

March 2013

# A Sustainable Wales

Friends of the Earth Cymru's response to

**The Welsh Government White Paper  
'Consultation on proposals for a  
Sustainable Development Bill'**

## Summary

The White Paper is a step forward from the first proposals and provides more clarity as to the Welsh Government's thinking in relation to Sustainable Development. However we do not feel that the direction of travel is sufficient to deliver the step-change required to set ourselves on course for a sustainable future.

We propose that the Welsh Government publish a Bill which is transparent about its aims, clear about its definition of Sustainable Development, applies to public authority functions, creates a Sustainable Development Commissioner for Wales, and monitors on key resource use indicators.

In this response we propose key clauses of a Sustainable Development Bill as an illustration to begin a dialogue with civil society and decision-makers in Wales of what could be achieved by simple and clear legislation.



**cyfeillion  
y ddaear  
cymru  
friends of  
the earth  
cymru**

## Introduction

Friends of the Earth Cymru welcomes the Welsh Government White Paper proposals for a Sustainable Development Bill and the Welsh Government's commitment in its Programme for Government to legislate for a sustainable future for Wales. We support the intention of setting a framework for Wales "To become a 'one planet nation', putting sustainable development at the heart of government"<sup>1</sup> and hope that the Sustainable Development Bill when published will reflect this aim and produce a clear and decisive way forward.

Progress has been made since the first consultation: the White Paper recognises the importance of a definition of Sustainable Development, an emphasis on an outcome related duty and recognition that we need to take responsibility for our international impacts.

However we are concerned that the White Paper proposals remain unclear and will not achieve these aims, and urge the government to work with stakeholders and partners to achieve effective and clear legislation that reflects the ambition of the people of Wales and the sense of urgency necessary.

## International context

The Rio+20 Summit was not the ground breaking step that many of us hoped it would be, but it did bring together representatives from nations, NGOs and businesses from across the world who strive to set us on a course to sustainable development, and an outcome document 'The Future We Want' that set in place a process to establish global Sustainable Development Goals.

But although there has been ever increasing recognition of sustainable development (SD) and sustainability since the original Rio Earth Summit, this has not led to a step change in our behaviour, legislation or institutional structures, and the global actions of the past 20 years have created a state of unprecedented planetary emergency:

*"The human pressure on the Earth System has reached a scale where abrupt global environmental change can no longer be excluded. To continue to live and operate safely, humanity has to stay away from critical 'hard-wired' thresholds in the Earth's environment, and respect the nature of the planet's climatic, geophysical, atmospheric and ecological processes."*<sup>2</sup>

We have already breached the safe operating space (or boundaries) for three of nine key planetary systems (climate change, biodiversity loss and excess nitrogen and phosphorus production), and risk.

*"Research now demonstrates that the continued functioning of the Earth system as it has supported the well-being of human civilization in recent centuries is at risk."*<sup>3</sup>

*"Energy-related CO2 emissions are at historic highs; under current policies we estimate energy use and CO2 emissions will increase by a third by 2020, and almost double by 2050. This would probably send*

<sup>1</sup> Welsh Government (2011), 'Programme for Government' p.42

<sup>2</sup> <http://www.stockholmresilience.org/research/researchnews/tippingtowardstheunknown.5.7cf9c5aa121e17bab42800021543.html>

<sup>3</sup> [http://www.planetunderpressure2012.net/pdf/State\\_of\\_the\\_Planet\\_Declaration.pdf](http://www.planetunderpressure2012.net/pdf/State_of_the_Planet_Declaration.pdf)

*global temperatures at least 6°C higher within this century.*<sup>4</sup>

The Doha Summit in December 2012 made little progress on a routemap towards a low carbon future and to avoid a planetary emergency.

And as we confront these massive environmental problems, we face societal problems that need not exist in the 21st century: some 1 billion people lack access to nutritious food; 2.7 billion lack access to clean cooking facilities, and breathe in smoke which damages their lungs as they cook; 2.6 billion lack access to basic sanitation<sup>5</sup>; 793 million adults – two thirds of whom are women – are illiterate<sup>5</sup>; and 1.4 billion people live on less than US\$1.25 a day<sup>6</sup>.

