. in terms of addressing **unsustainable** outcomes/behaviours (through policy/legislation/incentives). This would also focus attention on tracing and addressing root causes, rather than symptoms.*

**Q.18 How much time should organisations be given to make these changes?**

*Some organisations are already working within a SD framework, so timescales will vary dramatically. We suggest this will depend on the time required to clear any obstacles identified.*

*Sufficient time will be needed to change core strategies and plans but irrespective of this the expected outcomes must firstly be clearly defined by the Welsh Government in a manner which can be easily and transparently transferred to those strategies.*

*National Park Authorities are already delivering many of the objectives outlined owing to our statutory purposes and duty.*

**Q. 19 Would it be helpful to issue formal guidance to organisations subject to the new duty?**

*Yes, especially since a new approach is proposed.*





**Q. 20 Should any such guidance be issued by the Welsh Government or the new sustainable development body?**

*The Welsh Government will lend authority to the guidance initially, though subsequent guidance and advice could be provided by the SD body.*

**Q.22 Are there legal barriers to delivering in line with the sustainable development factors we have set out, which the Sustainable Development Bill could remove?**

*Consistency at all levels – legal, policy and guidance – is required to ensure clear, transparent and consistent delivery.*

**Q.23 Should organisations be required to report back on compliance with the duty through their existing annual reporting arrangements?**

*Yes - for NPAs this should occur through current Strategic Grant Letter and Business Improvement Plan reporting. Incorporating SD reporting in existing annual reporting makes SD a central priority in NPA business planning, reporting and WAO auditing. Additional reporting mechanisms and requirements should be avoided at all costs.*

**Q.25 Are there organisations that are not listed above but which should be subject to the duty? Please explain.**

*Commons Councils*

*Cadw (considered as part of the Welsh Government?)*

*Planning Inspectorate (considered as part of the Welsh Government?)*

*Design Commission for Wales*

A number of public sector organisations outsource their activities to either voluntary or private sector organisations. The legislation should ensure that the duty is not minimised or avoided, when this happens.

*An argument can be made for including the utilities such as Dŵr Cymru and the electricity companies, and others operating in Wales such as the National Grid and MoD. These are for the purposes of the s62(2) Duty (1995 Environment Act) regarded as bodies that have to have regard to National Park and AONB purposes in undertaking their work.*

**Q.26 Are there other advantages or disadvantages to defining “sustainable development” and if so, what are they?**

*A clear definition with outcomes that are measurable, which is agreed between (and adhered to across) the public sector in Wales is essential for successful delivery.*

**Q.27 If we were to define “sustainable development” do you think that the working definition above would be suitable and why?**

*It recognises natural and cultural limits in undertaking sustainable enhancements for quality of life improvement. However it's too general to focus on enabling successful delivery.*

**Q.28 What should be the overall purpose for a new body?**



Parciau Cenedlaethol Bannau Brycheiniog, Arfordir Penfro ac Eryri yn gweithio mewn partneriaeth  
Brecon Beacons, Pembrokeshire Coast, and Snowdonia National Parks, Working in Partnership.

Parciau Cenedlaethol Cymru  
National Parks Wales

126 Stryd Bute / 126 Bute Street  
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*If created the "expert advice & guidance model" should be followed. The body's purpose should be that of a "critical friend"; an advisor and advocate for SD.*

*The new body could appoint local champions/advocates already working in the bodies independently highlighted as exemplars. Such an approach would provide credibility, reduce duplication and assist delivery. These could be handed the responsibility of reporting to the new SD body and disseminating good practice.*

**Q.29 Do you have any views on the preferred approach regarding the main functions of a new body?**

*As a "critical friend" to Welsh Government; providing advice to other organisations; coordination of information sharing relating to SD, and as an advocate for SD*

**Q.31 Do you agree with the proposed functions for a new body established on a statutory basis?**

*We favour an approach where the Wales Audit Office monitors the delivery of the duty - formalising and prioritising the agreed definition of SD within the wider auditing of an organisation's activity.*

**Q.33 Do you have particular views on the independence of a new body?**

*The body should have an independent position whether it be through the Auditor role or as a new organisation. Those appointed must act without prejudice and remain impartial, balancing the needs of local communities with those of the nation and future generations.*

## **Case Study – National Park Management Plans and Local Development Plans**

The three Welsh NPAs are required by statute to apply Sustainability Appraisal (SA), Strategic Environmental Assessment (SEA), and Habitat Regulations scoping and/or assessment of their National Park Management Plans and Local Development Plans.

All local authorities are required to apply these assessment methodologies to their Local Development Plans. However, National Parks are distinctive in that their local economies, and what people value about the Parks themselves, are more fundamentally and obviously based on landscape and seascape, on the natural environment, on cultural heritage and on people's enjoyment of them. The high value placed on these assets emerged strongly from stakeholder engagement during preparation of the three National Parks' Management Plans and Local Development Plans, as well as through the economic input-output 'Valuing our Environment' methodology which has also been applied to the three Welsh Parks.

The Management Plan includes outcome information (relating to progress on National Park purposes), as well as information on the principal factors affecting the National Park and on the impact of management measures. In this, the Management Plan incorporates 'state of the Park' information as a key aspect of management. This helps us to design management policies, and to evaluate their effectiveness and overall sufficiency. The Management Plans provide context for the Local Development Plan, which is evaluated through Annual Monitoring Reports.

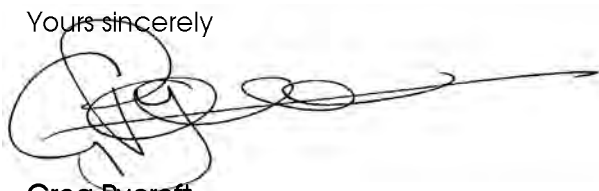


The main purpose of SA/SEA is improve the sustainability and environmental performance of a plan by assessing whether it is likely to result in any significant environmental effects (positive or negative). Recommendations as to how adverse effects can be avoided, offset or reduced, as well as how improvements can be made, should be suggested. A programme to monitor significant effects is required in order to check whether the SA/SEA has been accurate in its predictions.

The Management Plans and Local Development Plans are therefore geared towards the sustainable economic use of natural resources and cultural assets. The approach of National Park Authorities, we believe, demonstrates a potential approach to local and national resource planning, as proposed by Welsh Government in the *Living Wales: Natural Environment Framework*.

If you have any questions, please do not hesitate to contact me in the first instance.

Yours sincerely



**Greg Pycroft**  
Policy Officer, National Parks Wales



## **Welsh Government Proposals for a Sustainable Development Bill (WG15440)**

### **SDCC consultation response**

The SDCC broadly welcomes the current proposal for a new SD Bill for Wales. We hope that this Bill will achieve the step change needed to make sustainable development the central organising principle for the Welsh public sector and that it will become a robust and challenging piece of legislation. The Bill will put a framework in place to deliver ongoing, lasting and significant change in behaviour across the Welsh public sector.

The Bill presents a critical opportunity to build on previous legislation such as the Local Government Measure, Local Government Act (2000). This will make Wales the first country to do this. We hope this opportunity will not be missed, and that the new legislation will be bold and ambitious, ensuring that all public sector organisations operate within environmental limits.

Sustainable Development Co-ordinators Cymru represents the twenty two local authorities and the three national parks across Wales, and has an effective track record of working with Welsh Government and the Welsh Local Government Association. The SDCC response was produced following a network meeting where members debated and commented on the proposals. The Executive has then collated the comments to produce this response, grouping the comments to align with the format of the consultation document. The SDCC is happy to discuss this response further with Welsh Government.

### **Promoting sustainable development – barriers to taking more long term joined up decisions (Q1-2):**

Regulatory barriers often act as a disincentive to long term thinking.

There is a different organisational focus for Welsh public sector organisations, making partnership working around sustainability more difficult than it needs to be.

Organisations have different and often conflicting legal and financial frameworks in place.

Political timescales – can be a barrier but can also be good way to make rapid progress. Politicians inevitably focus on short term outcomes, and long term issues are discounted.

There is a low level of understanding of the integrated nature of sustainable development, with organisations tending to give it an environmental focus, both at political and officer level.

Greater buy in is needed from Councillors, senior managers etc

There is poor understanding of the relevance of SD to different service areas, which usually operating in silos, and with a lack of joined up thinking.

The economic growth agenda needs to be seen as delivering sustainable outcomes, rather than just an emphasis on number of new jobs delivered.

The current economic climate has meant the Welsh public sector face year on year cost savings etc. However, spend to save and greater integration is an opportunity to avoid unnecessary costs

There is a clear implementation gap between policy and procedure

Annual budgets – no rolling over of funds and savings aren't retained. Invest to save conflicts i.e. 5 year paybacks and annual budgets.

Current methods of Government funding, such as outcome agreements, penalise ambition as only organisations will only set achievable targets or focus on incremental improvement.

Limited understanding of the opportunities that a joined up sustainable approach to procurement – instead there is a widespread fear of procurement regulations

Conflicting priorities – e.g. recycling targets vs. waste minimisation

The conflicts within the organisation need working through and out, not just ignoring. This is a key behavioural change.

There are often contradictory messages emerging from Welsh Government and its departments For example: the collaboration agenda having a different understanding of SD to that in the bill; the cutting of public transport budgets and proposing to increase duties on LAs to provide cycling and walking facilities while arranging prudential borrowing for road improvements; financial reporting vs. long term thinking.

Current reporting methods which can make reporting on social and environmental issues difficult, especially in relation to finance and each other.

#### **What actions need to be taken?**

**All WG policy and ministerial announcements need to be made through a SD prism to ensure a consistency of approach.**

SD is a core competency if SD is to be COP. From the very start management competencies across the organisation must focus on how to deliver sustainability.

Training and awareness for staff and members. Target key groups e.g. chief executives, chief financial officers, portfolio holders including engaging with bodies such as CIPFA, RTPI.

Longer term budgets.

Financial reward incentives – WG to use their powers i.e. Outcome

Agreements to drive ambition,

Change regulatory systems – ensure sustainable outcomes. Need to revamp regulations and laws to ensure that they're promoting SD.

Develop a common understanding of SD throughout the public sector in Wales.

Better scrutiny and external challenge.

#### **A new sustainable development duty**

##### **The level of decision making to which the duty applies (Q4-8):**

A named individual (Leader or CEO) should have specific responsibility.

However, all staff would have obligations relating to SD e.g. similar to the duty of care in Health and Safety legislation. This deals with the implementation gap, whilst minimising bureaucracy.

The level of plan pitched correctly – as long as everyone realises what this means to their role

All staff to be able to explain what SD means to them and how they include in their jobs

Budget and spending proposals should be included.

A clear, staged approach is needed so more decisions become subject to the Duty as time goes on.

Service areas operate within specific frameworks, so the Bill needs to influence decision making processes within specific service areas. How does SD become part of the decision making process.

SD needs to be considered at the outset, rather than as an impact appraisal.

All high level procurement decisions need to be included.

Level of decision should be subject to the significance of the decision (impact: cost, time etc)

Wider reaching internal decisions should be subject to the duty.

Appropriate conditions should be attached to funding to ensure that partner organisations are mindful of SD, depending on the size of the organisation.

The approach (Q9-17):

There are methodological problems with the four proposed approaches, however even what the approaches mean is hard to understand:

Behaviours – too vague, too open to interpretation, no emphasis on considering the elements together, difficult to measure, but could be with the appropriate measures and audit. What is being made illegal? These behaviours could be nurtured within public bodies.

Objectives – too vague, open to conflicts within the objectives themselves.

Outcomes may have been a better approach. Too easy to find evidence (however weak) to show consideration of objectives. Could become a tick box approach.

Combined – too complicated to embed and measure. Multiplies the issues above.

