

## Environment and Sustainability Committee

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Meeting Venue:

**Committee Room 3 – Senedd**

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Meeting date:

**Thursday, 27 November 2014**

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Meeting time:

**09.00**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

**Alun Davidson**

Committee Clerk

029 2089 8639

[ES.comm@wales.gov.uk](mailto:ES.comm@wales.gov.uk)

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### Agenda

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**Informal pre-meeting (09:00 – 09:15)**

**Public session**

**1 Introductions, apologies and substitutions**

**2 The Government of Wales Act 2006 (Amendment) Order 2015:  
Evidence from the Minister for Natural Resources (09:15 – 09:30) (Pages 1  
– 13)**

Carl Sargeant AM, Minister for Natural Resources

Amelia John, Deputy Director, Fairer Futures Division

Andrew Charles, Head of Sustainable Development

Louise Gibson, Lawyer

E&S(4)-29-14 Paper 1

### **3 Planning (Wales) Bill: Stage 1 – Evidence Session 1 (09:30 – 11:00)**

(Pages 14 – 67)

Carl Sargeant AM, Minister for Natural Resources, Member in charge

Neil Hemington, Chief Planner

Dion Thomas, Senior Planning Bill Manager

Sarah Dawson, Legal Services

[Planning \(Wales\) Bill](#)

[Explanatory memorandum](#)

### **4 Planning (Wales) Bill: Stage 1 – Evidence Session 2 (11:00 – 11:45)**

(Pages 68 – 76)

Councillor Anthony Jones, Chair of Planning Committee, Carmarthenshire County Council

Councillor Andrew Morgan, Leader of Rhondda Cynon Taf County Borough Council and WLGA Spokesperson on Planning

Councillor John Wyn Williams, Cabinet Member for Planning, Gwynedd Council

Councillor Giles Howard, Cabinet Member, Monmouthshire County Council

E&S(4)–29–14 Paper 2

### **5 Planning (Wales) Bill: Stage 1 – Evidence Session 3 (11:45 – 12:30)**

Aled Davies, Head of Regulatory Department, Gwynedd Council

Eifion Bowen, Head of Planning, Carmarthenshire Council

Marcus Goldsworthy, Operational Manager Development Control, Vale of Glamorgan Council

Jane Lee, Policy Officer, Welsh Local Government Association

**Break (12:30 – 13:30)**

### **6 Planning (Wales) Bill: Stage 1 – Evidence session 4 (13:30 – 14:15)**

(Pages 77 – 78)

Martin Buckle, Member of Brecon Beacons National Park Authority

Jane Gibson, Director of Park Direction and Planning, Pembrokeshire Coast National Park Authority

Jonathan Cawley, Director of Planning and Cultural Heritage, Snowdonia National Park Authority

E&S(4)-29-14 Paper 3

## **7 Planning (Wales) Bill: Stage 1 – Evidence session 5 (14:15 – 15:00)**

Lyn Cadwallader, Chief Executive, One Voice Wales

Mike Cuddy, Vice Chair, One Voice Wales and Leader of Penarth Town Council

Paul Egan, Deputy Chief Executive, One Voice Wales

## **8 Papers to note**

**The Government of Wales Act 2006 (Amendment) Order 2015: Correspondence from the Sustainable Development Alliance (Page 79)**

E&S(4)-29-14 Paper 4

**Inquiry into energy efficiency and fuel poverty in Wales: Further information from British Gas following meeting on 13 November (Pages 80 – 81)**

E&S(4)-29-14 Paper 5

# Agenda Item 2

## Environment and Sustainability Committee

E&S(4)-29-14 paper 1

### The Government of Wales Act 2006 (Amendment) Order 2015

#### Background

The Government of Wales Act 2006 (Amendment) Order 2015 was laid before the Assembly by the Minister for Natural Resources (the Minister) on 5 November. This Order, if approved by the Assembly, would confer competence on the Assembly to amend section 79 of the Government of Wales Act (GOWA) (Sustainable Development). The Order itself does not amend GOWA, the Minister has stated his intention of modifying section 79 through an amendment to the Well-being of Future Generations (Wales) Bill at Stage 3.

The Minister has provided a draft amendment, which is attached at Annex A.

The Business Committee has referred the Order to the Environment and Sustainability Committee and the Constitutional and Legislative Affairs Committee for consideration. The Committee must report on its consideration of the Order by 4 December.

#### Action

The Committee is asked to consider:

- Whether the Order to confer competence on the Assembly to amend section 79 of GOWA should be approved;
- The process followed by the Welsh Government; and
- The detail of the draft amendment.

