

EPGBTWB 01 - Evidence from: Auditor General for Wales

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?

In our view, there is a need for legislation to deliver the stated policy intentions. This is clearly the case in respect of the establishment of the OEGW to address the gap in environment law oversight. And while there is the existing biodiversity and resilience of ecosystems duty in section 6 of the Environment (Wales) Act 2016, together with scope for better compliance with and support for that duty on the part of the Welsh Government, as noted in our March 2025 report (“our report”—more details below), we see the provisions of Part 3 of the Bill as overall conducive to strengthening arrangements in relation to that duty. Similarly, Part 1 of the Bill seems to be necessary to meet the Welsh Government’s policy intentions of applying environmental principles to contribute to a high level of environmental protection to respond to environmental harm.

Our report found that the nature emergency has not been a high enough priority for public authorities, and public authorities need to do more to create a culture that adequately focuses on the nature emergency. The Welsh Government largely accepted the recommendations of our report and set out in a management response form how it intended to respond. It noted the areas where the draft provisions of the Bill had the potential to address our recommendations.

If implemented effectively, we consider the Bill has potential to contribute to an increased focus on the nature emergency in Wales. It appears to provide for a stronger legal framework around biodiversity responsibilities, though in the case of biodiversity targets much will depend on what follows in secondary legislation.

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)**

The environmental objective and environmental principles provisions seem to establish a framework for environmental governance that should enable an increased focus on the nature emergency in Wales, while also aligning with the wider Welsh policy and legislative context, including the Well-being of Future Generations (Wales) Act 2015.

In our response to the Welsh Government's white paper consultation in 2023, we highlighted the need for clarity around how these environmental principles would fit with the requirements of other legislation. We note that the explanatory memorandum seeks to explain how these principles align with other legislation and how they should be applied by the Welsh Government, Natural Resources Wales and other public authorities.

We recognise that the proposed environmental principles are well-established and widely recognised in international law and policy.

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)**

As noted at Q1, we see that the Bill makes provision to address the current gap in environmental law enforcement. However, we have concerns that the provisions for OEGW oversight are not optimal, particularly in terms of meeting the Welsh Government's statement that "independence is of paramount importance to its effective operation" (Explanatory Memorandum 3.165).

In our response to the Welsh Government's white paper consultation in 2023, we noted that to have the independence necessary for monitoring and enforcing environmental law in relation to the Welsh Ministers, resourcing would need to be from the Welsh Consolidated Fund (WCF) on a Senedd Budget Motion, along

the lines of the Public Services Ombudsman for Wales (PSOW), rather than a budget controlled by the Welsh Ministers. Resource allocation by the Welsh Ministers would signal that the OEGW is not independent—certainly not as independent as the PSOW. We raised similar concerns in earlier submissions on Environment Governance and Principles to the Climate Change, Environment and Rural Affairs Committee and to the Welsh Government in June 2019.

Similarly, we are concerned at sub-optimal arrangements for independence in terms of:

- (a) Provisions for the appointment of members of the body to be made by the Welsh Ministers (para 2 of Sch 1 to the Bill)—we consider that appointments should be made by the Senedd (with the benefit of panel of independent members similar to that provided for in para 8 of Sch 1 to the Bill).
- (b) Disqualification provisions (para 3 of Sch 1)— given that the OEGW is confined to monitoring of “devolved provisions” (see para 29 of Sch 1) these include what appear to be irrelevant prohibitions on members being members of non-Welsh parliaments, while relevant conflicts of interest, such as employment by (or ownership of) economic operators with significant effects on the environment (e.g. property developers) are not mentioned. (We note that this might be addressed by disqualifications made by regulations made by the Welsh Ministers under para 3(1)(i), but we do not consider reliance on that mechanism to be satisfactory.)
- (c) The absence of “special finance” provisions in the Bill equivalent to para 11 of Sch 1 to the Public Services Ombudsman (Wales) Act 2019—such provisions are necessary to provide indemnity cover for the OEGW, without which it may feel obliged to act very cautiously in exercising its functions.
- (d) The provision for Welsh Ministers by regulations under para 29(4) of Sch 1 to alter the scope of the OEGW’s work by altering the definition of “environmental law”—this facility enables the Welsh Ministers to narrow the work of the OEGW, which does not seem appropriate.

