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Welsh Government

Consultation Document

Proposals for a Sustainable Development Bill

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Ministerial Foreword



Our Programme for Government sets out how we will make a difference over the next five years for the people of Wales. Political programmes are short term by their very nature, but a long term approach is at the very heart of our programme. This legislation is how we intend to commit ourselves and other organisations delivering public services to this approach.

Our interpretation of sustainable development, as set out in our sustainable development scheme One Wales; One Planet, has a long term vision. We want communities that are safe, sustainable and attractive places to live and work, where people have access to services and enjoy good health. We want Wales to be a fair, just and bilingual nation, in which citizens of all ages and backgrounds are empowered to live their own lives, shape their communities and achieve their full potential. We want an innovative, successful, resilient and resource-efficient economy which supports the aspirations of our citizens. We recognise that our environment has an intrinsic value, is our life support system and is central to our quality of life, sense of place, health and wellbeing.

The imperative for sustainable development is being considered by heads of government at Rio later this year. We think that it is important that a small nation like Wales demonstrates leadership and commitment on sustainable development, as part of the global effort.

We are fortunate in Wales to have support from all parties for our existing sustainable development duty. We have made progress in Wales over the first ten years of devolved government, and the case studies in this document show us what is already possible, and are already making a difference for people now. This is a journey, and all organisations are at different points on the journey, dealing with their own particular set of challenges. Given the successes we can see now, we want all organisations to speed up the pace of change towards sustainable development, and to get excellent value from our finite resources, delivering on behalf of citizens.

This is why we are bringing forward legislation now, to commit government, at local and at national level, to this journey. We are proud to have the opportunity to be the administration which commits Welsh Government to this proposed duty.

I know that the proposals we set out in this consultation will help us build our vision for a sustainable Wales. We do not pretend to have succeeded everywhere, but we are making progress, and you will start to see the results throughout our delivery of our Programme for Government.

This consultation asks for the views of the people of Wales on our proposals. We are accountable to the people of Wales during our term of Government, and we ask that you in turn play your part in shaping what it is that we do. I look forward to hearing what you have to say on this central plank of our legislative programme.

A handwritten signature in dark ink, appearing to read 'John Griffiths', written in a cursive style.

John Griffiths AM

Minister for Environment and Sustainable Development

Executive Summary

Thinking Differently

The Welsh Government has set a different direction for Wales since it was established in 1999. This difference is becoming more visible as devolution develops and matures. Our Programme for Government makes it clear that sustainable development is that difference, and is the foundation on which we will build a strong future for the country. We see sustainable development as the principle that helps us define the best development path for Wales. Sustainable development can be summarised as the maximisation of wellbeing or quality of life in Wales over the longer term, within environmental limits. It is about how we promote sustainable economic growth and regeneration that serves our communities; how we ensure that everyone has a healthy life and fulfils their own potential; how we can achieve social justice and equality for all; how we build on our cultural legacy, including the Welsh language; as well as how we reduce our use of the earth's resources and promote healthy, functioning ecosystems and wildlife.

We are going through tough times, with decreasing public spending and global financial challenges alongside increasing need for the services which the public sector provides, and on which the most vulnerable in our society depend. We need to think and deliver differently if we are to meet these challenges, protect our communities, develop our economy and secure the future for our children.

Fit for the future

We need to think about the long term, and make sure that we design and build organisations, infrastructure and public services which will serve us for the long term, and are affordable to run and maintain. We need to identify and deal with the root causes of issues such as lack of education or skills, lack of health, disengagement from society – and not the symptoms. We need to deliver in ways which are thought through, joined up and offer what people need, with organisations working together with a focus on serving citizens. We need to make sure that we consider, integrate and balance the need for a strong economy, a strong Welsh culture and society, and a robust environment, which will together support the people of Wales for all the generations to come. This is how we will create a safe, strong and resilient future for Wales.

The heart of everything we do

The Welsh Government is committed to putting this approach at the heart of everything it does. We call this sustainable development – we currently use clear principles to take decisions which will deliver the outcomes we want to see. When faced with hard choices we choose the option that works best for the long term – such as investing in better early education and support for families now to prevent social hardship later; or helping Welsh citizens and businesses to use energy more efficiently to prepare for future price rises.

Organisations in all sectors in Wales are also taking this long term approach, and are starting to see the benefits it brings. We have been working with many of these

through our Sustainable Development Charter network, as we build our understanding and ability within Wales to make these changes. However, given the scale of the challenges which face us, and the need to get the best value we can from our limited resources, we need to encourage all our organisations which deliver public services to put sustainable development at the heart of everything they do and be prepared to actively learn from those who are already making progress.

Why another duty?

This is why we are proposing to bring forward proposals for a sustainable development duty on organisations delivering public services in Wales. The public sector has a major impact across Wales, as a community leader, as a service provider and as a regulator, setting the framework for local and regional development. We want organisations to think about the implications of their work on long-term wellbeing. We want them to take into account the social, economic and environmental impacts before making a decision, but we do not want to specify in legislation that any particular outcome should be the result. We want to see organisations embed this way of thinking, and to be transparent about how they make these decisions, so that we start now to build better places.

Not about ticking boxes or bureaucracy

We have considered a range of models for a duty. We are moving away from tick-box compliance, and we do not want to add unnecessarily to the burden of bureaucracy: indeed, it may be that there are obligations that could be removed in the light of the proposed sustainable development duty, and we are looking to the public sector to help us identify which these might be.

We are proposing a duty that:

- applies to higher level decisions adopted by organisations delivering public services to guide the way they work;
- ensures that those decisions have to be informed by key sustainable development factors;
- Requires organisations to report on how they have complied with the duty through their existing annual reporting.

We identify possible sustainable development factors¹ based on sustainable development behaviours (long term thinking, integration, working across organisational boundaries, a focus on prevention, and involvement) and other possible factors based on sustainable development objectives (which incorporate desired economic, social, environmental and health outcomes). Overall we think that ensuring high level decisions are consistent with a set of sustainable development factors will promote the sorts of sustainable development outcomes we want to see. We think that this will build on the principles set out in our sustainable development

¹ We explain this fully in section 6

scheme, One Wales: One Planet, and on the agreed UK framework principles for sustainable development².

Leadership and Culture Change

What we wish to see is a change of culture across organisations, and we know that this does not happen overnight, or without significant effort. There will be a need for both scrutiny and support, and again we propose to embed this where possible within existing structures. On scrutiny, there is a current consultation³ about the Auditor General for Wales, whose role could include a duty to undertake sustainable development examinations.

Supporting the change

We are also proposing to set up a new independent sustainable development body, as a source of expert advice and guidance (and possibly challenge) for organisations subject to the duty. The proposed new body could have a distinctive role in Wales:

- promoting a long term view, balancing the wellbeing of future generations alongside that of current generations;
- promoting an integrated view, balancing economic, social and environmental outcomes through the lens of sustainable development.

The proposed new body could also:

- report periodically on the wellbeing of Wales, and how current trends might impact on future generations;
- review our current key sustainable development indicators, or measures of progress, to advise Welsh Government ;
- review specific issues or themes related to the proposed sustainable development duty across organisations to which the duty applies as a whole;
- make recommendations to the Welsh Government and organisations delivering public services regarding removing barriers to promoting sustainable development;
- be a statutory consultee in relation to significant developments or policies.

This consultation asks for feedback on our proposed approach, before we formulate firm proposals for legislation. We are particularly interested in identifying the existing systems and duties which currently drive unsustainable decisions within organisations, and in any unintended consequences which may result from our

² One Future; Different Paths – the UK's shared framework for sustainable development, HM Government, Scottish Executive, Welsh Assembly Government, and Northern Ireland Office, 2005.

³ The draft Public Audit (Wales) Bill. Welsh Government consultation. This consultation closes on May 15 2012

proposals. We hope that wide and thoughtful involvement in this consultation will result in effective proposals for legislation, in turn creating better, stronger more resilient organisations delivering stronger, healthier, cleaner and safer communities.

Section 1: Purpose of consultation

Overall purpose

1. The consultation document sets out our proposals to develop and strengthen our approach to sustainable development in Wales. It relates specifically to the commitment in our Programme for Government to:

- Legislate to make sustainable development the central organising principle of the Welsh Government and public bodies in Wales.
- Create an independent sustainable development body for Wales.

Sustainable development as the central organising principle

Sustainable development as the central organising principle refers to the way that organisations should make decisions and implement policies and programmes. We think that organisations should use sustainable development thinking to inform their decisions, so that these decisions are considered through the “lens” of sustainable development.

2. This consultation will inform the development of detailed proposals that we will include in a White Paper consultation on the Sustainable Development Bill. We plan to launch this second consultation in autumn 2012.

3. Our Programme for Government is clear that we need to look to the longer-term in the decisions that we make now, to the lives of our children’s children as well as current generations. All our policies and programmes will reflect our commitment to sustainability and fairness so that we make sustainable development our central organising principle.

4. To advance our goals of building a sustainable Wales, our legislative programme⁴ contains a number of proposed Bills. Just as sustainable development lies at the heart of our Programme for Government, it also lies at the heart of this legislative programme.

5. This consultation document is about a key proposal within this programme: to strengthen the approach to sustainable development within Wales.

6. In this consultation document we are seeking your views on:

- our preferred approach to a sustainable development duty that applies to organisations delivering public services (section 6);
- our preferred approach to the role and functions of a new independent sustainable development body (section 7);

⁴ The legislative programme was announced by the First Minister in the National Assembly for Wales on 12 July 2011

- the barriers that are currently faced to taking more long-term, joined-up decisions, and what actions need to be taken to remove these barriers (section 3);
- other evidence that exists about progress in promoting sustainable development (section 4);
- opportunities for reviewing existing legal duties and simplifying the legal landscape, in light of the proposed Sustainable Development Bill (section 6);
- the merits of having a single definition of “sustainable development” that applies across the Welsh statute book (section 6).

7. We also let you know how you can get involved and have your say. We want to hear your views on our proposals. This is your chance to help to shape this commitment, and a better future for Wales.

