

EPGBTWB 11 - Tystiolaeth gan: Cyfoeth Naturiol Cymru | Evidence from: Natural Resources 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

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?

The Bill provides the necessary legal framework to embed environmental principles consistently and transparently across Welsh public policy. This is critical to address gaps in environmental governance following the UK's exit from the European Union (EU) and respond to the climate and nature emergencies.

While EU derived environmental principles (precautionary, prevention, rectification at source and polluter pays) underpins much of our existing legislative framework, including through the Sustainable Management of Natural Resources (SMNR) duty under the Environment (Wales) Act 2016, the Bill is a necessary requirement to ensure their application is explicit, accountable and provides a statutory requirement across decision-making.

The statement if well designed, should strengthen alignment between environmental principles and other statutory duties, including the Well-being Future Generations Act and the Environment (Wales) Act 2016.

Legislation provides legal status and clarity in applying environmental principles, ensuring consistency and reinforcing the integration of environmental protection into broader decision making.

For the governance body the policy intention has been clearly articulated during the development of the draft legislation and within the areas noted in the policy intention statement. Since leaving the EU, Wales remains the only part of the UK without a statutory body for overseeing the functioning environmental law. Whilst Wales will not be able to fully replicate the setup under the EU, the creation of a new governance body does provide an appropriate level of domestic scrutiny of environmental law. Ensuring the Office of Environmental Governance Wales (OEGW) and its functions are defined in statute provides a robust and appropriate implementation of the policy objectives.

The Bill's provisions features reflect and compliment international commitments such as UN Sustainable Development Goals, Paris Agreement, Ramsar, Bern Convention, UK Climate Change Act and the Global Biodiversity Framework. They are also in line with Welsh Government's sustainable development duty, embodied in the Well-being of Future Generations Act, the UN Ecosystem Approach and the climate objectives, enshrined in the Environment (Wales) Act 2016.2. 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 support the provision set out in Part 1 of the Bill and see them as necessary to ensure environmental considerations are embedded into public decision-making in Wales.

Section 1 Environmental objective

We support the inclusion of a high-level environmental objective. This sets the expectation that all subsequent duties and functions under the Bill such as applying the environmental principles, the governance framework and

biodiversity targets must contribute to environmental improvement and not just avoid harm.

Section 2-5 Environmental principles duty. We welcome the extension of the duty to Natural Resources Wales (NRW) as it aligns with our current duties and responsibilities. We advise that Welsh Government (WG) should consider extending the “special regard” duty more broadly to other key public authorities, particularly to those that have significant impacts on land use, infrastructure, planning and economic development. Proportionate application of the principles across all public authorities would enhance delivery through the ability to achieve more integrated policy outcomes. It will enable collective accountability and consistent application across Welsh public bodies.

The duty to have ‘special regard’ to the EU derived environmental principles is welcomed. An existing legal precedent to “have special regard” has been established by the Court of Appeal in several cases such as the Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council (2014) as requiring decision makers to give “considerable importance and weight”. This provides that substantial weight, and priority must be given to the environmental principles.

To deliver the duty’s intended purpose, it must be communicated well to ensure duty holders understand the legal weight and apply the duty correctly and consistently. Without clarity, there is a risk the duty is misinterpreted or applied superficially, and so undermining its intended effect.

We recommend the following to help aid effective implementation:

- That the intended meaning of the term 'special regard' is clearly communicated in s.42 as there is a risk of it being misconstrued as just 'due consideration' which would weaken its legal and practical effect.
- Each principle should be considered deliberately with a requirement to evidence how each has influenced the decision-making process (e.g. mitigation, alternatives, monitoring, compensation and enhancement).
- Recommend clear guidance is provided to address subjective framing and terms such as 'open-minded approach' that risk inconsistent applications and being misinterpreted as a soft or symbolic duty. Clear guidance and illustrative examples should demonstrate ambiguous terms.
- The messaging around terms and weight needs to be effectively communicated to all.

