

The National Assembly for Wales and Taking the Longer View

**A discussion document
by Peter Roderick
for
WWF Cymru**

28th June 2011

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Our values lead us to support the development of a more equal society, in which every Welsh citizen is able to make the most of their abilities and contribute to the wider community in which they live. We seek to improve the well being of all. We also recognize our responsibility to future generations and will continue to build a more sustainable Wales.

Welsh Labour Party Manifesto, 2011

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Executive summary

Human activities have developed to a point where our actions impact not just on other people and our local environment, but the whole planet and the conditions of life for centuries to come. We are now facing serious and threatening environmental problems as never before.

Our responsibility to future generations has been recognized by the previous Welsh Assembly Government. But progress has been patchy, and much still remains to be done.

The National Assembly for Wales now has new primary law-making powers. An Assembly Act cannot impose duties, confer powers or otherwise apply in relation to any subject not listed in Schedule 7, Part 1 of the Government of Wales Act 2006. Neither can it modify section 79 of that Act under which Welsh Ministers must make a scheme on how they propose, in the exercise of their functions, to promote sustainable development. These limitations, however, do not prevent a comprehensive and coherent legislative package from being enacted, aimed at providing a long-term framework to help safeguard the future.

This can be achieved by an Act of the Assembly firstly by requiring Welsh Ministers to exercise their duties and powers in order to achieve sustainable development, to adopt a sustainable development strategy, to make sustainable development the central organizing principle of government and by enacting the precautionary principle.

Secondly, an Act should acknowledge the existence of environmental limits expressly, and Wales' need to keep within them, by starting to establish a system respecting planetary boundaries which would evolve over time.

A third limb of the Act should put the Commissioner for Sustainable Futures on a statutory footing as a strong and independent champion of the environment and future generations, with significant powers and duties.

The Act should also establish a bold and inspiring Welsh Charter of Environmental Rights, which would help to raise awareness beyond policy makers of the predicament we now face and to prevent and remedy environmental injustice, suffered disproportionately by poorer people.

Each of these areas is summarized briefly more below:

Sustainable development

An Act should go beyond the current duty in section 79 by requiring Welsh Ministers to exercise their (other) duties and powers in order to achieve sustainable development. This strengthened duty should be supplemented by a legally-required sustainable development strategy which would become the main mechanism for achieving sustainable development. The strategy should be given specific legal consequences, such as requiring specified public bodies to frame their sustainable development objectives by reference to it, and would become the lynchpin for making sustainable development the central organizing principle of government by setting out the processes that would ensure that the Welsh Government's policies in relation to sustainable development are coordinated, consistent and coherent, including processes for the resolution of conflicting priorities. The strategy would be presented to the Assembly by the First Minister, and monitored and audited independently. It would be possible to require the Assembly's approval of the strategy before it became formally adopted, as well as the Assembly being given powers to require reviews. The Act should also define sustainable development, and require the precautionary principle to be applied by Ministers in the exercise of their duties and powers.

Environmental limits

An Act should acknowledge environmental limits by starting to establish a statutory system to recognise the biophysical preconditions necessary for human development in line with the planetary boundaries concept. The system would begin by setting out a process to establish in law those Earth-system processes which are necessary for the resilience of the Earth and of the natural environment of Wales. It would evolve over time and relate to the ecosystem approach. Local and public authorities would also be covered, whilst recognising the need for action at the UK, EU and international levels as well, such as at the meeting in 2012 in Rio de Janeiro to mark twenty years since the UN Conference on Environment and Development.

Commissioner for Sustainable Futures

The Commissioner for Sustainable Futures should be put on a statutory footing as a strong champion of the environment and future generations elected by and accountable to Assembly Members, and independent of the executive and legislature. The Commissioner would have the duty of investigating complaints from members of the public, or on his or her own volition. This duty would be backed up by the power to request other public bodies, such as the Environment Agency, to use its powers to prevent actual or potential environmental damage, and in cases of inaction to seek the intervention of the courts directly in the face of serious environmental harm. This investigative duty would be aimed at holding the government and other public authorities to account, and preventing environmental degradation. The Commissioner

would also have research, advice and reporting roles, including in relation to the strengthened sustainable development duty and planetary boundaries.

In this way, the Commissioner would not only be a spokesperson for present and future generations of people in Wales, but would have real powers, demonstrating that policy delivery is as important as policy formulation not only as a matter of intent, but in actual fact. Locating such a position within the Welsh Government, or even within the Assembly, would not give him or her much credibility outside “the Bay” and would not encourage the Commissioner to exercise his or her functions without fear of prejudice or hope of advantage. Locating it outside the Bay would be a waste of time and money if no real powers were to be enacted; and.

Environmental rights

An Act should establish a Welsh Charter of Environmental Rights, guaranteeing the right to live in a healthy environment which would be enforceable in the Welsh courts in the same way as human rights are enforceable under the Human Rights Act. The right has been acknowledged in many constitutions around the world; the Council of Europe’s Parliamentary Assembly has recommended its addition to the European Convention on Human Rights; and the UK has acknowledged it in ratifying the Århus Convention. This would be a bold and inspiring step for the Assembly to take, motivated by its long-term vision for Wales. It would help to raise awareness beyond policy makers of the predicament we now face; and by guaranteeing rights that would be enforceable against politicians and public authorities it would help to prevent and remedy environmental injustice, suffered disproportionately by poorer people.

1. Introduction

Human activities have developed to a point where our actions impact not just on other people and our local environment, but the whole planet and the conditions of life for centuries to come. Despite at least four decades of regulatory and legal efforts domestically and internationally, we are now facing serious and threatening environmental problems as never before. Indeed, according to many scientists, at the planetary level three biophysical preconditions necessary for human development have already been crossed – relating to climate change, biodiversity and the nitrogen cycle.

Growing concerns in this regard led in March 2011 to the formation in the UK of the Alliance of Future Generations with the objective of ensuring that long-term considerations and the needs of future generations are brought into the heart of UK democracy and policy processes in order to safeguard the earth and secure intergenerational justice.

