

EPGBTWB 21 - Tystiolaeth gan | Evidence from: Healthy Air 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

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?

Healthy Air Cymru (HAC) brings together organisations that share a common vision for a cleaner and greener Wales. We want our nation to be a better place, where people have the right to breathe clean air and do not have to suffer from the harmful effects of air pollution.

We agree with and support the general principles of the Bill to establish an Office for Environmental Governance in Wales (OEGW), environmental principles duty and a requirement for targets to protect and restore biodiversity.

Across Wales, our rivers, lakes and seas are being poisoned by sewage and other pollutants. Our land is littered with contaminated ex-industrial sites, leaky landfills and toxic waste dumps. And companies are walking away from opencast coal mines, without doing the restoration they promised.

Polluters have been getting away with this for too long. Wales has been without a permanent environmental governance body since Brexit. It is the last country in the UK to get one – and never has it been more needed. Our wildlife is in crisis, with 1 in 5 species are at risk of extinction. And a growing body of evidence is showing that polluted air, toxic land and dirty water are impacting on human health too.

This means that while this Bill is extremely welcome, it is also vital that it is clarified, strengthened, and implemented at pace. Ambitious targets must be set as soon as possible to reduce pollution, improve ecosystems and reverse the decline in species.

Our environmental governance body must be strong and independent, and environmental principles such as polluter pays must be widely applied.

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 environmental objective to “attain a high level of environmental protection and improvement” and the contribution that consideration of the environmental principles is intended to make to achieving this objective – namely, the precautionary principle, preventative action, rectification at source and the polluter pays principle. However, the reference in 1(1)(a) to achieving goals set out in the Wellbeing of Future Generation (Wales) Act 2015 – which address economic, social and cultural issues alongside the environment – risks undermining the headline objective diluting the focus of the principles and decreasing the efficiency of the OEGW.

We are also concerned by the potential limitations to integration imposed by section 3(1), which states that “The Welsh Ministers must, for the purpose of contributing to the environmental objective (a) have special regard to the environmental principles when making policy in Wales that has, or could have, any effect on the environment and (b) integrate environmental protection into the making of such policy.”

The Ministerial integration and special regard duties, alongside the specific duty on Natural Resources Wales, are welcome improvements on the approach to principles taken in the Environment Act 2021. However, by narrowing their scope

to policy that is intended to affect the environment, the bill risks undermining integration, and limiting the potential of the principles to support the identification and mitigation of unintended consequences, or indeed to provide additional positive environmental outcomes.

The Environmental Principles Policy Statement set out under the 2021 Environment Act specifies that “integration is the principle that environmental protection should be integrated into the making of policies. This means that policymakers should look for opportunities to embed environmental protection and/or enhancement across fields of policy – not just those directly related to the environment.”

While we note the intention for all relevant policy to be caught by the proposed scope of the section 3 duty, we are concerned that considerable discretion will be placed in the hands of future Ministers to decide whether policy has (or could have) an environmental impact. There is no requirement for Ministers to seek advice on this, to publish the criteria that they will use to decide whether policy is in scope, or to consider how environmental benefit might be secured through integration. To ensure that environmental protection can be integrated into all policy making, the bill should be amended to make it clear that the environmental principles duty applies to all policy making.

We welcome the proposed environmental protection statement, but it is not clear from the Bill when the statement will be published or updated - only that “Welsh Ministers may review the statement from time to time.” Given that the principles duties will come into force six months after Royal Assent, it would be helpful if Ministers could confirm the proposed timeline for consultation on and publication of the statement. We also agree with the Wales Environment Link and Friends of the Earth Cymru recommendation that this statement is reviewed on a regular basis – once every Senedd term – to ensure it keeps pace with developments in environmental protection.

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)**

The need for an Office of Environmental Governance for Wales (OEGW) is clear and long overdue. Wales has been without a statutory body to monitor and enforce breaches of environmental law since Brexit. It is the last UK nation to introduce legislation to plug this governance gap.

The Senedd must make the most of this once-in-a-generation opportunity to protect and improve our environment and bring to justice offenders who break environmental laws. To do this, the bill should be strengthened in the following ways.

First, measures should be taken to safeguard the independence of the OEGW. We recommend this bill is amended to introduce a duty on Welsh Ministers to respect the OEGW's independence, as in schedule 1 of the UK Environment Act 2021, which safeguards the independence on the Office of Environmental Protection (OEP) in England and Northern Ireland. This would act as a potential backstop should future ministers be less favourably disposed to the OEGW and would inform future decision-making in relation to issues including funding and appointments. The bill could also be amended to clarify that Welsh Ministers have no power of direction in relation to the OEGW, as set out in relation to Environmental Standards Scotland in Schedule 1 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

Second, it will be impossible for the OEGW to fulfil its role – or be independent for that matter – without sufficient funding. Currently, Schedule 1 of this bill specifies that “The Welsh Ministers may make such payments to the OEGW of such amounts, at such times and on such conditions, as the Welsh Ministers may determine” - this does not provide the certainty of resourcing that the OEGW will need, nor protection from funding cuts if the body is seen to become too challenging to a future administration. The OEP has a ring-fenced five-year budget and the power to tell the UK parliament if it doesn't have enough

resources to do its job, through a 'sufficiency statement'. Similar safeguards should be provided within this bill to guarantee adequate resourcing.