Carl Sargeant AC / AM  
Y Gweinidog Cyfoeth Naturiol  
Minister for Natural Resources



Llywodraeth Cymru  
Welsh Government

Dame Rosemary Butler AM  
Chair of Business Committee

14 November 2014

Dear *Rosemary*

On 5 November I laid an Order under section 109 of the Government of Wales Act 2006 ("GoWA") which, if approved by the National Assembly and by Parliament, would grant legislative competence to the Assembly to legislate to modify section 79 of GoWA – sustainable development.

My intention, should the Order be made in time, is to bring forward such a modification to GoWA through an amendment to the Well-being of Future Generations (Wales) Bill, ("the Bill"). A shorter period of Committee scrutiny would help ensure that the Order can be made in time to bring forward the amendment to the Bill at the earliest possible time, in Stage 3 of scrutiny.

I also wrote to the Environment and Sustainability Committee, and to the Constitutional and Legislative Affairs Committee (as the two Committees which I have appeared before on the Bill) to draw their attention to the laying of the section 109 Order and to express my willingness to appear again for scrutiny on the Order.

I understand that Business Committee has requested further information about the Government's intentions in relation to amending section 79 of GoWA and considers the provision of a draft amendment would be particularly beneficial in this instance.

The section 109 Order confers legislative competence on the Assembly to make legislation which amends the duty (in section 79 of GoWA) of Welsh Ministers in respect of sustainable development. I would like to emphasise therefore that the merits of the Order, and the merits of the amendment I intend to bring forward in the Well-being of Future Generations (Wales) Bill – which will be subject to separate scrutiny as part of the Bill process – are separate matters. The section 109 Order will confer competence; the Well-being of Future Generations (Wales) Bill will be the first opportunity for the National Assembly for Wales to make use of that competence.

In reflecting the legal context, any revision to section 79 must take account of the new sustainable development duties on Welsh Ministers set out in the Bill, but retain the critical role that promoting sustainable development should have as part of our constitution. To

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

English Enquiry Line 0845 010 3300  
Llinell Ymholiadau Cymraeg 0845 010 4400  
Correspondence: Carl.Sargeant@wales.gsi.gov.uk

Wedi'i argraffu ar bapur wedi'i ailgylchu (Recycled Paper) 2

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illustrate the wider framework of sustainable development duties for Wales, I have set out in Annex A what is required of the current provisions in section 79 of GoWA and the comparative provisions in the Bill and the proposed revision to section 79, which I also include as an annex to this letter.

Should the section 109 Order be made law, but the Bill is not passed by the Assembly, then the proposed amendment to GoWA would fall away with the Bill, although the Assembly would retain legislative competence over section 79 and could pass other legislation making modification to the duty Welsh Ministers are under in respect of sustainable development.

In presenting the draft amendment to you at the annex to this letter, I must of course emphasise that it may be subject to minor changes when the drafting is finalised before it is formally tabled at Stage 3.

I am copying this letter to the members of Business Committee. If you are content, I am happy for this letter and draft amendment to be shared with committees scrutinising the section 109 Order.

Yours sincerely

A handwritten signature in black ink, appearing to be 'CS', written over a horizontal line.

**Carl Sargeant AC / AM**

Y Gweinidog Cyfoeth Naturiol

Minister for Natural Resources

C.C. Paul Davies AM; Jane Hutt AM; Elin Jones AM; Aled Roberts AM; David Melding AM

## **Annex A – Proposed draft provision amending GoWA section 79**

This provision would be brought forward as a Government amendment to the Well-being of Future Generations (Wales) Bill as soon as possible, at Stage 3 of scrutiny.

### **X Promotion of sustainable development**

For section 79 of the Government of Wales Act 2006 (sustainable development) substitute—

#### **“79 Sustainable development**

- (1) The Welsh Ministers must, in the exercise of their functions, make appropriate arrangements to promote sustainable development.
- (2) After each financial year the Welsh Ministers must publish a report containing a statement of the arrangements made in pursuance of subsection (1) that had effect during that financial year and must lay a copy of the report before the Assembly.
- (3) The arrangements referred to in subsection (1) may be made by the Welsh Ministers exercising their functions under section 8(1) of the Well-being of Future Generations (Wales) Act 2014 (duty of Welsh public bodies to set objectives and take steps to meet them in accordance with the sustainable development principle).”.

