

# Agenda – Climate Change, Environment, and Infrastructure Committee

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Meeting Venue:	For further information contact:
Committee room 3 Senedd and video	Marc Wyn Jones
Conference via Zoom	Committee Clerk
Meeting date: 9 July 2025	0300 200 6565
Meeting time: 09.30	<a href="mailto:SeneddClimate@senedd.wales">SeneddClimate@senedd.wales</a>

## Hybrid

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**Private pre-meeting (09.15–09.30)**

**Public meeting (09.30–12.00)**

**1 Introductions, apologies, substitutions, and declarations of interest**

(09.30)

**2 Stage 1 scrutiny of the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill – Evidence session with academics**

(09.30–10.40)

(Pages 1 – 78)

Professor Steve Ormerod, Professor in Ecology – Cardiff University

Dr Victoria Jenkins, Associate Professor, Hillary Rodham Clinton School of Law – Swansea University

Dr Viviane Gravey, School of History, Anthropology, Philosophy and Politics – Queens University Belfast

Professor Robert Lee, Director of Education for the Centre for Environmental Research and Justice at the University of Birmingham – on behalf of the UK Environmental Law Association (UKELA)



[Environment \(Principles, Governance and Biodiversity Targets\) \(Wales\) Bill: consultation responses](#)

Attached Documents:

Research brief – Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill

Paper – Professor Steve Ormerod

Paper – Dr Victoria Jenkins

Paper – Dr Viviane Gravey and Prof Ludivine Petetin

Paper – UK Environmental Law Association

**Break** (10.40–10.50)

**3 Stage 1 scrutiny of the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill – Evidence session with environmental bodies**

(10.50–12.00)

(Pages 79 – 92)

Lynda Warren, Interim Environmental Protection Assessor for Wales – IEPAW

John Henderson, Deputy Interim Environmental Protection Assessor – IEPAW

Dame Glenys Stacey, Chair – Office for Environmental Protection

Natalie Prosser, Chief Executive Officer – Office for Environmental Protection

Mark Roberts, Chief Executive – Environmental Standards Scotland

Attached Documents:

Paper – Office for Environmental Protection

Paper – Environmental Standards Scotland

**4 Papers to note** (12.00)

**4.1 General scrutiny of the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs**

(Pages 93 – 112)

Attached Documents:

Letter from the Chair to the Deputy First Minister & Cabinet Secretary for Climate Change and Rural Affairs following the 27 March general scrutiny session

Response from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs to the Chair following the 27 March general scrutiny session

#### **4.2 Bus Services (Wales) Bill**

(Pages 113 – 114)

Attached Documents:

Letter from Cardiff Council to the Chair in relation to the Bus Services (Wales) Bill

#### **4.3 Pre-appointment hearing for the role of Chair of Transport for Wales**

(Page 115)

Attached Documents:

Response from the Cabinet Secretary for Transport and North Wales to the Chair in relation to the Committee's report: Pre-appointment hearing: Chair of Transport for Wales

#### **4.4 Transport Inter-Ministerial Group**

(Page 116)

Attached Documents:

Letter from the Cabinet Secretary for Transport and North Wales to the Chair of the Legislation, Justice and Constitution Committee in relation to the Transport Inter-Ministerial Group

#### **4.5 Scrutiny of Natural Resources Wales**

(Pages 117 – 140)

Attached Documents:

Letter from the British Mountaineering Council Cymru to the Chair in relation to the scrutiny of Natural Resources Wales

Response from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs to the Chair in relation to the Committee's report:

Natural Resources Wales – Annual Scrutiny 2024–25

Response from Natural Resources Wales to the Chair in relation to the Committee's report: Natural Resources Wales – Annual Scrutiny 2024–25

#### **4.6 Legislative Consent: Bus Services (No. 2) Bill**

(Pages 141 – 142)

Attached Documents:

Response from the Cabinet Secretary for Transport and North Wales to the Chair in relation to the Committee's report: Report on the Legislative Consent Memorandum for the Bus Services (No. 2) Bill

#### **5 Motion under Standing Order 17.42 (vi) and (ix) to resolve to exclude the public from the remainder of this meeting**

(12.00)

**Private meeting** (12.00–12.30)

#### **6 Consideration of evidence received under items 2 and 3**

#### **7 Consideration of the Legislative Consent Memorandum on the Sustainable Aviation Fuel Bill**

(Pages 143 – 149)

Attached Documents:

Legal note on the Legislative Consent Memorandum on the Sustainable Aviation Fuel Bill

#### **8 Consideration of draft report on storm response**

(Pages 150 – 196)

Attached Documents:

Draft report on storm response

Document is Restricted

**EPGBTWB 15 - Evidence from: Steve Ormerod, Professor of Ecology, Cardiff University**

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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**

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**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?**

Given the current context with respect to:

1. biodiversity loss in Wales – and the stated nature and climate emergencies;
2. the evidence – from previous scrutiny by the Committee – that current approaches to biodiversity protection and restoration are failing
3. the importance of a nature-rich environment to human life support, ecosystem services and well-being;
4. the sustained and growing pressures on the environment – for example as revealed by the past and forthcoming State of Natural Resources Reports;
5. the need to act at scale and with pace – as revealed by the Welsh Governments Biodiversity Deep Dive and associated sub-committees
6. the need to contribute to the UK's responsibility to a range of environmental treaties – through devolved action in Wales
7. The consequences of the UK's exit from the European Union, and the imperative to replace functions formerly satisfied by the European Court of Justice – while also re-establishing parity with other countries of the UK
8. The need to maintain pace with environmental protection as applied at the scale of Europe through the EU

the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill is timely, important and complementary to other current actions to address environmental challenges in Wales. These include (but are not restricted to):

1. efforts to contribute to the Global Biodiversity Framework (30 x 30) through

i) an expanding SSSI network, with coverage across Wales still incomplete and with the potential to cover more semi-natural habitat as well as to build resilient ecological networks;

ii) improved condition of terrestrial, freshwater and marine protected areas (eg see [https://www.linkedin.com/posts/cyfoeth-naturiol-cymru-natural-resources-wales\\_weve-published-new-evidence-today-on-the-activity-7343532755198066689-jR22?utm\\_source=share&utm\\_medium=member\\_desktop&rcm=ACoAAAEcPhABxJQruzC7\\_4FWWsITyQ4oWXn4yRw;](https://www.linkedin.com/posts/cyfoeth-naturiol-cymru-natural-resources-wales_weve-published-new-evidence-today-on-the-activity-7343532755198066689-jR22?utm_source=share&utm_medium=member_desktop&rcm=ACoAAAEcPhABxJQruzC7_4FWWsITyQ4oWXn4yRw;)

iii) positive action through the Sustainable Farming Scheme;

iv) implementation of OECMs (other effective area-based conservation measures) following from the Biodiversity Deep Dive Reports here [https://www.biodiversitywales.org.uk/en/our-work/30-by-30-in-wales/;](https://www.biodiversitywales.org.uk/en/our-work/30-by-30-in-wales/)

v) possible developments in National Parks and National Landscapes to enhance biodiversity protection (eg Fermi Bro);

vi) possible improved biodiversity use of land in Welsh Government/NRW's 'land in our care' -i.e. Welsh Government Woodland estate and the NNR network;

2. enhanced use of private finance or green finance schemes – contingent on appropriate financial and scientific regulation – to mainstream nature, for example into 'nature-based solutions' to deliver ecosystem services.

3. The forthcoming recommendations from the Cunliffe Review and other exercises – for example to update the EU Water Framework Directive as implemented in Wales.

The Bill has the clear potential to marshal and unify these initiatives into overarching targets based on robust principles; appropriate duties and special regard

to the principles; a governance body to oversee compliance; and one or more meaningful biodiversity targets aimed at reducing extinction risk, managing ecosystems, reducing pollution, and bolstering evidence.

The Bill also has the capacity – through the actions of the Welsh Government and its agencies (eg NRW) – to move above and beyond the status quo in ensuring all key sectors can contribute (eg water, farming, fisheries, local authorities...).

I know the team involved in drafting the bill – and know how much effort and energy has been expended in getting it this far as well as drafting the explanatory material.

## **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)**

I find some vagueness in the extent to which ‘other considerations or countervailing factors’ (public health considerations, excessive costs or other impacts) should be given greater weight than the environmental principles. Government attention to economic growth could influence or affect judgement when considering the needs of environment or future generations as provided in this Bill

Do we need greater clarity?

Specifically with respect to the duties placed on NRW to have ‘special regard to the principles’ – I find it important to emphasise NRW’s role in this respect. NRW have responsibility for environmental protection that extends beyond the timescales of individual governments or terms of office – yet their actions are sometimes constrained by their working relationship with Welsh government as sponsors, funders and policy makers.

**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)**

I strongly support the creation of the Office of Environmental Governance. Most concerns in this part of the Bill are with respect to issues such as:

i) the true independence of the OEGW from Welsh Government (eg in setting strategy, taking action on complaints etc)

ii) the make up, appointment process and skill set of the associated panel

iii) the need for ring-fenced funding, financial certainty and sufficient resources to deliver the wider array of proposed functions

iv) processes of representation (ie rights to environmental justice)

v) reporting and monitoring frequencies

vi) interaction with parallel bodies in England – for example where potential developments are judged to have overriding public importance at UK level but have impacts on devolved responsibilities for environmental protection

Has there been any consideration given to scenario setting or testing of plausible interventions that the OEGW might need to make under different circumstances? Could the OEGW genuinely match the capability of the ECJ – for example with respect to government or regulatory infraction?

**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)**

For the reasons set in in response to question 1, I am strongly supportive of the establishment of biodiversity targets specifically to work alongside and marshal

other actions to protect, restore and recognise the importance of biodiversity in Wales. The provision in the bill also create opportunity for #TeamWales approaches to addressing biodiversity decline through collaborative action across sectors (eg government, citizens, agriculture, water, eNGO, regulators...) and organisations. The various duties – to set and, importantly, meet targets – are important.

Particular critical issues that I'm aware of – either from my own reading or the wider biodiversity community – are in:

1. the need to consider short and longer-term targets to provide adaptive capability within specified time-frames
2. the need to make targets outcome focussed rather than action-led
3. the need for targets that demonstrate sufficient ambition
4. the need for tests and monitoring to ensure effectiveness
5. the need for greater clarity on how suitable knowledge and evidence will be generated, sourced, reviewed and used
6. the need to consider species arrivals or introductions for organisms whose ranges are changing through climate change
7. the need for appropriate expertise on the Biodiversity Targets Advisory Panel  
There are some likely challenges with respect to:
8. The selection of representative or indicator species through which to measure changes in abundance
9. Identifying extinction risk
10. Understanding and measuring components of ecosystem resilience – because these are not all well understood despite the oft-quoted 'DECCA' framing (Diversity, Extent, Condition...)
11. Measuring changes in genetic diversity – because of the need to identify target indicators, collect appropriate samples and finance the work needed. Note that no WG body has particular capabilities in this domain

12. Addressing the risks and pressures from externalities – such as climate change

13. The focus, for understandable reasons, on pollution, might we miss the need to control other drivers of biodiversity decline – notably degrading habitat, invasive non-native species, resource over-exploitation, and once again climate change?

14. Resourcing appropriate monitoring assessment – which is already an area of concern in key organisations (NRW)

(Some of the above challenges are raised in explanatory material).

**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)**

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

**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)**

**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?**

# Evidence to the Climate Change, Environment and Infrastructure Committee on the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill

Dr Victoria Jenkins, Swansea University

25th June 2025

## Introduction

The introduction of this Bill to the Senedd is to be warmly welcomed. This legislation will create legal mechanisms to hold government to account for its actions to protect our natural environment and to ensure that public institutions work tirelessly to achieve this aim. In my view this is one of the most essential roles for law in protecting the natural environment in Wales.

A legislative response to the environmental governance gaps in Wales following the UK's exit from the European Union (EU) has been long awaited. This includes the extension of the EU environmental principles to policy and law making in Wales and the creation of a body to hold the government to account for its actions in relation to environmental protection. The environmental principles have underpinned environmental law and policy in Wales during the 40 years of EU membership, and their continued adoption is important to stability in this respect. The new Office for Environmental Governance in Wales (OEGW) will be essential in ensuring the effective implementation and enforcement of environmental laws in Wales going forward. The addition of statutory biodiversity targets also addresses a pressing need to focus attention on the nature crisis in Wales and mirrors the approach adopted to the climate crisis some time ago.

These new provisions will add considerable value to the existing systems for the wellbeing of future generations and the sustainable management of natural resources in Wales. They are essential building blocks in a system of environmental governance to

meet these broader objectives. In short, the sooner this legislation is passed and, most importantly, put into action, the better. Nevertheless, it is also important to ensure that the Bill will meet its objectives. This evidence points to aspects of the Bill that are important and to be welcomed, but also those that might be improved.

## Definitions

### Environment, Environmental Protection and Environmental Law

Definitions in legislation are significant because where terms are narrowly defined they can exclude the operation of the law. Therefore, it is important to note that there are broad definitions of the terms environment and environmental protection in this Bill. For example, it is made clear that restoration and maintenance are as important to environmental protection as conservation. The definition of environmental law is particularly significant. This is defined to include matters that are mainly as well as wholly concerned with environmental protection but excludes matters related to access to information as well as taxation, finance and budgets. Whilst the exclusion of laws on financial matters is common, it is not entirely clear why access to information, especially laws on access to environmental information, are not within its scope. There is also a wide power here for Ministers to exclude further elements of law from this definition.

### Defining Public Authorities

Public authorities are defined with reference to the provisions of the Government of Wales Act 2006 on devolved authorities. The way the provision is framed results in a very long list of public authorities subject to the provisions of this Bill. On the one hand, this means the approach is all encompassing, but on the other hand it creates a very wide scope for the work of the OEGW. Although a more confined list may have been preferable, the OEGW has discretion to prioritise its activities which will be important to offset this potential issue. An additional benefit of referring to the Government of Wales Act 2006 section 157A is that the definition will be tied to any amendments to this legislation.

There are two other points of note. First, if a body, office or holder of an office has functions of a public nature and is not specifically listed under the relevant provision, it will only be included in the remit of the OEGW if its function are exercisable only in

relation to Wales (and are wholly or mainly functions that do not relate to reserved matters). Secondly, the lists referred to under Schedule 7B para 9(2) and 9(6) are included as exceptions to the provisions under para 8(1). This seems a little odd, but it is also notable that the list in para 9(6) includes water and sewerage undertakers.

## The Environmental Principles

The environmental principles underlined law and policy making in the EU, which almost exclusively directed approaches to environmental protection in Wales, for more than 40 years. In the interests of stability and the continued alignment in approaches to environmental protection across the UK, it is important that these principles are maintained. The principles of prevention, precaution and the polluter pays are also essential principles of international law.

## The Office for Environmental Governance Wales (OEGW)

The evidence in this section will be based on the following fundamental objectives which are, in my view, essential in designing the new body:

- The OEGW must be independent of the Welsh Government in order to fulfil its functions effectively.
- The OEGW should be focused, first and foremost, on holding the Welsh Government and other public authorities in Wales to account for their actions in implementing and complying with Welsh law. The OEGW should have a robust set of powers in this regard. However, it will also be necessary to recognise the significance of the role of Welsh Ministers in framing the funding, regulation and operation of public authorities that impact the Welsh environment.
- This approach should not exclude the OEGW from carrying out other functions. However, the inclusion of other functions necessitates careful consideration of the make-up of the OEGW, the way it balances its different functions (and potential conflicts between them), and resourcing concerns.

## Independence and Accountability

### General duty

There is a general duty for the OEGW to exercise its functions impartially, objectively, proportionately, and transparently. Three of these criteria are essential to its independence. The issue of proportionality is quite different, and it is not entirely clear what this means. No further guidance is given in the Explanatory Memorandum, and nor was this approach discussed in the White Paper. Proportionality is inherent in the escalatory approach to compliance and enforcement adopted in the legislation. It is not, therefore, entirely clear why an additional principle of proportionality has been included, and this may cause some confusion in the implementation of the legislation.

### Appointment of the OEGW and Accountability to the Senedd

Welsh Government appoints the Chair, the Deputy Chair and all other non-executive members of the OEGW. Welsh Government also has the power to remove them from office under certain conditions. It might have been preferable for the Senedd to be responsible for the appointment of members of the OEGW. However, there is provision for accountability to the Senedd in the appointment of the Chair and Deputy Chair of the OEGW because the relevant Senedd Committee must be consulted. Welsh Government will also have to 'have regard' to the recommendations of a panel, that includes independent members with relevant expertise, in appointing all non-executive members.

Despite the inclusion of duties to consult the Senedd and a panel that includes independent members some concerns remain. First, Welsh Government must only consult the Senedd Committee and do not have duty to take into account its recommendations. Secondly, it is not clear why this duty only applies to the Chair and Deputy Chair and not other non-executive members. Thirdly, it is also not clear why there has to be a representative of Welsh Government on the otherwise independent panel that provides recommendations on the appointment of non-executive members.

## Accountability to the Senedd in the operation of the OEGW

This is a significant issue and is assured in the Bill in two ways. First, a Committee of the Senedd must be consulted on the strategy of the OEGW, but again without a duty to take their opinions into account. Secondly, a number of the reports of the OEGW must be laid before the Senedd:

- Reports on the monitoring of public authorities' compliance with environmental law and the implementation and application of environmental law; or any other matter concerned with the making of environmental law, or its effectiveness.
- Improvement reports.
- Annual reports.
- The strategy of the OEGW.

The OEGW itself will also be accountable to the Audit Office and there are procedures to ensure transparency before the Senedd in this process.

## The Functions of the OEGW

The OEGW will have several functions that will be necessary to both hold the Welsh Government and other public authorities in Wales to account for their actions in implementing and complying with Welsh law; and to recognise the significance of the role of Welsh Ministers in framing the funding, regulation and operation of public authorities that impact the Welsh environment. The OEGWs' powers are also focused on the development of an escalatory approach that will be important in ensuring that its actions are effective, but also proportional and cost effective.

## Monitoring and Reporting on the Effectiveness of Environmental Law

In this role, the OEGW will continue the work of the current Interim Environmental Protection Assessor for Wales (IEPAW). This has proven to be essential in developing our understanding of the way environmental laws in Wales function to protect, restore and enhance the natural environment. It is necessary to have a body with powers to

investigate in this way because the natural environment is complex and, so too, are the effects of legal interventions in this respect. However, one thing that is missing from the Bill is any reference to the way that the new body will provide a continuation of the role of IEPAW and the arrangements for a smooth transfer of those functions.

The role of the OEGW is to monitor and report on the effectiveness of environmental law. This can be clearly distinguished from the function of other bodies, such as Natural Resources Wales (NRW) which is responsible for monitoring and reporting by gathering data and evidence on the state of the natural environment. Including monitoring and reporting on the effectiveness of environmental law in the remit of the OEGW means it will be able to bring to light issues beyond individual breaches of environmental law by Welsh Government and public authorities. As such, this is a key aspect of the powers of the OEGW in holding Welsh Ministers to account for their role in framing, funding and regulating the operation of public authorities that impact on the Welsh environment.

The idea of investigating the effectiveness of the functioning of environmental law is now well established in the work of the IEPAW and includes considering law which is: outdated; does not function in a way which protects the environment or delivers the intended environmental outcomes; includes guidance or information about the law which is not accessible; or relates to an impediment to the practical delivery of the law. It would seem appropriate to continue with this approach. However, there are some indications in the new arrangements, as currently set out in the Bill, that this may not be the approach.

The relevant power here is to publish an improvement report for Welsh Government, where Welsh Ministers or a public authority have failed to make effective environmental law. This seems quite different to the existing role of the IEPAW in investigating and reporting on problems regarding the effective functioning of environmental law.

Effectiveness is a subjective term. There is a definition in the Bill which states that this should be construed as effectiveness in contributing to environmental protection, but this definition is very limited in understanding the term in this context. The concern is that the term effectiveness might be narrowly interpreted to mean, for example, that the law in question has failed to achieve its purpose, whereas the effective functioning of environmental law is often impeded by the fact that it is outdated.

There is also a more fundamental issue here around the phrasing of this particular provision. To suggest that there is a problem with the effective functioning of Welsh environmental law does not provide any blame for this, whereas to say that there is a failure to create effective environment law clearly lays blame. This is another reason why the term may be narrowly interpreted to exclude, for example, outdated law for which a government cannot be held to blame other than in not having updated it. It also means that the investigation focuses on identifying failings rather than understanding the concerns raised by the state of the law. In short, there seems to be a problem here in tying the role of improvement reports related to the effectiveness of environmental law with powers to issue such reports where a public authority has failed to comply with environmental law; or to implement or apply environmental law effectively.

The Welsh Ministers must respond to an improvement report with an improvement plan within 6 months (or 9 months if a process of consultation is necessary) setting out actions (with timescales), and arrangements for reviewing and reporting on progress with respect to the recommendations. Given the complexity of some of the problems in the functioning of Welsh environmental law, this timeframe seems appropriate. However, it is hard to see a circumstance where Welsh Government would not wish to consult on an improvement plan given the nature of the problems to be addressed and the significance of all kinds of evidence in tackling these problems, e.g., including local knowledge as well as scientific evidence. Therefore, it is arguable that the provision on consultation should be amended to become a duty rather than a power.

