

**National Assembly for Wales**  
Bill Summary

# Environment (Wales) Bill

July 2015

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# Contents

<b>Introduction .....</b>	<b>1</b>
<b>1. Background .....</b>	<b>2</b>
1.1. Legislative competence .....	2
1.2. Bill Development .....	2
1.2.1. The White Paper .....	2
1.2.2. Key changes made since the White Paper .....	2
1.3. Policy Objectives of the Bill .....	4
<b>2. The Environment (Wales) Bill: summary of provisions.....</b>	<b>5</b>
Part 1: Sustainable Management of Natural Resources .....	5
Part 2: Climate Change.....	6
Part 3: Carrier Bags .....	7
Part 4: Collection and Disposal of Waste .....	7
Part 5: Shellfisheries.....	7
Part 6: Marine Licenses .....	8
Part 7: Miscellaneous .....	8
Schedules .....	9
<b>3. Financial Implications of the Bill.....</b>	<b>10</b>
3.1. Additional costs and benefits of the preferred options .....	10
3.2. Net additional costs and benefits of the preferred options by group or body affected.....	11
3.3. Net additional costs .....	12
3.4. Monetisation of benefits.....	13
3.5. Subordinate legislation.....	13
<b>4. Response to the Bill .....</b>	<b>14</b>
4.1. Stakeholders .....	14
4.2. Assembly Members .....	14



# The Environment (Wales) Bill

## Introduction

*The [Environment \(Wales\) Bill](#)* was laid before the Assembly on 11 May 2015. The Bill was introduced in plenary by the Minister for Natural Resources and Food, Carl Sargeant AM on 12 May 2015. The Bill is the third in a series of interconnected Bills with links between this Bill and *The Well-being of Future Generations (Wales) Act 2015* and the *Planning (Wales) Bill 2015*.

In his [plenary statement](#) the Minister said:

If passed, this legislation will put in place the primary legislation needed to manage Wales's natural resources sustainably in line with the framework in the Well-being of Future Generations (Wales) Act 2015, and complement the wider legislative reform I'm bringing forward with the Planning (Wales) Bill.

The Bill is extensive and has seven distinct parts covering eight different policy areas.

The Business Committee has remitted the Bill to the Environment and Sustainability Committee. The Committee should report on its consideration of the general principles of the Bill by 9 October 2015.

The Business Committee also agreed that Stage 2 proceedings should be completed by 4 December 2015, subject to the general principles of the Bill being agreed by the Assembly.

The Environment and Sustainability Committee held a [consultation](#) on the general principles of the Bill, which closed on 12 June 2015. The Committee began taking oral evidence on 24 June 2015.

## 1. Background

### 1.1. Legislative competence

The Explanatory Memorandum (EM) states (in section 2) that the subject of the Bill falls within the list of subjects in Part 1 of Schedule 7 of the *Government of Wales Act 2006* and is therefore within the competence of the Assembly. The EM lists the relevant subjects in Schedule 7 as: *1. Agriculture, forestry, animals, plants and rural development*; *6. Environment*; and *19. Water and flood defence*, and states that none of the exceptions specified in Part 1 of Schedule 7 to the *Government of Wales Act 2006* are applicable.

The EM also states that Part 1 of the Bill contains provisions which confer functions on Ministers of the Crown and which therefore require the consent of the Secretary of State. At the time the Bill was introduced discussions with the UK Government were ongoing with a view to obtaining that consent.

### 1.2. Bill Development

In October 2013 the Welsh Government published a White Paper on the Environment Bill, [\*Towards the Sustainable Management of Wales' Natural Resources: Consultation on proposals for an Environment Bill\*](#). The White Paper followed on from two previous consultations on the direction of management of natural resources; the 2010 'A Living Wales: a new framework for our environment, countryside and seas' and the [\*2012 'Sustaining a Living Wales' Green Paper\*](#).

#### 1.2.1. The White Paper

The White Paper set out the Welsh Government's proposals on natural resource management aspects of the Bill, the carrier bag and waste management aspects and the proposals on shellfisheries, marine licensing, land drainage and flood and water management. Some of the detailed proposals in relation to these topics set out in the White Paper have been amended or not included within the Bill. In addition, no reference was made in the White Paper to climate change targets or to a change to the biodiversity duty.

