

**Auditor General for Wales’ response to Welsh Government consultation on proposals for a sustainable development Bill as set out in the white paper: “A sustainable Wales: better choices for a better future”.**

**Question 1. What are your views on the proposals for a new duty to embed sustainable development as the central organising principle of selected organisations in Wales?**

1. The AGW supports the proposals. Given robust and proportionate implementation, the proposed governance framework for sustainable development has the potential to deliver better quality strategic decision making in the public sector in Wales. The focus on strategic decision making will help in the Welsh Government’s aim of targeting those decisions that have the greatest influence on behaviour, whilst avoiding the creation of additional bureaucracy.
2. The dual focus on ‘what’ outcomes and ‘how’ they are delivered could deliver real added value if it is used as an approach to transforming public sector delivery. This will require time and thought to be invested in identifying meaningful outcomes at the level of both communities and service users. Our work shows that much of the ‘outcome’ focus in the public sector is in fact focused on outputs or service provision. Economy, efficiency and effectiveness is most likely to be ensured by establishing clear outcomes and then working back from these ‘ends’, to establish the ‘means’ of delivering them. This approach can provide a valuable challenge to ‘business as usual’ by highlighting aspects of current public sector activity which are not directly focused on the ‘outcomes’.
3. To ensure that a ‘clear focus’ on outcomes will complement the Welsh Government’s commitment to make SD the central organising principle, it will be important to ensure that the SD principles are applied to the strategic decision making that determines the outcomes. This will, for example, ensure that the process, which has led to the agreed outcomes, has been fully informed by ‘consideration of the effect on the economic, social, environmental and long term wellbeing’. It will also ensure that the process of agreeing the outcomes is inclusive. Ensuring that the analysis underpinning the outcome focus is shared by a broad range of stakeholders is key and will help when difficult decisions have to be made. These points might be usefully addressed by Welsh Government guidance.
4. It would be appropriate for the Welsh Government to guard against the risk that a proliferation and layering of the duties and requirements placed on public bodies can promote a focus on process and activity and increase bureaucracy. Such a focus would run counter to the Welsh Government’s stated intention. This risk could be mitigated by identifying how the SD Bill could be used to rationalise and streamline existing duties and requirements. For example, the Local Government Measure (Wales) 2009 places sustainability as one of seven “aspects of improvement” and in effect establishes sustainable development as one of seven potentially competing priorities. This is clearly

incompatible with the Welsh Government's stated intention to make sustainable development the central organising principle. (We consider this example further under question 4.)

5. We would also emphasise the importance of clarity and consistency in the use of language in ensuring the successful implementation of the proposed duty. In particular, the use of the term "wellbeing" has the potential to be a source of confusion. The White Paper refers to '...the joined up consideration of economic, social and environmental wellbeing, together with that of future generations'. However, across the public sector in Wales (and beyond), wellbeing is generally used to describe the physical, social and mental state of people. The potential for confusion and ambiguity is illustrated by key Welsh Government documents on health and social care, where the term phrase health and wellbeing is used regularly. There is nothing to suggest that current understanding of health and wellbeing, amongst policy makers and service providers in the area of health and social care, includes living within environmental limits. In addition, relatively recent documents produced by the Welsh Government and by Local Health Boards use the term 'sustainable' when referring to only one element of sustainable development, that of financial viability.
6. A more disciplined use of language, across all levels of the public sector, will be key to improving understanding and underpinning delivery of the Welsh Government's ambition in relation to sustainable development. Guidance will also need to make clear and explicit that the 'environment' is integral to 'wellbeing' as defined in the proposed duty. What this means in practical terms for the strategic decision making of public bodies will also need to be made specific. For instance, public bodies are currently focused on how to deliver services within ever tighter financial constraints. Under the duty they will need to consider the effect of their strategic decisions on future generations, living within environmental limits, and wider society, as well as the financial viability of the organisation.

**Question 2. What are your views on the proposals for an independent sustainable development body?**

7. The proposals to establish an independent body should be helpful in supporting the implementation of the SD duty. The proposed functions of providing a source of expertise, including access to international expertise and experience, will be important in supporting the public sector in Wales (including the AGW) to embed SD.
8. There is significant potential for the work of the independent body to inform the work of the AGW, and vice versa. The proposal that the SD body should have the ability to collaborate with the AGW is therefore welcome. This should be matched by ensuring that the AGW has the ability to collaborate with the SD body.
9. The proposals to embed SD in the existing accountability and scrutiny frameworks (see question 4) complement the approach proposed for the new SD body.

10. In addition to the AGW, the new SD body could also play a role in advising and informing National Assembly Scrutiny Committees.

**Question 3. What are your views on the proposed phasing and implementation of the duty, including the timing of the independent sustainable development body?**

11. The phased approach will enable the AGW focus effort on working with stakeholders to develop a robust and proportionate framework for accountability and external scrutiny. Given the pressures on the public sector, capacity will be an issue which will be helped by a phased implementation.
12. The AGW supports the early establishment of the SD Body as this will enable collaboration between the two organisations and facilitate preparations for the implementation of the duty.
13. In our response to Question 1, we note a number of issues in relation to the use of the term ‘wellbeing’ and ‘sustainability’. We also highlight the importance of ensuring that all public bodies understand the practical implications of undertaking an integrated consideration of the economic, social and environmental effects of their strategic decisions. The new body should be established as soon as possible, so as to help public bodies equip themselves with the knowledge, skills and tools needed.