## Annex B : Comparison of duties in respect of sustainable development

GoWA 2006 s79	WFG Bill	Draft Revised s79 GoWA
<b>Make a scheme to promote SD (s.79(1))</b>	<p>Set well-being objectives which are designed to contribute to the well-being goals (s7).</p> <p>Apply the sustainable development principle in setting and achieving sustainable development (s8).</p>	Make appropriate arrangements to promote sustainable development
<b>Comparison</b>	WFG is more prescriptive as to what the Welsh Ministers should do and moves beyond a 'promote' duty and separate scheme, to well-being objectives that are the core principles of Welsh Ministers plans.	
<b>Keep the SD scheme under review and may remake or revise</b>	Make a statement including how the Welsh Ministers propose to keep the duty under review (s8 (3)).	No requirements.
<b>Comparison</b>	Rather than keeping the scheme under review, the Bill focuses on reviewing how the Welsh Ministers propose to fulfil the duty.	
<b>Publish a report on how scheme proposals have been implemented in the year</b>	Publish a report on the progress it has made in meeting its well-being objectives, including the application of the sustainable development principle (s13).	Report on the arrangements made in that financial year
<b>Comparison</b>	A reporting mechanism has been retained.	
<b>Following an election publish a report containing an assessment of effectiveness</b>	No requirements.	No requirements.
<b>Comparison</b>	Whilst there is no specific requirement for an assessment of effectiveness by the Welsh Ministers, the Future Generations Commissioner is separately under a duty to publish a regular Future Generations	

Report (s.21 of the Bill). As the scope of the new sustainable development duty covers identified public bodies in comparison to s79 GoWA it is therefore an assessment of the improvements which public bodies should make in applying the sustainable development principle.

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# Agenda Item 3

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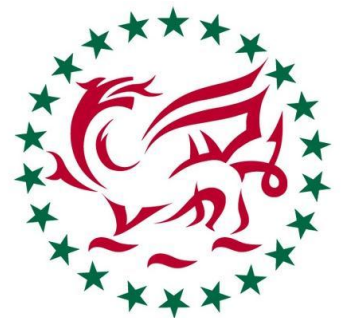
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# Agenda Item 4

## General Principles of the Planning (Wales) Bill

Evidence to the Environment &  
Sustainability Committee

November 2014



WLGA • CLILC

## INTRODUCTION

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities and the three fire and rescue authorities.
2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
3. We welcome the opportunity to submit evidence to the Environment & Sustainability Committee inquiry into the general principles of the Planning (Wales) Bill. We have set out our comments in line with the published terms of reference

### **The requirement to produce a national land use plan, to be known as the National Development Framework (NDF);**

4. The WLGA welcomes the production of a national land use plan to replace the Wales Spatial Plan. However, we disagree with the proposed 12 week consultation and 60 day consideration by the National Assembly proposed in Section 2 of the Bill. The NDF will have Development Plan status along with Strategic Development Plan (SDPs) and Local Development Plans (LDPs) and therefore all should be treated equally requiring the NDF to be subject to an Examination in Public (EiP). This is where there is an examination by an independent Planning Inspector to consider the 'soundness' of the plan, with hearings held in public. Without robust scrutiny, the plan will be open to challenge with a resulting loss of credibility and influence. Section 2 should be amended to reflect the requirement for the NDF to be subject to an EiP. The Welsh Government does not offer any reasons as to why they have adopted a different approach for the NDF.
5. The Bill is proposing a number of changes to LDP preparation including an end date after which the plan expires under the new Section 60C. Local Planning Authorities are also required to prepare a Local Development Plan Annual Monitoring Report. To ensure consistency with other development plans, proposals regarding the LDPs should apply to the NDF. The NDF should have an end date after which it expires and WG should be required to prepare an Annual Monitoring Report or similar and Section 60C(2) should be amended to reflect this rather than the current provision which allows the Minister to choose when to revise the NDF.
6. Further clarification should be given on the hierarchy of national plans and the relationship between the NDF and other national plans such as the National Transport Plan and Wales Infrastructure Investment Plan. Also there is little reference in the Bill and Explanatory Memorandum as to how the preparation of the NDF, SDP and LDP will be impacted by the Wellbeing of Future Generations Bill and the statutory duty to prepare a Wellbeing Plan. We would welcome a statement by the Minister or an explanation in the Explanatory Memorandum.