Our responsibility to future generations has been recognized by the previous Welsh Assembly Government – for example in making sustainable development the central organizing principle of government, in its 2009 ‘One Wales: One Planet’ sustainable development scheme,¹ and in its Commissioner for Sustainable Futures. Delivering sustainable development, however, is a difficult and complex task which the Welsh Government has not been alone in struggling with;² progress has been described as “patchy”;³ and much still remains to be done.⁴

In light of the Welsh Assembly’s new primary law-making powers, this report suggests ways in which these powers could be exercised in a comprehensive and coherent legislative package in order to help in this task. It does so by considering:

¹ *One Wales: One Planet*, a new Sustainable Development Scheme for Wales, available from here: <http://wales.gov.uk/topics/sustainabledevelopment/publications/onewalesoneplanet/?lang=en>

² A report by the Wales Audit Office in January 2010 pointed out, for example, limitations in business processes of the Welsh Assembly Government which have impaired its effectiveness in embedding sustainable development objectives and principles in business decision making, and the need to actively manage conflicts arising from competing priorities (see here: http://www.wao.gov.uk/assets/englishdocuments/Sustainable_Development_english.pdf).

³ By the Sustainable Development Commissioner for Wales in October 2010 (since appointed as the Commissioner for Sustainable Futures), in a commentary on implementation of the sustainable development scheme: <http://www.sd-commission.org.uk/news.php/380/>

⁴ See particularly *Progress in Embedding the ‘One Planet’ Aspiration in Welsh Government*, a report for WWF-Cymru by Dr Alan Netherwood (May 2011).

- in section 2 how duties in relation to sustainable development – meeting present needs without compromising those of future generations - might be strengthened bearing in mind that there is no obligation on the Assembly to secure or achieve sustainable development;
- in section 3 how legislation could start to recognise environmental limits, as this is a well-recognised aspect of achieving sustainable development;
- in section 4 how the powers and duties of the Commissioner for Sustainable Futures might be strengthened, considering different possible models, taking into account international comparisons; and
- in section 5 how environmental rights for the benefit of present and future generations of people in Wales might be guaranteed, in the same way as human rights, in the light of the UK's recognition in international law of the right of every person to live in an environment adequate to his or her health and well-being.

2. A legal foundation for achieving sustainable development

“Legislative embeddedness” of national sustainable development strategies was identified in a 2006 OECD study to be one of the criteria for their effectiveness.⁵ A legal article published in 2010 is entitled *‘It’s Time to get Serious – Why Legislation Is Needed to Make Sustainable Development a Reality in the UK’*.⁶

The article’s author, Andrea Ross, argues:

“that the UK is now at a stage where specific legislation is required to drive the implementation of sustainable development further forward. Legislation directed at the implementation of sustainable development could potentially address many of the current shortcomings by increasing the priority, support and protection afforded sustainable development across government(s) as a long term policy objective. Legislation could have a significant symbolic and educational impact in making people understand what is at stake. Moreover, it could crystallise the policy framework already in place and thus, turn what is now, at best, good practice into meaningful legal obligations, supported by monitoring and review mechanisms which impose significant consequences for failure. Finally, legislation could set out how tools such as environmental assessment, procurement practice, research funding and public consultation relate to sustainable development and their role in the overall framework for implementation.”

The author suggests three legislative models, covering procedural obligations, substantive duties and making sustainable development the central organizing principle of government, with monitoring and review mechanisms.

(1) Wales is ahead of the game procedurally...

In the procedural sense, and in both UK and international terms, Wales is already ‘ahead of the game’ in the legal duty to make a scheme to promote sustainable development. Under the Government of Wales Act 2006 (GOWA) section 79(1):

⁵ *Governance Structures for National Sustainable Development Strategies: Study of Good Practice Examples*, Darren Swanson and László Pintér, International Institute for Sustainable Development (IISD), Prepared for: The Organization for Economic Co-operation and Development (OECD), October 1st, 2006, available here: http://www.iisd.org/pdf/2006/measure_gov_structures.pdf

⁶ Ross, A., *It’s Time to Get Serious—Why Legislation Is Needed to Make Sustainable Development a Reality in the UK*, *Sustainability*2010, 2, 1101-1127; doi:10.3390/su2041101, available here: <http://www.mdpi.com/2071-1050/2/4/1101/pdf>

“The Welsh Ministers must make a scheme (“the sustainable development scheme”) setting out how they propose, in the exercise of their functions, to promote sustainable development.”

The Ministers must keep the scheme under review, and may from time to time, after consultation, remake or revise it. They must publish an annual report on how the scheme’s proposals have been implemented and in the year following an Assembly election they must publish a report assessing how effective the proposals have been in promoting sustainable development.

(2) ...but a substantive duty is needed

The duty in section 79(1), however, is very weak. It is not a duty to promote sustainable development (let alone a duty to achieve it, or even to further it), but rather a duty to write down how the Welsh Ministers propose to promote it through their other functions.⁷

No substantive duty to achieve sustainable development has been placed on ministers or public bodies in the UK so far.

GOWA section 79 cannot be modified by an Act of the Assembly. However, an Act could and should be passed which included a provision placing a duty on Welsh Ministers to exercise their functions in order to achieve sustainable development (taking care at the same time to provide in the Act that nothing in such a provision would require the Ministers to do anything that would not relate to at least one of the subjects listed in GOWA Schedule 7 Part 1).

The ranges of subjects in Schedule 7 Part 1, and of ministerial duties and powers, are very wide and cover much of the range of matters to which sustainable development is relevant. But there are some obvious omissions (such as taxation) and also important exceptions (such as financial markets, electricity generation, coal and nuclear energy).

Formulating the duty as one to exercise (other) duties and powers to achieve sustainable development would reflect these omissions and exceptions in relation to law-making powers, and limitations in relation to Ministers’ powers and duties. Moreover, without more, a duty to achieve sustainable development – or weaker verbs, such as to further or to contribute to it – would arguably place the duty on a par with all other duties. By requiring all the Ministers’ (other) duties and powers to be exercised to

⁷ The term ‘functions’ was defined in section 155(1) of the 1998 Act as including duties and powers. Section 158(1) of the 2006 Act provides that “‘function’ means power or duty”.

achieve sustainable development would operate as an over-arching duty, in effect creating a purpose for which their other powers and duties were to be exercised.

A similar duty could be placed on local authorities, and a range of public bodies.

