

EPGBTWB 10 - Evidence from: Office for Environmental Protection

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



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.