

National Assembly for Wales
Environment and Sustainability Committee

Environment (Wales) Bill
Stage 1 Committee Report

October 2015

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Wales



Environment and Sustainability Committee

The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: the maintenance, development and planning of Wales's natural environment and energy resources.

Current Committee membership:



Alun Ffred Jones (Chair)
Plaid Cymru
Arfon



Mick Antoniw
Welsh Labour
Pontypridd



Jeff Cuthbert
Welsh Labour
Caerphilly



Russell George
Welsh Conservatives
Montgomeryshire



Llyr Gruffydd
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North Wales



Janet Haworth
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Julie Morgan
Welsh Labour
Cardiff North



William Powell
Welsh Liberal Democrats
Mid and West Wales



Jenny Rathbone
Welsh Labour
Cardiff Central



Joyce Watson
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Mid and West Wales

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The Committee's Recommendations

Recommendation 1. We recommend that the Minister publishes the full exchange of correspondence between the Welsh Government and the UK Government in relation to each of the Minister of the Crown consents that were sought for provisions in the Bill. In particular, we ask that the Minister confirms the date on which the Welsh Government first sought the Secretary of State's consent to the provisions in section 6. (Page 17)

Recommendation 2. If the Secretary of State has not granted consent by the end of Stage 2 of the Bill's consideration, then we recommend that the Minister brings forward amendments to section 6 of the Bill at Stage 3 to limit the biodiversity duty to Welsh public authorities. (Page 17)

Recommendation 3. We recommend that the Assembly supports the general principles of this Bill. (Page 19)

Recommendation 4. We recommend that the Minister brings forward amendments to the Bill to insert the UN Convention's definition of 'biological diversity' as the definition of 'biodiversity'. (Page 21)

Recommendation 5. We recommend that the Minister brings forward amendments to the Bill to insert the UN Convention's definition of 'ecosystem' i.e. "*Ecosystem*" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit." (Page 21)

Recommendation 6. We recommend that the Minister brings forward an amendment to section 3(2) of the Bill to leave out the objective as drafted and to insert the Resilient Wales Goal, as set out under section 4 of the Well-being of Future Generations (Wales) Act 2015. (Page 21)

Recommendation 7. We recommend that the Minister brings forward amendments to the principles under section 4 to include reference to the 'precautionary principle' and to 'acting within environmental limits'. (Page 23)

Recommendation 8. We recommend that by the end of March 2016 the Welsh Government publishes the consultation arrangements that will apply to the production of the NNRP and the Section 7 biodiversity lists. (Page 25)

Recommendation 9. We recommend that the Minister brings forward amendments to the Bill that define the consultation arrangements that will apply to the production of SoNaRRs and Area Statements. (Page 25)

Recommendation 10. We recommend that the Minister brings forward amendments to leave out all uses of the phrase ‘take such steps as appear to them reasonably practicable’ and to insert ‘take all reasonable steps’ in their place. (Page 27)

Recommendation 11. We recommend that the Minister brings forward an amendment to the Bill that leaves out ‘seek to achieve’ in section 5(2) and inserts ‘to pursue’. (Page 28)

Recommendation 12. We recommend that Welsh Ministers produces statutory guidance on NRW’s general purpose, to be consulted upon as soon as the Bill receives Royal Assent. (Page 29)

Recommendation 13. We recommend that the Minister brings forward an amendment to section 6(1) of the Bill to leave out ‘seek to’ and insert ‘take all reasonable steps’. (Page 30)

Recommendation 14. We recommend that the guidance issued by Ministers on the reporting requirements should contain additional information on the activities that public bodies will be expected to undertake to demonstrate compliance with the duty. (Page 30)

Recommendation 15. We recommend that the Minister brings forward amendments to:

- Require Public Bodies to carry out their duty under section 6 with reference to the list established under section 7;
- Require the State of Natural Resources Report to include an assessment of the status of habitats and species in the section 7 list; and

- Require the NNRP and Area Statements to include the actions that will be taken to maintain and enhance the species in the section 7 list. (Page 32)

Recommendation 16. We recommend that the Welsh Government sets out the scope and timescale for its consultation on the biodiversity element of the Well-being of Future Generations indicators and a timescale for the introduction of these indicators. To allow this to be considered in the context of the Bill, we ask that this information is published before the conclusion of Stage 2 proceedings, currently 27 November 2015. (Page 33)

Recommendation 17. We recommend that the Welsh Government ensures that the State of Natural Resources Report includes an assessment of past and future trends (including risks and opportunities for sustainable natural resource management) in addition to an assessment of the current state of natural resources in Wales. In addressing this recommendation, we ask that the Welsh Government considers the merits or otherwise of specifying this on the face of the Bill. (Page 34)

Recommendation 18. We recommend that that the Minister brings forward amendments to the Bill to provide more detailed criteria for the minimum contents of a NNRP. (Page 35)

Recommendation 19. We recommend that the Minister clarifies how the NNRP will interact with Glastir and the Rural Development Plan. (Page 35)

Recommendation 20. We recommend that the Minister brings forward an amendment to section 9(2) of the Bill to require Welsh Ministers to set out any challenges to sustainably managing natural resources, alongside the key priorities and opportunities. (Page 35)

Recommendation 21. We recommend that the Minister brings forward an amendment to section 9(6)(a) to place Welsh Ministers under a duty to review the NNRP within twelve-months of an Assembly general election. (Page 36)

Recommendation 22. We recommend that the Minister brings forward an amendment to the Bill to require NRW to produce Area Statements that collectively cover the whole of the terrestrial and coastal areas of Wales. (Page 37)

Recommendation 23. We recommend that the Minister, in responding to this recommendation in Plenary, sets out the Welsh Government's intentions for Area Statements and whether they are to include actions for delivery as well as an evidence base. (Page 38)

Recommendation 24. We recommend that the Minister brings forward amendments to the Bill in order to place a duty on Welsh public bodies to take all reasonable steps to implement Area Statements. (Page 39)

Recommendation 25. We recommend that the Welsh Government publishes updated figures on the costs of implementing this legislation and the resources available to NRW to deliver the additional functions included within this Bill. (Page 40)

Recommendation 26. We recommend that the Minister brings forward amendments to the Bill to place additional duties on NRW to:

- Prepare and publish a risk assessment before making an application to Welsh Ministers; and
- Monitor, report and publish the impacts of any schemes undertaken. (Page 41)

Recommendation 27. We recommend that the Minister brings forward an amendment to the Bill to require the advisory body to review and report on the adequacy of the 2050 target every five years. (Page 43)

Recommendation 28. We recommend that the Minister brings forward an amendment to the Bill to provide a power for Welsh Ministers to vary the 2050 target by regulations (subject to the affirmative procedure). (Page 43)

Recommendation 29. We recommend that the Minister brings forward an amendment to section 32(3) of the Bill to insert the principle of keeping global warming within 2 degrees centigrade in the criteria that Ministers must consider when setting carbon targets and budgets. (Page 43)

Recommendation 30. We recommend that the Welsh Government sets out the scope and timescale for its consultation on interim targets and a timescale for the introduction of these targets. To allow this to

be considered in the context of the Bill, we ask that this information is published before the conclusion of Stage 2 proceedings, currently 27 November 2015. (Page 44)

Recommendation 31. We recommend that the Minister brings forward an amendment to the Bill to place a duty on Welsh Ministers to report on a consumption as well as a production basis. (Page 45)

Recommendation 32. We recommend that the Minister brings forward amendments to the Bill to require the first carbon budget to be set earlier than the end of 2018 and for the second and third carbon budgets to be published before the end of 2018. (Page 46)

Recommendation 33. We recommend that the Minister brings forward an amendment to the Bill to change the power in section 33(2) to a duty. (Page 48)

Recommendation 34. We recommend that the Minister brings forward amendments to the Bill to extend the parameters in section 32(3) to the climate change advisory body. (Page 49)

Recommendation 35. We recommend that the Minister brings forward an amendment to the Bill to place a duty on Welsh Ministers to produce an annual report on progress towards the 2050 target. (Page 50)

Recommendation 36. We recommend that the Minister provides greater clarity to the Assembly and stakeholders on how the reporting requirements in this Bill and the Future Generations Act will be coordinated. (Page 50)

Recommendation 37. We recommend that the Welsh Government engages with the Tyndall Centre with a view to further exploring the inclusion of aviation and shipping emissions in the setting of carbon budgets and targets and reports back to the Assembly on its consideration of the Tyndall Centre recommendations. (Page 51)

Recommendation 38. We recommend that the Minister sets out how the Commissioner for Future Generations and the advisory body on climate change will interact. (Page 52)

Recommendation 39. We recommend that the Minister sets out how he sees the future for the Climate Change Commission for Wales.

(Page 52)

Recommendation 40. We recommend that the Minister provides a list of the mechanisms he is referring to alongside a description of the aspects of adaptation that they cover so that we can assess the breadth and depth of their coverage.

(Page 53)

Recommendation 41. Notwithstanding our comments above, for any extension of the scheme, e.g. to bags for life, we recommend that these proceeds are directed to charities with an environmental remit. Further, where possible, they should only be directed to charities operating in Wales.

(Page 55)

Recommendation 42. We recommend that the Welsh Government sets out the support it will provide to small business to help them meet any new separation requirements.

(Page 57)

Recommendation 43. We recommend that any regulations brought forward under section 45AA of the Environmental Protection Act 1990 (inserted by section 66 of the Bill) include the TEEP test.

(Page 57)

Recommendation 44. We recommend that the Minister engages with the businesses and industry representatives that have made representations to us in relation to the ban and that he revises the RIA to take account of the latest technologies that are being used – especially those that meet Water Research Council standards.

(Page 59)

Recommendation 45. We recommend that the Minister considers the case for exempting equipment that meets the Water Research Council standards.

(Page 59)

Recommendation 46. We recommend that the Minister considers whether the exception in section 67 for waste mixed with water or any other liquid used for cleaning will allow oil, fat and/or grease to be disposed in sewers simply by virtue of these substances being emulsified during a cleaning process. If there is any doubt, we recommend that he revisits the drafting of this exception.

(Page 60)

Recommendation 47. We recommend that the Welsh Government sets out its proposals for the enforcement of the ban in more detail,

including the body that will be responsible for enforcement, and that this includes the estimated cost of enforcing a ban. (Page 60)

Recommendation 48. We recommend that the Welsh Government clarifies where the responsibility will lie for separating the waste i.e. with the waste carriers or the incinerator operators. (Page 61)

Recommendation 49. We recommend that the Welsh Government publishes guidance for the industry on how the provisions in the Bill will be applied and interpreted. (Page 63)

Recommendation 50. We recommend that the Minister considers whether the Bill should be amended to make failure to comply with a site protection notice a criminal offence and that he publishes his position in relation to this. (Page 63)

Recommendation 51. In undertaking this consultation, we recommend the Minister includes consultation questions on:

- Performance indicators (i.e. for the performance of the licensing authority) including timescales for processing applications;
- Establishing requirements around the publication of data;
- Ensuring a transparent mechanism for the setting of fees; and
- Introducing an hourly rate for fees. (Page 65)

Introduction

1. On 11 May 2015, Carl Sargeant AM, Minister for Natural Resources (“the Minister”) introduced the Environment (Wales) Bill (“the Bill”) and accompanying Explanatory Memorandum and made a statement on the Bill in Plenary on 12 May 2015.
2. At its meeting on 21 April 2015, the Assembly’s Business Committee agreed to refer the Bill to the Environment and Sustainability Committee for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9.