Behind each of these statistics is a human family or community whose story could be so different if the political will existed to make it so. As the people with the least struggle to survive, the consumption habits of the richest are stripping the earth of its resources:

*“The biggest source of planetary-boundary stress today is excessive resource consumption by roughly the wealthiest 10 per cent of the world’s population, and the production patterns of the companies producing the goods and services that they buy.”<sup>7</sup>*

There is an urgent need for humanity to shift course, and put the needs of the Earth and future generations above short-term gain. This will mean charting a course away from current values and expectations, developing societies and economies that support life and the Earth beyond the end of this century.

The European Commission last week launched a new Communication in response to the double challenges of eradicating poverty and ensuring a sustainable development, as part of the Rio+20 process of stepping up action on key sustainability challenges and working towards Sustainable Development Goals (SDGs).<sup>8</sup> This shows that the Welsh Government is operating in an international context of SD and should be proud of leading the way and being part of this process.

Friends of the Earth suggests that returning SD to the heart of national and international politics is the only way to recover from the triple-headed crisis we face. Real sustainability would see our economy delivering social justice within environmental limits. The world has been gripped by a focus on short-term economic growth for too long. The current crisis demands a longer-term lens and an ambitious and urgent approach.

We can choose to fix the problems that confront us – and see nature better protected and people across the world enjoying a better standard of living. This Bill could provide the political momentum and institutional framework to take this forward in Wales, but only if it makes a difference to the decisions we make.

<sup>4</sup> [http://www.iea.org/press/pressdetail.asp?PRESS\\_REL\\_ID=436](http://www.iea.org/press/pressdetail.asp?PRESS_REL_ID=436)

<sup>5</sup> [http://www.un.org/gsp/sites/default/files/attachments/GSP\\_Report\\_web\\_final.pdf](http://www.un.org/gsp/sites/default/files/attachments/GSP_Report_web_final.pdf)

<sup>6</sup> <http://www.worldbank.org/en/news/2008/09/16/new-data-show-14-billion-live-less-us125-day-progress-against-poverty-remains-strong>

<sup>7</sup> <http://www.oxfam.org/sites/www.oxfam.org/files/dp-a-safe-and-just-space-for-humanity-130212-en.pdf>

<sup>8</sup> European Commission (2013), ‘A Decent Life for All: Ending Poverty and Giving the World a Sustainable Future’ [http://ec.europa.eu/europeaid/documents/2013-02-22\\_communication\\_a\\_decent\\_life\\_for\\_all\\_post\\_2015\\_en.pdf](http://ec.europa.eu/europeaid/documents/2013-02-22_communication_a_decent_life_for_all_post_2015_en.pdf)

## Welsh context

Wales has a long track record of international solidarity, progressive politics and valuing equality and fairness.

From the first Act establishing the Assembly, Wales has had a duty to promote SD enshrined in law. One of the few countries across the world to have such a duty, this has been a source of great pride and sustainable development is, as Jonathan Porritt wrote, “in the Welsh Assembly’s DNA”<sup>9</sup>.

And in operating its devolved powers successive governments have taken bold decisions in relation to people’s rights and planning for a sustainable future, for example establishing a Children’s Commissioner and Older People’s commissioner, banning smoking in public places, charging for single-use carrier bags and choosing to appoint a Commissioner for Sustainable Futures when the UK Government abolished the SDC.

These are excellent examples of devolution delivering for Wales; protecting the vulnerable in society, thinking innovatively, breaking new ground and acting in the long term interests of people and the planet.

The Sustainable Development Bill should be viewed in this context and should aim to be equally ambitious and radical. As Environment Minister John Griffiths said on returning from Rio+20;

*“It is clear that smaller countries, like Wales, can show a lead and set examples in how to create sustainable places and practises. In Wales, we now have the opportunity to further demonstrate this by creating our own ground breaking legislation on Sustainable Development.”*<sup>10</sup>

The 2009 “One Wales: One Planet” SD scheme was pioneering, recognising that we currently use resources as if there were three planets, rather than our fair share of one planet.

And now that we have legislative powers in Wales we can move beyond a scheme or plan and develop both a legal definition of sustainable development and a system of governance to implement it.. The very nature of SD requires long term thinking and is particularly suitable for legislation; to give stability and certainty for bodies to adapt and create a different culture, and to avoid the political whim of governments - as was seen when the UK coalition government abolished the UK Sustainable Development Commission.