## **The creation of Strategic Development Plans to tackle larger-than-local cross-boundary issues;**

7. The WLGA agrees with the proposals for Strategic Development Plans but has concerns regarding the potential timescale and implications on LDP preparation. The Bill in Section 5 suggests that the SDP is to be in conformity with the NDF, implying that the NDF would be the priority in terms of plan preparation. Likewise the LDPs are to be in conformity with the SDP.
8. New Section 60I states that the SDP must be in 'general conformity' with the NDF. This need to be clarified or amended, does this mean that some parts of the SDP are not required to conform?
9. However, Welsh Government has made it clear that there cannot be any delay in the achieving complete LDP coverage for Wales. However we have concern that in some LPAs, a situation could arise where the adoption of an SDP would trigger a LDP rewrite when the LDP may have only recently been adopted. Preparation of an LDP is a significant financial undertaking for LPAs and this scenario will impact on LPAs resources and could be perceived by stakeholders as a questionable use of scarce resources. We would request that a provision is inserted in the Bill to enable WG and a LPA to suspend the LDP process in light of the preparation of an SDP for the region.
10. Section 60E(5)(b) directs Local Planning Authorities to consult "any other persons specified in, or of a description specified in, the direction" before submitting the strategic development plan proposal. The Explanatory Memorandum should give examples of who these persons could be. Section 60G has a provision that a local planning authority must provide the Welsh Ministers with any information that the Welsh Ministers request for the purpose of exercising their functions under sections 60D to 60F. This should be amended to read "available information" to avoid a direction to LPAs that would result in the commissioning of additional information. Section 60I(6) contains a list of plans/policies that the Strategic Planning Panel must have regard to when preparing a SDP, (f) however is a catch all "any other matters" and it would be helpful to have examples in the Explanatory Memorandum on what these could be.
11. With the formation of the Strategic Planning Panel and the preparation of SDPs, there is potential for duplication and confusion with other boards such as the City Region Board. The WLGA would welcome a statement by Welsh Government on the framework/hierarchy for strategic planning given DEST responsibilities for City Regions and the National Transport Plan.
12. The WLGA remains concerned about the proposed composition of Strategic Planning Panels (SPP) set out in Schedule 2A which will undermine local democracy and may result in businesses or communities raising concerns about accountability and transparency. The WLGA notes that such proposals are being introduced at a time when the Welsh Government is proposing an enhanced role for non-executive councillors in advance of the forthcoming second White Paper on Local Government

Reform. The proposals to create a Panel with a third of members being representatives from nominated organisations creates a planning regime which is arguably more susceptible to legal challenge around allegations of bias or predetermination.

13. During the Positive Planning consultation in February we questioned whether it was appropriate for non-LA representatives on the SPP to have voting rights given that they do not have a democratic mandate. We would have expected to see a section explicitly setting out voting arrangements in the Bill. We would like to see the appointed members having an advisory capacity not a voting capacity. Schedule 2A should be amended accordingly. The WLGA argues that as a minimum, a backstop safeguard for local democracy should be built into the decision-making process requiring at least a majority of elected members to vote on a decision (as well as an overall majority of the Panel).
14. The selection, by the Minister, of the nominated organisations from which one-third of SPP members will be selected could confer unfair advantage and undue influence on these organisations. It is not clear who these nominated organisations will be, the criteria for their selection by the Minister nor the criteria on how these organisations would determine their nominees. We would want this selection process to be open and transparent and subject to consultation. Schedule 2A paragraph 4(2) should be amended to ensure that the process is transparent. Also we would question how WG will ensure that these appointed members will be suitably trained and operate and, critically, be seen to operate without vested interest and within the letter and the spirit of the Code of Conduct which will apply to the elected members of the Panels. Local authority councillors adhere to a Code of Conduct in discharging their duties and therefore a similar Code of Conduct should be part of the standard terms of appointment referred to in Schedule 2A paragraph 5. These appointed Panels members should receive general planning training in addition to training to enable them to fulfil their role in the preparation of the SDP.
15. The Bill gives the Minister a number of default powers. Schedule 2A paragraph 23 gives the Minister power to take such steps as appropriate if the Minister considers that a Strategic Planning Panel is failing or omitting anything that is necessary and the Strategic Planning Panel must comply. The criteria for how the Minister will decide whether a SPP is failing should be on the face of the Bill; setting out clear criteria will ensure that such a decision is open and transparent.
16. The Bill (Schedule 2A, paragraph 24) also gives power to require that a constituent LPA provides the panel with staff or other services for the “purpose of enabling the panel to exercise its functions in its first financial year and specifying terms on which the services are to be provided if the authority and the panel cannot agree the terms”. Given the dire financial pressures facing non-protected services such as planning, the WLGA has considerable reservations on the use of a power which requires a constituent LPA to provide a SPP panel with staff or other services. As a result of these exceptional financial circumstances, we would suggest that the Bill is amended to insert a provision which requires the WG and LPA to enter into negotiation and seek

an agreed outcome to enable to the LPA to engage regionally rather than the current drafting which is a direction.

### **Changes to Local Development Plan procedures;**

17. The WLGA would be interested to understand the basis on which the Welsh Ministers would direct two or more LPAs to produce a joint LDP. Would a detailed business case be required setting out the reasons why a joint LDP is preferable to sole LDPs? The Explanatory Memorandum, merely states that "this decision would be based on evidence of the issues that need to be addressed". The circumstances for a direction for a joint LDP needs to be on the face of the Bill and Section 12(2) should be amended to reflect this.

### **Front-loading the development management process by making provision for pre-application services;**

18. Many LPAs already offer a pre-application service and it is essential that this is on a full cost recovery basis as LPAs cannot subsidise this service as is currently the case with the planning application fee. The requirement for the applicant of a major application to undertake pre-application consultation is supported.