(3) A legally-required strategy could become the main mechanism for achieving sustainable development and making it the Welsh Government's central organizing principle

The substantive duty should then be supplemented by further provisions that would require the Ministers to draw up a sustainable development strategy setting out how they proposed to perform their duty to achieve sustainable development.⁸ This would, superficially, be a similar document to the current sustainable development scheme, and could have similar associated provisions relating to review, remaking, revision, consultation, reporting and post-election assessment as are set out in section 79 in relation to the scheme.⁹

But there would be several potential differences, such as:

- the strategy document would be the main mechanism for taking forward the substantive duty in relation to achieving sustainable development, whereas there is no substantive duty at present;
- an Assembly Act could include provisions setting out what should be included – or at least considered for inclusion – in the strategy, such as objectives, indicators and targets;

⁸ Although weakly worded, an example of a ministerial obligation to draw up a document for the purpose of securing compliance with a duty is in relation to children. Under section 2 of the Rights of Children and Young Persons (Wales) Measure 2011, Ministers must make “the children’s scheme” setting out the arrangements they have made, or propose to make, for the purpose of securing compliance with the duty under section 1 of the Measure to have due regard, when exercising any of their functions, to the requirements of Part 1 of the UN Convention on the Rights of the Child (and provisions of the Optional Protocol). The Measure is here: <http://www.legislation.gov.uk/mwa/2011/2/enacted>

⁹ An Assembly Act cannot modify section 79, so the associated provisions for a sustainable development strategy in an Assembly Act could follow those set out in GOWA sections 79(2)-(7). An Assembly Act could then provide that drawing up the strategy and following associated provisions in relation to the strategy would also be regarded as compliance with the duty to make the sustainable development scheme in section 79(1) and with the associated provisions in section 79(2)-(7). In this way, a sustainable development strategy would build on and take forward the current scheme, and would avoid duplication whilst respecting the inability of the Assembly to modify the provisions of that section. In time, section 79 could be repealed by an Act of the Westminster Parliament, as it would become unnecessary.

- the strategy could be given specific legal consequences, such as requiring specified public bodies to frame their sustainable development objectives by reference to it.

As regards the final indent above, Welsh Ministers already have the power, under section 8 of the Local Government (Wales) Measure 2009,¹⁰ to establish performance indicators by reference to which a Welsh “improvement authority’s” (mainly, local authorities) performance in exercising functions can be measured, and performance standards to be met by them in relation to such indicators. The Measure includes “sustainability” as one of seven specified areas in which an improvement authority can set itself objectives for improving the exercise of its functions, and provides that an improvement in respect of sustainability will occur “if services are provided or functions are otherwise exercised in a way which contributes towards the achievement of sustainable development in the authority’s area”. This definition of an improvement is extremely vague.

Section 2 of the Measure requires authorities to make arrangements to secure continuous improvement in the exercise of its functions, and in discharging that duty, to have regard in particular to the need to improve the exercise of its functions in terms of sustainability (and in terms of strategic effectiveness, service quality, service availability, fairness, efficiency and innovation).

The strategy’s relevance for the Environment Agency and its guidance from Ministers in respect of sustainable development (under section 4 of the Environment Act 1995) and for the Countryside Council for Wales would also need to be covered.¹¹

Widespread consultation would be expected to precede the strategy’s adoption, and it would be possible to require the Assembly’s approval of the strategy before it became formally adopted, as well as the Assembly being given powers to require reviews.

Moreover, the strategy could also become the lynchpin of provisions relating to making sustainable development the central organizing principle of government. This could be done, for example, by requiring the strategy:

¹⁰ The Measure is available here: <http://www.legislation.gov.uk/mwa/2009/2>. Although when that link was accessed on 25th May 2011, this section was not indicated to be in force, section 8(1)-(6) was brought into effect by The Local Government (Wales) Measure 2009 (Commencement No 1) Order 2009 (2009 No. 1796 (W.163) (C.88)), which is available here: <http://www.legislation.gov.uk/wsi/2009/1796/made>

¹¹ Unlike Natural England, which has a general purpose “to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development” under section 2 of the Natural Environment and Rural Communities Act 2006, the Countryside Council for Wales has no similarly stated purpose. This also needs to be addressed.

- to set out the processes that would ensure that the Welsh Government’s policies in relation to sustainable development are coordinated, consistent and coherent, including processes for the resolution of conflicting priorities;
- to be presented to the Assembly by the First Minister, as well as the annual reports;
- to be monitored and audited, independently, for example by the Commissioner for Sustainable Futures (see section 4 below) and the Auditor General. The Act could include specific provisions requiring the First Minister to respond to recommendations made by the Commissioner and Auditor General, setting out those recommendations that are accepted and those which are not accepted.

(4) Should an Assembly Act define sustainable development?

Yes.

So far, the term has not been defined in a UK statute, except in the International Development Act 2002.¹² But that context is particular, and the definition adopted barely enlightening.

A proposed definition has recently been put forward by a coalition of UK NGOs in relation to the Localism Bill currently before the Westminster Parliament (in relation to England). It is a basic definition, based on the usually-cited five principles of sustainable development:

“sustainable development’ means development that meets the social, economic and environmental needs of the present without compromising the ability of future generations to meet their own needs including the application of the following principles:

- (i) living within environmental limits;*
- (ii) ensuring a strong healthy and just society;*
- (iii) achieving a sustainable economy;*
- (iv) promoting good governance;*
- (v) using sound science responsibly.”*

¹² In section 1 of the International Development Act 2002, “furthering sustainable development in one or more countries outside the United Kingdom” is a part of the definition of the “development assistance” which the Secretary of State is empowered under that section to provide, if satisfied that it is likely to contribute to poverty reduction. In this context, sustainable development is defined as including “any development that is, in the opinion of the Secretary of State, prudent having regard to the likelihood of its generating lasting benefits for the population of the country or countries in relation to which it is provided”. The Act is available here: <http://www.legislation.gov.uk/ukpga/2002/1>

This is an uncontroversial definition.

Defining the term is desirable, as the failure to be clear about its meaning is often regarded as a reason why it has proven difficult to achieve - though there are, I think, more critically relevant reasons, and, as always, the devil would be in the detail.