Two assessments have clearly demonstrated that the existing duty has failed to translate into consistent action on the ground in Wales and that legislation is needed to embed sustainable development in decision making<sup>11</sup>.

The monitoring of sustainable development indicators shows that there has been no positive news in several key areas such as greenhouse gas emissions reduction, mobility, ecological impacts (and

<sup>9</sup> [http://www.guardian.co.uk/environment/blog/2012/jul/11/wales-sustainable-development?CMP=twf\\_fd](http://www.guardian.co.uk/environment/blog/2012/jul/11/wales-sustainable-development?CMP=twf_fd)

<sup>10</sup> Written Statement by the Welsh Government, ‘Visit to Rio+20’, 29 June 2012

<sup>11</sup> [http://www.wao.gov.uk/assets/englishdocuments/Sustainable\\_Development\\_english.pdf](http://www.wao.gov.uk/assets/englishdocuments/Sustainable_Development_english.pdf)  
[http://assets.wwf.org.uk/downloads/main\\_report\\_progress\\_in\\_embedding\\_the\\_one\\_planet\\_aspiration\\_in\\_welsh\\_government.pdf](http://assets.wwf.org.uk/downloads/main_report_progress_in_embedding_the_one_planet_aspiration_in_welsh_government.pdf)

particularly the loss of biodiversity), urban air quality, chemical river quality, health inequality, access to local shops and services, worklessness, active community participation and the Welsh language (Sustainable Development Indicators for Wales, 2012, Statistics for Wales). This shows how much more needs to be done, and how there is a real need for change in the way our public authorities in Wales deliver their functions. Many of the issues listed such as greenhouse gas emissions are impacted by different areas of decision-making e.g. in planning terms the consenting of development or modification of existing development, or the consenting of energy generation, but also in Government schemes to retrofit existing housing stock. Many of the issues are also interrelated and integrated and public services should therefore have a common aim – that of delivering sustainable development. It is indisputably unsustainable to continue with business as usual given the evidence of environmental unsustainability.

In a survey of public perceptions of climate change in Wales published today by the Climate Change Consortium of Wales<sup>12</sup>, 84% of respondents were concerned about climate change<sup>13</sup>, 73% of respondents agreed that Wales should aim to set an example to the outside world when it comes to addressing climate change<sup>14</sup>, 80% were concerned about the effects of climate change in developing countries and 90% were concerned about the effects on wildlife and the natural world<sup>15</sup>. A clear majority of respondents also said they would be willing to vote for politicians committed to climate change.

This is a strong indication that the public in Wales is not only concerned about climate change but believe that politicians should take urgent action to tackle climate change and our impact on global resources, the ecosystem and developing countries. The definition of sustainable development in this Bill must fully reflect these views.

We are part of an Alliance of third sector organisations representing a broad range of social, cultural, environmental and international development issues that has been supporting the development of a draft Bill which we believe can achieve the ambition. We will continue working on alternative formulations for a Bill and have started drafting some key elements and structure for a Bill which we believe will be effective. The full text of these clauses is included in Annex 1 of this submission but remain open for further dialogue with civil society.

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<sup>12</sup> Capstick, S.B., Pidgeon, N.F., and Whitehead, M.S. (2013). 'Public perceptions of climate change in Wales: Summary findings of a survey of the Welsh public conducted during November and December 2012'. Climate Change Consortium of Wales, Cardiff.

<sup>13</sup> Ibid, Appendix A, p.57.

<sup>14</sup> Ibid, p.59

<sup>15</sup> Ibid, p.60

## Consultation questions

### Q1 – What are your views on the proposals for a new duty to embed sustainable development as the central organising principle of selected organisations in Wales?

#### Duty wording and how it could work

The duty must be based upon tried and tested effective legislation for public authorities. Legislation that only requires a strategy will not be effective in changing the way public authorities carry out their public functions. The point of the Bill must be to improve the decision-making of public authorities, in recognition that business as usual will not deliver sustainable development.