### Providing Advice to Welsh Government

The OEGW will have the power to give advice to Welsh Ministers on proposals for new environmental law or changes to existing laws, and any other matter related to environmental law. It is notable that this advice need not be on the request of Welsh Ministers but can be of the OEGW's own volition. This is important to the independence of the OEGW. The OEGW may also provide advice and guidance to others on any matter relating to Welsh environmental law. This is a necessary power to allow the OEGW to issue guidance, for example, about the procedure for making representations,

how those representations will be considered by the OEGW and more generally its functions and strategies.

The OEGW also has the power under the Bill to provide advice to individuals on matters related to environmental law. The way the powers are currently framed suggests that there is no role for the OEGW in providing more general information about Welsh environment law for public education. This approach is in line with the focus of the OEGW on holding government to account for its actions with respect to environmental law. There are other bodies, such as NRW, local government and the Future Generations Commissioner, that are better placed to be responsible for public education. In short, this approach is important in understanding the OEGW as a guardian of the environment, not an advocate for it.

### Monitoring on Statutory Environmental Targets

The role of the OEGW in monitoring statutory environmental targets is not entirely clear on the face of the Bill. However, Schedule 2 (1) states that the OEGW's strategy must set out how it intends to monitor any targets relating to the environment set by or under environmental law, as a function of monitoring public authorities' compliance with environmental law and monitoring the implementation and application of environmental law. Therefore, the OEGW will have a role in monitoring all targets with respect to Welsh environmental law including, but not limited to, the biodiversity targets under this legislation. The approach to this task will be within the discretion of the OEGW and not confined, for example, to annual reporting. These arrangements seem appropriate even if the provisions themselves are not entirely transparent.

The role of the OEGW in this respect should be to provide oversight of the Welsh Government's own reports on progress in terms of environmental targets, e.g., the requirements under the proposed s6I Environmental (Wales) Act 2016 for Welsh Government to provide statements about progress in meeting biodiversity targets. It will be important, therefore, not to go over too much of the same ground in doing so. Similarly, the OEGW should not replicate the role of the UK Climate Change Committee in reporting on progress on climate change in Wales. Given the potential for overlap

between the roles of the OEGW, Welsh Government and NRW in relation to monitoring progress on environmental targets, it might be useful to clarify this on the face of the Bill.

The role of both Welsh Government and the OEGW in reporting on progress in relation to environmental targets will rely on good data and evidence, the collation of which is the responsibility of NRW, principally through the State of Natural Resources Report (SoNARR). It will, therefore, be important for this report to include clear data and evidence with respect to the targets. It is possible that the legal framework for SoNARR may need amendment to accommodate this, given that this was developed at a time before the introduction of environmental targets.

### *Investigatory and Enforcement Powers*

The most significant powers of the OEGW in terms of holding government to account for its action on environmental protection will be those related to investigation and enforcement. There are several elements to this: investigating potential concerns identified through citizen representations and/or OEGW monitoring; issuing compliance notices and/or improvement reports; and the process of High Court review if compliance notices are not complied with.

### *Investigatory Powers*

The OEGW will have the power to carry out investigations in response to citizen representations. Citizens have a very useful role to play in being the 'eyes and ears' on the ground, but their representations can be driven by individual interests, and it is important that the OEGW has discretion in the Bill as to how to respond to those representations. However, transparency in the process is also essential so that citizens are made aware of the way the process will be conducted and informed of decision making in relation to their representation. Transparency in the process will be assured by requirements in the Bill related to the OEGW strategy which are to be welcomed. The strategy must include details of the following: enabling people to make

representations; managing those representations, including publishing information about them; prioritising consideration of representations; and, keeping people informed about its response to them.

It is also important that the OEGW will have the power to carry out investigations under its own initiative. This will be necessary to deal with issues that are of broader concern than individual representations, for example, less well known problems with pollutants that are not visible or have a direct impact on human health. The discretion afforded to the OEGW in the Bill will, therefore, allow it to balance concerns that exist at different spatial scales, e.g., individual, community, local and national concerns; as well as anthropological and ecological perspectives.

#### *Co-operation Duties and Information Notices*

It will be important to ensure that the OEGW has all the information it needs to carry out thorough investigations. The co-operation duties will facilitate this process as well as the clear duties in the Bill with respect to disclosure of information and confidentiality. One would hope that public authorities would co-operate with the OEGW in its investigations, but the power to issue a formal information notice is also a useful last resort.

#### *Compliance Notices and Improvement Reports*

Compliance notices can be issued if a public authority has failed to comply with an information notice, but also if they have failed to comply with environmental law. There is also an option to issue an improvement report on the same grounds or in addition because a public authority has failed to implement or apply environmental law effectively (the difference also being that only Welsh Government is issued with an improvement report even if it relates to a failure by another public authority).

This range of powers will be important in providing the tools the OEGW needs to ensure an appropriate response to failures by the Welsh Government and public authorities. It also fits with the notion that whilst all public authorities in Wales must be held accountable for their actions with respect to environmental protection, the Welsh Government has a particularly significant role in framing the funding, regulation and operation of public authorities.

It is important that improvement reports will be published and also laid before the Senedd for reasons of transparency and these provisions are found in the Bill. These requirements are not included on the face of the Bill for compliance notices. However, the OEGW strategy must include details on how it will publish information about these notices. A different approach for compliance notices may be justified by their role in formal enforcement proceedings. However, the OEGW has a great deal of discretion in this regard, which will not necessarily protect the transparency of the process.

In terms of timescales, the issues discussed above with respect to the 6 or 9 month timescale for improvement reports (and the discussion around consultation) in relation to improvement reports on the effectiveness of Welsh environmental law are quite different where that report refers to a failure to comply with environmental law or to implement or apply the law effectively. In these circumstances, a faster response may be appropriate, and consultation may not always be desirable if speed is a concern. This is another reason for dealing with improvement reports separately in these different circumstances.

Compliance notices must specify a period for action of no less than 30 days. This seems appropriate because, although we want to see a swift response, the response may be quite complex and resource intensive and needs to be carried out appropriately. There is also the option to issue an urgent compliance notice to prevent or mitigate an imminent risk of serious damage to the environment or human health. In these circumstances, it is appropriate that the time limit for action is reduced to 7 days.

### *Review of Compliance Notices*

The system of reviewing notices by a Review Committee is intended to be efficient in terms of time and resources. However, it also needs to be impartial, fair, and transparent. The fact that there must be two independent members of the Review Committee is notable, but there is also provision for any number of the OEGWs members or staff to also sit on this committee. There is also nothing to exclude these members/staff from chairing the Review Committee or voting on it. The Bill states that

OEGW members cannot sit on the Review Committee if they were 'involved' with the compliance notice. The breadth of this term involvement is important but this word is also difficult to interpret.

There are no time periods included in the Bill for holding the review and reporting on its findings even in cases of an urgent compliance notice. Whilst it may be difficult to hold external individuals to particular timings, it seems especially important to have clear time scales for urgent cases. The fact that the time for complying with the notice does not include the time for review is useful in this respect, but also problematic in the sense that it may basically require action notwithstanding a request for review – again especially in urgent cases.

### *High Court Review*

The system of High Court review will ensure that as a last resort there is the possibility of an action before the court which will be able to make an order requiring that the compliance notice is adhered to. Should a public authority fail to comply with the court order, a range of sanctions for contempt of court will also be available which is to be welcomed. However, in terms of time limits, it is notable that an action cannot be brought, even in the case of an urgent compliance notice, until the time period provided in the notice has passed. Whilst this is important from a fairness perspective, it is not clear how quickly the case will be heard after this time. This will only add to the relevant timescales with the potential for action in urgent cases to take several weeks. This may need further consideration.

### *Membership of the OEGW*

There needs to be a clear focus in the membership of the OEGW on those with experience of environmental law and investigatory and enforcement proceedings (preferably both). This aligns with the premise that the body should centre attention on investigatory and enforcement proceedings. However, the wider role of the OEGW in

carrying out investigations into the effectiveness of environmental law is also a significant function of the OEGW and will require a broader range of expertise. This is where knowledge of the wider context of environmental policy and law, and environmental science, will be particularly important.

The current provisions do not appear to acknowledge increasing attention to the significance of interdisciplinary perspectives in understanding and responding to environmental challenges. For example, the effectiveness of Welsh environmental law will depend not just on our knowledge of natural science but the response of people to that legislation both within and outside of regulatory agencies. This highlights the significance of social science. In the White Paper it was suggested that the OEGW would be able to “draw on wider expertise through external resourcing as required.” However, this seems to have been dropped in the final draft of the Bill. It would seem wise to provide at least a power for the OEGW to call upon wider external expertise to be able to bring in the perspectives of broader disciplines where necessary in understanding the effectiveness of Welsh environmental law.

## Biodiversity Targets

Whether or not targets with respect to the protection of the natural environment are appropriate has long been debated and the arguments are well rehearsed in the Welsh context. We already have targets with respect to climate change and air pollutants and it is timely to introduce targets for biodiversity. In my view, this will help ensure that the nature crisis is treated with the same focus as the climate crisis.

### A Headline Target

The introduction of a headline target on the face of the Bill was proposed in the White Paper but has been dropped in this Bill. This target was as follows:

‘to reverse the decline in biodiversity with an improvement in the status of species and ecosystems by 2030 and their clear recovery by 2050’.

In response to the consultation particular concerns were expressed about the enforceability of this target, the interpretation of some of the key terms used and the timings involved. In my view, despite these reservations, there would be clear benefits to the inclusion of a headline target for 2050, to mirror the focus on “Net Zero by 2050”. The headline target could be related to the goal of the UN Convention on Biological Diversity to ensure that “by 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people.” Although, as this is perhaps a little cumbersome, we could devise something around the language of nature recovery or nature positivity or improvement.

Acting by 2050, is, of course, not the whole answer to the problem we face in the nature crisis and greater urgency is necessary, but this will be achieved by the more detailed targets to be introduced under secondary legislation. In my view, linking these shorter-term targets to a longer-term approach is a good idea. However, there will undoubtedly be opposing views and clearly the most important thing is to introduce the shorter term and more specific targets that the Bill proposes as soon as possible.

### The Target-Setting Power

The Bill provides Welsh Government with a power to set targets in respect of any matter relating to biodiversity in Wales where they are satisfied that meeting that target will contribute to halting and reversing the decline in biodiversity. This gives Welsh Government wide discretion in setting targets which is necessary to ‘future proof’ the legislation to ensure it can respond to any new understanding of the notion of biodiversity and how to address its decline. However, there is a concern that the focus on decline rather than improvement may impede such target setting in the future. On the other hand, this approach has the advantage of centring attention on decline as the most pressing concern at present. The baseline for assessing that point of decline will also be very important, and more thought should be given as to whether it is appropriate to include this on the face of the Bill.

The Bill also refers to some issues which are considered particularly important in halting biodiversity decline - species abundance, ecological resilience and increasing genetic

diversity. This is a sensible approach that highlights key concerns but is not restrictive. Also of note is the link between targets on species abundance and the lists of species of principal importance under s7 Environment (Wales) Act 2016. This will support a more joined-up approach to governance, which is important in avoiding duplication of effort.

Finally, Welsh Government have a duty to create at least one target in each of four priority areas: reducing the risk of the extinction of native species; the effective management of ecosystems; reducing pollution; the quality of evidence to inform decisions relating to biodiversity, access to that evidence and its use and application. Outlining priority areas on the face of the Bill can ensure that targets are aligned with key concerns, but having one target in the four priority areas should be viewed as a minimum. It is also important that the Bill does not restrict the setting of targets to these areas.

In terms of the substantive nature of the priority areas there first two are straightforward, but there are some concerns with the other two. First, although the Bill dictates that targets on reducing pollution will need to be specific to halting and reversing biodiversity decline, there is a danger that they will become confused or overlap with wider targets in this respect. Secondly, as currently drafted, the priority area on evidence is a little confusing. There is clearly a need for a robust system of evidence to underpin the system of governance for halting and reversing biodiversity decline. The priority seems to be the quality of evidence including, the regularity of monitoring and the way it is collated, synthesised and shared. It is important that this focus is not lost in setting targets because of the way the priority areas is drafted, i.e., referring to access to and the use and application of evidence.

In terms of the framework for creating targets we have considerable experience to build on in existing Welsh legislation and the requirements seem appropriate in terms of specifying a standard to be achieved, which must be capable of being objectively measured; and a date by which the standard is to be achieved. The targets will be set through Regulations and the framework for making Regulations on targets is clear that these must include provision on how to measure progress with respect to achieving the target and whether it has been achieved (including any indicators to be used in this measurement).

When making the Regulations, Welsh Government must also apply the principles of the sustainable management of natural resources (SMNR). Again, this is an important part of providing a 'joined-up' approach to governance. However, the principles of SMNR are fairly complex so further thought might be given as to whether, in practice, applying these principles might interfere with the focus of these targets on halting and reversing the decline in biodiversity.

### Reporting on Targets

Welsh Government have a duty to publish a statement in relation to each target setting out whether the target has been met or not. However, Welsh Government will set the time frame for the initial statement in the Regulations which gives it a wide power over these timeframes. The statement will not only be published but laid before the Senedd, both of which are important for transparency and accountability.

If a target is not met, Welsh Government must produce a further report within 12 months outlining why this is the case and what steps they have taken or will take to achieve the target as soon as reasonably practicable. The reference here to a time frame that is reasonably practicable is a concern as it may be significant in delaying progress.

Where Welsh Government are unable to establish whether a target has been met they must give reasons and set out the steps being taken to address this. They must also report again within 6 months stating once more whether the target has been met, not met or they are still unable to establish whether it has been met. A potential issue here is that the legislation appears to allow for a continuous loop of 6 monthly reporting on not being able to establish whether a target has been met.

### Reviewing, Revoking and Lowering Targets

The time frame for introducing the first set of regulations on biodiversity targets is 3 years from the Royal Assent of the Bill, which is quite lengthy and there is no provision as to when further new targets should be introduced. However, there are important provisions on the transparency of this process as the review must be published and laid before the Senedd.

The power to review targets relates only to the targets that are already set in Regulations and it would be wise to extend this to include consideration of any possible new targets in the review. The time frame for the review of targets is 'from time to time' and it may be better to include a specific date, such as no longer than 5 years. There is also a duty to carry out a review where a target will not be met or is considered no longer appropriate. Although Welsh Government must include reasons for concluding that a target is 'no longer appropriate' this is still a very wide power. However, it will be subject to the provisions on introducing Regulations to revoke or lower targets.

The provisions on revoking or lowering the targets require special attention. There are concerns here in relation to each of the four conditions which all appear to give Welsh Government a great deal of discretion. Particularly problematic are the following terms: 'no significant benefit' which without further explanation could allow socio-economic concerns to be used as a reason for revoking or lowering a target; 'disproportionate to the benefits', again raising concerns over the notion of benefit but also introducing the notion of a cost-benefit analysis; and 'changes in circumstances' which is a very subjective phrase that could potentially be interpreted very widely. Of all the aspects of the Bill related to biodiversity targets discussed here, these provisions appear to be the most problematic because as currently phrased they have the potential to allow Welsh Government to undermine the aims and objectives of the other provisions.

## Conclusion

This evidence has pointed to aspects of the Bill that are important and to be welcomed, but also those that might be improved. Overall, the conclusion is that the Bill should be warmly welcomed and that these new provisions will add considerable value to the governance of environmental protection in Wales. The priority is to ensure the smooth passage of this legislation.

Dr Victoria Jenkins, Swansea University.

25<sup>th</sup> June 2025.

This evidence does not include any detail with respect to Part 1 because the author has carried out consultancy work with the Welsh Government on the environmental principles and statement.

## EPGBTWB 02 - Evidence from: Dr Viviane Gravey and Prof Ludivine Petetin

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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

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### 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?

*Evidence submitted by Dr Viviane Gravey, Queen's University Belfast and Prof Ludivine Petetin, Cardiff University, on behalf of the Brexit & Environment network, an ESRC-funded network of academics investigating the impact of Brexit on environmental policy and governance in the United Kingdom (<https://www.brexitenvironment.co.uk/>). This written evidence focuses on the Principles and Governance parts of the Bill.*

#### 1) Principles

1. The proposed Welsh approach to environmental principles is the most robust offered in the UK since Brexit. It differs from the English, Northern Irish and Scottish approaches in two major ways: through the environmental objective and through the stronger 'bite' of special regard. While innovative in many ways, this Welsh approach still suffers from a too narrow focus on (a) policy-making instead of the life-cycle of policy (b) lack of clarity around policy statement (c) and narrow reading of key principles.

*A welcome environmental objective firmly anchoring principles in Welsh practice*

2. The principles exist alongside an environmental objective ("the attainment of a high level of environmental protection and an improvement of the environment"). This builds on existing European Union practice, providing a direction of travel to interpret the principles.
3. But the use of the environmental objective is not just a nod to EU practice. It is used to tie in (formerly EU) environmental principles to Welsh home-grown approaches to principled environmental law in the Well-being of Future Generations (Wales) Act 2015.

4. It is further used in Section 1 to outline a series of overarching areas of priority for Welsh environmental action, 'maintaining and enhancing the resilience of ecosystems and the benefits they provide', 'mitigating and adapting to climate change', 'contributing to halting and reversing the decline in biodiversity', helping make the Bill and its objectives more tangible.

*A welcome – but under-defined – use of 'special regard'*

5. The fact that the ministers must 'have special regard to the environmental principles when making policy' is very much an improvement on simply having 'due regard' to the principles (which is the chosen approach in rest of the UK). However, greater guidance is needed on 'special regard' and this is not done here.
6. For example, there is extended guidance on the meaning of 'special regard' in Section 46 of the UK Internal Market Act.<sup>1</sup> Such detailed guidance is needed to clearly understand what this means in the Welsh environmental law context within this Bill. Further, there should be separate guidance and examples for Welsh Ministers, NRW and public authorities under the duty to give as much support as possible to those under the duty. The statement should clearly state that such examples are only indicative, i.e. non-binding, and that they reflect current the approach at a specific point in time and that the situation could evolve.

*Special attention – and consultation – needed for shaping the Statement*

7. The definition and interpretation of each of the four (or five) environmental principles considered in the Bill are not settled and the statement has the possibility to shape the Welsh stance on those debates. The Statement on Environmental principles and integrating Environmental Protection was not put forward with this Bill and therefore we are not able to comment on it. It is very difficult to know what actually will happen with Section 6. This is kicking the ball further down the line. This also means that there is no debate and no scrutiny of the Statement by the Senedd and this committee which is quite problematic.
8. For example, regarding the prevention principle, it needs to be made clear that Wales should stay away from adopting a pure 'cost-benefit analysis' (as for example the US does) to ensure that both environmental and social benefits and objectives remain and do matter in the decision-making process – in line with current Welsh practice and legislation.
9. Precaution and its participatory approach (i.e. where precaution plays a role in the risk management phase of the decision-making process) should remain as the key guiding principle in case of scientific uncertainty (and not adopting a

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<sup>1</sup> <https://www.gov.uk/government/publications/northern-irelands-place-in-the-uk-internal-market-and-customs-territory>

pure scientific approach) as it is currently the case in order to enable non-scientific factors or other legitimate factors to play a role in the decision-making process. If Wales were moving to a pure scientific approach, then the current ban on growth hormones in farming (or rBST) would need to be ended as it relies on consumer anxiety (at the time due to the BSE crisis and see the *WTO – EC Growth Hormones case*) – yet farmers and consumers do not want growth hormones in the meat or milk. Another example would be GMOs and how these would have to be approved and grown in Wales despite stakeholder opposition. Moving from one approach to another could have widespread repercussion in Wales, its approach to farming and its environment.

10. It is also important to highlight the differences in approaches regarding precaution in the recent trade agreements ratified by the UK. The recent ratification of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) introduces a notable shift in approach regarding sanitary and phytosanitary (SPS) measures. Under the CPTPP, where such measures deviate from established international standards or guidelines, they must be justified by ‘documented and objective scientific evidence’. This effectively precludes the application of the precautionary principle as a legitimate basis for SPS restrictions (such as the ban on growth hormones). In contrast, the Trade and Cooperation Agreement (TCA) adopts a markedly different stance: Article 391 enshrines a non-regression clause in relation to environmental protection, while Article 356 explicitly permits the UK to invoke the precautionary principle in situations characterised by scientific uncertainty.
11. Further, Section 6(5) states that the ‘Welsh ministers may review the statement from time to time’. This is too vague. It should be an obligation to review the statement every five to seven years in order to ensure that the latest evidence is utilised in the Statement and is available for all to read. Considering the stated objective to have statement and duty applied 6 months after the Bill receives Royal Assent,<sup>2</sup> the OEGW will not be in position to provide feedback to the first version of the statement. This suggests the first statement should be rapidly reviewed and revised once OEGW is fully operational.
12. Section 6(5) is also too weak. It is also important to note that embedding the principles within the decision-making will take time, effort and resources to actually see changes in policy and resulting legislation. Therefore, this should be acknowledged in the Statement.