Does allow some flexibility within a structure.

Single proposition – so broad and vague allowing any actions to be used as evidence. Impossible to measure.

None of the approaches consider the global aspects of SD.

What ever approach is used there needs to be external challenge to ensure progress. Support and assistance would also be needed. What we actually want to see over the long-term is good quality decision making.

**The time organisations may need to comply (Q18):**

This would need to take into account the overall planning cycle of organisations.

Once the Bill is in force this would be a minimum of one year to get basic processes and reporting mechanisms in place.

**The provision of guidance (Q19-20):**

Yes. Statutory guidance is needed, developed by the new body and issued by the Welsh Government,

The Guidance needs to be developed in tandem with the Bill and issued simultaneously – otherwise a similar situation will arise as when the Community Strategy guidance was issued far too late, and accordingly, largely ignored

The Guidance should be a living document, updated and amended, when necessary, by the new body.

### **The repeal of duties (Q21-22):**

Some analysis is needed to identify what duties, which already contribute to the SD agenda, could be repealed in light of the new duty. However it is possible that many of these would need to be kept as the SD duty will be very high level.

There may be advantages to keeping legislation in other areas which contribute to SD as this would reinforce the SD aims.

As Welsh Government will also be subject to the SD Bill does this mean that the Welsh Government SD Scheme will be relinquished once the SD Bill comes into force to avoid duplication of legislation?

### **Reporting (Q23):**

Reporting and monitoring are key to the success of the SD Bill. Organisations already have reporting mechanisms, such as improvement plans and annual reports, and these should be used to report on sustainability. This would ensure that SD is not seen as an add on but central to the way organisations work.

Is it about compliance of the duty or delivering sustainable outcomes?

Need to provide evidence of how changes made are contributing.

Ensure that our reporting has the rigour. Certify and ensure quality

How do we build the role and capacity of internal scrutiny?

Start at a higher level/large projects, and identify the impacts.

Peer review could be an effective tool to develop – maybe via LSBs? Or LA to LA?

Incentivised area targeting would encourage innovation

If SD is integrated, then need clear evidence on how dealing with big issues with regard to behaviours and outcomes (eg working across boundaries and within environmental limits)

Measure what matters rather than what we can – this is the opposite way round to conventional performance monitoring.

Clear evidence is needed how SD has been integrated rather than assuming it is implicit in other actions.

Clear and understandable reporting both internally and externally with public etc

### **The organisations that might be subject to the duty (Q24-25):**

- A phased approach to becoming subject to the duty may work best as expertise in the subject is still fairly limited both within those organisations what will be subject to the duty and those scrutinising them. As previously mentioned Welsh Government, Local Unitary Authorities and the Local Health Boards may become subject to the duty before others.
- The inclusion of Town and Community councils would appear to be placing requirements at too low a level. It may be that some organisations do not have the legal duty but are made aware of the overall aims in this area.
- Organisations and businesses which contract with public bodies that are subject to the duty should be expected to contribute to overall sustainability principles.

Organisation not currently identified:

- LSB – because of their overarching role in localities and the production of the single integrated plans.
- Police Authorities – sit on LSB and are part of the public sector in Wales.
- WCVA – receive significant funding from WG
- Housing Associations – provision of social housing
- Wales Audit Office – scrutiny function
- Statutory body
- Public Utilities Companies

**Defining sustainable development (26-27):**

If the SD Bill requires organisations to make SD their central organising principle then this also needs to be defined. This could be contained within guidance to enable changes to be made as SD work and external factors progress (SD as a central organising principle will alter as the economic, social and environmental backdrop progresses).

Defining SD offers consistency and legality, and has the potential to reduce personal bias of the term. It may not give consistency in interpretation, but this is the role of guidance to ensure the meaning is clear and understandable.

Several recent Welsh Government consultations have referred to SD and each time a slightly different definition of SD has been given. This is confusing and potentially problematic. The definition of SD contained in One Wales: One Planet is suitable for use in the new duty as it ties in directly with the long established international Brundtland definition, but at a local Welsh level.

Any definition needs to be used in its entirety in further publications and legislation, rather than just the pertinent bits to any subject – i.e. economic wellbeing being used in regeneration activities without the complementary social and environmental aspects.

Need flexibility at a local level.

How is this relevant to organisations – define. Need to go through process.

Decisions need to be arrived at in a clear and transparent manner.

WG should use their levers to enforce – outcome agreements are an example.

We would suggest the Welsh definition could have local flexibility and the duty would be to report progress. The contents of the report would be prescribed in detail based on the elements you would expect to find in an organisation that had SD as its COP e.g. how you raise awareness of SD with staff, how SD is considered in decision making to ensure rigor, comparability and continuous improvement. This would recognise that different organisations are at different stages of their journey.

**An independent sustainable development body (Q28 - 34):**

The purpose of the new body should be to support and foster delivery of the SD Bill across Wales.

The function of a new SD body could include:

- Research and evidence gathering around SD challenges and solutions
- Production of guidance to support public sector organisations
- Monitoring, scrutiny and challenge of public sector performance on SD



- Training for those involved in scrutiny and monitoring
- Organising peer review of organisations to identify good and bad practice and share learning
- Ensuring consistency of approach
- Investigating complaints and violations of the duty – ombudsman role.

If the new SD body is to incorporate aspects of audit then there is a question as to how this will link with the Auditor General for Wales to avoid duplication and embed SD into audit principles. Welsh Government needs to ensure that WAO has suitable resources, capacity and expertise to undertake this function.

The new body needs to have a presence across Wales to provide support and guidance. Adequate resources need to be provided to assist strategic transformation.

If there is a legal duty upon public sector organisations regarding SD then the SD body also needs to be statutory in order to offer certainty of support.

The role of the body would need publicising well so that stakeholders are clear as to its remit and how / who to approach with SD related issues.

The new SD body needs to be independent to Welsh Government. Partly as the SD Bill will apply to Welsh Government who will need to be audited and also an independent body will not be as affected by political changes.

The new body needs to be accountable for its actions to ensure that the body effectively fulfils its duties. A Board could be established (similar to the Commissioner for Sustainable Futures' Advisory Panel) with representation from different sectors and areas to oversee the work of the body.

## **Sustainable Development Bill Wales: The International Perspective**

### ***Joint position of International Development Groups in Wales***

#### **Introduction**

Wales' Sustainable Development Bill presents an amazing opportunity to put global social justice and environmental protection at the heart of the Government of Wales. The Welsh Government plans to legislate for Sustainable Development to be its "central organising principle"; placing responsibilities upon all public bodies and creating a commissioner to oversee these activities.

Not only could the SD bill redesign the way public services are co-ordinated and delivered, we have an opportunity to influence what public bodies do and how they do it. For example, changing the way money is spent through public procurement ensuring living wages for producers and standing against sweat shop and child labour, and how children growing up in Wales are educated to be **global citizens**.

To achieve all this, the Bill must represent a step-change in the implementation of policies to achieve sustainable development – with proper legal duties and a powerful commissioner to act when things go wrong.

This paper identifies some key asks which the **Welsh International Development Sector** sees as vital, to ensure that the value of **global interdependence** is recognised.

#### **Scope of Bill**

The new duty must be substantially stronger than the present duty [1] and needs to go beyond producing a scheme, "having regard to" something, or making sustainable development merely a "central organising principle".

The Bill should require Welsh Government Ministers and the devolved public sector (including local authorities and Welsh Government sponsored bodies) to exercise their (other) duties and powers in order to achieve sustainable development, **both within Wales and with regard to the impacts internationally**.

The duty should be supplemented by a statutory strategy (or strategies) which would become the main mechanism for achieving sustainable development. We would expect the duty to lead to clear actions by the Welsh Government and devolved public sector in Wales, which would, amongst other things:

- clearly drive down carbon and other greenhouse gas emissions
- create and sustain 'green jobs'
- promote ethical, fair trade and sustainable procurement by the public sector
- drive sustainable and ethical action by businesses that are supported by the Welsh Government in relation to their activities domestically and internationally

The duty should explicitly recognise and give regard to the **international impacts of Wales**, e.g.: the supply chains of the Welsh public and private sectors – both in terms of i.e. carbon

intensity, food security etc.; the activities of Welsh businesses abroad; and the carbon emissions produced in Wales.

### **Definition**

The Bill must clearly define sustainable development, rather than leaving interpretation to further guidance, officials or the courts, and must be meaningful and accessible enough to drive/guide effective action.

The definition must make it clear that the implications of Welsh sustainable development policy **do not end in Wales, but rather extend globally**, and that the wellbeing of people in Wales is **an aim but not the sole aim** of the legislation.

The definition in One Wales One Planet [2], with reference to *“using only our fair share of the earth’s resources”* is a good start. Welsh civil society organisations will be working together to propose specific wording to make this clear.

### **Commissioner**

We support the principle of having a Commissioner for Sustainable Development who should become a powerful champion for future generations, people in developing countries and those living in poverty in Wales – who are all impacted on by unsustainable development.

The Commissioner should be independent of the Welsh Government and able to hold the Government and public sector in Wales to account.

The Commissioner should be both empowered and required to investigate and take action on failures by government both to comply with the provisions of the Bill, and more widely.

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 wider public sector in developing effective sustainable development schemes and investigative capacity to hold the devolved public sector to account.

This position paper is endorsed by the following organisations:

Africa Greater Life Mission UK  
African Mothers Foundation International  
Batanai Bambanai Women’s Network Wales  
Brecon Molo Community Partnership  
Building Understanding through Links for Development  
CAFOD Wales  
Christian Aid Wales  
Daily Hope Foundation  
Disability Wales & Africa  
Dolen Ffermio  
Fair Trade Wales

Life For African Mothers  
Love Zimbabwe  
Oxfam Cymru  
Safe Foundation  
Size of Wales  
Sazani Associates  
Tools for Self Reliance Cymru  
Wales Africa Community Links  
Wales Council for Voluntary Action

July 2012

## Notes

[1] (Sec 79, Government of Wales Act 2006) Welsh Ministers *“must make a scheme (“the sustainable development scheme”) setting out how they propose, in the exercise of their functions, to promote sustainable development.”*

[2] Sustainable Development in Wales

In Wales, sustainable development means enhancing the economic, social and environmental wellbeing of people and communities, achieving a better quality of life for our own and future generations:

In ways which promote social justice and equality of opportunity; and

In ways which enhance the natural and cultural environment and respect its limits - using only our fair share of the earth’s resources and sustaining our cultural legacy.

Sustainable development is the process by which we reach the goal of sustainability.

Page used to send this email: /consultations/forms/sdbillresponse/

Responses to consultations may be made public - on the internet or in a report. If you would prefer your response to be kept confidential, please tick here: (Unchecked)

Your name: Mariana Lagoa

Organisation (if applicable):

Email Address: mariana.salgado.lagoa@gmail.com

Address: 35 Hanover Street Swansea

Postcode: SA1 6AZ

What are the principal barriers you face to taking more long-term, joined-up decisions?:

What actions need to be taken, and by who, to reduce or remove these barriers?:

What other evidence is there about the extent of progress in relation to the Sustainable Development agenda and making Sustainable Development the central organising principle of public bodies? :

Have we identified the most appropriate level of organisational decision making at which the duty should be applied? Please explain:

Would this approach risk capturing some decisions which should not be subject to the duty? What would these be?:

Are there any decisions that are not captured by this approach which should be subject to the duty? Again, what would these be?:

Should we include decisions which govern an organisation's internal

operations? If so, which internal operations should we include?:

Should budget proposals be subject to the duty? Please explain:

Are all of the behaviours we identify critical to acting in ways that reflect sustainable development thinking?

Please explain:

Are there critical behaviours that we have not identified?

