

Evidence from: WWF 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?

- WWF remains strongly supportive of this legislation and what it is seeking to achieve. We have been pressuring Welsh Government to bring forward this legislation since the EU Referendum given the central and essential role environmental principles, and EU regulatory bodies have played in protecting and seeking to improve the Welsh environment over several decades.
 - Given this it remains regrettable that it has taken longer to get to this point than other parts of the UK. We hope that delay can be turned into an advantage by Welsh Government seeking to learn from and improve upon more developed approaches elsewhere. To this end, we have made several references in this evidence to where approaches by Scottish and HMG appear stronger than the Bill as currently drafted.
 - We would have welcomed more ambition from Welsh Government to update and improve upon Wales' existing biodiversity framework in the form of the Environment (Wales) Act 2016. As we have made clear in previous Committee submissions, this legislation, and particularly the concept of the Sustainable Management of Natural Resources (SMNR) have thus far shown themselves to be poorly articulated (in both legislation and policy); deficient to global progress (such as the distinction between 'maintain and enhance' and 'restore'); poorly understood by Government itself and wider public authorities; and have not resulted in sufficiently strong implementation or measurable results over the past decade.
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- It remains regrettable that rather than seeking to improve this substantially, Welsh Government's view is that the problem is not with the framework legislation itself, but rather with all those trying to implement it. After this amount of time, and failure to produce the desired results, we would suggest that further reflection and improvements are worthy of consideration.

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)

- WWF is concerned about the scope of the environmental principles duty to apply only to policy that has an effect on the environment. This is different to the approach taken by the UK and Scottish Governments which instead applies the principles to all policy making.
 - That said, HMG does then take the step to carve out some policy areas (notably defence). In effect these differing approaches could amount to the same result, yet it is something which should clarify as the Bill develops.
 - WWF's view is that the best approach would be to apply the principles to all policy making without any carveouts. This would avoid the situation where impacts on the environment are missed, because the relationship between policy making and the environment is not immediately apparent.
 - Furthermore, it would remove the 'freehand' the current wording gives future ministers to decide what is and is not related to the environment. This is a risk in the long-term.
 - It is unclear whether budget setting for policy implementation is captured by the Welsh Government's approach. This risks the creation of strong and compliant policy that is then undermined by poor budgetary decisions.
 - Equally it risks the opposite, where policies are well funded that don't appear to have a significant environmental impact, but then through that budgetary focus, end up having a detriment impact through a failure to appreciate the wider impact, or the lack of remaining funds for other policies.
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- The Bill attempts to deal with this through the application of integration, yet full integration is undermined by the initial clause that limits the principles to policy that has an effect on the environment.
 - This is not true integration, which was intended (as set out in the Rome Treaty) to ensure that principles are embedded across all aspects of policy, rather than just those with an obvious link to the environment.
 - WWF welcomes the application of ‘special regard’ to Welsh Ministers and NRW. This is the highest iteration of regard and shall hopefully ensure that the principles are properly exercised. Doing so does however highlight that other public authorities need only to have ‘regard’ to them.
 - It can be argued that it is appropriate that NRW and Welsh Ministers have a higher regard due to the scope of their work, yet we would recommend stronger, more proactive wording is found for other public authorities – such as the requirement to ‘enact’ the principles in decision making.
 - Furthermore, the environmental principles duty only applies to them when carrying out functions connected to Strategic Environmental Assessments (SEA), yet it is unclear what is meant here practically. This is something which needs to be explored as the Bill develops.
 - A wider point to be made is the attempt to integrate the principles with the Well-being of Future Generations (Wales) Act 2015. The approach taken in Section 4 of the Bill is problematic as it attempts to place the principles within the scope of the FG Act, despite the reality that the FG Act itself was developed within the context of the principles as they applied in EU law.
 - Removing (due to Brexit) and then inserting the FG Act in this way risks confusing and diluting the strength of the principles as their focus on environmental protection and improvement is lessened as they would now also have to account for wider FG Act ambitions. We suggest this reference is removed.
 - Finally, the review process for the principles and integration statement is weak with a requirement to only review it ‘from time to time’. This leaves it open for a weak statement to be unchanged for political convenience. We suggest a provision is added to require the statement to be reviewed within 24 to 36 months of a Senedd election.
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- Further to this we suggest that as well as being laid before the Senedd, the statement is also subject to an affirmative vote by the Senedd to add democratic legitimacy.