#### *An overly narrow focus on policy-making*

13. Section 3 aligns the Welsh approach with what has been agreed in the rest of the UK, hereby diverging from EU practice. It restricts the role of principles and

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<sup>2</sup> As discussed in online briefing to stakeholders by Welsh officials working on the bill on 20 June 2024.

the integration principle to the drafting stage rather than policies and legislation **AT ALL STAGES**. At EU level it applies at all stages including when courts are interpreting environmental legislation. This broad application has been key to ensure the principles do not only inform policy development but the policy at it is applied (useful, in particular, for the polluter pays principle or the precautionary principle).

14. Such a narrow approach on policy-making, while understandable due to the shorter loop between policy development and application in Wales post-Brexit is problematic. Giving serious consideration to the principles cannot simply be a matter for Welsh ministers but should also be used by frontline regulators and the judiciary in choosing and ruling on how the law should be applied.
15. Having environmental principles solely playing a role at the drafting stage is likely to lead to engagement with those principles becoming a mere tick-box exercise. As noted, at EU level, the principles play a role beyond policy formulation and are considered at implementation, interpretation stage by the CJEU and beyond the environmental field.
16. Thus, while extending the scope of the principles to NRW when making policy and to public authorities in regard to environment assessment is welcome, it could be improved. Section 5 should be widened to include the application of environmental principles to wider public authorities 'when discharging functions relating to the environment' and not just relating to environmental assessments. Considering the climate and biodiversity emergencies we are facing, this would be a brave step that is clearly needed to be taken due to urgency the world is facing.
17. Furthermore - even if the focus on policy-making is maintained - the scope of policy itself should be reviewed. In Section 3(3), the interpretation of the meaning of 'policy' should be broader to also include strategies, plans and programmes. In order to think forward for future generations and improve environmental protection, such an approach would be more holistic.

#### *An overly narrow reading of key principles*

18. In Section 2, the role of the precautionary principle is limited to application to the environment realm. This seems to contrast what is in the Explanatory Notes to the Bill at 3.91 or page 36, which also covers public health and safety. This is an important point as much there is much jurisprudence/case law from the EU on how the precautionary principle has been widened to include public health and safety or could be applicable more generally. For example, the scope of application of the precautionary principle in the *Artegodan GmbH and Others v. Commission of the European Communities* case is defined as follows: 'as a general principle of Community law requiring the competent authorities to take appropriate measures to prevent specific potential risks to public health, safety and the environment, by giving

precedence to the requirements related to the protection of those interests over economic interests'.<sup>3</sup>

19. Section 3 limits the role of the principle of integration. It builds on the EU's approach of treating the integration principle differently than other environmental principles.<sup>4</sup> In that respect it differs from the approach chosen in rest of the UK to treat all 5 principles together. But the EU's approach came with a very wide remit: the integration principle applies to all EU policies and activities, from design to implementation. The Welsh approach has a different scope. While treated differently, integration and the four principles, as explained in explanatory notes, 'will apply not just to 'environmental policy', but to all areas of policymaking in relation to Wales which has or could have an environmental impact.' This could be very powerful – as the notes state 'the greatest damage to the environment occurs in other areas, not from within the framework of environmental policy'. Indeed; for the four principles, this potentially gives them a greater scope than in the EU.<sup>5</sup> But the lack of clarity around how the scope of application for the principles will be tested (who gets to decide whether a policy has or could have environmental impact, according to what criteria) needs to be addressed.
20. As explained further below (see Section 3), approach to principles and throughout Bill more generally is a missed opportunity to take compliance with the Aarhus Convention seriously and mark a step change in access to environmental information, justice and participation.

## 2) Governance body

*A late mover advantage?*

21. The Office for Environment Protection (OEP, England and Northern Ireland, as well as non-devolved UK environmental policy) and Environment Standard Scotland (ESS) were set up in late 2021. Wales favoured instead an interim body, the Interim Environmental Protection Assessor for Wales, established earlier that same year but with fewer powers and resources. By only proposing legislation for the Office of Environmental Governance Wales (OEGW) in 2025, Wales is moving very late. This is at odds with the self-perception of Wales as

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<sup>3</sup> De Sadeleer, N. (2006) 'The Precautionary Principle in EC Health and Environmental Law, *European Law Journal*, 12(2), 139-172 <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1468-0386.2006.00313.x>

<sup>4</sup> In the Treaty on Functioning of the EU, the integration principle is listed at Art 11 and applies to 'the definition and implementation of the Union's policies and activities', with precautionary principle, preventive action, rectification at source and polluter should pay are listed at Art 191.2 applying instead to 'Union policy on the environment'.

<sup>5</sup> Although – see previous point re precautionary principle, while the 'precautionary principle with regard to the environment' would apply to all policies with potential environmental impact, it does not detract from issue with limiting precautionary principle to environment only.

an environmental leader. But it offers an opportunity, as with principles, to learn from what has worked, and not worked in the rest of the UK. This can be seen through the Bill which takes inspiration from ESS and OEP but differs from both.

22. As OEP, ESS and IEPAW, OEGW will be tasked with monitoring environmental law. As with ESS, its investigative focus will not just be on non-compliance (as OEP) but also on the effectiveness of environmental law. Finally, as OEP (and contrary to ESS) it will also offer advice on policy development. As such, the OEGW offers, at first glance, the best of both OEP and ESS models. Yet, doing more than comparable bodies (after IEPAW was able to do much less) raises concerns for capacity, effectiveness and independence of the body.

#### *Capacity concerns*

23. OEGW needs sufficient resources. Costs included in the memorandum around 3 to 4.5 million per year are notably higher than in the white paper (2.5-3 million) – this would see OEGW better funded than ESS and roughly a third of OEP funding.<sup>6</sup> Considering the greater scope of powers than ESS (advice role) higher level of funding is to be expected. Nevertheless, concerns arise regarding the adequacy of resources allocated to the OEGW, particularly with respect to staffing levels, which may not be commensurate with the scope of its powers. Such a disparity risks undermining the OEGW's capacity to fulfil its mandate effectively, thereby diminishing its credibility.
24. Hence, in relation to the number of members/Commissioners, limiting the scope of the group is quite concerning (from 3 to 5 persons) beyond the Chair and Deputy Chair and could lead to gaps in expertise. Ensuring there is a robust Body implies that relevant expertise is present. Although we welcome the creation of Committees and sub-Committee to support the work of members of the OEGW (Schedule 1, Part 5).
25. OEGW needs to retain institutional memory of the early post-Brexit years – this means taking IEPAW transition seriously. The Bill reveals a notable and concerning absence of details regarding the transition or handover process between the Interim Environmental Protection Assessor for Wales (IEPAW) and OEGW. This omission represents a significant gap in the current framework for environmental governance, which must be addressed in the Bill. It is imperative that the legacy of the IEPAW's work, along with the insights and lessons derived from its operation, are not disregarded by the new governance structure.
26. OEGW further needs to build and retain its own institutional memory – this can be facilitated by rethinking Board term limits and appointment procedure. In

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<sup>6</sup> Gravey, V. and Petetin, L. 'Late mover advantage? Designing a post-Brexit environmental watchdog for Wales' *Brexit & Environment*

<https://www.brexitenvironment.co.uk/2024/04/08/late-mover-advantage/>

relation to the composition of the Body and the length of appointment, it should be ensured that all members are not renewed at the same time to ensure some continuity and smooth transitioning. Further, the Chairperson and the Deputy Chairperson's terms should not end at the same time either to ensure that the OEGW keeps functioning smoothly.

*Effectiveness – how strong are the OEGW's 'bark and bite'?*

27. The post-Brexit environmental oversight bodies/watchdogs in the UK have each different strength of 'bite' and varied options to 'bark'. But it is important to note that OEGW, as ESS and OEP, is deprived of the biggest 'bite' of the EU system: fines. The power to impose fines on the government and other bodies for non-compliance represents the loss of a significant lever for driving enforcement which should be duly considered. The power to fine acts as a deterrent on the government and other public bodies should be seriously considered. Fines collected could be utilised for environmental benefits, i.e. fund projects that would enhance environmental protection. The lack of fines makes getting other powers right critical so that OEGW has ability to contribute to the environmental objective.
28. Addressing information gathering problems head on is key. Both the ESS and OEP have identified issues with obtaining information in particular when relating to a complaint in relation to availability sufficiency and timeliness from the public authorities that need to comply. There has been a lack of cooperation transparency and disclosure from the part of the public authorities. Yet, sections 23 and 24 do not provide a timeline as to when such information must be disclosed. Therefore, a strict timeline should be included for the public authorities to respond in order to in to avoid similar issues as in England, Scotland and Northern Ireland.
29. Using the term 'representations', rather than 'complaints' – and hereby following the ESS approach – can be fruitful in that it opens the door to OEGW receiving broader range of communication (such as suggestion for improving environmental law and not just query about compliance).<sup>7</sup> But it should be made clear in both Bill and ultimately OEGW strategy and communications, that complaints are a form of representation – indeed likely to be the main form of representation. Not mentioning the term 'complaint' could create (i) confusion in the persons who would like to raise issues to the OEGW as they may think that they need a lawyers involved as it is often assumed that only lawyers can make representations; (ii) compliance issues under the Aarhus Convention as this could potentially be interpreted as a barrier to access to justice in environmental matters as utilising the term 'representations' could deter members of the public from complaining as it seems to call for the use

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<sup>7</sup> As discussed in online briefing to stakeholders by Welsh officials working on the bill on 20 June 2024.

of a lawyers, i.e. representation, before being able to lodge a complaint/representation.

30. Responsibility to authors of representations – Section 34 of the Environment Act 2021 includes a ‘duty to keep complainants informed’. Even if the Bill continues to choose representations over complaints, similar duty to respond and update complainants/authors of representations should be included (frequency and mean of information to be detailed in strategy).

31. Review – a simple way to undermine the OEGW? At first glance, the possibility (section 18) for the OEGW’s review of compliance notices is welcome. As a new body, the OEGW will have to establish its credibility – and providing a simple mechanism for affected public authorities to query the compliance notice served may help. Similarly, the ability for the OEGW to apply to the High Court for an order requiring the public authority to comply is useful. But while the principle of the review is welcome, the review committee and how it is appointed (paragraph 10, Schedule 1) is concerning. 2 out of 3 members of the review committee are to be picked from a list decided by the Welsh ministers (who should have experience of/capacity in environmental law and policy, science or investigation). Appointing to that list a majority/only members favouring light touch interventions or indeed opposing the mission of the OEGW would allow the Welsh ministers to effectively defang the OEGW.

*Is the OEGW sufficiently independent?*

32. The first few years of OEP/Defra interactions has illustrated how relationship between watchdog and ‘home’ Department can quickly turn sour. Establishing a body for the long run requires a clear commitment to independence – both practical and legal – to allow OEGW to pursue its mission. As it stands, the OEGW’s independence sits somewhere between the OEP and ESS – tentatively more independent than the OEP (although not fully) but less than ESS.

33. The approach chosen so far is inferred independence. The Bill does not give equivalent powers to UK SoS or NI Department to, for example, provide ‘Guidance on the OEP’s enforcement policy and functions’ (Section 25), and instead through Schedule 2 tries to set clear expectations as to what such strategy should include. Thus, the position appears to be that OEGW will be independent simply because Welsh Government has fewer powers to interfere than under the Environment Act.<sup>8</sup> But this approach is unsatisfactory as OEGW lacks both the protection of independence in the Environment Act, and the greater distance of the ESS model.

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<sup>8</sup> As discussed in online briefing to stakeholders by Welsh officials working on the bill on 20 June 2024

34. Protection of independence. The Environment Act 2021 Schedule 1 (17) sets out how ‘In exercising functions in respect of the OEP, the Secretary of State must have regard to the need to protect its independence.’ Even though Welsh ministers’ powers in this Bill to influence/interfere with OEGW are comparatively fewer, a similar commitment to protecting independence would be welcome (notably in relation to the list of prospective review committee body).
35. Ability to report on lack of resources. The Environment Act 2021 Schedule 1 (14.3) sets out how, as part of its annual accounts, ‘a statement of accounts must include an assessment by the OEP of whether, in the financial year to which the statement relates, the Secretary of State provided it with sufficient sums to carry out its functions’ – similar wording should be added to Part 8, Reporting Requirements (Schedule 1).
36. Potential tensions inherent in the dual functions of providing advice and undertaking enforcement action have neither been explicitly acknowledged (notably in terms of access to information on policy development etc.) nor sufficiently addressed. These shortcomings are likely to hinder the ability of the new governance body to meet the high expectations placed upon it.
37. Appointments should be ultimately decided by the Senedd after proposal from the Welsh Government to ensure the accountability of the Body. Similarly, the ESS is accountable to the Scottish Parliament. See Schedule 2(2) of UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 ‘The Scottish Ministers may appoint a person as a member only if the Scottish Parliament has approved the appointment.’ In contrast, as per the Environment Act 2021, OEP appointments are made by Government. This has created much criticism for the OEP as to its accountability if members are ultimately appointed by the UK Government.
38. The Welsh Government should be mindful of such pitfall and follow the path of Scotland with the ESS. A simple consultation of the Environmental Committee of the Senedd does not provide sufficient safeguards. Consequently, appointments should be ultimately decided by the Senedd after proposal from the Welsh Government to ensure accountability, independence and transparency.

### 3) Lack of Aarhus rights

39. The Bill, similarly to the White Paper, notably omits any reference to the three core pillars of the Aarhus Convention—Access to Information, Public Participation in Decision-making, and Access to Justice—constituting a significant gap in the proposed framework. The incorporation of Aarhus principles, which confer legally recognisable rights upon individuals and environmental non-governmental organisations (NGOs), is essential. As a

signatory to the Aarhus Convention, the United Kingdom is already bound by these obligations; however, reliance on international legal rights alone renders their practical enforcement challenging. It is therefore imperative that these principles be more explicitly transposed into Welsh law to facilitate their effective utilisation by citizens. Moreover, the OEGW must be endowed with the necessary authority to uphold and oversee the implementation of these rights within Wales.

40. Importantly, this issue extends beyond Wales and reflects a broader, UK-wide deficiency in compliance. For instance, the acting Chair of Environmental Standards Scotland (ESS) highlighted in the Scottish Parliament in March 2024 the need for substantive, merits-based review mechanisms under the Aarhus Convention, rather than a sole focus on procedural compliance. Nonetheless, Wales is uniquely positioned to demonstrate leadership by addressing this shortcoming and setting a precedent for more robust and rights-based environmental governance across the UK.

22 June 2025

## **EPGBTWB 05 - Evidence from: Uk Environmental Law Association**

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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

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### **UKELA (UK ENVIRONMENTAL LAW ASSOCIATION) RESPONSE TO THE SENEDD CYMRU | WELSH PARLIAMENT CONSULTATION ON ENVIRONMENT (PRINCIPLES, GOVERNANCE AND BIODIVERSITY TARGETS) (WALES) BILL**

#### **INTRODUCTION**

1. UKELA (UK Environmental Law Association) comprises over 2,000 academics, barristers, solicitors and consultants, in the public and private sectors, involved in the practice, study and formulation of environmental law. Its primary purpose is to make better law for the environment.
2. This document responds to the Senedd Cymru | Welsh Parliament consultation on the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill. It has been prepared by UKELA Wales in consultation with other UKELA Groups. It does not seek to represent the views and opinions of all UKELA members but has been drawn together from a range of its members.

#### **BACKGROUND**

3. As an EU member, environmental law in the UK was informed by environmental principles written into the Treaty for the Functioning of the European Union (TFEU).

Article 191(2) of the TFEU contains the four principles now included in the Bill (see below). These four principles are also embedded within EU environmental policy and action programmes including the European Green Deal. EU withdrawal has meant that these provisions cease to have effect in the UK. In England, the Environment Act 2021 embeds the principles into domestic law and this legislation places a statutory duty on the Northern Irish Department of Agriculture, Environment and Rural Affairs to publish a policy statement on environmental principles. The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 closely aligns the domestic law in Scotland.

4. Prior to EU withdrawal, the European Commission and the Court of Justice of the European Union (CJEU) had a role in ensuring the correct and complete application of EU environmental laws within member states. Post-Brexit, these governance structures no longer apply leaving a gap in environmental governance. In response, the Office for Environmental Protection (OEP) was established with a remit over England and Northern Ireland and Environmental Standards Scotland (ESS) was established for Scotland. In 2018, the Welsh Government committed to enshrining the principles and governance into domestic law<sup>1</sup>.
5. In 2021 the Senedd declared a 'nature emergency' owing to declines in Welsh biodiversity of anthropogenic origin.<sup>2</sup> In 2022, the UK Government were a signatory to the COP15 commitment to, amongst other aims, effectively manage at least 30% of land, freshwater and sea for nature by 2030, halt and reverse the loss of nature by 2030 and achieve recovery by 2050 as part of the newly adopted Kunming-Montreal Global Biodiversity Framework (GBF). In advance of the adoption of the GBF, and in response to the declaration of the nature emergency, the Welsh Government launched a biodiversity deep dive in 2022 aiming to develop a set of collective actions we can take in Wales to support nature's recovery under the 30x30 target.<sup>3</sup>

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<sup>1</sup> <https://record.assembly.wales/Plenary/4915#A10000092> at 409

<sup>2</sup> Senedd Cymru Plenary 30/06/2021 <https://record.senedd.wales/Plenary/12320#C371405>

<sup>3</sup> <https://www.gov.wales/written-statement-biodiversity-deep-dive>

6. The proposed Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill aims to address each of gaps in policy, principles and governance in Wales. The three primary purposes of the Bill are to:
- 1) establish environmental principles and an environmental objective;
  - 2) establish an independent environmental governance body, the Office of Environmental Governance Wales (“the OEGW”); and,
  - 3) establish a biodiversity target setting framework aimed at halting and reversing the decline in biodiversity in Wales, in addition to imposing a duty on the Welsh Ministers to promote awareness in Wales of the importance of, and the threats to, biodiversity.

## CONSULTATION QUESTIONS

**Question 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?*

7. UKELA believes that the Bill is necessary and overdue. We set out above the post-Brexit gaps in environmental governance and the need to urgently reverse biodiversity loss in Wales. The Bill provides an appropriate vehicle to deliver these objectives. Although we would have welcomed these measures at an earlier stage of the Government’s legislative programme, there is some room to learn from earlier introduction of legislation and other provisions in other UK nations and, where appropriate, we refer to this experience. We acknowledge that interim measures have been pursued in Wales in the run up to this Bill, and while these are welcome, they have lacked the statutory basis to be provided by the Bill.

**Question 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)*

8. UKELA supports the overarching environmental objective to guide the application of environmental principles as well as the goal to integrate environmental protection during the wider policy making process. Other UK jurisdictions have included a (fifth) principle of integration alongside the four principles covered in the Bill. Wales has some existing legal architecture. In the Well-being of Future Generations (Wales) Act 2015, one of the five ways of working is expressed as integration of well-being objectives such that these align with other objectives. All five ways of working speak to integration to some degree. Similarly, the legal framework for the sustainable management of Natural resources (SMNR) in the Environment (Wales) Act 2016 (EWA 2016) already guides the management of the environment in Wales by Natural Resources Wales (NRW) and other public bodies. Against this background, we see the logic of the duty in section 6 of the Bill to place Welsh Ministers under a duty to prepare an ‘environmental principles and integrating environmental protection statement’ rather than merely include integration as a principle in its own right. If anything, this emphasises and strengthens the integration of environmental principles into other policy realms.
9. The four principles chosen are well recognised in international law, but customary international environmental law continues to develop, and we note that there is no provision to allow the chosen list of principles to be reconsidered via delegated powers to make regulations.
10. The environmental objective is the attainment of a high level of environmental protection, which commitment is contained in the TFEU, so that it was pledged pre-Brexit, and an improvement in the environment, which sits well with Parts 2 and 3 of the Bill. The objective is said to be there with a view to:
- “(a) meeting the needs of the present without compromising the ability of future generations to meet their own needs and contributing to achieving the well-being goals in section 4 of the Well-being of Future Generations (Wales) Act 2015;
  - (b) maintaining and enhancing the resilience of ecosystems and the benefits they provide;
  - (c) mitigating and adapting to climate change; and,

(d) contributing to halting and reversing the decline in biodiversity.”