#### Why a duty must apply to public authority functions

It will only scratch the surface of what is possible if a public authority institutes an internal management process around sustainable development. What it needs to do is ensure that its actions *achieve* sustainable development outcomes, by applying a set of principles which change the outcomes. For instance a health authority could change its energy supplies (to a renewable source), implement a mobility plan and facilities to reduce the use of the private car; procure goods and services with both social and environmental benefits so as to ensure that all its packaging is recyclable, and that its use of drugs is sustainable in the long-term, that healthy living is a norm in hospitals (local and fresh food, access to natural light and space, outdoor, exercise facilities). Public authority definitions must also cover those services that have been contracted out to private companies, but which are not private functions. This is intended to pick up organisations such as private bodies providing public services, e.g. companies which operate nursing homes, companies operating recycling contracts.

In the Bill we propose that the first clause is a '**Duty to achieve sustainable development**'. This would set out that public authorities should act in such a way as to achieve sustainable development. The duty must apply to public authority functions so as to capture the way a public authority delivers its services (e.g. planning, waste, education, health), and its procurement activities. This would make a real difference to business as usual.

This wording has been developed with a range of organisations and stakeholders in the third sector Alliance.

#### Level of duty

The assumption in the White Paper is that high level decisions and principles trickle down from strategic level to operational decisions and therefore there is no need for issues such as budget and procurement decisions to be included in the duty. However, despite Sustainable Development being the central organising principle of the Welsh Government, and a duty since its inception, the Wales Audit Office assesses that it has not been integrated into financial and business planning.

*“Sustainable development principles have not been consistently embedded in the Assembly Government’s strategic and operational decision making. The Government of Wales Act 2006 commits the Assembly Government to ensuring that all its funding works for sustainable development. However, sustainable development is not driving resource allocation nor is it integrated into all financial and business planning*

*processes. The Assembly Government has not ensured that all its grant giving underpins its vision of a sustainable future.*<sup>16</sup>

This demonstrates that having a sustainable development duty at a high level of decision making does not necessarily affect resource allocation and lead to sustainable outcomes.

To address this failure, the Wales Audit Office recommended to *“Embed sustainable development in the Assembly Government’s governance procedures, financial planning, core business planning processes, change programmes and human resources processes.”*<sup>17</sup> Currently, the proposals only target strategic decisions, and not operational decisions. The Wales Audit Office’s recommendation should be considered in preparation of the public sector duty in the SD Bill, and the duty should apply to operational activities including financial and core business planning as well as high level decision making.

It is likely that good-practice procurement policy will remain inconsistent across the Welsh public sector without it being a legal requirement, as two reports prepared for Value Wales have emphasised<sup>18</sup>.

### **International scope**

We welcome the commitment in the White Paper to ensure that the international scope is encompassed.

However, looking to ensure that the international scope is encompassed in a ‘reasonable and appropriate manner’ is not good enough and open to wide interpretation. Failure to embed international scope within the Sustainable Development Bill dilutes the meaning and potential of sustainable development as a driving force for positive change and does not provide clear leadership for the rest of the public sector. Friends of the Earth Cymru suggests that global impacts should always be considered and only disregarded if there is an unreasonable and disproportionate impact on Wales by doing so.

### **A legal definition**

A definition of sustainable development needs to be on the face of the Bill in order to provide clarity, longevity, certainty and to reduce litigation concerns.

Without a definition on the Bill, the policy could be subject to political changes, resulting in uncertainty in the direction of travel for all sectors. It also reduces the risk of multiple, conflicting and confusing definitions.

Having a definition set out on the face of the bill will insulate public authority action on sustainable development from challenge and dispute, both because the definition builds upon European and international law, and because it lends status and protection to a particular course of action that is framed by the definition.

### **Why the definition is ‘long-term’ and requires legal clarity**

<sup>16</sup> Welsh Audit Office (WAO), (2010), ‘Sustainable development and business decision making in the Welsh Assembly Government’, page 11.

<sup>17</sup> WAO (2010), page 13

<sup>18</sup> Welsh Government, Value Wales (March 2009), ‘Barriers to Procurement Opportunity Research’, <http://wales.gov.uk/docs/dpsp/publications/valuewales/barrierstoprourementopportunity/090520barrierstoprourement2en.pdf> and John F McClelland CBE, for Welsh Government, Value Wales (August 2012), ‘Maximising the Impact of Welsh Procurement Policy’, <http://wales.gov.uk/docs/dpsp/publications/valuewales/120917mcclellandreviewfullfinal.pdf>

The Rio Declaration was 20 years old last year, and yet as a country, Wales has failed to implement many of its principles properly (the principles are attached in Annex 2 to this response) particularly 'polluter pays' and the 'precautionary principle', as well as recognition of environmental limits. The Declaration still resonates despite its age. It is a sobering thought that over these years, and despite stated commitments to sustainable development, there has been little real term progress – biodiversity and the natural environment are still degrading at an alarming rate, and consumption and production continues at unsustainable levels.

