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Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil yr Amgylchedd (Egwyddorion, Llywodraethiant a Thargedau Bioamrywiaeth) (Cymru) | Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill

You do not need to answer every question, only those on which you wish to share information or have a view.

1. What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

We strongly support the general principles of the bill: to enshrine environmental principles in Welsh law and place duties on Welsh Ministers and public authorities to take account of them in policy making; to establish a new governance body to hold Welsh Ministers and public authorities to account on compliance with environmental law; to create a framework to set legally binding biodiversity targets, with a duty to bring forward targets in priority areas and a duty on Welsh Ministers to deliver the targets.

While the principles of the bill are welcome, there are ways in which some of its provisions could be clarified or strengthened, as we set out below.

2. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

▪ **Part 1 - Environmental objective and principles (sections 1 to 7)**

The bill will embed four important and longstanding international environmental principles into Welsh law, along with duties on Welsh Ministers and Natural Resources Wales to have “special regard” to these principles and to integrate environmental protection into their policy making (sections 2 to 4).

The four environmental principles are:

- the precautionary principle so far as relating to the environment
- the principle that preventative action should be taken to avoid environmental damage
- the principle that environmental damage should as a priority be rectified at source
- the polluter pays principle

The bill also places duties on certain public authorities to have regard to environmental principles and integrate environmental protections when carrying out their functions in connection with the assessment of plans and programmes, known as Strategic Environmental Assessment (section 5).

The provisions on environmental principles will underpin the new environmental governance system in Wales, ensuring that environmental considerations inform ministerial and public authority policy making.

The Welsh Government has clarified that policy making includes proposals for legislation and developing, adopting or revising policies but that individual regulatory, planning or licensing decisions made by the Welsh Ministers are out of scope of the duty (section 4).

Welsh Ministers will be required to consult on and publish an environmental principles and integration statement, to clarify and explain how the environmental principles are to be interpreted and applied (section 6).

The bill introduces an environmental objective to guide the application and implementation of the duties on environmental principles and integration.

Comparison with the existing legislative frameworks in England, Northern Ireland and Scotland highlights that the Welsh Government has sought to build on the approaches taken by the other governments.

It has introduced a stronger standard for the duties on Welsh Ministers and Natural Resources Wales ("special regard" vs the "due regard" standard used in the other countries), which means that they must attach considerable importance and weight to the principles when making policy. It has opted to apply the duty directly to the principles rather than the more indirect – and less helpful – approach taken by the UK government of attaching the duty to a policy statement.

However, there are some areas where the bill needs clarifying or strengthening, as we highlight below.

Scope of the duty in section 3

The environmental principles duties in other legislation in the UK cover all policy making, with some exceptions for fiscal and defence policy. The Welsh Government has instead opted for what appears to be a narrower approach in which only policy “that has, or could have, any effect on the environment” will be covered by the duty. This allows future Welsh Ministers to exclude policy from the duty if they determine it would not have any effect on the environment.

While we note the Cabinet Secretary’s insistence that all relevant policy will be caught by the proposed scope of the section 3 duty, we are concerned that considerable discretion will be placed in the hands of future Welsh Ministers to decide whether policy has, or could have, any effect on the environment. There is no requirement for them to seek advice on this, nor to publish the criteria that they will use to decide whether policy is in scope of section 3.

Impact on the integration of environmental protection into policy making

The integration principle derives from international law and seeks to ensure that environmental protections are embedded across all fields of policy, not just those obviously related to the environment. While we welcome the Welsh Government’s decision to elevate the integration principle to a legal duty binding on Welsh Ministers and some public authorities, the scope of the section 3 duty frames, and potentially undermines, the way in which the duty to integrate environmental protection into policy making will be carried out.

The use of “such” in section 3(1)(b) clearly limits the application of the integration duty to policy which has, or could have, any effect on the environment, instead of its accepted and longstanding application to all policy. While we believe this is not the Welsh Government’s intention, it is the result of the way in which this subsection has been drafted. This should be corrected.

Recommendations

The Welsh Government should reconsider the scope of the environmental principles duty and, for the sake of legal clarity, apply it to all policy making not just that which has or could have an effect on the environment.

Section 3(1)(b) should be amended to clarify that the duty to integrate environmental protections must apply to all policy.

Welsh Government officials explained to the Legislation, Justice and Constitution Committee in the oral evidence session on 30 June that public authorities will only be required to have regard (and not special regard) to environmental principles, because the strategic environmental assessment regulations already focus on environmental impact. Further clarity on this would be welcome.