It would also help Ministers understand more clearly the framework for their duty to exercise (other) duties and powers to achieve sustainable development. At the same time, the courts can be expected to grant the executive a wide discretion in this area.¹³

(5) The system should be underpinned by legislative application of the precautionary principle

One of the supporting principles of the current sustainable development scheme is the precautionary principle. The scheme states, as supporting principle 3:

“we will use an evidence-based approach to decision-making but, where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

The precautionary principle has been a feature of international environmental law since its emergence in the mid-1980s. The first treaty which referred to the term was the 1985 Vienna Convention (as ‘precautionary measures’), and this fed through to the 1987 Montreal Protocol and its amendments. This legal regime is generally regarded as having been successful, largely because of production bans on the depleting substances, though still there has been “unprecedented” ozone depletion over the Arctic this spring.¹⁴

The principle has been evident in treaties to protect the marine environment. A particularly strong expression of it appears in Article 2.2 of the Convention for the

¹³ “The more the legislation concerns matters of broad social policy the less ready will be a court to intervene” - Lord Nicholls in *Wilson v Secretary of State for Trade and Industry* [2004] 1 AC 816 at [70]; “A very considerable margin of discretion must be afforded to the Secretary of State. Difficult questions of economic and social policy were involved, the resolution of which fell within the province of the executive and the legislature rather than the courts” - Laws LJ in *Hooper v Secretary of State for Work and Pensions* [2003] EWCA Civ 813; “less intrusive judicial review should apply to decisions in the ‘macro-political field’” - Laws LJ in *R v. Secretary of State for Education and Employment, ex parte Begbie* [2000] 1 WLR 1115 at 1131.

¹⁴ “Depletion of the ozone layer - the shield that protects life on Earth from harmful levels of ultraviolet rays - has reached an unprecedented level over the Arctic this spring because of the continuing presence of ozone-depleting substances in the atmosphere and a very cold winter in the stratosphere”, according to the World Meteorological Organization. .See its press release of 5th April 2011, here: http://www.wmo.int/pages/mediacentre/press_releases/pr_912_en.html

Protection of the Marine Environment of the North-East Atlantic (the OSPAR Convention):

“The Contracting Parties shall apply:

(a) the precautionary principle, by virtue of which preventive measures are to be taken when there are reasonable grounds for concern that substances or energy introduced, directly or indirectly, into the marine environment may bring about hazards to human health, harm living resources and marine ecosystems, damage amenities or interfere with other legitimate uses of the sea, even when there is no conclusive evidence of a causal relationship between the inputs and the effects;”

Such strong expressions of the principle, which are very much in keeping with its initial comprehensive elaboration,¹⁵ do not incorporate economic or cost-effective considerations. On the other hand, the principle never made it into the operative provisions of the 1992 Convention on Biodiversity (only the preamble), and it was significantly downgraded in the UNFCCC.¹⁶

In this Act, Welsh Ministers should be required to apply a strongly worded form of the precautionary principle, along the lines of the OSPAR Convention, and excluding economic or cost effective considerations requirements, when carrying out their functions.

Ministerial duties in relation to sustainable development in the manner suggested in this section would still not, however, be sufficient to achieve its delivery. Much more needs to be done to keep the executive on track, particularly as regards respect for environmental limits, the role of an independent watchdog, and the guaranteeing of environmental rights for the benefit of present and future generations of the people of Wales. These additional aspects are considered in the following sections.

¹⁵ See The 1990 Bergen Ministerial Declaration on Sustainable Development in the ECE Region, 16th May 1990, paragraph 7, which stated as follows: *“In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.”* Document reference A/CONF.151/PC/10.

¹⁶ *“In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:...* 3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors...”, UNFCCC, Article 3, Principles.

3. Legislation respecting environmental limits

Living within environmental limits is a key aspect of sustainable development. According to a report for Defra in 2006:¹⁷

“[t]here is a broad consensus in the scientific literature that the goals of sustainable development will not be achieved unless we are better able to identify and define what environmental limits are.”

The Climate Change Act 2008 can be regarded as an example of environmental limits legislation. But as the scale of human effects on the planet becomes more widely appreciated, what about other environmental limits?

In one of its final reports, in March 2011, the Sustainable Development Commission (SDC) suggested a definition of ‘environmental limits’ which combines environmental, social and economic considerations:¹⁸

“Actions that breach environmental limits cannot be sustainable, but neither can initiatives which respect those limits but are socially divisive or economically unviable. An essential step in responding to environmental change is to understand the limits that exist within the environmental system and therefore when and how to take action. The SDC defines an environmental limit as:

The critical point(s) at which pressure on a natural resource or system creates unreasonable or irreversible change to the resource or system itself, to the detriment of the humans and other organisms to which it provides a service.”

The ecosystem approach - currently being progressed via the Natural Environment Framework, ‘A Living Wales’, and the National Ecosystems Assessment – and its focus on putting an economic cost on ecosystem services, appears to be the management approach currently preferred in the policy world in the context of environmental limits. Views will differ on the effectiveness of this approach, if it was to be adopted.

Meanwhile, biophysical preconditions necessary for human development have, according to one international analysis, already been crossed.

In a remarkable intellectual effort, 29 scientists from Sweden, the US and six other countries proposed in 2009 a framework of planetary boundaries that would define a

¹⁷ Haines-Young, R, Potschin, M, Cheshire, D, 2006, *Defining and Identifying Environmental Limits for Sustainable Development: A Scoping Study*, paragraph 12.2, available here: http://www.nottingham.ac.uk/cem/pdf/NR0102_FTR_Final.pdf.

¹⁸ *Know your environmental limits: A local leaders’ guide*, page 5, available from here: <http://www.sd-commission.org.uk/publications.php?id=1149>

safe operating space for humanity, associated with the planet's biophysical subsystems and processes. They wrote, in the journal *Nature*:¹⁹

“Although Earth’s complex systems sometimes respond smoothly to changing pressures, it seems that this will prove to be the exception rather than the rule. Many subsystems of Earth react in a nonlinear, often abrupt, way, and are particularly sensitive around threshold levels of certain key variables. If these thresholds are crossed, then important subsystems, such as a monsoon system, could shift into a new state, often with deleterious or potentially even disastrous consequences for humans (footnotes omitted)...

We have tried to identify the Earth-system processes and associated thresholds which, if crossed, could generate unacceptable environmental change. We have found nine such processes for which we believe it is necessary to define planetary boundaries: climate change; rate of biodiversity loss (terrestrial and marine); interference with the nitrogen and phosphorous cycles; stratospheric ozone depletion; ocean acidification; global freshwater use; change in land use; chemical pollution; and atmospheric aerosol loading...Our analysis suggests that three of the earth-system processes – climate change, rate of biodiversity loss and interference with the nitrogen cycle – have already transgressed their boundaries.”