**Question 4. What are your views on the proposals to improve the accountability framework for sustainable development in Wales?**

14. Overall, the proposals seem practical and conducive to ensuring that SD does in fact become the central organising principle in decision-making. As the White Paper notes, the responsibility for external scrutiny for most of the organisations that are to be covered by the SD duty falls to the AGW. The AGW therefore already examines key governance documentation at the bodies concerned, so placing a duty on the AGW to review<sup>1</sup> how organisations have embedded SD as the central organising principle in their strategic decision-making is an efficient approach. This is important, as any arrangements to improve the accountability framework for SD is likely to incur additional cost, but making maximum use of existing mechanisms should minimise such costs.
15. The AGW will endeavour to ensure that the duty placed on him does not lead to an unduly narrow focus, which results in ‘tick box’ exercises within public bodies. The AGW intends to promote a focus on how strategic decision-making has applied SD principles in agreeing outcomes, and in deciding how they should be delivered. The AGW will therefore seek to complement the annual consideration of compliance with the SD duty with consideration of the need for more in-depth related work using his existing

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<sup>1</sup> Para 5.6 of the White Paper refers to “an examination”. For clarity it may helpful to use a term such as “review” rather than examination as the latter may be confused with certain other existing functions.

examination and improvement study powers, including those found in section 145A of the Government of Wales Act 2006, which applies to the Welsh Government and related bodies, including the NHS, and sections 41 and 42 of the Public Audit (Wales) Act 2004, which apply to local government bodies. (To ensure that such an integrated approach with studies and examinations continues, it might be helpful if the Welsh Government included specific provision for consideration of the use of such existing powers alongside the annual review of how organisations have embedded SD as the central organising principle. The White Paper's reference to the AGW's Code of Audit Practice is appropriate. It is in keeping with the concept of mainstreaming SD as the central organising principle for the AGW to set out, in the Code of Audit Practice, how the review of the SD duty is to be done. To ensure inclusion of SD in the Code it would be appropriate to make such inclusion a duty on the AGW.

16. Consideration needs to be given to how compliance with the SD duty is reviewed at bodies that are to be covered by the duty but are not audited by the AGW, such as universities. One approach would be to require the AGW to review compliance with the SD duty at bodies that he does not audit in other respects. This would ensure consistency, but it may not be the most efficient approach. Another option would be to put the same review duty that applies to the AGW on the auditors that such bodies appoint. That may, however, raise issues of legislative competence in relation to the Companies Act 2006 (and perhaps some aspects of charity legislation). It would also risk inconsistency in approaches across the Welsh public sector, though that might be addressed by requiring auditors to adhere to the AGW's Code of Audit Practice in respect of reviewing the SD duty.
17. A further option would be for the AGW to examine university and college compliance with the SD duty through studies under the Government of Wales Acts 1998 and 2006 of the arrangements made by funding bodies (HEFCW and the Welsh Government) to secure such compliance. This would, however, be a rather indirect route, and, as the studies under the 1998 and 2006 Acts are discretionary, there is no guarantee that they would be done. In the case of Registered Social Landlords, a more direct approach could be achieved by the Welsh Government and the AGW agreeing programmes of studies of compliance with the SD duty under section 145C of the 1998 Act. Again, however, the agreement of such programmes is discretionary, so there would be no guarantee that they would take place.
18. In our July 2012 response to the Welsh Government's previous consultation on the SD Bill, we outlined the following approach to external scrutiny, based on the Welsh Government's proposals to focus on strategic decision making. In certain places, we refer to the "auditor". For most public bodies, this will mean the AGW, but where bodies are still permitted to appoint their own auditors, to ensure consistent external scrutiny, we suggest that the duties referred to apply to such auditors.
19. As we understand it, the Government proposes that the SD Bill will put the auditor of a body subject to the sustainable development duty under a duty to undertake a high

level review of whether the sustainable development duty has been applied in higher-level decisions. Such decisions will include in particular its setting of long-term strategy, annual plan, annual corporate budget and key policies that govern how it is to deliver services or otherwise use public resources. Such a review would entail examination of the documents themselves, supplemented where necessary by examination of supporting records, such as records of public engagement, and interview (or survey) of relevant staff, users and stakeholders.

