

EPGBTWB 12 - Evidence from: RSPB Cymru

Senedd Cymru | Welsh Parliament

[Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee](#)

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

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

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

This legislation is vitally needed.

Primary legislation is needed to reinstate the influence of the core environmental principles on Welsh policy, and to establish a new body to provide independent oversight of our environmental laws – thus delivering on long-standing Welsh Government commitment that environmental standards will be upheld – if not strengthened, following the UK’s exit from the EU.

However, as the Explanatory Memorandum (EM) makes clear, the evidence – including the 2023 State of Nature Wales [report](#) – shows us that simply maintaining existing standards is not enough. We need action at scale and pace to deliver nature’s restoration and recovery, and as argued in our 2021 report [Putting Wales on a Path to Nature Recovery](#), the existing legislative framework is not adequate to secure this. An ambitious framework of legally binding targets must ensure that action for biodiversity is mainstreamed for the long term, to enable Wales to deliver on global commitments and see nature restored and thriving by 2050.

We therefore warmly welcome the tabling of the Bill. As set out in our evidence, however, we believe that it should be clarified and strengthened in parts to ensure it provides the ambition, accountability and enforcement to secure a healthier environment and restore nature in Wales.

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)

We welcome the introduction of an overarching environmental objective and the embedding of core environmental principles together with a duty to integrate environmental protection. However, we are concerned that aspects of the drafting could undermine the application and impact of the principles, and we recommend some changes, as set out below.

Environmental Objective

We welcome a headline overarching objective, aimed at achieving a high level of environmental protection and improvement of the environment, providing a core statutory purpose for the application of the environmental principles.

However, we are deeply concerned by reference (in clause 1(1)(a)) to contributing to achieving the well-being goals as part of the objective itself. The goals are not limited to the environment but also address economic, social and cultural aspects of sustainable development. We are concerned this will undermine and weaken the application of the environmental principles.

We also consider this particularly problematic given that the environmental objective provides the general purpose for the new Office for Environmental Governance Wales (OEGW). We fear this has the potential to compromise the OEGW's ability to uphold environmental law.

We therefore recommend that clause 1(1)(a) should be deleted.

Environmental Principles

We welcome the approach taken in the Bill on the role and application of environmental principles to replace their function under the Treaty on the Functioning of the European Union (TFEU). However, there are some areas where the bill needs clarifying or strengthening, as we highlight below.

The Duty

The duty on Ministers (clause 3) and NRW (clause 4) to have "special regard" to the principles and to integrate environmental protection is a welcomed strengthening compared to the equivalent requirements in other countries. It should mean that environmental principles should underpin the new environmental governance system in Wales, ensuring that environmental considerations inform ministerial and NRW policy making (which includes

proposals for legislation and developing, adopting or revising policies¹) from the outset.

We also welcome the decision to apply the duties directly to the principles rather than the more indirect – and less helpful – approach taken by the UK Government of attaching the duty to a Principles Policy Statement. The Welsh Government should also be commended for avoiding the carve-outs for fiscal and defence policy, which the other governments included in their legislation.

Scope

However, we are extremely concerned that the duty to have special regard to the four principles is limited by only applying to policy that “*has, or could have any effect on the environment*” as set out in clause 3(1)(a), with the use of the word “such” in clause 3(1)(b) meaning the same qualification applies to the integration duty. This clearly limits the application of both the integration duty and the environmental principles. Their application is not limited in this way in England, Northern Ireland or Scotland.

We note that, in his evidence session with the Committee on 26 June, the Deputy First Minister emphasised that the principles would have to be applied in relation to all policy making; this point is also stressed by the EM. However, we consider the current drafting would allow future Welsh Ministers to exclude policy from application of the duty if they determine it would not have any effect on the environment.

The integration principle derives from international law, particularly the Rome Treaty, and seeks to ensure that environmental principles are embedded across *all* fields of policy, not only those obviously related to the environment. To ensure it fulfils its vital role, it would be preferable to have the integration duty requirements first in clause 3(1)(a), with the environmental principles consideration applied for all policies thus “scoped in”, second both in time and within the Bill.