Section 2: Background – sustainable development

Purpose

8. The purpose of this section is to set out the background to sustainable development, and to explain our understanding of sustainable development, and its relationship to wellbeing. We also set out our view of the key issues that we think should be used to promote sustainable development thinking.

9. The term sustainable development came to public attention following the publication of the United Nations Brundtland Commission's report, *Our Common Future*, in 1987⁵. This report defined sustainable development as *development that meets the needs of the present without compromising the ability of future generations to meet their own needs*.

10. The United Nations Conference on Environment and Development in Rio de Janeiro in 1992 was the first international attempt to develop a strategy for a more sustainable pattern of development across the world. This had far-reaching effects, and was the root of all current sustainable development activity. In June this year, governments across the world will meet in Rio for the Rio + 20 United Nations Conference on Sustainable Development. Wales has played a part for many years in these international discussions, and what we do in our proposals for legislation will have an impact on other small nations and states working for the same outcomes for their people.

Our definition of sustainable development

11. In our Scheme for sustainable development, One Wales: One Planet, we provide a clear definition of sustainable development.

Sustainable development in Wales

Sustainable development means enhancing the economic, social and environmental wellbeing of people and communities, achieving a better quality of life for our own and future generations in ways which:

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

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

⁵ Our Common Future. Report of the World Commission on Environment and Development. United Nations, 1987.

12. We have explained in the scheme how our approach is consistent with, and builds on, the 5 UK framework⁶ principles of sustainable development. Our approach regards sustainable development as the process of development that leads, over time, to a Wales that is economically, socially and environmentally sustainable. The outcome of this is to secure the long term economic, social and environmental wellbeing of people and communities .

13. The long term outcomes we are seeking to achieve are:

- **A sustainable economy:** a more prosperous, vibrant and innovative resource-efficient economy, resilient to global changes, through Wales building on its strengths and being an excellent place for business to locate, grow, and prosper.
- **A sustainable society:** safer, fairer, attractive and more cohesive communities, with lower levels of poverty, and greater equality of opportunity for all, where people can achieve their full potential, and where we are resilient to the impacts of climate change.
- **Sustaining the natural environment:** a resilient environment, with healthy, functioning ecosystems that are biologically diverse, and managed sustainably to provide food, wood, water, soil, habitats and recreational opportunities.
- **Sustainable resource use:** a low carbon, energy efficient, low waste society, using only our fair share of the earth's resources.
- **The wellbeing of Wales:** (which all of the outcomes above contribute to but which also includes:) healthy living and quality of life for all, a society with a vital sense of its own culture, its language and heritage, where cultural diversity, a sense of place, and distinctiveness is valued and celebrated.

Our approach to wellbeing

14. Following earlier research⁷ on wellbeing, we included a definition of wellbeing in our sustainable development scheme.

Wellbeing

We define wellbeing as a positive physical, social and mental state; it is not just the absence of pain, discomfort and incapacity. Wellbeing requires that basic needs are met, that individuals have a sense of purpose, that they feel able to achieve important personal goals and participate in society.

Wellbeing is enhanced by conditions that include supportive personal

⁶ One Future; Different Paths – the UK's shared framework for sustainable development, HM Government, Scottish Executive, Welsh Assembly Government, and Northern Ireland Office, 2005. The 5 UK principles are living within environmental limits; ensuring a strong, healthy and just society; achieving a sustainable economy; promoting good governance; and using sound science responsibly.

⁷ Wellbeing concepts and challenges. Discussion paper prepared by Fiona McAllister for the Sustainable Development Research Network, SDRN, December 2005

relationships, strong and inclusive communities, good health, financial and personal security, rewarding employment and a healthy and attractive environment.

Securing the economic, social and environmental wellbeing of people is the outcome from achieving a sustainable Wales.

15. We know that there are many different issues that influence our wellbeing. The report of the Stiglitz Commission⁸ identified the following influences, and recommended that they should be taken into account, in principle simultaneously, to promote wellbeing:

- Material living standards (income, consumption and wealth).
- Health.
- Education.
- Personal activities including work.
- Political voice and governance.
- Social connections and relationships.
- Environment (present and future conditions).
- Insecurity, of an economic as well as a physical nature.

16. Wellbeing is already a familiar goal in the public sector. Local authorities in Wales already have wide ranging powers⁹ to promote or improve the economic, social or environmental wellbeing of their area¹⁰. This power has been extended to community councils in Wales¹¹. The Welsh Ministers have wide powers to promote or improve the economic, social and environmental well-being of Wales under section 60 of the Government of Wales Act 2006.

17. The issues that influence our wellbeing change over our lives – what contributes to our wellbeing as a child differs from what contributes to our wellbeing when we are older. We already publish detailed information on the wellbeing of children and young people in Wales¹², and on the wellbeing of older people in Wales¹³.

18. We also report annually on the wellbeing of Wales as one of our 5 headline indicators of sustainable development. This reporting is based partly on our National

⁸ Report by the Commission on the measurement of economic performance and social progress, Joseph Stiglitz, Amartya Sena, and Jean-Paul Fitoussi, 2009

⁹ Under the Local Government Act 2000

¹⁰ provided that they are not restricted from doing so by other legislation.

¹¹ by the Local Government (Wales) Measure 2011

¹² Children and young people's wellbeing monitor for Wales 2011, Welsh Government. This is based on themes taken from our 7 core aims for children and young people, which are underpinned by the UN Convention on the Rights of the Child

¹³ Older people's wellbeing monitor for Wales 2009, Welsh Government. This is based on the nine indicators of change from our Strategy for Older People in Wales (2008-2013), and the 18 United Nations Principles for Older Persons

Survey for Wales in which wellbeing is a key theme, and we have included a wide range of questions covering satisfaction with specific aspects of life. Developments by the Office for National Statistics are increasing the availability of data on wellbeing throughout the UK, with detailed data being available for Wales. The results of such analysis will become available from summer 2012 onwards.

19. It is not just overall wellbeing that is important. The distribution of wellbeing within society is also critical to sustainable development, and this is reflected in our strong commitment to social justice and equality of opportunity as part of approach to sustainable development.

Promoting sustainable development thinking

20. We think that to promote sustainable development to achieve economic, social and environmental wellbeing, now and over the long term, requires organisations delivering public services to adopt sustainable development as their central organising principle. By this we mean that the way that sustainable development thinking informs all decisions. We set out below key issues that we think are relevant to “sustainable development thinking”. These issues reflect ways organisations can behave when they make decisions – they can be thought of **sustainable development behaviours**, as we refer to them as such later in section 6. We also provide a number of illustrative examples of what these issues mean in practice, across different sectors.

The Social Services (Wales) Bill

150,000 young, old and disabled people receive help each year from Wales’ Social Services. Many of these services are delivered in partnership between organisations from the housing, health and education sectors. The Welsh Government is intending to develop legislation that **maintains and enhances the wellbeing of people in need**. A duty to that effect will form part of the Bill.

Our key concern has been the need to make Social Services in Wales sustainable. Our strategy for this was set out in *Sustainable Social Services for Wales: A Framework for Action*. The central purpose for this Bill is to provide the legislative framework to enable us to deliver that strategy.

Providing appropriate services often requires intervention at an earlier stage and reflects a key principle of the Welsh Government’s approach to sustainable development. Part of the Social Services (Wales) Bill will encourage the promotion of preventative strategies and access to support that will result in better outcomes for people; which we hope will save on more costly interventions at a later stage.

The legislation aims to give individuals a stronger voice and real control of the services they use, enabling them to understand how care and support can help them. It will also place a duty on social services and the NHS to collaborate in how they deliver integrated services.

Long term thinking

21. The imperative to consider the needs of future generations was recognised by the Brundtland Commission: *“future generations do not vote, they have no political or financial power, they cannot challenge our decisions. But the results of the present profligacy are rapidly closing the options for future generations”*.

22. There are many reasons why the long-term impacts (positive and negative) on the wellbeing of future generations are not considered as often as they should be in current decisions. There are many difficulties in doing this – uncertainty and lack of knowledge about the future; short term financial or political cycles; the need to deliver against current targets or outcomes. In formal economic appraisal, the process of discounting future costs and benefits may reduce the weight attached to the wellbeing of future generations¹⁴.

23. We think that the economic, social and environmental wellbeing of future generations is important enough to warrant consideration by organisations delivering public services when reaching decisions that have the most influence over well-being. This could include taking account of long term costs and benefits of decisions.

24. To help promote long term thinking we have published¹⁵ our analysis of how long term trends might affect the future of Wales.

25. There are benefits to organisations from thinking long term. Actively considering the implications of current decisions on long-term wellbeing can allow decisions to be future-proofed – helping to meet the needs of current and future generations where possible. Long term thinking can help identify, and mitigate or reduce, long term unintended costs, and so in the long term generate efficiency savings. Thinking long term can also promote innovation and new thinking in the design, development and delivery of public services. And these benefits can safeguard and enhance the reputation of organisations delivering public services.

Futures and Foresighting

The Welsh Local Government Association, through the Sustainable Development Framework has been encouraging local authorities and Local Service Boards to develop techniques and approaches to **long term thinking for their strategies and partnerships**.

Using Future Scenarios considering energy and food security, climate adaptation, low carbon and economic and demographic change, senior officers, members and LSB partners have been encouraged to explore policy and governance interventions to increase resilience in their communities. This has been useful in raising awareness of key trends, but also contextualising sometimes 'abstract' long

¹⁴ HM Treasury guidance recommends a discount rate of 3.5% for costs and benefits over the first 30 years of a project, based on social time preference, with reduced discount rates for longer term costs and benefits. HM Treasury. The Green Book – Appraisal and evaluation in central government. HM Treasury, 2003

¹⁵ Understanding Wales' Future – a resource to help us think systematically about the future of Wales. Welsh Government, 2011

term issues and what *sustainable* development means in the locality.

City and County of Swansea are currently using these techniques to explore approaches to long term planning in Financial Services, Adult Services, the Single Integrated Plan and approaches to economic regeneration.