11. One of the well-being goals in section 4 is a healthier Wales but given the impact on human health of exposure to pollution, we wonder whether it might be better to emphasise protection against pollution more directly, especially given its linkages to the principles all of which, precaution, prevention, rectification and polluter-pays, have immediate relevance to combatting the health impacts of pollution on the Welsh population.
12. It may assist to explain the status of environmental principles. They do not as such confer rights, impose duties or set out procedural requirements of environmental law. Rather they provide guidelines to policy and decision makers as to how environmental protection ought to be pursued and they offer a framework for courts and others to assist in interpreting provisions of environmental law.
13. Although the Bill envisages the embedding of principles in domestic law, these are well represented in international environmental law and applied globally. Partly because of this, there is no standard definition of any particular principle and the precise content and reach of the principle is often open to debate. This explains the need for guidance in the form of an 'environmental principles and integrating environmental principles statement' (section 6) on the application of principles in the course of making policy decisions relating to the environment such that environmental protection considerations are integrated into such policy making. UKELA supports this approach while pointing out that, as an aid to legal interpretation, guidance published by Welsh Ministers needs to be consistent with that adopted by the UK and Scottish governments.
14. In terms of the weight to be given to environmental principles in decision-making, we welcome the duty in section 3 on Welsh Ministers to have *special regard* to environmental principles in making policy which may impact upon the environment. Then in fulfilment of that duty Ministers must have *regard* to the section 6 statement. This appears to give primacy to the principles by requiring greater attention to be paid to the principles themselves over the statement of the principles, which we strongly support. The notion of special regard is found in statutory formulations (see, for example, section 66 of the Planning (Listed Buildings and Conservation Areas) Act

1990). Paying ‘special regard’ would suggest a higher threshold of consideration than merely paying ‘regard’ and confers some degree of priority over other considerations which may need to be taken into account. To pay regard requires that the statement is actively considered and that there is some reasoned justification in the event that the statement is not followed. The courts for their part in reviewing the duty to pay regard will take account of the legislative context including that the statement has been laid before Senedd Cymru. Note that between ‘special regard’ and ‘regard’ one often finds the statutory formulation of ‘due regard’. This for example is the standard applied to consideration of the public sector equality duty under the Equality Act 2010 and is a well understood expression which if adopted might do more to tie in the statutory objective. That is to say that Welsh Ministers, NRW and public bodies would be required to pay the level of regard to the principles that is due in order to fulfil the environmental objective. UKELA supports the wording of *special regard* in relation to the obligations of Welsh Ministers in policy making and the adoption of a standard of *due regard* elsewhere.

15. In England, under the Environment Act 2021 the Environment Agency has no direct duty to have regard to environmental principles in the manner that is expected of Ministers of the Crown, even though it will devise policy like the Enforcement and Sanctions Policy, which should surely be informed by (e.g.) the polluter pays principle. UKELA therefore supports the extension of the duty to have special regard to environmental principles and to integrate environmental protection in policymaking to NRW.
16. Other public authorities in Wales must have regard to the environmental principles in carrying out certain functions. These functions are any functions in connection with the assessment of plans and programmes relating solely to Wales or to any part of Wales under the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004. This means that the obligation falls upon public authorities charged with carrying out a strategic environmental assessment (SEA) so that while the notion of public authority is wide-ranging as defined in the Bill, in practice the duty is likely to fall upon local authorities and national park authorities, though it could extend to, e.g., regional transport strategies. UKELA notes that this again goes further than the English legislation and can see the advantages of certainty in knowing when the duty to have regard to the principles applies. However, there is a structure under the 2004

Regulations which covers matters of environmental impact and integration, whereas there are other forms of policy assessment outside of SEA that fall particularly on local authorities. One example might be the designation and management of local nature reserves under the National Parks and Access to the Countryside Act 1949. Due regard to the environmental principles and the guidance of the statement would be most useful in such contexts and ought to be considered. This is consistent with UKELA's response to the White Paper and that:

“UKELA considers that the duty in relation to the environmental principles and accompanying guidance should apply to all public bodies, whether Ministers, Council members, officers and anyone else in public office. It should apply to the development of all policies and legislation (whether primary, secondary, local, statutory and non-statutory). It should apply to policy making and decision-taking whether it is strategic or on a particular issue.”<sup>4</sup>

**Question 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)*

17. UKELA welcomes the shift from present interim governance mechanisms to the establishment of the OEGW. While the work of the interim assessor has done much to establish that there is a room for independent review of the effectiveness environmental law and its enforcement, statutory powers of the type written into the Bill together with mechanisms to ensure compliance are essential. UKELA considers that the genuine independence, effective accountability and sufficient funding of the OEGW are critical to its operational effectiveness. While there are strong indications of independence both procedurally (e.g. in terms of appointments) and substantively (e.g. in terms of the cooperation duties of section

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<sup>4</sup> Paragraph 15, UKELA response to the Welsh Government Consultation: *securing a sustainable future* (UKELA, 20.4.24), [www.ukela.org](http://www.ukela.org)

18. 23), UKELA is attracted to the mechanisms in Scottish legislation whereby the independence of ESS is guaranteed under paragraph 1(1), Schedule 1 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. This states that “in performing its functions, Environmental Standards Scotland is not subject to the direction or control of any member of the Scottish Government.” There is a proviso that this is “subject to any contrary provision in this or any other enactment” so that Government has room to limit the reach of ESS when making future legislative provision.
19. To further bolster independence, there may be room to amend paragraph 8(2), Schedule 1 which currently states that before appointing the chairperson or deputy chairperson of the OEGW, the Welsh Ministers must consult a committee of Senedd Cymru for the time being with remit for environmental protection on the proposed appointment. UKELA suggests that the Committee should confirm the appointments in question.
20. Once the Bill receives Royal Assent, and the OEGW is established it would require repeal of (at least) Part 2 of the resultant Act to wind up the OEGW. It is possible, however, to curb the activity of OEGW by controlling the resources made available to it to discharge its functions. Equivalent legislation elsewhere in the UK contains somewhat loose guarantees of ‘sufficiency of funding’. UKELA accepts that this is a promise which is hard both to assess and enforce. Paragraph 17, Schedule 1 of the Bill states that the “Welsh Ministers may make such payments to the OEGW of such amounts, at such times and on such conditions, as the Welsh Ministers may determine.” Could this contain an assurance that a certain minimum level of agreed funding would be ring-fenced for an agreed period (say, five years?) to support the OEGW. While accepting that this offers no long-term assurance, there is a hope and expectation that this might take the OEGW to a point that wider public recognition of its functioning might offer it further protection.
21. Since the OEGW is monitoring compliance with and reviewing the implementation and application of environmental law (section 11), the definition of environmental law is central to the OEGW’s remit. The wide formulation encompassing any devolved provision “wholly or mainly” relating to environmental protection seems, on the whole, a useful formulation. However, it might be argued that activity such as the

development of a circular economy in Wales is mainly directed at resource efficiency rather than at environmental protection, which might be seen as a subsidiary goal. Because UKELA believes that the OEGW ought to play some part in the oversight of the development of a green economy in Wales, the definition might be widened such that it relates to devolved provisions which “wholly or mainly relates to or which might substantially enhance environmental protection.”

22. In relation to the enforcement mechanisms included in the Bill, UKELA is broadly supportive of these and is grateful for additional clarity that has been brought to the proposed powers of the OEGW. There is much that we welcome, including: the broad freedom of the body to investigate including on its own initiative (section 15(2)); the capacity of the OEGW to decline to advise the Welsh Ministers (section 12(3)); and the proposed use of improvement reports (section 20). In general, the timescales for action and other procedural issues have been greatly clarified. There are some relatively minor queries. One is whether the urgent compliance notice procedure is sufficiently speedy in the most egregious of emergency cases, requiring as it does at least seven days’ notice and a review period which may last for up to a further seven days. In our view, the OEGW should have the ability to make an emergency application for an interim injunction to the High Court. This would be on the usual basis that there is a serious issue to be tried, where damages would not prove an adequate remedy and where the balance of convenience favours injunctive relief. The usual requirement for a cross undertaking in damages would mean that OEGW would exercise any such power to apply to the court sparingly. It may be that the supplementary powers of the OEGW in paragraph 23, Schedule 1 are thought wide enough to cover the pursuance of such proceedings, but the extent of the powers of the OEGW might be made more explicit in this regard.
23. Improvement notices may relate to activity on the part of more than one authority (section 20(3) of the Bill), but compliance notices are directed at a (*single*) public authority including a public authority which has failed to comply with an information notice. UKELA suggests that there might be scope in section 16 to serve a compliance notice on more than one public authority where (for instance) multiple authorities have failed to comply with an information notice. This would not seem to hinder an OEGW application to the High Court under section 19 if only some of the authorities in question fail to take the action specified in the compliance notice.

24. UKELA notes the provisions of section 18 of the Bill and the procedure for the review of a compliance notice via an internal process conducted by a panel including ministerially approved members. UKELA expresses no strong view on this as such as there are pros and cons attaching. However, that review may end, for example, in the withdrawal of the compliance notice with the review committee giving notice of its determination to the public authority that requested the review. UKELA would hope for greater transparency here in the form of a published determination of why a compliance notice has been withdrawn or varied. Failure to do so might result in a loss of public confidence in the independence of the OEGW, particularly perhaps where the compliance notice had been directed at Welsh Ministers.
25. On a section 19 application for a High Court review, the public authority may be required to take the action specified in the compliance notice, but we note that in accordance with section 19(2)(b) of the Bill the High Court may vary that action as it considers appropriate. Our assumption is that this means that the ordinary remedies available on an application for judicial review would be available to the High Court including, for example, an injunction and, in cases where there could be a separate cause of action (such as for the tort of breach of statutory duty) damages could be awarded. UKELA points this out because the White Paper which preceded the Bill took the stance that financial penalties might prove ineffective and counterproductive.
26. The legislation needs to include a clear focus on cross-border issues, reflecting the existing cooperation between UK and devolved nations through the OEP and ESS. The legislation needs to ensure that there are no obstacles to the sharing of relevant data and other forms of cooperation between the various environmental oversight. To this end, it would be useful if the confidentiality provision (section 25) included a clear exception to ensure that there is no hurdle to cooperation with the OEP and ESS. For example, the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, section 40, exempts disclosures made to the OEP, or any other environmental governance body, when the disclosure is for purposes connected with the exercise of their environmental governance function.
27. In producing its strategy, the OEGW is required only to consult the relevant Senedd Committee together with anyone it considers appropriate, leaving the choice of persons entirely its own discretion (paragraph 2(1), Schedule 2). The strategy is a

key document laying down how the OEGW will exercise its functions and determine its priorities in line with its statutory duties. The OEGW would be well advised to consult widely not least to build public knowledge and confidence in its functioning. Nonetheless UKELA suggests that this is made an explicit requirement, given the significance of the Strategy. To offer an example, the Equality and Human Rights Commission, which has jurisdiction in Wales, in preparing its strategy is required by section 5 of the Equality Act 2006 to:

- "(a) consult such persons having knowledge or experience relevant to the Commission's functions as the Commission thinks appropriate*
- (b) consult such other persons as the Commission thinks appropriate,*
- (c) issue a general invitation to make representations, in a manner likely in the Commission's opinion to bring the invitation to the attention of as large a class of persons who may wish to make representations as is reasonably practicable, and*
- (d) take account of any representations made."*

28. Provisions akin to section 5(c) and (d) of the Equality Act 2006 above might usefully be written into Schedule 2 of the Bill.

**Question 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)*

29. The Bill amends Part 1 of EWA 2016 to introduce a biodiversity target setting framework. UKELA supports this as urgently needed to halt and reverse biodiversity decline, which is the purpose of the targets. We note that the earlier suggestion in the White Paper of a "nature positive" mission statement has been dropped. UKELA has no strong view on this. What matters is the activity promoted by the Bill. The Bill places a duty on Welsh Ministers to set at least one target in each of the priority areas, contained in the new section 6C(2) of EWA 2016. These targets should be contained in a draft regulation laid before Senedd within three years of Royal Assent. Given the continuing decline in biodiversity this is a long period of time, and any foreshortening of this three-year period is encouraged.

30. That said, UKELA has made the point in earlier processes of consultation that reliable baseline data is critical in setting effective targets. It requires up to date, complete data based on careful monitoring of habitats and species. For example, we are data poor when it comes to the present and predicted impact of climate change on nature conservation in Wales. Having regard to climate change also illustrates why targets may need to be adaptive. Another example is that under the influence of climate change, species which may previously have been considered visitors to Wales are now resident, so there is a need for flexibility in the regulation to allow for the dynamics of biodiversity.
31. UKELA understands that the Joint Nature Conservation Committee (JNCC) is already commissioned to undertake data gathering and further work will need to be extensive and accompanied by resources, not least to fund NRW, for ongoing monitoring and to generate specific, measurable, achievable, realistic, and time-bound (SMART) datasets. Monitoring may fall on a range of bodies, depending on the nature of the targets such that their costs will need to be accounted for. The depth and accessibility of basic data is an important consideration. Support for the various biodiversity recording schemes is essential as is making them accessible and interoperable. In its work on environmental impact assessment (EIA), the OEP has pointed out that much relevant ecological study and analysis is undertaken within the EIA process but then lost, rather than being available for others to use, so enabling a cumulative accretion of knowledge, rather than costly repetition of basic work.
32. Beyond the time required to introduce targets, there is the issue of the lack of any specification on the timescale of the targets themselves (the new section 6B(4)(b) of EWA 2016 and whether target setting will be short- or long-term or both. This may allow targets to be specific and suited to the condition of species or habitats, but it might be useful to consider linkages to the dates set in national and international biodiversity strategies, not least to make reporting easier.
33. One final temporal element relates to the review of targets in accordance with the new section 6G of the EWA 2016. This is set in permissive language so that Welsh Ministers *may from time to time* review a target (new section 6G(1)). Welsh Ministers must review a target if a date for that target specified in a regulation is reached. However, given that there is no indication of how long term these targets may be, it

might be better to place an obligation (rather than a power) to review targets on a chosen anniversary of the regulation coming into force, perhaps every three or five years. Note that this same “time to time” formulation applies to review of the Statement under section 6 and again UKELA would prefer periodic review.

34. UKELA notes the power of the Welsh Minister (the new section 6F of EWA 2016) by regulations to designate a public authority in relation to a target set in regulations made under the Act. Designation by regulations may be somewhat cumbersome and will bind only chosen designated authorities. UKELA would prefer a wider ranging duty to apply to public authorities generally. This need not cut across the proper performance by public authorities of their other responsibilities, but would require them to take into account biodiversity considerations at a time of the nature emergency, This would form a duty upon public authorities in Wales to consider how their functions might be discharged in a manner which fulfils the objective of halting and reversing the decline of biodiversity.

**Question 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)*

35. Other than the comments on subordinate legislation (question 7 below) and earlier comments on definitions, including the definition of environmental law, and commencement, we have nothing to add.

**Question 6:** *What are the potential barriers to the implementation of the Bill’s provisions and how does the Bill take account of them?*

36. UKELA refers to the comments above on resources and on timescales. In particular, we emphasise the need to adequately secure the resource base for the OEGW and to ensure that adequate financial and human resource is made available to generate the data required and the ongoing monitoring to successfully pursue the objectives in Part 3 of the Bill to halt and reverse biodiversity decline.

**Question 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)*

37. UKELA notes the powers in section 39 and the so-called Henry VIII clause which confers powers on Welsh Ministers to modify any enactment, including primary legislation. The Delegated Powers and Law Reform Committee of the Scottish Parliament has recently reviewed the use of such powers in the Scottish Parliament. The Committee concludes as follows.

*“The Committee recognises the need in some cases for primary legislation to provide flexibility, by allowing for laws to be updated without requiring further Bills. In such cases though, the Committee argues for any delegated powers to be clear and well defined, and steps to be taken to strengthen scrutiny of both the primary legislation delegating the power and subsequent secondary legislation made under it.”*

38. The scrutiny issue is addressed in section 40(4) which requires Senedd approval of regulations made under section 39. However, UKELA queries the clarity of section 39 in terms of when the delegated power may be exercised. This is said to be where it is considered “necessary or appropriate for the purposes of, in consequence of, or for giving full effect to any provision of this Act,” UKELA suggests the changes to legislation “in consequence” of the Act might allow certain provisions of other enactments to be shielded from the governance procedures laid out in the present Bill.

**Question 8:** *Are any unintended consequences likely to arise from the Bill?*

39. UKELA hopes not. However, the governance elements of the Bill do promote a thorough and independent scrutiny of performance across all areas of law as it relates to environmental protection and Part 3 of the Bill sets targets to reverse biodiversity loss. In terms of the latter provision, the UK largely failed in its efforts to meet the Aichi Biodiversity Targets set under the Biodiversity Convention with particularly poor performance on pollution, species extinction and ecosystem restoration. There is a danger that failure to ensure a high level of environmental protection and to halt and

reverse biodiversity decline could undermine the confidence of Welsh citizens in the capacity of government in Wales to deliver on its promises.

**Question 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?*

40. See comments above on resources and on the wide range of public authorities that may be called upon to deliver the requirements of the legislation.

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

41. None.

### **Key contributors**

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President: Right Hon Lord Justice Lindblom

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## **EPGBTWB 10 - Evidence from: Office for Environmental Protection**

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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**

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**Evidence to the Senedd Climate Change, Environment, and Infrastructure Committee in relation to the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill**

1. The Office for Environmental Protection (OEP) was established by primary legislation - the Environment Act 2021 (EA2021) - to fulfil a role in England and Northern Ireland analogous to that envisaged for the proposed Office of Environmental Governance Wales (OEGW).
2. We are established as one part of a framework for national environmental governance in England and Northern Ireland, itself established by EA2021. This fulfils a similar purpose to the framework now proposed for Wales in the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill.
3. The Welsh environmental governance framework must be designed for the specific context, laws and institutional arrangements of Wales. Similarly, an oversight body for Wales must have the appropriate role, powers and arrangements to operate as intended within this specific Welsh context. With this in mind, we do not consider the particular proposals for Wales, which are of course for the Senedd to decide.
4. We are, however, pleased to highlight aspects of our experience of the governance framework in England and Northern Ireland, which may be useful to your consideration of the proposed arrangements for Wales. We also highlight some areas of our experience which may be helpful as you consider arrangements for the establishment of the OEGW.

**The framework of environmental governance for England and Northern Ireland established in EA2021**

5. EA2021 created a new environmental governance system with the overall objective of achieving a significant environmental improvement in both England and Northern Ireland. Having a vision set out in law is an important feature of the Act.
6. The governance system in England and Northern Ireland to achieve that improvement includes four cornerstones:
  - a. In England, long-term statutory targets for air quality, water, biodiversity, and resource efficiency and waste reduction, as well as any other areas Parliament decides relating to the natural environment or people's enjoyment of it. These targets set the direction of travel through establishing binding outcomes that government must achieve by specific dates. EA2021 requires that these targets, together with other relevant targets, should significantly improve the natural environment. Other elements of environmental governance should support this outcome.
  - b. An Environmental Improvement Plan (EIP), setting out the steps government intends to take to significantly improve the natural environment. This acts as a statutory delivery plan explaining how government will achieve the overall objective of a significant environmental improvement, including the targets. An EIP must include interim targets for each matter covered by a long-term target set under EA2021.
  - c. An environmental principles policy statement (EPPS), to which officials and ministers must have due regard when making policy. This aims to embed

environmental considerations across government, and can foster policy-making which is coherent with meeting environmental targets and delivery steps set out in the EIP.

- d. The OEP, an independent oversight body to scrutinise the above and the implementation of environmental law more broadly, as well as to enforce serious non-compliances with environmental law by government and other public authorities.
7. Taken in the round, there is clear logic to the structure. The targets set clear and binding outcomes in specific areas that add up to the overall objective of achieving a significant environmental improvement. The EIP should lay out the path to achieve these targets and wider significant environmental improvement, including by setting out the specific delivery steps to be taken. The EPPS provides principles and guidance so that policy-making across government takes account of the environment. The OEP's scrutiny provides oversight and enables accountability, so the outcomes intended are more likely to be achieved. Achieving significant environmental improvement relies on all these elements playing their full part.
  8. Given its foundational relevance to each government's aims to deliver significant environmental improvement, scrutiny of the implementation of this governance framework has been a feature of our early work.

### **Environmental Principles**

9. In England and Northern Ireland, the law requires each government to set out an explanation of its interpretation and application of the Environmental Principles in an Environmental Principles Policy Statement (EPPS).
10. The OEP advised [Defra](#) and [DAERA](#) on their draft EPPS in July 2021 and August 2023 respectively. In England, the duty to have due regard to the EPPS in policy making came into effect in November 2023. We monitored the [early implementation of the duty and reported our findings to Parliament in February this year](#). We have highlighted the importance of:
  - a. integration of the policy statement with environmental goals, such as the targets and EIPs, to strengthen the role they might play in achieving each government's environmental ambitions.
  - b. ensuring that environmental protection is at the centre of policymaking and not viewed as something to be fulfilled via a tick box approach after policy has been developed. The timing of the consideration is important.
  - c. existing guidance and documents used as part of the policy-making process being aligned and strengthened to fully reflect the EPPS duty.
  - d. the governance, monitoring and oversight arrangements to support effective application in practice. In England, this has included a department which led the development and roll-out across government alongside cross-government infrastructure, so as to avoid the EPPS being viewed as the responsibility of one department.
  - e. publicly available information in relation to the application of the EPPS duty as part of government's policy-making process. In England, we have found a lack of transparency hinders the ability of Parliament and others to scrutinise implementation and effectively hold government to account.

### **Environmental Targets**

11. In both England and Northern Ireland there are a range of statutory environmental targets. In England, these are established under EA2021 as well as a wide range of other legal frameworks. [We provided advice to ministers in England as the EA2021 targets were being set.](#) We have monitored progress towards them and assessed prospects of them being achieved in each of the annual reports on progress we provide to Parliament.
12. A framework of well-crafted, statutory environmental targets can play a critical role in driving action across all who need to contribute to environmental improvement, including central government departments, local authorities, delivery partners and civil society. Long-term binding targets can set direction and ambition over time which supports continued action, policy continuity and confidence in the direction of travel.
13. However, in England, we have found that a number of environmental targets are insufficiently coherent, connected or applied. We have advocated for a clear hierarchy of targets in each environmental area where government aspires for significant improvement. In our view, there should be an apex or headline target that sets out the overall intended environmental outcome supported by a suite of SMART (Specific, Measurable, Attainable, Realistic and Time-bound) interim targets in each area. We judge this clarity and coherence to be essential if targets are to have the intended galvanising effect.
14. We have also emphasised the importance of planning and transparency in setting out how targets are to be achieved. Statutory targets should be supported by statutory requirements for delivery plans that ensure clear, sufficiently detailed and plausible delivery pathways are in place and followed. This is not least so that all who are to play their part understand the contribution they are intended to make, and so progress can be properly tracked and delivery pathways adjusted if needed.

