



Evidence from WWF Cymru to the Environment & Sustainability Committee Environment (Wales) Bill

June 2015

As members of WEL and SCCC, we have contributed to, and support the submissions they have made. The information provided in this response, is additional detail to the major matters raised by WEL and SCCC.

SUMMARY of key points

- We agree with WG intention to legislate to embed an ecosystem approach at the heart of sustainable management of natural resources and to legislate on climate action in Wales. These are necessary steps to deliver the wellbeing of current and future generations in Wales, as expressed in the WFG Act 2015.
- Unfortunately, the history of failure to adequately protect Wales' biodiversity renders legislation necessary to drive a change so that these fundamental building blocks, which ultimately provide our ecosystem services, are afforded the priority necessary to ensure environmental sustainability in the long term.
- We agree that it is sensible and important to amend the purpose, powers and functions of NRW to ensure effective delivery of the WFGA and an ecosystem approach.
- In terms of coherence with WFGA, we do not feel there is anything contradictory in the Bill but the Bill could improve clarity in regard to the hierarchy of obligations between the Acts and further clarify the definition of public authorities.
- There are several instances where duties are more weakly worded than in WFGA, due to the inclusion of qualifying words and phrases. These should be removed.

- We welcome Welsh Government’s inclusion of the climate section within the Environment Bill. In general it has the potential to be deliver an effective governance framework.
- We however have concerns around some aspects of the proposals including coherence of the measurement structure including the emissions counted, lack of regular reporting and the level of scrutiny.

Part 1 : Natural Resources Management

What are your views on the proposal to strengthen the biodiversity duty on public authorities operating in Wales?

1. WG intention’s to legislate to embed an ecosystem approach at the heart of sustainable management of natural resources is innovative and leading the way on governance frameworks for sustainability globally, recognising in law, humanity’s dependence on and responsibility for an environmentally sustainable future.
2. The WFG Act reference group specifically looked at what was required to ‘live within environmental limits’. We agreed that decisions in regard to the environment needed to better recognise and manage the risks associated with breaching or approaching breaching such limits. Biodiversity is a fundamental building block of ecosystems and their services but the seriousness of its decline has not been addressed and given sufficient weight by public bodies. Therefore strengthening the duty through this legislation is a good idea.
3. We would make a general point that, as with the initially published WFGA, most of the duties seem unnecessarily weakened by qualifying phrases, which only serve to obfuscate what is required. There are various versions of this, which could easily be amended by addition or removal of small clauses within the existing Bill. For example,
 - a. Duties in Sections 7.3, 9.4 and 10.4 all use a phrase “take such steps **as appear to** them to be reasonably practicable to maintain and enhance....”. This wording seems unnecessarily circuitous when compared to similar qualifications in the duties under WFGA where the only requirement is ‘to take all reasonable steps’. The phrase ‘**appear to them to be**’ could be replaced by ‘**are**’.
 - b. The duty in Sec 6.1 to ' promote resilience of ecosystems' could be strengthened by changing section 6.2 from “In complying with subsection (1), a public authority must **take account of** the resilience of ecosystems," to '**have due regard** to the resilience....’.

- c. Finally, 9 (1) on publishing an NNR Policy states “their general and specific policies **for contributing to achieving**” SMNR. Given this refers to a policy setting, “contributing to” could be removed, since a policy is by its nature a statement of intent about how to reach an outcome, and can easily be qualified.

Your views on the relationship between this Bill and the Well-being of Future Generations Act 2015 and the Planning (Wales) Bill? Are the links and connections between them clear?

There are several areas where clarity could be improved.

4. Section 6, Biodiversity and resilience of ecosystems duty, applies to additional public authorities compared to the WFGA public bodies. We welcome this. It is important that all public bodies will be contributing to an environmentally sustainable future for Wales.
5. However, this means there are authorities here who are not subject to the WFG duty but who they are is not totally clear because the definition of a public authority includes at section 6 (6) (e) ‘ a public body’ and then gives some examples. The examples do not include bodies such as the Arts council of Wales, nor NRW which are public bodies under WFGA. However, they may be captured by section 6 (6) (f) (ii).
6. Therefore there is a likelihood of confusion in understanding and application of the duties in WFGA alongside the various duties within this Bill. We recommend some clarification be provided on this. We also think there should be a clear explanation of why NRW is *not* subject to this duty, as this seems counter-intuitive to the intention of this section.
7. Section 6 focuses on enhancing biodiversity to promote the resilience of ecosystems. In so doing, bodies need only ‘take into account’ *one* of the principles in section 4. It also seems that none of the public authorities in section 6 have a clear duty to ensure the sustainable management of natural resources (SNRM) (section 2). Given that these bodies are expected to contribute to achieving Goal 1 of the WFGA in regard to ‘efficient and proportionate’ use of resources, this is a puzzling omission. Paragraph 42 of the explanatory memorandum states that the intended effect of section 2 includes ‘aiming to improve resource efficiency’ and para 45 talks of sustainable use of secondary resources. Therefore, clarity on why section is not an obligation on other public bodies would be useful.
8. For public bodies covered by WFGA and EB, there is no contradiction in setting objectives to contribute towards the goal and the duty here in regard to