#### 1.2.2. Key changes made since the White Paper

In relation to Part 1 of the Bill on Natural Resources the definitions on natural resources and sustainable management have been expanded and amended in the Bill. In addition, the Bill includes a list of the key principles for the sustainable management of natural resources which were not included in the White Paper. The proposal in the Bill to strengthen the existing biodiversity duty placed on public authorities was not consulted upon as part of the White Paper. Proposals to provide NRW with powers to stimulate the use of payments for ecosystems



services and to make use of General Binding Rules included within the White Paper have not been taken forward in the Bill. The Welsh Government states in the Explanatory Memorandum that these changes are to reflect the responses they received from stakeholders to the White Paper.

Members will be aware that the proposals on statutory climate change targets were not originally included within the White Paper consultation on the Bill. In the Explanatory Memorandum accompanying the Bill the Welsh Government states that the targets were included in response to the views expressed in the Wales We Want Report. In addition, the Explanatory Memorandum explains that the decision to include these targets was influenced by advice provided to the Welsh Government by the UK Committee on Climate Change, recommendations made by the Climate Change Commission for Wales, recommendations made by this Committee in its work on the *Well-being of Future Generations (Wales) Bill* and a recommendation made by the Committee for the Scrutiny of the First Minister which stated that carbon budgeting for public bodies should be included within the *Well-being of Future Generations (Wales) Bill*.

In relation to the provisions on waste the majority of the provisions in the Bill reflect the proposals contained in the White Paper. One exception is the proposal to consolidate Welsh Ministers powers to ban certain materials from landfill which does not appear to be included in the Bill.

In relation to marine and fisheries the provisions in the Environment Bill in relation to marine licensing are the same as those consulted upon in the White Paper but some changes have been made to the provisions in relation to shellfish. The White Paper proposed to change Several and Regulating Orders to allow Welsh Ministers when issuing an Order to make reference to a management plan document that would set out details on how a fishery would be managed, without this information being needed to be included on the face of an Order. The Environment Bill does not make reference to management plans, instead it provides Welsh Ministers with powers to issue site protection notices if it believes the management of a shellfish fishery covered by an Order is causing harm to a protected site.

The proposal to give Welsh Ministers powers to consolidate water acts included in the White Paper is not included within the Bill. However, new provisions on establishing a flood and coastal risk committee for Wales, changing the way in which internal drainage notices are advertised and on providing a new appeals mechanism for local authorities to Welsh Ministers against any special levies issued by NRW are included and were not consulted on as part of the White Paper. In relation to the flood and coastal risk committee the Welsh Government states in the Explanatory Memorandum that the need for this provision has arisen from the review of Flood Risk Management completed by NRW. The provisions on internal drainage have arisen from the merger of the Internal Drainage Boards into NRW.

### *1.3. Policy Objectives of the Bill*

The Explanatory Memorandum accompanying the Bill identifies the following policy objectives for the legislation:

- Putting in place legislation that will enable Wales' resources to be managed in a more pro-active, sustainable and joined-up manner.
- Establish the necessary legislative framework to tackle climate change.
- Improving resource use in relation to carrier bag usage and waste management.
- Clarifying the law for a number of existing regulatory regimes including marine licensing, shellfisheries, land drainage and flood risk management.

## 2. The Environment (Wales) Bill: summary of provisions

### *Part 1: Sustainable Management of Natural Resources*

**This part provides new definitions for natural resources, re-aligns NRW's statutory purpose, provides a framework for area based natural resource planning, strengthens the duty on public bodies to conserve biodiversity and provides NRW with broader powers in relation to land management and experimental schemes.**

It does this by:

- Providing definitions for the terms natural resources and sustainable natural resource management and listing principles for the sustainable management of natural resources.
- Replacing NRW's existing statutory purpose with a new purpose aligned to the definitions of natural resource management included in the Bill.
- Placing a duty on NRW to prepare a State of Natural Resources Report. NRW must do so for the first time within four months of the Bill coming into force and then before the end of every year preceding an Assembly election.
- Requiring Welsh Ministers to prepare and publish a National Natural Resources Policy setting out the opportunities and priorities for the sustainable management of natural resources in Wales. It must do this within 10 months of the Act coming into force and then review it after every general Assembly election.
- Placing a duty on NRW to prepare and publish 'area statements' identifying the risks, priorities and opportunities for natural resource management within an area. The term area is not defined in the Bill. Welsh Ministers may give directions to a public body to take actions to deliver area statements and a duty is placed on public bodies to cooperate with NRW. NRW must also provide public bodies with any information and assistance they require to deliver area statements.
- Providing NRW with the powers to enter into land management agreements with land owners to promote the achievement of any objective within its functions. These agreements will replace existing land management agreements in relation to Sites of Special Scientific Interest (SSSIs) and broader nature conservation goals.
- Providing NRW with experimental powers to undertake innovative schemes to deliver any of its functions. Welsh Ministers may introduce regulations to allow the waiving of statutory requirements on participants in such a scheme.
- Placing a new duty to maintain and enhance biodiversity on all public authorities who exercise functions in Wales including those not currently

devolved e.g. police forces. Public authorities will be required to report on actions to deliver this duty by the end of 2019 and every three years thereafter.