Public Authorities’ Duties (clause 5)

The Bill places a requirement on certain public authorities to integrate environmental protections and “have regard” to the environmental principles when carrying out their assessment of plans and programmes (known as Strategic Environmental Assessment (SEAs)) functions (clause 5). It is not clear why this requirement is limited to only their SEA functions, or is a lesser duty than that placed on Ministers and NRW. We further note that SEA already substantially includes consideration of the environmental principles’ aims and objectives and we are keen to understand how this new duty (and the associated guidance) will secure additional benefit. We would encourage the Committee to seek further clarity on these matters.

Environmental Principles and Integrating Environmental Protection Statement

¹ As clarified in clause 3

We support publication of this statement to support the application of the principles and integration of environmental protection duties. Clause 6(5) allows the Welsh Ministers to review the statement from time to time. We suggest the Bill should require the Statement to be reviewed regularly, e.g. once per Senedd term, to ensure that it keeps pace with developments in environmental protection legislation and provides up to date guidance to ministers and public authorities.

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

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

We welcome the creation of the Office for Environmental Governance Wales (OEGW). This new body will have an unique and critical role in ensuring effectiveness and implementation of environmental law in Wales.

Whilst we are broadly supportive of the remit and functions set out for the OEGW there are several matters of concern which we consider must be remedied to provide effective environmental governance.

1. Ensuring Independence

The OEGW will only be effective in carrying out its purpose if truly independent from government. We welcome the Deputy First Minister's recognition that the independence of the OEGW is crucial to its operations²; this is also reflected in the Explanatory Memorandum (e.g. para 3.165). However, we consider it vital that the independence of this new body is clearly stated on the face of the Bill. The Welsh Government should amend the bill to introduce a duty on Welsh Ministers to not only respect the OEGW's independence but also to be clear there is no ability to influence the Body. There are examples of this approach in existing legislation:

The Environment Act 2021, Schedule 1, para 17 duty is very powerful and frames the relationship between the OEP and Defra: "*In exercising functions in respect of the OEP, the Secretary of State must have regard to the need to protect its independence*". The application of this requirement covers any decisions including appointments and funding.

The independence of Environmental Standards Scotland is also protected through the Continuity (Scotland) Act, Schedule 1, para 1 "*In performing its*

² <https://www.senedd.tv/Meeting/Live/3e9ce200-e633-4f72-b46e-159ebf905b2a>, several examples including at 43:53

functions, [ESS] is not subject to the direction or control of any member of the Scottish Government”.

We recommend that explicit wording protecting the independence of OEGW be added to the Bill.

Sufficiency of resources and funding

The Bill currently says very little about the funding of the OEGW, with paragraph 16 of Schedule 1 simply giving Ministers the power to make payments to the body. Adequate resourcing will be essential in providing the security and independence needed for the OEGW to fulfil its functions and purpose, and we consider safeguards on this must be included within the Bill. This could follow the example of the Environment Act 2021 which requires (Schedule 1, para 14) that:

“(3) 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 and the Northern Ireland Department provided it with sufficient sums to carry out its functions.”

We also strongly recommend the Body should receive a 5-year indicative budget.

The OEGW’s Strategy

It is essential to the OEGW’s independence that the new Body has complete discretion in the development and publication of its Strategy. Although it is beneficial to include some elements on the face of the Bill, for example the requirement for an enforcement policy, the overly prescriptive nature of Schedule 2 is of concern.

Despite such full coverage, we note there are some omissions for example reference to the important need to consider the existing work of the Climate Change Committee and ensuring not only collaboration but also no overlap with the functions of this important body.

2. Functions and powers

General purpose.

The OEGW’s general purpose (as set out in clause 9) is to contribute to the environmental objective in clause 1. As discussed above, we welcome the first part of the environmental objective: *the attainment of a high level of environmental protection and an improvement of the environment*, we are concerned by the link to the well-being goals in clause (1)(1)(a). We strongly believe this would weaken the body’s vital environmental focus.

We therefore strongly recommend the OEGW’s purpose be re-stated to focus solely on environmental protection and improvement of the natural environment.

As noted in our response to Part 4, we do not agree that the OEGW should be subject to the Well-being duty in s3 of the Well-being of Future Generations Act, and as such this should not be referenced in Schedule 2.

