

## **EPGBTWB 23 - Tystiolaeth gan: Yr Athro Maria Lee | Evidence from: Professor Maria Lee**

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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

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### **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?**

I am grateful for the opportunity to comment on this important, and welcome, Bill. I set out below some thoughts on Part 1, Environmental Objective and Principles (only).

I raise one additional, more general concern. The Bill fails to embed rights for citizens (including, but not limited to, businesses and environmental NGOs) to be informed and consulted about measures taken under the Act. Instead, consultation is either absent, or subject to the discretion of ministers or others. This is an unfortunate carry-over from the Westminster Environment Act, which took a weak approach to consultation (discussed <https://onlinelibrary.wiley.com/doi/10.1111/1468-2230.12789>).

Framework legislation like the Environment (Principles, Governance and Biodiversity Targets) Bill depends on its capacity to enhance political (if not legal) accountability. A right for the public to scrutinise and debate is an important part of that, especially given the clause 38 duty to promote awareness.

Such a right should be embedded in all of the decision-making procedures set out in the Bill (eg clause 7, clause 10/Schedule 2, clause 33). (Even better would be a general legislative commitment to effective participation in environmental decision-making.) This would enhance compliance with obligations under the 'Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters', to provide for effective public participation in environmental decision-making.

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## **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)**

### Clause 1

An environmental objective is positive, in particular providing a direction of travel for the principles, and an objective against which to assess any proportionality considerations, and providing heft to integration. The 'improvement' limb adds to the initial objective.

My main concern is with the addition in clause 1(1)(a) of both sustainable development ('meeting the needs ...') and the 'well-being goals' could dilute the environmental objective. It is always difficult for environmental objectives to compete with other social, and especially economic, objectives. In this legislation, environmental protection must be prioritised.

### Clause 2

There is a danger that expressly limiting the precautionary principle to the environment only, given the overlap with environmental standards, could lead to unnecessary confusion.

### Clauses 3 & 4

#### Content of the duties

- These clauses contain two duties – (a) a duty to have special regard to the environmental principles, and (b) a duty to integrate environmental protection. The former is primarily procedural; the latter is a duty of substantive outcomes. This second duty is an important and positive framing.

- Notwithstanding the effort to go beyond 'have regard', a duty to 'have special regard' to the principles still allows decision-makers to choose not to allow the principles to do any work. Better would be an obligation simply to act in accordance with the environmental principles.

### Scope of application

- The duty applies to Welsh ministers (s3) and NRW (s4) only. The duty should apply to all public bodies; all public bodies should contribute to the environmental objective; all public bodies should integrate the environment.
- The duty applies to policy making only. This is limited, the duty should apply to all relevant decision making, as it did in EU law.
- The restriction of the duties to policy which has, or could have, 'any effect on the environment' is fails to recognise the meaning and power of integration specifically. Integration implies a positive duty - ie, even if a policy has no environmental effect in its initial iteration, integration of environmental protection could convert it into a positive environmental measure.

### Clause 5

The duty on other public authorities is not only narrower, but also more complex, applying only to plans and programmes falling within the Environmental Assessment regulations (plans and programmes in particular fields and which 'sets the framework' for an EIA project).

It is not clear what, specifically, the draft legislation is intending to exclude here. Far simpler and potentially stronger would be to apply the same policy obligation as in clause 3 (including 'special regard' rather than regard).

### Clause 7

As above, the statement should be based on open public consultation, consistently with the UK's obligations under the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. The same applies to other procedures set out in the Bill.

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**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)**

**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)**

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

**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?**

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

As above.

The Bill fails to embed rights for citizens (including, but not limited to, businesses and environmental NGOs) to be informed and consulted about measures taken under the Act. Instead, consultation is either absent, or subject to the discretion of ministers or others. This is an unfortunate carry-over from the Westminster Environment Act, which took a weak approach to consultation (discussed <https://onlinelibrary.wiley.com/doi/10.1111/1468-2230.12789>).

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