For these nine processes, the authors have suggested numerical parameters and a proposed boundary for seven of them, and quantified their current status and pre-industrial value. Although a lack of information hinders the extent to which individual boundaries can be agreed at present (except, perhaps, in relation to climate change), and although the parameters are debatable, the very fact that for the first time nine key Earth-system processes have been identified as critical for the resilience of the Earth is important information for society in general, and for policy-makers in particular. In the words of one commentator, the concept itself is *“a sound idea...[with]...profound implications for future governance systems.”*²⁰ It is also information that legislators wanting to take the longer view should respect and respond to.

The main difference between the planetary boundaries concept and the ecosystem approach (and the SDC's definition of environmental limits) is that the concept is not –

¹⁹ Rockström, J, et al, 2009, *Nature* **461**: 472-475 (*A safe operating space for humanity*). The fuller scientific paper on which this feature is based, along with Supplementary Information, can be accessed from the 'Relevant Info' box on this web page: <http://www.stockholmresilience.org/planetary-boundaries>. Seven short expert commentaries on the concept were also published at the same time as the *Nature* feature, and they are available here: *Nature* reports, *Climate Change*, Vol. 3, October 2009, pages 112-119, <http://www.anu.edu.au/climatechange/wp-content/uploads/2009/09/climate-commentary-october-2009.pdf>

²⁰ Steve Bass, Senior Fellow at the International Institute for Environment and Development, in his short expert commentary *Keep Off the Grass*, available at the second link in the above footnote.

at least at this stage - an action plan or strategy for ensuring that we live within these boundaries. Rather, it is providing us with information about the key Earth-system processes that we must keep an eye on, and not degrade further if the Earth is to be kept resilient and if potentially serious and possibly irreversible change is to be averted. Going forward, the relationship between the ecosystem approach and biophysical realities crystallized in the planetary boundaries concept will need to be carefully considered.

In a previous recent report for WWF-UK I have discussed the planetary boundaries concept and responses to it in more detail; noted that it has been taken up by the UN Secretary-General's High-level Panel on Global Sustainability²¹ and the UK's Institution of Civil Engineers;²² and suggested ways in which legislation could be enacted now by the UK Parliament to recognise the concept.

(1) A start should be made to establish a statutory system...

In my view, the Assembly should legislate now to recognise the Earth-system processes at the heart of the planetary boundaries concept, as a first 'early warning' step (although in some respects of course the warning is hardly early). In time, a statutory system would evolve of recognising planetary boundaries, and of assessing the effects of key decisions on them, which would help us understand to what extent as a society we were respecting these environmental limits, and where policies (such as the ecosystem approach) were and were not working.

A start should be made on this statutory system by setting up in an Assembly Act a process that would lead to the establishment of these Earth-system processes in law. Ministers should be required to consider the nine (and possibly other) processes, with a view, after widespread consultation, to coming forward with proposals for how they could be implemented in Wales. They should be assisted in this task by the Commissioner for Sustainable Futures, who could be given a wide ranging advice and research role, with a duty to make recommendations on how to proceed that the Welsh

²¹ The Meeting Report of the Panel's second meeting (Cape Town, 24-25 February 2011) frames its overall goal for its report later this year and input into Rio+20 as follows: "*To eradicate poverty and reduce inequality, make growth inclusive, and production and consumption more sustainable while combating climate change and respecting the range of other planetary boundaries*". The Meeting Report is here: <http://www.un.org/wcm/webdav/site/climatechange/shared/gsp/docs/GSP2%20meeting%20report.pdf>

²² In its October 2010 *Engineering to live within planetary boundaries* report, the Institution states that "*the concept is clear and sufficiently intuitive that we can begin to explore ways in which society can stay within such boundaries.*" The report is here: <http://www.ice.org.uk/Information-resources/Document-Library/Engineering-to-live-within-planetary-boundaries>

Ministers would be legally obliged to follow or alternatively to provide reasons for not following.

(2) ...which would develop over time

The Act should also provide a framework for the development of the legal recognition of these processes once they have been established, with a view to:

- establishing parameters for each process, and numerical boundaries, in respect of the resilience of Wales' natural environment in the context of the resilience of the planet as a whole, of the UK, and also our "fair share";
- requiring the Environment Agency's collation and organisation of its pollution data to be done in such a way as enables the contributions from the activities it regulates to the level of each parameter to be quantified; and
- incorporating into the laws on strategic environmental assessment, sustainability appraisal, appropriate assessments and environmental impact assessments for projects a quantitative assessment of the effects of relevant decisions on each process.

An Assembly Act could also go further, and require consideration of these processes in the development of policies, in addition to those policies that are already covered, such as the marine policy statement,²³ and also in proposed legislation, in line with the international obligation of the UK – signed up to but still not ratified – to *"endeavour to ensure that environmental, including health, concerns are considered and integrated to the extent appropriate in the preparation of its proposals for policies and legislation that are likely to have significant effects on the environment, including health."*²⁴

The Act should also require the Ministers to monitor, and as part of the sustainable development strategy to report to the Assembly, on Wales' effects on each of the nine Earth-system processes, both in absolute terms and relative to the rest of the UK and other countries. The Commissioner would also be able to assist with this.

(3) Local and public authorities would also be covered

In addition, the Act should include a mechanism to ensure that once the Minister has established these processes in law, where a local or public authority has a statutory duty

²³ The UK Marine Policy Statement, under section 44 of the Marine and Coastal Access Act 2009, was published in March 2011: <http://archive.defra.gov.uk/environment/marine/documents/interim2/marine-policy-statement.pdf>

²⁴ Article 8 of the UNECE Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, available from here: http://www.unece.org/env/eia/sea_protocol/contents.htm

in relation to sustainable development, that duty would encompass those processes. The precise formulation of the public authority's duty would require further consideration consistent with the evolving statutory system, but the principle should be that the planetary boundaries concept would become an integral part of sustainable development.

How the idea of environmental limits is understood and applied at a local level, with the genuine participation of local people is crucially important. There is much merit in the 'legacy planning' approach at the local level, as put forward by the Environmental Law Foundation in its response to the Natural England White Paper in October 2010 (footnotes omitted):

“3.24. Legacy planning could be a first step in the process whereby a local authority in conjunction with its local community set both values and limits upon the use and depletion of their local natural environment – one such mechanism could be to use models such as those adopted in the Philippines towards setting eco budgets.