Main Functions

The effectiveness of the OEGW's provision of environmental governance depends on the following definitions:

Meaning of "environmental law" (clause 29)

We strongly recommend it is made clear that the OEGW is able to review and scrutinise all legal and policy areas (including interpretative guidance) which may impact the environment, including for example economic, transport, social and health policies as well as consideration of international law particularly those conventions, protocols and agreements which lead to our domestic environmental protection legislation.

Currently clause 29 defines environmental law "As any devolved provision to the extent that it - wholly or mainly relates to environmental protection....". We are concerned this may have unintended limitation on the OEGW's scope to only legislation wholly or mainly concerned with the environment. Simply adding the word "legislative" before "provision" would make it clear that even a single section or regulation would be enough to pass this definition.

Meaning of "public authority" (clause 30)

Clause 30 refers to an existing list of authorities as well as to a definition in the Government of Wales Act 2006. We are concerned this approach omits some reserved bodies that undertake devolved public functions in Wales - for example, The Crown Estate. It is not clear that the devolved functions of these bodies fall under the auspices of the OEP either - leaving an accountability gap. The Welsh Government should clarify which public authorities fall within this accountability gap, and how it plans to address it.

We would prefer an approach which would ensure public functions undertaken by private entities are included in the scope of OEGW's governance. For example, section 31(3) of the Environment Act 2021 includes a definition that covers both public authorities and public functions:

(3) In this Part "public authority" means a person carrying out any function of a public nature...

Subject to the above issues, overall we welcome the functions set out in clauses 11 to 22, but there is one key exception - Review of Compliance Notices - and a major gap - the ability for people to make representations to the OEGW.

Review of Compliance Notices (clause 18)

This allows any public body that has received a OEGW Compliance Notice, including an Urgent Compliance Notice, to request that it be reviewed. Such a request appears to be able to include process and well as substantive issue points,

and following the review the Notice can be varied or withdrawn. The review is to be undertaken by the OEGW's Review Committee.

Schedule 1, para 10 makes clear the Review Committee must include at least two "external" persons, selected from a list maintained by the Welsh Ministers. We are deeply concerned that such an influential role could be passed to "externals" ultimately weakening the OEGW's authority.

In addition there appears to be a significant undermining of the reasons for and therefore purpose of an Urgent Compliance Notice, by also enabling internal review of them with no specified timeframe attached.

We urge the Committee to seek clarity on these matters including serious consideration being given to an alternative process without possible "external" interference and without the ability to request a review of urgent compliance notices.

Representations

The ability for citizens to make representations to the OEGW regarding implementation of, compliance with and effectiveness of environmental law is critical to reinstating the rights we enjoyed prior to the UK's departure from the EU. This ability is provided, in relation to the OEP, by s32 of the Environment Act 2021.

It is equally important that there is a requirement for the Body to keep those who submit representation informed. The Environment Act 2021, section 34, includes this important duty:

"(1) Where a person makes a complaint to the OEP alleging that a public authority has failed to comply with environmental law, the OEP must keep the complainant informed about its handling of the complaint."

S34(2) sets out specific requirements for the various stages if the complaint leads to an investigation.

It is important that these fundamental provisions are included within Part 2 of the Bill, not left to be determined within the OEGW strategy.

Further requirements and abilities

We are disappointed that the OEGW does not have a duty to work with its counterparts in the other UK nations, and would like to see this added to the Bill – the OEP (under s27(4) Environment Act 2021) and Environmental Standards Scotland (under the s23(3) Continuity (Scotland) Act 2021) are subject to a duty to consult other environmental governance bodies where relevant. In addition, the Continuity (Scotland) Act 2021 sets out a list of powers for ESS, in exercising its functions (e.g. research, obtaining independent expert advice) which would be valuable for the OEGW.

We are also concerned that the Bill does not provide a power for the OEGW to intervene in proceedings brought by other parties (such as engagements with the

High Court). This is a power that is explicitly provided for the OEP and ESS in their respective founding legislation.