These techniques are helping authorities to consider long term thinking while acknowledging the limitations of our existing short term political and financial cycles. Used well, they should provide the 'business case' for changing current unsustainable approaches.

<http://www.wlga.gov.uk/english/futures-masterclass-resources/>

Integration

26. To promote long term wellbeing, we cannot focus solely on only one or two of the issues that influence wellbeing that are listed above. Nor can we seek to achieve one of these deliberately at the cost of another. The issues that influence wellbeing (and the relationships between them) have to be considered together in an integrated way.

27. We think that organisations should identify and integrate the various economic, social and environmental outcomes into decision making, and where there are trade-offs, manage these through a focus on sustainable development.

Porth Teigr

Porth Teigr, a joint venture between Igloo (an Aviva Investors fund) and the Welsh Government, is a 38 acre 2.2 million ft² mixed-use, sustainable development project in Cardiff Bay, **integrating the economy, society and the environment**, and one of the most significant waterside regeneration projects in Europe. The development will complete the final piece in the Cardiff Bay Inner Harbour jigsaw by transforming the last piece of brownfield land in the area into a 21st century environment.

Porth Teigr's centrepiece is BBC Roath Lock studios, the home of flagship BBC shows including Doctor Who, Casualty, Pobol y Cwm and Upstairs Downstairs. Roath Lock has achieved the highest possible environmental and sustainability rating – BREEAM Outstanding – and is the first industrial building in the UK to obtain this prestigious certificate. Future phases will see the development of the Welsh Government's new 40,000 sq ft Centre for Creative Industries at Porth Teigr. All are helping to shape Porth Teigr into a creative 'hub' for the region, providing employment and opportunities for high-growth businesses. When the project is fully complete around 8,000 people will be employed.

Working across organisational boundaries

28. We think that the major economic, social and environmental challenges that we face cut across organisational and administrative boundaries. A recent paper from the University of Cambridge Programme for Sustainability¹⁶ supports this. Promoting economic, social and environmental wellbeing requires us to take a “whole system” approach to tackling issues. We need to ensure that our economy, society and environment are resilient to future change, to contribute to long term wellbeing.

29. Decision-makers therefore need to be aware of the ways in which their decisions could contribute to, or detract from, the long term health of the economy, society or the environment, including impacts on specific groups or areas. A decision in one part of the public sector could result in unintended harm, and therefore additional cost in another. In particular, failure within one part of the public sector could result in many costs and consequences for other parts of the public sector. Preventing this needs joined up decision making across organisational boundaries and services designed and delivered with a focus on the citizen.

30. We think that organisations should take a whole system approach to decisions. This might involve identifying the impacts, costs and benefits of a decision that may fall elsewhere within the public sector, and managing these in partnership.

31. Joining up public service delivery in this way is reflected through our approach to Local Service Boards, where the leaders of local public and third sector organisations work together to ensure public services are effective and citizen focused. We have consulted on new statutory guidance¹⁷ which is intended to integrate local service planning, streamline partnership working, and strengthen the strategic role and accountability of the local service board. This is a strong reflection of our commitment to promote sustainable development as our central organising principle within public service delivery.

A co-designed future: The Third Sector role in Health and Social Care in Hywel Dda

Services provided by the third sector have always been crucial in supporting patients and their carers but have often lacked recognition. Hywel Dda Health Board, the Community Health Council, and the Local Authorities and Associations of Voluntary Councils in Carmarthenshire, Ceredigion and Pembrokeshire have used whole system thinking to co-design the role the third sector plays in each patient pathway. They are:

- **Strengthening partnership working** between the third sector, hospitals and GPs, improving service planning, delivery and resourcing;

¹⁶ Regulation and the edge. Regulation for resilience – a regulatory revolution for sustainability. Terry A’Hearn, University of Cambridge Programme for Sustainability, 2011

¹⁷ Shared purpose, shared delivery – Welsh Government consultation document, January 2012

- **Encouraging volunteering**, by increasing volunteering opportunities and training, and developing a sustainable code of practice
- **Providing support for unpaid carers;**
- **Supporting the development of social enterprises** in health and social care.

Benefits will include reduced hospital admissions and improved discharge planning. The ethos is to support community resilience in particular recognising and supporting the role of unpaid carers and volunteers. This approach focuses on prevention and early intervention rather than waiting until people become ill or need high level services.

Focusing on prevention

32. Another important principle is tackling problems at source, rather than tackling the consequences of these problems at a later date. This principle has wide application across a whole range of economic, social, health and environmental issues, and across the entire reach of the devolved public sector in Wales.

33. It is an approach which has the potential to generate long term cost savings. For example, a 2009 report from the Audit Commission¹⁸ in England suggested that *"a young person who starts showing behavioural problems at age five, and is dealt with through the criminal justice system will cost the taxpayer around £207,000 by the age of 16. Alternative interventions to support changes in behaviour would cost about £47,000"*.

34. We therefore think that organisations should focus more on preventing problems occurring, through identifying critical early interventions, which could generate long term cost savings and efficiencies in the future.

A public health approach to reducing violence in Scotland:

Scotland's Violence Reduction Unit adopted in 2005 a public health approach to tackle high rates of violent crime, and worked with health and education partners, and with community groups. They intervened to prevent violence rather than deal with its consequences. This included:

- **Developing systemic evidence** on causes of violence, and on the scale of injuries recorded by the health service;
- **Early interventions in schools:** Campus police officers and "Medics against violence" provided anti-bullying and conflict resolution resources, and talked about the outcomes of violence. "Parentline" offered support to parents;
- **Community Safety Partnerships:** police, health, education and other

¹⁸ Tired of hanging around. Using sport and leisure activities to prevent anti-social behaviour by young people, Audit Commission, 2009.

services provided community mediation, activities for young people, and improved transport out of the city at night time;

- **Community and police worked with gang members**, inviting them to hear from bereaved parents, victims, and A&E consultants, and offered help to turn their lives around.

In 2010 Scotland recorded its lowest level of violent crime since 1986.

Engagement and involvement

35. Giving people likely to be affected by decisions the opportunity to have their say is a fundamental principle of sustainable development, as this contributes to better outcomes and to public support for these outcomes. There are already excellent demonstrations of this approach being applied throughout Wales.

Making a Fire Station work for the community

In 2007 North Wales Fire and Rescue Service (NWFRS) transformed an underused building into their first community fire station, with up-to-date fire and rescue facilities, improved fire safety education, and a well-used community venue.

NWFRS asked the community what they wanted, and researched the best way to use the fire station to promote fire safety amongst elderly people and vulnerable groups

The new facilities include meeting rooms and computers for community use. They have 14,000 visitors per year, and are used by 200 groups such as a cardiac rehabilitation unit, Relate, Coleg Harlech, and playgroups. Some groups use the facilities free of charge in return for home Fire Safety Check referrals and an input from NWFRS from a community fire safety perspective.

This engagement and involvement approach has made NWFRS more accessible to the public, putting them in touch with hard-to-reach groups in a comfortable and informal environment. All this resulting in more home safety checks and greater community safety awareness.

Summary

36. Each of these sustainable development behaviours above needs to actively inform decision making in a way that is underpinned by evidence. Using evidence linked to each of these behaviours will provide clarity about the choices faced, and will help align decisions to sustainable development in a consistent way.

37. We would wish all organisations to take decisions that are informed by their full costs and benefits, where this includes costs and benefits over the long term,

opportunity costs¹⁹, and costs and benefits across organisational and administrative boundaries, where appropriate. We want decisions to be reached by considering the impacts on the economic, social and environmental wellbeing on different sections of society and within different geographic areas, including the impacts on the wellbeing of future generations.

38. We acknowledge that this is a difficult and long term challenge. Ensuring that sustainable development thinking informs all decisions within an organisation is a journey and not an event. We think that our proposals for a sustainable development bill will represent a significant step on this journey.

¹⁹ Opportunity cost is the value of the next best alternative. It is not restricted to monetary or financial costs.

Section 3: Our approach to promoting sustainable development

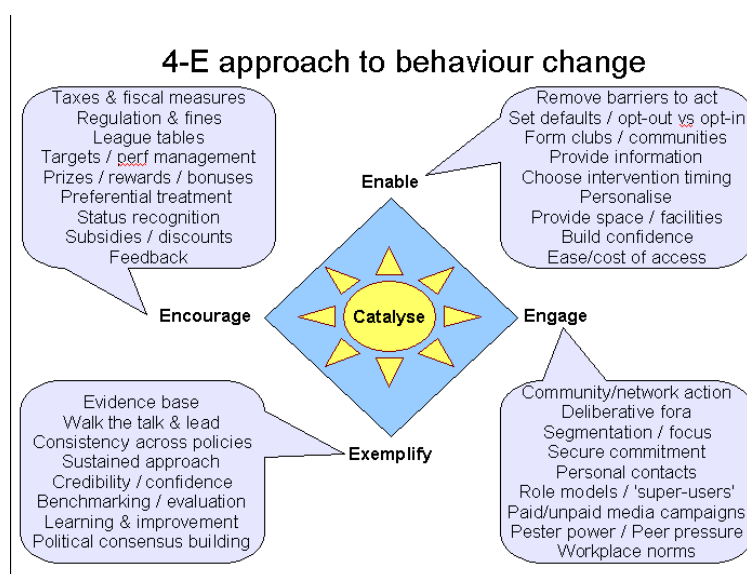
Purpose

39. This section sets our approach to how we currently promote sustainable development. It provides broad context for considering our legislative proposals which are set out in section 6, and for our proposals on the sustainable development body which are set out in section 7.

How we promote sustainable development

40. The transition to a culture where all decisions are made for the best long term outcomes, by organisations which set policy and delivery in a joined- up way, and which take account of the needs of future generations, will need a significant shift in attitudes, behaviours and capabilities.