Terms of reference

3. We agreed the following:
 - To consider the general principles of the Environment (Wales) Bill including:
 - A. The need for legislation in the following areas –
 - Planning and managing Wales’ natural resources at a national and local level;
 - Providing Natural Resources Wales with a general purpose linked to statutory ‘principles of sustainable management of natural resources’ defined within the Bill;
 - Enhancing the powers available to NRW to undertake land management agreements and experimental schemes;
 - Providing a requirement for public authorities to maintain and enhance biodiversity;
 - Creating a statutory framework for action on climate change including targets for reducing emissions of greenhouse gasses;
 - Reforming the law on charges for carrier bags;
 - Provide powers to the Welsh Ministers in relation to waste recycling (including the separate collection of waste); food waste treatment and energy recovery in business;

- Making provision about several and regulated orders for fisheries for shellfish;
- Fees for marine licences;
- Establishing a Flood and Coastal Erosion Committee; and
- Changes to the law on land drainage and bylaws made by NRW.

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

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

D. The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment, which estimates the costs and benefits of implementation of the Bill));

E. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum, which contains a table summarising the powers for Welsh Ministers to make subordinate legislation).

The Committee's approach

4. We issued a consultation and invited key stakeholders to submit written evidence to inform our work. A list of the consultation responses is attached at Annex 1.

5. We took oral evidence from a number of witnesses. The schedule of oral evidence sessions is attached at Annex 2.

6. The following report represents the conclusions we have reached and our recommendations based on the evidence received.

7. We would like to thank all those who have contributed to our work.

1. General principles and the need for legislation

The Assembly's legislative competence to make this Bill

8. The Presiding Officer issued a statement on 11 May 2015, which stated that, in her opinion, most of the provisions of the Environment (Wales) Bill, introduced on 11 May 2015, would be within the legislative competence of the National Assembly for Wales.

9. However, she also stated that Sections 6, 11(2) and 21 would not be within competence. This is because these provisions require the consent of the Secretary of State to bring them within the competence of the Assembly and this necessary consent had not been obtained at that time.

10. At our meeting on 16 September, the Minister confirmed that the Secretary of State has refused to grant consent in relation to section 6 of the Bill; the section that seeks to introduce a biodiversity duty on public authorities in Wales.¹

11. The Secretary of State for Wales, in his letter to the First Minister on 11 September 2015 confirmed:

“I am content to provide consent for sections 11(3)(b), 21 and 22(2). I am however, withholding consent for section 6 at this time.”²

Our view

12. To bring the relevant part, or parts, of the Bill within the legislative competence of the Assembly, the Minister will have to convince the Secretary of State to change his mind. Failing this, the Bill will need to be amended to either leave out section 6 or limit its provisions so that the duty does not apply to functions of a Minister of the Crown.

¹ Environment and Sustainability Committee, Record of Proceedings 16 September 2015 c.11

NB: unless otherwise stated, subsequent references in this report to “RoP” refer to the proceedings of the Environment and Sustainability Committee.

² Letter from the Secretary of State for Wales to the First Minister, Environment (Wales) Bill, 11 September 2015

13. It is unfortunate that this matter was not resolved before introducing the Bill. To assist the Assembly in understanding the steps taken by the Welsh Government to achieve these consents, the Minister should publish a timeline and the full exchange of correspondence with the Secretary of State.

14. The Minister has provided us with details of the percentage of land in Wales affected by the Secretary of State's decision. He states that, on the basis of an initial assessment, the estimated total coverage of Crown land in Wales equates to around 5 per cent of the land mass of Wales.³

We recommend that the Minister publishes the full exchange of correspondence between the Welsh Government and the UK Government in relation to each of the Minister of the Crown consents that were sought for provisions in the Bill. In particular, we ask that the Minister confirms the date on which the Welsh Government first sought the Secretary of State's consent to the provisions in section 6.

15. If the Secretary of State maintains his position then the Bill will need to be amended. Our preference, in these circumstances, would be for the Bill to be amended to limit section 6 to Welsh public authorities. Whilst it is disappointing that 5-6% of land would not be covered by the duty in these circumstances, the remainder of the public estate in Wales would be. It is therefore important that an amended section 6 remains in the Bill.

If the Secretary of State has not granted consent by the end of Stage 2 of the Bill's consideration, then we recommend that the Minister brings forward amendments to section 6 of the Bill at Stage 3 to limit the biodiversity duty to Welsh public authorities.

General principles

16. The Welsh Government's stated aims for the Bill are:

- To put in place legislation to enable Wales' natural resources to be managed in a more proactive, sustainable and joined-up manner.

³ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, Environment (Wales) Bill, 29 September 2015

- To make provision to help plan and manage Wales' natural resources at a national and local level, through a State of Natural Resources Report (SoNaRR), a National Natural Resources Policy (NNRP) and Area Statements.
- To provide Natural Resources Wales (NRW) with a general purpose aligned to the statutory principles of sustainable management natural resources defined within the Bill, together with enhanced powers to undertake land management agreements and experimental schemes.
- To provide public authorities with a reshaped requirement to maintain and enhance biodiversity.
- To put in place a clear statutory framework for action on climate change.
- To make provisions for a charging scheme for all types of carrier bags.
- To further improve the management of resources by providing the Welsh Ministers with powers to take action to achieve higher levels of waste recycling, food waste treatment and energy recovery in business.
- To clarify the law for a number of existing environmental regulatory regimes including marine licensing, shellfisheries management, land drainage and flood risk management.
- To support the Welsh Government's wider work and initiatives to help ensure that Wales develops sustainably and benefits from a prosperous economy alongside a healthy and resilient environment and vibrant, cohesive communities.

17. The remainder of this report will provide more detailed comment on these aims, and our view on whether the legislation as drafted will achieve them.

Our view

18. The approach that the Government has taken to this legislation, the breadth and diversity of issues dealt within this Bill, has caused us and our stakeholders some difficulty.

19. We believe that the Welsh Government should think carefully before taking this approach in the future; there are risks to the proper making of laws in these circumstances.

20. Notwithstanding this overarching concern about the approach taken to this legislation, many stakeholders have welcomed the introduction of this Bill and we are broadly supportive of the policy objectives behind this legislation. Whilst we believe the Bill needs to be improved in a number of areas, we are content with the general principles.

We recommend that the Assembly supports the general principles of this Bill.

2. Part 1: Sustainable management of natural resources

Definitions of ‘biodiversity’ and ‘ecosystem’

21. In both the written and oral evidence a large number of organisations, including local authorities⁴, national parks and a variety of environment organisations⁵, call for the Bill to include definitions of ecosystems and biodiversity that match those found in the UN Convention on Biological Diversity (‘the UN Convention’).⁶

22. The UK Environmental Law Association (UKELA) told us in its oral and written evidence that it did not subscribe to the view that consideration of these two issues would necessarily flow from the objectives and definitions in the Bill. It stated that the absence of the UN definitions weakened the Bill.⁷

23. At our meeting on 16 September 2015, the Minister confirmed that the Bill is his main tool for the delivery of the Welsh Government’s commitments under the UN Convention. However, he was not persuaded by the suggestion of stakeholders that the terms

⁴Environment and Sustainability Committee consultation response EB 22, *Environment (Wales) Bill*; Submission from the Welsh Local Government Association (WLGA), April 2015.

NB: subsequent references to consultation responses will only include the reference number and the name of the organisation or individual that submitted the response.

⁵ EB 21 National Parks; EB 35 Wales Environment Link and EB 28 Wildlife Trusts Wales.

⁶ The United Nations Convention on Biological Diversity

⁷ EB 19 UK Environmental Law Association; RoP 24 June 2015 c.595

'biodiversity' and 'ecosystem' should be defined on the face of the Bill, though he stated that his understanding of these terms mirrored the definitions in the UN Convention.⁸

24. The Minister stated that the term 'biodiversity' has the meaning attributed to it under the UN Convention.⁹ Article 2 of the Convention provides the following definition:

"Biological diversity" means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

25. The Minister did not provide this level of clarity in relation to the use of the term 'ecosystem'. Whilst the Minister's officials attempted to provide clarification, the Minister did not confirm that the explanation offered by them, or provided under the Convention, was his intended definition for 'ecosystem' in the Bill.

Our view

26. Both terms are complex and open to wide interpretation. Public bodies and stakeholders in Wales will have an important role to play in ensuring the successful delivery of this Bill and both have asked for certainty and clarity on what these terms mean and what they are being asked to deliver. We believe that given their complexity, there is merit in defining them on the face of the Bill.

27. The Minister has provided clarity over his intended definition of 'biodiversity' and we are satisfied that this would aid future interpretation of this legislation. Nevertheless, placing the definition on the face of the Bill would avoid the need to refer back to Assembly proceedings for this interpretation. Therefore, our preference would be for the Bill to be amended to include the definition.

28. The Minister has not provided the same level of clarity in relation to the definition of 'ecosystem'. We would require a clear statement from the Minister to be made during Assembly proceedings before we could be satisfied that 'ecosystem' has been satisfactorily explained

⁸ RoP 16 September 2015 c.38

⁹ Ibid c.40

for the future interpretation of this legislation. Again, our preference would be for the Bill to be amended to include a definition of ‘ecosystem’. Article 2 of the UN Convention includes such a definition that could be utilised in this regard.

We recommend that the Minister brings forward amendments to the Bill to insert the UN Convention’s definition of ‘biological diversity’ as the definition of ‘biodiversity’.

We recommend that the Minister brings forward amendments to the Bill to insert the UN Convention’s definition of ‘ecosystem’ i.e. *“Ecosystem” means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.*”

Amending the objective for sustainable management of natural resources

29. A number of suggestions have been made for amending the objective in section 3 (2). The majority call for the terms restoration and biodiversity to be mentioned in some way. Some stakeholders have advocated that the objective in section 3 (2) should mirror the Resilient Wales Goal included in the Well-Being of Future Generations (Wales) Act 2015 (the Future Generations Act).¹⁰

Our view

30. Enhancing the link between this Bill and the Future Generations Act will leave a more coherent legal position for those interpreting and implementing these laws. Given the level of stakeholder support for the Resilient Wales Goal to replace the objective under section 3(2), we conclude that this provision should be amended to make the Resilient Wales Goal the objective.

We recommend that the Minister brings forward an amendment to section 3(2) of the Bill to leave out the objective as drafted and to insert the Resilient Wales Goal, as set out under section 4 of the Well-being of Future Generations (Wales) Act 2015.

¹⁰ EB 36 Wales Environment Link; EB 11 RSPB Cymru.

Landscapes

31. Some stakeholders have also called for the term ‘landscape’ to be specifically referenced either in the objective in section 3 or the principles in section 4.¹¹ In his evidence to us, the Minister for Natural Resources outlined his belief that the absence of a word from the objective did not mean it was not being taken into account.

32. During our meeting on 16 September, the Minister reiterated his view that the term ‘landscape’ did not need to be included in section 4. He stated that the Bill encompasses the principle of landscape management, but provided two reasons for resisting the inclusion of landscape as an explicit consideration:

- Whilst landscape is not specifically mentioned, it could be considered an appropriate scale for action under section 4(b); and
- That the inclusion of ‘landscape’ could prove problematic - ‘cause some indirect consequences’- in terms of other areas of policy including planning i.e. that it could be used to block development.¹²

Our view

33. We believe that the Campaign for the Protection Rural Wales, and other stakeholders, provided some compelling evidence for the inclusion of the term ‘landscape’ in either the objective in section 3 or the principles under section 4.¹³ The Minister has informed us that the Bill’s provisions are broad enough to allow it to apply at a landscape scale.

Principles of Sustainable Natural Resources Management

34. Stakeholders called for the inclusion of a number of additional principles within section 4 of the Bill. These include:

- The precautionary principle so that precaution is taken in the absence of evidence about potential negative impacts on the environment;

¹¹ EB 02 Campaign for the Protection of Rural Wales; EB 07 Bat Conservation Trust; EB Alliance for National Parks Cymru; EB 34 National Trust.