## *Part 2: Climate Change*

**This Part creates statutory climate change targets and budgets, provides for the creation of an advisory body on climate change and sets out the reporting duties of Welsh Ministers against the delivery of these targets.**

It does this by:

- Placing a duty on Welsh Ministers to ensure that ‘net Welsh emissions’ of greenhouse gases are at least 80% below the 1990-1995 baseline by 2050.
- Requiring Welsh Ministers to specify by regulation one or more interim targets for emissions reductions.
- Requiring Welsh Ministers to publish carbon budgets for five year periods that should ensure the delivery of emissions targets. The first budgetary period will be 2016-2020.
- Setting out provisions for the definition of ‘net Welsh emissions’, establishing carbon units, the definition of greenhouse gases and the calculation of gasses from international aviation and shipping.
- Placing a duty of Welsh Ministers to: prepare and publish a report for each budgetary period setting out their proposals and policies for a carbon budget; to publish a final statement for each budgetary period setting out if and why a carbon budget has or hasn’t been met; and to publish new proposals and policies for delivery of emissions reductions if they have failed to meet a carbon budget.
- Allowing Welsh Ministers to establish an advisory body on climate change. The body will be required to provide advice on the establishment of interim targets, on the formation and delivery of carbon budgets, on Welsh Ministers’ progress towards achieving the targets and budgets and any action that may be needed to address shortfalls in the achievement of these targets and budgets.

### *Part 3: Carrier Bags*

**This Part provides Welsh Ministers with broader regulatory powers to reduce the usage of carrier bags.**

It does this by:

- Providing Welsh Ministers with broader powers to introduce a charge on any carrier bag as opposed to single use carrier bags as is the case at present.
- Enabling Welsh Ministers to set variable charges for different types of carrier bag.
- Requiring the net proceeds of any new charge to be directed to charitable causes.
- Allowing for the appointment of an administrator to oversee and enforce the scheme.
- Making the charge subject to a Civil Sanctions enforcement and compliance regime.

### *Part 4: Collection and Disposal of Waste*

**This Part provides Welsh Ministers with broader regulatory powers in relation to the separate collection of waste, the disposal of waste via incineration and the disposal of food waste to sewers.**

It does this by:

- Providing Welsh Ministers with expanded powers to require waste to be collected separately.
- Requiring businesses or organisations to present waste for collection in accordance with any separation requirements established.
- Prohibiting businesses or organisations from discharging food waste produced or brought onto a premises via the public sewers.
- Providing Welsh Ministers with powers to introduce regulations to prohibit the incineration of certain recyclable waste.

### *Part 5: Shellfisheries*

**This Part makes several amendments to the *Sea Fisheries Act (Shellfish) Act 1967* to provide Welsh Ministers with new environmental powers in relation to Several and Regulating Orders.**

Several Orders are the Orders by which exclusive rights are given to individuals to fish or farm shellfish on a certain part of the seabed e.g. through the development of a mussel bed or oyster bed. Regulating Orders are Orders usually given to a body such as NRW to regulate access to a shellfishery such as access to cockle beds. The Bill provides Ministers with new powers by:

- Requiring Welsh Ministers when issuing a Several Order to include provision within the Order to protect the marine environment and any European marine site affected.
- Providing Welsh Ministers with the power to issue site protection notices where harm may result from the operation of a Several Order to a European marine site.
- Providing Welsh Ministers with powers to vary or revoke a Order under Section 1 to take account of issues raised in a site protection notice.

### *Part 6: Marine Licenses*

**This Part extends the powers of Welsh Ministers or bodies delegated to issue marine licences on their behalf to raise charges for the services provided to applicants.**

It does this by:

- Allowing charges to be introduced for pre-application assistance, the monitoring of the use of a licence once granted and the varying, revoking or transferring an existing licence.
- Providing powers to require applicants in some cases to pay a deposit upon applying for a marine licence and to refuse to proceed with an application until such time as a deposit is paid.