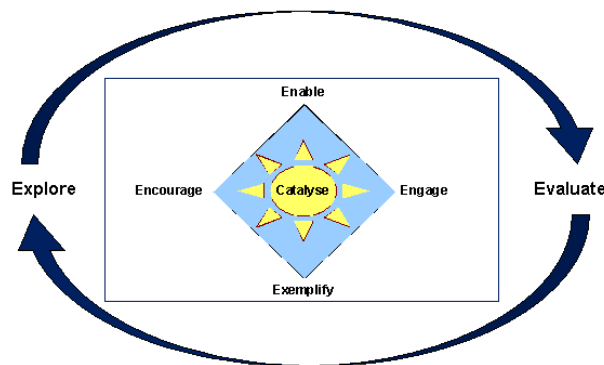
41. The Welsh Government has adopted an effective model for creating an approach to drive this sort of long term change, called the “Four E’s” approach²⁰. This is simply a way of working through the influences which need to act together in order to catalyse change.



42. In order to truly embed this approach, however, it is worth using the “Four plus 2 Es” approach, which adds exploring and evaluating, and means that an initial approach can be developed and adjusted as the situation changes.

²⁰ A framework for pro-environmental behaviours, Defra 2008. We refer to the 4E’s approach in our guidance and advice to support the Sustainable Development Charter

4+2 Es approach to behaviour change



43. We need to continue to explore the current situation, identifying existing and possible future means of encouraging, engaging, enabling and exemplifying more sustainable behaviours, and put these together in a coherent programme of action. This is what we propose to do over the period of development of legislation.

44. We are particularly interested in identifying the key drivers of current unsustainable practices, and we welcome input which identifies these, as part of our exploration. Only if we identify the current influences and their causes correctly, can we hope for a successful programme of action.

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

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

45. There are a number of programmes which we already have under way to support this change and they are set out below under the 4 Es headings.

Encourage	Enable
Sustainable development scheme Sustainable development Annual Report	Sustainable development framework for local government Sustainability research Sustainable development component of business support
Exemplify	Engage
Programme for Government Sustainable development scheme Policy input from the Commissioner for Sustainable Futures	Commissioner for Sustainable Futures Sustainable Development Charter Wales Sustainability Week Cynnal Cymru Sustainable Development Advocates Eco Schools programme

46. The organisations which have signed our Sustainable Development Charter form a network from across the public, private and third sectors of Wales who have voluntarily committed to make sustainable development central to all that they do. BT is a member of the network and have highlighted the benefits a sustainable development approach can give through the following case study.

ICT is a mode of transport

In BT, Information and Communications Technology (ICT) is a mode of transport. They think about using ICT whenever and wherever possible and are planning for ICT to become the first choice in the future not the last alternative to other forms of transport.

At the end of financial year 2011 BT's 9,400 (12.3%) UK home based workers were each estimated to have avoided, on average, 1.4 tonnes of CO₂e emissions per annum as a result of reduced commute travel emissions (primarily) and reduced office energy use (and accounting for some increase in home energy use). In addition, around 69,000 BT people are equipped to work flexibly and therefore select the most appropriate place to conduct their work, based on business requirements.

It also makes it easier for people with disabilities and/or caring responsibilities to work. Their flexible working policies contribute to their achievement of 99% of new mothers returning to work after maternity leave.

By offering flexible working options BT hopes to attract and retain the best talent. When bad weather such as snow and ice threatens to disrupt their operations, flexible working enables employees to continue to work from remote locations, where available.

47. Our approach to creating change also employs the principles of sustainable development: we want to engage and enable people to act as appropriate in their circumstances, as we believe this is the best way to ensure a long term commitment, without a burden of administration and enforcement. Our approach so far has been enabling rather than encouraging through tax or regulation. This consultation focuses principally on one specific element, the proposed legislation, which is intended to strongly encourage public sector use of a sustainable development approach, yet remain enabling rather than burdensome.

48. This consultation is not on our engagement approach, and so the majority of the supporting framework is therefore out of scope for this consultation. However, it does become relevant when considering the nature of the proposed duty and the role of a body in this process, and sections 6 and 7 cover these in more detail. More information on all our work can be found on the Welsh Government website²¹.

²¹ For more information, see <http://wales.gov.uk/topics/sustainabledevelopment/?lang=en>

Section 4: Learning from our approach to sustainable development

Purpose

49. The purpose of this section is to briefly consider how our own approach to sustainable development has matured, and what we have learnt from this. We also look at the evidence provided by our sustainable development indicators.

Sustainable Development duty on National Assembly for Wales/Welsh Ministers

50. The National Assembly for Wales under section 121 of the Government of Wales Act 1998 and then Welsh Ministers under section 79 of the Government of Wales Act 2006 have had a duty requiring them to make a scheme setting out how they propose, in the exercise of their functions, to promote sustainable development.

51. In summary, the schemes and the evaluations we have undertaken indicate that we have put a great deal of the processes in place to embed sustainable development, but that, in some areas of the organisation, it is still seen as one of a competing number of priorities rather than the central priority by which decisions are made. Reviews have highlighted that sustainable development should not be seen as an event, but as a journey.

Learning from our approach to sustainable development

Our first two sustainable development schemes were accompanied by action plans. A statutory review²² of the effectiveness of this approach concluded it led to sustainable development in the Welsh Government being undertaken in 'innovative silos'. A separate Wales Audit Office review²³, examining how we had embedded sustainable development into our business decision-making, stated that sustainable development was seen as one of a number of competing priorities rather than the means by which competing priorities were managed. Our current scheme for sustainable development reflected these lessons, and confirmed that sustainable development is our central organising principle. A 2011 review of our sustainable development scheme stated that, a number of high profile policies and programmes had demonstrated effective cross departmental working, and that where this had happened it had resulted in different, better policy outcomes, demonstrating that having a sustainable development focus added value²⁴.

²² The sustainable development effectiveness report for the Welsh Assembly Government, Netherwood Sustainable Futures, March 2008

²³ Sustainable development and business decision making in the Welsh Assembly Government, Wales Audit Office, January 2010

²⁴ For example, the independent statutory effectiveness review of our sustainable development scheme cited *Arbed*, (our strategic energy performance investment programme), our *Economic Renewal Programme*, our *Child Poverty Strategy*, *Our Healthy Future* (setting out our ambitions for public health) and our *Climate Change Strategy*. Effectiveness Review of the sustainable development scheme, report to Welsh Government by PwC, December 2011.

Other sustainable development duties

52. Some organisations in the public sector are already subject to certain legislation relating to sustainable development. For example Local authorities, fire and rescue authorities and National Park authorities in Wales must set themselves continuous improvement objectives which should include objectives designed to contribute towards the achievement of sustainable development. Local planning authorities are also required by legislation to prepare a Local Development Plan with the objective of contributing to the achievement of sustainable development.

53. Under the Environment Act 1994, the principal aim of the Environment Agency is to protect or enhance the environment, taken as a whole, so as to make the contribution towards attaining the objective of achieving sustainable development. It must comply in Wales with statutory guidance issued by the Welsh Ministers which sets out the principles it must follow in deciding its priorities.

54. A 2006 review²⁵ indicates that a duty can provide: symbolic importance and legitimacy to sustainable development; raising the profile and awareness of sustainable development; formalising an organisation's contribution to sustainable development; as a driver for more rapid progress; promoting the consideration of more sustainable solutions; and as a driver for partnership working.

55. However, a duty is not sufficient by itself to ensure progress in mainstreaming sustainable development. The single most important factor in driving organisational approaches to sustainable development was considered to be management leadership. Other important issues included the mechanisms in place to scrutinise delivery of the duty; external stakeholder pressure; and the presence of (statutory or non-statutory) guidance on interpretation and implementation.

Sustainable Development Indicators

56. Since One Wales; One Planet was published we have published three annual reports, setting out how the proposals in the scheme have been implemented. We have reported progress against our sustainable development indicators since 2002, and recent trends²⁶ in the overall progress of these indicators are shown in the table below. The indicators cover a wide range of economic, social and environmental trends, and include our 5 headline indicators of sustainable development.²⁷

²⁵ Review of statutory sustainable development duties, Serena Cussons, report for Defra, 2006.

²⁶ Sustainable Development Indicators, Welsh Government 2008 (SDR 126/2008), 2009 (SDR 129/2009), 2010 (SDR 127/2010), 2011 (SDR 147/2011). The table is intended to convey the broad picture. Not all indicators have the same base year from which change is measured. There may be small differences in the indicators reported on year on year.

²⁷ Our 5 headline indicators of sustainable development cover economic progress, social progress, environmental progress, progress in reducing our use of resources, and the wellbeing of Wales. We emphasise that the headline indicators should be viewed collectively to give a high level view of our progress towards becoming a sustainable nation.

	2008	2009	2010	2011
Indicators showing a clear improvement	15 (38%)	18 (44%)	17 (39%)	19 (43%)
Indicators showing little or no change	12 (31%)	14 (34%)	22 (50%)	18 (41%)
Indicators showing clear deterioration	6 (15%)	5 (12%)	1 (2%)	4 (9%)
Indicators with insufficient or no comparable data	6 (15%)	4 (10%)	4 (9%)	3 (7%)
Total indicators	39 (100%)	41 (100%)	44 (100%)	44 (100%)

57. Overall the pattern is one of a slight upward trend in the number of indicators showing a clear improvement; and a slow increase in the number of indicators showing little or no change.

58. Conversely, there has been a slow decrease in the number of indicators with insufficient or no comparable data; and a low but fluctuating number of indicators which are deteriorating. In some cases, indicators will have been seen as deteriorating one year, and stable or improving the next (and vice versa).

59. For some indicators (such as breeding bird populations), and for a variety of reasons, it is difficult to be clear about the link between Welsh Government policies and programmes and the change in specific indicators. In other cases (such as proportion of household waste recycled or composted), it is easier to be clear about the impact of our policies and programmes on an indicator.

Summary

60. This chapter has looked at our developing approach to sustainable development. We have learnt that the process of embedding sustainable development as the central organising principle should be viewed as a journey and not an event. As part of this journey, we have moved away from action plans, and of regarding sustainable development as one of a number of competing priorities, and of working in innovative silos. We have learnt that we need to have sustainable development as our central organising principle.