Please explain:

What are the advantages and disadvantages of designating behaviours as the sustainable development factors that must influence high level decisions?:

is consistent with one, some or all of the behaviours:

broadly reflects the behaviours:

is not inconsistent with the behaviours?:

are there other options?:

Are there core sustainable development objectives we have not identified above?:

What are the advantages and disadvantages of designating sustainable objectives as the factors that must influence higher level decision making?:

only if they actively contribute to one or more of those objectives:

if they do not detract from any of the objectives:

even if they detract from some of those objectives, as long as they actively promote others?:

are there other options?:

What are the advantages and

disadvantages of basing a duty on sustainable development behaviours and sustainable development objectives?:

What are your views on basing a duty around a single sustainable development proposition?:

How much time should organisations be given to make these changes?:

Would it be helpful to issue formal guidance to organisations subject to the new duty?:

Should any such guidance be issued by the Welsh Government or the new sustainable development body?:

Are there any particular statutory duties which it would be appropriate to repeal, in light of the approach we are proposing under the Sustainable Development Bill?:

Are there legal barriers to delivering in line with the sustainable development factors we have set out, which the Sustainable Development Bill could remove?:

Should organisations be required to report back on compliance with the duty through their existing annual reporting arrangements?:

Are there organisations on this list that should not be subject to the duty? Please explain:

Are there organisations that are not listed above but which should be subject to the duty? Please explain:

Are there other advantages or disadvantages to defining “sustainable development” and if so, what are they?:

If we were to define “sustainable development” do you think that the working definition above would be suitable and why?:

What should be the overall purpose for a new body?:

Do you have any views on the preferred approach regarding the main functions of a new body?:

Are there significant disadvantages to establishing a new body on a statutory basis?:

Do you agree with the proposed functions for a new body established on a statutory basis?:

Are there other functions which should be considered?:

Do you have particular views on the independence of a new body?:

Do you have particular views on the accountability arrangements for a new body?:

Do you have any other related queries or comments?:

The Welsh Government has set very positive and ambitious targets to ensure a healthier future for Wales. In order to achieve the 'Zero Waste' target, a lot more needs to be done regarding education. Currently there is little monitoring of results and change in attitudes amongst youngsters, who will be the active members of society by 2050. There is a lot that needs to be done, as the major changes across all sectors that are required to achieve a low waste society, can only be achieved via education and awareness. Whilst doing research for my final year project in university (Youngsters opinion and perception of waste management issues regarding the zero waste target), I discovered that more than 60% of youngsters between the age of 12-16 did not know about



the target, and feel that they need more guidance to be able to achieve a waste free society. A very high percentage were not familiar with terms such as sustainable development, waste pyramid and others. I have also found inconsistency amongst different schools, regarding how they implement the eco-schools programme. I would like to discuss further my research given the opportunity.

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Responses to consultations may be made public - on the internet or in a report. If you would prefer your response to be kept confidential, please tick here: (Unchecked)

Your name: Colleen Theron

Organisation (if applicable): CLT Envirolaw

Email Address: colleen.theron@clt-envirolaw.com

Address: 56 Mistys Field Walton on Thames Surrey KT 12 2 BG

Postcode: KT122BG

What are the principal barriers you face to taking more long-term, joined-up decisions?:

What actions need to be taken, and by who, to reduce or remove these barriers?:

What other evidence is there about the extent of progress in relation to the Sustainable Development agenda and making Sustainable Development the central organising principle of public bodies? :

Have we identified the most appropriate level of organisational decision making at which the duty should be applied? Please explain:

Would this approach risk capturing some decisions which should not be subject to the duty? What would these be?:

Are there any decisions that are not captured by this approach which should be subject to the duty? Again, what would these be?:

Should we include decisions which govern an

organisation's internal operations? If so, which internal operations should we include?:

Should budget proposals be subject to the duty? Please explain:

Are all of the behaviours we identify critical to acting in ways that reflect sustainable development thinking?

Please explain:

Are there critical behaviours that we have not identified?

Please explain:

What are the advantages and disadvantages of designating behaviours as the sustainable development factors that must influence high level decisions?:

is consistent with one, some or all of the behaviours:

broadly reflects the behaviours:

is not inconsistent with the behaviours?:

are there other options?:

Are there core sustainable development objectives we have not identified above?:

What are the advantages and disadvantages of designating sustainable objectives as the factors that must influence higher level decision making?:

only if they actively contribute to one or more of those objectives:

if they do not detract from any of the objectives:

even if they detract from some of those objectives, as long as they actively promote others?:

are there other options?:

What are the advantages and disadvantages of basing a duty on sustainable development behaviours and sustainable development objectives?:

What are your views on basing a duty around a single sustainable development proposition?:

How much time should organisations be given to make these changes?:

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Should any such guidance be issued by the Welsh Government or the new sustainable development body?:

Are there any particular statutory duties which it would be appropriate to repeal, in light of the approach we are proposing under the Sustainable Development Bill?:

Are there legal barriers to delivering in line with the sustainable development factors we have set out, which the Sustainable Development Bill could remove?:

Ensuring greater access to justice by legitimate bodies seeking to implement the main principles of sustainable development

Should organisations be required to report back on compliance with the duty through their existing annual reporting arrangements?:

Questions arising from this proposition are: 1) Would a similar reporting framework to this for the devolved public sector be effective in delivering sustainable development? 2) How do we avoid a compliance or a reporting process that is a costly, bureaucratic tick-box exercise? 3) How might the effectiveness of the Bill in delivering sustainable development on the ground best be monitored? In response to Q1: A key issue would be to determine whether the framework would be voluntary or mandatory and what issues would have to be reported on. There needs to be a clear understanding of ‘sustainability’ to encompass environment, social and

economic aspects and not limit it to environment reporting. H M Treasury has published guidance ('HMT guidance') on sustainability reporting for public bodies . The aim of the HMT guidance is to:

- provide information on minimum reporting guidelines
- explain reporting information on sustainability performance requirements in annual reports
- ensure that the information published is consistent and comparable between both different public sector bodies and between different accounting periods for the same body
- influence improved performance on sustainability issues

A starting point for the Welsh Assembly might be to follow the aims of the HMT guidance. These are to:

- provide information on minimum reporting guidelines
- explain reporting information on sustainability performance requirements in annual reports
- ensure that the information published is consistent and comparable between both different public sector bodies and between different accounting periods for the same body
- influence improved performance on sustainability issues

Response to Q: Avoiding compliance as a tick boxing exercise This question assumes the adoption of a mandatory reporting framework. The key will be to engage public bodies sufficiently so that they view any reporting requirements as 'best practice'. is a challenge How might the effectiveness of the Bill in delivering sustainable development on the ground be monitored? It is proposed that the Welsh Assembly should ensure that the right indicators for tracking information are properly identified . KPI's for reporting and monitoring should be set. For example, some of the principles that have been stated to reflect Sustainable Development as the central organising principle may be used to set KPIs. For example:

- Monitor the effectiveness of the independent sustainable development body.
- Embedding social justice and equality for all in all decisions.
- Increasing resource efficiency.
- Engaging citizens, and enabling them to live more sustainable lives.
- Reducing unnecessary bureaucracy and complexity so that maximum effort and resources can be directed to improving the day-to-day lives of our citizens.
- Promoting long-term cost savings between and within organisations through focusing on critical early interventions.

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Are there organisations on this list that should not be subject to the duty? Please explain:

Are there organisations that are not listed above but which should be subject to the duty? Please explain:

Are there other advantages or disadvantages to defining “sustainable development” and if so, what are they?:

If we were to define “sustainable development” do you think that the working definition above would be suitable and why?:

What should be the overall purpose for a new body?:

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Are there significant disadvantages to establishing a new body on a statutory basis?:

Do you agree with the proposed functions for a new body established on a statutory basis?:

Are there other functions which should be considered?:

Do you have particular views on the independence of a new body?:

Do you have particular views on the accountability arrangements for a new



body?:

Do you have any other  
related queries or  
comments?:

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Responses to consultations  
may be made public - on the  
internet or in a report. If you  
would prefer your response (Unchecked)  
to be kept confidential,  
please tick here:

Your name: Jamie Agombar

Organisation (if applicable): NUS and NUS Wales

Email Address: j.agombar@nus.org.uk

Address: NUS Wales 2nd floor Cambrian Buildings Mount Stuart  
Square Cardiff

Postcode: CF10 5FL

What are the principal  
barriers you face to taking  
more long-term, joined-up  
decisions?:

What actions need to be  
taken, and by who, to reduce  
or remove these barriers?:

What other evidence is there  
about the extent of progress  
in relation to the Sustainable  
Development agenda and  
making Sustainable  
Development the central  
organising principle of  
public bodies? :

Have we identified the most  
appropriate level of  
organisational decision  
making at which the duty  
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explain:

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Should organisations be required to report back on compliance with the duty through their existing annual reporting arrangements?:

Are there organisations on this list that should not be subject to the duty? Please explain:

We welcome the inclusion of HE and FE institutions and HEFCW

Are there organisations that are not listed above but which should be subject to

the duty? Please explain:

Are there other advantages or disadvantages to defining “sustainable development” and if so, what are they?:

If we were to define “sustainable development” do you think that the working definition above would be suitable and why?:

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Are there other functions which should be considered?:

Do you have particular views on the independence of a new body?:

Do you have particular views on the accountability arrangements for a new body?:

Do you have any other related queries or comments?:

NUS and NUS Wales strongly support the SD Bill and endorse the approach as advocated in the consultation. The duty will greatly support our work as an enabler of more sustainable behaviours by staff and students in tertiary education in Wales. In addition we would like to see the duty extended for HEFCW so that they themselves compel the intuitions they fund to deliver direct carbon reduction and embed education for sustainable development in curriculum.

Dear Sir / Madam: Thank you for the opportunity to respond top this consultation.

It should be made a legal requirement for all local authorities to have an extant Local Development Plan by which planning decisions can be judged. At present, it appears to be a requirement of WAG but there are no sanctions. In our case, Ynys Mon County Council does not intend to agree an LDP until 2016 and the status of the stopped UDP is unclear. This leaves a planning vacuum.

I remain, yours faithfully

Mandi Abrahams (Ms)

Arlanfor  
Warren Road  
Rhosneigr  
Anglesey / Ynys Mon  
LL64 5QT

Tel: 01407 810027  
Mob: 07870 297520  
[mandi.abrahams@btopenworld.com](mailto:mandi.abrahams@btopenworld.com)

## **Sustainable Development Bill Consultation Response**

The Equality and Human Rights Commission ('EHRC') is a statutory body established under the Equality Act 2006. It is the independent advocate for equality and human rights in Britain. It aims to reduce inequality, eliminate discrimination, strengthen good relations between people and promote and protect human rights.

The Commission's duties under the Equality Act 2006 include encouraging good practice in relation to equality and diversity and good relations. To this end the Commission has powers to undertake research and to give advice or guidance.

The Commission in Wales welcomes this opportunity to provide advice to government in response to the consultation on the proposed Sustainable Development Bill. The key points below are drawn from the fuller response that follows.

### **Key points:**

The Commission welcomes the proposal that sustainable development should be the central organising principle of policy making in Wales.

We welcome the explicit recognition of equality as a key component of Sustainable Development.

The Commission would anticipate playing a role in contributing evidence of progress towards a sustainable society.

We have evidence indicating that the greatest inequalities and human rights abuses in Wales are costly in terms of ruined lives, missed opportunities and public expenditure. An approach to policy making that emphasises prevention is very welcome.

The Commission would hope to be part of the group considering the development of the Sustainable Development Bill and to have a close working relationship with any Sustainable Development Body.