We strongly support including the integration principle as it enhances coherence and aligns duties across policy and legal frameworks. It encourages public bodies to consider how environmental protection supports wider objectives (such as health) which reflects Wales's approach to sustainable development.

Section 6 Environmental principles and integration statement

Publishing a statutory environmental principles statement and integration statement is crucial to provide a practical way to maintain continuity in applying the principles to secure consistent interpretation and implementation across public bodies.

The principles are underpinned by decades of environmental decision making at EU and international scales. An overview of their background context of their legal origins, development, application would help support the continuity of standards and reduce the risk of divergence and weak application to maintain high levels of environmental protection.

The integration duty should be framed proactively, requiring both the prevention of harm and the active identification and pursuit of opportunities to restore, enhance and future-proof the ecosystems and the benefits they provide. This should help shift our cultural approach from risk avoidance to encourage active consideration of opportunities for environmental gain and not just minimise harm.

Given the scale and urgency of the climate and nature emergencies, we support the intention of the environmental objective and principles. It reflects the proactive ethos of the Well-being and Future Generations Act, including delivering improvements to biodiversity. The duty further aligns with the Environment Act and the Agriculture Act to enhance ecosystem resilience and benefits to people, promote long-term thinking and encourages the use of preventative and adaptive approaches.

Section 7 Public authority SEA duty

The requirement for all public authorities to have regard to the environmental principles when undertaking Strategic Environmental Assessments (SEAs) is proportionate. We recommend extending the duty to consider the principles to all public authorities to enable the wider application of the principles at a local and regional level.

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)

Overall the establishment and functions of the Office of Environmental Governance Wales (OEGW) appear sensible and proportionate to deliver the policy intentions for the oversight of environmental law in Wales. We welcome the establishment of the OEGW as a separate and independent organisation, and our views can be summarised:

- The *general purpose* requirements in s.9 provide a sufficient strategic direction and principles to guide the OEGW's actions, although adding 'and with integrity' to s.9(b) may emphasise the standards required and reflect their importance within the legislative landscape;

- The proposed escalatory nature which the OEGW should take is welcomed. Taking an outcomes-based approach, and operating in-line with the Regulators' Code, will ensure that appropriate action is taken to achieve the best result in an efficient and timely manner.

- The ability for the OEGW to act flexibly and with discretion is of key importance. We would discourage the introduction of mechanisms to restrict the organisations actions (such as on discretion of investigation topics or advisory capacity).

- The provision within Schedule 2 of the Bill requiring the OEGW to set out within their strategy how they will seek to avoid overlap with NRW in the exercise of its functions, is sufficient to reduce potential overlap in our regulatory duties. This is supported by the explanatory memorandum.

- Within Annex 2 of their submission to the Panel Review of Environmental Governance in Northern Ireland, the Office for Environmental Protection (OEP) highlight attributes of effective environmental regulation, many of which are addressed by the Bill. The requirements for clarity of role, access to the right tools, and strategy are clearly stated, although attributes such as the culture of the organisation are non-legislative.

- We agree with the general co-operation duties in section 23. As the environmental regulator for Wales, we may receive requests to provide

significant amounts of information and/or expertise to inform the OEGW's investigations of other public authorities. The OEGW should have appropriate access to expertise to reduce potential unfunded pressures on NRW and increase the independence of the body.

- The provisions within s.20 - 22 are a welcome addition to address systematic issues identified involving multiple public authorities, although where this is the case, it may be worth including the ability for the OEGW to issue linked information notices to authorities under s.14 to inform these investigations.

- We have an outstanding concern in relation to the definition of public authority in section 30. Whilst understandable given the constitutional arrangement, the OEGW will not have remit over *reserved* public authorities, when they're undertaking a *devolved* function within Wales (unless specified within the Government of Wales Act). The OEP's remit within Wales is limited to *reserved* functions only. The OEGW should therefore set out within its strategy how it intends on taking forward investigations where there is a suspected non-compliance by a *reserved* public authority discharging a *devolved* function.