biodiversity and ecosystem resilience. In fact, these duties should strengthen the weight given to environmental considerations in decision making. Statutory guidance can clarify still further that in setting and meeting WFGA objectives, they must maintain and enhance biodiversity and promote the resilience of ecosystems. Or put another way, they should not set objectives which are injurious to the resilience of ecosystems.

9. It would also be useful to provide specific reference in the EB in regard to the WFGA duty to set and meet objectives. This could help avoid confusion about the hierarchy of obligations in the following contexts:
 - (a) between the SD Duty (including the duty to set and meet objectives) and the General Biodiversity Duty (sec 6);
 - (b) between the SD Duty (including the duty to set and meet objectives) and the Specific WM Biodiversity Duty (sec 7);
 - (c) between the SD Duty (including the duty to set and meet objectives) and the new General Purpose Duty of NRW (sec 5.2).

Part 2: Climate Change

WWF Cymru strongly supports having a legislative framework to tackle climate change. We have recommended Wales strengthen its governance framework for emission reduction including via a statutory emission reduction targets and a comprehensive action plan on how that will be achieved. We therefore welcome Welsh Government's inclusion of the climate section within the Environment Bill. In general it has the potential to be an effective governance framework in particular placing the accountability to meet GHG targets on the Welsh Ministers (clause 28) and the requirement for a cross Ministerial plan for how to meet them (Clause 39).

We however have concerns around some aspects of the proposals including:

- Coherence of the measurement structure including the emissions counted
- Lack of regular reporting and the level of scrutiny

Do you agree with proposals for the 2050 target?

1. We welcome the provision for a statutory climate change target. We believe that a binding long term 2050 target gives commitment to deliver and provides a certainty which is necessary to inspire investor confidence and drive decarbonisation. In terms of the amount of emission reduction by that date, we consider the key criteria for establishing this are:
 - keeping global temperatures below 2 degrees (This objective is consistent with global environmental limits and global well being in Goals 1 and 7 of the Wellbeing of Future Generations Act)

- the UNFCCC's core principle of "differentiated responsibility" (which requires countries emitting a proportionate share of GHG).
2. We would like to see evidence from Welsh Government on their proposed target of 80% to assess against these principles and understand why Welsh Government consider this target right for the Wales.
 3. Discussions across EU states on the 2025 decarbonisation target have produced a range of proposals of between 80-95% reduction against the 1990 base level. The Tyndall Centre has recently produced a report for the CCCW on 2 degree budgets for Wales. Have these considerations been integrated into Welsh Government's target setting?

Views on whether the interim target should be on the face of the Bill

4. We would require a target on the face of the Bill for the current Welsh Government target of 40% reduction by 2020. Welsh Government has made much out of their ambitious 2020 commitments. We believe these should now be enshrined in law. It is important to ensure the momentum for ambitious reductions by 2020 is maintained and we ensure this ambition is not reduced through the process of budget setting. The Bill's proposal not to start the budgets until 2018 leaves too long a stretch of time for uncertainty of Welsh Government's plans for emission reduction and the 2020 target would offer certainty and momentum in the interim period.
5. The Statement of Policy Intent (SoPI) which suggests that only one interim target will be set by Welsh Ministers also uses terms which might be of concern, in order to make cuts at the "most economically effective rate"¹ and "some technologies or change in plant need a long lead in time and some behaviours take time to change". This suggests that progress for some areas, for example heavy industry or power generation will be excluded and allowed slower than needed emission reduction. We recommend that the Committee explore this inclusion with the Minister for clarity of its purpose.

Do you believe that the inclusion of carbon budgets is more effective approach than the 3% annual emissions reduction target that is currently in place.