There are notable alignments of the proposed sustainable development duty with the Public Sector Equality Duty, both in terms of approach and outcomes, and these issues could usefully be explored as the Bill takes shape.

## Observations and Indicative Evidence

### 1. Equality, Social Justice and Sustainable Development

There are clear commonalities between the outcomes sought by the agendas for equality and human rights and for sustainable development.

The consultation paper identifies as a key longer term outcome a “sustainable society”, which means “safer, fairer .... and more cohesive communities, with lower levels of poverty, and greater equality of opportunity for all, where people can achieve their full potential ...”

The 5 headline indicators of sustainable development include economic progress, social progress, and the wellbeing of Wales. Wellbeing criteria identified in the consultation include “.. participation in society; positive physical, social and mental state – inclusive communities, good health, security.” The planks of wellbeing - health, education, work, political voice and governance, security - align closely with the key challenges identified in research published by the Commission in our periodic report ***How Fair is Wales?***

**Life and health** - Reduce health inequalities between socio-economic groups - especially those affecting older and younger men.

**Education and skills** - Close the gap in attainment between different socio-economic groups - including that of boys, black, Bangladeshi and Pakistani pupils and disabled children.

Reduce the incidence of young people who are not in education, employment or training.

**Employment** - Increase employment rates for all people, especially disabled people and older people.



Close gender, ethnic and disability pay gaps faster and further

**Legal and physical security** - Reduce the incidence of domestic and sexual violence and reduce homophobic, transphobic, disability-related and religiously motivated bullying and hate crime.

**Power and voice** - Increase participation of protected groups in decision-making and make Wales's public, private and third sector bodies representative of the people they serve.

In addition to the strong commitment to social justice and equality of opportunity as part of sustainable development, the Commission welcomes the explicit recognition of the need for distribution of wellbeing within society as critical to sustainable development.

The Commission's ***An anatomy of economic inequality in Wales*** report explores economic inequality in Wales through the lens of people's characteristics - such as gender, ethnicity, age and disability - and shows the impact of family background on life chances.

The report highlights serious and entrenched inequalities. We know that feelings of being valued, respected and trusted are lower in societies with a big gap between the rich and the poor. Unhappiness, crime and violence are often higher. Good relations between people in society can be seriously damaged. Tackling corrosive, persistent inequalities is vital to people's wellbeing and a sustainable Wales.

## **2. Importance of prevention**

There is strong cost-benefit evidence to favour prevention and early intervention as the sustainable approach across large areas of public sector work. The Commission welcomes this emphasis and has promoted similar approaches.

### **Domestic Abuse**

The Commission has actively promoted the adoption of workplace policies to address domestic abuse (Source: Domestic Abuse is your business)

Domestic abuse has a devastating impact on individuals and their families. In 2008/09 domestic abuse accounted for 68% of female homicides and 15% of male homicides.

Domestic abuse can cause employees to be distracted at work, arrive late, leave early, or miss work. Supporting staff experiencing domestic abuse makes business sense. In England and Wales £2.7 billion a year is lost through economic output due to decreased productivity, administrative difficulties from unplanned time off, lost wages and sick pay.

With the statistic that 1 in 4 women will experience domestic abuse at some point in their life, it is likely that all workplaces have staff that have or are experiencing domestic abuse as well as those who are perpetrators of abuse.

## **Mental Health**

The Commission has actively promoted the adoption of workplace policies to address mental health (Source: Mental Health is your business)

Mental health conditions are the second largest category of occupational ill health. An effective mental health policy for staff means that mental ill health can be managed more effectively benefiting both employer and staff member. Effective practice can reduce sickness absence, improve productivity and decrease recovery time.

Mental ill health has huge implications for employers as research shows that 91 million days are lost each year due to mental health conditions. The combined costs of sickness absence, non-employment, effects on unpaid work and output losses in the UK is £26 billion a year. This can be averaged out at a cost of around £1,035 per employee. This implies that a small organisation employing 50 people will typically incur costs of around £50,000 a year because of mental ill health among its employees. Recent research from Wales estimates the total cost to the Welsh economy to be £7.2 billion, larger than the total amount of public spending in Wales on health and social care for all health conditions combined.

According to the Shaw Trust, Welsh employers could be losing £292 million a year to mental health conditions. However, research shows that mental health management programmes offer good returns on the money invested. According to the Sainsbury Centre for Mental Health “British Telecom has reported that its mental wellbeing strategy has led to a reduction of 30 per cent in mental health-related sickness absence and a return to work rate of 75 per cent for people absent for more than six months with mental health problems .... If all employers could achieve the

same reduction...it can be calculated that the overall savings would come to over £300 a year for every employee in the workforce.”

## **Human Rights**

The rights-respecting schools model demonstrates the benefits a human rights approach. The Rights Respecting Schools Award (RRSA) recognises achievement in putting the United Nations Convention on the Rights of the Child at the heart of a school's planning, policies, practice and ethos. A rights-respecting school not only teaches about children's rights but also models rights and respect in all its relationships: between teachers / adults and pupils, between adults and between pupils. Main areas of impact include:

- Improved self-esteem and well-being
- Improved relationships and behaviour (reductions in bullying and exclusions and improved attendance)
- Improved engagement in learning
- Positive attitudes towards diversity in society and the reduction of prejudice
- Children and young people become more involved in decision-making in schools

Other examples of improved public service delivery through an emphasis on human rights-based approach include:

- managing nutrition and hydration in hospital wards (Betsi Cadwaladr University Local Health Board)
- meeting the needs of Gypsy and Traveller children through the innovative approach at Monkton Priory Primary school in Pembrokeshire, with the result of increased numbers securing employment and apprenticeships.

The consultation paper refers to the desirability of increased homeworking, which entails a significant benefit not only from an environmental perspective, but which also addresses the needs of disabled people, people with caring responsibilities and women returning to work. There is also evidence to demonstrate the great potential benefits of other forms of flexible working, including in terms of equal pay and sustainable childcare. The recent Census results show that there are 11000 more under 5s in Wales than 10 years ago and in 2011 the gender pay comparison based on median hourly earnings for all employees stands at 19.5 per cent.

There is a clear role for the Equality and Human Rights Commission in contributing information to the indicators on social progress. The Commission would wish to explore various options for formalisation of our input to the work of the independent sustainable development body.

### **3. Long Term Planning**

Although the sustainable development duty properly seeks to achieve some improved outcomes in the short and medium term, it has an inherent emphasis on long-term planning. The Commission welcomes such long term planning, which sits well with the need to address entrenched equality issues. It is undoubtedly useful and necessary to bring longer term considerations into planning for children's services and education.

By 2035, more than a quarter of the Welsh population will be over 65. It is equally useful and necessary to bring longer term considerations into planning for the needs of an aging population in Wales to help secure maximum independence. This may involve review and improvement of

the provision of advice and information services and addressing delays in transfers of care from hospital to social care settings.

The emphasis on a longer term outlook could also assist in securing the provision of suitable Gypsy and Traveller sites. The Commission notes from its engagement activity that the year on year cost in staff time and legal fees to Bristol City Council dealing with unauthorised Gypsy and Traveller encampments was between £200,000 - £350,000 annually.

There was also significant impact on the health, education and wellbeing of Gypsy and Traveller families. Councillors and officers eventually took a different approach and developed a permanent site in consultation with Gypsy and Traveller families and local people. They now spend very little on enforcement and the site generates an income for the council. The site is a place where people are proud to live and have pride in their community.

#### **4. Focus on outcomes**

We note the various approaches to framing a Sustainable Development Duty that are under consideration – centred on behaviour-type factors; objectives focussed approach or a single sustainable development proposition. Whichever of the approaches is ultimately favoured, we would strongly emphasise the need to focus on improved outcomes and better policy decisions.

The discussion paper asks for views on which type of higher level decisions should be subject to a sustainable development duty and specifically whether the duty should apply in relation to budget setting. The Public Sector Equality Duty clearly applies in relation to budget setting. The duty to have due regard to the need to achieve the PSED aims of course operates simultaneously with other demands and

considerations – whether statutory, political and other. This is not a reason for deciding against factoring in the duty into budgetary decisions and we would suggest that the same should apply to any sustainable development duty. Decisions taken on allocation of budget have a clear and defining impact on the nature and potential of outcomes. In other words, the breadth and quality of options (for improved equality or sustainable outcomes) clearly reduce where a high level budgetary decision has failed to provide sufficient resource.

## **5. Partnership Approach**

The Commission also endorses the emphasis on sustainable development through encouraging public bodies to work together. This partnership emphasis is very much in line with the approach promoted by the Commission to encourage authorities to co-ordinate with one another so as to maximise the impact of their actions. This is seen for example in the findings of the Commission's Disability Harassment Inquiry, which recommend a multi-agency approach and emphasise the importance of effective systems for sharing information.

Part of our regulatory approach as an enabler has involved the production of statutory Codes of Practice and non-statutory guidance. The paper considers the production of similar key documentation to support the Sustainable Development Duty and that this would be produced by either the Welsh Government or the created Sustainable Development Body. The Equality and Human Rights Commission in Wales would be able to add value to such guidance by providing expertise particularly on aspects of social progress in Wales.

## **6. Public Sector Equality Duty.**

The consultation paper emphasises the need for headline indicators on sustainable development to be viewed collectively to give a high level view of progress towards becoming a sustainable nation. In promoting the Public Sector Equality Duty the Commission places a similar emphasis on the need to take account of the cumulative impact on equality of a range of policies and practices.

Sustainable development behaviours align well with aspects of the Public Sector Equality Duty, such as engagement and involvement to inform decision making and provide underpinning evidence.

The Public Sector Equality Duty frames the requirement to address the needs of people from protected groups under the Equality Act 2010. Although socio-economic circumstance is not a protected characteristic, there are strong correlations between having a protected characteristic and lacking key resources (poverty, exclusion, poor health etc). This is true for example of disabled people, older people, carers, people from certain ethnic backgrounds and so on.

The Commission has evidence that in areas where there may be a lack of robust data around the equality profile of service users or other stakeholders, public authorities have used socio-economic data as a proxy for protected characteristics. It may be that the proposal to introduce sustainable development as the central organising principle driving public policy and practice, could help align authorities' consideration of the equality and social justice / socio-economic impact of policies and practices.



It would be useful to explore how the range key public sector strategies and drivers in Wales – including duties and objectives in relation to equality, social justice and sustainable development – may operate to inform and add value to one another.

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Cymdeithas Eryri Snowdonia Society is a registered charity with some 1700 members, established in 1967. It works to ensure that the beauty and diversity of the Snowdonia National Park's landscape, wildlife and cultural heritage remain for present and future generations to enjoy.

The Society is not making its own detailed response to this consultation. However, the Society is an Associate Member of Wales Environment Link and has given its explicit endorsement to the response submitted by WEL.

We also wish to register our strong support for the points made in the response submitted by Campaign for National Parks Cymru in the letter of today's date from Ruth Bradshaw.

David Lewis  
Chair, Cymdeithas Eryri Snowdonia Society  
01341 241400



**Neath Port Talbot Council for Voluntary Service**

*Supporting, promoting and developing the local voluntary sector*

**Cyngor Gwasanaeth Gwirfodl Castell-nedd Port Talbot**

*Cefnogi, hyrwyddo a datblygu y sector wirfoddol leol*

# **Welsh Government's Proposals for a Sustainable Development Bill**

***A response from Neath Port Talbot CVS***

**July 2012**

Neath Port Talbot CVS  
T Margaret Thorne  
17-19 Alfred Street  
Neath  
SA11 1EF

# **A Response to the Consultation on the Welsh Government's Proposals for a Sustainable Development Bill**

## **Introduction to Neath Port Talbot CVS**

Neath Port Talbot CVS is the County Voluntary Council supporting, promoting and developing the Third Sector in Neath Port Talbot. It is a charitable company with Board Members elected from its membership. Over 500 groups/organisations are members of Neath Port Talbot CVS but the organisation is in touch with over 1,100 organisations that work locally.