20. We consider that it would be appropriate from the point of view of effective external scrutiny arrangements for the Bill to put the auditor under a duty to provide a report on the review (a sustainable development compliance report) alongside his/her certificate/report on the accounts. We also consider that the sustainable development compliance report should be subject to the same publication and consideration requirements as the certificate/report on the accounts, and accordingly it would be appropriate for the SD Bill to put such requirements in place. This would mean, for example, for the Welsh Government and related bodies, including the NHS, that the sustainable development compliance report would be laid before the National Assembly. Such requirements would ensure sustainable development compliance reports are available for consideration by relevant Assembly committees, including PAC, councils and their scrutiny committees and the general public.
21. We also consider that the SD Bill should put the auditor under a duty of considering whether the review raises concerns about the body's compliance with the sustainable development duty that merit further examination. Such further examination could be pursued under the AGW's existing vfm examination and study functions (as mentioned in para 15 above), or the new legislation could provide specific sustainable development examination duties. The AGW's existing vfm examination and study functions do not, unfortunately, currently extend to individual further and higher education institutions, except by agreement or through examination of arrangements by the Welsh Government and HEFCW in relation to their funding of the institutions. A sustainable development Bill might therefore usefully address that gap.
22. The AGW would also endeavour from time to time to undertake cross-cutting studies of sustainable development issues informed by work under paras 19 to 21 above, using existing examination and study powers. To ensure that this takes place, the SD Bill could usefully place a duty on the AGW to consider whether cross-cutting studies of SD should be undertaken. We envisage such studies might include periodic studies to summarise the results of all sustainable development review and examination work across all sectors.
23. We consider that auditors should be under a duty to make available all their sustainable development reports to the new sustainable development body for information. Such a duty would make the new body's task of tracking reports much easier and would therefore save time and expense. (This would not strictly be necessary if the SD Bill were

to require SD compliance reports to be published alongside the certified accounts of public bodies.)

24. A further consideration is that the Government's proposals for a duty on the AGW to examine how organisations have embedded SD as the central organising principle may provide scope for significantly streamlining some external review activities in local government. Part 1 of the Local Government (Wales) Measure 2009 places extensive improvement planning and reporting duties on county and county borough councils, national park authorities and fire and rescue authorities. It also places duties on the AGW to audit and assess compliance with those duties. The focus of the 2009 Measure is on the process of improvement planning and public accountability through reporting. If the Welsh Government introduces a duty on the AGW to examine the extent that sustainable development principles are embedded in decision-making, it could render the requirements placed on the AGW by the 2009 Measure superfluous in that the AGW, through the new SD duty, could be required to focus on strategic decision-making and planning more broadly. The new duty would not restrict the AGW to examinations of single organisations as the principles of sustainable development are more wide-ranging. Removing the requirements placed on the AGW by the Measure and replacing them with requirements under the SD Bill would mean that the AGW could appropriately focus on the strategic collaborative space and community outcomes, rather than single organisation matters of process.
25. The AGW will work with a range of stakeholders in the period prior to commencement to seek to engage with a range of experience and expertise, in shaping a framework for accountability and external scrutiny, which is both proportionate and fit for purpose. Reporting is a key element of accountability and external scrutiny. Our engagement with a range of professional bodies has suggested that a number of initiatives currently being developed offer potential to both rationalise and improve the effectiveness of reporting. These include Accounting for Sustainability's Connected Reporting, the Global Reporting Initiative and the work of the Integrated International Reporting Committee.

**Question 5. We have asked four specific questions. Do you have any related issues which we have not specifically addressed, for example with regards the implementation of proposals? Please use the consultation response form to express your views.**

26. Proposals for using the SD Bill to place single integrated planning on a statutory basis, is a practical example of seeking to integrate and streamline. It strengthens the role of single integrated planning as a delivery mechanism for sustainable development. However, the current single integrated planning proposals do not reference the need to live within environmental limits. Current Single Integrated Plans have yet to develop into effective mechanisms which are able to: support the 'consideration of the effect on the

economic, social *and* environmental wellbeing of Wales...so that decisions are informed by an appreciation of the likely effects on each and the integration between them’.

27. To deliver on the commitment to the National Principles of Public Engagement in the White Paper, the proposals for Single Integrated Planning will need to consider how to improve the quality of engagement between public bodies, the public, communities and the third sector. A number of the principles for public engagement relate to encouraging those affected to be involved, working with relevant partner organisations and enabling people to take part effectively. In addition, the need to be inclusive and empower people and their communities is an internationally recognised underpinning principle of SD. It is not clear how the current proposals for Single Integrated Planning reflect this commitment to inclusivity.
28. These are some examples of how the framework for public sector policy making and service delivery will need to be reshaped to support effective governance for sustainable development. Using the SD Bill to provide a statutory basis for Single Integrated Planning provides an opportunity to address these and similar issues.
29. These examples also highlight the importance for public bodies of using the time prior to the commencement of the SD duty to improve their knowledge and skills in relation to public engagement. Given the challenges facing public sector, consensus building and conflict resolution will need to be a key focus of this work.
30. There is a need to clarify what is meant by long term thinking. Single Integrated Planning has a time frame of three to five years, which can be appropriate for service focused delivery, but is not an appropriate timescale for tackling some of the key social and environmental challenges facing Wales. Typically community planning has a twenty year planning horizon.
31. Given the central role that budget setting and procurement play in the delivery of public sector policy, services and functions, the duty would be more effective in supporting the Welsh Government’s intention to make SD the central organising principle if these key areas are referred to specifically.