61. We have learnt that we need to be clearer around the interpretation of sustainable development as our central organising principle, and how it applies to different policy areas. But, critically, we think that our latest effectiveness review shows that having sustainable development as the central organising principle results in different, better policy outcomes.

62. We have seen that only around 40% of our sustainable development indicators show a clear improvement. We think that we need to make faster progress here so that a greater number of our indicators are improving.

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

Section 5: The case for strengthening our approach

63. We have seen in the previous section that there is evidence that having sustainable development as the central organising principle results in different, better policy outcomes.

64. The approaches to date have been a combination of voluntary approaches (described in section 3) and statutory drivers. There are examples of excellence in promoting sustainable development from across the public sector in Wales.

65. We have used legislation to strengthen our approach to some key components of sustainable development – equalities and the Welsh language. We are also currently consulting²⁸ on proposals to strengthen the role of sustainable development within the planning system, by introducing a clear statement on the presumption in favour of sustainable development, within Planning Policy Wales.

66. However, we believe that there still remains an inconsistency of approach. We think that, to promote the sort of long term change we desire, greater consistency from across the public sector is required.

67. We have used the table provided in chapter 3 to identify gaps in the approach to sustainable development, based on the 4E's model.

Encourage	Enable
New sustainable development duty on certain organisations Possible role of Auditor General for Wales providing scrutiny for sustainable development	Support to build capacity in embedding a sustainable development approach within organisations Setting standards and researching good/excellent practice Convening cross sector groups
Exemplify	Engage
New sustainable development duty applied to Welsh Government	Getting high level understanding and support for sustainable development Raising public and organisational awareness of sustainable development

68. We believe that in order to achieve a greater consistency of approach, we need to strengthen our approach to sustainable development. We believe that we require greater effort from organisations delivering public services.

69. We consider that this will require an element of compulsion within our suite of encouragement measures. We believe that a statutory duty that applies within organisations delivering public services will promote greater consistency; could introduce a level of public accountability on sustainable development that cannot currently be achieved; and will provide the coherent focus for sustainable development that is needed to accelerate the pace of change.

²⁸ Planning for sustainability. The presumption in favour of sustainable development. Welsh Government consultation March 2012. This consultation ends on 25 May 2012

70. We want to do this in two ways.

- Firstly, we want to ensure that sustainable development as the central organising principle is placed on a statutory footing for ourselves and within organisations delivering public services in Wales. We believe that requiring these organisations to act consistently with sustainable development principles is the best way to achieve this. We set out in section 6 our preferred approach to this.
- Secondly, we want to resource the engage and enable functions more effectively within Wales, as people cannot comply with a duty if they lack a common understanding of its purpose, and do not know how to do this well. This is why we propose to establish an independent sustainable development body for Wales. We believe that creating a new sustainable development body for Wales that can reflect Welsh interests and needs, can play a key role as we accelerate the pace of change towards sustainability. We set out in section 7 our preferred approach concerning the role that such a new body could have.

Section 6 A new sustainable development duty

71. The policy objective for proposing a statutory duty is to compel organisations delivering public services to act consistently with sustainable development as the central organising principle.

Methodology.

72. We have:

- consulted informally early in the process to inform our work below;
- referenced the key sustainable development outcomes that we refer to in our sustainable development scheme, to provide context²⁹;
- identified a range of issues to promote sustainable development thinking, linked, firstly, to *behaviours* (these are described in section 2) and secondly, to *objectives* (which reflect the long-term outcomes we describe in section 2). These are different approaches to making sustainable development the central organising principle. In this section, we refer to these different issues as sustainable development factors;
- looked at the behaviours we would expect organisations to exhibit if everything organisations delivering public services collectively did were influenced by sustainable development thinking;
- identified a variety of approaches capable of ensuring that organisations delivering public services exhibit these essential behaviours or objectives, and we assessed these approaches against a set of factors we considered critical to producing sound policy options for the Bill.

73. We are not attracted to a legislative approach consisting solely of a high level duty, such as a general duty to *have regard* to sustainable development. We do not think that this kind of broad approach would produce the sort of tangible change we want to see in the short to medium term.

74. We want to ensure that the organisations can be held to account for their performance, but we wish to avoid a system that places unreasonable expectations on decision makers. We want an approach that fosters consistency within and between organisations, but one that does not stifle innovation or discourage healthy risk taking.

75. For the same reason we are not attracted to a legislative approach that compels every decision at every level to be made in accordance with sustainable development principles. To subject organisations to this kind of burden could have significant resource implications that we do not at present think are justified, relative to the alternative we propose below.

²⁹ The sustainable development outcomes are included in our sustainable development scheme, One Wales: One Planet

76. We think that to accelerate the pace of change to a level that is sufficient to bring about tangible change sooner rather than later, we need to target a duty on those decisions that have the greatest influence over organisational behaviour.

77. Our assessment led us to identify an approach which we think captures the right level of decision making at which an obligation should apply, and at the same time leaves a sensible amount of discretion in the hands of individual bodies to determine how they will, in fact, comply.

Our preferred approach

78. Our preferred approach to a statutory duty is to:

- focus on the higher level decisions that have the greatest influence over organisational behaviour;
- require those decisions to be informed in some way by sustainable development factors;
- allow organisations the discretion and flexibility needed to respond positively to the duty, in a way that meets the needs of people and communities they serve;
- ensure that organisations are transparent and open about how these decisions have been informed by sustainable development factors.

Sustainable development factors

To promote sustainable development as the central organising principle, we think that organisations delivering public services should be required to ensure that their high level decisions are informed by sustainable development thinking. We have identified different issues that we think are relevant to sustainable development thinking and we have called these issues **sustainable development factors**. We have identified sustainable development factors based on behaviours; and sustainable development factors based on objectives.

We identify below different options to consider how sustainable development factors might be used to inform high level decisions:

- Using factors reflecting sustainable development behaviours; or
- Using factors reflecting sustainable development objectives; or
- Using a combination of sustainable development behaviours and objectives; or
- Using a single sustainable development proposition.

79. We have not yet settled on a preferred option for the most suitable way to capture “sustainable development factors”; nor have we settled on a preferred option for how far higher level decisions should have to be informed by sustainable development factors. We welcome your views on both questions. We have identified

a number of options which would be consistent with our preferred approach and these are considered at paragraphs 81 to 100 below. Firstly, we look at the higher level decisions that we think the duty should apply to.

Higher level decisions

80. When we talk about higher level decisions we mean decisions that are adopted by an organisation with the intent that they should influence the way an organisation delivers services, allocates resources, procures services, provides financial assistance and manages its estate. In many organisations these kinds of decisions will be set out in plans, policies or programmes that are formally adopted by the organisation's board or members; in other organisations they may not. In essence, these high level decisions encapsulate the choices that organisations make about how they will deliver their services and use public money in cases where they have discretion about how to do so.

81. We acknowledge that there are a great many higher level decisions at play within organisations and we are keen to apply the duty only to those that have a key role in influencing decision-making behaviour. At present we consider these to include:

- **longer term strategies** adopted to guide an organisation's behaviour for a period of more than one year³⁰;
- **annual plans** – such as annual operational plans³¹;
- **general or subject-specific policies** that govern how an organisation is to deliver its services or use public money³² or which govern others to deliver services on its behalf.

82. The extent to which an organisation has discretion to decide its own approach to delivering services and spending public money will be limited in some way by existing legal constraints. Where these constraints derive from European, International or human rights law there may be less scope for a domestically imposed sustainable development duty to make inroads into the way these higher level decisions are reached; procurement is a good example.

83. Under European law public authorities must invite tenders for the award of certain contracts. If an organisation is in future subject to a duty to take sustainable development factors into account in deciding how it will approach procurement generally, that sustainable development duty could not entitle the organisation to disregard its EU duty to invite tenders for the relevant types of contracts.

³⁰ For example, Public Health Wales launched its 5 year strategy in 2010, setting out its ambition, purpose, values and strategic objectives. The Higher Education Funding Council for Wales has a 3 year corporate strategy, which sets out our vision and targets for higher education in Wales by the year 2013.

³¹ For example, the Arts Council of Wales has published its operational plan 2011-12, translating the vision they describe in their 2008-12 corporate plan into practical activity for that year.

³² For example, Bangor University has adopted a procurement strategy to cover the period 2009-2014.

84. On the other hand, where existing legal constraints derive solely from domestic policy, an Act of the Assembly could in principle be used to remove those constraints.

85. In general, the higher level decisions we mention above are those most likely to embody an organisation's vision, values, and ways of working. They will include policies whose production and agreement involve chief executives, leaders, directors and members. Leadership has a key role to play in promoting sustainable development within organisations and a duty applying to policies at this level will require leaders to focus their attention on sustainable development as the central organising principle.

86. Requiring the most influential decisions within an organisation to be informed in some way by sustainable development factors should logically ensure that all decisions influenced by those higher level decisions are consistent with sustainable development factors. In this way, the benefits of applying the duty to individual decisions can be enjoyed without the burdens that that approach would bring.

87. There are some higher level decisions that organisations make which require an independence of mind that could be disturbed by a requirement to comply with the sustainable development duty. At present we think that these decisions would include clinical judgements, academic freedoms and possibly those concerned with the role of advocate played by the Children's and Older People's Commissioners for Wales or the Public Services Ombudsman for Wales. There may be others.

88. We also need to consider high level budgets for organisations. We mention above that higher level decisions would include those concerned with allocating resources. This would in principle include financial resources allocated to particular service areas. The process of producing budget proposals is quite often prescribed by existing legal duties and sometimes detailed guidance. Those responsible for proposing and adopting such plans may be accountable to electors, a board, other statutory bodies, Welsh Ministers or the Assembly. These plans will have a key influence on how an organisation responds to sustainable development challenges. We need to explore further the relationship between the proposed duty, and an organisation's high level budget proposals.

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

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

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

Q.7 Should we include decisions which govern an organisation's internal operations³³? If so, which internal operations should we include?