## **Sustainable Development Bill**

Neath Port Talbot CVS welcomes the opportunity to comment on the Welsh Government's Proposals for a Sustainable Development Bill. We think it important that the Bill represents a step-change in the implementation of policies, services and development to achieve sustainable development.

## **Scope of Bill**

The new duty will need to be substantially stronger than the present duty and needs to go beyond producing a scheme, 'having regard to' something, or making sustainable development merely a 'central organising principle'.

The Bill should require Welsh Government Ministers and the devolved public sector (including local authorities and Welsh Government sponsored bodies) to exercise their (other) duties and powers in order to achieve sustainable development, both within Wales, and with regard to the impacts internationally.

The duty should be supplemented by a statutory strategy (or strategies) which would become the main mechanism for achieving sustainable development. We would expect the duty to lead, within a specified timetable, to clear actions by the Welsh Government and devolved public sector in Wales which would, amongst other things:

Clearly drive down carbon and other greenhouse gas emissions

Create and sustain 'green jobs'

Promote ethical, fair trade and sustainable procurement by the public sector

Drive sustainable and ethical action by businesses that are supported by the Welsh Government in relation to their activities domestically and internationally

Deliver public services which meet the needs of the citizens of Wales.

The duty should explicitly recognise and give regard to the international impacts of Wales, e.g. the supply chains of the Welsh public and private sectors – both in terms of, i.e. carbon intensity, food security, etc.; the activities of Welsh businesses abroad; and the carbon emissions produced in Wales.

## **Definition**

The Bill will need to clearly define sustainable development, rather than leaving interpretation to further guidance, officials or the courts, and must be meaningful, relevant and accessible enough to drive/guide effective action.

The definition must make it clear that the implications of Welsh sustainable development policy do not end in Wales, but rather extend globally, and that the wellbeing of people in Wales is *an* aim but *not the sole aim* of the legislation.

The definition in One Wales One Planet with reference to '*using only our fair share of the earth's resources*' is a good start.

## **Commissioner**

We support the principle of having a Commissioner for Sustainable Development who should become a powerful champion for future generations, people in developing countries and those living in poverty in Wales, who are all impacted on by unsustainable development.

The Commissioner should be independent of the Welsh Government and able to hold the Government and public sector in Wales to account.

The Commissioner should be both empowered and required to investigate and take action on failures by Government both to comply with the provisions of the Bill, and more widely.

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 wider public sector in developing effective sustainable development schemes and investigative capacity to hold the devolved public sector to account.

## **Delivery**

The Bill will need to make clear that sustainable development is about social justice and addressing poverty as well as protecting the environment and will require understanding and action from across all organisations and sectors.

The Bill could also influence how services are procured by a legal requirement for all public bodies in Wales to consider how their procurement activities contribute to environmental, social and economic benefits.

It will be important for the Bill to require joined up working across organisational boundaries ensuring that services are delivered in ways which offer what people need with organisations working together with a focus on serving citizens, including the most marginalised and disadvantaged.



By Email to [Huw.charles@wales.gsi.gov.uk](mailto:Huw.charles@wales.gsi.gov.uk) , Welsh Government Sustainable Development Bill Team

18 July 2012

Dear Huw

I am writing to share the Consumer Council for Water's (CCWater)<sup>1</sup> thoughts on the proposals for a Sustainable Development Bill in anticipation of a Welsh Government White Paper firming up these proposals and identifying the best way for their delivery (autumn 2012).

CCWater agrees that sustainable development should be a central organising principle for public bodies or bodies delivering public services in Wales, but we would ask for clarity on several points, namely

- what the proposed sustainable development duty means in practice and what organisations like CCWater might have to do differently;
- how the new duty would apply for cross-boundary bodies;
- whether a *de minimis* and proportionate approach will be applied to the delivery of this duty in financial reporting, i.e. limited to those public bodies with more than a specified number of staff and/or office space in Wales in line with Her Majesty's Treasury Financial Reporting Manual (FReM) and Greening Government requirements.

We note that the regulatory impact assessment does not fully consider the expected costs of the new statutory body and, most importantly, the cost of the duty and its potential resource impact on public bodies: we think it should.

We also suggest that the Welsh Government attempts to assess the monetary and carbon value of the proposals, and the benefits that this would deliver to the citizens of Wales.

### **CCWater already considers sustainable development**

Sustainable development is central to our policy activities and the way we operate<sup>2</sup>. CCWater already considers sustainable development in its policies and activity, and also in the management of its procurement as it is *'required to exercise and perform its powers and duties in the manner which it considers is best calculated to contribute to the achievement of sustainable development'* [S27A (12), Water Act 2003].

In our operational business plan we state that we will *"fulfil our duty to contribute to achieving sustainable development by showing how we balance the economic, environmental and social aspects in all that we do."*

Our Forward Work Programme and Operational business plan consider sustainable development under each section, whilst also reporting on our commitment to manage our organisational

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<sup>1</sup> The Consumer Council for Water (CCWater) is a non departmental public body and the statutory consumer organisation representing water and sewerage consumers in England and Wales. We have a committee for Wales and four regional committees in England;

<sup>2</sup> Please see our website for our organisational policy on Sustainable Development, <http://www.ccwater.org.uk/server.php?show=ConWebDoc.1801>;



resources in the most sustainable manner. We also publish an Annual Review each year to report on our key wins and achievements on behalf of water consumers in Wales and England. Finally, our Annual Report and Accounts includes a section on our sustainability achievements.

This is evidence that CCWater's higher level decisions are already informed by sustainable development considerations. So, we would like any sustainable development reporting arrangements to be incorporated in existing CCWater mechanisms to increase efficiency, and to minimise bureaucracy and additional burdens on our already limited resources.

We already consider sustainable development in our work across organisational boundaries. This includes supporting cost effective and sustainable solutions for water and sewerage services now and in the future, such as catchment management schemes to tackle pollution at source and sustainable drainage systems to mitigate flooding. We also provide advice to consumers on the sustainable use of water resources, and reducing the risk of flooding and environmental pollution. We promote these messages through our press releases, our consumer relations team and our online resources<sup>3</sup>.

Through our work with the water industry, we continue to promote cost effective and sustainable investment and solutions for sustainable water and sewerage services now and in the future. Finally, we work with external partners so that environmental improvements in the water industry are carried out in a way that ensures customer bill impacts are acceptable, represent good value for money and ensure that costs on water customers are proportionate.

CCWater has recently restructured its policy and research team to better focus its work on the three pillars of sustainable development, i.e. environment, society, economy. From 1 August 2012 three Senior Policy Managers, working with the Head of Policy and Research, will ensure that our business planning, policy work, research proposals and public facing messages have fully considered sustainable development.

We welcome the opportunity to comment on the Welsh Government proposals on a Sustainable Development Bill, and ask to be included in information dissemination and event invitation lists in the future. If you have any questions or would like to get in touch with CCWater you can contact us directly or speak to Lia Moutselou on 02920 239 852, [lia.moutselou@ccwater.org.uk](mailto:lia.moutselou@ccwater.org.uk).

Yours sincerely

Diane McCrea  
CCWater Wales Committee Chair  
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02920 239852

Deryck Hall  
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<sup>3</sup> CCWater website: <http://www.cewater.org.uk> and CCWater Online customer help page:  
<http://ccwater.custhelp.com/>



CONSUMER COUNCIL FOR



CYNGOR DEFNYDDWYR





**Wales Green Party**  
**Plaid Werdd Cymru**

## **Sustainable Development Bill**

The Plaid Werdd Cymru/Wales Green Party sees the potential for communities to reshape the world around them as immense. The bill must offer a way for communities to put forward ideas to solve the problems that most affected them, with an obligation on government to respond either by removing the barriers or justifying why action was not possible. This will have the potential to bring state and citizen closer together.

the duty should apply to all organisations insofar as they provide public services, to include Bus/rail companies, water, electricity and communication companies, utilities (in respect of operations in Wales) and well as E&W government bodies (Ofcom, HSE...)

we support a model for the Commission majoring on scrutiny, holding the Welsh Government and the devolved public sector to account, including rapid response to proposed legislation

The new body needs to be more than advisory. It requires power to call ministers to account, then report to the NAW. Members appointed by NAW in consultation with environmental organisations. Power to set up investigative panels and hold hearings on particular public organisations – County Councils and cross-Council bodies, utilities,

The WAO would conduct much more open auditing and link into an effective enforcement and appeals system, based on tribunals – which should have legal powers as required under the Aarhus Convention, but short of the current costly and lengthy judicial review.

Mechanisms for representing the interests of children in policy matters, as required under the Convention on Rights of the Child, and ensuring they are given high weight

Review and reduce (the 44) indicators for Wales for ease of application and holding the WG to account; we favour a set of primary indicators including carbon and ecological footprints, and a well-being or happiness index.

The Wales Sustainability Bill should encompass the provisions of the Sustainable Communities Act 2007/2010 for communities to put forward ideas to solve the problems that most affect them, with an obligation on local government to respond either by removing the barriers or justifying why action is not possible. There should be a similar provision for Wales-wide NGOs to put forward evidenced proposals, with an obligation on Welsh government to respond either by adopting them or justifying why action is not possible.

Anne Greagbsy

Wales Green Party Campaigns Officer

send to

[sdbill@wales.gsi.gov.uk](mailto:sdbill@wales.gsi.gov.uk)



## **SD Bill consultation response**

**July 2012**

**Wales Environment Link (WEL)** is a network of environmental 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 environmental sector in its ability to protect and improve the environment through facilitating and articulating the voice of the sector.

Wales Environment Link values the opportunity to take part in this important consultation.

### **1. Introduction – Scope of the SD Bill**

The creation of the SD Bill presents an important opportunity for Welsh Government to clearly define sustainable development and establish a substantive legal duty on all public bodies to adopt a sustainable approach across the full range of their functions. WEL believes that Welsh Government needs to use this opportunity to make a firm commitment to reversing the decisions that lead to unsustainable practices, which continue to have negative impacts on the people, environment and economy in Wales and outside its borders.

WEL would also like to emphasise to Welsh Government the importance of obtaining cross party agreement on the legislation. We want to see a Bill that is supported by all political parties, so that irrespective of views on a specific strategy for implementation, future governments will continue to champion sustainable development and the goal of a sustainable Wales.

WEL also believes that there is scope within the Bill's accompanying statutory guidance to explain the reasons why we need to live in and develop our world sustainably. Helping people involved in decision making to understand the consequences of continuing to endorse unsustainable decisions could be a core component of achieving the cultural shift and change in behaviours Welsh Government is seeking through this consultation. Similarly when it comes to the obligations on public bodies to adopt sustainable development practices, this approach must extend to all relevant levels within organisations and not be confined to high-level policy. WEL would expect sustainability principles to be embedded within the new Natural Resources Wales body and to be a performance measure for its managers.

### **2. Strength and Nature of the Duty**

WEL believes that the duty proposed by Welsh Government must be substantially stronger and needs to go beyond producing a scheme, "having regard to" something, or making sustainable development simply a "central organising principle". It is unclear whether the current proposals adequately constitute a legal duty – WEL would argue that considering

sustainable development in decision-making does not equal delivering sustainable development in exercise of functions.

WEL would like to draw Welsh Government's attention to the paper by Andrea Ross presented in the 2012 IWA conference report<sup>1</sup>. In this article the author agrees that Government should legislate to make sustainable development the central organising principle of governance. However, she makes it clear that by itself, this is insufficient. There must also be a clear declaration of purpose of sustainable development in all its activities and it must impose meaningful substantive duties on all bodies. WEL agrees with this and urges Welsh Government to consider wording for its legal duty, which is strong enough to provide a framework for decision-making.