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)

We welcome the target-setting framework introduced by Part 3. It contains many positive elements, but we suggest it needs to be strengthened to avoid leaving the door open for a minimalist approach to implementation. In our evidence we address the need for:

1. Greater clarity on the ambition to halt and reverse biodiversity loss and to restore biodiversity, including a 'north star' target to reverse the decline in species abundance within ten years, to embed urgency and ambition within the Bill.
2. A requirement for both long term, and short term/interim targets relating to key biodiversity measures, to ensure a focus on long-term outcomes drives action for many years to come.
3. A process for reviewing targets regularly to ensure their 'significant contribution' to reversing biodiversity loss holds.
4. Clarity on the requirements on public bodies and government departments, to support mainstreaming of biodiversity actions.
5. Enhanced scrutiny through a role for the OEGW in relation to the evaluation of targets and delivery plans

These points are addressed in more detail below.

1. Greater clarity on ambition

A North-Star target requirement

It is disappointing that the White Paper proposal for a headline target has been dropped, but we recognise the complexity of setting and measuring against such a target. However, we suggest the alternative approach of including a requirement in the Bill for a target to reverse the decline in species abundance by 2035, so that, by that date, abundance is at least at the same level as it is today, and is showing an upward trend. This short-term target, addressing a key biodiversity measure, would act as a 'north star' - giving an indication of the scale and pace of change required to set biodiversity on a path to recovery, and embedding the ambition and commitment of the current Welsh Government

and Senedd as they prepare to hand the delivery of this vital legislation onto the next.

This proposal follows the precedent of the Environment Act 2021 (section 3), which, alongside duties to establish long term environmental targets, includes a specific requirement for a target to halt the decline in species abundance by 2030. Our suggested later deadline here accounts for the extra time it has taken for the Welsh Government to introduce this legislation. The trajectory required to meet this target would mean species decline being halted by 2030, aligning with the UK Government target and Global Biodiversity Framework (GBF).

Condition for targets to meet

6B(2) sets out the condition that targets must meet: the Ministers can only set a target if they are satisfied that meeting it would contribute to halting and reversing biodiversity loss, in particular through one or more of: increasing the abundance of native species; enhancing the resilience of ecosystems, and increasing genetic diversity. These three elements correspond with Goal A of the [Global Biodiversity Framework](#) (GBF), and so this is a positive framing for biodiversity targets.

However, we are concerned that to ‘contribute to halting and reversing biodiversity decline’ is a weak test, and suggest this should be strengthened. As in the GBF, the aim to restore biodiversity as well as halting and reversing decline should be clear, and Ministers should be satisfied that each target will ‘significantly contribute’ to this ambition. We also suggest that Ministers must set out how meeting each target will contribute to 6B(2) in the regulations in 6B(4), to increase robustness and transparency.

As a point of detail we note that 6B(2)(c) refers to increasing genetic diversity whereas Goal A refers only to maintaining genetic diversity. We would be interested to hear the reasoning behind this change.

Targets duration

As expected, 6B(4)(b) requires that each target set must have a date specified by which the standard is to be achieved. However, in contrast to other legislation - e.g. the Environment Act 2021 and the Environment (Air Quality and Soundscapes) (Wales) Act 2023, which both stipulate and define ‘long term’ targets - there is no general requirement as to minimum duration. We are concerned that it would be possible, particularly with the weak ‘contribute’ test, for all of the targets brought forward to be short in duration, whereas in reality, restoring biodiversity is a long-term goal and action will need to be driven through

numerous Welsh Government terms. Legally binding shorter term, or interim, targets are also important to ensure that action cannot be delayed and that successive Governments are held to account.

Target setting process (new section 6D(1))

We welcome the requirement in the new 6D(1) for the Welsh Ministers to seek advice from persons they consider to be independent and to have relevant expertise, and the accompanying requirement in 6D(2) for Ministers to publish a summary of such advice. It is important that this independent advice is also applied to the consideration Ministers must make as to whether a target would contribute to halting and reversing biodiversity loss (which, as outlined above, we suggest should also be addressed in the Regulations under 6B).

6D(4) requires that the Welsh Ministers must be satisfied, before making or amending a target, that the target or amended target can be met; we would expect this to be considered in the independent advice sought under sub-clause (1). The transparency and accountability provided for by this section would be improved if the requirement to publish advice addressed this matter also.