Third, if a member of the public feels an environmental law has been broken, there must be a formal complaints process for bringing the matter to the attention of the OEGW that specifies how it will be handled. This is a matter of environmental justice. It's reassuring that Schedule 2 (2)b includes a requirement that the OEGW must "enable persons to make representation to it about any matters relating to (i) public authorities compliance with environmental law", and that the OEGW strategy is required to contain an investigation and enforcement policy. However, without a specified a time limit for writing such a strategy, the OEGW could be without one for long time. To prevent this happening, Healthy Air Cymru recommend that the bill is amended to require the OEGW to publish a draft strategy and enforcement policy within a period of 9 months from establishment.

Additionally, the UK Environment Act 2021 provides a clear right for "A person [to] make a complaint to the OEP [...] if the person believes that a public authority has failed to comply with environmental law." Similar legislative clarity would be welcome within this bill. The bill should also provide OEGW with more guidance on how public complaints should be handled and what is expected such as the requirement for service levels. The Environment Act 2021 (31-34) includes provisions relating to the fundamental structure of the complaints process complaints, and this bill would benefit from a similar section.

Finally, we note that section 27(4) of the UK Environment Act and section 23(3) of the Scottish legislation both require their relevant environmental bodies to cooperate with other such bodies across the UK. However, no equivalent provision is made in this bill. This oversight should be rectified to provide a basis for effective and collaborative working.

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 have no comment on this question.

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)**

Paragraph 3 of Schedule 4 brings the OEGW within scope of the Wellbeing of Future Generations (Wales) Act 2015 by adding it to the list of public bodies specified in section 6 of the Act and requiring it to comply with the well-being duty in section 2 of the Act. We do not feel it is appropriate to require the OEGW to comply with the wellbeing duty in this way, as it could dilute its environmental focus. The bill could helpfully replace this Schedule 4 requirement with a provision within Schedule 2 requiring that the OEGW and Future Generations Commissioner (FGG) agree how they will work together during the development of the OEGW strategy, which must set out how the body intends to avoid overlap with the FGG.

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

To a very significant degree, this bill will be implemented, not by the current Welsh Government and Senedd, but by their successors. There is no guarantee that current levels of commitment and ambition will be maintained. The recommendations we have set out throughout this response seek to respond to this potential risk by ensuring legislative clarity on the intent behind and pace of implementation required by this bill, to restore the health of Wales's environment and biodiversity.

A second potential barrier to the successful implementation of the bill is insufficient funding. Wales's environmental sector has been underfunded for

years, hamstringing its ability to protect the environment and deliver key services. A lack of substantial increases in core funding from the Welsh government has led to staff cuts, service reductions, and a sense of eroding public trust. For instance, Natural Resources Wales has axed over 256 jobs over the past year to bridge a funding gap, putting nature at risk. The stated role of the OEGW is to “hold public authorities to account” and ensure they “comply with environmental law; make effective environmental law; implement / apply environmental law effectively.” Cases of non-compliance might need to be escalated to the High court. As stated in our answer to Q3 above, the OEGW must have a ring-fenced budget and the power to tell the Welsh Government if it doesn’t have enough resources to do its job.

The narrow scope of the environmental principles (see our answer to question 2, part 1) is another potential barrier, since it could inadvertently undermine the environmental objective to “attain a high level of environmental protection and improvement.” The OEGW must have the power to review and scrutinise all legal and policy areas that may impact the environment, such as economic, transport, social and health policies. Put simply, we’re concerned that policies deemed by Welsh Ministers, not to the effect the environment, could in fact have unintended consequences for nature.

Finally, as stated in our answer to question 2, part 2, the lack of guidance and the timeline for the complaints process could be a barrier to members of the public feeling able to bring cases before the OEGW. This could lead to important information being missed that could impede its work.

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)

We have no comment on this question.

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

As previously discussed in our response to Question 2 (1), we’re concerned that some policy that impacts on the environment be missed due to the narrow scope of the environmental principles.

As stated above and in our answer to question 3(2), we worry that without a proper complaints process, people won't feel able to bring their concerns to the OEGW and important information will be missed that will impede its work.

As stated in our response to questions 3 and 6, without sufficient resources and independence, OEGW won't have the clout to hold the government and public authorities to account. This could be an unintended consequence if the bill continues in its present guise, without amendments.

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?

We have no comment on this question.

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

Matters in Wales that are reserved to the UK parliament will be dealt with by the OEP rather than the OEGW. This is a huge concern and we worry will create legal confusion. We hope that the UK and Welsh Governments can find a legal way to resolve this.