WEL wants to highlight to Government the importance of operating within the earth's limits. There are a number of elements to consider here:

- Living within environmental limits is not just about effective ecosystem functioning within Wales, but must also recognise our global impacts and how can we operate in a safe space, respecting essential earth system processes.
- We must be explicit that concern for environmental (and other) impacts cannot be restricted to Wales alone.
- This must also include a concern for long-term effects i.e. recognise the interests of future generations.

These important factors need to be fully recognised by Government and WEL wants to see explicit recognition of environmental limits in the legislation.

The SD duty should also explicitly recognise and give regard to the international impacts of Wales. It should ensure that environments, economies and people in other countries are considered and not detrimentally affected as part of the goal of achieving sustainable development in Wales.

In order for the SD Bill to work, no aspect of the governance of Wales can be exempted from appraisal under the duty. WEL would therefore argue it is essential for budget proposals to be subject to the duty. Funding is a huge driver of behaviour change, and a direct consequence of bringing budgeting under the duty will be to ensure that all those seeking funding will take sustainable development sufficiently into account in their proposals. In addition, the budget is what drives large infrastructure decisions, which will themselves be subject to the duty. It is therefore vitally important that the budget and the duty are inextricably linked.

### **3. Definition**

WEL believes that sustainable development must be clearly defined in the SD Bill itself rather than left to interpretation in further guidance, officials or the courts. It must be meaningful and accessible enough to drive and guide effective action. Sustainable development can be a difficult concept to understand, especially when faced with immediate pressing problems such as joblessness or housing pressures. Without a clear and meaningful definition of what sustainable development means with illustrative examples, we will continue to be driven by short term expediency rather than long term future-proofed decisions. Also, leaving the definition open to interpretation will make it vulnerable to legal challenge and ultimately decided by the courts rather than Welsh Government.

### **4. Delivering Sustainable Development**

WEL appreciates the Welsh Government position that generating outcomes through an objectives-orientated 'tick box' approach to compliance does not change the mentality or outlook of those complying. However, quantifiable targets, defined processes, audit procedures, compliance and enforcement of specific regulations are a direct means of

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<sup>1</sup> IWA, 2012. Wales' Central Organising Principle. Legislating for Sustainable Development.

delivering defined results. These outcomes can be measured and audited. Examples include the UK Climate Change Act or the three tests approach in the Habitats Directive.

Under the terms of the SD Bill, WEL believes that public bodies should demonstrate, where applicable, that their activities fully contribute to the principles of sustainable development, and not just that they are considering the factors. Enforcement, incentivising, the establishment of procedures for stakeholder engagement and consultation, the setting of specific and appropriate timetables and targets, and the implementation of audit processes are key factors that need to be addressed by Welsh Government to successfully embed sustainable development processes across public bodies.

A successful approach would see the integration of environmental, economic and social factors, and a decision making process that serves all three elements without one taking precedent over another. However, WEL suggests that close linkage with Welsh Government's emerging Natural Environment Framework could provide an even more robust and compelling solution to ensuring that sustainable development decision-making is deeply embedded in all functions of public bodies. Developing the ecosystem approach methodology will serve to place values (both monetary and non-monetary) on the environment and the ecosystem services it provides. The significance of these services would be universally recognised and would serve to impart a clear understanding of the environment's role in supporting humanity, especially to those who do not currently value it.

WEL understands the complexity of this methodology and the intricacy needed to ensure its accurate and effective development. We support Welsh Government in its ambition to develop a Natural Environment Framework (NEF) which employs an ecosystem approach underpinned by the value of and need for action to improve biodiversity (in line with the Convention on Biological Diversity definition) and appreciates the need for enhancement and protection of the environment as a whole. WEL would therefore urge Welsh Government to ensure that the NEF is fully developed and effectively utilised to give the natural environment proper weight in the undertaking of sustainable development decisions.

As part of this process WEL acknowledges that it is essential for the environment sector to continue to integrate social and economic considerations into its own decision making. There are numerous examples of this practice already taking place within the work of the environmental NGO sector in Wales. These include, but are not limited to, the following:

- Coed Cadw's work on woodland creation on farms, and the economics of planted ancient woodland sites (PAWS) restoration;
- The range of environmental NGOs who work in partnership with National Park Authorities to help them achieve their statutory purposes of environmental protection and enhancement, and their additional duty to foster the economic and social well being of those who live in and use the National Parks;
- RSPB's review of job creation and value to local economies of conservation work at their reserves (Natural Foundations: Conservation and Local Employment in the UK);
- The National Trust's work on the economic value of recreation and tourism;
- Keep Wales Tidy's community projects, which contribute to healthy living, improving biodiversity, community cohesion, learning new skills and encouraging the use of locally grown produce.

## **5. SD Commission**

WEL believes that the role of the SD Commission should primarily be for advice and support and provide recommendations where necessary, at least in the short term (5-10 years). As the phasing and adoption of sustainable development becomes more established across the public sector this role could move towards audit and enforcement and holding public bodies to account in an Ombudsman-like manner.

WEL also feels that the relationship between Auditor General, Public Services Ombudsman and SD Commissioner is critical, and that Welsh Government should consider how these three positions can work together to ensure that sustainable development approaches are correctly adopted by public bodies. Firstly, the SD Commissioner will be responsible for safeguarding the interests of future generations by monitoring and analysing the functions of public bodies in response to sustainable development policy. In conjunction with this role the SD Commissioner will have the power to direct the Auditor General, where necessary, to undertake a review, and through this process public bodies may be held to account. Finally, the Public Services Ombudsman will have the power to hold public bodies to account on behalf of the public and therefore needs to work in harmony with SD Commissioner and Auditor General to ensure the entire process is cohesive, has maximum impact and does not undermine itself.

WEL would also like to make the point that adequate resourcing of the Commission and Commissioner is as important, if not more so, than establishing the appropriate powers. Both Commission and Commissioner need to be empowered by funding to achieve what they are tasked to do, in a similar fashion to other Commissions e.g. Welsh Language Commission.

**The following WEL members support this document:**

**Afonydd Cymru**

**Bat Conservation Trust**

**British Mountaineering Council**

**BTCV Cymru**

**Butterfly Conservation Wales**

**Campaign for National Parks**

**Campaign for the Protection of Rural Wales**

**Coed Cadw / Woodland Trust**

**Council for British Archaeology Wales**

**Cymdeithas Eryri / Snowdonia Society**

**Keep Wales Tidy**

**Plantlife Cymru**

**Ramblers Cymru**

**RSPB Cymru**

**Wildlife Trusts Wales**

**WWF Cymru**

**Wye & Usk Foundation**

**Ymddiriedolaeth Genedlaethol / National Trust**

SD Bill Team,  
Welsh Government,  
Cathays Park,  
CARDIFF,  
CF10 3NQ

18 July 2012

Dear Sir,

## PROPOSALS FOR A SUSTAINABLE DEVELOPMENT BILL

Thank you for consulting on your proposals for a Bill to place a sustainable development duty on organisations delivering public services in Wales.

This response is from Dŵr Cymru Welsh Water, the regulated water and sewerage company serving most of Wales (and some adjoining parts of England). We provide an essential public service to some 1.2 million households and we have over 100,000 business customers.

As we explain in our enclosed detailed comments, our day-to-day work often involves weighing the economic, social and environmental impacts of our activities. This balance is at the heart of sustainable development. Dŵr Cymru was therefore pleased to become a signatory to the Welsh Government's Sustainable Development Charter in 2011.

We are supportive of the Welsh Government's wish to promote the concept of sustainable development within the Welsh public sector. We particularly welcome the emphasis you place on long term thinking and the need for decision making to be informed by an assessment of costs and benefits.

However, we think that there are opportunities to simplify and streamline your proposed regime. In particular, we recommend that priority should be given to producing a tool to enable practitioners to put strategic plans through a sustainability proofing process. As well as being a more practical and potentially more effective approach, we believe it would significantly reduce the costs for relevant public sector bodies.

We all agree that Wales must be seen as "open for business" so the Welsh Government will, no doubt, want to ensure that the new duties do not put Wales at a competitive disadvantage in attracting investment opportunities. Economic, environmental and social policies should therefore be applied in a way that is seen as enabling, not obstructing business to thrive in Wales.



I hope these comments are helpful. I would be happy to meet you to discuss them further.

Copies of this letter and enclosure are being sent to your Water Policy Branch colleagues for their information.

Yours faithfully,

A handwritten signature in black ink, reading "Tony Harrington". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Tony Harrington  
Director of Environment – Cyfarwyddwr yr Amgylchedd

Email: [tony.harrington@dwrcymru.com](mailto:tony.harrington@dwrcymru.com)

## **CONSULTATION PAPER ABOUT PROPOSALS FOR A SUSTAINABLE DEVELOPMENT BILL – COMMENTS FROM DŴR CYMRU WELSH WATER**

### **Introduction to Dŵr Cymru**

In 2011 Dŵr Cymru was delighted to become a signatory to the Welsh Government's Sustainable Development Charter, so we are already committed to making sustainable development our central organising principle.

As a business we routinely find ourselves having to balance economic, social and environmental considerations. Indeed this is enshrined in the regulatory frameworks we already work within. A competitive economy relies on the availability of infrastructure that is fit for the 21<sup>st</sup> century, including water and sewerage services: Dŵr Cymru is therefore a key economic enabler both here in Wales and in some parts of England. We are also a major employer, with a presence throughout most of the country and a track record of offering excellent career opportunities for Wales' young people.

However, we are very mindful that some of our customers struggle to pay for the essential services we provide. As well as having a sense of social responsibility, Dŵr Cymru recognises that a high level of customer indebtedness does not make commercial sense. We are therefore currently supporting some 40,000 low income households through our range of social tariffs.

We are also very aware that Dŵr Cymru's business, now and in the future, is totally dependent on the water environment. It is therefore in our long-term commercial interest to protect and improve the water environment of Wales for current and future generations.

The water sector as a whole is very keen to embed sustainability into the running of our industry. Last month, UK Water Industry Research published a report it had commissioned into Sustainable Regulation [*UKWIR report Ref No 12/RG/08/4*]. There are many parallels with your consultation paper, particularly in recognising the importance of long term planning and stakeholder involvement. We would commend this document to you as it could assist you to develop practical tools which embrace sustainable outcomes.

### **The Welsh Government's proposals**

We are supportive of the Welsh Government's wish to promote the concept of sustainable development within the Welsh public sector. Convincing the relevant decision-makers of the value of sustainable development may, of course, be easier said than done. This is particularly true in a period of economic hardship when social and environmental concerns can sometimes be perceived as unaffordable luxuries as compared to job creation. With the economy in such a bad place and with the Whitehall Coalition's austerity programme still to bite, it is essential that Wales must be seen as "open for business". We need to overcome the perception held by some that environmental protection and social responsibility are bad for business and bad for jobs. Environmental and social policies should therefore be flexible enough to both accommodate the needs of the environment and be specifically applied in a way that is seen as enabling, not obstructing business to thrive in Wales.

From our perspective, the big prize in adopting the sustainable development approach as outlined would be a long term commitment by all Government bodies to economic, social and environmental prosperity for Wales.