3.25. A legacy plan could be a way in which to engage local communities to participate in the decision making process around biodiversity valuation. Such plans can also be a mechanism for taking an ecosystem approach to the natural environment over the longer term thereby capturing public benefits from changing landscapes as a result of climate change.

3.26. One aim of legacy planning is to capture those biodiversity values (cultural, public) that are often invisible when planners determine whether the development of our natural environment is unlikely to have significant environmental impacts.

3.27. A legacy plan could be incorporated into the current planning system through existing Sustainable Community Strategies. Local communities would be fully involved in the provision of such plans that could look at a set legacy period and take into account climate change scenarios over the legacy period (say 2010-2050).”

The reference in the above extract to the ecoBUDGET approach in the Philippines is a reference to an environmental management system developed for and by local authorities by ICLEI-Local Governments for Sustainability, which defines locally-set key short-term and long-term (generally 8-20 year) targets.²⁵ This would appear to link well with the focus of the SDC's March 2011 publication, *Know your environmental limits: A local leaders' guide*.²⁶

²⁵ <http://www.ecobudget.org/index.php?id=6975>

²⁶ *Know your environmental limits: A local leaders' guide*, available from here: <http://www.sd-commission.org.uk/publications.php?id=1149>

This approach would seem to fit well with the consensual “community planning” process established by Part 2 of the Local Government (Wales) Measure 2009.

Community planning is defined in section 37(2) as:

“a process by which the [local] authority and its community planning partners—
(a) identify long-term objectives for improving—
(i) the social well-being of the area;
(ii) the economic well-being of the area; and
(iii) the environmental well-being of the area;
(b) identify long-term objectives in relation to the area for contributing to the achievement of sustainable development in the United Kingdom; and
(c) identify actions to be performed and functions to be exercised by the local authority and its community planning partners for the purpose of meeting the objectives identified under paragraphs (a) and (b).”

Under section 39, the consensual community strategy that emerges from the community planning process is to include community strategy objectives, and to describe actions to be performed and functions to be exercised for the purpose of achieving those objectives. And if an authority exercises its functions in a way which is reasonably likely to lead to the achievement of, or assist in achieving, any of its strategic objectives, then this is deemed under section 4(2) to be improving the exercise of its functions in terms of strategic effectiveness. In this additional way, sustainable development - and economic, social and environmental well-being - comprises a part of a local authority’s duties. There seems, therefore, plenty of scope within the Measure for respecting environmental limits at the local level.²⁷

(4) Though action at the UK, EU and international levels is also necessary

Of course, the planetary boundaries concept is of international scale and requires an international approach. And the current political environment at a UK level – for example, in the so-called ‘red tape challenge’ and the inane idea of not ‘gold-plating EU rules’ - gives plenty of room for pessimism. But taking the longer view requires making a start now, however modest, to reflect over-arching realities.

I have considered the UK and wider world in my previous discussion paper, and would refer readers to that.²⁸

²⁷ The powers and duties of local authorities are considered in more detail in *Sustainable development: local authority duties and responsibilities*, a report by Price Waterhouse Cooper for the Welsh Local Government Association (May 2011).

²⁸ *The feasibility of environmental limits legislation*, a discussion paper for WWF-UK by Peter Roderick, 13th April 2011.

It might be worth mentioning here though that in 2012, governments will be meeting in Rio de Janeiro to mark twenty years since the UN Conference on Environment and Development. This would seem to be an imminent opportunity for taking the planetary boundaries concept forward, for example by the adoption of a Rio Declaration on Planetary Boundaries, as a fore-runner of a possible Convention.

4. The Commissioner for Sustainable Futures

The appointment in March 2011 of the Commissioner for Sustainable Futures, in the wake of the abolition of the Sustainable Development Commission at the UK level, potentially places Wales amongst a small number of countries who have seen the merit of an institution to safeguard future generations. The UK Ambassador to Hungary has noted the appointment positively.²⁹

An Act of the Assembly could – and in my submission should – provide for such a Commissioner, and his or her functions. This section considers the kind of provisions that an Act could include.

Broadly, three possible models can be considered:³⁰

- an office within the executive,
- an institution within the legislature,
- an institution outside the executive and legislature.

Which model should be followed depends, essentially, on the duties and powers that would be imposed and conferred on the office or institution.

The first model would be appropriate if the duties and powers were to be focused on advising and monitoring the Welsh Government “from the inside”. This was broadly the model of the Sustainable Development Commission, and appears to be the model of the Commissioner for Sustainable Futures, but with no statutory basis. An Act of the Assembly could establish such an office, and it could, with adequate funding and expertise, be a means to provide the government with sustainability advice, and to monitor its performance. The weakness with this kind of approach is that the Commissioner would be too near to government and the bureaucracy to be objective, transparent and robust – he or she would be seen as ‘the government’s adviser’, not accountable to the Assembly, or to the people of Wales.

The second model would be appropriate if the duties and powers were to focus on assisting the Assembly (mainly) and the Welsh Government (secondarily) in enacting primary and secondary legislation. This was the approach that the Israeli Knesset

²⁹ http://blogs.fco.gov.uk/roller/dorey/entry/a_fine_hungarian_example?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+BloggerFCO+%28FCO+Bloggers%29. The possibility, mentioned in the final paragraph, of Hungary’s Commissioner for Future Generations being a casualty of redrafting the country’s new constitution did not, in the event, happen.

³⁰ A fuller account of the examples discussed below, and others, is set out on page 4 onwards of Appendix 2 of the report, entitled *Taking the longer view: UK governance options for a finite planet* (December 2010), which I wrote for WWF-UK and the Foundation for Democracy and Sustainable Development. The Appendix and the report are available from here: <http://www.fdsd.org/2010/12/taking-the-longer-view/>

adopted by law in 2001 when establishing a Parliamentary Commissioner for Future Generations, appointed by the Speaker for a renewable five year term. The Commissioner's powers were focused on supporting the Knesset in its consideration of proposed laws and regulations of particular relevance for future generations.³¹ An Act of the Assembly could establish a Commissioner within the Assembly in this way, who would participate in the law-making process, as an adviser to the Assembly when enacting primary legislation, and possibly to the government when enacting secondary legislation. A weakness of this approach is that it would focus possibly too much on the actual law-making process, rather than having a broader remit – facing inwards, instead of outwards.