### **Introducing a new category of development to be known as Developments of National Significance that are to be determined by Welsh Ministers;**

19. We note that it is predicted that there will only be about 10 applications per year but there is uncertainty regarding the exact scope given that the number of DNS will be dependent on the NDF. We do not consider it appropriate to set up another tier of application for so few applications and would recommend that Section 17 is removed. We would support putting in place changes and support that can assist LPAs to determine the applications in a more timely manner. Local authorities are well placed to determine these applications ensuring public involvement in the process. If the DNS category is introduced, the WLGA is concerned that over time the Welsh Government may seek to increase the numbers in this category by removing more types of applications from LPA determination to justify introducing DNS. The Bill at a minimum should be amended to require that the Welsh Government consults on proposals to widen the scope of the category.
20. If the Development of National Significance remains in the Bill, the WLGA would welcome clarity through the scrutiny process on the definitions of Development of National Significance as the Explanatory Memorandum is not specific on this issue. We would want the types of development or at the very least the criteria on the face of the Bill and the new Section 62(D)(3) should be amended to reflect this.
21. LPAs still have a significant workload associated with DNS proposals including the preparation of a Local Impact Report and discharge of conditions. The proposal is for developers to pay the LPAs direct, however further clarity is required on this. The fee payable should be based on full cost recovery. Potentially, the preparation of a Local Impact Report could involve commissioning additional evidence. Local authorities

should not bear the cost of this. This should be borne by the developers or should be the responsibility of WG to commission additional evidence if the LPA flagged up a potential impact in the Local Impact Report. The Bill should be amended to this effect.

22. New Section 62H introduced by Section 18 gives the WG power to prescribe the description of what constitutes a secondary consent. The criteria for what is a secondary consent should be on the face of the Bill and therefore the Bill should be amended.
23. An explanation is required regarding the meaning of Section 62H (2) in relation to developments which are of a private nature.

### **Streamlining the development management system;**

24. The rationale to seek greater consistency in the decision making process is broadly accepted. However, we do not understand the desire to legislate on the size of planning committees or for a national scheme of delegation. Only 3 LPAs (Neath Port Talbot are reducing their committee size imminently) do not have planning committees within the proposed banding (Planning Committees, delegation and joint planning boards consultation) so it should not be an onerous task to work with these LPAs to bring the size of the committee in line with the proposals. Section 3191ZB introduced by Section 37 should therefore be removed.
25. The WLGA is preparing (at the request of Welsh Government) a voluntary planning committee protocol to achieve consistency on matters such as right to speak, committee running order, member voting etc so we would question why WG isn't advocating a voluntary national scheme of delegation with some local variation. The RTPi research on planning committees and the responses to the consultation Positive Planning supported an element of local variation to the national scheme of delegation. WG has disagreed with this and is not advocating any local variation although it acknowledges that it is difficult to draft a national scheme of delegation due to difference in the scale of development across Wales. We would seek amendments to section 319ZA to reflect a national scheme of delegation (i.e a minimum threshold) which enables LPAs to amend to suit local circumstances.
26. We see no reason why it is acceptable to leave many of the 'consistency issues' to a voluntary protocol but it is not acceptable to achieve size of committee and a national scheme of delegation voluntarily.

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

27. There are a number of proposals in this Bill which potentially require additional local resources. However as much of the detail is subject to secondary legislation it is difficult to quantify future changes and future costs. As a principle, it is not appropriate or realistic to expect LPAs to find additional resources. Many LPAs have suffered budget cuts resulting in loss of staff and have limited capacity to implement

new initiatives and ways of working. Their focus is on delivering an acceptable service within current parameters.

**Whether there are any unintended consequences arising from the Bill;**

28. The Bill will give the Minister power to publish conditions by which major applications can be made to Welsh Ministers instead of a LPA. One of the proposals is when the LPA is designated as a poorly performing LPA. The criteria to be used by Welsh Ministers to define poor performance are not yet established, although it is anticipated that they will include timeliness and quality of decision making. A provision should be inserted in new Section 62L(8) which requires the Minister to consult with LPAs before criteria is published.
29. The penalising of poor performing local planning authorities may not drive up performance if it is not accompanied by an agreed plan of action to positively address the issues which contribute to the poor performance. Without this positive intervention, the power for the Minister to designate LPAs as poorly performing will be viewed negatively and is unwelcome. The removal of the fee income if major development applications are determined by WG will only exacerbate the issues possibly leading to further job losses and greater resourcing challenges for the LPA. It is vital that there is a process for addressing poor performance inserted in the Bill otherwise it is hard to see how the LPA can then find itself 'improved' and in a position to be receiving major applications again.
30. The drive for consistency in approach and delivery across the 25 LPAs in Wales could be counterproductive to performance. For example some LPAs are already achieving a high delegation rate. The proposed national scheme of delegation will result in changes to the current delegation scheme in these LPAs resulting in more applications being considered by committee and as a result the delegation rate in these LPAs will fall.