Economic, social and environmental objectives are closely interlinked. We are keen to work with our partners and stakeholders to help us weigh the pros and cons of options to identify the best outcome for Wales. To illustrate the point, there are continuing pressures on all water companies to adopt new and tighter environmental standards. Dŵr Cymru is committed to protecting Wales's water environment, not least because it provides the raw material that our company, as well as many other businesses, rely on. But meeting tighter standards can cause water bills to rise (putting more customers into water poverty) or squeeze out much needed investment to maintain our existing network of assets properly, or hamper our ability to provide infrastructure for new development. We hope that the new sustainable duty will encourage relevant public sector bodies to work with us to recognise these competing pressures so that the best balance can be struck in decision-making processes. Perhaps the Welsh Government's Water Industry Forum would be a focal point for promoting this message, as well as seeking out best practice examples to share with other such forums.

We welcome the emphasis you place on long-termism. You say (on page 3) that you wish to embed a longer term view into decision-making in the Welsh public sector *"and make sure that we design and build organisations, infrastructure and public services which will serve us for the long term and are affordable to run and maintain"*. The water industry must take a long term view, given the long life of much of our infrastructure. On behalf of today's customers and future generations, Dŵr Cymru looks after a very large network of long-lived assets that would cost £25 billion (or around £20,000 per customer) to replace. However, we often come under pressure, particularly from local planning authorities, to apply short term fixes to long term problems. We would therefore welcome a greater emphasis on identifying the best long term solutions, and we hope that the Welsh Government's emphasis on sustainable development will support this ethos.

For example, climate change poses a major threat to the sustainability of the essential services that our sector provides. The damage being done to the climate is a clear example of unsustainable practice. Through its targets to reduce greenhouse gas emissions, the Welsh Government is leading efforts here in Wales to try to mitigate the social, economic and environmental impacts. But climate change mitigation will also require a greater willingness by regulators to think long term and to give more weight to the energy implications of regulatory decisions (such as whether we should provide additional treatment of effluent discharges or whether we should be permitted to install renewable energy infrastructure at our sites).

The five year cycle that our economic regulator, Ofwat, applies to the price setting process can lead towards short-termist investments. Although in recent years water companies have taken a longer term view through their 25 year strategic direction statements, these inevitably carry less weight than the 5 year business plans on which our price limits are based. The Minister has announced plans to produce a Water Strategy for Wales: it would be useful if the Strategy gave the Welsh Government's thoughts on how the price setting process could be changed to encourage more long term, future proofed investment in our sector.

For example, there is a mismatch between the five year cycle that Ofwat uses to set limits on water charges and the six year river basin planning cycles that underpin delivery of the European Water Framework Directive (WFD). It is the WFD that will set the agenda for the

water environment for the foreseeable future. But in 2014, when Ofwat will make its key decisions about water prices during 2015–2020, the WFD River Basin Management Plans (RBMPs) for 2015–2021 will not have been finalized, so the extent of work required of water companies to meet WFD will still be unknown. At its worst, this mismatch may mean that after prices are set by Ofwat in 2014, we will have to ask for additional financial allowance to be made so that we can fund the programmes in the RBMPs subsequently approved by Ministers. This uncertainty does nothing to assist ‘joined up’, long term planning.

We note that the paper accompanying the Draft Water Bill published on 10 July confirms (in paragraph 54 on page 14) that the Welsh Government wants Ofwat’s current duty to promote sustainable development to be elevated to primary status. We would welcome the opportunity to discuss this issue with you so you can fully understand both the benefits of such a position and the possible drawbacks of an unlevel playing field across regulators in England and Wales.

You say (on page 17) that giving people affected by decisions the opportunity to have their say is a fundamental principle of sustainable development. Dŵr Cymru shares your commitment to involve key stakeholders in decision making. We are establishing a customer challenge group to ensure that our business plan for 2015-2020 reflects a sound understanding and reasonable balance of customers’ views, and whether the phasing, scope and scale of work required to deliver outcomes – including legally prescribed standards and other regulators’ requirements – is socially, economically and environmentally sustainable. We are also setting up an Independent Environmental Advisory Panel made up of representatives of key environmental organisations. They will come together to share expertise and advise us as part of our business as usual work, on how we should deal with and prioritize the environmental issues we face. This in turn will assist us to continue to deliver our services to customers and the environment.

Earlier this year the Welsh Government consulted on a proposal to strengthen and clarify the presumption in favour of sustainable development in the planning system. We think that is the key lever if sustainable development is to be delivered on the ground, hence Dŵr Cymru’s response to that consultation was supportive of your proposals.

Although we remain very much in favour of the broad objective of embedding sustainable development into other forms of strategic planning within the Welsh public sector, Dŵr Cymru is less convinced about some of the more detailed proposals contained in this latest consultation paper. This is because we are unclear what practical additional benefits you envisage that your latest proposals will deliver – your consultation paper says comparatively little about this.

For example, we wonder whether a complex statutory system of sustainable development behaviours, objectives and/or propositions is needed (pages 33–35 refer). The nebulous nature of these proposals makes it hard to envisage how they will work in practice. The lack of clarity will also hamper the ability of relevant public sector bodies in Wales to comply with their new duties.

There is a danger that public bodies will transfer their new sustainable development obligations onto those promoting major projects in their areas of responsibility, effectively shifting the burden of proof away from their own organisations. We would certainly not

want a system analogous to the current Environmental Impact Assessment regime as this would represent an unwelcome added burden and would place Wales at a competitive disadvantage in terms of attracting worthwhile investment.

The other issue that concerns us is the implied, but as yet unspecified costs of your proposals. With the continuing weakness of the economy, and pressures on public expenditure, the Welsh Government will wish to avoid placing additional regulatory and financial burdens on the public and private sectors here in Wales. If your current proposals are adopted there is, for example, a real danger that public bodies will feel the need to recruit sustainable development 'experts' or resort to paying for external consultants to review their strategic documents: we question whether this would be a worthwhile use of finite public funds.

We note your ambition (paragraph 73 on page 29) to go further than introducing a high level duty, but we think that the best way to overcome these risks would be to introduce a simpler duty (e.g. a duty to require that public sector bodies 'seek to deliver sustainable development in carrying out their functions'). This would be supported by a tool to enable practitioners to put strategic plans through a sustainability proofing process. We believe that this would be a more effective and cheaper option.

This should be reinforced by a statutory definition of sustainable development, along the lines of the one given in the Executive Summary on page 3 (which is much better than, for example, the sustainable development proposition on page 35 which makes no reference to living within environmental limits).

We would encourage the Welsh Government to take the lead in supporting the production of a sustainable development tool, providing a practical test of sustainability that could be applied to any development proposal. At its best, this could make a bigger contribution to sustainable development than a general duty or a definition of sustainable development. The key to this lies at the heart of the Natural Environment Framework approach which seeks to value ecosystems properly, including the services they provide. Sustainable development should generally be cost beneficial, or at least cost-effective, when the value of ecosystem services are properly factored in.

Dŵr Cymru stands ready to help you to develop such a tool. Perhaps the Welsh Government's own Policy Planning Gateway would provide an appropriate model?

The consultation paper also recommends the establishment of an independent sustainable development body. Again for reasons of cost, we question whether now is the right time to be advocating the establishment of a new statutory body, with the inevitable on-costs (such as personnel; auditing; accommodation etc). We believe that the sustainable development advisory role should be undertaken by a unit within the Welsh Government which could spearhead the delivery of the Welsh Government's own sustainable development duties as well as providing leadership and guidance to the rest of the Welsh public sector.

If, though, you are convinced that the new body should be at arms' length from the Welsh Government, you might locate the new unit within the Natural Resources Body for Wales. This would reinforce the need for the new organisation to be mindful of the economic and social impacts of its regulatory decisions.

We very much welcome the emphasis you place (on pages 17-18) on assessments of costs and benefits but this is undermined by the absence of any costings to accompany this consultation. A review of the costs and benefits would have informed the debate on, for example, whether a new statutory independent body is justified and exemplify the principles of the policy that you are intending to promote.

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# Proposals for a Sustainable Development Bill

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FSB Wales  
response to  
Welsh  
Government

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18<sup>th</sup> July 2012

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## **Proposals for a Sustainable Development Bill**

### **The Federation of Small Businesses in Wales**

The Federation of Small Businesses Wales welcomes the opportunity to present its views to the Welsh Government on its proposals for a Sustainable Development Bill. FSB Wales is the authoritative voice of small businesses in Wales. With 10,000 members, a Welsh Policy Unit, two regional committees and twelve branch committees; FSB Wales is in constant contact with small businesses at a grassroots level. It undertakes a monthly online survey of its members as well as an annual membership survey on a wide range of issues and concerns facing small business.

### **Executive Summary**

- FSB Wales recognises that sustainable development is important in ensuring that Wales becomes a viable and prosperous country for future generations. As such, putting sustainable development at the heart of decision making in Wales is to be welcomed.
- It is crucial that in doing so the Welsh Government does not exacerbate the risk averse culture of many decision makers within the public sector in Wales. As with all proposed legislation, the Welsh Government should be sure that placing a duty on the public sector in Wales is the most appropriate means of achieving its stated aims.
- The Welsh Government must guarantee that its definition of sustainable development is sufficient in breadth in order to enable small businesses to become the corner stone of Wales' economic, social and environmental fabric. Sustainable development must not jeopardise small businesses' potential for success in Wales.
- FSB Wales believes that any duty should seek to influence the culture of decision making within the public sector in Wales. This means that decisions taken in line with sustainable development should be encouraged and that the duty should not be treated as an additional and potentially onerous tick box exercise.
- Should the Welsh Government decide that the creation of a new sustainable development body is necessary; FSB Wales would like to see the body become one that provides expert advice and guidance to the public and private sectors in Wales.
- The Welsh Government should be robust in carrying out regulatory impact assessments that accurately consider the effects of any additional duty or legislation on small businesses. FSB Wales believes the Welsh Government should examine the existing regulatory burden to ensure that small businesses in Wales can operate in a competitive environment.

### **Introduction**

Putting sustainable development at the heart of decision making in Wales is to be welcomed and FSB Wales members recognise that ensuring Wales is viable and prosperous for future generations is important. Small businesses are acutely aware of changes to the public sector and frequently rely on public sector contracts as a source of revenue.





FSB Wales believes that while the changes proposed by the Sustainable Development Bill may only directly affect the public sector, it is important that small businesses are considered as part of the legislative process. Ultimately, decisions made in the public sector have implications for the private sector and FSB Wales does not believe that either can be treated in isolation.

### **Definition**

As a matter of first principle, FSB Wales believes that the Welsh Government must ensure that there is a clear definition of sustainable development that does not favour environmental concerns at the expense of economic and social considerations. This definition should encourage best practice in decision making in Wales.

FSB Wales notes the Welsh Government's definition of sustainable development as:

*"...enhancing the economic, social and environmental wellbeing of people and communities, achieving a better quality of life for our own and future generations, in ways which:*

- a. Promote social justice and equality of opportunity, and*
- b. Enhance the natural and cultural; environment and respect its limits – using only our fair share of the earth's resources and sustaining our cultural legacy".<sup>1</sup>*

Clearly, small businesses are a crucial part of the social and economic fabric of Wales' communities and have a vital role to play in sustainable development. The presumption in favour of sustainable development should enable decisions to be made transparently and quickly, encouraging good practice rather than serving as an additional barrier to small businesses in dealing with the public sector.

FSB Wales believes that economic and social outcomes are inextricably linked and calls on the Welsh Government to enable small businesses to thrive in Wales and provide the growth needed to ameliorate Wales' social problems. It is important that decisions made in line with sustainable development are consistent in their application and this requires strong guidance from the Welsh Government.

### **Creating a duty for sustainable development**

The Welsh Government must be certain before proceeding with legislation that creating an additional duty is the best means by which to deliver results in line with its sustainable development goals. FSB Wales believes that any additional duty should seek to enable best practice amongst public sector organisations and should not exacerbate the risk averse culture of the public sector in Wales.