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)

- WWF strongly welcomes the establishment of the Office of Environmental Governance Wales (OEGW). It has taken the Welsh Government far too long to get to this point.
- The independence of the OEGW is of critical importance, as the body will likely focus most of its monitoring and compliance activity on Welsh Ministers.
- While the Explanatory Memorandum recognises that independence is of 'paramount importance' to effective operation, the Bill itself does not provide sufficient safeguards to define and protect that independence.
- For example, the Bill is silent on the independence of the body and does not include any of the comparable safeguards that the Scottish and UK Governments built into their legislation. Specifically, the Bill should be amended to set out that Welsh Ministers have no powers of direction over the body.
- At present, there is no provision in the Bill to safeguard the body's financial security [resourcing]. This cannot be left to chance, as the goodwill of current ministers does not guarantee independence in the long term. HMG committed to provide the Office of Environmental Protection (OEP) with a ring-fenced five-year indicative budget and also included a power in the Environment Act 2021 to enable the OEP to highlight any under-resourcing to the Westminster Parliament. Similar safeguards should be considered for the Bill.
- The arrangements for appointing the body's Chair and other board members place the power in the hands of Welsh Ministers, with little input from the Senedd. This balance must be reconsidered due to the unique role

the OEGW will play on monitoring and enforcing breaches of environmental law, including by Welsh Ministers.

- WWF would encourage Committee Members to reflect on the level of engagement they would consider appropriate, such as an active and majority role in recruitment panels, rather than a role in the scrutiny of preferred Government candidates.
 - The requirements in Schedule 2 on what the OEGW should include in its strategy are overly prescriptive and should be reduced to avoid further undermining the body's independence.
 - The Bill does not establish a legal requirement for the body to accept complaints or representations from the public. This is a major gap in what has hitherto been considered a central purpose of a new body. Excluding a specific clause to this effect risks weakening the rights Welsh people had when the UK was a member of the EU.
 - Linked to this is the need for OEGW to have the explicit power to intervene in proceedings brought by other parties (such as engagements with the High Court). This is an invaluable tool enjoyed by equivalent bodies in the rest of the UK.
 - A further matter of significant concern is that the Bill requires OEGW to cede power on its enforcement decisions to a 'review committee' which will include people appointed by Welsh Ministers. This would undermine the body's governance and should be removed.
 - Finally, little information has yet been provided on the timetable for setting up the new body or the transition from the non-statutory Interim Environmental Protection Assessor for Wales. While we wouldn't expect this to be in the text of the Bill, the timetable is critical and the Welsh Government should begin setting up the OEGW now, so that it can be legally established as quickly as possible, avoiding further delay.
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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)

- WWF remains disappointed about the lack of a headline, timebound target to reverse the decline in species abundance in line with the international community. This is a key part of biodiversity recovery and should be included in the Bill to give a clear signal of the urgency of action needed.
 - Given the excessive time it has taken Welsh Government to bring forward this legislation the prospect of achieving 2030 ambitions is now unobtainable. In response Welsh Government, rather than abandoning a timebound target, should instead commit to a target of 2035. Similar targets have been set elsewhere in the UK, and we are concerned that the current Welsh Government approach fails to learn the lessons of the Environment (Wales) Act 2016, which has thus far failed to deliver the scale and pace of change intended.
 - Further to this, the Bill should also set out the timeframe for wider targets, to be set in secondary legislation and make a distinction between short- and long-term targets. The equivalent HMG legislation requires long-term targets, and defines long-term as being at least 15 years. The Bill should adopt such an approach and require interim targets to be set for each Senedd until their attainment.
 - Secondary legislation defining the actual targets should be brought forward within 12 months of the Bill's royal assent to ensure the next government does not delay action. If this cannot be achieved for all target areas then it should be limited to the priority areas identified in the Bill. This should be achievable given that work to define priority targets is already underway.
 - One priority area defined in the Bill is the reduction of pollution. Welsh Government have ruled out acting on air pollution in this area due to existing legislation. WWF continue to urge Welsh Government to set a clear target to halve excess nutrient loss by 2030 as part of this priority area. This would reflect the COP15 agreement and drive government and public authority action to addressing freshwater pollution which remains rife across Wales.
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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?

- The principal barrier remains the political unknowns facing Wales beyond May 2026. If this area is not a priority for the new Welsh Government, then the current working of the Bill will be sufficient for that government to produce a weak principles statement; not provide the OEGW with sufficient funding and independence; delay its commencement; and delay/weaken any biodiversity targets proposed.
 - It is for this reason that we make the recommendations contained in the above sections.

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?

- The gap over the lack of specific obligation to accept representations from the public, and for OEGW to intervene in cases brought by others could result in OEGW failing to fulfil its primary purposes. We do not believe that this is the intent of Welsh Government, nonetheless it could occur as the Bill is currently drafted.

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?

- The costings contained in the EM appear realistic.

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