### **The importance of effective implementation**

15. Across our work, we have generally found governments' ambitions for environmental improvement in both England and Northern Ireland, as set out in a variety of goals, commitments, targets and plans, to be laudable. Yet we have also found progress to be largely off track to deliver these ambitions. This is partly due to a lack of sufficiently focused and tangible measures to make the improvements required, in a context of growing environmental degradation.
16. In our [annual progress reports](#), we have emphasised the absence of transparent, plausible delivery pathways as a key barrier to ambitions being achieved. We have similarly found a lack of effective implementation as a factor hindering progress in our detailed scrutiny of the implementation of laws across England and Northern Ireland, for example in our scrutiny of the implementation of the [Water Environment Regulations](#) in [each jurisdiction](#), and [laws relating to protected wildlife sites in Northern Ireland](#).
17. The EIPs required by EA2021 should describe how actions contribute individually and in combination to deliver the intended outcomes. We advised government in [England](#) and [Northern Ireland](#), when reviewing or establishing their EIPs, to address this, by setting out delivery plans transparently in sufficient detail. In our view, getting this part of the EA2021 governance framework right is essential for environmental ambitions to be achieved, and for the scrutiny mechanisms to be effective as intended.

## The Office for Environmental Protection

18. The OEP is established as a key part of the EA2021 system of national environmental governance, so that a significant improvement in the natural environment is more likely. Our statutory principal objective is to contribute to environmental protection and improvement of the natural environment. We have a number of key functions which provide the means to pursue this aim.
19. We monitor and report annually and independently to Parliament or the Assembly on: progress being made in improving the natural environment and towards meeting targets, in accordance with the EIP; the prospects of targets and ambitions for environmental improvement being achieved, and; our recommendations for how progress and prospects can be improved. Each government must respond to Parliament or the Assembly on our reports and recommendations before our next annual report. In this way, EA2021 creates a cycle of assessment, reporting and responses which aim to create transparency of and accountability for delivery, and enable course correction where needed.
20. We monitor the implementation of environmental law, and can report independently to Parliament and the Assembly on the effectiveness of specific environmental laws and their implementation, making recommendations for improvement. Each government must respond to Parliament or the Assembly in relation to our reports. We interpret 'implementation of law' broadly in [our strategy](#) to include, for example, the design of the law and interactions between laws, the set-up of responsible institutions and their resourcing, co-ordination of delivery actions amongst bodies, guidance, good practice, enforcement and sanctions. We have found this breadth important to our ability to assess the causes of issues, and recommendations for improvement.
21. We can advise Ministers when they propose changes to environmental law, or on any other matter connected to the environment when they ask us to do so. Governments can, but do not have to, respond to Parliament or the Assembly in relation to our advice.
22. We receive complaints from members of the public about suspected failures to comply with environmental law. We make information available about how we manage complaints on our website, building on the requirements set out in EA2021 for us to keep complainants informed of progress.
23. We investigate and can enforce where there are serious failures to comply with environmental law by government or other public authorities, whether we identify these from a complaint or information from any other source, including our own monitoring of the implementation of environmental law. Our staged investigation and enforcement steps are designed to enable resolution of matters as early as we can, and without taking cases to court where this is possible. EA2021 requires us to focus our enforcement activity on matters which are serious, and which we determine a priority. We have set out how we assess this in our strategy and enforcement policy. EA2021 provides that the Secretary of State or Department in Northern Ireland may give guidance on the OEP's enforcement policy. This can be done only after laying a draft of the guidance before Parliament or the Assembly and the passage of a period for scrutiny and a response to that scrutiny. Such guidance cannot preclude us from investigating individual cases or subject areas. No guidance has been given to date.
24. We can intervene in cases relating to potential failures to comply with environmental law brought by others. We seek to do this when we consider that our intervention

would assist the court, and it is a matter we prioritise. We have done so four times to date, typically seeking to make submissions to support the courts provide clarity to the law, so it can be better implemented and so achieve more for environmental protection or improvement, rather than to take a position on the merits of the specific case.

### **Complaints and enforcement**

25. EA2021 sets out criteria for what is an eligible complaint for the OEP to consider. It states, for example, that the complainant must have exhausted the complaints process of the relevant public authority in advance.
26. The OEP's enforcement functions are intended to be targeted to matters which are serious, and a priority. Since June 2022, we have initiated nine investigations across England and Northern Ireland, which [can be found on our website](#). We have launched investigations into potential failures to comply with environmental law:
  - a. in response to complaints we have received.
  - b. that relate to multiple complaints we have received, which on their own may not be serious or a priority, but when aggregated point to a serious, systemic or strategic potential failure in relation to the environmental laws in question. We have targeted our activity to the systemic rather than specific failure to fulfil the strategic role intended for the OEP, make the most effective use of our resources and secure wider benefits.
  - c. that have identified through our other monitoring and scrutiny work, and not from complaints.
27. Environmental law is complex, as can be the network of different public authorities responsible for it. In our experience, it can be difficult for members of the public to identify which environmental laws may not be being complied with, and by which public authorities. Yet the public has valuable experience on where environmental outcomes are not being achieved as they should. People may know what is wrong, but not necessarily how the responsibilities of public authorities in environmental law relate to those problems.
28. The ability to pursue potential failures to comply with the law we identify from different sources has therefore been important to our work so far. This allows us to act proportionately and purposefully to target those issues which can have widest benefit, including as reflected in complaints we receive.
29. Our strategy and enforcement policy emphasises our aim to seek resolution to matters at the earliest opportunity. Our investigation and enforcement powers support this, through staged processes, starting with an investigation, supported by the issuing of an Information Notice requesting information, and then if appropriate a Decision Notice setting out our view of the failure, and steps to be taken in resolution. EA2021 also provides recourse to the courts if needed.
30. The statutory power and organisational competence to bring legal proceedings against public authorities through the courts has proved an effective tool. In particular, the extended time period in which such proceedings can be brought creates more opportunity for meaningful dialogue in relation to compliance issues. In our experience, public authorities are well motivated to explore and discuss constructive and meaningful resolution, rather than engage in litigating often complex points of law before the Courts.

31. To help secure accountability, we must generally publish a report setting out our findings and the reasons for them when we resolve a matter without needing to go to court.

## **Independence**

32. Your officials suggested we set out how the OEP safeguards its independence. In our view, public confidence in the OEP, and the oversight role we have in the system of environmental governance of which we form part, will always closely relate to confidence in our independence, impartiality and objectivity.

33. Our independence arises in part from the statutory provisions which establish the OEP, and in at least equal part from how we exercise our role in practice. It matters who we are, what we do and how we do it. Parliamentarians and other stakeholders took a keen interest in the provisions for independence of the OEP during the passage of EA2021, and continue to do so as we exercise our role.

34. We were cognisant that it was critical to the OEP's authority that our work was and was seen to be evidence based, robust and authoritative. We therefore invested early in our development in ensuring that our internal governance, analysis, and research methodologies were robust and transparent. This was essential in establishing credibility with both government and wider stakeholders.

35. EA2021 places a duty on ministers, and officials on their behalf, in exercising their functions to have regard to the need to protect the OEP's independence. This provision sets an overall context for the OEP's independence, and its relevance to all of our role. It provides a helpful frame of reference as we undertake our role, clearly signalling the legislative intent. We have found this to be a valuable safeguard through changes of Ministers and government.

36. EA2021 places a duty on government to pay to the OEP such sums as it considers are reasonably sufficient to enable the OEP to carry out our functions. The OEP must, in turn, make an annual statement to Parliament and the Assembly on whether the sums are sufficient. This provides transparency, and a mechanism for Parliamentary and Assembly scrutiny of the adequacy of resourcing. We are to employ staff on terms which we determine, though in practice have chosen to align closely with others across the government system.

37. Ministers ensured that the appointment of the OEP Chair was conducted as a significant appointment under the Commissioner for Public Appointments, and the appointment was subject to pre-appointment scrutiny by relevant Parliamentary Committees. Ministers confirmed to Parliament their intention that similar processes would be followed for future Chair appointments.

38. Safeguarding our independence is central to how we work. We identify independence as one of the core values for all our staff. This manifests practically in how we prioritise, how we engage with government, stakeholders and civil society, and how we do our work.

39. Our decisions are our own, formed independently. EA2021 requires us to act objectively and impartially, which the UK Government has said it equates with a legal duty to act independently. We are also required to have regard to the need to act proportionately and transparently. These principles guide how we exercise our independent decisions and judgements. We have set out how we do this, and apply these principles, in our strategy.

40. As well as our decision-making, we are operationally independent. We have our own communications and legal teams. We operate our own IT, finance, procurement and human resources systems. We recognise that the importance of independence differs across our activities. It is fundamental to our role to have an independent external voice, as well as independent legal capability. At the same time, it is sensible to align aspects of our human resource policies with broader government. We take advantage of cross government buying power and efficiency where relevant, and guard our independence where we should.

### Cooperation

41. Since being established, we have developed and benefited from constructive and effective working relationships with the Interim Environmental Protection Assessor for Wales (IEPAW), and Environmental Standards Scotland (ESS).
42. We have well established engagement with ESS and IEPAW across the different levels of our organisations, and a [jointly agreed Memorandum of Understanding](#). These constructive and effective ways of working are critical in each jurisdiction, notably where interests may be common and issues may transcend national boundaries. There are a number of examples of how these have enabled appropriate coordination of activity in common areas of interest, minimised duplication, and allowed the sharing of information where appropriate. We look forward to these continuing as the OEGW is established, and see it as essential that they should.
43. The EA2021 provides a framework within which the OEP is to pursue and support this cooperation. It requires us to set out how we will co-operate with equivalent bodies in England and Wales, when relevant consult with them in exercising our functions and permits disclosure of information obtained by the OEP to those bodies which we would otherwise be required to keep confidential. It is not clear how comparable arrangements are provided for the OEGW in the draft Bill, and therefore whether and how the Bill intends to enable this co-operation with the OEP.
44. We have also agreed Memoranda of Understanding with the [Climate Change Committee](#), the [Local Government and Social Care Ombudsman in England](#), and the [Northern Ireland Public Services Ombudsman](#).
45. More broadly, the EA2021 creates a duty on public authorities to cooperate with us and provide the reasonable assistance we require to exercise our functions. This is important in supporting us to access information and other cooperation, but has not always been straightforward in practice to achieve. The risk that a lack of timely and effective cooperation fetters our ability to discharge our statutory duties has been a strategic risk for the OEP for sustained periods. We continually engage with those public authorities most affected by and able to support our work, with the aim that it is as straightforward as possible for public authorities to cooperate with us.

## **EPGBTWB 05 - Evidence from: Environmental Standards Scotland**

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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

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### **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?**

▪ Environmental Standards Scotland (ESS) strongly welcomes and supports the proposals in the Bill to establish the Office of Environmental Governance Wales (OEGW) as the statutory body responsible for scrutinising compliance with, and the effectiveness of, environmental law in Wales. Since its establishment in October 2021, ESS has worked closely with the Interim Environmental Protection Assessor for Wales and looks forward to continuing to do so with the OEGW, if established as proposed by the Bill.

### **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)**

▪ ESS' view is that having the environmental principles in Scottish legislation (in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021) has provided valuable continuity, following the UK's exit from the European Union, in how the environment is considered when making relevant legislation and policy. The statutory guidance on the application of the principles notes that the principles should be considered early in the policy development process, and must be performed with a substantial, rigorous and open-minded approach. It is open to ESS to examine how the environmental principles are being applied in the course of the exercise of its functions.

### **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)**

- The Bill proposes the establishment of OEGW to provide independent oversight of the effectiveness, application and implementation of environmental law, including any failures by public authorities to comply with environmental law. As the equivalent oversight body in Scotland, ESS has very similar powers to those being proposed in the Bill.

- Status

- The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (the ‘Continuity Act’) established ESS as a non-ministerial office, directly accountable to the Scottish Parliament. A clear principle in the creation and establishment of ESS has been its independence from Scottish Ministers. Schedule 1 of the Continuity Act makes this explicit, stating that: “Environmental Standards Scotland is not subject to the direction or control of any member of the Scottish Government.”

- This independence is reinforced by the fact that appointments to the Board of ESS can only be made following approval from the Scottish Parliament. ESS’ strategy is also subject to parliamentary scrutiny and approval. ESS is currently consulting on a revised strategy for the 2026-2031 period. ESS will lay a revised strategy in the Scottish Parliament for approval during autumn 2025. In addition, on a non-statutory basis, ESS provides a six-monthly written update to the Scottish Parliament’s Net Zero, Energy and Transport Committee on its work and is subject to an annual review of its work by that committee.

#### Functions

Section 20 of the Continuity Act defines ESS’ functions as being to:

(1) monitor:

- public authorities’ compliance with environmental law
- the effectiveness of environmental law and of how it is implemented and applied

(2) investigate (either on its own initiative or in response to any representations made to it by another person) any matter concerning:

- whether a public authority is failing (or has failed) to comply with environmental law
- the effectiveness of environmental law or of how it is (or has been) implemented or applied

(3) to take the steps it considers appropriate to secure—

- a public authority's compliance with environmental law
- improvement in the effectiveness of environmental law or in how it is implemented or applied

In terms of enforcement powers, ESS can:

- issue information notices – these require a public authority to provide us with any information we need
- lay improvement reports in the Scottish Parliament – these set out what a public authority must do to comply with environmental law or to improve effectiveness. Scottish Ministers must then lay an Improvement Plan in response in the Scottish Parliament for approval
- issue compliance notice – these require a public authority to take steps to address a failure to comply with environmental law and to prevent that failure being repeated
- apply for judicial review – ESS can apply for judicial review or to intervene in other civil court proceedings where there is a serious failure to comply with environmental law or where there is a risk of serious environmental harm

ESS endeavours to resolve matters without recourse to its enforcement powers wherever possible. ESS has used information notices to seek information from public authorities and prepared and presented two improvement reports (one on [air quality](#) (nitrogen dioxide) and one on [local authorities' climate change duties](#)).

In addition, section 20 of the Continuity Act enables ESS to “make recommendations in relation to any matter relevant to its functions”. ESS has used this to make recommendations to public authorities following analytical and monitoring work (see reports on [particulate matter](#), [storm overflows](#), [soils](#) and

marine litter). ESS publishes public authorities' responses to these recommendations on its website and follows up on their implementation.

### Representations

ESS can receive representations from members of the public, communities and organisations about concerns they have regarding environmental law and how it is implemented. Since ESS began operating on 1 October 2021, it has received a total of 79 representations covering the full spectrum of environmental law. At the time of writing, ESS has two full investigations underway (one on Special Protected Areas and one on bycatch and discards in cod fisheries) and over twenty other pieces of investigatory work at varying stages.

### Monitoring and Analysis

ESS monitors developments in environmental policy and law at an international, UK and Scottish level. This work enables it to comment on the development of new environmental law. It also conducts its own analytical work based on environmental data, discussions with public authorities and other stakeholders. Current analytical work includes seafloor integrity, invasive non-native species and river basin management planning.

### Reporting

Scotland does not have the equivalent of England's 25 year Environmental Improvement Plan and therefore there is no requirement on ESS to make reports on progress equivalent to those made each year by the Office for Environmental Protection. However, current legislative proposals relating to biodiversity being considered by the Scottish Parliament may extend ESS' duties (see below).

## **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)**

The proposals in part 3 of the Bill aim to establish a biodiversity target setting framework aimed at halting and reversing the decline in biodiversity in Wales, as well as imposing a duty on the Welsh Ministers to promote awareness in Wales of the importance of, and the threats to, biodiversity.

The Scottish Parliament is currently considering the Natural Environment (Scotland) Bill. This Bill was introduced to the Scottish Parliament on 19 February 2025 and proposes to establish a framework of statutory biodiversity targets. The precise detail of the targets will be set out in secondary legislation.

ESS, in its response to the Scottish Parliament's Rural Affairs and Islands Committee's call for views on the Natural Environment (Scotland) Bill, agreed that statutory nature targets are needed in Scotland given the evidence of a serious decline in biodiversity. Statutory targets help to provide clarity and certainty about the long-term direction of government policy. They need to be ambitious but achievable but, critically, supported by sufficient action. They also must be supported by effective and transparent reporting and appropriate scrutiny of progress. The Bill proposes that ESS should act as the Independent Review Body (IRB) to scrutinise the proposed new biodiversity targets. This would represent a significant extension of ESS' functions.

**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)**

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

**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)**

**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?**

For context, ESS’ total budget for 2025/26 is £3.8 million. This consists of £3.1 million in revenue funding and capital funding of £0.7 million to cover a change to the budgeting and accounting treatment of leases. The majority of ESS’ revenue budget is staff costs. At the time of writing, ESS has a staff of 25 (23.5 full time equivalents) with two vacant positions organised into three teams. The balance of the budget is predominantly used for operating expenditure and the commissioning of external advice and support.

The Continuity Act requires ESS to state, retrospectively, in its annual report and accounts (which are laid in the Scottish Parliament) whether the resources allocated to it by the Scottish Government in the preceding year were sufficient to enable it to perform its functions. In addition, ESS writes to the Scottish Parliament about its proposed budget for the following year at the time that the Scottish Parliament is considering the draft budget for the next year.

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

Huw Irranca-Davies MS

Deputy First Minister & Cabinet Secretary for Climate Change and Rural Affairs

2 June 2025

Dear Huw,

Thank you for attending the Committee's meeting on 27 March 2025 to discuss Welsh Government policies on Climate Change and Rural Affairs. The Committee agreed that I should write to you to request clarification of several issues raised during the session.

### **Forestry and woodland**

The Committee remains concerned that tree-planting rates remain considerably below the Welsh Government's target of 43,000 ha of new trees by 2030 (almost 5,000 ha per year), rising to 180,000 ha by 2050 (over 6,000 ha per year), as recommended by the UK Committee on Climate Change (CCC).

When asked if this remained your target, you said: "I think it's hugely stretching, but I think we are committed to working towards that target."

1. Please could you confirm that the Government is committed to its target of 43,000 ha of new trees by 2030 (almost 5,000 ha per year), rising to 180,000 ha by 2050 (over 6,000 ha per year)?

Just as important as the overarching target is the detailed work on how the target is to be achieved.

During the discussion, you set out that the Government is "trying to work through the [Trees and Hedges Stakeholder Delivery] group now to say what the trajectory will be. Do we go very early and steep? Do we have a more level line towards doing it? That's the discussion we're currently in."

2. Bearing in mind that the target has been in place for over four years, it is important that these discussions are brought to a conclusion swiftly. We would like you to share with the Committee the year-on-year milestones that Government will require to meet these targets.

As you set out to the Committee, tree planting will require action not just from Government but from other stakeholders too. However, the Committee did not get a sense from your answers of the quantum of tree planting that will be achieved on public sector land.

3. Could you set out for the Committee how the Government will achieve significant tracts of new planting on Welsh Government land?
4. Additionally, could you set out for the Committee how the Government will achieve significant tracts of new planting on non-Welsh Government land?

You stressed the work of the Sustainable Farming Scheme in achieving improved tree-planting rates. We saw opposition to tree planting from farmers during the SFS consultation last year and tree planting will now be an optional action, rather than mandated under the scheme.

The question remains for the Committee, what will the Government do specifically to encourage behavioural change?

During the Committee session Gian Marco Currado said payments will be at risk if farmers don't make progress on the plan.

5. Please could you set out for the Committee how will the Welsh Government define "progress" in delivering tree planting through the new SFS? How will you ensure that this is meaningful and does not just amount to "one more tree"?
6. Could you share the membership of the SFS Trees and Hedges Stakeholder Delivery Group with the Committee, as you indicated you would?

In terms of the work of the above group, Clare Bennett said that she saw it as "an action-orientated group" rather than producing "some grand report".

7. The Committee would be grateful if you could share the work programme of the group and the likely outcomes and outputs that you expect from their work, together with timescales.

The Committee also notes that you have not yet consulted the UK Climate Change Committee (UKCCC) on the proposed changes to the SFS scheme design around tree planting but that you will do so when the scheme design is finalised. The final scheme is expected in the summer.

8. Could you explain when you expect to consult the UK CCC and how will you ensure that the Government will have necessary time to take account of its input?

The Committee would also be interested to understand how the new SFS scheme will help to achieve other policy goals. For example, the Committee is currently taking evidence about the recent floods.

9. How will the Welsh Government ensure that the SFS is used to promote the planting of other plants as a preventative measure against both flooding and run off from farms? Specifically, the Committee would also be interested to understand what more can be done to encourage the use of continuous cover forestry when NRW are engaged in clear felling operations.

