

EPGBTWB 18 - Tystiolaeth gan: Yr Athro Colin T Reid | Evidence from: Professor Colin T Reid

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?

Legislation is needed for all three strands of this Bill. Legal status is essential for environmental principles to carry weight in the battle for influence against the many other legal requirements on Ministers and other bodies. Despite the excellent work done by the Interim Environmental Protection Assessor for Wales, a robust environmental “watchdog” requires clear statutory powers and legal guarantees of independence. Any system of long-term targets is greatly strengthened if embedded in legislation rather than just in more easily amended or abandoned policy statements. This Bill is very welcome and overdue.

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 general approach is welcome and fitting for the distinct environmental legal framework in Wales.

It is welcome that the duty to have special regard relates to the environmental principles themselves, not (as in England) just the policy statement on these. The statement (s.6) should also be required to address how the principles and integration requirement relate to other requirements, especially those under the Wellbeing of Future Generations (Wales) Act 2015.

Whereas this Bill is following the English approach of limiting the scope of public bodies' duty in section 5(1) to the scope of Strategic Environmental Assessments, the broader Scottish position of applying both of these to all policy making does not appear to have caused particular difficulty and it may be desirable to get rid of a boundary that may create awkward and unnecessary borderline decisions.

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)**

It would provide a greater level of independence if the appointment of the Chair of the OEGW required approval from, not just consultation with, the Senedd and there were some provision on resourcing such as for Environmental Standards Scotland (para.13 of Schedule 1 to the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021).

While it is appropriate that the OEGW cannot issue a compliance notice in relation to a single regulatory decision (s.16(7)) – the OEGW is an oversight not an appeal body - this should not stand in the way of an appreciation that a single instance can be a sign of a more systemic problem worthy of investigation and intervention, even though there is so far only a single manifestation.

The fact that the review of a compliance notice (s.18) is undertaken by a review committee drawn from OEGW's own staff and ministerial nominees, rather than an independent body, such as a court or tribunal, may give rise to concern, although there can be merits in the chosen approach (particularly in relation to speed and existing expert knowledge of the issues). However, it is essential that there is suitable publicity for the outcomes and reasoning of the review process in order to ensure transparency and maintain public trust in the system. Many environmental breaches are very public and the response and why it has been selected must be equally so.

Although the wide power to undertake incidental functions may cover this (para.23 of Schedule 1), it might be beneficial to add a clear power for the OEGW to commence or intervene in legal proceedings where it considers this useful – the OEP has certainly found this to be a useful means of fulfilling its duties.

Cooperation with the other environmental “watchdogs” in the UK will be essential at times and should not be thwarted by unintended obstacles. It would therefore be a good idea to add a provision explicitly authorising such cooperation and in particular ensuring that the rules on confidentiality do not stand in the way (see the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, s. 40).

It is welcome that the OEGW will have the power to start investigations on its own initiative (s.15(2)).

A narrow interpretation of the definition of “environmental law” (s.29) may exclude matters that have significant environmental dimensions but can be characterised as not “mainly” relating to environmental law, e.g. housing or agriculture. Equally it would be inappropriate for a wide interpretation of the exclusion of matters relating to “finance or budgets” to enable any policy or action to escape scrutiny simply because issues of the budget or resources available are significant background factors. Ministerial reassurance on the intention of these provisions might be useful.

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)**

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)**

The fact that there is no guaranteed timescale for Part 3 coming into force (s.44), far less the powers being exercised to set biodiversity targets, is a concern.

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

The success of all parts of this Bill depends on adequate resourcing and the political will to make its provisions a success. The role of the OEGW needs to be respected and the principles and biodiversity targets taken seriously. Passing the legislation will not ensure this by itself.

As noted below, a key element will be the availability of good data on the state of biodiversity. Gathering such data is currently a fragmented process, relying heavily on voluntary inputs and how data is gathered, collated and made available all require attention and support.

7. How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)

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

9. What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

Implementation of the biodiversity targets relies on the availability of robust baseline data and continuing monitoring. The effort to achieve this is spread between many bodies – public, private and “third sector” - and is often reliant on considerable voluntary work by specialist societies (e.g. the data collection for the atlas projects of the British Trust for Ornithology and Botanical Society of Britain and Ireland). The costs to various bodies of gathering, collating and making accessible the necessary data must be taken into account and their work to establish and maintain databases of biodiversity information supported. The benefits of this will be felt not only in the context of this Bill but also in relation to many other conservation, planning and development activities, e.g. by providing background data to make environmental and habitats assessments much easier and cheaper to complete.

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