¹² RoP 16 September 2015 c.54

¹³ EB 02 Campaign for the Protection of Rural Wales.

- Principles for the prioritisation of any conflicting objectives;
- Reference to action being taken over the appropriate temporal scale as well as to the appropriate spatial scale (which is already included in the Bill);
- Reference to acting within environmental limits;
- Reference to maintaining the functionality of ecosystems;
- Specific reference to the taking account of the resilience of habitats and species; and
- The need to include stronger reference to the principle of participation of the public in environmental decision-making enshrined in the Aarhus Convention.¹⁴

35. At our meeting on 16 September 2015, the Minister said that whilst there is no direct reference in the Bill to the precautionary principle, the approach set out in the Bill enables the precautionary approach to be adopted.¹⁵

Our view

36. After carefully considering the proposals put forward by stakeholders, we see merit in including the precautionary principle and reference to acting within environmental limits under section 4. These are internationally well-understood and established principles. They offer additional clarity and strength to the set of principles set out in the Bill as currently drafted and we believe reflect the principles and aims of the Future Generations Act.

37. In recommending the inclusion of the precautionary principle, we wish to emphasise that we would not wish to see this interpreted as a barrier to appropriate innovation or sustainable development.

We recommend that the Minister brings forward amendments to the principles under section 4 to include reference to the

¹⁴ Organisations calling for the inclusion of some or all of these principles include: EB 02 CPRW; EB 07 BCT; EB 19 UKELA; EB 21 National Parks Wales (NPW); EB 22 WLGA; EB 28 WTW; EB 35 WEL; and EB 53 Llinos Price.

¹⁵ RoP 16 September 2015 c.52

‘precautionary principle’ and to ‘acting within environmental limits’.

Consultation provisions

38. Part 1 of the Bill does not include specific consultation provisions in relation to many of its key aspects such as the production of the National Natural Resources Policy (NNRP) and Area Statements. Instead, the Bill relies on a reference in the principles in section 4 to the need to take account of all evidence and to engage and collaborate. A significant number of stakeholders have outlined to us their belief that this reference is not sufficient and that the Bill should include specific consultation provisions in relation to all or some of the following aspects:

- The preparation and publication of a State of Natural Resources Report by NRW (section 8);
- The preparation and publication of a National Natural Resources Policy by the Welsh Ministers (section 9);
- The preparation and publication of an Area Statement by NRW (section 10); and
- The preparation and publication of a list of living organisms and types of habitat of principal importance in relation to Wales by Welsh Ministers (section 7).¹⁶

39. Reference is also made by some to the need to comply with the Aarhus Convention on the right of the public to participate in environmental decision making.¹⁷

40. The Minister has been consistent in resisting the inclusion of specific consultation provisions on the face of the Bill.¹⁸ His position, as we understand it, is that the duty for NRW and Welsh Ministers to apply the principles in section 4 when producing the SoNaRR; NNRP, Areas Statements and the section 7 biodiversity lists is sufficient as the principles include ‘promote and engage in collaboration and co-

¹⁶ Organisations calling for the inclusion of some or all of these provisions include: EB 07 BCT; EB 34 National Trust; EB 35 WEL; EB 36 Pembrokeshire County Council; EB 11 RSPB Cymru; EB 42 CONFOR; and EB 51 NFU Cymru.

¹⁷ EB 35 WEL and EB 28 WTW.

¹⁸ RoP 16 September c.56 and 58

operation'. The Minister offered us reassurance that it is the Welsh Government's intention to consult stakeholders fully on the preparation of these plans and policies.¹⁹

Our view

41. We welcome and accept the Minister's reassurance that a Welsh Government would be required, in accordance with the principles in section 4 of the Bill, to fully consult stakeholders on the preparation of an NNRP and section 7 biodiversity lists. We therefore accept that it is not necessary to include specific consultation provision on the face of the Bill in relation to the NNRP and the section 7 biodiversity lists.

42. To provide reassurance to stakeholders, the Minister should publish the consultation arrangements that will apply to the production of the NNRP and the section 7 biodiversity lists.

43. Whilst we accept that the Minister believes that NRW would fully consult stakeholders the Minister cannot offer assurances on behalf of another organisation. In addition, given the vital importance of the SoNaRR and Area Statements to the successful implementation of the legislation, we recommend that the Bill is amended to require NRW to consult on their production.

We recommend that by the end of March 2016 the Welsh Government publishes the consultation arrangements that will apply to the production of the NNRP and the Section 7 biodiversity lists.

We recommend that the Minister brings forward amendments to the Bill that define the consultation arrangements that will apply to the production of SoNaRRs and Area Statements.

Qualifying Language

44. WWF Cymru and UKELA specifically highlight the use of qualifying language in a number of the duties in Part 1 which they consider should be strengthened.²⁰ In oral evidence to the Committee UKELA set out its view that in both national and international terms the duties set

¹⁹ RoP 16 September 2015 c.58

²⁰ EB 19 UKELA; EB 28 WWF Cymru.

out in Part 1 of the Bill are 'relatively weak'.²¹ A number of other stakeholders make reference to specific provisions where they would like to see the language strengthened. The duties where recommendations are made for change are:

- Section 7(3) duty on Welsh Ministers to 'take such steps as appear to them reasonably practicable' to maintain and enhance living organisms and habitats of principal importance to Wales and to 'encourage others' to take such steps;
- Section 9(4) duty on Welsh Ministers to 'take such steps as appear to them reasonably practicable' to implement the NNRP and 'encourage others' to take such steps;
- Section 10(4) duty on NRW 'take such steps as appear to them reasonably practicable' to implement an area statement; and
- Section 12(1) power of Welsh Ministers to direct a public body 'take such steps as appear to them reasonably practicable' to implement area statements.

45. One suggestion put forward by stakeholders is that the term 'take such steps as appear to them reasonably practicable' should be replaced by the language used in the Future Generations Act, 'take all reasonable steps'.²² Stakeholders also called for the duties in sections 5 and 6 to be strengthened.

46. On 16 September, the Minister indicated his willingness to consider our view on the drafting of the Bill.²³

Our view

47. As we stated in paragraph 29 above, enhancing the synergy between this Bill and other relevant legislation is desirable from the perspective of making this area of law as clear as possible. We are convinced that amending the Bill to utilise the same phraseology as the Future Generations Act would have the dual effect of enhancing the strength of the provisions in the Bill and adding consistency to the drafting.

²¹ RoP 24 June 2016 c.617

²² EB 19 UKELA

²³ RoP 16 September 2016 c.91

We recommend that the Minister brings forward amendments to leave out all uses of the phrase ‘take such steps as appear to them reasonably practicable’ and to insert ‘take all reasonable steps’ in their place.

NRW's Purpose

48. A number of stakeholders have outlined their belief that the duty on NRW to ‘seek to achieve’ sustainable natural resource management should be strengthened.²⁴ Some suggest the removal of the words ‘seek to’ whilst others suggest NRW should be required ‘to pursue’ sustainable natural resource management. The removal of the word ‘environment’ from NRW’s original purpose has been highlighted by some. They call for it to be re-instated into the purpose.

49. A suggestion was made by Wildlife Trust Wales that NRW’s purpose should mirror that of the Scottish Environment Protection Agency (SEPA) so that where there is a conflict between their environmental and other purposes the environment is given primacy.²⁵ SEPA’s legal duty is to: protect and improve the environment; contribute to improving the health and well-being of people in Scotland; and achieve sustainable economic growth except where it would be inconsistent with its primary purpose of protecting the environment.

50. Stakeholders also highlight that NRW’s purpose can only be interpreted with reference to the objective in section 3 and the principles in section 4 which it must seek to promote and act in accordance with. NRW told us it was happy with its new purpose, as drafted in the Bill.²⁶

Our view

51. In our broader work, it is apparent that NRW’s current purpose is not well understood by its staff and stakeholders. This Bill provides an important opportunity to clarify NRW’s purpose and this, if done properly, will substantially contribute to increasing stakeholder confidence in the body.

²⁴ EB 28 WTW and EB 35 WEL

²⁵ RoP 2 July 2015 c.203

²⁶ RoP 24 June 2015 c.559

52. The Minister offered his definition of NRW's purpose as:

“[...] the agency that manages our natural resources [...]”²⁷

53. Previously, the Minister has explained that NRW, along with all public bodies, is required to deliver on all of the Future Generations Act's goals; that primacy should not be given to any one goal in the delivery of a public body's functions.²⁸

54. We are not convinced by this argument. Whilst we accept that a public body must have regard to all of the goals, we see no barrier to a public body having an overriding purpose; a goal for which it is especially tasked to deliver. We were given the example of the health service; that whilst it is required to deliver on all aspects of Future Generation Act's goals, it is rightly expected to give primacy to its core function of delivering health services.

55. Further, the combined effect of subsection 3(1) is to give primacy to the objective specified in subsection 3(2). In our view, the Bill as drafted provides for a hierarchy.

56. If section 3(2) is amended to explicitly reference the 'A resilient Wales' Well-being goal (as recommended above), then we believe that the Bill would make this goal NRW's primary purpose. In these circumstances, NRW could not take action to contribute to the other Well-being goals if it had a detrimental impact on its achievement of the 'A resilient Wales' Well-being goal.

57. The wording of the general purpose should be strengthened to further ensure the achievement of the principal objective.

We recommend that the Minister brings forward an amendment to the Bill that leaves out 'seek to achieve' in section 5(2) and inserts 'to pursue'.

58. In investigating this issue, the value of guidance that is issued alongside the general purpose has become apparent. This is something that we have called for previously and the Minister's predecessor committed to providing. The Welsh Ministers already have power to issue such guidance under section 5 of the Natural Resources

²⁷ RoP 16 September 2015 c.109

²⁸ Ibid c.116; RoP 24 June 2015 c.18, 20 and 22

Body for Wales (Establishment) Order 2012. Once the Bill has received Royal Assent we are of the view that guidance on NRW's new purpose should be published.

We recommend that Welsh Ministers produces statutory guidance on NRW's general purpose, to be consulted upon as soon as the Bill receives Royal Assent.

Biodiversity Duty

59. This section of our report focuses on the Bill as introduced and does not address the issue of Secretary of State consent as we have offered conclusions in relation to this in an earlier section of the report.

60. We heard support for the inclusion of a new biodiversity duty in the Bill. However a number of organisations and stakeholders have also argued that the duty in section 6 should be strengthened. As is the case with other sections in Part 1 some stakeholders have advocated that the words 'seek to' are removed from the duty in Section 6(1).²⁹ Another suggestion is that the duty is strengthened by requiring public bodies to 'take all reasonable steps' to maintain and enhance biodiversity. Several organisations argue that given the current levels of biodiversity loss, the duty should require public bodies to 'restore' as well as maintain and enhance biodiversity.

61. A number of organisations have highlighted to us that the inclusion of definitions of biodiversity and ecosystem would help public authorities tasked with interpreting the duty. Some local authorities and Dŵr Cymru highlight a lack of clarity over what additional action they would be required to undertake to deliver the duty and have called for guidance from the Welsh Government.³⁰

62. Stakeholders welcome the inclusion of a reporting mechanism but ask for greater clarity on what will be included in the reports. The Welsh Government has stated that public authorities might not necessarily need to produce a standalone report to comply with this duty but could report through other mechanisms such as annual reports or accounts. Concern has been expressed that this could lead to varying levels of information being provided making it difficult to

²⁹ EB 11 RSPB Cymru; EB 19 UKELA; EB 28 WTW and EB 33 Ceredigion County Council

³⁰ EB 54 Dŵr Cymru

assess compliance. A number have also questioned how the effectiveness of outcomes or actions taken by public authorities will be monitored and tested.³¹

63. The Minister has stated the Welsh Government will issue guidance to public authorities which will outline the relevant information that can be included in this report.³² However, there isn't a requirement in the Bill for Welsh Ministers to issue such guidance in future.