Wording of the environmental objective

We welcome the introduction of an environmental objective in relation to the environmental principles and integration duties, although have reservations in relation to its application to the Office of Environmental Governance in Wales, as we explain in our response to question 3.

The inclusion of a reference in Section 1(1)(a) to achieving the well-being goals in section 4 of the Well-being of Future Generations (Wales) Act 2015 would, however, dilute the environmental objective's focus away from its primary aim of the attainment of a high level of environmental protection and environmental improvement, due to the goals' very broad focus.

Timetable for publishing and reviewing the environmental principles statement

The bill requires Welsh Ministers to consult before publishing the statement and enables them to review it "from time to time" (section 6(5)). The explanatory memorandum suggests that the Welsh Government wants to progress the statement ahead of commencement of the bill's provisions, which would be welcome (para 3.1444).

The duties on Welsh Ministers, NRW and public authorities on environmental principles and integration will come into force six months after Royal Assent, which would be in October 2026.

It would be helpful if Welsh Ministers could be asked to confirm the timetable for consulting on and publishing the first statement, so that consultation can be undertaken with sufficient time for meaningful engagement, bearing in mind the forthcoming pre- and post-election periods.

We suggest that it would be beneficial for the statement to be reviewed on a regular basis, rather than "from time to time", for example once during each Senedd term, to ensure that it keeps pace with developments in international environmental protection legislation and provides up to date guidance to ministers and public authorities.

3. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

- **Part 2 - The Office of Environmental Governance Wales (sections 8 to 32 and Schedules 1, 2 and 3)**

We welcome Part 2 of the bill, which establishes a new statutory environmental oversight body, the Office of Environmental Governance Wales (OEGW).

This is long overdue, as since Brexit, Wales has been without a statutory body to monitor and enforce breaches of environmental law by Welsh Ministers and public authorities and is the last UK nation to introduce legislation to fill this gap. The Office for Environmental Protection (OEP) and Environmental Standards Scotland (ESS) perform a similar role in England, Northern Ireland and Scotland.

While an interim arrangement, the Interim Environmental Protection Assessor for Wales, has been put in place, it lacks resourcing and has no statutory powers. Given the delays, a clear timetable and process for the establishment of the OEGW is needed, as we set out in our response to question 5.

Independence of the OEGW

The Welsh Government recognises that the independence of the OEGW “is of paramount importance to its effective operation” (para 3.165, Explanatory Memorandum).

However, there are no legal safeguards in the bill to protect the body's independence. While welcome, words of positive intent from the current administration do not amount to long term legal certainty.

We note that the Cabinet Secretary argued in his oral evidence to the Committee on 26 June that the independence of the OEGW would be assured because of measures that had not been included in the bill. For example, the Welsh Government has not sought a power to issue guidance to the OEGW akin to that of the Secretary of State in relation to the OEP in [section 25](#) of the UK Environment Act 2021 and has empowered the OEGW to decline to provide advice to Welsh Ministers if requested.

While we welcome the decision not to seek such a guidance power, the absence of any explicit legal safeguards on OEGW independence leaves the body vulnerable to the political whims of future ministers, who may be less well

disposed to the OEGW, especially once it has started to ask difficult questions about any potential lack of compliance with environmental laws.

The Welsh Government should amend the bill to introduce a duty on Welsh Ministers to respect the OEGW's independence, like that in [Schedule 1](#) of the Environment Act 2021, which has been very helpful in relation to safeguarding the independence of the OEP. This duty is far from a mere declaratory statement; it would act as a potential backstop should future ministers be less favourably disposed to the OEGW, but its greater significance lies in how it would inform decisions about funding and appointments. It would also provide a frame for the sponsorship relationship, helping to ensure that the OEGW is "differently independent" to other public authorities, as we believe is the Welsh Government's policy intention.

The bill could also be amended to clarify that Welsh Ministers have no power of direction in relation to the OEGW, like [Schedule 1](#) of the Scottish legislation.

Review of compliance notices

The bill currently enables public authorities to ask the OEGW to undertake an internal review of a compliance notice and to require the OEGW to pass the decision on notices over to a 'review committee', which will include people appointed from a list maintained by Welsh Ministers. That review committee would be able to confirm, withdraw or vary the compliance notice. This would weaken the OEGW's governance and enforcement authority. It would also create a perceived lack of independence, especially in relation to compliance notices relating to Welsh Ministers.

Para 10 of Schedule 1 of the bill specifies that the composition of the committee must include at least 2 people co-opted from a list maintained by Welsh Ministers. Placing the fate of compliance notices, which are designed to be the OEGW's principal vehicle to bring about compliance with environmental law, in the hands of a potential majority of external persons, would weaken its governance and enforcement authority.