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

31. The consultation document Positive Planning contained numerous proposals to reform the planning system. Many of these proposals do not require primary legislation so are not on the face of the Bill. As a result their potential financial impact is not incorporated into the Regulatory Impact Assessment and therefore not subject to scrutiny.
32. The WLGA appreciates the difficulty for WG in costing many of the proposals as the financial evidence is not available and WG has therefore made assumptions based on a sample of costs from LPAs. In response to local circumstances, the 25 LPAs have in place different delivery models and associated costs and therefore it is difficult to draw conclusions based on a small varied sample. In addition to the lack of robust evidence we also have concerns on the assumptions made. For example, the cost of introducing SDPs is estimated at £3.5m. WG has assumed savings from the LDP preparation but in

some areas where LDP preparation is ongoing and SDP preparation is to commence, these LPAs will incur the cost of both LDP and SDP preparation. For example, SDP work could start in earnest in 2017 for the A55 corridor whereas the LDP for Flintshire is timetabled for adoption in 2018.

33. The preparation of the initial SDP will require evidence gathering as it is not appropriate to use the LDP evidence base if the area is to be planned as a strategic whole. In the past the WG has made funding available to LPAs via the Planning Improvement Fund but from 2014/15 this funding was no longer available. The WLGA would welcome clarity on what the £120,000 (which WG have stated may be available to SDP areas, Explanatory Memorandum Page 92 paragraph 7.38) can be spent on.

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

34. Generally this is a well drafted Bill but we do not consider that the balance is right regarding the face of the Bill and secondary legislation and our response suggests amendments accordingly. In terms of drafting we prefer the drafting style Section 360D(5) rather than 60G(2).
35. In Section 9 there are a lot of minor amendments which might be better in a Schedule.
36. The power contained in new Section 62D(3) introduced by Section 17 should be subject to super affirmative resolution procedure due to its importance and to give an opportunity for it to be amended.
37. In new Section 62H(1) introduced by Section 18 – the criteria for secondary consents need should be on the face of the Bill and not left to subordinate legislation.
38. The regulations introduced in the New Section 62M(3)(b) should be subject to consultation before they are made.
39. Section 53(2) provides for a blanket Henry the 8<sup>th</sup> power. Generally, powers to amend primary legislation should be limited and remain exceptional. The Constitutional and Legislative Affairs Committee might like to comment on this in particular.
40. New paragraph 14(2) of Schedule 2A should be amended so that the list of qualifying expenditure should be on the face of the bill. A power to amend the list by SI in the future could be envisaged.
41. In Schedule 4 paragraph 18 inserting new 303(1B), the setting of fees is a substantial power which should be on the face of the Bill. At a minimum it should be subject to super-affirmative resolution procedure.

42. This Bill provides an opportunity to ensure that the planning system reflects the needs of Wales. Currently there is no means for councillors, under the present statutory framework, to permit or refuse developments on the basis of their impact on the Welsh language alone and the WLGA would have welcomed powers in the Bill to strengthen the Welsh language in our communities.

**For further information please contact:**

Jane Lee, Policy Officer  
Jane.lee@wlga.gov.uk

Welsh Local Government Association  
Local Government House  
Drake walk  
Cardiff  
CF10 4LG

Tel: 029 2046 8600

## Planning (Wales) Bill

### Joint response from Welsh National Park Authorities

We refer to the Planning (Wales) Bill and the consultation on its general principles which is due to close on Friday 7<sup>th</sup> November 2014. To confirm, this email comprises a joint response to the consultation on behalf of the three Welsh National Park Authorities at the Brecon Beacons, Pembrokeshire Coast and Snowdonia.

Firstly, we are pleased to note the intention to retain the planning functions of the National Park Authorities and consider this to be wholly in the best interests of delivering on our statutory purposes and duty. Indeed, we were pleased to note the level of support for National Park Authorities in the responses to the initial 'Positive Planning' consultation and in the findings of the Commission on Public Service Governance and Delivery.

The '3 Parks' are generally supportive of the principles of the Planning (Wales) Bill as introduced and set out below is our response to the consultation.

#### **Development Planning**

##### ***National Development Framework***

In terms of the NDF, the strategic approach is welcomed and it is considered that this will assist in dealing with cross boundary issues as set out in our response to the 'Positive Planning' consultation in February 2014.

##### ***Strategic Development Plans***

The intended provision of a legal framework to provide formalised SDPs is also supported. However, in light of the intention for National Park Authorities to retain their planning function and to remain separate from Councils and/or Joint Planning Boards, clarification is sought on how an SDP would effect a NPA area. This is particularly relevant for the Brecon Beacons National Park Authority given its proximity to both Cardiff and Swansea. Should it be determined that the boundary for the Cardiff SDP (for example) was to include the Council areas that make up the South East Wales Strategic Planning Group (SEWSPG), the SDP would cover a significant part of the National Park (i.e. the Monmouthshire, Caerphilly, Torfaen, Blaenau Gwent, Merthyr Tydfil and Rhondda Cynon Taf areas within the Brecon Beacons National Park). How would the rationalisation of LDPs be applied in LPA areas only partially covered by SDPs.