Our view

64. We agree with the call to strengthen the duty, but believe that including 'restore' in the duty is unnecessary. We agree that restoration is of vital importance but believe that the terms 'maintain' and 'enhance' imply that restoration must take place.

65. We are pleased that the Minister has committed to producing guidance on the reporting requirements of section 6 but believe this guidance should also include information on the types of activities that bodies covered by this section will be expected to undertake in their implementation of the duty.

We recommend that the Minister brings forward an amendment to section 6(1) of the Bill to leave out 'seek to' and insert 'take all reasonable steps'.

We recommend that the guidance issued by Ministers on the reporting requirements should contain additional information on the activities that public bodies will be expected to undertake to demonstrate compliance with the duty.

Section 7

66. In addition to calling for further consultation provisions to be included in this section and a strengthening of the duty in section 7(3), stakeholders call for greater links to be made between section 7 and other sections in Part 1.

67. The evidence suggests that this could be done by:

³¹ EB 28 WTW

³² RoP 24 June 2015 c.182

- Requiring Public Bodies to carry out their duty in section 6 with reference to the list in section 7;
- The State of Natural Resources Report including an assessment of the status of habitats and species in the list;
- The NNRP and Area Statements setting out actions that will be taken to maintain and enhance the species listed in section 7;

Our view

68. The Minister, in responding to our questions on 16 September, appeared open to suggestions as to how this area of the Bill could be improved.³³ We believe that creating links between sections 6 and 7 will create a meaningful reporting structure that will allow progress to be monitored alongside any broader indicators being developed under the Future Generations Act. Further, embedding the list in section 7 into the actions to be taken under the NNRP and Area Statements will offer real clarity to those placed under the duty to be established by section 6.

69. Ultimately, we believe that linking the list in section 7 with the delivery mechanisms to be established by the Bill (policies, reports, statements and duties) will provide a meaningful framework that has the potential to deliver outcomes for biodiversity in Wales. Without these links, section 7 stands somewhat on its own and the link between the section 6 duty and the rest of Part 1 is unclear. Making these links will assist in delivering the Welsh Government's aspirations for the Bill.

We recommend that the Minister brings forward amendments to:

- **Require Public Bodies to carry out their duty under section 6 with reference to the list established under section 7;**
- **Require the State of Natural Resources Report to include an assessment of the status of habitats and species in the section 7 list; and**

³³ RoP 16 September 2015 c.97

- **Require the NNRP and Area Statements to set out the actions that will be taken to maintain and enhance the species in the section 7 list.**

Statutory Biodiversity Targets

70. A number of environment organisations have argued for the inclusion of statutory biodiversity targets in the Bill.³⁴ The organisations argue that this would increase accountability for the delivery of existing targets by both the Welsh Ministers and NRW. They state that in the absence of targets it will be difficult to assess and monitor whether progress towards halting biodiversity loss is being made.

71. Question 1 of our Outreach survey asked if people supported the inclusion of targets to halt biodiversity loss and restore nature. Of the 1, 663 responses we received 90 per cent supported their inclusion. Three targets have been suggested for inclusion in the Bill:

- A duty to increase biodiversity by 15 per cent by 2020 against a national index of priority species;
- A target to ensure protected sites in Wales are in a favourable condition; and
- The inclusion of milestones towards these targets.

72. In his first oral evidence session, the Minister stated that he was yet to be convinced by the arguments for targets.³⁵

73. During his second session with us, the Minister made it clear that a structure for measuring progress, that would include milestones and targets, would be delivered under the Future Generations Act and that he would be consulting on this soon.³⁶

Our view

74. We are, in principle, content with what the Minister has outlined i.e. if a meaningful set of indicators can be developed under existing legislation then there is no need to include them on the face of this Bill. For the Assembly and stakeholders to be confident in concluding

³⁴EB 7 BCT;EB 11 RSPB;EB 28 WTW

³⁵ RoP 24 June 2015 c.192

³⁶ RoP 16 September 2015 c.95

this we will need some further information from the Minister about the consultation he is proposing. We are convinced that any set of indicators should be based around priority species and habitats and note Professor Lawton's advice to us in that regard.³⁷

75. Additionally, we believe that if the Bill is amended to embed the section 7 list into other aspects of Part 1, then this will provide clarity over the action to be taken and the outcomes achieved over time (see recommendation 15 above).

We recommend that the Welsh Government sets out the scope and timescale for its consultation on the biodiversity element of the Well-being of Future Generations Act indicators and a timescale for the introduction of these indicators. To allow this to be considered in the context of the Bill, we ask that this information is published before the conclusion of Stage 2 proceedings, currently 27 November 2015.

State of Natural Resources Report

76. There is substantial stakeholder support for the proposal to require NRW to prepare and publish SoNaRR.³⁸

77. A number of witnesses and respondents have suggested that the SoNaRR should be required to assess the risks and opportunities for sustainable natural resources management.

78. Professor Marsden (Cardiff University), Professor Dwyer and Dr Berry (both from University of Gloucestershire) emphasised the importance of assessing both historic and future trends in relation to sustainable natural resource management i.e. not only their current condition.³⁹

79. This panel called for the Bill to include a requirement for NRW to consider past data to allow the generation of predictive data in order to anticipate future natural resource management issues. This is in addition to assessing the current state of natural resources.⁴⁰

³⁷ Comments from Professor Sir John Lawton, 25 June 2015

³⁸ EB 02 CPRW, EB 11 RSPB, EB 13 Alliance for National Parks

³⁹ RoP 2 July 2015 c.32-35

⁴⁰ Ibid

80. Clarification was sought as to whether the SoNaRR would include marine data.

Our view

81. We welcome the establishment of a statutory report on the state of natural resources in Wales. This is a positive and much needed step in improving the knowledge base from which policy can be developed and in monitoring whether policies are achieving the right outcomes.

82. To assist our understanding of the Bill, we engaged with academic experts in the field of natural resource management. These academics made the point that the SoNaRR report should include a consideration of past data to allow the generation of predictive data in order to anticipate future natural resource management issues. This leads to an assessment of the risks and opportunities for sustainable natural resource management.

83. We support this call. Including such consideration will enhance the evidence base from which the NNRP is developed.

We recommend that the Welsh Government ensures that the State of Natural Resources Report includes an assessment of past and future trends (including risks and opportunities for sustainable natural resource management) in addition to an assessment of the current state of natural resources in Wales. In addressing this recommendation, we ask that the Welsh Government considers the merits or otherwise of specifying this on the face of the Bill.

National Natural Resources Policy

84. Stakeholders support the proposal to place a duty on Welsh Ministers to prepare and publish an NNRP. However, stakeholders also call for further clarity on the contents of the NNRP, what it will deliver and how. Several advocate that the Welsh Ministers should be required to include time-bound prioritised objectives and actions. Both farming unions and RSPB Cymru call for greater clarity on how the NNRP will impact upon and influence Glastir and the Rural Development Plan.⁴¹

⁴¹ EB 11 RSPB Cymru; EB 51 NFU Cymru.

Our view

85. Whilst section 9(2) provides a basic outline of what the NNRP must contain, it would be of benefit to those interpreting this section for there to be further clarity around the intended structure of the NNRP. We are also supportive of calls for greater clarity around how the NNRP will interact with Glastir and the Rural Development Plan.

We recommend that that the Minister brings forward amendments to the Bill to provide more detailed criteria for the minimum contents of a NNRP.

We recommend that the Minister clarifies how the NNRP will interact with Glastir and the Rural Development Plan.

86. Some stakeholders and witnesses also call for the NNRP to set out how the Welsh Ministers will tackle challenges as well as opportunities for sustainable natural resource management.

87. This concurs with our conclusions in relation to SoNaRR and we believe this could be achieved through a simple amendment to the Bill.

We recommend that the Minister brings forward an amendment to section 9(2) of the Bill to require Welsh Ministers to set out any challenges to sustainably managing natural resources, alongside the key priorities and opportunities.

88. Section 9(6) places a duty on Welsh Ministers to review the NNRP after an Assembly general election but some environmental organisations have called for the Bill to include a more specific timeline for its review e.g. within twelve-months of an Assembly general election.

89. During our session on 16 September 2015, Dr Fraser, Head of Natural Resources Management at the Welsh Government, explained that the first NNRP would be published in spring 2017 and that it would likely be reviewed towards the end of 2019.⁴²

90. This timescale suggests that it would be possible for the second NNRP to be ready for publication early in the Sixth Assembly i.e. within twelve-months of the 2021 Assembly elections.

⁴² RoP 16 September 2015 c.65

91. Providing a more specific timescale for the review of the NNRP would offer some assurance that it will be regularly updated. We believe that the suggestion proposed by the environmental organisations is reasonable i.e. that the NNRP should be reviewed within twelve-months of an Assembly general election.

We recommend that the Minister brings forward an amendment to section 9(6)(a) to place Welsh Ministers under a duty to review the NNRP within twelve-months of an Assembly general election.

Area Statements

92. In the context of Part 1 of the Bill, the provisions that relate to the publication and preparation of Area Statements by NRW are those that have caused stakeholders the most concern.

93. This concern, in the most part, stems from a lack of clarity around:

- The geographical scope of Area Statements;
- Whether they will cover all of Wales or only part;
- The governance arrangements that will be put in place to deliver and how stakeholders outside of public bodies will be involved;
- The timeframe for their production and the timescales they will cover;
- Whether they will be action plans or only statements on the condition of the local environment; and
- How they will be monitored and benchmarked against each other and how NRW will ensure they are consistent across different areas of Wales.

Coverage

94. There is a broad consensus that Areas Statements should cover the whole of Wales in the evidence and there is an expectation that they will need to be action plans. Greater clarity on their content is requested. No definitive answer is offered as to the geographical scope of areas and we did not receive any calls for these to be defined in the legislation. Annex 3 of the Minister's letter to us on 3 September 2015 outlines the Welsh Government's expectation that Area Statements will cover all Welsh terrestrial and coastal areas in due course but will not include marine areas. It states these will be covered by the Wales

National Marine Plan. The Annex does not state whether the Bill will be amended to require Area Statements to be developed for the whole of Wales.⁴³

95. On 16 September the Minister provided further reassurance that Area Statements are to be developed for the whole of Wales.⁴⁴

Our view

96. We are pleased that the Minister has confirmed this. We do not doubt his intention to develop Area Statements for the whole of Wales. In scrutinising the Bill, we must also consider the longer term application of its provisions and a future Welsh Government may not take the same position as the current Minister. To ensure that Area Statements cover the whole of Wales in the future the Bill needs to be amended to provide for this.

We recommend that the Minister brings forward an amendment to the Bill to require NRW to produce Area Statements that collectively cover the whole of the terrestrial and coastal areas of Wales.

97. Stakeholder and NRW have expressed the expectation that Area Statements will include actions for their delivery.⁴⁵ We are not certain that this will be the case. The Minister, at our meeting on 16 September, stated that:

“They [Area Statements] provide an evidence base, providing information on the natural resources in an area, the benefits that they provide in evidence relating to the priorities, risks and opportunities that need to be addressed in that area”⁴⁶

98. This suggests that they are to provide an evidence base rather than a set of actions for the delivery of sustainable natural resource management in an area of Wales.

⁴³ Letter from the Minister of Natural Resources to the Chair of the Environment and Sustainability Committee, *Environment (Wales) Bill*, 3 September 2015

⁴⁴ RoP 16 September 2015 c.62

⁴⁵ RoP 24 June 2015 c.493-4

⁴⁶ Ibid

Our view

99. Notwithstanding the importance of a strong evidence base – it is something we have called for previously – we agree with the stakeholder view that these Statements should also contain actions linked to the delivery of the NNRP.