The Committee is also particularly interested in the work of the Woodland Finance Working Group to look at models to attract private investment that avoid disadvantaging rural communities and disrupting existing patterns of land ownership. You said that your thinking “has moved on apace” on this.

10. When will the Woodland Finance Working Group conclude its work and publish its outputs?

### Air quality

As you know, the Environment (Air Quality and Soundscapes) (Wales) Act places a duty on the Welsh Ministers to set an air quality target for PM2.5 by 2027. The Committee welcomes your confirmation that you will consult upon this in autumn of this year.

11. Could you confirm when you expect to meet your statutory duties under the Act (in advance of the hard deadline of February 2027, set out in the Act)?

In relation to the (now closed) consultation on local air quality management and smoke management guidance, we discussed the view of Asthma and Lung UK that this “fails to provide the necessary ambition and clarity required to protect public health”. You committed to reflect on that feedback.

12. The Committee would urge you, in doing so, to consider how the draft guidance can be strengthened.

The Committee remains concerned about the slow rate of delivery in relation to other planned consultations. You said that the following consultations originally planned for autumn 2024 will now commence this month:

- a delivery plan for promoting awareness of air pollution;
  - regulations to set a penalty range for the offence of stationary vehicle idling.
13. You originally timetabled for these to be implemented (following an autumn 2024 consultation) in spring 2025. Given the delay, can you confirm that you will still be able to implement this year?

Similarly, you previously advised the Committee that you intended to consult on draft regulations on domestic burning of solid fuels in early 2025, with a view to laying regulations in autumn 2025. You have not yet laid a draft.

14. Could you update the Committee on your timetable for bring forward these regulations?

## **Biodiversity**

As we discussed, Audit Wales has published its study on implementation of the “biodiversity and resilience of ecosystems duty” by public authorities. This duty arises from section 6 of the Environment (Wales) Act 2016.

The anticipated Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill is expected to introduce a new biodiversity framework and targets. You have said that the Government will use the existing section 6 duty as a mechanism for public authorities to contribute towards the biodiversity targets.

The current duty requires public authorities to “maintain and enhance biodiversity so far as consistent with the proper exercise of their functions and in so doing promote the resilience of ecosystems”.

It is therefore a matter of concern that almost half of public authorities included in its study have not complied with the section 6 duty to both prepare and publish a biodiversity plan. The Committee notes your view that, despite this lack of compliance, the duty has still driven positive change. However, this situation is far from ideal.

Given poor implementation of the biodiversity duty, it is incumbent on the Government to explain how it intends to improve awareness and delivery, either through the Bill or new guidance. The Committee will wish to look at that matter closely during the scrutiny of the legislation.

Secondly, the fact that the Welsh Government itself is failing to comply with the duty should alarm you, just as it alarms the Committee. The Government cannot credibly expect other public authorities to fulfil this legal duty if the Government itself does not do so.

15. Could you set out how you will improve your own compliance with this duty and that of other public sector bodies and the timetable for doing so?

## **Deposit Return Scheme (DRS)**

You explained that the (previous) UK government has diverged from the original four-nation approach to the Deposit Return Scheme (DRS) and that this was why the Welsh Government withdrew from the planned UK-wide DRS in late 2024. You confirmed to the Committee that you wish to develop a scheme that includes glass.

You will be aware that in 2023 the UK Government used its powers under the UK Internal Market Act to prevent the Scottish Government from including glass in its planned DRS.

In answer to the Committee's questioning you stated that

*"We haven't gone to seek an exemption from UK Government on the United Kingdom Internal Market Act 2020 because we've been working, now, in partnership. It's a very different approach now."*

16. It is the Committee's view that, given your intention to consult on a Wales-only DRS to include glass, this should be taken forward having had reassurance from the UK government that Wales will not be prevented from introducing the scheme. Will you seek such a reassurance before launching the public consultation?

I should be grateful for a response as soon as possible, and by 30 June at the latest.

Yours sincerely,



**Llyr Gruffydd MS,  
Chair, Climate Change, Environment and Infrastructure Committee**

Croesewir gohebiaeth yn Gymraeg neu Saesneg | We welcome correspondence in Welsh or English.

Huw Irranca-Davies AS/MS  
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet  
dros Newid Hinsawdd a Materion Gwledig  
Deputy First Minister and Cabinet Secretary for  
Climate Change and Rural Affairs



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref PO/HIDCC/0261/25

Llyr Gruffydd MS  
Chair  
Climate Change, Environment and Infrastructure Committee

27 June 2025

Dear Llyr

Thank you for your letter dated 2 June following my attendance at CCEI Committee on 27 March, seeking clarification on issues raised during the session.

### Forestry and Woodland

1. Recognising the need to deliver a major step-change in tree planting rates, 43,000 hectares of new woodland in Wales by 2030 remains our aspiration. We also need to consider these targets in light of more recent CCC advice (22,000 hectares by 2030, and 208,000 hectares by 2050, including 15% of open ground for biodiversity) and to work with stakeholders to consider the relative contribution of hedges, agroforestry and other smaller scale planting to carbon sequestration in Wales.
2. The Welsh Government is committed to working towards the CCC recommendations for tree planting. There are a number of factors which will affect year on year progress and as a result it is not our intention to set annual targets, but we will be closely monitoring progress on an annual basis in order to identify further actions that might be required. The newly established Tree Planting and Hedgerow Creation Stakeholder Delivery Group will have a key role to play in providing advice on annual trajectories for tree planting and hedgerow extension for land both within and outside SFS.
3. The single biggest area of land owned by Welsh Government is the Welsh Government Woodland Estate. In 'Making wood work for Wales', our consultation on a Timber Industrial Strategy which closed on 16th April, we proposed working with NRW to explore options for expanding the size of the Welsh Government Woodland Estate. This offers the most obvious route for new planting. The final Timber Industrial Strategy will be published later this year.
4. With the majority of land in Wales managed for agriculture we expect farmers will continue to contribute significantly to increasing woodland cover. But if we are to reach the level of tree planting that we need to deliver it will need a concerted effort across all landowners and managers. This requires a tailored approach with different types of land facing different challenges.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

We are establishing relationships with a wide range of landowners and managers to understand these challenges better and to provide the necessary support to enable large scale planting. We will be using the Tree Planting and Hedgerow Creation Stakeholder Delivery Group to prioritise actions including identifying and removing barriers to planting; trialling resources for advice and knowledge-sharing; using new mechanisms for promoting planting at a landscape scale including through the National Forest; and refining our strategic communications plan to increase awareness of grant schemes, local networks and the benefit of woodlands across sectors.

5. The final SFS scheme is still being developed.

6. The membership of the group is published here: <https://www.gov.wales/trees-and-hedgerows-stakeholder-delivery-group-terms-reference>

7. The Terms of Reference for the group are published here: [Trees and Hedgerows Stakeholder Delivery Group: terms of reference \[HTML\] | GOV.WALES](#)

8. The design of the SFS is in development and will only be signed off once all the work underpinning it has been completed. As the role of the CCC is to provide advice to us on a potential pathway that includes action across all sectors to reach Net Zero, we do not expect them to provide a separate assessment of the SFS's role in tree planting.

9. Under SFS each farmer will be required to produce a Trees and Hedgerow Planting Opportunity Plan. This will require them to go through a series of questions that will help them identify how tree and hedgerow planting could benefit their farm and where they might best be located. These include questions on flooding under a Changing Climate theme. In addition, depending on the scale of planting involved they will be able to access advice from a registered woodland planner or other expert advice. Welsh Government officials will continue to liaise with Natural Resources Wales regarding appropriate management approaches, including continuous cover forestry, on the Welsh Government Woodland Estate.

10. The Woodland Finance Working Group published its recommendations in July 2022, and we have made good progress implementing them. We acknowledge there is a role for private investment in helping tackle both the nature and climate emergencies we face but want to ensure investment is secured in a way that works for Wales.

We also think woodland creation should be considered alongside other developing environmental services markets. We believe environmental markets must be well-designed and governed to prevent 'greenwash' and ensure they are high integrity, deliver real environmental improvement and both engage and benefit local communities. This position informed the development of our Sustainable Investment Principles, which we consulted on last year. We intend to use responses from the consultation to develop our approach to investment in nature-based solutions in a way which complements our existing commitments under the Well Being Act for Future Generations, Biodiversity targets and Net Zero ambitions. Our Timber Industrial Strategy which will launch later this year, will also create a real opportunity for foresters, timber processors and manufacturers in Wales to contribute to a "wood economy" and therefore drive long term investment not just in woodland creation but also the wider supply chain and infrastructure.

## **Air Quality**

11. Work remains on track to develop new air quality targets for Wales in line with the statutory duties under the Act.

I expect to launch a public consultation on target options for PM2.5 during autumn 2025, subject to my on-going consideration of advice. There will need to be proper consideration of consultation responses in relation to the proposed targets. The specific date of laying will depend on the outcome of the consultation. Based on current planning, I fully expect the draft regulations will be laid by the end of January 2027 in line with the duties in the Act.

12. The guidance, which will be published by the end of July, will reflect the updated legislative commitments for local air quality that were designed, consulted upon and agreed during the development of the Act. Publication of the updated guidance will also ensure commencement of the appropriate sections of the Act, and will reflect the already agreed position of the Welsh Government.

13 and 14. It is our intention to publish a consultation on the draft promoting awareness plan by July. I have been considering advice from officials on stationary vehicle idling and domestic solid fuel burning with regard to policy options. I will announce my decision on these shortly.

### **Biodiversity**

15. We have set out our response to the recommendations set out in the Audit Wales report which is attached as Annex A. These include the actions we propose to take to improve the awareness of and delivery of the section 6 duty, including our own compliance.

### **Deposit Return Scheme**

16. A common UK-wide approach to DRS existed only up until the point the previous UK Government diverged from the collectively agreed scope. The competence to bring forward a Deposit Return Scheme is fully devolved and in line with the principles of devolution, it should be for the Government of Wales to bring forward proposals to the Senedd on a DRS which delivers for Wales, noting that this was not an issue under the EU's framework prior to Brexit. In the case of DRS, whilst we have a shared long term objective, it is clear that the different nations of the UK are at different stages of their journey towards it. As Wales is second in the world for recycling it means that for a DRS to be effective in a Welsh context it must deliver benefit over and above our current performance, which necessitates a broad 'all-in' scheme, which was the overwhelmingly endorsed outcome of the consultation, alongside a clear pathway to reuse.

I trust this information provides clarity for the committee on these important matters.

Yours sincerely,



### **Huw Irranca-Davies AS/MS**

Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd  
a Materion Gwledig

Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

# Management response form

**Report title:** The Biodiversity and Resilience of Ecosystems Duty

**Completion date:** April 2025

Pack Page 101

Ref	Recommendation	Management Response Relevant commentary on the planned actions in response to the recommendations	Completion date Completion date for planned actions	Responsible officer (title)
R1	The Welsh Government should publish a list of public authorities covered by the duty. It should do this before the next reporting deadline at the end of 2025. It should update the list when any new public authority covered by the duty is created.	<b>Accept.</b> We will publish a list of public authorities covered by the duty before the next reporting deadline at the end of 2025. The list will be updated periodically, for example when any new public authority covered by the duty is created.	By the end of 2025	Marine and Biodiversity Team
R2	The Welsh Government should require that public authorities submit their biodiversity plans and reports to it when published	<b>Accept.</b> We will amend the reporting guidance to include a requirement that reports and plans should be forwarded to us. The section 6 <a href="#">FAQ document</a> already includes a request for public authorities to forward	By the end of 2025	Marine and Biodiversity Team

Ref	Recommendation	<b>Management Response</b> Relevant commentary on the planned actions in response to the recommendations	<b>Completion date</b> Completion date for planned actions	<b>Responsible officer (title)</b>
	<p>or revised. It should also follow up with public authorities if they have not published these plans and reports as expected.</p>	<p>plans to us (response to question 11), but we will include this requirement in future guidance.</p> <p>We will follow up where appropriate with public authorities who have not published plans and reports</p>		
R3	<p>The Welsh Government should publish reports that provide an overall view on public authorities' actions, progress, and compliance with the duty. It should do so every three years in line with the</p>	<p><b>Accept.</b> Following each reporting round we will utilise the reports published by public authorities to set out our view on actions and progress. We will provide good practice guides in light of exemplar actions and work with public authorities to identify where improvements are needed to ensure compliance with the duty. The</p>	<p>Within twelve months of each reporting deadline</p>	<p>Marine and Biodiversity Team</p>

Ref	Recommendation	<b>Management Response</b> Relevant commentary on the planned actions in response to the recommendations	<b>Completion date</b> Completion date for planned actions	<b>Responsible officer (title)</b>
	reporting cycle defined by the Act.	Environment (Principles, Governance and Biodiversity Targets)(Wales) Bill will introduce provisions to strengthen the monitoring, evaluation and reporting requirements for section 6.		
R4	Before the next reporting deadline at the end of 2025, the Welsh Government should lead by example in publishing a high-quality biodiversity plan and report specific to its own actions.	<p><b>Accept.</b> We will publish a section 6 plan which will be developed alongside the update to the Nature Recovery Action Plan proposed for later this year.</p> <p>We will publish a section 6 report by the reporting deadline.</p>	December 2025  December 2025	Marine and Biodiversity Team

Ref	Recommendation	Management Response Relevant commentary on the planned actions in response to the recommendations	Completion date Completion date for planned actions	Responsible officer (title)
R5	<p>The Welsh Government should work with public authorities to review and revise existing guidance and supporting information around the duty. This should include:</p> <p>a) integrating it seamlessly with material produced to support the proposed changes to environmental law;</p>	<p><b>Accept.</b> We will work with public authorities to gather views and improve our understanding on practical implementation and challenges. We will look at what has worked well and what can be improved to inform new or refreshed guidance taking into account the evidence gathered by Audit Wales to inform their report and recommendations. Guidance will be co-designed and co-developed with public authorities.</p> <p>a) <b>Accept.</b> We will ensure any updates to the guidance and supporting information will take account of and reflect the proposed changes in the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill. For example, we will work with public authorities to revise the guidance for the new biodiversity targets when they are set in secondary legislation.</p>	<p>Many of the recommendations here will be on an ongoing basis but we will work to align with the existing section 6 reporting cycles. Some will be triggered by the work required to implement the Environment (Principles, Governance and</p>	<p>Marine and Biodiversity Team</p>

Ref	Recommendation	<b>Management Response</b> Relevant commentary on the planned actions in response to the recommendations	<b>Completion date</b> Completion date for planned actions	<b>Responsible officer (title)</b>
	<p>b) ensuring public authorities without specific biodiversity expertise can understand it;</p> <p>c) tailoring it for different sectors and types of public authority;</p>	<p>b) <b>Accept.</b> When new guidance is published or existing guidance refreshed it will be written in non-technical language, tailored to and appropriate for its target audience based on feedback received from public authorities.</p> <p>c) <b>Accept.</b> When new guidance is published or existing guidance refreshed it will be written in non-technical language, tailored to and appropriate for its target audience based on feedback received from public authorities. We will work with different types of public authorities to ensure guidance meets different requirements. For example, tailoring guidance for public authorities that cover the marine environment.</p> <p>d) <b>Accept.</b> We will ensure that all section 6 guidance documents are available through both the Wales</p>	<p>Biodiversity Targets) (Wales) Bill. The timeline for the Bill is yet to be confirmed, but when the targets are set in secondary legislation they will be subject to specific schedules which will govern the timelines for any new or</p>	

Ref	Recommendation	<b>Management Response</b> Relevant commentary on the planned actions in response to the recommendations	<b>Completion date</b> Completion date for planned actions	<b>Responsible officer (title)</b>
	<p>d) ensuring it is all easily accessible in, or through, one place;</p> <p>e) clarifying whether guidance has statutory force; and</p>	<p>Biodiversity Partnership's and Welsh Government's website.</p> <p>e) <b>Accept.</b> Guidance issued is statutory guidance. Public authorities (other than a Minister of the Crown or UK government department) "must have regard to" the guidance, as well as the other listed documents in section 6(5) of the Environment (Wales) Act 2016. This means that public authorities must specifically consider these documents but how a public authority does so, i.e. what weight each is given in its decision making process, is for each public authority to determine is appropriate in the circumstances as it remains within their discretion as decision maker. We will include a statement explaining this when we update or publish guidance.</p>	revised section 6 guidance.	

Ref	Recommendation	Management Response Relevant commentary on the planned actions in response to the recommendations	Completion date Completion date for planned actions	Responsible officer (title)
	f) adapting and sharing its own biodiversity toolkit and impact assessment guidance as resources for other public authorities.	f) <b>Partially Accept.</b> We will examine the feasibility and benefit of making them available, as part of how we can improve our overall support package for public authorities. This will include working with and assisting public authorities through existing support mechanisms such as the section 6 duty working group and the Wales Biodiversity Partnership. Any toolkit needs to be appropriate for the user – our own internal toolkit may not be of relevance to other public authorities.		
R6	The Welsh Government should provide public authorities with a planning template. It should	<b>Accept.</b> We will publish a planning template.	December 2025	Marine and Biodiversity Team

Ref	Recommendation	Management Response Relevant commentary on the planned actions in response to the recommendations	Completion date Completion date for planned actions	Responsible officer (title)
	ensure this is adaptable to those with stand-alone plans and those that have integrated biodiversity planning into wider plans.			
R7	The Welsh Government should develop training for public authorities, targeted at staff responsible for developing biodiversity plans and reports. The training should cover the duty and additional requirements arising from the proposed changes to environmental law.	<b>Accept.</b> As noted in the responses to recommendation 3 and 5(f) we will work with public authorities to explore what additional support we can provide to assist them in complying with the section 6 duty. This will include looking at possible training provision but will include other options, such as opportunities to build on existing support packages, for example the NatureWise course offered by Academi Wales.	As linked to the Environment (Principles, Governance, and Biodiversity Targets) (Wales) Bill timelines will be governed by when targets are set in regulations.	Marine and Biodiversity Team

Ref	Recommendation	Management Response Relevant commentary on the planned actions in response to the recommendations	Completion date Completion date for planned actions	Responsible officer (title)
R8	To improve quality and consistency, the Welsh Government should routinely provide feedback to public authorities on the plans and reports they submit.	<b>Accept.</b> We will use our existing governance mechanisms to provide feedback when appropriate including working with and through umbrella organisations. The Environment (Principles, Governance and Biodiversity Targets)(Wales) Bill will introduce provisions to strengthen the monitoring, evaluation and reporting requirements for section 6 and this recommendation will be considered as part of the work required to develop our approach to monitoring, evaluation and reporting.	Not applicable	Marine and Biodiversity Team

Ref	Recommendation	Management Response Relevant commentary on the planned actions in response to the recommendations	Completion date Completion date for planned actions	Responsible officer (title)
R9	The Welsh Government should rigorously assess the costs of its proposed changes to environmental law and ensure there are adequate resources within (or provided to) public authorities to support effective implementation.	<b>Accept.</b> This will be considered as part of the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill Regulatory Impact Assessment and further impact assessments that will be required when secondary legislation is developed. As part of the target setting framework proposed under the Bill there will be a consultation process which will allow public authorities to make representations.	Not applicable	Marine and Biodiversity Team

Fy Nghyf / My Ref: CE:0075485  
Dyddiad / Date: 25 June 2025

Llyr Gruffydd MS  
Chair, Climate Change, Environment and Infrastructure Committee  
Welsh Parliament  
Cardiff CF99 1SN

Annwy/ Dear Chair,

## **Re: Bus Services (Wales) Bill – Implications for Municipal Bus Companies**

I am writing to express Cardiff Council's broad support for the Welsh Government's ambition to deliver a more strategic and integrated approach to bus services across Wales, as set out in the Bus Services (Wales) Bill currently under consideration by your Committee.

We fully support the principle of bus franchising and the need for a comprehensive, coordinated framework that ensures bus services are accessible, reliable, and sustainable. In Cardiff, buses are a vital part of our transport network supporting sustainable growth and reducing inequalities, and we are committed to working with partners to improve services for our residents and visitors.

However, I would like to raise concerns about the potential implications of the Bill for municipal bus companies, including Cardiff Bus. These companies are long-standing public assets that play a crucial role in delivering cost-effective, community-focused services. There is a risk that the current framing of the legislation could unintentionally undermine their viability and limit their ability to continue serving the public effectively. This poses a risk to market stability and service continuity. The investment in Cardiff Bus has been significant so there is a need to safeguard public value.

The Council is also concerned that the combination of uncertainty of the details of how and when the bus reform proposals will be delivered and funded may result in unintended consequences. The current proposal to franchise South East Wales in 2029 creates a further four years of uncertainty in the market. Bus operators are less likely to invest in their fleets and grow bus patronage. Some may withdraw from the market in Cardiff as a result. This would be a significant risk to providing cost-effective home to school travel. The proposal to cross-subsidise bus services across Wales from surplus bus revenue is a risk to the effectiveness of the bus network in Cardiff. Any such surplus in Cardiff will be needed to reinvest locally to support growth and make best use of the funds to grow patronage and make a significant contribution towards achieving the aims and objectives of the Wales Transport Strategy, Regional Transport Plan, Cardiff Local Development Plan, Cardiff Transport White Paper and One Planet Cardiff Strategy.