##### ***Local Development Plans***

As referred to above, the provision to retain the separation between National Park Authorities and Councils/Planning Boards is welcomed and it should be noted that all three National Park Authorities have up-to-date and adopted Local Development Plans. The provisions of the Bill are generally accepted in this regard, although a detailed '3 Parks' response will be provided to the consultation on the review of the LDP subordinate legislation and guidance.

#### **Development Management**

##### ***Pre-Application Advice***

Turning to the issue of pre-application advice, the requirement for LPAs to offer a pre-application advice service is generally welcomed (A more detailed response on this will be provided as part of a '3 Parks' submission on the consultation relating to 'Frontloading the Development System'). Indeed, the Brecon Beacons National Park Authority has been operating a formalised pre-application service since April 2010. A guidance note is available to 'pre-applicants' which clearly sets out the nature and level of information and detail required from them, the level of advice that will be provided by the Authority and, crucially, a schedule of the fees relevant to different types of development. The pre-application advice service provided by the Authority is reviewed on an annual basis. Pembrokeshire

Coast and Snowdonia National Park Authority also offer a pre-application advice service and protocol. These services are similar to that operated by the Brecon Beacons National Park Authority.

### **Option to make a planning application direct to the Welsh Ministers**

We refer again to National Park Authority functions remaining separate from the Councils/Joint Planning Boards. To this end, would the provision of an option to make an application directly to the Welsh Ministers extend to the National Park Authorities? In any event, it should be noted that the three National Park Authorities are amongst the best performing LPAs in Wales and have demonstrated this throughout 2014 (see table below which sets out 8 week performance for 2014 to date).

**Table**

<b>NPA</b>	<b>Q1 2014 (%)</b>	<b>Q2 2014 (%)</b>	<b>Q3 2014 (%)</b>
Brecon Beacons	84	95	93
Pembrokeshire	76	88	85
Snowdonia	75	69	94

### **Planning Committees and Delegation**

In terms of the national scheme of delegation, we would express some concern. The proposal for a national scheme of delegation was contained in the consultation document Positive Planning. Of those who directly answered the question, a slight majority 53.5% agreed that there should be local variation within a national scheme of delegation and the RTPI research into planning committees also recommended local variation. Whilst the Welsh Government categorically state that they do not agree with this approach (as they do not consider it will achieve greater consistency in decision making across Wales), it is suggested that some variation should be applied to National Park Authorities given the fact that National Park Authorities have specific purposes which need to be upheld through the development process and smaller applications have a disproportionate impact on these protected landscapes.

It is considered reasonable to suggest that there should be some local discretion in terms of how some applications (which do not meet size or objection number thresholds) are dealt with. Snowdonia National Park Authority has estimated that the proposals would result in the number of applications being reported to Committee would be reduced by 90%. Clearly, this would have consequences in terms of accountability and the local democratic decision making process. Incidentally, only 10-15% of applications are reported to Members so we are referring to a relatively small number under the existing local schemes of delegation. It should also be noted that the Committee process assists in terms of Member knowledge and understanding as well as in providing an element of scrutiny and common sense.

Should you require any further information, please do not hesitate to contact me (Ryan Greaney) as the three Park Authorities point of contact on this consultation.

Regards

**Ryan Greaney BSc MSc AMInstLM MRTPI**  
**Principal Planning Officer**

Brecon Beacons National Park Authority - Awdurdod Parc Cenedlaethol Bannau Brecheiniog  
Plas Y Ffynnon  
Cambrian Way - Ffordd Cambrian  
Brecon - Aberhonddu  
LD3 7HP

# Agenda Item 8.1

We are pleased the Minister has sought to provide further information on his intentions for replacing the provisions of GOWA sec 79. We are pleased to see a draft amendment as per our recommendation in paragraph 15.

However, as regards to the issues we raised in our previous submission, we consider that the Minister has not addressed the points in our previous submission and our recommendations 16, 18, 19 and 20.

In particular, we still consider that the Government should commit to further amendments to GOWA in order to meet our concerns in paragraph 14 and the recommendation in paragraph 18 with regard to OWOP.

We would strongly recommend that questions in regard to these other amendments are raised with the Minister in scrutiny, in order that any of his commitments are on record.

The draft amendment allows the Government to fulfil its duty for sustainable development by delivering less than required under the current Government of Wales Act. We do not think the amendments as stated, particularly in sub section 3, will be sufficient to fully replace important provisions of the current scheme.