³³ For example, estate management

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

Sustainable development factors

89. Determining which aspects of sustainable development are the most appropriate to designate as “sustainable development factors” is critical to the success of our preferred approach. Requiring all higher level decisions to be informed by factors which are not themselves squarely at the core of sustainable development risks leading the public sector in the wrong direction. There are a number of ways we could approach this.

Factors reflecting sustainable development behaviour

90. When we looked at the way we would expect organisations delivering public services to do business if everything they did were collectively influenced by sustainable development thinking we identified the following behaviours as key:

- **Long-term thinking**; ensuring a greater emphasis on long-term outcomes, basing decisions on cost-effectiveness over the longer-term
- **Integration**: decision making is supported by evidence of the wider and longer-term economic, social and environmental impacts that those decisions are likely to produce;
- **Working across organisational boundaries**; taking a wider view, working in partnership across organisational boundaries;
- **Focusing on prevention**; identifying critical early interventions, which generate long term cost savings and efficiencies in the future;
- **Engagement and involvement**: involving stakeholders who will be affected by decisions;

91. This is the kind of behaviour we want to encourage. One way to go about this in the context of our preferred approach would be to designate these key behaviours as the sustainable development factors that should influence higher level decisions in organisations. We think that application of these behaviours would promote sustainable development in a way that is consistent with the 5 UK framework principles of sustainable development³⁴, and the principles we set out in our sustainable development scheme³⁵.

Factors reflecting sustainable development objectives

92. We could take a different approach, designating the objectives that are at the heart of sustainable development as the “sustainable development factors” that must

³⁴ The 5 UK principles are living within environmental limits; ensuring a strong, healthy and just society; achieving a sustainable economy; promoting good governance; and using sound science responsibly.

³⁵ The principles referred to in One Wales; One Planet are: involvement; integration; reducing our footprint; full costs and benefits; precautionary principle; polluter pays; proximity principle; and reflecting distinctiveness.

inform higher level decisions. From the long-term sustainable development outcomes that we identify in section 2, we think that at their most basic, these include the following; there may be more, or it may be possible to subsume some within others:

- the wellbeing of people and communities should be enhanced;
- social justice and equality for all should be promoted;
- the vibrancy of the economy should be promoted;
- environmental limits should be respected;
- healthy, functioning ecosystems should be promoted;
- cultural legacy should be strengthened;
- healthy living should be enabled;
- the interests of future generations' should be recognised;
- people should be involved in the decisions that affect their lives.

93. If we went in this direction we might want to provide examples of when each of the factors above is met. So, for example, we might want to go on to say something about the meaning of “wellbeing”, or give examples of when people's wellbeing is enhanced or when social justice is promoted and so forth. We would also wish to ensure an integrated approach to promoting these issues, when considered across all of an organisation's plans and policies as a whole. We would not wish an organisation to focus solely on one or two issues, or to change the focus between issues year to year.

A combined approach: sustainable development behaviours and objectives

94. We could combine the behaviours and objectives approach so that:

- the behaviours are designated as the sustainable development factors that must inform higher level decisions and;
- at the same time require those decisions to pay particular attention, in some way, to the sustainable development objectives.

95. If we adopted this approach one possibility might be to require higher level decisions to be developed in a way that is consistent with sustainable development behaviours and also to require the ultimate decisions reached to demonstrate their impact on sustainable development objectives.

96. We welcome views on whether a combined approach would be helpful, or whether the combination of a duty based on behaviours and objectives might prove too complex.

A single sustainable development proposition

97. Another possibility is to propose a single proposition as “the sustainable development factor” that must inform higher level decisions. If we were to adopt this model, the proposition might be something along the following lines:

- The wellbeing of present and future generations should be enhanced.

98. We are aiming at the same objective regardless of which approach we adopt to defining the sustainable development factors. Therefore, a single proposition by its nature would be intended to encapsulate the range of other sustainable development factors that remain unarticulated.

99. For this reason we think that if we were to go in the direction of a single sustainable development proposition, we may need to go further and exemplify circumstances in which the proposition is met, in a similar way to the approach mentioned under the sustainable development objectives model above.

The extent of the influence that sustainable development factors should have over higher level decisions

100. We are keen to develop proposals that will accelerate sustainable development behaviours in the shorter term. For this reason we are currently inclined to consider that higher level decisions should be required to have more than *regard* to sustainable development principles.

101. We think that the level of influence that will be appropriate will depend on the approach we adopt to defining “sustainable development factors”.

102. If we go in the direction of *behaviour-type factors* it might be appropriate to require higher level decisions to be reached in a way that is consistent with those factors, or for the substance of the decisions themselves to reflect sustainable development factors.

103. On the other hand, if we settle on the *objectives- focussed approach* to defining sustainable development factors, a requirement for higher level decisions to be consistent with those factors might be unworkable. This could be the case because those factors may conflict with each other in any particular instance, or it may not be realistically possible to accommodate some factors in some high level decisions.

104. We do not want to bind an organisation in a way that impedes its ability to produce the best sustainable development outcomes in the particular circumstances it faces and we acknowledge that this dictates that organisations must have sufficient flexibility to give greater weight to some sustainable development factors over others if necessary.

105. What we do know is that the public sector duty will fail to deliver the outcome we are looking for if the approach we adopt allows a high level decision to be

inconsistent with sustainable development factors, regardless of how they are defined. Our expectation is that by complying with the duty, an organisation's plans, policies, programmes and similar guiding decisions will influence the day to day decisions of that organisation in a way that reflects sustainable development considerations.

106. If an organisation contravenes the duty, its decisions will be reviewable by the courts in the usual way.

107. It will be easier for some organisations to meet this challenge than others. The process of building sustainable development principles into the higher level decision making process may take differing periods of time. With this in mind it may be sensible to propose a date by which all high level decisions must comply with the duty and we would welcome your views on this approach

108. We intend that the new sustainable development body will offer support to these organisations in how they review their existing high level decisions and make the changes needed.

Guidance

109. We acknowledge that, once the duty comes into force, there may be a need for guidance in support of the duty. This is an issue we need to consider further as we develop our legislative proposals. Guidance could be issued by the Welsh Government, or by the new sustainable development body. We would welcome views on this.

Questions on the behaviours approach

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

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

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

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

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

Questions on the objectives approach

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

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

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

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

Question on the combined approach

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

Question on the single sustainable development proposition

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

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

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

Question on the provision of guidance

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

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

Simplifying the statutory burden on organisations delivering public services

110. In view of the broad approach we have proposed to the duty we think it is sensible to look at whether there are existing statutory duties and requirements on organisations delivering public services that could be removed or simplified.

111. This supports our aim to deliver better, sustainable public services for the people of Wales. This is a major theme of public sector reform, and will allow more of our resources to be focused on improving people's wellbeing.

112. Through public sector reforms, we wish to

- Improve collaboration and rationalisation through joint planning and commissioning; examining organisational overlap, and incentivising joint working;
- Improve integration through developing new arrangements to remove artificial barriers between services and citizens; and
- Reduce burdens and complexity through review and, where necessary, repeal of unnecessary duties and regulations.

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

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

Transparency through reporting

113. We think that organisations should be transparent and accountable in the way that they have responded to the duty. We do not think that it would be a good use of public resources to compel organisations subject to the duty to produce separate sustainable development annual reports. Rather, embedding the approach at the centre of the organisation means that it is sensible to require organisations to report within their existing annual reporting requirements on how higher level decisions comply with the duty³⁶. We would wish to ensure a consistency of approach across organisations in how they responded to such a reporting requirement.

114. Such an approach could provide a useful body of evidence that could inform any reviews of progress towards sustainable development. It could also provide evidence to inform any sustainable development examinations that might be undertaken by the Auditor General for Wales (in the next chapter we also consider the role that the AGW might play in respect of scrutiny for sustainable development).

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

The organisations that might be subject to the duty

115. We are currently considering the bodies to which the proposed new duty should apply.

116. At this stage we are proposing a very broad list of organisations which could be subject to the proposed sustainable development duty. The list is indicative only; there is much work yet to be done before any decision is reached on precisely which

³⁶ One approach to sustainability reporting is advocated by the Global Reporting Initiative. See <https://www.globalreporting.org>

organisations should be included and on identifying the higher level decisions that the duty could apply to in different kinds of organisations.

117. Some organisations are commonly understood by citizens to be part of the public sector. In reality, whilst they may be spending large sums of public money to deliver public services (for example, on behalf of local authorities) they may be private sector organisations. In these cases the dividing line between public and private sector is not always easy to identify. This is an issue we will need to give detailed consideration to, as we develop our proposals.

118. There are some organisations whose roles are such that it may not be appropriate to subject their high level decisions about service delivery to the sustainable development duty. These might include the Children's and Older People's Commissioners for Wales, or the Public Services Ombudsman for Wales. There may be others

119. We will be giving very careful consideration to these questions and we particularly welcome your views on the issues.

120. Very broadly speaking we think the following organisations make a very clear contribution to people's economic, social and environmental wellbeing. We think that there would be value in requiring some or all of the higher level decisions that these organisations take to be informed by sustainable development factors:

- Welsh Government;
- Local Unitary Authorities in Wales;
- National Health Service Trusts and Local Health Boards;
- Higher and Further Education organisations in Wales;
- The new single body (comprising Countryside Council for Wales, the Environment Agency in Wales and the Forestry Commission in Wales);
- National Park Authorities in Wales;
- Higher Education Funding Council for Wales;
- Fire and Rescue Authorities in Wales;
- Public Health Wales;
- Arts Council of Wales;
- Sports Wales;
- Amgueddfa Cymru National Museum Wales;
- National Library of Wales;
- Town and Community Councils.

121. It would make sense to keep open the option of adding and removing bodies to the list of those bodies that are subject to the sustainable development duty.

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

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

Defining “sustainable development”

122. One of the issues we are seeking views on is whether to propose a legal definition of “sustainable development”.

123. The term “sustainable development” is used in a number of laws that apply in relation to Wales and none of these laws define what is meant by the term. An Act of the Assembly could change this by defining “sustainable development” and applying that definition to the laws in Wales that currently use the term (some examples are given further below).