It would be a mistake to attempt a 'flexible' definition of sustainable development or not to define it clearly on the face of the Bill. The fact of the matter is that 'environmental limits' are there, whether companies and politicians recognise that or not. The intelligent and conscientious recognise that these limits mean something in relation to the way we deliver public services, the way we live, our consumption and production. If the Welsh Government is to be seen as a global leader in terms of Sustainable Development then it must put on the face of the Bill a definition of sustainable development that is not merely a single sentence reference to the Brundtland report<sup>19</sup> but a proper explanation of the principles that therefore apply in decision-making.

Friends of the Earth, working with a wide range of interests and through discussion and debate, including the input of eminent legal experts from across the UK into the wording suggest the following definition and principles:

*(1) Sustainable development means meeting the economic, social, cultural and environmental needs of people and communities without compromising the ability of future generations to meet their own needs and includes the application of the following principles:*

- (a) living within environmental limits;*
- (b) using natural resources prudently;*
- (b) ensuring a strong, healthy and just society;*
- (c) achieving a sustainable economy;*
- (d) applying the preventative, precautionary and polluter pays principles;*
- (e) using sound science responsibly;*
- (f) promoting good governance;*
- (g) avoiding adverse international impacts;*
- (h) using only Wales' fair share of the earth's resources;*
- (i) sustaining and promoting Welsh language and heritage.*

The listing of the principles confers clarity, agreement, and transparency to the exercise of public functions by public authorities. These are, in effect, the things that need to be applied to make the outcome sustainable. These principles are there to make changes to the way things are done.

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<sup>19</sup> UN (1987), 'Our Common Future' <http://www.un-documents.net/wced-ocf.htm>



All the proposed principles derive from existing Acts or policy. 'Environmental limits' is a well-known but poorly applied and understood policy concept, which is in Planning Policy Wales (as are many of the other principles). There is a clear need to understand more about 'limits' and planetary boundaries, and the healthy functioning of ecosystems in Wales. A recent report by the Royal Commission on Environmental Pollution (RCEP) highlights some of the difficulties, favouring the term 'environmental constraints' instead;

*"4.40 The Commission has used the language of environmental constraints as opposed to the now more widely used language of environmental limits. This is because the language of limits suggests something which is fixed and absolute, whereas the Commission believes that an assessment of how much environmental damage a group or society is prepared to accept is often a matter of political judgement. This is not to suggest that science, economics and law cannot assist in exercising this judgement, but merely that they cannot be relied upon to provide unequivocal 'right answers'."*<sup>20</sup>

And the Parliamentary Office for Science and Technology said in its March 2011 report on 'Environmental Limits';

*"An environmental limit is usually interpreted as the point or range of conditions beyond which there is a significant risk of thresholds being exceeded and unacceptable changes occurring."*<sup>21</sup>

This understanding also implies consideration of social and economic impacts.

The use of natural resources 'prudently' is from the New Zealand Resources Management Act. The precautionary principle is set out in the EU Water Framework Directive and should be clearly recognised in Wales. *"Thousands of lives could have been saved and extensive damage to ecosystems avoided if the "precautionary principle" had been applied on the basis of early warnings"*, is the conclusion of the authors of the 2013 Late Lessons from Early warnings report published by the European Environment Agency.

Legally, it is perfectly normal to set out the definition of a term. The Equality Act 2010 is an example of this. In fact, the **failure** to set out a definition is more problematic. For instance in planning, the failure to set out the definition of sustainable development in relation to the Planning and Compulsory Purchase Act 2004 has led to continuing arguments over the application of sustainable development principles. An unclear policy framework such as the National Planning Policy Framework 2012 in England has led to a series of trade-offs, where viability of the development (whether a developer is making sufficient profit) is being prioritised ahead of climate change policies and regeneration in local plans. The case in the Supreme Court in *Tesco Stores v Dundee* demonstrate the need to be clear in planning policy (the case hinged on the interpretation of the word 'suitable'). Land-use planning is a fertile source for examples of how unclear policy affects outcomes. The Welsh Government could not promote such trade-off outcomes and call itself a world leader in Sustainable Development.