We recommend that the Minister, in responding to this recommendation in Plenary, sets out the Welsh Government’s intentions for Area Statements and whether they are to include actions for delivery as well as an evidence base.

A duty on public bodies

100. Whilst stakeholders accept that Area Statements will need to (and should) cover long time scales they ask for greater certainty about the timescales within which they will be produced and reviewed. There have been strong calls for this section of the Bill to contain specific consultation provisions and recommendation 9 above addresses this. Stakeholders agree that the links into the public service boards will be important but state that the membership of these boards means they will not be sufficient as the only governance mechanism. They call for clarity to be provided on the role of land managers and environment stakeholders in their delivery. Requirements in relation to the monitoring and benchmarking of Area Statements are seen as vital.

101. There is also concern about where responsibility for the delivery of Area Statements will lie. Stakeholders have pointed out that NRW’s remit is too narrow to enable it to deliver on all of the actions that might be included in an Area Statement and that others including the Welsh Government will need to share this responsibility. NRW itself has outlined that it cannot be solely responsible for delivery of Area Statements and that there should be obligations on all public bodies to do so. RSPB Cymru and UKELA have highlighted that the Welsh Government aren’t required to either adopt the Area Statements once completed or to deliver them under the Bill as drafted. Whilst section 13 of the Bill gives Welsh Ministers powers to direct a public body to ‘take such steps as appear to them to be reasonably practicable’ to address matters in Area Statements, public bodies are not under a general duty to implement them.

Our view

102. If Area Statements are to play the role that we believe is envisaged for them, then organisations other than NRW alone will need to implement them. The most robust way of ensuring this is to place public bodies in addition to the Welsh Ministers under a duty to take all reasonable steps to implement them. As with the point we make above in relation to the coverage of Areas Statements, this Bill must be strong enough to bind future administrations to the provisions of this Bill if its longer term impact is to be secured.

We recommend that the Minister brings forward amendments to the Bill in order to place a duty on Welsh public bodies to take all reasonable steps to implement Area Statements.

Timescales

103. Given the lack of timescales in the Bill for the preparation, publication and review of Area Statements, stakeholders have also expressed concern about the accountability of NRW should there be significant delays in their production. Some have suggested that NRW should be under an obligation to at least list or define the areas for which it intends to produce Area Statements within 12 months of the publication of an NNRP and to be required to review Area Statements should the Welsh Government review the NNRP at any time. At present there is no requirement in the Bill for NRW to take account of the NNRP when designing Area Statements although the Minister has indicated that he would expect them to do so.

104. Dr Fraser clarified the expected timescale for the production of Area Statements, with there being Wales-wide coverage by the end of 2019.⁴⁷

Our view

105. We are satisfied with this clarification, but have sought confirmation of this in writing from the Minister.

⁴⁷ RoP 16 September 2015 c.65

NRW resources

106. There is also a general concern from stakeholders about the resources and capacity within NRW to prepare and publish Area Statements, deliver their additional obligations under this Bill, their new responsibilities under the Future Generations Act and Planning (Wales) Act and their existing functions and obligations. NRW stated that its preferred option for Area Statements was not the preferred option identified by the RIA accompanying the Bill. NRW told us that the figures included within the RIA had been calculated at early stage in the development of the Bill and that it was therefore in discussions with the Welsh Government over the level of resources that would be required.⁴⁸

Our view

107. We are concerned about the financial implications for NRW in undertaking this new duty in addition to the existing requirements placed upon it. In light of the uncertainty about the figures included in the RIA and to assist Members and stakeholders in their scrutiny of the Bill, we believe that updated information is needed.

We recommend that the Welsh Government publishes updated figures on the costs of implementing this legislation and the resources available to NRW to deliver the additional functions included within this Bill.

Experimental Schemes

108. There is general support for the principle of providing NRW with broader powers to conduct experimental schemes under sections 23-24 of the Bill. However, some concern is expressed about the proposal to allow NRW to make an application to Welsh Ministers to suspend existing statutory requirements for up to six years to pilot these approaches. Both UKELA and Professor Lawton expressed concern about the precedent this would set.⁴⁹ Stakeholders have been concerned about the examples provided in the Statement of Policy Intent, of the types of experimental scheme that may be brought forward. Landowners are concerned about the suggestion they could be used to introduce General Binding Rules without proper

⁴⁸ RoP 24 June 2015 c.497

⁴⁹ EB 19 UKELA; Comments from Professor Sir John Lawton, 25 June 2015

consultation and environment organisations are concerned about the suggestion they could be used to relax conservation duties. There is a call therefore for additional safeguards on these powers to be included in the Bill. These are:

- More rigorous consultation provisions;
- Completion of a risk-assessment before an application is approved;
- Some controls on the types of scheme that would qualify; and
- Requirements on NRW to monitor, report and publish the impacts of any schemes undertaken.

109. Both in the Statement of Policy Intent and in NRW's written evidence an indication is given as to the type of information NRW would need to provide to Welsh Ministers in making an application and the type of monitoring NRW might undertake. The Minister states in the additional information provided to us that the details of the schemes would be made available to stakeholders through consultation. None of these commitments are included on the face of the Bill.

Our view

110. We believe that ensuring transparency around this process would offer significant reassurance to both stakeholders and the Assembly. This can be achieved by placing some of the Minister's stated intentions on the face of the Bill.

We recommend that the Minister brings forward amendments to the Bill to place additional duties on NRW to:

- **Prepare and publish a risk assessment before making an application to Welsh Ministers; and**
- **Monitor, report and publish the impacts of any schemes undertaken.**

3. Part 2: Climate Change

The 2050 Target

111. The target of at least an 80 per cent reduction in emissions by 2050 is welcomed by the majority of stakeholders, but others, including the Tyndall Centre, suggest that it should be set higher if it is to reflect the urgency of climate change action that is needed.⁵⁰ Some stakeholders suggest that provisions should be included to allow for the target to be reviewed and varied in the light of scientific evidence about the reductions that might be needed to keep global temperatures within 2 degrees centigrade. The Tyndall Centre's evidence paper, submitted as part of its consultation response, provides further detail.⁵¹

112. In oral evidence, Dr Wood from the Tyndall Centre stated that she would recommend including such a clause in the Bill, or one that would require the advisory body to review the 2050 target every 5 years to assess its suitability.⁵² A number of stakeholders suggest that the targets should also take account of the principles of global equity, fairness and Wales' global responsibilities enshrined in the Future Generations Act.

113. In oral evidence, TATA steel stated there is a limit as to how much carbon dioxide can be reduced when manufacturing steel, and that the steel sector is unlikely to be able to achieve more than a 10 to 15 per cent reduction. They added that the 80 per cent target is not achievable for the steel sector without breakthrough technology, which does not yet exist. However, they acknowledged that it may still be possible for Wales as a whole to meet this target.⁵³ Other industry and farming stakeholders welcome the Welsh Government's decision not to set a higher rate of emissions reduction in Wales than the rest of the UK, and also express concern that targets have the potential to disadvantage Wales based industry against other Member States.

114. The Minister stated in his oral evidence that the target is consistent with the UK provision and wider international targets, and

⁵⁰ EB 20 Climate Change Commission for Wales

⁵¹ Published as an annex to EB 20 Climate Change Commission for Wales

⁵² RoP 8 July 2015 c.30

⁵³ RoP 2 July 2015 c.460-544

that use of ‘at least’ does not prohibit Ministers exceeding the target should they so wish.⁵⁴

Our view

115. It is possible that the international community will arrive at revised 2050 targets during the next 35 years. Whilst there is an element of flexibility provided by the wording of the target, introducing a role for the advisory body and providing a power to vary the target would provide a stronger structure for responding to developments in the global efforts to reduce emissions.

116. Additionally, the inclusion of the principle of keeping global warming within 2 degrees centigrade in the criteria that Ministers must consider when setting carbon targets and budgets (section 32(3)) would enshrine this end goal in the legislation and ties in with the enhanced flexibility to respond to emerging evidence that we advocate above.

We recommend that the Minister brings forward an amendment to the Bill to require the advisory body to review and report on the adequacy of the 2050 target every five years.

We recommend that the Minister brings forward an amendment to the Bill to provide a power for Welsh Ministers to vary the 2050 target by regulations (subject to the affirmative procedure).

We recommend that the Minister brings forward an amendment to section 32(3) of the Bill to insert the principle of keeping global warming within 2 degrees centigrade in the criteria that Ministers must consider when setting carbon targets and budgets.

Interim Targets

117. Some stakeholders call for interim targets to be included on the face of the Bill, whilst others believe the proposal to include them within regulations is adequate. In oral evidence, the Minister for Natural Resources rejected the idea of having interim targets on the face of the Bill.⁵⁵ Of those that support their inclusion, there is some

⁵⁴ RoP 24 June 2015 c.201

⁵⁵ RoP 24 June 2015 c.203

support for including the target of 40 per cent by 2020 that is contained in the Climate Change Strategy for Wales, either on the face of the Bill or in regulations. There are some calls for the inclusion of more than one interim target to enable the setting of a steep trajectory for emissions reductions. A number of stakeholders also suggest that the inclusion of interim targets would offer certainty and momentum in the time before the carbon budgets are set in 2018. Stakeholders call for clarity about when the interim targets would be introduced as no timeline is included in the Bill, and in oral evidence the Minister and his officials only stated that the interim targets need to be developed before the carbon budgets are set in 2018.⁵⁶

118. Our Outreach Survey asked respondents if they thought an interim target should be included in the Bill; 83 per cent of respondents responded 'yes', 10 per cent 'no', and 7 per cent 'don't know'.

119. The Minister outlined his view that including interim targets on the face of the Bill would be inflexible.⁵⁷ Welsh Government officials told the Committee that regulations setting an interim target/s would be published before the first carbon budget is adopted.⁵⁸

Our view

120. We agree that interim targets do not need to be on the face of the Bill at this time. Further information is needed however before the Assembly concludes its consideration of this Bill if we are to be fully satisfied that interim targets do not need to be included on the face of the Bill.

We recommend that the Welsh Government sets out the scope and timescale for its consultation on interim targets and a timescale for the introduction of these targets. To allow this to be considered in the context of the Bill, we ask that this information is published before the conclusion of Stage 2 proceedings, currently 27 November 2015.

⁵⁶ Ibid c.209-10

⁵⁷ Ibid c.203

⁵⁸ Ibid c.210

Emissions for inclusion

121. There is broad support for emissions being measured on a production basis, but some stakeholders also recommend the inclusion of a separate provision that would require the Welsh Government to report on consumption emissions.

122. The UK Committee on Climate Change suggests that production emissions may be a sensible starting place for Wales, but suggest the measuring and reporting on consumption emissions alongside this in the Bill.⁵⁹ Stakeholders point to the inclusion of a standalone requirement for the reporting of consumption emissions in the Scotland Climate Change Act.⁶⁰

Our view

123. Reporting consumption emissions will provide important additional information that can be utilised to assess more intelligently progress towards the 2050 target. This would appear to be especially important in Wales given the relevant balance between a minority of large-scale emitters and the consumption of the outputs from these emitters within Wales. The Bill should be amended to include a requirement to report on a consumption basis as well as on a production basis.

We recommend that the Minister brings forward an amendment to the Bill to place a duty on Welsh Ministers to report on a consumption as well as a production basis.

Carbon Budgeting

Timing

124. Stakeholders expressed broad support for the use of carbon budgets, but some concerns were expressed about the timing of the setting of the first budget. Although the Bill proposes that the first carbon budget should cover the period 2016-2020 it does not require the publication of the first two carbon budgets until the end of 2018.