124. If “sustainable development” is to be defined in law that definition could also be used in any future legislation where the need to use the term arises. In this way a definition could bring consistency and coherence to a growing body of sustainable development law in Wales and to the public sector’s efforts to comply with it.

125. There are disadvantages to this approach. The principle disadvantage concerns the question of whether our understanding of what constitutes “sustainable development” may change over time. If an Act of the Assembly were to define the term, that definition may need to be revisited as our understanding evolves.

126. Examples of laws that currently use the term “sustainable development:

- xx. The Environmental Assessment of Programmes and Plans (Wales) Regulations 2004³⁷ require the environmental impacts of some strategic plans and programmes to be assessed before they can proceed. One of the criteria for deciding whether a particular plan or programme must be assessed relates to the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting *sustainable development*;
- xxi. The Local Government (Wales) Measure 2009 establishes a system of community planning whereby local authorities identify long-term objectives for their area for contributing to the achievement of sustainable development in the United Kingdom (amongst other things);
- xxii. The 2009 Measure also requires local authorities to make arrangements to continually improve the way they do their work and they have to pay particular regard to the need to improve certain aspects of their performance. Sustainability is one such

³⁷ S.I. 2004 No. 1656 (W. 170).

aspect and improving performance in sustainability is defined as services being provided or other functions being carried out in a way that contributes towards the achievement of sustainable development;

- xxiii. The Welsh Ministers have a number of duties under the Water Industry Act 1991 concerning when and how they are to carry out their functions in relation to water and sewerage undertakers. Performing their powers and duties in the manner best calculated to contribute to the achievement of sustainable development is one of a number of the obligations imposed.

127. We are interested to know your views on the merits of defining “sustainable development”. We are also keen to know whether you think that our current definition of “sustainable development” would be suitable if we were to propose a legal definition. Our definition is:

Sustainable development means enhancing the economic, social and environmental wellbeing of people and communities, achieving a better quality of life for our own and future generations in ways which:

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

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

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

Section 7: An independent Sustainable Development Body

Purpose

128. The purpose of this section is to set out our broad proposals for the establishment of an independent sustainable development body. We also set out some of the key issues that we will be considering as we develop these proposals further.

Background

129. Until March 2011, the Sustainable Development Commission (SDC) was the Welsh Government's adviser on sustainable development. Its role was to provide the Welsh Government with policy advice, capability building and independent assessment to help make sustainable development our central organising principle. Following the closure of the SDC, we appointed a Commissioner for Sustainable Futures in 2010 to, amongst other things:

1. Provide leadership for sustainable development in Wales;
2. Promote sustainable development as the central organising principle in all organisations in Wales;
3. Advise the Welsh Government on the policies and approaches to promoting and implementing sustainable development .

130. The Commissioner is supported in his role by a contract, currently delivered by Cynnal Cymru-Sustain Wales. The role of Cynnal Cymru is to act as a catalyst and focal point for:

- The contribution of expert analysis and grassroots opinion to inform policy making and practices within the Welsh Government and other stakeholder organisations;
- The development of capacity to take practical actions that will contribute to sustainable development within government, civil society and business.

131. In section 5, we identified gaps in our overall approach to promoting sustainable development. The gaps relate to:

- *encouraging* organisations, through appropriate scrutiny, to comply with any proposed legal obligation; and
- *enabling* organisations to embed SD as a central organising principle in light of any legal obligation and *engaging* them in the process.

132. We think these gaps can be addressed by:

- ensuring that the Auditor General for Wales has a scrutiny function in relation to sustainable development; and

- establishing an independent sustainable development body for Wales.

133. These proposals and the proposed sustainable development duty each form part of a co-ordinated approach to strengthening sustainable development behaviours in Wales. It is therefore important that they are developed alongside each other in a way that produces a coherent approach to encouraging behaviour change in support of sustainable development.

Our methodology

134. We established a range of key criteria to assist in determining the nature and type of an independent sustainable development body. We identified the following issues as being critical to producing sound policy proposals:

- **Impact** – the purpose and role of the body must support and foster the delivery of sustainable development outcomes; its work must make a tangible contribution to improving the wellbeing of current and future generations;
- **Effectiveness** – the new body must add value over and above what would otherwise be available; it must not duplicate the role of other organisations; it must be sufficiently independent of government to have credibility; it must have the capability and powers necessary to enable it to become a centre of respected sustainable development expertise; it must have the duties necessary to make it accountable for its performance;
- **Engagement, partnership and collaboration** – the new body must have the powers necessary to enable it to work in ways that maximise opportunities for engagement, partnership and collaboration;
- **Strategic Fit** – the new body must operate in a way that actively moves the sustainable development agenda forward in a way that fits coherently with our wider approach to promoting sustainable development;
- **Affordability** – the role assigned to the new body must be realistically affordable and capable of being undertaken in a cost-effective manner.

135. In reaching this stage we have looked at a number of international arrangements aimed at encouraging sustainable development behaviours, and we have considered a number of institutional models that currently exist in Wales.

Purpose

136. The overall purpose of the new body must fit sensibly with our overall policy objectives. One approach would be to specify that the new body's purpose must be to support and foster the delivery of the economic, social and environmental wellbeing of current and future generations.

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

137. The next section considers what the possible roles and functions of a body in relation to this overall purpose.

Functions

138. In our December 2011 discussion document, we suggested three possible models for a new SD body in terms of its broad role and functions:

- An ombudsman serving citizens, enforcing rights and dealing with specific case work;
- A body focused on scrutinising and holding organisations delivering public services to account on sustainable development;
- A body set up to advise and guide organisations, to which the duty might apply, on sustainable development.

139. These models are not mutually exclusive and provide a useful way of thinking about the overall functions of a body. We discuss each below.

Ombudsman/Case work model

140. Under this model, a body would act as an advocate on behalf of present and future generations generally, and in response to specific public sector policies and proposals. It would also deal with individual cases referred to it by citizens concerned about how bodies are performing their sustainable development duty.

141. There are a number of organisations of this type currently operating in Wales such as the Children's and Older People's Commissioners, and the Public Services Ombudsman for Wales. Generally speaking the role of these types of organisations is to act as advocate for a specific cause and to investigate individual grievances against public sector organisations.

142. We see a role for the new body as an advocate for sustainable development, but we think that to position the new body as an arbitrator of individual grievances against organisations would be the wrong emphasis. We want a significant part of the new body's role to involve working collaboratively with the organisations delivering public services to encourage sustainable development behaviours. We think that the mutual trust and goodwill needed to bring that about will be better served if the new body has no formal role in adjudicating disputes about organisational behaviour.

143. We see no obvious need to establish a bespoke mechanism to resolve individual grievances against organisations in connection with the sustainable development duty. We believe that existing mechanisms for resolving disputes about public sector behaviour are sufficient and that establishing a new dispute resolution procedure would add unwarranted duplication and unjustified cost.

Scrutiny Model

144. Under this model, a body would focus on providing challenge and scrutiny in relation to compliance with the sustainable development duty, for example:

- by reviewing compliance with any legal obligation, either at the level of specific organisations or across different organisations operating within the same area of public service;
- by responding formally to particular policy consultations or developments.

145. We consider in principle that scrutiny has a useful role to play in encouraging sustainable development thinking within organisations delivering public services.

146. We are currently consulting³⁸ on a proposed Public Audit (Wales) Bill, to establish arrangements for more effective accountability, governance and oversight of the Auditor General for Wales (AGW) and his Office. In that consultation, we have asked for views on whether the new Auditor General for Wales should have an express duty to examine sustainable development in the Welsh public sector, and on whether such a duty should be included in Public Audit (Wales) Bill or in the proposed Sustainable Development Bill.

147. We are not in favour of the new sustainable development body having a role in relation to compliance with the sustainable development duty, for the reasons explained earlier. We do think that there are strong arguments in favour of the AGW having a formal role in that respect. We consider that an express statutory role for the AGW in examining sustainable development would bring transparency to, and accountability for, sustainable development performance in the organisations to which the sustainable development duty applies.

148. We think that it makes sense for examinations of sustainable development behaviours to be interwoven with existing mechanisms for examining public sector performance. We consider that the AGW is best placed to undertake examinations of sustainable development in the public sector.

149. We think that such an approach would also:

- add considerable certainty to the role of the AGW in relation to sustainable development, by requiring the AGW to undertake sustainable development examinations;
- signal that sustainable development is an issue for consideration by Leaders and Chief Executives of all organisations that are subject to audit by the AGW;
- be in keeping with appropriate international parallels and would represent leading thinking and practice internationally. For example, the Auditor General of Canada is required to appoint a

³⁸ The draft Public Audit (Wales) Bill. Welsh Government consultation. This consultation ends on 15 May 2012

commissioner to provide sustainable development monitoring and to report on the progress of Government departments towards sustainable development.

150. Once the responses to the consultation on the Public Audit (Wales) Bill have been considered a decision will be made about whether to establish a formal role for the AGW in examining sustainable development under that Bill or under the Sustainable Development Bill. If the decision is to do so under the Public Audit (Wales) Bill, we will consider whether any adjustments to that role are needed as proposals for the sustainable development duty are firmed up.

Expert Advice and Guidance Model

151. Under this model, a body would focus on providing advice, guidance and support on sustainable development. This could be done in a variety of ways including through the provision of tailored support, disseminating case studies, undertaking research and providing progress reports on issues relevant to wellbeing.

152. The primary focus of such a body could be on organisations in Wales, and in particular those subject to any legal obligation. This would build on the role of the SDC and the Commissioner for Sustainable Futures which had previously largely provided advice and support to the Welsh Government. The body's advice could include helping organisations consider the links between their sustainable development behaviours, the outcomes they achieve, and the contribution they make towards sustainable development indicators.

153. Alternatively, a new body could have a wider focus that encompasses a wider range of organisations in Wales from across the public, private and third sectors.