The third model would be appropriate if the duties and powers were to focus more on the substantive nature of the issues, rather than the official constitutional set-up, in a way which reflected their importance for the people of Wales and recognised the merit of an independent watchdog who would be able to perform his or her functions without fear of prejudice or hope of advantage.

This is the approach that has been taken in Hungary, where the Parliamentary Commissioner for Future Generations has been one of four ombudsmen elected by the unicameral Hungarian Parliament. He is charged with protecting the constitutionally-guaranteed fundamental right to a healthy environment, and receives petitions from those concerned that that right has been, or is in danger of being, violated. He must investigate proper petitions and make recommendations to the relevant public body, and he can investigate violations on his own initiative. He has duties aimed at improving law enforcement, legislation, and implementation of international treaties, and can ask the Constitutional Court to intervene, as well as the duty to participate in formulating Hungary's position at the EU level. He has powers aimed at controlling the activities of individuals and companies that actually and potentially harm the environment; at moving the competent regulatory authorities to use their own powers to restrain environmentally-damaging activities; and at suspending the decisions of administrative bodies which permit activities that harm the environment. In performing his functions, he has significant powers to obtain information, to enter property and to publicise his proceedings. The Commissioner has said that he also carries out strategic development and research, covering the duty of representing the interests of future generations.

Legislative models for Commissioners in other policy areas are also worth considering, in particular those applying to the Children's Commissioner for Wales and the Commissioner for Older People in Wales.

³¹ The Knesset Act has, apparently, been recently repealed.

The office of Children’s Commissioner (CC) was established under Part V of the Care Standards Act 2000,³² with the “principal aim... in exercising his functions...to safeguard and promote the rights and welfare of children”. The CC has the power to “review the effect on children” of the exercise and proposed exercise of any function of the Assembly (and of any listed person). The CC may also review and monitor the operation of arrangements made by the Assembly and others, such as providers of regulated children services, for dealing with complaints and representations from children, and can provide advice, information and support. The CC may also examine cases of particular children where a complaint has been made, and the case raises a principle of general application. The CC may provide assistance to a child in proceedings concerning, for example, provision of services or the effect on a child of the exercise or proposed exercise of the Assembly’s functions.

The CC also has a general power to consider and make representations to the Assembly about any matter affecting the rights and welfare of children. In exercising his or her functions the Commissioner must have regard to the UN Convention on the Rights of the Child.³³

The CC is appointed by the First Secretary, after taking account of the views of selected children and the advice of any interviewing panel, for a non-renewable seven year term.³⁴

Under the Commissioner for Older People (Wales) Act 2006,³⁵ a Commissioner for Older People in Wales (COP) is appointed with no stated purpose. However, the COP may promote awareness of the interests of older people and of the need to safeguard those interests; promote the provision of opportunities for, and the elimination of discrimination against, older people; encourage best practice in their treatment and keep under review the adequacy and effectiveness of law affecting their interests.

³² Part V of the Act is available here: <http://www.legislation.gov.uk/ukpga/2000/14/part/V>. Further powers are set out in The Children’s Commissioner for Wales Regulations 2001 (2001 No. 2787 (W.237)), available here: <http://www.legislation.gov.uk/wsi/2001/2787/made#text%3Dchildren%20commissioner%20wales#match-1>

³³ The text of the Convention is available here: <http://www2.ohchr.org/english/law/crc.htm>

³⁴ Under The Children’s Commissioner for Wales (Appointment) (Amendment) Regulations 2007 (2007 No. 1049 (W.107)), which are available here: <http://www.legislation.gov.uk/wsi/2007/1049/made#text%3Dchildren%20commissioner%20wales#match-1>

³⁵ The Act is available here: <http://www.legislation.gov.uk/ukpga/2006/30>

The powers of the COP are very similar to those of the CC.³⁶ In considering what constitutes the interests of older people the COP must have regard to the UN Principles for Older Persons adopted by the UN General Assembly on 16 December 1991.³⁷

The COP is appointed by the First Minister in a similar way to the CC, for a four year term that can be renewed once.³⁸

A number of observations in relation to the CC and COP legislation might be worth making, in the context of their relevance to an Assembly Act establishing a Commissioner for Sustainable Futures:

- the legislation establishing both focuses on giving powers, and not duties, so that neither Commissioner is obliged (for example) to ensure that children's rights or older people's interests are respected. It would be possible and desirable for the Commissioner for Sustainable Futures (for example) to have a statutory duty to protect the environment and to safeguard the interests of future generations;
- the powers of both Commissioners are linked to specific international instruments directly relevant to their role – namely the UN Convention on the Rights of the Child and the UN Principles for Older Persons. It would be possible and desirable for a similar link to be made in relation to the Commissioner for Sustainable Futures, such as the 1992 Rio Declaration, and to require him or her to have regard to international Conventions concerning the environment that the UK has signed and ratified, including the 1998 UN ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Århus Convention).
- the CC and COP appear to have extensive powers to obtain information, though these do not seem to extend to having proactive physical access to property in order to obtain information. This power is given to the Hungarian Commissioner and should be given to the Commissioner for Sustainable Futures.

³⁶ As well as the Act, further COP powers are set out in The Commissioner for Older People in Wales Regulations 2007 (2007 No. 398 (W.44)), which are available here:
<http://www.legislation.gov.uk/wsi/2007/398/made#text%3D%22Commissioner%20for%20Older%20People%22#match-1>

³⁷ The UN General Assembly Resolution, to which the Principles are annexed, is available here:
<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/581/79/IMG/NR058179.pdf?OpenElement>

³⁸ Under The Commissioner for Older People in Wales (Appointment) Regulations 2007 (2007 No. 396 (W.42)), which are available here:
<http://www.legislation.gov.uk/wsi/2007/396/made#text%3D%22Commissioner%20for%20Older%20People%22#match-1>

- the form of appointment of the Commissioner is very important for determining the type of person who fills the post. Without in any way intending to cast aspersions on particular individuals, the closer the appointment process is to the executive, the more likely it is that the person appointed would be in its image. The closer the process is to the legislature, the better the chances of appointing someone who is independent and would not fear the government. An Assembly Act should provide for the Assembly to elect the Commissioner.
- neither legislation establishing the CC nor the COP – nor, indeed, the Rights of Children and Young Persons (Wales) Measure 2011 – guarantee or ensure the rights of children or older people. In the former respect, the rights only specifically exist in international law and the 2011 Measure only establishes a “have due regard” duty.