## **Q2 – What are your views on the proposals for an independent sustainable development body?**

We strongly support the principle of having a Commissioner for Sustainable Development who should become a powerful champion for future generations, people in developing countries and those living in poverty in Wales.

<sup>20</sup> RCEP (2011). Twenty-ninth Report, Demographic Change and the Environment <http://www.rcep.org.uk/reports/index.htm>

<sup>21</sup> [http://www.parliament.uk/documents/post/POSTLongReport\\_370-Environmental-Limits.pdf](http://www.parliament.uk/documents/post/POSTLongReport_370-Environmental-Limits.pdf)

The Commissioner should be independent of the Welsh Government and able to hold the Government and public sector in Wales to account. The level of independence of the Commissioner is currently unclear in the White Paper proposals and should be clarified. We believe that the Commissioner should be appointed by the National Assembly for Wales.

Independent scrutiny is essential to hold the government and public bodies to account. The UK Government no longer has any body that can hold it to account on SD and its decisions suffer as a result, allowing it to slip off the agenda. We must not repeat that mistake here in Wales when we have the opportunity to get it right from the word go.

It is implicit in the language around SD in Wales that building a sustainable future involves everyone, and impacts the wellbeing of all, and is not just a matter for government. The new body must have a public facing role as a champion of SD for the people of Wales and future generations and not merely become a bureaucratic friend of public bodies carrying out internal conversations behind closed doors.

The Commissioner should be both empowered and required to investigate and take action on failures by government and public bodies both to comply with the provisions of the Bill, and more widely.

The body should also be enabled by the legislation to;

- provide and publish advice on matters relating to the implementation and enforcement of the Sustainable Development Duty;
- conduct research and inquiries into matters which the Commissioner considers relevant to sustainable development or the Sustainable Development Duty;
- make recommendations to public bodies, including Ministers and the National Assembly for Wales in respect of the discharge of their duties under this Act;

Eligible persons, as defined by regulation, should be able to make complaints to the Commissioner in relation to any matter concerning discharge of the Sustainable Development Duty by public authorities.

The Commissioner must be adequately resourced, with a staff able to support a significant programme of work including research, policy development, support for the wider public sector in developing effective sustainable development schemes and investigative capacity to hold the public sector to account.

There is insufficient information in the White Paper on the status, role or composition of the advisory panel<sup>22</sup> and how it relates to the Commissioner or staff of the body. Whilst drawing on a wide range of expertise and public engagement is desirable this should not replace sufficient staffing.

### **Q3 – What are your views on the proposed phasing and implementation of the duty, including the timing of the establishment of the independent sustainable development body?**

If a phased approach for elements of the duty and/or the bodies subject to the duty is introduced, there must be a clear timetable and statutory deadlines for implementation stages, with responsibility falling to the Commissioner or Minister to ensure compliance and follow up.

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<sup>22</sup> Welsh Government (2012), 'White Paper: A Sustainable Wales – Better Choices for a Better Future', p.15-16

We recognise that there must be sufficient training and capacity building so that staff in the public sector e.g. financial managers and operational staff, as well as senior management, can work to get the best sustainable development outcome.

#### **Q4 – What are your views on the proposals to improve the accountability framework for sustainable development in Wales?**

The Rio+20 outcome document ‘The Future We Want’ stated that;

*“the [SD] framework should be inclusive, transparent and effective and that it should find common solutions related to global challenges to sustainable development.”<sup>23</sup>*

Respondents to the first Welsh Government consultation stated that a duty on high level decision making would not be transparent or easy to monitor and there would be difficulty with the measurement and auditing of performance and the subsequent enforcement. It could also be too easy for organisations to show compliance without substantially changing the way in which they make their decisions. A number of respondents said that the behaviours would be too vague to prescribe in law and would invite frequent legal challenge as a result of their subjective nature.

This could undermine the transparency and effectiveness of the Welsh Governments proposed institutional framework. Transparency and ease of monitoring are key aspects of the Rio+20 proposed framework for best practice in sustainable development.