Whilst the requirement to publish a summary of the advice will provide some transparency as to whether that advice has been followed, we note there is no requirement in 6D(1) for Ministers to take account of the advice received - this should be added (for comparison, the Natural Environment (Scotland) **Bill** (clause 1(3) 2E in the Bill as tabled) requires Ministers to seek, *and have regard to*, scientific advice when setting or amending targets).

The duty in new section 6E, for Ministers to ensure the targets are met, is very welcome, and a vital part of this framework.

Review of targets (new section 6G)

There is no requirement to review targets regularly - only a power to do so from time to time, unless specified circumstances apply (i.e.: Ministers must review a target if it appears to them that it may not be met, or that it may no longer be appropriate; and must review the full suite of targets if one target has not been met).

The EM (3.354) suggests that a target may no longer be appropriate, and should trigger a review, if it has been set too low/ is not ambitious enough. We think the Bill should make this clearer, and could do so by explicitly linking 6G(2)(b) to the s6B requirement for Ministers to be satisfied that a target will contribute to halting and reversing biodiversity loss.

Regularity of review and 'significant improvement test'

The absence of a requirement for a review of targets to be undertaken regularly differs from the approaches taken for England and Scotland.

The Natural Environment (Scotland) Bill (as tabled) requires a review of the targets set, and the topics for targets that are set out in the Bill, to be undertaken once every ten years.

The Environment Act 2021 requires targets to be reviewed to consider whether the 'significant improvement test' is met. This is to consider whether the full set of targets set under that Act, together with relevant targets set under other legislation, would significantly improve the natural environment in England. The first of these reviews was required by a deadline of 31 January 2023, and the Act requires subsequent reviews to be undertaken every 5 years. We would emphasise though, that the provisions for the Significant Improvement Test are not ideal and we would not want to repeat them wholesale – the main problem being that the test is a subjective one undertaken by the Secretary of State.

It is not clear why the Welsh Bill does not include a requirement for a regular review of the targets, nor a test as to whether, as a set, the targets in force at the time of a review are sufficient to make a significant contribution to halting and reversing biodiversity loss (as per 6B(2)). A regular review requirement, with a requirement for independent advice to be transparently applied, would enable the Welsh Government to ensure a sufficiently ambitious suite of biodiversity targets is established and maintained in the long term. This would provide a further safeguard against a minimal approach being taken under this Part.

Power to revoke or lower a target (6H)

As noted above, 6H limits the Welsh Ministers' power to revoke or lower a target to prescribed circumstances. We question the reference to 'disproportionate costs compared to benefits' of meeting a target, as set out in 1(c) and referenced in 6H(2)(a); how will this be assessed, in particular ensuring the benefits of meeting a target are properly taken into account?

We note there is no requirement, if a target is revoked, that it should be replaced with an alternative target – this is in contrast to the Natural Environment (Scotland) Bill which requires that if a target is revoked through a Regulation, a new target should be set via the same Regulation (section 2C(1) of the Bill as tabled). This provision appears to provide a safeguard against biodiversity targets simply being dropped.

Statement about targets (6I)

The process set out in 6I is broadly as we would expect but we are concerned that under 6I(3), in the event that a target has not been met, Ministers are given 12 months to publish a report explaining why not, and setting out the steps to be taken. 12 months seems an unduly long time for this stage, particularly given that, if a target has not been met, there is likely to be an urgent need for remedial actions to be taken. We recommend this timeframe should be reduced to 6 months.

2. Requirement for long term and interim targets covering key measures to be introduced as soon as possible

As noted above, we propose that there is a requirement for at least one *long-term* target to be set in each priority area, in addition to a requirement for legally binding shorter term or interim targets.

Priority Areas

6C requires Ministers to set a target (using the 6B power) in respect of at least one matter under each of four priority areas. We welcome the inclusion of priority areas on species – the building blocks of biodiversity; ecosystems; and pollution – one of the main drivers of biodiversity loss; but please see further comments on priority areas (a) and (b) below.

While we agree that the subject of priority area 6C(2)(d) - quality of and access to evidence - is important, we feel we need more information to understand the role that targets will play in this area, as opposed to a specific duty for Welsh Ministers – e.g. s16 of the Environment Act 2021 places a specific monitoring duty on the Secretary of State.