### *Part 7: Miscellaneous*

**This Part provided for the establishment of a Flood and Coastal Committee for Wales, provides new powers of entry in relation to ditch cleaning, provisions to amend the issue of internal drainage notices and provisions for local authorities to appeal against the raising of special levies by NRW in relation to its internal drainage role.**

It does this by:

- Establishing a Flood and Coastal Committee to advise Welsh Ministers on flood and coastal erosion risk and providing Welsh Ministers with regulatory powers to establish the membership requirements and proper proceedings of the Committee.
- Revoking the requirement for NRW to advertise a range of notices in relation to its internal drainage functions in local newspapers and the London Gazette.
- Providing an appeals mechanism for local authorities to Welsh Ministers against any special levies issued by NRW.

- Providing Welsh Ministers with powers to enter property to inspect whether the land owner has complied with an Order by an Agricultural Land Tribunal to clean ditches and improve the drainage on their land.

### *Schedules*

- Schedule 1: Contains provisions in relation to the use of the Civil Sanctions regime to enforce carrier bag charges.
- Schedule 2: Includes a list of all repeals and amendments to existing primary legislation that will be made by the Bill.

### 3. Financial Implications of the Bill

A detailed Regulatory Impact Assessment (RIA) is contained within the Explanatory Memorandum (EM). The RIA presents the costs and benefits of the options considered under each section structured around the **seven main parts of the Bill**. The RIA presents a range of options under each section of the Bill along with the costs and benefits of each option and an assessment of how far they meet the Bill's aims.

The RIA explains that it has been **informed by work undertaken by three sets of independent consultants**. Eftec helped with the sustainable management of natural resources section, AEA Ricardo worked on the charges for carrier bags and Eunomia Consulting and Research Ltd provided scenario modelling for the collection and disposal of waste section.

#### *3.1. Additional costs and benefits of the preferred options*

Table 1 provides a summary of the **additional costs and benefits** that will result from implementing the preferred options detailed in the EM. The costs and benefits are calculated over a ten year time period (2015-2025) and discounted using a 3.5% discount rate as set out in the Treasury Green Book. This means that all the costs and benefits are presented in present value (PV) terms.

The RIA calculates the **total additional cost over the first ten years of the Bill to be around £291 million, this is balanced by savings of £359 million to give a net saving of £68 million**. The RIA explains that a **10 year time period** was chosen to enable Natural Resources Wales to embed the new approaches identified in the Bill.

Table 1 below shows that Part 1 of the Bill, **Sustainable Management of Natural Resources, has the greatest overall additional cost of up to £4.5 million**. This includes the development of a National Natural Resources Policy (NNRP) by the Welsh Government and a State of Natural Resources Report (SoNaRR) and Area Statements by NRW. The RIA states that the preferred option could lead to benefits of over £2 billion per year, however it is **not possible to determine the proportion of benefits that would be directly attributable to the Bill** and therefore these figures are not included in the summary table. Similarly with Part 2 of the Bill concerning **Climate Change, monetised benefits are not included in the summary table** as only a UK estimate is available and not a Wales figure.

The other parts of the Bill are estimated to be cost neutral or will generate savings. Part 4, **Collection and Disposal of Waste is estimated to save £58.7 million** over ten years mainly due to the estimated £139.8 million environmental benefits and savings for waste management companies of £70.7 million. Part 3 of the Bill which places a minimum charge on all carrier bag types, estimates a



saving of £8.3 million furthermore sellers would be subject to a duty to donate their net proceeds of the charge on carrier bags to good causes generating additional savings of £7.5million.

**Table 1: Additional costs and benefits of the preferred options by policy area; 2016-17 to 2025-26**

<b>Policy area</b>	<b>Cost</b>	<b>Benefit</b>	<b>Net cost / benefit (negative)</b>
1) Sustainable Management of Natural Resources	4.5	Figure not robust	<b>4.5</b>
2) Climate Change	2.1	Not monetised	<b>2.1</b>
3) Minimum Charge on all carrier bag types	123.8	-132.0	<b>-8.3</b>
3) Application of Carrier Bag Charges to a good cause	1.2	-8.7	<b>-7.5</b>
4) Collection and Disposal of Waste	158.9	-217.6	<b>-58.7</b>
5) Fisheries for Shellfish	0.0	0.0	<b>0.0</b>
6) Marine Licensing	0.7	-0.7	<b>0.0</b>
7) Flood Risk Management Wales Committee	0.0	0.0	<b>0.0</b>
7) Internal Drainage Board	0.0	0.0	<b>0.0</b>
7) Land Drainage	0.0	-0.1	<b>-0.1</b>
<b>TOTAL</b>	<b>291.1</b>	<b>-359.1</b>	<b>-68.0</b>