*Your information is processed under the Data Protection Act 2018 to fulfil Cardiff Council's legal and regulatory tasks as a local authority. For further information on what personal data we hold and how long we keep it for, please view our Privacy Policy; [www.cardiff.gov.uk/privacynotice](http://www.cardiff.gov.uk/privacynotice) If you have concerns about how your data has been handled, contact the Council's Data Protection Officer via [dataprotection@cardiff.gov.uk](mailto:dataprotection@cardiff.gov.uk). Your information has been shared with Xerox in order to contact you today. For further information on how Xerox manage personal data, please view Privacy Policy; [www.xerox.co.uk/en-gb/about/privacy-policy](http://www.xerox.co.uk/en-gb/about/privacy-policy)*

### **GWEITHIO DROS GAERDYDD, GWEITHIO DROSOCH CHI**

Mae'r Cyngor yn croesawu gohebiaeth yn Gymraeg, Saesneg neu'n ddwyieithog. Byddwn yn cyfathrebu â chi yn ôl eich dewis, dim ond i chi roi gwybod i ni pa un sydd well gennych. Ni fydd gohebu yn Gymraeg yn arwain at oedi.

### **WORKING FOR CARDIFF, WORKING FOR YOU**

The Council welcomes correspondence in Welsh, English or bilingually. We will ensure that we communicate with you in the language of your choice, as long as you let us know which you prefer. Corresponding in Welsh will not lead to delay.



The draft Bus Services (Wales) Bill and associated bus reform proposals do not include the flexibility needed to facilitate the range of options that may be required to deliver the most effective bus network. For example, it may be more effective for Cardiff to be the franchising authority within the Cardiff area. Such an arrangement could commit to being aligned to the national franchising standards whilst meeting the local needs of Cardiff with reduced risks to the market. The Bill also needs to provide the flexibility for enhanced partnerships and net cost contracts as options that may be appropriate to get best value depending on local circumstances.

We are therefore seeking your assurance that these issues have been fully considered and addressed in the Committee's scrutiny of the Bill. It is essential that the final legislative framework supports, rather than disadvantages, municipal operators and recognises their value in delivering high-quality public transport.

We would welcome the opportunity to meet with you to discuss this matter further and to hear your thoughts on how these concerns can be constructively resolved. I look forward to your response and to continuing our shared efforts to strengthen public transport across Wales.

Yours sincerely,



**COUNCILLOR HUW THOMAS**  
**LEADER**  
**CARDIFF COUNCIL**

CC: Ken Skates MS, Cabinet Secretary for Transport & North Wales

Eich cyf/Your ref  
Ein cyf/Our ref: KS/PO/312/2025

Llywodraeth Cymru  
Welsh Government

Llyr Gruffydd MS  
Chair Climate Change, Environment, and Infrastructure Committee

[SeneddClimate@senedd.wales](mailto:SeneddClimate@senedd.wales)

27 June 2025

Dear Llyr

Thank you for your report on the pre-appointment hearing for the Chair of Transport for Wales.

I am grateful to the committee for its pre-appointment scrutiny of my preferred candidate, Vernon Everitt, and for the prompt publication of its report. I am pleased that the committee shares my view that Mr Everitt is very well placed to become the new Chair of Transport for Wales.

As highlighted in your report, there are considerable delivery challenges ahead for TfW with the delivery of bus franchising, completing the transformation of the CVL, developing the Network North Wales programme, as well as maintaining improvements to rail performance.

Mr Everitt brings a wealth of transport knowledge and experience, and I look forward to him continuing the success of his predecessor Scott Waddington. I have therefore made the decision to appoint Mr Everitt to the role of Chair of Transport for Wales. I will be informing Vernon of my priorities for the role and expectations of him, including formalising the commitments that he made to your committee, over the coming weeks.

Yours sincerely



**Ken Skates AS/MS**  
Ysgrifennydd y Cabinet dros Drafnidiaeth a Gogledd Cymru  
Cabinet Secretary for Transport and North Wales

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

# Agenda Item 4.4

Ken Skates AS/MS  
Ysgrifennydd y Cabinet dros Drafnidiaeth a Gogledd Cymru  
Cabinet Secretary for Transport and North Wales



Llywodraeth Cymru  
Welsh Government

Mike Hedges MS  
Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

01 July 2025

Dear Mike

## Inter-Ministerial Group - Transport

I am writing in accordance with the inter-institutional relations agreement to notify you that the Transport Inter-Ministerial Group, which was due to place on 25<sup>th</sup> June 2025, was postponed.

I will notify you once a new date has been confirmed.

I have copied this letter to the Chair of Climate Change, Environment, and Infrastructure Committee.

Yours sincerely

## Ken Skates AS/MS

Ysgrifennydd y Cabinet dros Drafnidiaeth a Gogledd Cymru  
Cabinet Secretary for Transport and North Wales

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



Climate Change, Environment and Infrastructure Committee  
Welsh Parliament  
Cardiff Bay  
Cardiff  
CF99 1SN

4/6/2025

Dear Mr Gruffydd

I'm writing to you on behalf of the organisations noted below, and within your position as the chair of the CCEI Committee.

Following the recent release of Natural Resources Wales's (NRW) scrutiny report, we were concerned that it did not sufficiently address the cuts being made within the various Access departments. NRW has a statutory duty towards access and recreation, an area which has been drastically cut. The report references the visitor centre closures, however, considering the difficulty which much of the public has in accessing green or blue spaces, we feel that the impact of these cuts on access not been properly investigated. We are calling on the committee to investigate that NRW are able comply with their statutory duties in light of the widespread cuts to access and recreation.

Your Sincerely

Tom Carrick  
(Access and Conservation Officer for the BMC (Cymru))

List of Signatories:

UK MTB Trail Alliance

Associate Heads Of Outdoor Education Centres

National Coasteering Charter

Mountain Training UK&I

Mountain Training Cymru



# Welsh Government Response

## Climate Change, Environment and Infrastructure Committee's *Natural Resources Wales:* *Annual Scrutiny 2024-25* report

2 July 2025

As Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs with Ministerial accountability for the performance and delivery of Natural Resources Wales, I very much welcome the Climate Change, Environment and Infrastructure (CCEI) Committee's Annual Scrutiny report of Natural Resources Wales.

I thank the Committee for its careful and professional consideration in undertaking this scrutiny as laid out in its comprehensive [report](#) which was published on 21 May 2025.

This sets out the Welsh Government's response to the report's 11 recommendations.

**Huw Irranca-Davies AS/MS**

Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd  
a Materion Gwledig

Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

# Contents

<b>1. Governance .....</b>	<b>3</b>
Recommendation 1.....	3
<b>2. The Impact of Case for Change .....</b>	<b>5</b>
Recommendation 2.....	5
Recommendation 3.....	6
Recommendation 4.....	6
Recommendation 5.....	7
Recommendation 6.....	8
Recommendation 7.....	8
<b>3. HMRC Tax Issues .....</b>	<b>9</b>
Recommendation 8.....	9
Recommendation 9.....	10
<b>4. Environmental Governance Bill .....</b>	<b>11</b>
Recommendation 10.....	11
<b>5. Tree Planting and Timber Production .....</b>	<b>13</b>
Recommendation 11.....	13

## 1. Governance

Within this section, the CCEI Committee focused on Natural Resources Wales' Remit Letter, Corporate Plan, Business Plan, budget pressures and recruitment, including the Chief Executive Officer vacancy.

The Committee made one recommendation within this section.

### Recommendation 1.

*NRW must move swiftly to recruit a permanent Chief Executive Officer within the next six months and ensure that plans are in place for an orderly succession to a new Chairperson in October 2025.*

#### Welsh Government Response: Accept

1. Following a comprehensive, public and transparent recruitment exercise earlier this year, led by Welsh Government it identified a proposed candidate for the role of Chairperson for the Deputy First Minister's consideration. The CCEI Committee undertook a pre-appointment hearing on 11 June 2025 with the candidate ([CCEI Committee report of this hearing was published on 16 June](#)). Subject to the Deputy First Minister's consideration of the committee's report and his final decision, the appointment of the new Chairperson is anticipated to commence on 1 November 2025.
2. The Welsh Government is working with Natural Resources Wales to develop a comprehensive induction programme for the incoming Chairperson. The induction programme, including specific Natural Resources Wales and Welsh Government activities, will build on the successful induction process Natural Resources Wales established in introducing three new non-executive Board members in May. The successful delivery of this programme will ensure the Chairperson will deepen the detailed understanding of the organisation, its stakeholders, Welsh culture and the specific environmental challenges faced in Wales.

- 3.** Upon the Chairperson's arrival, they, supported by Natural Resources Wales' Board members, will identify the criteria and person specification for the appointment of a new Chief Executive Officer. This timeline means the process will begin within the Committee's deadline however, it is unlikely this will be fully concluded. The Welsh Government will support Natural Resources Wales's Board to ensure any delay in the recruitment is kept to a minimum.

## 2. The Impact of Case for Change

Within this section, the CCEI Committee focused on Natural Resources Wales' visitor centres, regulatory and enforcement services, environmental pollution incidents and flood risk management.

The Committee made six recommendations within this section.

### Recommendation 2.

*NRW must urgently provide a credible plan to reopen all three visitor centres. This must include clarity about its vision for the future of the visitor centres, the service levels it wishes to see and a financially viable strategy and timetable to achieve this. This should be provided to the Committee within three months.*

Welsh Government Response: Accept

4. It is important that it is absolutely clear all three visitor centre sites managed by Natural Resources Wales are not closed and continue to remain open for walking, biking, access to play areas, car parking and toilet provision. These visitor centres provide a wonderful gateway to outdoor recreation and an important attraction to tourism in mid Wales.
5. Natural Resources Wales is seeking partners who are better placed to provide retail and catering services at two of the sites. The offer to market, to identify potential operators for Bwlch Nant Y Arian and Coed Y Brenin visitor centres, is expected to be launched via Sell2Wales in autumn 2025, with a view to awarding the successful contracts in spring 2026.
6. A community management agreement is being finalised with Borth Community Council for the use of space at Ynyslas Visitor Centre to continue its community outreach programmes and is expected to be operational by the summer.
7. Natural Resources Wales will provide the Committee with more information regarding arrangements within the Committee's timeframe.

### Recommendation 3.

*In relation to the Dyfi National Nature Reserve, NRW must set out its proposed management of the nature reserve to reassure the Committee, and the wider public, that this will be adequate, at a minimum, to meet its statutory obligations.*

#### Welsh Government Response: Accept

- 8.** Natural Resources Wales will continue to deliver the ongoing management of Dyfi National Nature Reserve (NNR) as NNR management is a core element of Natural Resources Wales' statutory functions. The funding that supports Natural Resources Wales' management of the NNR is contained within Natural Resources Wales' Grant in Aid budget which has been unaffected by the Case for Change.
- 9.** The Welsh Government will continue to work with Natural Resources Wales as it continues to provide assurance that its focus remains on the delivery of its core functions and statutory duties.
- 10.** Natural Resources Wales will share information with the Committee, setting out its proposed management of the nature reserve to provide assurance to the Committee that its statutory obligations are being met.

### Recommendation 4.

*NRW should ensure that it monitors and evaluates the adequacy and use of funding for flood management. It should report back to the Committee within six months to ensure that this informs next year's Welsh Government budget decisions.*

#### Welsh Government Response: Accept

- 11.** Natural Resources Wales engages with the Flood and Coastal Erosion Risk Management (FCERM) Programme Board, which approves the necessary funding request ahead of submission to Welsh Government, throughout the year. It also meets with flood officials on a monthly basis to review progress, funding use, and programme delivery. Last autumn, Natural Resources Wales presented its FCERM Programme Business Case which was subsequently approved by Deputy First Minister as part of the wider Flood and Water Programme. This Case sets out the proposed levels of investment, which are assessed by officials for affordability and alignment with strategic priorities.

The business case is updated on an annual basis as the programme progresses.

- 12.** In addition to annual planning, Natural Resources Wales identifies longer-term priorities through its Long-Term Investment Requirements (LTIR), which help shape future investment needs and support our flood management and wider shared climate resilience goals.
- 13.** We will continue to work closely with Natural Resources Wales as it provides assurance of effective delivery of its flood management programme, ensuring its reporting is timely, robust, and supports effective scrutiny and budget planning.
- 14.** Natural Resources Wales will report back to the Committee with the requisite information, including its longer-term priorities, within the requested timeframe.

### **Recommendation 5.**

*NRW should continue to monitor closely its performance on preventing and responding to environmental pollution incidents to ensure that its change of emphasis does not result in more pollution incidents or a failure to respond.*

#### **Welsh Government Response: Accept**

- 15.** Natural Resources Wales' role in monitoring and responding to pollution incidents remains a statutory function under the Environment (Wales) Act 2016.
- 16.** The Welsh Government continues to work with Natural Resources Wales as it provides assurance on its ability to maintain its operational capacity, using its technical expertise help ensure that any shift in regulatory emphasis does not lead to increased pollution incidents or diminished responsiveness.
- 17.** Natural Resources Wales is currently developing metrics to capture performance data which will demonstrate progress having undertaken a risk-based approach in responding to pollution incidents. The Welsh Government will continue to work closely with Natural Resources Wales as it monitors the latter's performance in this area, through its regular reporting structures.

## Recommendation 6.

*NRW should set out for the Committee where it feels the level of sanctions and fines is too low for it to be able to perform its environmental regulation duties effectively.*

### Welsh Government Response: Accept

**18.** The Welsh Government understands and accepts Natural Resources Wales' appetite to move to a civil sanctions approach as an alternative to criminal prosecution. It supports the Committee's recommendation for Natural Resources Wales to provide the evidence illustrating where the level of sanctions and fines are too low for further consideration.

## Recommendation 7.

*NRW should continue to press for a multi-year funding regime to help it manage its budgets for the long term.*

### Welsh Government Response: Accept in Principle

**19.** The Welsh Government agrees in principle that we should work to minimise funding uncertainties and fully understands the funding uncertainties related to the current budget setting process. However, this must be subject to the specific constraints in which we operate. The timing of UK Fiscal events, the UK Government election cycle and the Senedd election cycle all have significant impact on our ability to deliver multi-year settlements.

**20.** The Welsh Government Budget Improvement Plan sets out our vision to improve the Welsh Government's budget process using the Well-being and Future Generation Act and the five ways of working to drive continuous improvement. To support the Welsh Government in the development of long-term ambitions we have drawn on the expertise of the Budget Improvement and Impact Advisory Group (BIAG), alongside a range of experts and other governments.

**21.** In the meantime, the Welsh Government is committed to continuously working closely with Natural Resources Wales, providing all necessary support in ensuring agreed multi-year focussed programme and projects are delivered.

### 3. HMRC Tax Issues

Within this section, the CCEI Committee focused on the tax bill relating to historical compliance issues with off-payroll workers, future budget reduction arrangements to recognise the tax liability, and enhanced monitoring arrangements.

The Committee made two recommendations within this section.

#### Recommendation 8.

*Following the conclusions of the negotiations with HMRC, NRW should provide a full update on the outcome as soon as possible, together with a full explanation of how this money will be paid back through efficiency savings and without impacting on frontline services.*

#### Welsh Government Response: Accept

**22.** The Welsh Government understands that HMRC investigations into Natural Resources Wales' compliance with IR35 requirements is to conclude imminently, with both agreeing on a final settlement. Natural Resources Wales will provide the Committee with a full update regarding the outcome of these investigations as soon as possible.

**23.** The Welsh Government has worked with Natural Resources Wales to agree a budget reduction plan to its Grant in Aid Budget to recognise the IR35 liability. The Welsh Government will continue to work with Natural Resources Wales to ensure it provides the necessary assurance that its core function and statutory duties continue to be delivered within available budgets.

## Recommendation 9.

*In addition to the enhanced monitoring arrangements that the Welsh Government has already put in place, it is critical that lessons are learned from the HMRC experience through a comprehensive review. NRW should report back to the Committee with full details of its approach.*

### Welsh Government Response: Accept

**24.** The Welsh Government supports the need for Natural Resources Wales to undertake a comprehensive review to understand how practices can be improved following the HMRC experience. Natural Resources Wales will ensure that it reports to the Committee the full details of its approach in meeting this recommendation.

## 4. Environmental Governance Bill

Within this section, the CCEI Committee focused on resourcing the ambitions of the Bill and separation of functions between Natural Resources Wales and the new environmental governance.

The Committee made one recommendation within this section.

### Recommendation 10.

*NRW should report back to the Committee (before the Bill is introduced) on the conclusions it has reached with Welsh Government on the resources required to implement the legislation adequately.*

### Welsh Government Response: Accept in principle

**25.** The Welsh Government acknowledges that the Bill was introduced on the 2 June, so it was not possible for Natural Resources Wales to report back to the Committee ahead of its introduction. The Welsh Government will continue to work closely with Natural Resources Wales to ensure it reports back to the Committee as soon possible.

**26.** Natural Resources Wales has provided ongoing input into the development of the policies contained within the Bill. There has been extensive engagement on both a one-to-one basis and in the context of broader stakeholder workshops. The Explanatory Memorandum (EM) that supported the introduction of the Bill quantifies the costs of delivering the legislation, including, where possible, the additional resource costs. The EM highlights where further work will be undertaken through secondary legislation to further quantify costs associated with certain policies.

**27.** In relation to Environmental Principles the duty placed on Natural Resources Wales is significant and reflects the importance of taking long-term, consistent action to protect and improve the environment. However, it is important to note that Natural Resources Wales already operates within our environmental governance regime as a steward for the environment and has

a general purpose to pursue Sustainable Management of Natural Resources. There will be marginal compliance costs (estimated in the Regulatory Impact Assessment (RIA) at around £12k per annum) associated with this new duty, primarily in the form of officials' time in ensuring the duty is applied. Training materials and guidance will be given by Welsh Government to minimise direct cost exposure to Natural Resources Wales and further analysis will be undertaken to quantify when the implementation of the Environmental Principles is agreed after Royal Assent.

**28.**In relation to the Biodiversity Targets, a detailed analysis of the expected costs of the secondary legislation will be carried out during its development when the specific target details have been finalised. The work to identify suitable targets and indicators has already commenced through the Biodiversity Targets Advisory Panel. The Welsh Government is collaborating specifically with Natural Resources Wales and the Joint Nature Conservation Committee (JNCC) to understand both the costs and benefits associated with suitable target options. It is envisaged that programmes currently run by Natural Resources Wales including (but not limited to) the Nature Network Programme, Natur am Byth, work on the Marine Protected Area Network and Protected site network and the State of Nature Resources Report (SoNaRR) will continue to play a key role in supporting target delivery to halt and reverse biodiversity decline in Wales.

**29.**Extensive engagement with Natural Resources Wales will be maintained throughout the passage of the Bill and subsequent implementation workstreams to further understand the resource required to implement the legislation adequately.

## 5. Tree Planting and Timber Production

Within this section, the CCEI Committee focused on challenges with tree planting rates, the Timber Industrial Strategy and timber income.

The Committee made one recommendation within this section.

### Recommendation 11.

*NRW should work closely with the Welsh Government to ensure that the forthcoming Industrial Timber Strategy allows NRW to manage its income from commercial timber effectively across financial years.*

#### Welsh Government Response: Reject

- 30.** Manging income across financial years is not possible as Natural Resources Wales accounts are consolidated with those of the Welsh Government. Recognising the impact this has on Natural Resources Wales' ability in managing the Welsh Government Woodland Estate (WGWE), along with timber market volatility, the arrangements regarding the Welsh Government underwritten timber budget will continue to remain in place 2025-26. These arrangements provide certainty to Natural Resources Wales and its management of the WGWE and ensure it is not constrained by timber markets. To ensure there is flexibility, these arrangements are reviewed annually as part of Natural Resources Wales budget negotiations to ensure arrangements remain fit for purpose and continue to bring stability to Natural Resources Wales' planning and management of the WGWE.
- 31.** In addition, the Welsh Government set out in the Timber Industry Strategy consultation its commitment to work with Natural Resources Wales to consider whether support to enable investment in building harvesting capacity and infrastructure is necessary to maximise the amount of timber coming to market between now and 2030. More detail on this will be announced when this Strategy is launched later in the year.

Llyr Huws Gruffydd MS  
Chair, Climate Change, Environment and Infrastructure Committee  
Y Senedd  
Cardiff Bay  
Cardiff  
CF99 1SN

By email only: [seneddclimate@senedd.wales](mailto:seneddclimate@senedd.wales)

3<sup>rd</sup> July 2025

Annwyl Llyr,

On behalf of Natural Resources Wales (NRW) we'd like to thank the Committee for its Annual Scrutiny Report and for its constructive recommendations. We greatly value the Committee's role in holding NRW to account and supporting us to deliver effectively for the people of Wales.

We very much appreciated the opportunity to present oral evidence as part of the scrutiny process. The engagement of the Members helped ensure a productive and transparent dialogue, and we welcome the Committee's continued interest in our work.

The recommendations in the report are an important contribution to our ongoing work to deliver on the priorities set out in our Corporate Plan - to support nature's recovery, tackle climate change and minimise pollution. We are already taking steps to address a number of the points raised and we will continue to build on this as we improve the effectiveness, impact and transparency of our work.

Please find enclosed NRW's full response to the recommendations. Should you require any further information or clarification we would be pleased to provide it.