- We note other stakeholders have raised concerns on the independence of the OEGW from Ministers. Whilst we do not express a view regarding how the body is constituted or members appointed, we noted within our response to the White Paper the need for the OEGW to demonstrate independence from both Government and public authorities. Public trust in the new body is linked to the legitimacy of the institution and therefore confidence in the actions it takes – the transparency requirements built in throughout the Bill should help with this.

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 are fully supportive of WG's approach with the proposed Bill, and also their parallel biodiversity targets development work through their independent Biodiversity Targets Advisory Panel.

We see that the Bill and statutory biodiversity targets will positively focus attention on nature recovery and key actions and also galvanise wider interest and support for nature recovery action across other policy interests and sectors.

Statutory targets will make clear how Wales is looking to support international commitments and especially those under the Global Biodiversity Framework (GBF). It will also help put Wales into better alignment with England and Scotland who are also taking a legislative approach, and, through comparison, enable mutual learning with them as well as other nations.

We note climate change targets have provided a very strong foundation for political and public focus for action for that agenda which was previously more disparate in how to deal with it, and so we support statutory biodiversity targets to help similarly provide necessary focus and accelerate essential action. These targets will need to be set carefully in this regard, and consideration also given to avoid potentially diverting attention from other (non-statutory) biodiversity improvement actions.

The four target priority areas seem appropriate and practical for delivering the stated policy intention and targets need to strike the balance between being meaningful and yet achievable. We see the four priority areas being a strong foundation for action now, and also for subsequent iterations to ensure synergistic and positive action regarding future needs as these emerge. In relation to ecosystem management, we note this the most helpful priority target in a marine context, especially in relation to resilience for the Marine Protected Area network.

However, we would like to see on-going discussion about how other GBF targets will be considered and addressed in the future. This is particularly important regarding the enabling and mainstreaming tranche of GBF Targets from Target 14 onwards including how businesses can be more proactively involved, generating the additional financing and capacity needed for nature recovery and crucially, addressing negative and encouraging positive incentives. These 'enabling' targets are critical for accelerating the transformative changes needed to tackle the indirect and direct drivers of biodiversity as detailed in the various Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) reports such as the Global Assessment, Nexus Assessment and the Transformative Change Assessment. The 'enabling' targets are also crucial for supporting action for the other GBF targets not currently in scope within the Bill, such as Target 6 relating to INNS management for example.

We support including an action plan to set out how achieving targets will be delivered and resourced. It will be essential to elicit strong cross-departmental agreement with other policy areas to maximise synergies and avoid conflicts or negative unintended consequences arising through other policy delivery mechanisms. We think it will encourage a better balance across policy priorities

to more appropriately incorporate nature improvement requirements and mutually beneficial outcomes. Sometimes other priorities can be seen to override potential biodiversity outcomes and not realise the associated wider benefits that stem from taking nature restoration opportunities.

To support effective delivery of the pollution target we recommend a preventative approach to support upstream interventions in line with the Sustainable Management of Natural Resources (SMNR) and the Environmental Principles. Any new targets must build on existing legislative obligations and help facilitate and focus the management of sources that would benefit from improved regulation rather than duplicating existing targets. As an example, in the case of chemicals, introducing a ban on consumer products containing per- and poly fluoroalkyl substances (PFAS), known as 'forever chemicals' to prevent them from entering the supply chain in the first place. However, ensuring we have the ability to monitor and control the release of PFAS into the water environment by introducing environmental quality standards is also important part of building our evidence and knowledge to address pollution.

The targets must also promote joined-up thinking across policy regimes and make use of the evidence available in the State of Natural Resources Report ([SoNaRR](#)) statutory natural resources assessments to help determine priorities. Due regard must also be given to NRW's Wellbeing objective in our Corporate Plan on minimising pollution and ensuring appropriate resources are available to implement and manage a pollution targets.