Source: Research Service calculations from National Assembly for Wales, [Explanatory Memorandum – Environment \(Wales\) Bill](#) – table 42

### *3.2. Net additional costs and benefits of the preferred options by group or body affected*

The RIA also breaks the costs down by groups and bodies who are affected by each option in the Bill, these are shown in table 2 below.

**Table 2: Additional costs and benefits of the preferred options by group or body affected; 2016-17 to 2025-26**

<b>Group or body affected (policy area)</b>	<b>Cost</b>	<b>Benefit</b>	<b>Net cost / benefit (negative)</b>
Consumers (3)	115.5	-	<b>115.5</b>
Waste Management Business (4)	155.0	-70.7	<b>84.3</b>
Manufacturers (3)	8.3	-	<b>8.3</b>
NRW (1) (4) (6) (7)	5.4	-0.7	<b>4.8</b>
Business Waste Producers (4)	3.3	-	<b>3.3</b>
WG (1) (2) (4) (7)	2.4	-0.1	<b>2.3</b>
Local authorities (3)	0.4	-	<b>0.4</b>
Wholesalers (3)	-	-0.1	<b>-0.1</b>
Sewerage Authorities (4)	-	-7.1	<b>-7.1</b>
Tax Revenue (3)	-	-19.3	<b>-19.3</b>
Retailers (3)	0.8	-37.7	<b>-36.9</b>
Charitable Donations (3)	-	-75.5	<b>-75.5</b>
Environmental Impact (3) (4)	-	-148.0	<b>-148.0</b>
<b>TOTAL</b>	<b>291.1</b>	<b>-359.1</b>	<b>-68.0</b>

Source: Research Service calculations from National Assembly for Wales, [Explanatory Memorandum – Environment \(Wales\) Bill](#) – table 42

The RIA estimates that the reduction in volume of waste being sent to landfill would reduce the amount of Landfill tax waste management businesses are required to pay by £172.5 million over the 10 year period. This is excluded from the previous tables as it would be a transfer payment, initially to the Treasury and from April 2018 to the Welsh Government.

### *3.3. Net additional costs*

Table 2 shows that **consumers are estimated to incur a cost of £115.5 million** over the first ten years of the Bill due to the additional costs of purchasing other types of carrier bags which in turn increases charitable donations if these regulation making powers are used.

**Waste management business are estimated to incur net additional costs of £84.3 million** in the same period due to the ban on the incineration and landfilling of specified materials which means that capital and operating costs are expected to be higher. **Manufacturers are expected to have additional costs of £8.3 million** in the first ten years of the Bill due to a reduction in their revenues bought about by the extended carrier bag charge. **Business waste producers** (includes commercial and industrial premises as well as public sector institutions and charities) are estimated to have costs of £3.3 million for administrative costs to change to the new bin system including purchasing new bins as well as the ongoing costs related to the collection of their waste materials.

**Natural Resources Wales (NRW) are expected to incur additional net charges of £4.8 million** under several parts of the Bill including the development of State of Natural Resources Report (SoNaRR) and Area Statements under the Part 1 - Sustainable Management of Natural Resources and the inspection of non-domestic premises to enforce the requirement to sort waste under Part 4 - Collection and Disposal of Waste. Under Part 6 - Marine Licensing the RIA states that costs to NRW should be neutral as they will be able to achieve greater cost recovery and the costs will be borne by the users of the marine licensing system.

According to the RIA the **Welsh Government will face additional net costs of £2.3m** comprised of £2.1million for the costs of setting and administration the carbon budgets along with seeking independent advice on the level at which carbon budgets should be set. The Welsh Government will also input £0.2 million staff time into the development of the National Natural Resources Policy.

**Local authorities** are mentioned in the Application of Carrier Bag Charges to a good causes section where they incur **costs of £0.4 million for monitoring and enforcement costs**.

### 3.4. *Monetisation of benefits*

The RIA provides monetised benefits for a number of sections most notably in Part 3 – Carrier Bags (£132m + £8.7m) and Part 4 – Collection and Disposal of Waste (£217.6). In the Carrier Bags section the bulk of benefits are made up of charitable donations and tax revenue. In the Collection and Disposal of Waste the benefit to the environment is the largest component followed by benefits to waste management businesses and sewerage authorities.