FSB Wales would not support a move to an objective duty that placed measurable objectives in line with sustainable development goals. This would undoubtedly lead to an increase in tick box

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<sup>1</sup> Welsh Government. 2012. Planning for Sustainable Development: the presumption in favour of sustainable development [online]. Available at: <http://wales.gov.uk/docs/desh/consultation/120302sustainabledevelopmenten.pdf> (accessed 23rd May 2012)



exercises that would render the public sector in Wales far less responsive, especially to small business needs, and could unduly increase public sector bureaucracy.

The consultation document states that statutory duties already in place could be re-examined in light of the additional sustainable development duty<sup>2</sup>. FSB Wales is clear that all statutory duties should be reviewed within a reasonable timeframe as a matter of good practice, in order to ensure that they are not adversely damaging small businesses in Wales.

### **A new sustainable development body**

FSB Wales recognises that the Labour Party carried a manifesto commitment to create a sustainable development body and acknowledges that the Welsh Government will seek to deliver on this manifesto pledge<sup>3</sup>. Any new sustainable development body should seek to encourage best practice and provide advice to both the public and private sectors in order to further Wales' economic, social and environmental aims.

FSB Wales agrees with the Welsh Government's preferred approach that would entail creating an expert advice and guidance body that would work with organisations that fall under the remit of the Bill. Such a body should also be a resource for organisations outside the remit of the Bill and should seek to encourage behavioural change by promoting best practice.

### **Regulatory Impact Assessment**

Finally, FSB Wales believes that the Welsh Government should be robust in its approach to legislating for Wales by carrying out regulatory impact assessments, particularly in relation to small businesses in Wales. The Welsh Government should only legislate on a particular issue if it is sure that legislation is the best means by which to achieve its aims. The Welsh Government should also periodically review regulations to ensure any unintended adverse impact of previous legislation is assessed.

### **Conclusion**

FSB Wales is grateful for the opportunity to respond to this consultation outlining the thoughts of small businesses in Wales and looks forward to responding to future consultations on this matter as the details of the Sustainable Development Bill are introduced.

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<sup>2</sup> Welsh Government. 2012. Proposals for a Sustainable Development Bill [Online]. Available at: <http://wales.gov.uk/docs/desh/consultation/120508susdevbillconsulaten.pdf> (accessed 17th July 2012)

<sup>3</sup> Welsh Labour. Manifesto 2011: Standing up for Wales [Online]. Available at: <http://www.welshlabour.org.uk/uploads/welsh-labour-manifesto.pdf> (accessed 17th July 2012)

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**The Federation of Small Businesses**

The FSB is non-profit making and non-party political. The Federation of Small Businesses is the UK's **largest campaigning pressure group** promoting and protecting the interests of the self-employed and owners of small firms. Formed in 1974, it now has **200,000 members across 33 regions and 194 branches**.

**Lobbying**

Our lobbying arm - led by the Westminster Press and Parliamentary office - applies pressure on MPs, Government and Whitehall and puts the FSB viewpoint over to the media. The FSB also has Press and Parliamentary Offices in Glasgow, Cardiff and Belfast to lobby the devolved assemblies. Development Managers work alongside members in our regions to further FSB influence at a regional level.

**Member Benefits**

In addition, Member Services is committed to delivering a wide range of high quality, good value business services to members of the FSB. These services will be subject to continuing review and will represent a positive enhancement to the benefit of membership of the Leading Business Organisation in the UK.

**Vision**

A community that recognises, values and adequately rewards the endeavours of those who are self employed and small business owners within the UK

The Federation of Small Businesses is the trading name of the National Federation of Self Employed and Small Businesses Limited. Our registered office is Sir Frank Whittle Way, Blackpool Business Park, Blackpool, Lancashire, FY4 2FE. Our company number is 1263540 and our Data Protection Act registration number is Z7356876. We are a non-profit making organisation and we have registered with the Information Commissioner on a voluntary basis.

**Associate Companies**

We have two associated companies, FSB (Member Services) Limited (company number 02875304 and Data Protection Act registration number Z7356601) and NFSE Sales Limited (company number 01222258 and Data Protection Act registration number Z7315310).

**Christian Aid - Cymorth Cristnogol**  
**Welsh Government Sustainable Development Bill - Consultation Response**

Christian Aid works globally for profound change that eradicates the causes of poverty, striving to achieve equality, dignity and freedom for all, regardless of faith or nationality. We are an agency of our churches in Britain and Ireland and are mandated to work on relief, development and advocacy for poverty eradication. We provide urgent, practical and effective assistance where need is greatest, in around 45 countries, tackling the effects of poverty as well as its root causes, and are part of a wider movement for social justice.

Christian Aid in Wales works with churches, communities, schools, youth organisations, individuals and politicians across Wales to fight international inequality and to expose the scandal of poverty.

Christian Aid in Wales welcomes the opportunity to respond to the Welsh Government's call for views regarding the proposed Sustainable Development Bill and requests that serious consideration be given to the views below, and those jointly submitted by the Welsh International Development Sector and the Stop Climate Chaos Cymru Coalition, in the drafting of the Bill.

Our response to the consultation document is in three parts:

1. Our initial thoughts on sustainable development and the role the bill has to play, which do not directly relate to the consultation questions.
2. Comments on five of the consultation questions:
  - a. Duty
  - b. Governing body
  - c. Definition.
3. Concluding remarks.

**1. General comments on the proposed bill**

Christian Aid's mandate to eradicate poverty can only be achieved within the context of sustainable development. Our vision of achieving Poverty Over in a resource-constrained world will have dramatic implications for the lifestyles of the wealthy and will require a fair green development pathway. In our recent report, 'Equity in a Constrained World'[1], we "argue for a more sustainable future in which the world's wealthy and middle classes take up a smaller, fairer share of its precious resources [including water, forests, fish, minerals, fossil fuels and carbon space in our atmosphere] while the poorest take more. Such a transformation should be led by high-income countries, which should take domestic action to reduce their environmental footprints and support poorer countries to pursue low-carbon, resource-efficient development. In addition, countries should ensure that whatever system succeeds the Millennium Development Goals has sustainability and equity at its heart". [2]

We recognise the important role that Wales has to play in implementing this vision and welcome the Welsh Government's plan to legislate in this area. We also recognise efforts already being undertaken and sustained by the Welsh Government to achieve international social justice, for example through its Wales for Africa programme, greenhouse gas emissions targets, commitment to Fairtrade and the ESDGC Strategy.

The Sustainable Development Bill now presents an exciting opportunity to put global social justice and environmental protection at the heart of the Government of Wales, but this will only be achieved if the bill represents a step-change in the implementation of policies to achieve sustainable development.

As the Bill is drafted, we will be interested to see how global social justice and equity are built into the Welsh Government's perception of Sustainable Development and how areas such as ESDGC and post-MDGs Wales for Africa programme will be further resourced and promoted to support the Welsh Government's vision of a sustainable Wales.

## 2. Consultation questions

### a. Consultation questions on the sustainable development duty:

*Have we identified the most appropriate level of organisational decision making at which the duty should be applied? Please explain*

The new duty must be substantially stronger than the present duty [3] and needs to go beyond producing a scheme, "having regard to" something, or making sustainable development merely a "central organising principle".

The Bill should require Welsh Government Ministers and the devolved public sector (including local authorities and Welsh Government sponsored bodies) to exercise their (other) duties and powers in order to achieve sustainable development, **both within Wales, and with regard to the impacts internationally.**

The duty should:

- Be supplemented by a statutory strategy (or strategies) which would become the main mechanism for achieving sustainable development. We would expect the duty to lead to clear actions by the Welsh Government and devolved public sector in Wales, which would, amongst other things:
  - clearly drive down carbon and other greenhouse gas emissions
  - create and sustain 'green jobs'

July 2012

- promote ethical, fair trade and sustainable procurement by the public sector
- drive sustainable and ethical action by businesses that are supported by the Welsh Government in relation to their activities domestically and internationally
- Explicitly recognise and give regard to the **international impacts of Wales**, e.g.: the supply chains of the Welsh public and private sectors – both in terms of i.e. carbon intensity, food security etc.; the activities of Welsh businesses abroad; and the carbon emissions produced in Wales.

b. Consultation questions on the governing body:

*What should be the overall purpose for a new body?*

*Do you have any views on the preferred approach regarding the main functions of a new body?*

*Do you have particular views on the independence of a new body?*

Christian Aid in Wales supports the principle of having a Commissioner for Sustainable Development. We suggest that the Commissioner should be a powerful champion for future generations and people in developing countries, as well as for those living in poverty in Wales. We suggest that the Commissioner should:

- Be independent of the Welsh Government and able to hold the Government and public sector in Wales to account.
- Be both empowered and required to investigate and take action on failures by government to comply with the provisions of the Bill, and more widely.
- Be adequately resourced, with a staff able to support a significant programme of work including, research, policy development, support for the wider public sector in developing effective sustainable development schemes and investigative capacity to hold the devolved public sector to account.

c. Consultation questions on the definition of sustainable development:

*If we were to define “sustainable development” do you think that the working definition above would be suitable and why?*

The definition in One Wales One Planet [4], with reference to “*using only our fair share of the earth’s resources*” is a good start. However, the definition must make it clear that the implications of Welsh sustainable development policy **do not end in Wales, but rather extend globally**, and that the wellbeing of people in Wales is **an aim but not the sole aim** of the legislation.

July 2012

The Bill must clearly define sustainable development, rather than leaving interpretation to further guidance, officials or the courts, and must be meaningful and accessible enough to drive and guide effective action.

Christian Aid will be working with Welsh civil society organisations to propose specific wording to make this clear.

### **3. Concluding remarks**

In summary, Christian Aid in Wales hopes that the Welsh Government will introduce a robust bill with strong duty to achieve sustainable development and which will clearly define sustainable development in its **global context, underlining the value of global interdependence**.

Unsustainable development is impacting on poor communities in the developing world, as well those living in poverty in Wales. The Welsh Government's commitment to the Rio+20 process is a positive sign of the political will to implement an innovative and outward-thinking sustainable development bill that will set a strong international precedent. Wales, and the Welsh Government, has an opportunity to show leadership in providing a framework which will implement joined-up thinking across the Welsh Government and public bodies in Wales, allowing us to change our practices in favour of the world's poor and to play our part in supporting and achieving equity in a constrained world.

We would welcome the opportunity in due course to comment on the draft Bill itself when it is published.

This submission was made on behalf of Christian Aid in Wales with input from briefings written by Oxfam Cymru and Stop Climate Chaos Cymru. Please contact Jeff Williams, Head of Christian Aid Wales, if you have any queries. Christian Aid, 5 Station Road, Radyr, Cardiff, CF15 8AA.

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### **Notes**

[1] 'The Rich, the Poor, and the Future of the World: Equity in a constrained world', Christian Aid Poverty Over report April 2012 <http://www.christianaid.org.uk/images/constrained-world.pdf>

[2] 'Overconsumption, not population, is key to solving global environment crisis', Christian Aid press release, 23 April 2012 <http://www.christianaid.org.uk/pressoffice/pressreleases/april-2012/overconsumption-not-population-key-solving-global-environment-crisis-2304.aspx>

[3] (Sec 79, Government of Wales Act 2006) Welsh Ministers *“must make a scheme (“the sustainable development scheme”) setting out how they propose, in the exercise of their functions, to promote sustainable development.”*

[4] Sustainable Development in Wales

In Wales, sustainable development means enhancing the economic, social and environmental wellbeing of people and communities, achieving a better quality of life for our own and future generations:

- In ways which promote social justice and equality of opportunity; and
- In ways which enhance the natural and cultural environment and respect its limits - using only our fair share of the earth's resources and sustaining our cultural legacy.

Sustainable development is the process by which we reach the goal of sustainability.