

EPGBTWB 05 - Evidence from: Environmental Standards Scotland

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

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
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(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?