Under the summary table it states that the overall total benefit figure for the Bill only includes monetised benefits and concludes:

Inclusion of non-monetised benefits would be anticipated to greatly increase this figure. (tbl 42 footnote)

The RIA states as with most Bills that it has not been possible to quantify all the identified benefits and a qualitative description is provided alongside many of the benefits.

### 3.5. *Subordinate legislation*

There are several parts of the Bill where the details of the regulations have yet to be decided and will substantially affect the costs:

- The RIA explains that the climate change target and carbon budget delivery costs will be determined by the level at which the target and budget levels are set at which will be defined in secondary legislation. Therefore the costs and benefits will need to be evaluated and independent advice sought before introducing formal carbon budgets.
- Regulations are needed to set a minimum charge for other types of carrier bags in addition to single use carrier bags and the RIA explores a number of possible options assuming that these regulation making powers will be used. The RIA states that a further detailed RIA would be undertaken should it be decided to pursue this policy intention in the future.
- In terms of Collection and Disposal of Waste the RIA states under the Options Analysis that the secondary legislation will be accompanied by a detailed Regulatory Impact Assessment.

The EM also does not include an **estimate of the costs to the Welsh Government of developing secondary legislation** whereas the [\*Regulation and Inspection of Social Care \(Wales\) Bill 2015 Explanatory Memorandum\*](#) provided estimates of £13,412 to the WG for developing subordinate legislation in relation to prohibition orders and protection of title ([Para 7.5](#))

## 4. Response to the Bill

### 4.1. Stakeholders

The Environment and Sustainability Committee received fifty five responses to its [consultation](#) on the Bill from a wide range of stakeholders, some of which focused on particular aspects of the Bill.

### 4.2. Assembly Members

The Bill was introduced in plenary by the Minister for Natural Resources and Food, Carl Sargeant AM on 12 May 2015. The following issues were raised by Members.

**Andrew RT Davies**, Leader of the Welsh Conservatives, sought clarification on a number of aspects of the Bill and was concerned about the ability of Natural Resources Wales (NRW) to deliver on some aspects of the legislation. He asked the Minister to clarify who would be responsible for the State of Natural Resources report, the National Natural Resources Policy, and Area Statements which he believed should be produced independently of government.

He asked how the statutory targets supported by carbon budgeting referred to by the Minister will operate in practice. He was also concerned about the capacity of the recycling sector and public bodies to achieve some of the targets introduced by the Bill. He believed that better information and public education is required to create a sustainable and environmentally friendly Wales.

The **Minister** said that, although there hasn't been time to consolidate the large number of environment statutes, one of the aims of the Welsh Government is to bring the current legislation into one place, with a single agency (NRW) linking into it.

**Llyr Gruffydd**, Shadow Minister for Sustainable Communities, Energy and Food believed that statutory targets to restore biodiversity should have been included in the Bill. He welcomed statutory targets on climate change but wished to ensure they are appropriate and adequate and remain so in the future. He questioned the rationale for expanded waste incineration capacity in Wales when the Bill seeks to limit the amount that can be incinerated.

He questioned the extent to which the Welsh Government has co-ordinated its programme of environmental legislation and said the large number of subordinate powers in the Bill can sometimes obscure the Minister's intentions. He asked the Minister about the resource constraints on NRW and its ability to deliver on the Bill and about what he believed is a shift in its focus away from nature conservation and towards the management of natural resources.

The **Minister** said that the Welsh Government is co-ordinating its environmental legislation but that it needed to ensure that each piece of legislation functions in its own right. He disagreed with the comments about NRW.

**Joyce Watson**, Welsh Labour, wished to know more about the flood and coastal committee for Wales and in particular, how it will operate and how local communities will be able to interact with it. She was concerned about planning for surface water drainage to reduce the risk of flooding from heavy rainfall. She wished to strengthen the licensing arrangements for waste disposal to address the problem of fly tipping.

**William Powell**, Shadow Minister for the Environment, Sustainability, Agriculture and Rural Affairs Welsh Liberal Democrats, was concerned about the capacity of NRW to undertake its duties under the Bill. He believed that statutory targets on the protection of biodiversity should be on the face of the Bill to ensure recovery from losses that have already occurred, and that the Bill should include stronger commitments to energy efficiency and to decarbonising the power sector.