6. We believe that a budget measurement system is an effective approach when accompanied by appropriate reporting and scrutiny opportunities on an annual basis and also has appropriate principles required for the setting of the budgets.

¹ SoPI page 8-9

7. This is demonstrated through the provisions in the UK Climate Act which alongside the budget planning and reporting required on a 5 yearly cycle has a requirement for an annual statement of UK emissions (Section 10). This links in with a report from the CCC which is produced in advance of the Government's report to which the government needs to respond. The UK Act (section 12) includes indicative annual ranges of targets based on the budgets and these can be used as a proxy for whether the emission reduction is heading in the right direction.
8. The Scottish Act has annual targets but the other main difference is the level of reporting detail and scrutiny required alongside this. The Scottish Act requires Scottish Ministers to provide the Scottish Parliament with a report on annual targets, by the second autumn after the target year, which must state whether the annual target for the year has been met, and if not it must explain why not. Section 34 of the Act includes a list of additional information the report must also contain, including carbon units purchased, electricity generation and more.
9. The current Environment Bill proposals do not provide for any annual reporting from the Welsh Government or scrutiny by Advisory Committee or NAW which WWF Cymru believes is a critical gap in the Bill provisions. We would recommend a form of annual reporting and scrutiny – at least as strong as Scotland's- is included within the Bill. WWF Cymru has a few ideas which we can explore with the Committee in more detail. What is important when considering what form the reporting should take is the level of detail on emissions or impact of policies that stakeholders consider necessary to assess Welsh Government progress.
10. Whether Welsh Government considers the WFG Act's reporting requirements to provide this annual reporting is unclear and we would suggest this is something the Committee explores with the Minister. It is certainly not something that is specified within the Bill.
11. The UK Act sets parameters for its budget setting which is something that should be included in the Environment Bill. WWF Cymru will be considering this further and we recommend that the Committee explore this with the CCC. For example, there is no legal requirement in the UK Act for the CCC or the Secretary of State to set a '*cost effective*' budget, we suggest Welsh Government might include this as a parameter when setting their budgets in Clause 32 (3). This will not only ensure that emission reductions are along the right trajectory but are in line with the requirements of the WFGA. It provides a requirement for budgets to be set at a level which seeks to achieve the 2050 target in a cost effective manner and would ensure that the cost is not delayed and is not disproportionately loaded on future generations.

12. We would like the Committee to explore with the Minister what is meant by “most economically effective rate” in the SoPI and whether it covers the above interpretation or means something else which would be of concern (as explained in Paragraph 10). There are details in Clauses 39, 41, 42 and 43 on statements and reports for the 5 year budgets which are worth flagging up. The reporting and statement cycle appears to be an odd order of events. This means that at the start of next budgetary period, the first event will be the clause 39 report on how to meet the carbon budget for the new budgetary period with proposals and policies covering the areas of responsibilities of each Welsh Minister, then followed by the clause 41 final statement concerning the previous budgetary period to which it relates, and then finally a clause 42 report on policies and proposals to compensate for any excess emissions in the previous budgetary period. It would be a more logical order, with Clause 39 report following – and taking account of – the clause 41 and 42 reports, particularly with respect to any shortcomings they may identify as to progress with reducing Welsh emissions over the previous period.
13. Clause 39 uses the words ‘proposals and policies’. To add a sense of urgency in the process and to avoid Welsh Ministers being content to leave matters at the proposals stage without the Act requiring them to follow through with actual delivery. We would suggest adding the word ‘actions’.
14. As part of Stop Climate Chaos Cymru and CCCW, WWF Cymru has long called for carbon assessment of the annual fiscal budget and major strategies and infrastructure. This is a requirement within the Scottish Act and has led to demonstrable reprioritisation of spending. We therefore recommend that this is a requirement within Section 2 of the Environment Bill. Wales could improve on the Scottish system by requiring a life cycle assessment or at least carbon footprint assessment which would capture not just direct carbon impacts but also the indirect ones. This would be more in keeping with the integrated long term approach embedded through the Wellbeing of Future Generations Act.

What are your views on what emissions should be included in the targets? All Welsh emissions or those within devolved competence?

15. This is a complex and technical area of climate legislation. WWF believes that all emissions from Wales should be included as is the case with the current cross party commitment to 40% reduction by 2020. That target can only be achieved by work from both UK and Welsh Government and also by the effectiveness of EC regulation.
16. Basing targets on all Welsh territorial emissions makes it easier to show progress towards UN-inspired targets of 40% reduction by 2020 and 80% reduction by 2050.