Experience from the other jurisdictions in the UK highlights that public authorities do not always agree with the findings of the relevant environmental oversight body, so the review process is likely to be used on a regular basis. These provisions should be rethought so that the OEGW retains control over its enforcement decisions. It would be possible, for example, to build independence and objectivity into the review process without requiring the OEGW to cede its enforcement authority.

Resourcing of the OEGW

The bill provides no safeguards on the process for deciding the resourcing of the OEGW, which is set out in Paragraph 16 of Schedule 1. The UK government took a different approach and [recognised](#) the importance of providing the Westminster Parliament with the means to scrutinise the adequacy of resources provided to the OEP and the need for financial independence.

It committed to provide the OEP with a ring-fenced five-year indicative budget and empowered the OEP to highlight any under-resourcing to the Westminster Parliament by publishing a Sufficiency Statement (Paragraph 14(3), [Schedule 1](#) of the UK Environment Act 2021). In his oral evidence to the Committee on 26 June, the Cabinet Secretary appeared unconvinced by the merits and mechanics of such a statement. We suggest the Committee could ask the Office for Environmental Protection for its views on the Sufficiency Statement.

Board appointments

A greater oversight role for the Senedd should be considered in the appointment of the OEGW's board members.

Schedule 2 requirements for OEGW strategy

Schedule 2 sets out a long list of requirements which the Welsh Government is proposing must be included in the OEGW's strategy. While some of these are helpful – for example, providing clarity on how the OEGW plans to work with bodies such as the Auditor General for Wales – the list is overly prescriptive.

In his oral evidence to the Legislation, Justice and Constitution Committee on 30 June, the Cabinet Secretary said that the Welsh Government had taken “a hands off” approach to the OEGW's strategy, with no constraints. Analysis of Schedule 2 does not wholly chime with this. The list of requirements should be reduced, to avoid giving the impression in law that the OEGW's strategic direction and priorities are being set by Welsh Ministers.

Clarity of purpose for the OEGW

We welcome the introduction of an environmental objective in section 1 in relation to the environmental principles and integration duties but have serious reservations about its application to the general purpose of the OEGW (section 9).

The OEGW will replace the role played by the European Commission and Courts in monitoring and overseeing compliance with environmental law. It will be a

strategic oversight body with specific legal functions and responsibilities, all of which relate to environmental law.

There are many examples of public authorities under-delivering because of a lack of clarity in their strategic purpose and founding legislation.

We recommend therefore that the general purpose of the OEGW is rethought and simplified to focus on what the public expects its role to be: environmental protection and the improvement of the natural environment.

Ensuring that the OEGW has sufficiently robust enforcement powers

We agree that the OEGW should adopt an escalatory approach to enforcement, working collaboratively with public authorities to resolve compliance concerns before resorting to formal action. This mirrors the approach taken in other countries in the UK. However, for this approach to be effective, the system must include a sufficiently robust deterrent. We have questions in this regard about the proposed High Court review (section 19) and the absence of an explicit power for the OEGW to intervene in proceedings brought by other parties.

The Cabinet Secretary appeared to suggest that the OEGW could make use of its broad ancillary power to apply to intervene in such proceedings. We are concerned that the absence of an explicit power in the bill could potentially weaken the OEGW's standing before the court, which may understandably ask why the other UK governance bodies have an explicit power to intervene, but the OEGW does not.

Ensuring access to environmental justice

It is of serious concern that there is no provision in the bill for people to make formal representations to the OEGW if they feel an environmental law has been broken, nor on how the OEGW would handle such representations. This is a major oversight and would represent a regression from the position that existed when the UK was a member of the EU.

We note that Schedule 2 will require the OEGW's strategy to set out how it intends to enable persons to make representations to it about matters relating to environmental law, but this is not the same as including a legal right for people to make representations on the face of the bill.

While we agree that the OEGW should be allowed to develop its own systems and approaches, the ability for people to make representations to it on breaches of

environmental law should be clearly enshrined in legislation given its public importance.

The bill should therefore be amended to include the ability for people to make a representation to the OEGW if they believe that a public authority has failed to comply with environmental law. The bill should also set out the broad process that will be followed, for example to mirror the approach taken by the UK Government in [section 32](#) and [section 34](#) of the UK Environment Act 2021.