A report by the IHPC consultancy for Defra and the UK SDC also concluded that the mechanisms to scrutinise the delivery of any sustainable development duty are critical to determining how seriously bodies took their responsibilities.<sup>24</sup>

Any governance process should also reflect and enhance the provisions within the Aarhus Convention on access to information, public participation and access to justice in environmental decision-making.

The proposals for accountability in Chapter 5 of the White Paper are not adequate to ensure the delivery of sustainable development. There is logic in requiring the Auditor General for Wales (AGW) to audit public bodies to ensure that they have put in place the appropriate processes. However, this does not in itself ensure that public bodies are complying with the principles of sustainable development or measure whether sustainable development is being delivered.

There must be an assessment of the outcomes of sustainable development processes in order for the Commissioner to be able to ensure that the Bill is being complied with. The assessment of sustainable development outcomes should be included in the role and powers of the AGW, which would inquire into the performance of public bodies and ensure compliance in their duties. This would include audit against a full range of sustainable development indicators designed to identify where there might be weaknesses or short-comings. Public bodies should be required to provide information as directed by the Commissioner.

To facilitate monitoring and review there should be an annual report on the use of resources in Wales, addressing the use of land, materials, water and climate.

<sup>23</sup> UN (2012), ‘The Future We Want’, <http://sustainabledevelopment.un.org/futurewewant.html>

<sup>24</sup> IHPC (2006), ‘Review of Statutory Sustainable Development Duties’

## Q5 – Any related issues, and Conclusion

We attach in Annex 1 some wording of a Bill that the third sector Alliance of organisations has been working on developing and which Friends of the Earth Cymru fully supports. We hope that this Welsh Government will consider this annex in drafting the Bill.

We believe that the Welsh Government has the boldness and political will to meet its commitment in its Programme for Government and set ground-breaking sustainable development legislation that can set us on a course to a sustainable future. This Bill could and should be an example of how to take forward the Rio+20 declaration, feeding into the global process, and setting a precedent for how to move towards achieving SD.

There are numerous reasons to make here and now is the time for action - new powers, cross-party commitment to sustainable development and good natural resource management and affinity to the environment. It's also a limited time for action. As the Environment Minister noted during Rio+20;

*“The world is set on an unsustainable course and the window for action is closing. It is clear that progress can happen quickest at regional level with regional governments being the true leaders in sustainability.”<sup>25</sup>*

Responding effectively to the societal, economic and environmental crisis demands rapid and radical changes in the way that we live and work. A global transition needs to take place as swiftly as possible and the next ten years will be crucial to avoid environmental catastrophe. It will require a transformation of our energy system and a radical overhaul in the design of our buildings and towns. It will entail huge changes in how we manage our land, freshwater and seas, in what and how we produce and consume, and in how we manage markets and deliver an economy within environmental limits.

There is already wide third sector agreement that the White Paper proposals fall short of the political commitments made, the public will and what is necessary for the long term future of Wales. We look forward to continue working with the Welsh Government and all parties in developing a strong and effective Bill.

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<sup>25</sup> Welsh Government press release, ‘Wales’ commitment to sustainability is on the map after Rio conference’, 22 June 2012

**ANNEX 1**

**Friends of the Earth Cymru example clauses and structure for a draft Sustainable Development Bill**

**A**

**Sustainable Development Bill  
for Wales**

<b>Preamble/Recital/Long title</b>
<i>Recognising that sustainable development means achieving a way of life capable of being continued indefinitely by all of earth's people while respecting environmental limits and-</i>
<i>Sustaining and promoting the Welsh language, culture and heritage.</i>
<b>1 Duty to achieve sustainable development</b>
(1) Every public authority must exercise their functions so as to achieve sustainable development.  (2) The Welsh Ministers may publish guidance on how to comply with the duty in subsection (1).  (3) A public authority must have regard to any guidance published under subsection (2) when complying with the duty in subsection (1).
<b>2 Meaning of sustainable development</b>
(1) Sustainable development means meeting the economic, social, cultural and environmental needs of people and communities without compromising the ability of future generations to meet their own needs and includes the application of the following principles:  (a) living within environmental limits;  (b) using natural resources prudently;  (b) ensuring a strong, healthy and just society;  (c) achieving a sustainable economy;  (d) applying the preventative, precautionary and polluter pays principles;  (e) using sound science responsibly;  (f) promoting good governance;  (g) avoiding adverse international impacts;  (h) ensuring that the people of Wales use only their fair share of the world's resources;

(i) sustaining and promoting Welsh language and heritage.