125. The UK Committee on Climate Change stated in oral evidence that the Welsh Government should consider setting the first three (as

⁵⁹ RoP 2 July 2015 c.594-99

⁶⁰ Ibid c.653

opposed to the first two) carbon budgets in 2018.⁶¹ In addition the UK Committee stated the current timeline proposed for the publication of the first carbon budget (the end of 2018) means that the first budget will only be able to act as a baseline for measuring future progress as there will be little time for industry, public bodies and the general public to act on delivery (i.e. 2 years) .⁶² Concern was therefore expressed by environmental stakeholders at the length of time that will pass before the first carbon budget is set.

126. We have received further information from the UK Committee on Climate Change that states that it:

“[...] should be able to provide advice to the Welsh Government on the first two or three carbon budgets during the 2nd half of 2016. Extending the advice to the first three carbon budgets does not have any time implications for us, by that time the UK will already have legislated budgets to 2032 and our analysis for the UK (which would be the starting point for the advice to Wales) will go out to 2035.”⁶³

127. The UK Committee on Climate Change states that this is contingent on additional funding from the Welsh Government.

Our view

128. We believe that the first budget should and could be produced earlier than the end of 2018. We also see merit in setting the first three carbon budgets by the end of 2018 for the reasons set out by the UK Committee on Climate Change. In light of the information provided to us by the UK Committee on Climate Change, we believe it would be possible to complete this work by the end of 2017.

We recommend that the Minister brings forward amendments to the Bill to require the first carbon budget to be set earlier than the end of 2018 and for the second and third carbon budgets to be published before the end of 2018.

⁶¹ RoP 2 July 2015 c.621

⁶² Ibid c.566

⁶³ Email from the Chief Executive of the Committee on Climate Change to the Chair of the Environment and Sustainability Committee, 29 September 2015

Net Welsh emissions account

129. The Bill contains provisions in relation to how carbon credits traded by Welsh companies, as part of the EU Emissions Trading Scheme ('EU ETS') or another carbon trading scheme, will be accounted for in the net Welsh emissions account.

130. Carbon units sold by Welsh companies will be debited from the account thus increasing net Welsh emissions. Carbon units purchased by Welsh companies will be credited to the Welsh account and reduce net Welsh emissions.

131. Given the high percentage of companies in Wales involved in the EU ETS, the regulations governing the extent to which carbon credits can be added and subtracted to net Welsh emissions are seen as important by stakeholders, as this could determine whether or not Wales reaches its emissions targets.

132. In addition, stakeholders are concerned that allowing for a large number of carbon credits to count towards net Welsh emissions could mean that emissions' reductions come from purchasing international credits rather than the Welsh Government taking steps to reduce emissions here in Wales.

133. Section 33(2) of the Bill states that Welsh Ministers may by regulation set a limit on the amount of carbon credits that can be counted towards net Welsh emissions. Stakeholders have pointed out that, in both the UK and Scotland Climate Change Acts, Ministers are under a duty to publish regulations limiting the amount of carbon units that can be credited.⁶⁴

134. In his letter to us dated 3 September 2015, the Minister states it is a retained power rather than a duty as if no carbon trading was permitted at some point in the future the power would be redundant. However, the Minister goes on to state that he is:

⁶⁴ EB 35 WEL

“considering this matter further and acknowledges our comments on the desirability to limit the net amount of credits by which the net Welsh emissions may be reduced”⁶⁵.

Our view

135. We are pleased that the Minister is giving this issue further consideration. We were not convinced by his argument for this being a retained power rather than a duty as this argument could be made for almost any duty in statute. It is an overly cautious position to take. The risk of carbon trading no longer being permitted is relatively low and is outweighed by the benefit of placing Welsh Ministers under a duty to publish regulations.

We recommend that the Minister brings forward an amendment to the Bill to change the power in section 33(2) to a duty.

Parameters and guidance

136. Although the Bill already contains some parameters that Welsh Ministers are required to take into account when setting interim targets and budgets stakeholders have called for these to be expanded. They have pointed to the parameters included in the UK Climate Change Act which include the impact of targets and budgets on factors such as fuel poverty, the competitiveness of industry and the fiscal position of the Government.

137. In the UK Climate Change Act these parameters not only apply to Ministers but also to the advisory body when it is providing its advice to the UK Government. In oral evidence, the UK Committee on Climate Change went into some detail about parameters and guidance that may be considered when setting carbon budgets. The UK Committee said that they find the extension of the parameters to their advice very valuable.⁶⁶ Environmental NGOs have called for the Bill to be amended to extend the parameters to the advisory body for climate change in Wales.

⁶⁵ Letter from the Minister of Natural Resources to the Chair of the Environment and Sustainability Committee, Environment (Wales) Bill, 3 September 2015

⁶⁶ RoP 2 July 2015 c.570

Our view

138. In light of the UK Committee on Climate Change's view on the benefit of extending these parameters to the advisory body, and the calls from stakeholders for this, we believe that the Minister should seek to amend the Bill to this effect.

We recommend that the Minister brings forward amendments to the Bill to extend the parameters in section 32(3) to the climate change advisory body.

Reporting, Monitoring and Scrutiny

139. A majority of stakeholders call for the reporting, monitoring and scrutiny mechanisms contained within the Bill to be strengthened and clarified. There is strong support for the inclusion of an annual reporting mechanism, as is currently the case with the UK Climate Change Act, the Climate Change Strategy for Wales and existing non-statutory targets. Evidence from the Climate Change Commission for Wales notes that, as all-Wales emissions are provided on a yearly basis by the National Atmospheric Emissions Inventory report, annual reporting by the Welsh Government would not be particularly onerous.

⁶⁷

140. In respect of annual reporting, in his evidence, the Minister stated he was giving consideration to the links between the Bill and of the Future Generations Act and what will be reported on where. The Minister expressed his reluctance to report annually on the grounds that he feels a view needs to be taken over a longer period of time in order to give a true reflection of progress. However, he did imply that he would continue to report annually on the 2020 target, and expressed that he was flexible about reporting in the future.⁶⁸

Our view

141. An annual report on progress would provide a useful mechanism for monitoring progress. We are sympathetic to the Minister's position and accept that taking one year in isolation could provide a misleading picture. However, as the reporting cycle does not allow for an incumbent government to face informed scrutiny of its performance

⁶⁷ EB 20 Climate Change Commission for Wales

⁶⁸ RoP 24 June 2015 225-38

we believe that an annual report would deliver a tier of transparency and accountability to the process.

We recommend that the Minister brings forward an amendment to the Bill to place a duty on Welsh Ministers to produce an annual report on progress towards the 2050 target.

142. In terms of links to other legislation, stakeholders seek clarity on the relationship between the reporting requirements under this Bill and the Future Generations Act.

143. The relationship between this Bill and the Future Generations Act needs to be clearer. There is a danger that, unless there is a clear understanding of what will be reported where, gaps in accountability could develop.

We recommend that the Minister provides greater clarity to the Assembly and stakeholders on how the reporting requirements in this Bill and the Future Generations Act will be coordinated.

Aviation and Shipping

144. The UK Committee on Climate Change recommended that emissions from aviation and shipping should be broken down into at least three categories: the emissions that are caused by travel within Wales; the emissions that are caused by travel around the UK and potentially around Europe; and global emissions caused by people travelling further afield.⁶⁹ They suggested that the Welsh carbon budgets could give consideration to including emissions for travel within the UK, as these are included in the UK carbon budget.⁷⁰ Oral evidence from the Tyndall Centre supported the inclusion of international shipping and aviation emissions from the outset, stating that any growth in emissions from those sectors needs to be compensated for by greater emission cuts elsewhere. Dr Wood, from the Tyndall Centre told us that it had been doing some research into options on how the Welsh Government might take account of emissions from aviation and shipping in its carbon budgets and targets.⁷¹

⁶⁹ RoP 2 July 2015 c.607

⁷⁰ Ibid c.608

⁷¹ RoP 8 July 2015 c.35

145. Stakeholders have also noted that the existing UK carbon budgets have been set at a level that would allow for the inclusion of emissions from aviation and shipping at a later date.

Our view

146. We do not underestimate the task of taking into account appropriate emissions from aviation and shipping, but we believe that as long as they can be calculated in an equitable way then they should be included.

147. The Tyndall Centre told us that it has already started work on a methodology for making this calculation on a Wales only basis.

We recommend that the Welsh Government engages with the Tyndall Centre with a view to further exploring the inclusion of aviation and shipping emissions in the setting of carbon budgets and targets and reports back to the Assembly on its consideration of the Tyndall Centre's recommendations.

Advisory Body

148. There is general support for the UK Committee on Climate Change acting as the advisory body to the Welsh Government. Stakeholders were forthright in expressing the view that the advisory body needs to be completely independent of Welsh Government. There is also support for the continuing role of the Climate Change Commission for Wales as a stakeholder engagement forum. Evidence from businesses emphasised that it is essential for the advisory body to represent the views of all interested stakeholders, including industry.

149. Stakeholders called for clarity on the role of the Future Generations Commissioner in advising Welsh Government on climate change, and on the specific roles of the Climate Change Commission for Wales and the UK Committee on Climate Change.

Our view

150. We support this call and would like more information on how the Future Generations Commissioner and the UK Committee on Climate Change will interact with each other.

We recommend that the Minister sets out how the Commissioner for Future Generations and the advisory body on climate change will interact.

We recommend that the Minister sets out how he sees the future for the Climate Change Commission for Wales.

Adaptation

151. Concerns were expressed by a number of stakeholders about the absence of climate change adaptation measures in Part 2 of the Bill.⁷² Some call for the Welsh Government to include a provision requiring the publication of a national adaptation plan, with a number suggesting that the NNRP could take on this function. NRW states that whilst it accepts that the NNRP will need to consider the impacts of climate change for sustainable natural resource management and public bodies will need to consider long-term implications under the Future Generations Act, some sectors such as energy may not be covered by these plans.⁷³ The Climate Change Commission for Wales states that lack of reference to adaptation in the Bill is a ‘marked contrast’ to the UK Government, Northern Ireland and Scotland equivalents.⁷⁴

152. In his letter to us dated 3 September, the Minister states that there are no provisions in place within the Bill to deal with adaptation as there are other mechanisms in place within the Bill and in other legislation to account for adaptation such as the Future Generations Act and the UK Climate Change Act. He also states that the NNRP must include actions that should be carried out in relation to climate change in relation to sustainable natural resource management, which will include both adaptation and mitigation as a consequence of climate change.⁷⁵

Our view

153. The Minister has assured us that all aspects of adaptation are covered by existing mechanisms.⁷⁶ We can see that some are, but it is

⁷² EB 11 RSPB; EB 20 CCCW; EB 35 WEL

⁷³ EB 41 NRW

⁷⁴ EB 20 CCCW

⁷⁵ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, *Environment (Wales) Bill*, 3 September 2015

⁷⁶ RoP 16 September 2015 c.268-9

not clear to us that all aspects are covered by existing mechanisms. For example, the adaptation of the energy sector or nationally significant infrastructure such as key rail and water infrastructure.

We recommend that the Minister provides a list of the mechanisms he is referring to alongside a description of the aspects of adaptation that they cover so that we can assess the breadth and depth of their coverage.

4. Part 3: Carrier Bags

154. Written and oral evidence received as part of the consultation revealed mixed views on the extension of the levy to other types of bags. Whilst a number of stakeholders including WEL and the WLGA support the extension,⁷⁷ trade bodies express concern that that the move to variable charges could be counter intuitive, drive customers back to using single use bags, and jeopardise public goodwill.⁷⁸

155. There is also a divergence of views on where the proceeds should be directed, although the majority of responses favour them being directed to environmental causes. There is also general support for directing the proceeds at organisations operating in Wales.

