

EPGBTWB 20 - Tystiolaeth gan | Evidence from: WildFish

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?

WildFish supports the general principles of the Bill and certainly agrees there is a need for legislation to deliver the stated policy intention. It has been said many times but Wales has not performed well relative to the other nations of the UK in bringing forward this legislation in a timely manner, post-Brexit.

We do consider that some tightening of both the environmental objective and the environmental principles would be valuable to deliver the overall improvements in the Welsh environment that is required.

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)

Generally, WildFish is content with the environmental objective, at clause 1, although, under clause 1(1)(d), we consider that the wording should be altered to remove "contributing to".

An objective to contribute towards halting or reversing declines in biodiversity gives insufficient priority to biodiversity given the crisis in nature we are experiencing.

The objective should be 'to halt and reverse the decline in biodiversity', not merely to 'contribute' towards those aims.

WildFish is also concerned that clause 3 requires considerable strengthening. 'Having special regards to' is insufficiently strong to deliver the change required.

We suggest re-wording 3(1) to read:

"3(1) The Welsh Ministers must for the purpose of achieving the environmental objective - (a) apply the environmental principles when making policy in relation to Wales that has or could have any effect on the environment, and..."

Similar tightening is then required in clause 3(2), as well as in clause 4 (duties on NRW) where, given NRW's existing statutory functions generally, the case for a more robust general duty here is even stronger.

Similarly, clause 5, relating to public authorities, should be worded similarly to our proposed amendments to clause 3(1) above.

There is no point in laying down environmental principles unless there is a duty to apply them, not merely to have regard (or even 'special regard') to them and then continue with decision-making driven by what might be termed traditional economic thinking.

The nature crisis being experienced in Wales and beyond means that priorities in Wales must change.

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)**

WildFish has serious concerns over the proposed OEGW.

WildFish would urge Welsh Ministers to look closely at the evidence given on the Bill by the Office for Environmental Protection (OEP) in paras 32 to 45 on independence, impartiality and objectivity. Paper - Office for Environmental Protection.pdf

It is absolutely essential that the OEGW is independent of Welsh Ministers as in many cases the OEGW will be investigating compliance with environmental law

by Welsh Ministers.

It is a major omission from the Bill that the OEGW does not contain express powers to bring environmental or judicial review as does the OEP in England or the ESS in Scotland (see sections 38 and 39 of the Environment Act 2021 and section 38 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021).

That is simply unacceptable if the Welsh Government is serious about the OEGW's independence. WildFish believes that this is a litmus test of the Welsh Government's intentions here. Will the OEGW just be there to issue reports that can be ignored, or will it genuinely be able to hold Welsh Ministers to account?

WildFish understands that Welsh Government has suggested the time taken seeking UK Government approval in so far as such provisions might offend against the devolution settlement with Wales ('reserved matters') is a reason for their omission. If so, that is a poor excuse and simply illustrates further the slow post-Brexit response of the Welsh Government to establishing a governance body in Wales.

It is of course, nonsense to suggest that the UK Government might somehow stand in the way of the OEGW being given powers that the OEP in England already enjoys.

It is also necessary for the OEGW to have financial independence as far as is possible from Welsh Ministers.

WildFish strongly suggests a governance model like that enjoyed by the National Audit Office. There should certainly be no powers for Welsh Ministers to direct the OEGW. Nor should there be any possibility for Welsh Ministers to 'pressurise', directly or indirectly, the OEGW in the performance of its functions.

On the proposed review of OEGW compliance notices (clause 18), WildFish believes this is simply unnecessary and is likely to (is designed to ?) have a chilling effect on the OEGW's independence and the robustness of its findings.

In any event, there is already a power under clause 16(6) for the OEGW to withdraw a compliance notice or vary it if it considers that is warranted.

The reality is that any disagreements will have been aired earlier in the process of

the OEGW investigating a public authority's compliance with environmental law and receiving, for example, responses to information notices served by the OEGW.

There is also the cooperation duty on the OEGW and public authorities under clause 23.

The public authority concerned would also enjoy confidentiality (clauses 25 to 27).

No further 'review' mechanism is required.

Additionally, in relation to clause 27 - the application of the Environmental Information Regulations 2004 - it is important that no information provided to the OEGW pursuant to clauses 25 and 26 that would otherwise have been published on request made under the Environmental Information Regulations 2004 is in some way now to be withheld merely because of the fact of an investigation by the OEGW. In other words, if the information would have been published pursuant to the 2004 Regulations, it must continue to be published. The mere existence of an OEGW investigation should not reduce access to environmental information. Clause 27 needs re-drafting accordingly.

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)**

Biodiversity targets set by Welsh Ministers must do more than contribute to halting and reversing the decline in biodiversity, as suggested in clause 33 at 6B(2).

As for the environmental objective, at clause 1, the wording should be altered to remove "contributing to".

An objective to contribute towards halting or reversing declines in biodiversity gives insufficient priority to biodiversity given the crisis in nature we are experiencing. The objective should be 'to halt and reverse the decline in biodiversity', not merely to 'contribute' towards those aims.

We suggest re-wording 6B(2) to read:

"The Welsh Ministers May set a target in the regulations only if they are satisfied that meeting it would halt and reverse the decline in biodiversity..."

Similar amendments are required to the other clauses in Part 3 to reflect a more urgent setting of biodiversity targets for clearer objectives to reverse the crisis in nature in Wales.

WildFish is also concerned at the proposed clause 6H - Revoking or lowering targets - which allows Welsh Ministers to revoke or lower a biodiversity target in a range of circumstances which are potentially very wide. This is wide open to abuse in future (perhaps after insufficient efforts have been made to halt and reverse the decline in biodiversity).

6H is essentially about allowing Welsh Ministers the wiggle room to move the goalposts at a later date. This would take much of the urgency out of actions taken under Part 3 of the Bill. 6H should therefore be removed in its entirety.

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)**

WildFish considers that the absence of legally binding interim and long-term targets is a failing. The alarming decline in nature across Wales requires action at pace that reflects the scale of the crisis.

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

As ever, the real barriers to the implementation of any particular Act are a question of the political will of the incumbent government. The statute book is full of legislation never properly implemented, particularly on the environment. The only way that the Bill can avoid backsliding by future administrations is to give the OEGW true independence from Welsh Ministers, to make the duties in the Bill hard duties, and to remove the wiggle room of "having regard to" or "having special regard to" or being able to revoke or vary targets when they prove to be awkward to achieve.

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)

WildFish would suggest that the power at clause 29 (4) - Meaning of “environmental law” – is unnecessary and its inclusion risks future downgrading of the OEGW’s remit by the exclusion of matters that are environmental, but which some future Welsh Government may not wish to see examined by the OEGW.

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

In so far as the Bill is not ambitious enough, both in the target to “contribute to” the halting and reversal of biodiversity decline (see above), and in the weak “have regard to” or “have special regard to” duties that will apply, the Bill risks reassuring stakeholders that sufficient is being done to address the biodiversity and nature crisis in Wales when, under the Bill as currently drafted, that is unlikely.

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?

No comment

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

WildFish is concerned that this Bill is a backward step from what has hitherto been UK-leading environmental legislation enacted by the Welsh Parliament.