**3 Sustainable Development Commissioner for Wales**

(1) The National Assembly for Wales shall appoint a Sustainable Development Commissioner for Wales.

(2) The Sustainable Development Commissioner for Wales may–

(a) provide and publish advice on matters relating to the implementation and enforcement of the Sustainable Development Duty;

(b) conduct research and inquiries into matters which the Commissioner considers relevant to sustainable development or the Sustainable Development Duty;

(c) make recommendations to public bodies, including Ministers and the National Assembly for Wales in respect of the discharge of their duties under this Act;

(3) Eligible persons may make complaints to the Commissioner in relation to any matter concerning discharge of the Sustainable Development Duty by public authorities.

(4) The Minister may make regulations concerning complaints which may be made to the Commissioner.

(5) The regulations may contain provision concerning (but not limited to)–

(a) persons who are eligible to make complaints;

(b) the time frame within which complaints must be made;

(c) the procedure which the Commissioner must follow when handling and determining complaints; and

(d) the sanctions which the Commissioner may impose following determination.

**4 Resource use – monitoring and review**

(1) The Commissioner must publish no later than 31 January each year a report setting out the use of resources in Wales during the relevant period.

(2) The reference to the use of resources in subsection (1) includes the use of resources in connection with goods and services imported into Wales during the relevant period.

(3) Each report must address use of the following resources –

(a) land;

(b) materials;

(c) water; and

(d) climate.

(4) The use of land shall be measured by reference to the total number of hectares.

(5) The use of materials shall be measured in tonnage, including sub-totals of the tonnage of biological and mineral materials used.

(6) The use of water shall be measured in litres.

(7) The use of the climate shall be measured in tonnes of CO2 equivalent.

## **5. Interpretation**

“public authority” means an authority that has functions of a public nature;

“public function” means a function, which is a function of a public nature for the purposes of the Human Rights Act 1998;

“relevant period” means the year ending on 31 December immediately preceding the date on which the report under section 4 is required to be published;

“sustainable development” has the meaning given in section 2;

“Sustainable Development Duty” means the duty set out in section 1(1).

## **ANNEX 2**

### **Rio Declaration 1992**

#### PREAMBLE

The United Nations Conference on Environment and Development,

Having met at Rio de Janeiro from 3 to 14 June 1992,

Reaffirming the Declaration of the United Nations Conference on the Human Environment,

adopted at Stockholm on 16 June 1972, and seeking to build upon it,

With the goal of establishing a new and equitable global partnership through the creation of new levels of co-operation among States, key sectors of societies and people,

Working towards international agreements which respect the interests of all and protect the integrity of the global environmental and developmental system,

Recognizing the integral and interdependent nature of the Earth, our home,

Proclaims that:

#### PRINCIPLE 1

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

#### PRINCIPLE 2

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

#### PRINCIPLE 3

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

#### PRINCIPLE 4

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

#### PRINCIPLE 5



All States and all people shall co-operate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

PRINCIPLE 6

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.

PRINCIPLE 7

States shall co-operate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

PRINCIPLE 8

To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.

PRINCIPLE 9

States should co-operate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.

PRINCIPLE 10

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

PRINCIPLE 11

States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

PRINCIPLE 12

States should co-operate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

PRINCIPLE 13

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also co-operate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

PRINCIPLE 14

States should effectively co-operate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

PRINCIPLE 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

PRINCIPLE 16

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

PRINCIPLE 17

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

PRINCIPLE 18

States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

PRINCIPLE 19

States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

PRINCIPLE 20

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

PRINCIPLE 21

The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

PRINCIPLE 22

Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices.

States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

PRINCIPLE 23

The environment and natural resources of people under oppression, domination and occupation shall be protected.

PRINCIPLE 24

Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and co-operate in its further development, as necessary.

PRINCIPLE 25

Peace, development and environmental protection are interdependent and indivisible.

PRINCIPLE 26

States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.

PRINCIPLE 27

States and people shall co-operate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.