156. Evidence from trade stakeholders calls for reporting exemptions for small businesses (currently those with less than 10 employees) from record-keeping requirements to continue, with the FSB calling for the exemption to be extended to all SMEs (companies with less than 250 employees).⁷⁹

157. In oral evidence, the Minister outlined his belief the proposals contained in the Bill are necessary as there are loopholes in the current system.⁸⁰ In terms of direction of proceeds, the Minister stated he does not want to interfere in local democracy where funds are already being directed at non-environmental charities.⁸¹

158. Oral evidence from local authorities revealed concerns about how the proposals will be administered, including costs to local government, and how enforceable they will be. They emphasise the need to compare the potential benefit with the administrative burden.⁸² The RIA does not set out who would be responsible for enforcement.

159. Our outreach survey asked respondents if proceeds should be directed to environmental causes or to all charities; 72 per cent of respondents stated environmental charities, 26 per cent all charities and 2 per cent didn't know. Respondents were also asked if the Welsh

⁷⁷ EB 22 WLGA; EB 35 Wales Environment Link

⁷⁸ EB 44 British Retail Consortium

⁷⁹ EB 17 Federation of Small Businesses (FSB)

⁸⁰ RoP 24 June 2015 c.276

⁸¹ Ibid c.284

⁸² RoP 8 July 2015 c.75

Government should put a charge on a wider range of carrier bags; 28 per cent of respondents answered yes, 67 per cent no and 6 per cent don't know.

Our view

160. Whilst we were concerned to hear that some of the proceeds from the existing single use carrier bag charge were not making it to charitable causes, we understand this to be a minority concern. Most businesses, small and large, have established links with charities and local causes and the proceeds have been directed towards them.

161. We are sympathetic to the call for proceeds to be directed to environmental causes only. However, we think there is a risk of undoing some of the good will established around the existing scheme if businesses were to be required to break the links they have established with local causes that are not of an environmental nature immediately.

162. On balance, we believe that the existing scheme should be left as it is. Whilst it is not perfect, it has succeeded in reducing the amount of single use carrier bags being used. Making significant changes to the existing scheme could lead to unintended consequences.

163. One aspect of current and future schemes that could be improved is around the transparency of where proceeds go. It has been suggested that businesses should display a sign indicating the charitable cause that proceeds from the charge are being directed to.

Notwithstanding our comments above, for any extension of the scheme, e.g. to bags for life, we recommend that these proceeds are directed to charities with an environmental remit. Further, where possible, they should only be directed to charities operating in Wales.

164. In drawing these conclusions, we acknowledge that this level of detail will come through in any regulations that the Welsh Government decides to propose in the future. It is possible to amend the Bill to establish the above restrictions. We have resisted recommending this as we are content to leave this to secondary legislation and for the merits of the regulations to be considered at that point in the scrutiny process.

5. Part 4: Collection and disposal of waste

Separation of waste

165. Both oral and written evidence revealed a divergence of views on the proposals to extend waste separation requirements to non-domestic premises. Whilst some stakeholders are in favour of the proposals and state they will provide a clear and enforceable framework, others believe they will constitute an additional burden on small businesses, particularly in terms of space available for storage and sorting of waste. Many stakeholders suggest that a voluntary approach would be more effective than legislation. However, WRAP Cymru reported that, in their experience, the voluntary approach is attractive to some businesses, but is not necessarily a sufficient incentive for all.⁸³

166. Whilst local authorities were, in general, in favour of placing waste separation requirements on non-domestic premises, they strongly emphasised the need to ensure that any separation requirements align with the collection services being offered within an authority, a view supported by the FSB.⁸⁴ Some stakeholders noted the whilst the separation regulations governing the collection of domestic waste by local authorities are subject to the ‘Technically, environmentally and economically practicable (TEEP) test’ i.e. apply as far as they are technically, economically and environmentally practical there is to date no proposal to include this test in the regulations in this Bill.

167. In oral evidence, the Minister stated that the purpose of the proposals contained in the Bill is to increase the current standard of separation of materials, consider other materials that could be recovered and provide greater clarity.⁸⁵ He anticipates that the proposals will bring non-domestic waste collection in line with municipal waste collection practice.⁸⁶ In his letter to us dated 3 September, he states that the provisions in the Bill will increase the competitiveness of Welsh businesses, whilst recognising that there may be an increase in costs for some businesses. In addition the letter

⁸³ RoP 8 July 2015 c.311

⁸⁴ Ibid c.102

⁸⁵ RoP 24 June 2015 c.311

⁸⁶ Ibid c.318

states that the regulations will be proportionate and whether this is done by adherence to the TEEP test will be considered in the course of developing regulations under this provision.⁸⁷

168. Our Outreach Team, asked respondents if all businesses and households in Wales should be required to separate their recycling and waste. In response 91 per cent answered yes, 7 per cent no and 2 per cent don't know. When asked if the same rules should apply to big businesses and small businesses 88 per cent answered yes, 8 per cent no and the remainder didn't know.

Our view

169. After considering the representations made to us, we are left with two key concerns. The first is that these proposals could place additional pressure on small businesses. The second is that unless the TEEP test is included in regulations, there is a risk of separation requirements being out of kilter with the collection arrangements in a particular area.

We recommend that the Welsh Government sets out the support it will provide to small business to help them meet any new separation requirements.

We recommend that any regulations brought forward under section 45AA of the Environmental Protection Act 1990 (inserted by section 66 of the Bill) include the TEEP test.

Prohibition on disposal of food waste to sewer

170. There is some support for a ban on food waste to sewers. WRAP Cymru supports the proposals, stating in oral evidence that it would improve the visibility of food waste, and that the waste would be processed at anaerobic digestion plants for heat and power, and for digestate to be used on the land.⁸⁸ Keep Wales Tidy also support the proposed ban.⁸⁹

171. Significant concern about the economic impacts of the ban are expressed in the written evidence by companies that provide bio-

⁸⁷ Letter from the Minister of Natural Resources to the Chair of the Environment and Sustainability Committee, Environment (Wales) Bill, 3 September 2015

⁸⁸ RoP 8 July 2015 c.341

⁸⁹ EB 04 Keep Wales Tidy

digester and maceration equipment to the catering industry and public sector. These organisations state that the figures used in the RIA on the cost savings the ban would achieve are ‘fundamentally incorrect’. AMEDA in its written evidence states that a report conducted by Eunomia to support the RIA accompanying the Bill contains ‘serious misapprehensions, unsupported by science’.⁹⁰ Mechline Ltd and Biological Preparations Ltd state that the Eunomia report only looked at traditional macerators and not at enzyme bio-digesters or food water recovery systems. Both in their evidence outline that the enzyme bio-digesters have received Water Research Council approval for being 100 per cent safe to discharge into the public sewer.⁹¹

172. These two companies state that Wales is currently considered UK and EU market leaders in this technology and the ban could threaten 62 jobs in their manufacturing base in Caerphilly and head office in Cardiff.

173. The Catering Equipment Suppliers Association (CESA) states that the RIA accompanying the Bill is based on the flawed assumption that food waste to sewers is responsible for blockages where research by water companies has shown other factors are more significant (for example disposable nappies, sanitary products, oil, grease and fat).⁹² In terms of public health, trade bodies outline that the use of food waste disposers by the catering sector also reduces the attendant risks of storing food waste for collection (e.g. odours and vermin) and minimises the temptation for some businesses to fly tip their food waste.⁹³

174. In written evidence, Dŵr Cymru states that it would be in favour of a ban if the definition of food waste contained in the Bill contained fat, oil and grease.⁹⁴

175. Many stakeholders, including Cylch and CIWM question the enforceability of a ban,⁹⁵ a view not shared by the Minister for Natural Resources. NRW states it does not believe it should be required to enforce any ban, instead suggesting that Food Standards and Hygiene

⁹⁰ EB 14 Association of Manufacturers of Domestic Appliances (AMEDA)

⁹¹ EB 37 Mechline; EB 30 Catering Equipment Suppliers Association (CESA)

⁹² Ibid (CESA)

⁹³ Ibid

⁹⁴ EB 54 Dŵr Cymru

⁹⁵ EB 48 Chartered Institution of Wastes Management (CIWM)

Inspectors would be better placed as they are already visiting the premises.⁹⁶

176. We had understood that at least one aim of this section had been to prevent problems in the sewerage system from the disposal of food waste. However, on 29 September 2015, we received a letter from the Minister that set out a different intention:

“[...] the purpose of the proposed ban to sewer is to maximise the amount of food waste available for energy production and high quality fertiliser. The safety of disposal of treated waste to sewer, though an important consideration to the water authorities, is not an issue.”⁹⁷

Our view

177. The Government has insufficiently consulted with the businesses and trade bodies that are to be most affected by any ban on food waste to sewers. The RIA has not taken into account all of the information that it could have. There have been advances in the technologies that are used and a substantial number of jobs could be lost in Wales in the event of a ban.

178. We were encouraged that the Minister has, and will continue, to take steps to engage constructively with the industry and that the door remains open in terms of potential exemptions from the ban.

We recommend that the Minister engages with the businesses and industry representatives that have made representations to us in relation to the ban and that he revises the RIA to take account of the latest technologies that are being used – especially those that meet Water Research Council standards.

We recommend that the Minister considers the case for exempting equipment that meets the Water Research Council standards.

179. An area that requires further clarity is whether the exemption for waste that is mixed with water or any other liquid used for cleaning is so broad as to allow some of the more harmful substance such as oil,

⁹⁶ RoP 8 July 2015 c.447

⁹⁷ Letter from the Minister of Natural Resources to the Chair of the Environment and Sustainability Committee, Environment (Wales) Bill, 29 September 2015

fat and grease to continue to be discharged into the sewers (see proposed new section 34D (5) to the Environmental Protection Act 1990 to be inserted by section 67 of the Bill).

We recommend that the Minister considers whether the exception in section 67 for waste mixed with water or any other liquid used for cleaning will allow oil, fat and/or grease to be disposed in sewers simply by virtue of these substances being emulsified during a cleaning process. If there is any doubt, we recommend that he revisits the drafting of this exception.

180. An unanswered question remains in terms of the enforcement of any ban. It is clear that NRW does not see this as an additional task that it would wish to undertake. Additionally, the costs of effectively enforcing the ban have not been made clear.

We recommend that the Welsh Government sets out its proposals for the enforcement of the ban in more detail, including the body that will be responsible for enforcement, and that this includes the estimated cost of enforcing a ban.

Ban on certain materials from incineration

181. As with other aspects of the Bill there are mixed views on the proposals, with some organisations including NRW supporting the ban, and trade organisations and some local authorities opposing it. Concerns are expressed about the need for such a ban and about the facilities/market for low-grade recyclable material that would no longer be able to be sent for incineration. A number of stakeholders stated that a differentiation should be made between incineration and energy from waste.

182. Industry stakeholders expressed strong concerns that the ban could threaten the future of energy from waste facilities in Wales, particularly at a time when there has been considerable investment in energy from waste infrastructure. Unintended consequences, such as the exporting of waste to England and further afield for treatment are also identified by stakeholders, including Local Authorities. The CIWM highlights that, at present, Wales is an exporter of secondary materials

and an importer of raw materials, and that the balance needs to be redressed.⁹⁸

183. Our outreach survey asked respondents if the Welsh Government should have more powers to stop recyclable materials being sent to incineration. 88 per cent of respondents answered yes, 4 per cent no and the remainder didn't know.

Our view

184. In general, we are supportive of these provisions as banning certain materials from being incinerated could be a useful tool in driving higher recycling rates in the future. However the industry requires some clarity from the Welsh Government on several issues, the most prominent being in relation to who is liable for the separation of waste and what types of material would be included within a ban. The operators of incineration facilities are concerned that their operations are designed around the receipt of waste that has already been separated. They believe that the onus should be on the supplier of the waste to the facility to ensure that it has been properly separated.

We recommend that the Welsh Government clarifies where the responsibility will lie for separating the waste i.e. with the waste carriers or the incinerator operators.