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)

Establishing the OEGW (s.8) is expected two months after the Bill receives Royal assent (s.44). Suitable arrangements should be made for transferring information received by the Interim Environmental Protection Assessor for Wales (IEPAW) during their tenure, including any open investigations.

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

Effective implementation must be supported through strong integration across ongoing reforms in planning, agriculture, water, waste, and the future of land management to build support through joint outcomes, prevent siloed action and unintended consequences. This includes the need for alignment across wider strategies and projects such as Nature Recovery Action Plan when this is revised and Net Zero Wales Plan and Adaptation Strategy for Wales.

The effectiveness of statutory biodiversity targets will also heavily rely on appropriate investment in monitoring systems, data interpretation and reporting capabilities to support decision-making and delivery mechanisms regarding habitat management and restoration or other nature recovery actions.

While details for proposed targets are still being developed, effective and affordable monitoring and evidence frameworks are vital to track progress. Effective monitoring and evidence underpins good decision making and enables an adaptive management approach to positively respond to pressures such as climate change and others issues that may become more apparent over time. These frameworks need to be informed by appraising data needs, building on existing good practice and data sets, and identifying future needs. This includes creating better collaboration opportunities, increased citizen science roles and making better use of technological advances. We have been working with WG through the 30 by 30 Monitoring and Evidence Expert Group on how to address these challenges. A key aspect is ascertaining and evaluating the priority steps to take and resolving barriers alongside prioritising existing resources. This process may identify other gaps that could impede progress which may have additional resourcing needs.

Consideration and clarity within other government policy portfolios and across the public authority spectrum about respective responsibilities and associated expectations is essential. This is particularly pertinent to how new targets will integrate with other statutory mechanisms requiring national indicators and targets to be set and delivered. Key examples include s.10(1) of the Well-being of Future Generations (2015) Act regarding National Well-being indicators, as well as s.4 (1) of the Agriculture (Wales) Act 2023, in relation to setting of Sustainable Land Management objectives and targets.

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)

Throughout the development of the Bill we have had ongoing discussions with WG on the need to ensure sufficient flexibility balanced with the need to reduce ambiguity to ensure the legislation is appropriate and 'future proof'. The Bill includes use of statutory statements and duties, periodic review and reporting requirements, guidance expectations and a duty to consult that promote transparency and accountability.

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

Misinterpretation or dilution of the "special regard" duty.

Under 6F(2) when consulting with public bodies being designated responsibility under the targets, it would be especially valuable to do this in a timely manner to align with respective corporate planning cycles to ensure actions and associated resourcing are considered and appropriately accommodated.

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 Regulatory Impact Assessment (RIA) recognises potential cost implications that would fall on NRW. The full resource implications, particularly for biodiversity targets which have still to be developed, and engagement with the new governance body, cannot yet be fully quantified. While we have not as yet identified specific new resource needs within NRW, we are keeping this under review with WG.

Proper implementation of the principles will require a genuine commitment to further legislative and organisational investment if they are to drive meaningful change - and this should be clearly acknowledged at this stage. For example, further legislative mechanisms in Wales to drive environmental markets based on regulatory compliance could be considered. Similarly, operation of such markets could be steered by legislation to ensure the precautionary principle is appropriately adhered to in addressing market risk. In doing so, the principles could drive high integrity compliance markets in Wales, attracting positive

impact investment and supporting well-being goal outcomes. Organisationally, the appropriate regulator will need resource to develop and oversee such compliance markets. Without such commitment to investment in these areas, the principles could be stymied in their ability to drive real change.

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

There are possible resource implications associated with ensuring alignment with the Sustainable Land Management indicators and the role of the Sustainable Farming Scheme in delivery.

The Bill states that “*Wales*” includes, so far as policy relates to fishing, fisheries or fish health, the area of the Welsh zone beyond the seaward limit of the territorial sea.’ It is important to note the Environment (Wales) Act and Section 7 species list only applies out to 12nm, which could lead to complications if targets are set which relate to Section 7 fish species.