It is important that these deficiencies are addressed, otherwise the OEGW is likely to lack public trust and credibility and may be less effective than needed.

Aspects of the importance of addressing the current gap in environmental law enforcement are evident from our report, which concluded that the Welsh Government was not effectively monitoring public authorities’ compliance with the planning and reporting requirements under the Section 6 duty. (We

recommended that the Welsh Government should publish reports that provide an overall view on public authorities' actions, progress and compliance with the Section 6 duty. We also recommended that the Welsh Government should follow up with public authorities that have not published biodiversity plans and reports and provide feedback to public authorities on the plans and reports they submit.) The establishment of the OEGW has potential to improve the monitoring and compliance with the Section 6 duty by public authorities. And we recognise the new body may, in time, take forward some actions that we set out for the Welsh Government through the recommendations in our report.

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)**

Sections 33, 36 and 37 (insertions of new provisions 6l, 6(7A), 6A and amendment of 6(7) of the Environment Act): It appears that these provisions are intended to lead to a robust reporting regime in relation to biodiversity targets. We are, however, concerned at the complexity of the requirements, though that may perhaps be addressed by guidance. In addition, we are concerned that despite these various provisions, in practice there may be no overall report that sets out the activity and effects of all relevant public authorities in relation to biodiversity targets. (We found a lack of overall reporting in relation to the section 6 duty in our report.) Sections 6(7), 6(7A), 6A and 6l are cast in terms of the particular public authority's/ Welsh Ministers' activities/plans—there does not seem to be explicit provision for Welsh Ministers to draw together reporting of activities and effects of individual bodies.

(In our report, as well as recommending that the Welsh Government should produce a biodiversity report specific to its own actions (to comply with the existing Section 6 duty as a body in its own right), we also recommended that the Welsh Government should produce reports that provide an overall view on public authorities' actions, progress, and compliance with the duty.)

Section 34(4): The new subsection 6(1l) to be inserted by section 34(4) of the Bill perhaps provides some clarification of which public authorities are covered by certain elements of the Section 6 duty and the duty to take action in relation to targets set in regulations (under s6F). But the situation is complex, and, as noted in our report, the 2016 Act does not clearly list the public authorities covered by the section 6 duty (let alone other particular duties related to it). Instead, it

provides a general definition of such a public authority. We understand that such an approach may help with future-proofing the legislation as new bodies are created. However, it does have the drawback of tending to lead to uncertainty or lack of awareness among public bodies, as noted in our report.

Following our finding, we recommended that the Welsh Government should publish a list of public authorities covered by the section 6 duty, and the Welsh Government responded to say that it would do so at the end of 2025. To maintain clarity following the amendment inserted by section 34(4) of the Bill, we think the Welsh Government will need to provide additional lists (or a segmented list) that set out which bodies are covered by the particular duties (the s6(5)(d) duty and the s6(2A) duty).

Section 35: Sub section (b) of the newly inserted section 6(6A) refers to how the targets will contribute 'to halting and reversing the decline in biodiversity'. This is different wording to the current duty under the current section 6(1). The latter is 'to maintain and enhance biodiversity'. While it does not strike us as incompatible, we are not clear why there is this difference in wording, especially if the targets are intended to help demonstrate the existing duty is being achieved. In case of the risk of confusion, it may be worth seeking the Welsh Government's clarification of this point.

Section 36: Generally, we think these provisions have potential to help strengthen monitoring and reporting by making certain specific reporting requirements. (These are requirements on public authorities to explain in a report what they have done to contribute to meeting a biodiversity target to which they have been designated and on the Welsh Government to report on progress towards achieving the biodiversity targets.) These specific requirements may be helpful as we found that current approaches to reporting are inconsistent and of variable quality. Nevertheless, it is likely to also be helpful if the Welsh Government provides clear guidance on what reporting is required. Some of the recommendations in our report are relevant to this.

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)

We would question whether it is appropriate to add the OEGW to section 6(1) of the Well-being of Future Generations (Wales) Act 2015 (para 3 of Sch 4 to the Bill).

