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Legislation and
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By email only

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Dear Helena

Clarity on oversight of public authorities on reserved matters in Wales

We would be grateful for the OEP's response to the questions below which seek clarity on the oversight of public authorities discharging functions on reserved matters relating to environmental law in Wales.

These questions are not related to a specific activity or potential non-compliance with environmental law and are intended to clarify whether there are any oversight gaps on reserved matters relating to environmental law in Wales.

We understand that, were these public authorities to fall within the OEP's remit, decisions on whether to exercise its functions in this context would of course depend on the relevant circumstances and the application of the various tests set out in the [OEP's strategy and enforcement policy](#).

We have set out in an annex to this letter examples of public authorities from the energy and transport sectors likely to exercise functions on reserved matters in Wales in the future, many of which could have significant implications for environmental law and protection in Wales.

Our understanding is that these authorities would be outside the jurisdiction of the proposed new oversight body, the Office of Environmental Governance Wales (OEGW). Section 29(1) of the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill provides a meaning of environmental law, which effectively sets the scope of the OEGW's functions. This is clear that environmental law includes "any devolved provision" but does not include reserved matters.

Paragraph 3.262 of the [explanatory memorandum](#) to the bill explains that the definition of public authorities aims to capture public authorities within the legislative competence of Senedd Cymru. Paragraph 3.263 states there will be an oversight gap as the bill does not include oversight powers for the OEGW in respect of certain reserved bodies operating in Wales, such as the Ministry of Defence. It also states that the OEP does not have oversight powers in respect of "such bodies", although no other examples are given.

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Section 46(1) of the Environment Act 2021 provides that environmental law includes “any legislative provision”, excluding devolved legislative provisions as defined in section 46(4).

Section 31(3) of the Environment Act 2021 provides a meaning of “public authority” as “a person carrying out any function of a public nature that is not a devolved function”. Various bodies, including Welsh ministers, are excluded from this meaning of “public authority”.

We note that the OEP’s [complaints guidance](#) for public authorities states that the OEP covers reserved matters across the UK. This is repeated on the landing page of the complaints section of the OEP website ([what we can and can’t investigate](#)) but no list of public authorities operating on reserved matters in Wales appears to be available.

Clarity on the oversight arrangements for public authorities discharging functions relating to reserved matters in Wales, including those listed in the annex to this letter, would therefore be welcome, given the number of authorities and the public interest in the functions they will be undertaking.

Question 1

Does the OEP consider that the public authorities listed in the annex to this letter fall within scope of its investigation and enforcement powers?

Question 2

- (a) What proportion of complaints received by the OEP since its establishment relate to reserved matters in Wales, and**
- (b) How many of the OEP’s investigations have involved such matters?**

Question 3

How does the OEP intend to raise public awareness of its potential role on reserved matters in Wales, given the low public awareness of this?

Question 4

The Crown Estate is reserved in relation to Wales and has been [specified by the ONS](#) as a public corporation. If the Crown Estate was acting in Wales, including in Welsh marine waters, on a reserved matter, would that activity fall within the OEP’s remit?

Question 5

Is the explanatory memorandum correct to state that the OEP does not have oversight powers relating to bodies such as the Ministry of Defence operating in Wales?

Yours sincerely

Ruth Chambers

Ruth Chambers
Senior fellow

Annex

Examples of public authorities likely to exercise functions on reserved matters in Wales

Transport sector

- [UK Civil Aviation Authority](#): regulates aviation safety, airspace and the environmental impact of aviation on local communities.
- [Maritime & Coastguard Agency](#): enforces standards for ship safety, security, pollution prevention and seafarer health, safety and welfare. It promotes maritime standards, encourages economic growth and minimises the maritime sector's environmental impact.
- [Network Rail](#): owns, operates, maintains and develops the railway infrastructure in Wales.

Energy sector

- [Department for Energy Security & Net Zero](#): retains UK-wide control over energy consents, including Contracts for Difference allocations, and other market regulations.
- [Ofgem](#): regulates the electricity and gas markets across Great Britain, including enabling infrastructure for net zero.
- [National Electricity System Operator](#): ensures the day-to-day operation of the electricity grid in Great Britain, including strategic planning of transmission infrastructure.
- [North Sea Transition Authority](#): regulates licensing, exploration and production of oil and gas, offshore hydrogen and carbon storage industries for the UK Continental Shelf.
- [Office for Nuclear Regulation](#): oversees GB nuclear facilities (eg decommissioning of Wylfa – alongside the Nuclear Decommissioning Authority), regulating nuclear safety and security