Co-operation with other environmental governance bodies

No provision is made in the bill for the OEGW to co-operate with other environmental governance bodies across the UK, despite those bodies having a requirement to cooperate with the OEGW. For example, [section 27\(4\)](#) of the UK Environment Act 2021 requires the OEP to consult other environmental governance bodies where relevant, and [section 23\(3\)](#) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 places the same requirement on Environmental Standards Scotland. This should be added.

Accountability gap for some public authorities

Section defines a public authority as a person which is a devolved Welsh authority (as per [157A](#) of the Government of Wales Act 2006) or listed in paragraph 9(2) or (6) of [Schedule 7B](#) of that Act.

The OEGW will therefore have oversight of public authorities whose functions are exercisable only in relation to Wales and are wholly or mainly functions that do not relate to reserved matters.

In addition to Welsh public authorities such as Natural Resources Wales, this includes the following bodies: Electoral Commission; the Food Standards Agency; the Water Services Regulation Authority; the Joint Committee on Vaccination and Immunisation; the Human Tissue Authority; the NHS Business Services Authority; NHS Blood and Transplant; the Open University; the Controller of Plant Variety Rights; a water or sewerage undertaker; the Consumer Council for Water; and the Chief Inspector of Drinking Water for Wales.

This potentially leaves an accountability gap as public authorities exercising reserved functions in Wales will not be within the OEGW's oversight. The Welsh Government should clarify which public authorities fall within this accountability gap, and how it plans to address it.

We think it would include bodies which have a potentially significant interaction with Welsh environmental law and would welcome clarification on whether the following bodies would be within the oversight remit of the OEGW:

- Crown Estate
- Marine Management Organisation
- National Grid
- Network Rail
- Ministry of Defence

4. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

▪ Part 3 - Biodiversity targets, etc (sections 33 to 38)

Section 6B(1) provides Welsh Ministers with a welcome power to set targets through regulations in respect of any matter relating to biodiversity in Wales.

The explanatory memorandum notes that the legislation makes provision that “aims to respond effectively and with urgency to these fundamental [nature and climate] crises”. We welcome this intent but question whether the absence of timescales in the new target setting framework is commensurate with the Welsh Government’s aim of tackling the nature crisis with urgency.

Just as the Global Biodiversity Framework describes both 2030 targets and longer-term 2050 goals, the bill should ensure that Welsh Ministers are accountable for delivering legally binding interim and long-term targets, with at least one long-term and one short-term target required for each priority area.

The bill is silent on the duration of targets and our current reading is that it would be possible to bring forward only short-term targets, for example.

Furthermore, the timescale set by section 6C(5) for Welsh Ministers to exercise the power in section 6B to set a target in respect of at least one matter within four specified priority areas does not reflect either the urgency needed to address the alarming declines in Welsh nature nor the calls from [Senedd Cymru](#) and [Audit Wales](#) for action to be at a pace that reflects the scale of the nature crisis. This timeframe means that targets will not be required until 2029.

Wales’ first suite of biodiversity targets should be required within 12 months of the bill receiving Royal Assent. This timeframe was applied in the UK Environment Act

2021 and targets under that Act were published within 13 months. We consider that the Welsh Government should adopt a more ambitious statutory timeframe for publishing and adopting targets, particularly because work towards developing the targets is already underway.

We agree that biodiversity targets should be set via regulations, rather than on the face of the bill, provided those regulations are passed via the affirmative procedure, which we believe will be the case under [section 25\(3\)](#) of the Environment (Wales) Act 2016.

However, we consider there would be value in including an additional requirement in the bill for Welsh Ministers to set a target to reverse the decline in species abundance by 2035. This would follow the precedent set by the UK Environment Act 2021, which required the Secretary of State to set a target, through regulations, to halt the loss of species abundance by 2030. This would act as a 'North Star', capturing and embedding the ambition and commitment of the current Welsh Ministers and Senedd to respond to the nature emergency and galvanising action from the outset. Its value is heightened by the fact that implementation of the duties included in the bill will be in the next Senedd term.

The absence of a requirement for a review of targets to be undertaken regularly differs from the approaches taken for England and Scotland. The bill enables ministers to review a target "from time to time", or in specific circumstances when it appears that a target would not be met. We suggest that a regular review of targets would be useful to ensure that the right targets are in place to significantly contribute to halting and reversing biodiversity loss.

5. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

▪ Part 4 - General (sections 39 to 45 and Schedule 4)

Schedule 4 - consequential amendments

We note that Paragraph 3 of Schedule 4 brings the OEGW within scope of the Well-being of Future Generations (Wales) Act 2015 by adding it to the list of public bodies specified in section 6 of the Act and requiring it to comply with the well-being duty in section 2 of the Act.