⁹⁸ EB 48 CIWM

6. Part 5: Fisheries for Shellfish

185. Stakeholders are broadly content with the proposals in relation to Part 5 of the Bill but have made some suggestions for amendments and clarifications. Environment organisations outline in their evidence their belief that the definition of harm in the Bill is too narrow. They have called for the definition to be broadened to refer to ‘a risk of an adverse effect’ to a European Marine Site by a fisheries order on its own or in ‘combination with another plan or project’. The organisations argue that this amendment is needed to make the Bill consistent with existing legislation on protected sites in the Conservation of Habitats and Species Regulations 2010.⁹⁹

186. Both NRW and the Welsh Government state that this is not necessary. The Welsh Government has stated that provided it can show a ‘causative link’ between the operation of the fishery and damage to a marine site it is confident that it could issue a site protection notice. It is also content that the provisions in Part 5 meet the requirements in EU legislation to adhere to the precautionary principle.¹⁰⁰

187. We heard concern from the industry about how the provisions in Part 5 would be interpreted and applied by Welsh Ministers. For example there was concern about how harm would be attributed and how responsibility or remedial action would be apportioned. There was also concern about what ‘appropriate actions for the purpose of protecting marine environment’ will mean in practice. NRW suggested in its oral evidence that guidance may be needed to provide clarity and certainty to shellfisheries businesses about how the powers will be implemented.¹⁰¹

188. Environment organisations have called for the Bill to be amended to make failure to comply with a site protection notice a criminal offence. The Bill would enable Welsh Ministers to revoke a fisheries order or to undertake remedial actions required by the site protection notice itself and to recover the costs of doing so, but WEL argues that a criminal offence is more dissuasive. It states that experience with other legislation has shown that public bodies are unlikely to take

⁹⁹ EB 35 WEL

¹⁰⁰ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, *Environment (Wales) Bill*, 4 September 2015

¹⁰¹ RoP 16 July 2015 c.117

remedial action if they believe there is a chance they will be unable to recoup cost from the operator. WEL also points to other areas of environmental law such as that surrounding Sites of Special Scientific Interest where knowingly damaging a site is a criminal offence.¹⁰² NRW outlines its belief that the sanctions in the Bill provide sufficient deterrent and a resort to criminal sanctions is not needed.¹⁰³

Our view

189. Many of the concerns expressed by the shellfisheries industry could be addressed through the provision of further guidance from the Welsh Government.

We recommend that the Welsh Government publishes guidance for the industry on how the provisions in the Bill will be applied and interpreted.

190. There is a difference of opinion in terms of whether the Bill should be amended to make failure to comply with a site protection notice a criminal offence. WEL Marine Link has provided us with additional information that makes a good case for this,¹⁰⁴ but we are mindful of the potential impact this could have on the industry. We also note NRW's view that resorting to criminal sanctions is unnecessary.

191. This is an important point, with good arguments on both sides of the discussion. We have not arrived at a view on this, but believe there is merit in the Minister considering this point further before proceedings in relation to the Bill are concluded.

We recommend that the Minister considers whether the Bill should be amended to make failure to comply with a site protection notice a criminal offence and that he publishes his position in relation to this.

¹⁰² EB 35 WEL and E&S(4)-24-15 Paper 10, *WEL – Additional information, Part 5*, 16 September 2015

¹⁰³ RoP 16 July 2015 c.443

¹⁰⁴ See Paper 10 attached to the agenda for our meeting on 16 September 2015

7. Part 6: Marine Licensing

192. There is broad support for the provisions contained in Part 6 of the Bill to give Welsh Ministers or a body, such as NRW acting on their behalf, powers to charge fees for a wider variety of services in relation to its marine licensing functions. However, support for the charging of additional fees is based upon NRW's ability to re-invest the money raised in its marine licensing and advisory services. Stakeholders have also called for the process of setting fee levels to be transparent and for NRW to be accountable for its performance.¹⁰⁵ Some suggest that this should be done through the introduction of statutory timescales for determining marine licenses and others through requiring NRW to report publicly against agreed Key Performance Indicators.

193. Suggestions were made that the Welsh Government and NRW should give consideration to the introduction of hourly rates instead of set fee levels for all applications. WEL and Marine Energy Pembrokeshire state that more could be done in the Bill to require applicants to publish data they have gathered through the application process once the application has been determined.¹⁰⁶ The Welsh Government has stated that it is in the process of consulting stakeholders on the proposed new fees regime and will issue a formal consultation on new regulations following the passage of the Bill.

194. The Minister confirmed that fee income will be retained, both for existing fees and the extended charging powers set out in Part 6 of the Bill. He caveated this by drawing our attention to the fact that this is subject to approval as required by the financial provisions of the Government of Wales Act 2006.¹⁰⁷

195. The Minister has provided additional detail around these arrangements in his letter to us dated 29 September 2015.¹⁰⁸

Our view

196. We support this part of the Bill and are pleased that these provisions have received broad support from stakeholders. Getting the

¹⁰⁵ EB 55 British Marine Aggregate Producers Association

¹⁰⁶ EB 35 WEL; EB 32 Marine Energy Pembrokeshire

¹⁰⁷ RoP 16 September 2015 c.255

¹⁰⁸ Letter from the Minister of Natural Resources to the Chair of the Environment and Sustainability Committee, Environment (Wales) Bill, 29 September 2015

consultation on the new fee regime right will be crucial and we believe that picking up on some of the suggestions put forward during our consideration of the Bill could be useful in preparing this consultation.

In undertaking this consultation, we recommend the Minister includes consultation questions on:

- **Performance indicators (i.e. for the performance of the licensing authority) including timescales for processing applications;**
- **Establishing requirements around the publication of data;**
- **Ensuring a transparent mechanism for the setting of fees; and**
- **Introducing an hourly rate for fees.**

Annex 1

List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at:

<http://www.senedd.assembly.wales/mgConsultationDisplay.aspx?ID=178>

Organisation or individual	Reference
World Wildlife Fund & Aviation Environment Federation	EB 01
Campaign for the Protection of Rural Wales	EB 02
Menai Strait Fishery Order Management Association	EB 03
Keep Wales Tidy	EB 04
Valero	EB 05
Wood Panel Industries Federation	EB 06
Bat Conservation Trust (Wales)	EB 07
Wheelabrator Technologies Inc. (UK)	EB 08
Calor Gas Ltd	EB 09
Salmon & Trout Association (Cymru)	EB 10
RSPB Cymru	EB 11
Local Authority Recycling Advisory Committee	EB 12
Alliance for National Parks Cymru	EB 13
Association of Manufacturers of Domestic Appliances	EB 14
Tata Steel	EB 15
Velindre NHS Trust	EB 16
Federation of Small Businesses	EB 17
The Royal Town Planning Institute	EB 18
UK Environmental Law Association	EB 19
Climate Change Commission for Wales	EB 20
National Parks Wales	EB 21
Welsh Local Government Association	EB 22

Institute of Environmental Management and Assessment	EB 23
Association of Convenience Stores	EB 24
Oxfam Cymru	EB 25
Clifford Parish ,Vale of Glamorgan Council	EB 26
National Federation of Retail Newsagents	EB 27
Wildlife Trusts Wales	EB 28
World Wildlife Fund	EB 29
Catering Equipment Suppliers Association	EB 30
RenewableUK	EB 31
Marine Energy Pembrokeshire	EB 32
Ceredigion County Council	EB 33
National Trust	EB 34
Wales Environment Link	EB 35
Pembrokeshire County Council	EB 36
Mechline Developments Ltd	EB 37
Committee on Climate Change	EB 38
Country Land and Business Association Cymru	EB 39
Friends of the Earth Cymru	EB 40
Natural Resources Wales	EB 41
Confor	EB 42
Stop Climate Chaos Cymru	EB 43
Welsh Retail Consortium	EB 44
Tidal Lagoon Power	EB 45
Conwy County Borough Council	EB 46
Wye and Usk Foundation	EB 47
The Chartered Institution of Wastes Management	EB 48
Viridor	EB 49
Farmers' Union of Wales	EB 50
NFU Cymru	EB 51
Geoconservation Cymru - Wales	EB 52

Llinos Price	EB 53
Welsh Water	EB 54
British Marine Aggregate Producers Association	EB 55
Neath Port Talbot County Borough Council	EB 56
Biological Preparations Ltd	EB 57
RICARDO-AEA	EB 58

Annex 2

Witnesses

The following witnesses gave evidence to the Committee. Transcripts of the meetings can be viewed at:

<http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?Ild=1308>

24 JUNE 2015	
Session 1	
Carl Sargeant AM	Minister for Natural Resources
Rhodri Asby	Welsh Government
Andy Fraser	Welsh Government
Jasper Roberts	Welsh Government
Helena Bird	Welsh Government
Prys Davies	Welsh Government
Graham Rees	Welsh Government
John Guess	Welsh Government
Session 2	
Emyr Roberts	Natural Resources Wales
Ceri Davies	Natural Resources Wales
Sarah Williams	Natural Resources Wales
Steve Cook	Natural Resources Wales
Session 3	
Professor Robert Lee	UK Environmental Law Association
Dr Haydn Davies	UK Environmental Law Association
Dr Victoria Jenkins	UK Environmental Law Association

2 JULY 2015

Session 4

Professor Terry Marsden	Cardiff University
Professor Janet Dwyer	University of Gloucestershire
Robert Berry	University of Gloucestershire

Session 5

Annie Smith	RSPB Cymru
Rachel Sharp	Wildlife Trusts Wales
Peter Ogden	Campaign for the Protection of Rural Wales
Anne Meikle	WWF Cymru

Session 6

Ifer Gwyn	Snowdonia National Park
Neville Rookes	Welsh Local Government Association

Session 7

Rachel Lewis-Davies	NFU Cymru
Dr Nick Fenwick	Farmers' Union Wales
Martin Bishop	Confor
Karen Anthony	CLA Cymru

Session 8

Peter Quinn	TATA Steel
Richard Leonard	TATA Steel

Session 9

Matthew Bell	Committee on Climate Change
Peter Davies	Climate Change Commission for Wales

Session 10

Haf Elgar	Friends of the Earth Cymru
Jessica McQuade	World Wildlife Fund

8 JULY 2015	
Session 11	
Dr. Ruth Wood	University of Manchester
Session 12	
Alan L Roberts	Denbighshire County Council
Andrew Wilkinson	Conwy County Council
Chris Howell	City and County of Swansea
Session 13	
Malcolm Williams	Cylch
Gill Bell	Marine Conservation Society
Session 14	
Carl Nichols	WRAP Cymru
Linda Chrichton	WRAP Cymru
Rebecca Colley-Jones	Chartered Institution of Wastes Management
Session 15	
Sarah Williams	Natural Resources Wales
Isobel Moore	Natural Resources Wales
Becky Favager	Natural Resources Wales
16 JULY 2015	
Session 16	
Julian Harrison	Wheelabrator Technologies
Phil Short	Wheelabrator Technologies
Edward Woodall	Association of Convenience Stores
Dr Mark Lang	Federation of Small Businesses Wales
Session 17	
Scott Fryer	Wildlife Trusts Wales

Gill Bell	Marine Conservation Society
Gareth Cunningham	RSPB Cymru
Session 18	
Jim Evans	Wales Fisherman's Association
James Wilson	Bangor Mussel Producers
Session 19	
Mark Russell	British Marine Aggregate Producers Association
David Jones	Marine Energy Pembrokeshire
Session 20	
Sarah Williams	Natural Resources Wales
John Wheadon	Natural Resources Wales
Eleanor Smart	Natural Resources Wales
Mary Lewis	Natural Resources Wales
16 September 2015	
Session 21	
Carl Sargeant AM	Member in charge
Andy Fraser	Welsh Government
Lori Frater	Welsh Government
Nicola Charles	Welsh Government