The RSPB views four matters as priorities for target setting because of their importance as measures of biodiversity - species abundance, species extinction risk, habitat extent, and habitat condition.

Priority area (a) – reducing the risk of the extinction of native species – could be read as focusing only on extinction risk, rather than wider species measures. It is vital that this framework seeks to drive the recovery not only of threatened species, but also species that are widespread but declining, as well as keeping common species common (this is in keeping with Target 4 and Goal A of the GBF). In spite of the connection to ‘increasing abundance’ in 6B(2), we think the current framing could be limiting. We would prefer to see this priority area drafted more broadly – e.g. ‘improving the status of native species’.

Priority area (b) – effective management of ecosystems – makes a welcome connection to both the ecosystem restoration target (target 2) and the 30 by 30 target (target 3) of the GBF. We recognise that the priority areas must be read in conjunction with the components in 6B(2)(a-c), which includes enhancing the resilience of ecosystems. However, we would emphasise the importance of targets addressing both extent and condition of ecosystems – rather than only considering management as an action-based proxy for these. We also consider targets specifically related to protected areas (terrestrial/freshwater and marine) are vital, given their vital role in biodiversity protection and recovery.

As indicated, we consider that a single target in these priority areas would be insufficient – the requirement to set *at least one* target in each priority area is therefore important, but we would welcome clarification that thinking will not be limited to seeking one target only. As well as targets needing to address multiple parameters of biodiversity, it will be necessary to have specific targets for marine, terrestrial and freshwater environments.

The EM states that the framework allows for both outcome-based and action-based targets. We see a role for action-based targets, particularly as short-term or interim targets, but would like to emphasise that we consider long-term biodiversity outcome targets as essential for securing ministerial accountability for the state of nature, which we see in turn as critical for ensuring a commensurate response. For example, interim targets of securing effective management (management plans in place and actions on track) of terrestrial/freshwater and marine protected areas would provide a valuable milestone towards achieving longer-term condition-based targets.

Statutory deadline for bringing forward priority targets

Currently, Welsh Ministers are required by 6C(5) to bring forward the first set of targets within three years of Royal Assent. This is an unacceptably long timeframe for the setting of targets, given the nature emergency that Wales currently faces. As work has already started on developing targets and identifying suitable indicators, we suggest that the first set of targets should be set within 12 months of Royal Assent.

3. Clarity on the requirements on public bodies and government departments, to support mainstreaming of biodiversity actions.

Designation of public authorities (new section 6F)

New section 6F empowers the Welsh Ministers to designate a public authority in relation to a target set under 6B. A public authority so designated is required,

under s6(2A) to take action to contribute to the target in relation to which it has been designated. We welcome this approach, as it should both push and support public bodies to prioritise biodiversity delivery, and better mainstream it into wider functions. As the recent Wales Audit Office [report](#) on the section 6 found, the nature emergency is not currently given high enough priority.

However, we are concerned that 6F refers to ‘a public authority’ in the singular, and would welcome clarification that Ministers may designate multiple public bodies in relation to any individual target. Since the targets will be strategic in nature, we think it is very likely that multiple public bodies will have a role to play in relation to any one of them – e.g. all Local Authorities and National Park Authorities.

Biodiversity planning and reporting requirements (clause 35 inserting new s6(6A))
Welsh Ministers’ plans for meeting the biodiversity targets are integrated into the existing planning requirements under the s6 Biodiversity and Resilience of Ecosystems Duty. It is welcome that new sub-clause 6(6A) requires the plan prepared by the Welsh Ministers to set out the action they propose to take to meet targets, and when they propose to take it.

It is disappointing that the Bill does not stipulate that the Welsh Ministers’ plan for meeting the biodiversity targets must address the areas of responsibility of all of the Welsh Ministers. Wording for this could be based on s39 of the Environment (Wales) Act, which states that the Welsh Ministers’ report for each carbon budget period ‘*must set out proposals and policies covering the areas of responsibility of each of the Welsh Ministers*’.