The Act is a long standing and important feature of the Welsh policy landscape. The OEGW and the Future Generations Commissioner will need to work together given their different but complementary roles. However, we question whether it is appropriate to require the OEGW to comply with the well-being duty in the way the bill proposes.

The purpose of the OEGW is to monitor and enforce compliance with environmental law. Its job will be demanding as it will be assuming its functions after a lengthy absence of statutory oversight, and at a challenging time for public finances and a perilous moment for the Welsh environment, much of which is declining or in a very poor condition. It will therefore need to focus on delivering its statutory functions to ensure that environmental law in Wales is effectively monitored and enforced.

We therefore suggest that Paragraph 3 of Schedule 3 is removed and that the OEGW and Future Generations Commissioner should instead agree how they will work together once the OEGW has been set up. This could be articulated in the OEGW's strategy, which Schedule 2 of the bill requires should set out how the OEGW intends to avoid overlap with the Future Generations Commissioner in the exercise of their respective functions.

Section 44 - coming into force

The long delay in establishing the OEGW is regrettable as it has left Wales without a statutory system of environmental oversight and compliance for several years. While we note that some provisions relating to the OEGW will come into force two months after the day the Act receives Royal Assent, the majority will not, and it will therefore fall to the next government to commence most of the provisions relating to the OEGW.

The explanatory memorandum states that Royal Assent will be in April 2026, which means that Sections 8, 9, most of Schedule 1, Section 28 and Schedule 3 will come into force in June 2026, after the Senedd elections. This will establish the OEGW as a legal entity, and enable detailed work on its establishment, including possible staff transfer and the appointment of interim board members.

But the provisions that give the OEGW its powers will come into force at some unknown future date. The Cabinet Secretary told the Committee on 26 June that he expected the OEGW to be fully operational within 18 to 24 months but provided no detail on the phasing of this.

The lengthy delays experienced to date suggest that it would be prudent for a more detailed timetable to be published so that the next Senedd and civil society can hold future Welsh Ministers to account on the establishment of the OEGW.

6. What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

A lack of clarity in the legislative framework, reflecting the Welsh Government's apparent preference for implicit rather than explicit legislation, could lead to delayed or ineffective implementation and legal uncertainty for those affected by the bill.

This submission discusses the importance of providing constitutional independence for the OEGW through explicit provisions in the bill. However, there are other aspects of independence, including those that will arise through decisions on the design and operation of the OEGW. Some of these will be very significant in terms of ensuring sufficient operational independence for the OEGW, for example the location of its office (which should be in a location that will facilitate the recruitment of suitably expert staff), the importance of independent communications, human resources and procurement functions and the need to avoid any 'back office' sharing that would compromise its independence.

In his oral evidence to the committee on 26 June, the Cabinet Secretary suggested that the OEGW could share 'back office' functions with the Disused Tips Authority for Wales. We understand why this may at first appear an attractive option, given the two bodies are being set up in similar timescales.

However, it would not be appropriate for the OEGW, charged as it will be with ensuring compliance of public authorities with environmental law, to share systems or services with a public authority which will be responsible for monitoring and potentially taking action to address tip safety to protect human health and avoid environmental damage. Any 'back office' sharing should be strictly limited to organisations which are not likely to fall within the oversight of the OEGW nor have any significant interaction with Welsh environmental law. More transparency and engagement on the Welsh Government's plans for establishing the OEGW would be welcome.

7. How appropriate are 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)

Section 29(4) – meaning of environmental law

This section relates to the meaning of environmental law and gives Welsh Ministers the power to amend this by regulation, which the statement of intent and explanatory memorandum explain is “to ensure the definition of environmental law can be future proofed and updated with the latest developments in respect of international and domestic policy”.

We note that the UK Environment Act 2021 provides the Secretary of State with a similar power in section 46(5). However, [section 46\(6\)](#) of the UK Act also requires the Secretary of State to undertake consultation before making regulations, including with the Office for Environmental Protection, which is important given the meaning of environmental law shapes its oversight remit.

The meaning of environmental law in section 29(4) of the bill will perform a similar role for the OEGW (the statement of intent notes that it “effectively sets the scope of the OEGW’s functions” while the explanatory memorandum notes that it “has a substantial bearing on the scope of the Office of Environmental Governance’s oversight powers”). It is concerning, therefore, that no consultation requirement has been included in section 29 in relation to the OEGW. This should be added.

8. Are any unintended consequences likely to arise from the Bill?

9. What are your views on the Welsh Government’s assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

10. Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

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