17. Obviously currently, many key drivers of Welsh emissions are not within power of WG, such as energy, however, this is legislation for the long term and devolved powers will change over time, with proposals already in train for this. Elsewhere in the Bill, Welsh Government has shown much foresight in future proofing the legislation and such an approach would be important here. Targets based on territorial emissions don't need to be reassessed when more things come within devolved competency.
18. Until then however the all Wales emissions tend to both obscure and hide delivery by Welsh Government itself. Energy production is not in the control of Welsh Government but makes up much of Welsh emissions movements. The all Wales figures therefore do not provide sufficient analysis of Welsh Government policy impact. Whilst the analysis of emission within devolved competence offers more insight into the impact of Welsh Government policies, the way it has been presented in the Welsh Government annual report did not offer the detail that would enable sufficient assessment of Welsh Government activity or delivery.
19. Possible alternative mechanisms could be provided in the annual reporting alongside the all Wales emissions which could draw on examples for the Scottish and UK annual reporting. We can provide further details on this to the Committee. We would welcome the Committee exploring with the Minister how they anticipate providing assessment of its programmes' impact within all Wales emissions.
20. WWF Cymru would certainly also expect to see separate assessment of carbon embedded in the products we export and also import – our carbon footprint or consumption. The Well-being of Future Generations Act Goals 1 and 7 requires Wales to make a positive contribution to global well-being and use resources proportionately so to not include this would seem at odds with existing commitments.
21. We recommend the Welsh Government formally include international aviation and shipping emissions (IAS) in its climate targets from the outset. This could initially be achieved using similar formulae to those adopted by the Scottish government². Inclusion will underline the importance of fully accounting for IAS, enabling policymakers to make informed decisions about these sectors without imposing any restrictions on Welsh aviation that are not in practice imposed in England and Scotland. The Welsh Environment Bill could become the first piece of climate legislation in the UK to have complete credibility on international transport emissions from the outset³.

² http://www.legislation.gov.uk/ssi/2010/218/pdfs/ssi_20100218_en.pdf

³ This issue is discussed in more detail in the joint submission from the Aviation

22. Section 16(2)(c) of the Scottish Act makes this a one-way power – once shipping and aviation are brought in, then they cannot later be removed from the calculations. The Environment Bill does not do this, for reasons unknown, therefore we recommend that there are amends to that effect in line with the Scottish Act.

Do you agree with the Bill’s proposals as to what should happen if the Welsh Ministers fail to meet emissions targets or carbon budgets?

23. We are pleased to see responsibility to “each” Minister (section 39(2)) as this helps mainstream climate action across government.

24. Clause 42 requires a report on policies and proposals to compensate for an excess of emissions over the net Welsh emissions account, if the budget has been exceeded, to be published “as soon as reasonably practicable” after laying the final statement in clause 41. The compensatory action for carbon budgets is to be welcomed. However the timing of this is odd as explained above as is the apparent reporting of the Advisory Body to Welsh Government. We would seek clarity in this section from the Minister.

25. We consider that a more regular reporting and scrutiny system (as outlined above) would help reduce the possibility of missing the carbon budgets. Five years is too long to wait to make compensatory actions.

26. It is worth noting Section 28- the general purpose of the Welsh Bill - carries with it a requirement that Welsh Ministers meet ‘targets’ for reducing emissions of greenhouse gases from Wales, which is not so overtly stated in Scottish or the UK Acts. While it is hard to envisage any separate enforcement of clause 28 alone by way of judicial review, it would be helpful in such a case to have clause 28 on the face of the Bill, should any future legal proceedings challenge, for example, some detailed decision leading to the predicted or actual failure to meet emissions reductions in Wales.

What should the role of an advisory body on climate change be?

27. The Advisory body needs to have in-depth expertise therefore we support the involvement of the UK Committee on Climate Change as the Advisory Body. We also accept the power to appoint a Welsh advisory body in place of the UK body, if such a body can be similarly resourced and staffed with expertise in the future.

The relationship between this Bill and the Well-being of Future Generations Act 2015

28. This has been covered through questions above.

I gael mwy o wybodaeth, cysylltwch â / For more information, please contact:
Anne Meikle, ffôn/phone: 02920454970, e-bost/email: ameikle@wwf.org.uk