This is particularly important given the key finding of the [Wales Audit Office report](#) on implementation of the s6 duty: There is evidence of some integration of the strategic approach to biodiversity with wider Welsh Government policy but there has been far less national focus on biodiversity than on decarbonisation. Snapshot analysis of the Welsh Government’s budget presented in the Future Generations [Report](#) backs this up, with the finding that only 8.7% of the budget is likely to positively impact the ‘Resilient Wales’ Goal, and a shocking 50.4% could be harmful to it.

4. Enhanced scrutiny through a role for the OEGW in relation to the evaluation of targets and delivery plans

Evaluation report (clause 37/new section 6A)

This new report must set out the Ministers’ assessment of the impact and

effectiveness of the proposals set out in their biodiversity plan. This is welcome, but we do not consider that placing this responsibility on Ministers alone is adequate.

We note that the Environment Act 2021 (s28) places a specific duty on the OEP to monitor and report on environmental improvement plans and targets, and to publish an annual report, to which the Secretary of State must respond. The OEP's reports under this duty have been very robust in challenging the UK Government and pushing for greater clarity as to how its environmental targets will be met. This has contributed to the UK Government's decision to undertake a review of its Environmental Improvement Plan (this is still ongoing).

Given the challenges biodiversity is facing and the inadequacy of actions to date to address the nature emergency, we suggest a similar role should be set out for the OEGW in evaluating the effectiveness of Ministers' plans and actions for biodiversity.

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)

Paragraph 3 of Schedule 4 brings the OEGW within scope of the Well-being of Future Generations (Wales) Act 2015 by adding it to the list of public bodies specified in section 6 of the Act and requiring it to comply with the well-being duty in section 3 of the Act. We do not agree that this is appropriate, given the specific environmental oversight role and functions of the OEGW.

We suggest that Paragraph 3 of Schedule 3 is removed and that, instead of being subject to the requirements of the Act the OEGW, once set up, works with the Future Generations Commissioner to agree how they will work together. This should inform the preparation of the OEGW's strategy (Schedule 2 requires the strategy should set out how the OEGW intends to avoid overlap with the Future Generations Commissioner in the exercise of their respective functions).

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

The Bill leaves 'unfinished business' in terms of the public bodies that are covered by various duties and by the oversight of the OEGW. The current limitation to devolved public authorities not only has a limiting effect on the impact of the duty to have regard to the environmental principles and the ability for Ministers to designate public authorities in relation to biodiversity targets, but leaves gaps in coverage of environmental oversight in relation to Wales, since neither OEGW nor the OEP will have the remit to consider the delivery of devolved environmental law by reserved bodies.

Linked to this are limitations – we believe – in the Bill's application to the marine environment. Part 1 (s3(3)(c)) applies the environmental principles duty to policy affecting the offshore area for policies relating to fishing, fisheries and fish health. In Part 2 (s12(6)) states that the OEGW's power to advise Ministers on environmental law applies in the same way. We do not believe there is any reference to the marine environment in Part 3 and we assume therefore that as per Part 1 of the Environment (Wales) Act 2016 this Part extends only to inshore waters.

Perhaps the greatest challenge in terms of implementation of the Bill is that, to a very significant degree, it will not be delivered by the current Welsh Government and Senedd, but by their successors. There is no guarantee that the shared commitment to robust governance and high ambition and accountability for biodiversity, as set out in the declaration of a nature emergency by the Senedd in 2021, will be maintained.

This uncertainty has sharpened our focus on seeking to ensure the Bill does not leave room for doubt as to the scale and pace of change required to restore the health of Wales' environment and biodiversity.

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?

In our evidence we have made recommendations for increased clarity within the Bill. Our position differs from that of the Welsh Government in some instances in relation to the importance and value of stating matters on the face of the Bill, rather than depending on their inferral from what is absent.

One key example of this is the current absence of a specific provision protecting the independence of the OEGW.

Another is the absence of a power for any person to make a representation to the OEGW, and a requirement on the body to set out key elements of the process for receiving, handling and acting in relation to such representations.

The absence of a specified 'long term' duration for biodiversity targets – with the risk that this could lead to only short term targets being brought forward – is another.

As a final example, the Bill requires important reviews – of the Principles and Integration of Environmental Protection Statement, and the biodiversity targets – 'from time to time'. This presents a risk that weak or inadequate products remain in place in the long term.

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?