Regards,

Anne Meikle  
Chair of Sustainable Development Alliance

## Reforming the Green Deal

October 2014

### Summary

British Gas has provided ongoing and active support to the Green Deal programme since its inception. We have arranged over 300 finance plans, trained over 300 assessors, completed 100,000 assessments and carried out 13,000 installations. Our experience has highlighted several challenges with the Green Deal proposition, including an over-reliance on Green Deal finance to drive demand, and a complex customer journey.

We support the Government's objective to create a significant, paid-for market for energy efficiency improvements. However, the success of this market depends on the creation of significant customer demand. This demand has not been stimulated to date, and has been hindered by a focus on the finance mechanism. We therefore believe there should be a **renewed focus on driving customer demand**.

To create this demand, energy efficiency policy needs to take customers as its starting point and be built on a deep understanding of their needs and behaviours. Our experience suggests that long-term demand for energy efficiency needs to be driven by incentives, regulation, or both. Without this, customers will simply not make their homes more energy efficient.

### The role of Green Deal finance

Green Deal finance was intended to overcome perceived financial barriers to the uptake of energy efficiency measures. It reflected the belief that untapped customer demand existed for energy efficiency improvements, but was held back by the lack of a suitable finance product. Despite the introduction of Green Deal finance, this assumed customer demand has not materialised. Take-up of Green Deal finance has been further hampered by the complexity of the process, and the restrictive 'Golden Rule'.

**We understand the attractions of the pay-as-you-save (PAYS) principle; however we do not believe it will play more than a niche role**, even with significant reform. The key benefit of PAYS is that it can provide finance to those who would otherwise struggle to borrow. However, customers who need PAYS are constrained by the Golden Rule, which limits loans to around 30% of installation costs. While this funding gap could be bridged with subsidy, it is significant – typically accounting for 70% of the cost of measures. We believe that any subsidy should be applied to the measures installed, and not be dependent on householders taking on what they perceive to be debt, whether it is through Green Deal finance or elsewhere.

Customers who can afford to break the Golden Rule do not need PAYS because they have the option to borrow more cheaply from other lenders elsewhere. The interest rates and charges applied by the Green Deal Finance Company (GDFC) are not attractive to those who are able to secure conventional finance at lower rates. There are many other lenders who would be keen to provide finance of this sort, should significant paid-for demand develop. For example, Nationwide already offers 'Green Additional Borrowing' to mortgage customers, with an initial interest rate of 1.89% - far below the 8-12% APR typically offered by the GDFC. The small numbers of Green Deal finance plans that have

been delivered to date have been driven by incentives such as cashback, and there is **little evidence that Green Deal finance on its own causes customers to take action.**

The GDFC has recently accepted that its current business model is not sustainable, and while we agree with this assessment, we are considering the merits of their new business plan. It does little to address demand creation, yet assumes a paid-for market ten times larger than that being created by the Green Deal Home Improvement Fund (GDHIF). Finance is an enabler of demand, and will not create demand where previously there was none.

### Driving demand

The Green Deal **demand that we have seen has been driven by incentives.** Customers are attracted by the 'Deal' in Green Deal, and will act if it is sufficiently compelling. For most, a 'deal' means cashback or money off. It doesn't mean a loan, however innovative. British Gas has delivered more than 13,000 measures through the Green Deal, and all of these have been driven by incentives. The offerings of other market participants rely heavily on incentives, in both marketing and customer proposition.

While the early closure of the GDHIF was disappointing, we welcome the overall approach and the intention of creating a compelling customer offer. While we welcome the recent announcement of further funding for the scheme, the GDHIF is finite, and it relies on significant taxpayer funding. The creation of sustainable, **long-term demand for energy efficiency measures can best be driven by a combination of both 'carrots' and 'sticks'**. This could include taxpayer-funded offers, fiscally neutral incentives such as variable stamp duty and council tax, or regulation; for example, by building on current legislation targeting the private rented sector.

Reforming the Green Deal framework – including simplifying the customer journey, Green Deal finance and PAYS – will not lead to significant demand for paid-for energy efficiency measures. Government should focus on the role that could be played by incentives and regulation.

### Green Deal assessments

While the majority of the 320,000 Green Deal assessments delivered in total to date have been followed by the installation of an energy efficiency measure, **there is little evidence that the assessments themselves create demand.** Assessments are typically driven by the need to secure funding for installations that are already planned; this has been the case for the Energy Company Obligation, Green Deal incentive schemes and the Renewable Heat Incentive.

Of the 100,000 assessments we have carried out, only 6,000 have been for customers not already engaged in buying a measure, and few of those have resulted in an installation. While tailored energy efficiency advice can play a role in building demand, Green Deal assessments lack product information, a clear 'call to action' or advice on behaviour change. They are lengthy, expensive, and can be intrusive. Advice should be personalised, interactive, action-oriented and free.

We believe that **an engaging online service could meet the needs of most customers** - which would be cheaper, simpler and quicker - and that consideration should be given to how this might be developed as a substitute for the current Green Deal assessment.