Rather like, for example, the PSOW or the Future Generation's Commissioner, the OEGW's main functions will essentially be confined to particular areas of oversight rather than service delivery. While OEGW may have significant impact on the environmental well-being of Wales (and also less directly on economic, social and cultural well-being) it is not to have executive, strategic policy or corporate planning functions itself, so does not seem to meet the Welsh Government's criteria for section 6 of the WFGWA 2015. In any event, it is also hard to see how it could appropriately be required to set and pursue well-being objectives across all the well-being goals. Such a requirement would seem likely to be disproportionate and potentially distracting from effective delivery of its core 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 interaction between the Bill and the current Section 6 duty is an area of risk. Our report highlighted specific concerns raised by public authorities about guidance and supporting information regarding the Section 6 duty. We recommended that the Welsh Government should work with public authorities to review and revise existing guidance around the Section 6 duty. The Welsh Government accepted our recommendation, stating that it would look at what could be improved to inform new or refreshed guidance.

The Bill (when enacted) will no doubt be accompanied by new guidance. This provides a key opportunity to review and refresh existing guidance. However, the Welsh Government will need to be mindful of the inherent risk that new guidance could add to current complexities and confusion for public authorities. Any new guidance will need to be clear about how expectations and requirements from the Bill will interact with those set out in the 2016 Act.

Revised guidance relating to the Bill will not be produced for at least 2 years, so the Welsh Government will also need to be mindful of the need for clear messaging in the interim period.

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)

As noted at Q3, the provision for Welsh Ministers by regulations under para 29(4) of Sch 1 to alter the scope of the OEGW's work by altering the definition of

“environmental law” does not seem appropriate. This provision would seem to enable the Welsh Ministers to constrain the work of the OEGW by revising the extent of environmental law.

8. Are any unintended consequences likely to arise from the Bill?

As noted elsewhere in this response, we see a risk of further confusion for public authorities arising from the interaction between the Bill and the existing Section 6 duties.

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?

General observations:

Our report recommended that the Welsh Government should rigorously assess the costs of its proposed changes to environmental law and ensure there are adequate resources within public authorities to support effective implementation.

We have not evaluated the rigour of Welsh Government’s financial assessment. We note that the Welsh Government considers that most of the costs arising from this framework legislation will fall on the Welsh Government rather than the wider public sector.

However, the explanatory memorandum recognises the need for further work to estimate costs and benefits as a part of the target setting process undertaken under secondary legislation. In response to our recommendation, the Welsh Government has stated that ‘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’ (and this is to be provided for in the new 6F of the 2016 Act).

We note that our previous report on 'Better law making: the implementation challenge' (<https://www.audit.wales/publication/better-law-making-implementation-challenge>) highlighted examples where Regulatory Impact Assessments have underestimated the costs associated with implementing legislation.

Audit costs:

The Explanatory Memorandum states at paragraph 7.1114 that ‘The creation of a new public body may generate additional costs for the Wales Audit Office (WAO) due to their need to audit and engage with the new organisation. At this stage, these costs are unknown.’

We are happy to work with the Welsh Government to provide estimated costs for any revised assessment. By way of broad comparison, we would highlight to the Committee the estimates contained within the revised explanatory memorandum for the Disused Mine and Quarry Tips (Wales) Bill that are based on information we shared with the Welsh Government. For the new Authority proposed under that Bill we provided an estimate of costs totalling around £500k over 15 years.

We note that the financial assessment for the Environment Bill is mapping costs over 10 years covering 2025-26 to 2034-35. Assuming a first year of accounts audit for 2026-27, a total cost for accounts audit and sustainable development examination work under the Well-being of Future Generations Act could be in the region of £350k (if applying similar assumptions as for the Disused Mine and Quarry Tips Bill). This total would reduce to under £300k if the OEGW were not designated as a public body under section 6(1) of the WFGWA.

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

For consistency with the good standards required in relation to local government, the NHS and the PSOW, we would suggest revising the audit provisions in para 19 of Sch 1 to the Bill so as to require the Auditor General in the course of the audit of the OEGW’s accounts to be satisfied that the body has made proper arrangements for security economy, efficiency and effectiveness in the use of its resources. This would be equivalent to the provision in para 18(5)(b) of Sch 1 to the Public Services Ombudsman (Wales) Act 2019.