In my view, the Commissioner for Sustainable Futures should be elected by and be accountable to Assembly Members, and independent of the executive and legislature. He or she should have the duty (not simply the power) of investigating complaints from members of the public, or proactively. The duty would be backed up by the power to request other public bodies, such as the Environment Agency, to use its powers to prevent actual or potential environmental damage, and in cases of inaction to seek the intervention of the courts directly in the face of serious environmental harm. This investigative duty would be aimed at holding the government and other public authorities to account, and preventing environmental degradation. The Commissioner would also have research, advice and reporting roles, including in relation to the strengthened sustainable development duty and planetary boundaries.

In this way, the Commissioner would not only be a spokesperson for present and future generations of people in Wales, but would have real powers, demonstrating that policy delivery is as important as policy formulation not only as a matter of intent, but in actual fact. Locating such a position within the Welsh Government, or even within the Assembly, would not give him or her much credibility outside “the Bay” and would not encourage the Commissioner to exercise his or her functions freely. Locating it outside the Bay would be a waste of time and money if no real powers were to be enacted.

Further possible functions of the Commissioner are discussed in the following section.

5. A Welsh Charter of Environmental Rights

In my December 2010 report,³⁹ I noted that about 120 constitutions around the world contain provisions on environmental rights and State protection duties. At least eight European countries have environmental rights contained in the operative provisions of their constitutions – Belgium, Czech Republic, Hungary, Norway, Portugal, Slovenia, Slovakia and Spain – and France includes it in the preamble to the Environment Charter included in its Constitution. The constitutions of South Africa, the Virgin Island and Pitcairn also contain the right and make express reference to future generations.

The UK does not have a written constitution contained in one document of particular sanctity, setting out the powers of and relationships between State institutions, and the relationships between those institutions and British citizens. That said, however, GOWA 2006 is a constitutional document, which focuses on the former aspect in relation to Wales, the Assembly and the Welsh Ministers. It does not set out the relationship between these Welsh institutions and people in Wales in relation to the environment and future generations. An Assembly Act would be able to do so.

The Assembly should legislate to guarantee the right to live in a healthy environment, which could be enforceable in the Welsh courts in the same way as human rights are enforceable under the Human Rights Act. This would be a bold – and inspiring – step for the Assembly to take, motivated by its long-term vision for Wales. It would involve accepting limitations (for as long as the Act was in force) on the legislative, executive and decision-making powers of the Assembly, Ministers and public authorities, in favour of the people, who would be able to challenge these institutions in the courts, not only procedurally (as in most judicial review cases) but also substantively. The right would also have to be specifically addressed during public decision-making, so its potential effect would be systematically preventative and not merely sporadically curative.

The Parliamentary Assembly of the Council of Europe recommended in September 2009 that the Committee of Ministers “draw up an additional protocol to the European Convention on Human Rights, recognising the right to a healthy and viable environment.”⁴⁰ Despite a vigorous NGO campaign,⁴¹ the Committee of Ministers rejected the recommendation on 16th June 2010.⁴²

³⁹ *Taking the longer view: UK governance options for a finite planet*, a report by Peter Roderick for WWF-UK and the Foundation for Democracy and Sustainable Development, available here: http://www.wwf.org.uk/wwf_articles.cfm?unewsid=4545. The Appendices to that report are available here: <http://www.fdsd.org/wordpress/wp-content/uploads/Taking-the-longer-view-appendices-December-2010-rev.pdf>

⁴⁰ Recommendation 1885, available here: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/EREC1885.htm>

⁴¹ For example, see the letter from Stand Up for Your Rights in March 2010 to the Swiss Minister, Chair of the Committee of Ministers, in the run up to the vote (accessed on 6/12/10):

The UK has recognised the existence of a substantive environmental right in the preamble and in Article 1 of the Århus Convention:

“Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations...”

Article 1 - OBJECTIVE

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.”

This substantive right, however, has not been operationalised in the UK. An Assembly Act could and should make it so.

An alternative, but weaker, option would be for an Act of the Assembly to impose a duty on Ministers and public authorities to protect the environment for the benefit of present and future generations. The duty would not extend to the Assembly, and although such a duty would be in theory judicially reviewable – and so amenable to mostly procedural challenges - unless elaborated upon the circumstances in which a court would strike down a decision on the basis of it would be rare. The latter weakness could be ameliorated to some extent by requiring Ministers and public bodies to set out how the duty has been complied with when making decisions which significantly affect the environment and/or future generations. A duty to carry out an inter-generational analysis could also be considered for inclusion.

The Commissioner for Sustainable Futures’ functions should be empowered to receive complaints and representations concerning possible violations of the substantive right or non-compliance with such a duty.

<http://www.righttoenvironment.org/ip/uploads/downloads/To%20Swiss%20Minister%20of%20Foreign%20Affairs%20on%20Right%20to%20Environment%20SUFYR.pdf>

⁴² The Decision of the Committee of Ministers on 16th June 2010, rejecting the Assembly's recommendation (dated 18 June) is available here:

<https://wcd.coe.int/ViewDoc.jsp?Ref=CM/AS%282010%29Rec1883-1885&Ver=final&Language=lanEnglish&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

6. Conclusion

A comprehensive and coherent legislative package is needed in order to provide a legal foundation to help Wales live on a finite planet within its fair share of the world's resources. This can be achieved by an Act of the Assembly, firstly, by requiring Welsh Ministers to exercise their duties and powers in order to achieve sustainable development, to adopt a sustainable development strategy, to make sustainable development the central organizing principle of government and by enacting the precautionary principle.

Secondly, an Act should acknowledge the existence of environmental limits expressly, and Wales' need to keep within them, by starting to establish a system respecting planetary boundaries which would evolve over time.

A third limb of the Act should put the Commissioner for Sustainable Futures on a statutory footing as a strong and independent champion of the environment and future generations, with significant powers and duties.

The Act should also establish a bold and inspiring Welsh Charter of Environmental Rights, which would help to raise awareness beyond policy makers of the predicament we now face and to prevent and remedy environmental injustice, suffered disproportionately by poorer people.

Taken together, these provisions would go a long way in helping set a long-term framework for safeguarding the future.