154. Alongside a specific focus on organisations subject to the duty, a new body could have a role that extends beyond these. Working to maximise the wellbeing of current and future generations will require a perspective which is not limited to one particular sector, and the new body will need to be alive to the opportunities to work in a way that maximises opportunities for partnership and collaboration across sectors.

155. We think there is a sound case for establishing a body that exists to offer support, advice and guidance to the range of bodies to which any new duty would apply. We also believe it is important to establish a body whose expertise can be drawn on and referred to by all elements of the public sector in Wales; a body whose independence and expertise is such that it enjoys the trust and confidence of all sectors of society.

156. Within this model, there may be scope for the new body to act as a "critical friend" to those organisations to which the new duty would apply. The new body could provide a level of challenge internally within an organisation, for example providing challenge on whether an organisation's plans or policies were consistent with sustainable development factors.

Preferred Approach

157. We think that there are elements of all of the models above that are potentially suitable for the new body. We think the body should be an advocate for sustainable development, championing the wellbeing of present and future generations in a way that encourages behaviour change within and beyond organisations delivering public services. We think that the body's role should encompass periodically reporting to the nation on the wellbeing of present and future generations and we think there may be a case for a formal role as a statutory consultee in relation certain decisions.

158. We consider that the role of the new SD body should be predominantly focused on providing expert advice and guidance in relation to sustainable development and wellbeing. We think that much of the focus of the body's work should be on working with those bodies that are subject to any sustainable development duty. It could, where necessary, provide a level of challenge to these organisations.

159. We believe that the combination of such a role with the scrutiny role proposed for the Auditor General for Wales would provide a powerful and coherent approach to encouraging sustainable development behaviours.

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

Statutory body

160. Till now the Welsh Government has funded institutional support to develop the sustainable development agenda through non-statutory mechanisms. The SDC was an independent body which was funded by Government. It supported the Welsh Government through the provision of policy advice, capability building and independent assessment to help make sustainable development the central organising principle of government. Similarly, the Commissioner for Sustainable Futures, whilst a public appointment, is not established by statute.

161. These arrangements have allowed us to respond flexibly to changing circumstances and have worked well. We are convinced that the time is now right to bring more formality and certainty to the arrangements for independent expertise, advice and advocacy.

162. If the proposed sustainable development duty becomes law it will bind the organisations to which it applies indefinitely. We consider that because of the intrinsic link between the duty and the role of the new body there needs to be certainty for all sectors of society that there will continue to be an independent source of expert advice and support available to assist these organisations in meeting their sustainable development obligations.

163. The current non-statutory model used to appoint the Sustainable Development Commissioner has served its purpose very well but by its nature there can be no certainty that future governments would retain the role. We believe that the Welsh public sector will make better and faster progress enhancing social,

economic and environmental wellbeing with the advice, support and expertise of an independent body and we believe that the need to make this progress is too important to leave to chance. Establishing a statutory body to undertake this role would ensure that a future government would need to make a conscious decision to seek the Assembly's permission in the form of an Assembly bill, to abolish the body. We believe that this in turn would bring considerable certainty to the durability of the arrangements.

164. We believe that establishing the body through a democratic legislative process will enhance the body's mandate and lend weight to its advice and guidance.

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

Specific Functions

165. The following are functions which we believe should form part of the new body's role:

- A duty to produce an annual report on its own activities. This would help to ensure accountability for the body's performance.
- A duty to produce a periodic 'Wellbeing report', explaining how current economic, social and environmental trends (as evidenced by our sustainable development indicators, for example), if unabated, might impact on the long term wellbeing of future generations.
- A power to require organisations subject to a sustainable development duty to provide information on how they are implementing the duty. This could help ensure that the body would have evidence to support the development of a 'Wellbeing Report'.
- A power to make representations (present an opinion) about matters affecting sustainable development or future generations. The purpose of such powers could be to bring a wider perspective to bear to inform decisions or debate.
- A power to commission research in support of its main purpose.
- A power to procure services in support of its main purpose to provide advice, guidance and support on sustainable development.
- General powers to employ and pay staff, hold property, enter into contracts and so on.

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

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

166. Other possible functions for a new body might include:

- A duty to review, from time to time, the Welsh Government's suite of sustainable development indicators, and to provide advice to Welsh Ministers in relation to these indicators. This would help to ensure a clear link between the work of the body and the delivery of sustainable development outcomes.
- A power to undertake reviews of specific issues or themes related to a sustainable development duty, across the organisations to which the duty applies, as a whole. Such reviews could help to inform guidance and good practice.
- A power to make recommendations to the Welsh Government and public bodies regarding removing particular barriers to sustainability.
- A formal role as a statutory consultee in relation to significant developments or policies. This could allow a wider perspective to be taken into account in decisions of significance.

Independence and Accountability

167. In addition to questions about the purpose, roles and functions of a new body, consideration will also need to be given to the independence and accountability of any new body. We believe that any body should be independent from Government and in a position to offer expert and credible advice on the implementation of any sustainable development duty as well as on sustainable development and wellbeing more generally. Any such body should operate transparently and clearly be accountable for its actions.

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

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

The form that the new body might take

168. This section focuses on the possible purpose and functions of the new body. There are issues that we will need to consider, in due course, about the form that such a body might take. We think that we need clarity on the purpose and functions of the new body before we can consult on its proposed form. We will be including questions on the form of the new body in the Autumn White Paper consultation.

Section 8: Our approach to the Regulatory Impact Assessment

169. When we publish our Sustainable Development Bill White Paper, we will also publish the results of the impact assessment. This assessment will be both:

- A continuous process to help weigh up the costs and benefits of the various approaches for achieving the objective of making sustainable development the central organising principle of the Welsh Government and organisations delivering public services in Wales, and to understand the consequences of the proposed introduction of the Bill. The assessment will also consider the independent sustainable development body in line with our policy intention to establish such a body on a statutory basis.
- A tool to be used to help refine the Bill by assessing and presenting the likely costs and benefits, and the associated risks, of the proposed Bill on public, private or third sector organisations, on the environment and wider society over the long term.

170. A key aim of the Regulatory Impact Assessment is to provide an analysis of the short list of possible approaches for the Bill. These potential approaches will be compared against the baseline of where we are now. We will compare likely costs, benefits and risks of the Bill against this baseline, which will be the costs, benefits and risks of our existing approach to sustainable development.

171. Hence a key component of the Assessment will be establishing the current baseline against which we will compare the proposals for the Bill. The current baseline includes the following:

- Action we have taken to promote sustainable development that is included in our Sustainable Development Scheme, and which we have reported on in our Annual Reports;
- action that other organisations in Wales have taken to promote sustainable development, under existing legislation (such as the Local Government measure), or through signing our Sustainable Development Charter, or through having embedded sustainable development principles in other activity

172. We propose structuring the assessment in a formal way that reflects the guidance from the Department of Business, Innovation and Skills³⁹, and HM Treasury Green book guidance⁴⁰. The following headings give an indication of how the assessment will be structured. We will not cover the detail of these headings here because a lot of the detail underpinning these headings has already been covered elsewhere in the consultation document.

³⁸ <http://webarchive.nationalarchives.gov.uk/+/http://www.bis.gov.uk/ia>

⁴⁰ http://www.hm-treasury.gov.uk/data_greenbook_index.htm

- We will consider the problem under consideration;
- we will consider the rationale for intervention;
- we will define the policy objectives;
- we will define the options being considered and compare against the baseline;
- we will highlight a preferred option and give our reasoning for why this is the preferred option;
- we will carry out a cost benefit analysis if appropriate. This will depend on our ability to quantify the impacts. Where impacts can not be quantified a robust qualitative assessment will be undertaken;
- we will list any assumptions used and our interpretation of the key risks; and
- we will also consider wider and specific impacts. These will include impacts on greenhouse gas emissions, other environmental impacts, health and wellbeing, human rights (including the rights of children) and justice, equalities, rural proofing, small firms and competition, and the Welsh language.

173. The Impact Assessment stage attempts to quantify as much of the impacts as possible, but as highlighted above a robust qualitative assessment will be carried out if this is not possible. In order to achieve this we will be asking organisations if they are able to provide evidence and data to support us in this, where appropriate. This will provide an important opportunity for these bodies to influence the Sustainable Development Bill through telling us about the costs and benefits of existing approaches.

174. The input of the bodies to be affected by this Bill is going to be critical to producing a robust and evidence-led impact assessment that will help determine the eventual proposed approach to how we embed sustainable development principles across organisations delivering public services.

List of consultation questions

Promoting sustainable development (section 3)

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

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

Evidence in relation to sustainable development (section 4)

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

A new sustainable development duty (section 6)

The level of decision making to which the duty applies

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

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

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

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

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

The behaviours approach

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

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

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

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

- is consistent with one, some or all of the behaviours;
- broadly reflects the behaviours;

- is not inconsistent with the behaviours?
- are there other options?

The objectives approach

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

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

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

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

The combined approach

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

A single sustainable development proposition

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

The time organisations may need to comply

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

The provision of guidance

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

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

The repeal of duties

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

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

Reporting

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

The organisations that might be subject to the duty

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

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

Defining sustainable development

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

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

An independent sustainable development body (section 7)

The purpose of the new body

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

The preferred approach for the new body

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

A statutory body

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

Proposed functions for the new body

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

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

Independence and accountability

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

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

How to get involved and have your say

Consultation dates and where to send responses to

We want your views on the options for legislation on sustainable development. This consultation will run from 9 May 2012 until 18 July 2012.

How to respond

Please submit your comments by 18 July 2012, in any of the following ways:

Email

sdbill@wales.gsi.gov.uk

Post

SD Bill Team
Welsh Government
Cathays Park, Cardiff
CF10 3NQ

Additional information

If you have any queries on this consultation, please telephone: 029 2082 3388. The information you send to us will be published in a summary of responses to this consultation. Normally the names and addresses (or part of them) of their authors are published along with the response. If you do not wish to be identified as the author of your response, please state this clearly when you write or e-mail.

Data Protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the

Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.