Yn gywir,

Ceri Davies

Sir David Henshaw

**Prif Weithredwr Dros-Dro  
Interim Chief Executive Officer**

**Cadeirydd, Cyfoeth Naturiol Cymru  
Chair, Natural Resources Wales**

# Response to Natural Resources Wales (NRW) Annual Scrutiny 2024-25

## Recommendation 1

NRW must move swiftly to recruit a permanent Chief Executive Officer within the next six months and ensure that plans are in place for an orderly succession to a new Chairperson in October 2025.

NRW awaits confirmation from the Deputy First Minister of the appointment of the new Chair for NRW. We are in the process of preparing a comprehensive induction programme for the incoming Chair. This will be based on the induction process that we have recently developed and that was used to induct the three new Board Members that joined the NRW Board in May this year.

The new induction programme will include meeting Board Members, the Chief Executive and members of her Executive Team, and a range of staff across the breadth of the organisation's functions and place-focused operations.

In addition, it will include opportunities to meet with stakeholders from across Wales and across the range of NRW's activities. We will also ensure that it provides an introduction to working within Wales and the Welsh language and culture.

The feedback gained from these opportunities will help inform the new Chair's views on the essential qualities required of the new CEO.

In the meantime, the existing Chair and the interim CEO have already started to put in place arrangements for the appointments process, including appointing senior leadership recruitment specialists and a draft recruitment pack so that the new Chair and their Board can discuss and agree upon the role description for this crucial appointment.

## Recommendation 2

NRW must urgently provide a credible plan to reopen all three visitor centres. This must include clarity about its vision for the future of the visitor centres, the service levels it wishes to see and a financially viable strategy and timetable to achieve this. This should be provided to the Committee within three months.

We are rapidly progressing the timetable and plans for utilising our Visitor Centre sites. At Ynyslas, a community management agreement is currently being finalised between NRW and Borth Community Hub to use the space available to continue their community outreach programmes. We expect this to be fully operational by mid-July. This agreement is the outcome of an Expression of Interest exercise that was undertaken to find suitable partners to utilise the building.

For Bwlch Nant Yr Arian and Coed Y Brenin, opportunities will be put to market for potential operators via Sell2Wales in early November 2025. Given the amount of interest generated by the informal expression of interest at the start of 2025 and the variety of potential bidders and possibilities for enhancement and opportunity presented, we will be using a Competitive Dialogue approach to these sites. This will ensure the greatest possible value is achieved as well as long-term viability and the promotion of local economy benefits plus the reduction of liabilities. The market exercise will be strongly weighted in favour of local and community ventures who can provide a feasible business case for either site. The plan is to have a preferred bidder at the start of the financial year 2026-27. The speed of reopening will depend partly on the winning bidder and any additional investment they may wish to make on site, but we are expecting them to be operational in some capacity by the summer of 2026.

### **Recommendation 3**

**In relation to the Dyfi National Nature Reserve, NRW must set out its proposed management of the nature reserve to reassure the Committee, and the wider public, that this will be adequate, at a minimum, to meet its statutory obligations.**

The Dyfi National Nature Reserve has a long standing and approved Management Plan that sets out a range of work areas across both the area of dunes and Cors Fochno bog. From this, we develop a programme of conservation work, supported by dedicated resourcing and annual funding.

In addition, funding is available for essential liability-related or infrastructure work. Work including grazing management, scrub control and inspection and maintenance of infrastructure will continue despite the recent changes at our visitor centre at Ynyslas.

NRW staff and contractors are in place to carry out a range of duties including liability inspections, beach patrols, litter picking, and wider conservation tasks. Where needed, we will adapt our annual programme for this and other sites to respond to emerging issues and reactive work pressures.

### **Recommendation 4**

**NRW should ensure that it monitors and evaluates the adequacy and use of funding for flood management. It should report back to the Committee within six months to ensure that this informs next year's Welsh Government budget decisions.**

We note the Committee's interest regarding the oversight of flood risk management funding. We will continue to work very closely with the Welsh Government Flood Branch to provide reassurance on the use of flood funding, utilising the close working relationship already in place between our teams and through our role on the flood and coastal risk management board. We meet monthly with the officers within Flood Branch, providing written updates on

our capital investment programme and attend quarterly Programme Board meetings where we provide updates.

As we did last Autumn, we will submit our investment plans each year for scrutiny and assurance, through a Programme Outline Business Case. This process allows us to set out requirements, options and risks, whilst also justifying the investment being put into our programme through an established “five case” business model approach. We hope this will also support and influence the budget allocations process.

In addition to the routine reporting throughout the financial year, we also provide Welsh Government with an end of year Flood Risk Management (FRM) Annual Report. This provides good coverage of case studies and activities that have been delivered utilising our investment into FRM, but it also provides a detailed breakdown as to which specific activities funding has been utilised on. The 2024/25 report is being finalised but previous years reports are available on the NRW website - [Natural Resources Wales / Flood risk management annual report 2023 to 2024](#).

In regard to the adequacy of funding available to deliver FRM activities, as the scrutiny report has identified there are a range of overarching financial pressures that constrain our ability to deliver FRM work. We deliver these activities, as steered by Welsh Government’s National FCERM Strategy, through a risk-based approach, therefore prioritising our efforts towards those at greatest risk of flooding. This does mean however that we aren’t able to deliver as much as we’d like to across all areas of Wales and does mean that some activities are prioritised over others. As has been recognised by the report we have highlighted these issues previously through the likes of the February 2020 Floods Review and the more recent Long Term Investment Requirements Report.

The impacts of the Climate Emergency will only increase the resources needed to effectively manage flood risk in Wales, but it is critical we also consider the resources and skills required to deliver the vital adaptation and resilience actions required to support Wales moving forward.

NRW wants to work in real partnership with a range of organisations including Local Authorities, Water Companies and Welsh Government departments as well as communities themselves to deliver sustainable solutions to manage flood risk. It is vital that we plan for and invest in range of tools and techniques, as we and society respond to the rapidly changing climate and the impacts it will bring.

This needs to be considered in addition to being able to deliver our core services, such as development advice, flood warnings and flood defence maintenance. We will also therefore continue to develop evidence regarding our current and long-term investment needs, and we will discuss these with Welsh Government on an ongoing basis.

## Recommendation 5

NRW should continue to monitor closely its performance on preventing and responding to environmental pollution incidents to ensure that its change of emphasis does not result in more pollution incidents or a failure to respond.

Evidence shows that around 95% of the incidents we respond to result in little or no environmental impact. However, they still consume a significant proportion of our time and resources. This limits our ability to carry out compliance and prevention work that could stop pollution before it occurs.

NRW will therefore continue to prioritise incidents that significantly impact the environment. However, we are now asking officers to adopt a more proportionate, risk-based approach, focusing our effort where our involvement will deliver the greatest benefit. For some low-level, low-impact incidents, this may mean they do not receive an immediate response or direct intervention. In these cases, we may instead choose to address the underlying issues through routine regulatory activity, enforcement, or pollution prevention work by seeking to address root causes of pollution rather than symptoms.

This shift in approach to pollution incident response will be made live in July 2025. From that point, we will begin capturing data to assess how the new model is working and whether we need to make any further changes to ensure we are reducing the time we spend on low impact work. We will also start to capture examples of where we are shifting resources to work that will make a real difference in minimising pollution.

We are working with colleagues across the organisation to strengthen our evidence led approaches to managing different incident types, and we are producing guidance to support our officers to make decisions on how to respond in the most impactful and risk-based way.

## Recommendation 6

NRW should set out for the Committee where it feels the level of sanctions and fines is too low for it to be able to perform its environmental regulation duties effectively.

Court fines for environmental crimes in Wales vary significantly. Since 2021, NRW cases have resulted in the courts awarding fines totalling more than £1.8 million. Of this, the average fine imposed for summary only offences, excluding Rod and Line cases, is £1,139. This is 22% of the maximum £5,000 fine that could be awarded for such cases.

Non-summary offences have more guidance around the fine level and are arguably less problematic. Different maximum fines are available depending on the route via which the offender was indicted. Crown or magistrates court determines the appropriate level of fine which, following Sentencing Guidelines, must reflect the seriousness of the offence and take into account the financial circumstances of the offender.

NRW would welcome more consistent and stringent fines to better reflect the gravity of the offences within the fine ranges already available within legislation to act as an effective

deterrent to environmental offences. It should also be noted that the actual penalties imposed sometimes do not reflect the cost of remediating environment damage or the financial benefits obtained from illegal activities. It' is also important to note that court fines are paid to His Majesty's Treasury and, therefore, NRW is unable to use this money to support future enforcement activities or fund restorative work that protects the environment in Wales.

Our use of Fixed Penalty Notices (FPN) has been very limited – we have issued only 10 notices since 2016. Our operational teams report that their use is low due to low fine value (usually £300) and the high administrative costs for their use. The low fine value means they are only appropriate for the most minor of offences. With limited resources, a cost-benefit analysis favours using available resource to enforce against more serious offences. Increasing the maximum FPN would improve the cost-benefit balance and should increase the use of FPNs.

In recognition of this, NRW supports the introduction of progressive civil penalties powers as an alternative to criminal prosecution, where appropriate. An enhanced civil sanctions approach, with a proportionate burden of proof, would offer more flexibility with scope for higher penalties that better reflect the environmental damage caused by an offence. This would support clear, timely and proportionate enforcement, which will help strike a better balance between deterrence and restitution.

We have raised repeatedly that some of the key regulations that we deploy in our enforcement approach (e.g. Environmental Permitting Regulations (England & Wales) 2016 and the Water Resources Control of Agricultural Pollution Regulations (Wales) 2021) cannot presently be enforced via civil sanctions – this is at odds with the equivalent regulations in England.

We are also supportive of the implementation of the Water Special Measures Act in Wales which will see civil sanctions for some offences (relating only to the water industry) redefined using a civil (balance of probabilities) approach to burden of proof.

## **Recommendation 7**

**NRW should continue to press for a multi-year funding regime to help it manage its budgets for the long term.**

NRW has developed a Corporate Plan that spans from 2023 to 2030, and our remit letter from Welsh Government is for the whole of the current term of government. The vast majority of our work is multi-year in nature. This means balancing our wide range of duties and responsibilities within the constraints of the public sector's finances is often challenging.

NRW's Board is firmly committed to reimagining how we deliver our remit. Our focus is on ensuring we take the most effective actions to achieve meaningful outcomes at pace. Within this context, we believe that having clarity and certainty of funding on a multi-year basis would enable NRW to better forward plan and deliver our Corporate Plan.

## Recommendation 8

Following the conclusions of the negotiations with HMRC, NRW should provide a full update on the outcome as soon as possible, together with a full explanation of how this money will be paid back through efficiency savings and without impacting on frontline services.

An update will be provided on the conclusion of the HMRC Enquiry. This will include details of the agreement reached with Welsh Government for the return of the £19m advanced. As the final total is likely to be less than the sum paid on account, HMRC will reimburse the difference to NRW and we will return that amount to Welsh Government immediately. Initial adjustments to our 2024/2025 and 2025/2026 budgets have already been made to collect the first two instalments. Further budget adjustments will be made over the coming years to recoup the remainder from NRW.

NRW is currently engaged in various reviews to ensure efficiency and cost effectiveness in our operations without impacting on frontline services. These include an Enabling Services Review, NRW2030 (looking at our accommodation strategy, IT and digital services) and an exploration of a range of ways of resourcing capacity for NRW to deliver on its commitments, (referred to as the Mixed Economy Model). It is anticipated that these will identify efficiencies (including cost) which will help NRW achieve balanced budgets for which we factored the repayment into. The repayment is equivalent to just less than 0.5% of our overall budget. More importantly, the level of Grant in Aid funding and NRW realising efficiency savings from investment in technology, is crucial to protecting our front-line services.

## Recommendation 9

In addition to the enhanced monitoring arrangements that the Welsh Government has already put in place, it is critical that lessons are learned from the HMRC experience through a comprehensive review. NRW should report back to the Committee with full details of its approach.

NRW and Welsh Government have both been proactive in seeking to review the lessons learned from the IR35 Enquiry. Internal Audit reports have been completed by both organisations and action plans already implemented.

A further report on lessons learned will also be produced for the NRW Board and Audit & Risk Assurance Committee (ARAC) once the HMRC Enquiry has concluded. The main findings and recommendations of the report will be made available to the Committee.

NRW had already taken action to remove all off-payroll contractors by the end of 2023/2024. None have been engaged since then. People Management (HR) and Procurement colleagues have developed a new 'Ways of Resourcing with People & Skills Procedure' to identify robust and compliant methods of engaging external support (e.g. Agency Workers, Agency Specialists and Consultants) but only where strictly necessary. The Procedure has been published on our intranet site and promoted via internal communication channels. A staff training event is planned this month and will be recorded for those unable to attend.

A Resource Governance Group has also been established to review all new and existing Agency Specialists and Consultant engagements. Business cases are required for each one, which must be approved by the Group and then signed off by an Executive Director. Guidance is clear that in no cases will it be acceptable to engage an off-payroll contractor through a Personal Services Company (PSC).

Our new arrangements have been developed internally. To provide additional assurance, they have now been subjected to independent review by our external tax advisors. All recommendations made by the advisors have now been addressed in the final arrangements implemented.

The NRW Board and Finance Committee have been kept aware of developments throughout this process.

## Recommendation 10

**NRW should report back to the Committee (before the Bill is introduced) on the conclusions it has reached with Welsh Government on the resources required to implement the legislation adequately.**

NRW has been working closely with Welsh Government to understand the implementation requirements of the new environmental principles duty and an environmental objective.

The new duty to have “special regard” to the environmental principles introduces a distinct and more explicit requirement for NRW (and Welsh Ministers) to integrate these principles systematically across all policy making functions. The introduction of the duty will require NRW to ensure evidence, advice and internal decision-making processes explicitly reflect and apply the environmental principles. To implement the duty effectively, we anticipate there will be requirements for:

- Initial internal training and capacity building, to support the continued and consistent interpretation and application of the principles across all functions.
- Review and update of our existing policies and procedures, to ensure the principles are embedded into policy development, operational guidance and risk-based decision-making processes.
- An ability to demonstrate that the principles have been considered and applied in practice for example through internal assurance mechanisms.

The inclusion of the integration principle within the duty will support better coherence across legislative duties and NRW's own regulatory principles. It reinforces a more joined up, preventative approach to environmental and social outcomes, to avoid siloed or short-term decision-making. The approach builds on our existing Sustainable Management of Natural Resources duty, and aligns strongly with NRW's purpose and delivery model, particularly in our environmental protection priorities and responding to the climate and nature emergencies.

The Bill establishes the Office of Environmental Governance Wales (OEGW) to provide oversight of the implementation of, and compliance with, environmental law in Wales by

Welsh public authorities – it will have powers to undertake investigations, enforcement actions, and monitor the progress of Ministers towards meeting targets.

We have been liaising with Welsh Government on the appropriateness of the proposed governance arrangements during the development of the draft Bill. However, we have not yet had detailed discussions regarding the resource implications for NRW of the establishment of OEGW and so the direct costs are difficult to quantify. It should be noted that many of the functions of the proposed OEGW apply to all public bodies, although NRW is a significant part of the environmental legislative landscape and we will need to consider how best to facilitate investigations and implement any recommendations efficiently. We will continue to liaise with regulators in England and Scotland to learn from their experiences.

We note, and agree with, the general co-operation duties to be placed upon public bodies within section 23. It should however be highlighted that as the primary environmental regulator for Wales we may be requested to provide significant amounts of information and/or expertise to assist the OEGW and inform their investigations of other public authorities. Within our response to the White Paper consultation, we highlighted the need to ensure that the new body will have appropriate access to expertise to reduce these potential unfunded pressures on NRW and ensure the independence of the body.

The Bill amends Part 1 of the Environment (Wales) Act 2016 to introduce a new biodiversity target setting framework. Ministers will have a duty to set at least one target for each of the following priorities:

- Reducing native species extinction risk
- Effective management of ecosystems
- Reducing pollution
- Evidence relating to biodiversity including access to it and use and application.

While the details regarding actual targets for the four priorities are still being developed, effective and affordable monitoring and evidence frameworks are vital to track progress. Effective monitoring and evidence underpins good decision making and enables an adaptive management approach to deliver resilient ecosystems and positively responding to wider pressures such as climate change. These frameworks need to be informed by an appraisal of data needs, building on existing good practice and data sets, and identifying what is needed in the future. This includes creating opportunities for better collaboration, an increased role for citizen science and making better use of technological advances. We have been working with Welsh Government through the 30 by 30 Monitoring and Evidence Expert Group about how to address these challenges. A key part of this process is to ascertain and evaluate the priority steps to take, resolving any blockers and prioritising existing resources. The process may identify gaps that could impede progress and additional resourcing needs cannot be ruled out at this stage.

The above sets out the areas of discussion with Welsh Government around parts of the Bill that have resource implications for NRW. To date we have not identified specific new resource needed, but rather prioritising and re-directing of existing resource. We will, however, keep this point under review with Welsh Government because as the operational

implications of the Bill become increasingly clear, we may identify new permanent or time-limited resource needs.

## Recommendation 11

**NRW should work closely with the Welsh Government to ensure that the forthcoming Industrial Timber Strategy allows NRW to manage its income from commercial timber effectively across financial years.**

The Welsh Government underpins NRW's timber income at £33m, due to the volatility that is ever present in the market but especially now, given its sensitivity to world economic conditions (initially the pandemic, wars and tariffs). The market is also vulnerable to a variety of other factors, such as the storms last winter which contributed to a reduction in income in the final two quarters of last year. While NRW works to maximise timber income and aims to meet or exceed the £33 million target, this is not always achievable due to these external pressures.

NRW has supported and continues to work with Welsh Government on the Timber Industrial Strategy (TIS), through membership of the TIS Working Group. NRW officers advocate for the Welsh Government Woodland Estate (WGWE) within this forum. Welsh Government (WG) colleagues have also attended customer engagement events hosted by NRW, as an opportunity to engage directly with industry stakeholders, and promote the opportunities within a TIS for Wales.

We will continue to work with WG to ensure that any change in timber requirements, or introduction of alternative sales methods from the WGWE are funded in a sustainable way, to deliver the greatest benefit. At the time of writing, the forthcoming TIS has not yet been published, so the potential impact on the demand for timber from the WGWE – and the implications for NRW's commercial timber income – remain uncertain.

In parallel, NRW is currently developing a new Commercial Strategy, which will outline how NRW will deliver Sustainable Management of Natural Resources through its commercial activities. The TIS is likely to give a clearer indication on maximising the benefits of Welsh timber as a provisioning resource and may influence this plan and our commercial decisions around forest management and timber marketing.

Llyr Gruffydd MS Chair  
Climate Change, Environment, and Infrastructure Committee

[SeneddClimate@senedd.wales](mailto:SeneddClimate@senedd.wales)

02 July 2025

Dear Llyr,

Thank you for the Climate Change, Environment, and Infrastructure Committee's report on the Legislative Consent Memorandum for the Bus Services (No. 2) Bill ("the UK Bill").

Whilst the report did not contain any recommendations in relation to the LCM, the Committee has raised matters relating to the interconnection between the UK Bill and the Bus Services (Wales) Bill.

The Committee has asked for reassurance on the following:

**i. that there are no provisions in the UK Government's Bill that conflict with the aims of the Welsh Government's Bus Bill.**

I can confirm that there are no provisions in the UK Bill that conflict with the aims of the Welsh Government's Bus Bill. We have successfully negotiated with the Department for Transport for amendments to the UK Bill to ensure that the Welsh Ministers are consulted when appropriate in relation to cross-border services. We have also secured clarification in the UK Bill that the new tests for franchising authorities to issue service permits under clause 7 of the Bill will apply in relation to local bus services secured under the Wales Bus Network Plan.

**ii. that discussions have been held with the Department for Transport on the interaction of the two Bills and, in particular, that the Welsh Government has undertaken a detailed analysis of the extent to which the provisions in the UK Bill will impact the Welsh Government's proposals.**

Regular discussions have been held between Department for Transport and Welsh Government officials on the interaction between the two bills. Our Legal Services team has conducted a comprehensive analysis of the UK Bill, in particular the provisions that impact

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Wales or are within Senedd's competence. This analysis has included the extent to which the provisions in the UK Bill will impact the Welsh Government's proposals.

We have been in discussion with Department for Transport about whether potential amendments should be made in relation to these provisions, their application in Wales and their potential impact on the future delivery of the Bus Services (Wales) Bill. We have now completed those substantive discussions. Amendments to the UK Bill have been laid in Parliament. I will lay a supplementary LCM on these shortly.

I am grateful for the Committee's time and consideration in relation to the UK Bill and its interconnection with our own Bill. The concurrent timetables for the Bills have complicated their scrutiny but has afforded us the opportunity to retain a focus on their impact, in particular on cross-border services, which should prove helpful in the long term.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ken Skates', with a large, stylized flourish extending to the right.

**Ken Skates AS/MS**

Ysgrifennydd y Cabinet dros Drafnidiaeth a Gogledd Cymru  
Cabinet Secretary for Transport and North Wales

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# Agenda Item 8

By virtue of paragraph(s) vi of Standing Order 17.42

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