

## **EPGBTWB 28 - Tystiolaeth gan | Evidence from: Climate Cymru**

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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?**

We welcome the ongoing development of the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill and agree with its general principles. We believe that a robust Environmental Governance Bill is essential for Wales to secure a nature-positive future.

To ensure this Bill truly delivers ambitious targets and ensures accountability, we advocate for the following key provisions:

#### 1. Expedited & Legally Binding Target Setting:

- o Embed Deadline in Bill: The Nature Positive Bill must include a statutory deadline, no later than 12 months post-election, for the Welsh Government to establish specific, measurable, and legally binding nature recovery targets.
- o Immediate Preparatory Work: The Welsh Government should commence secondary work on key target areas (e.g., water pollution) immediately upon the Bill's passage, pre-empting the 12-month target-setting period.
- o Clarity on Headline Targets: Set clear headline and "north star" targets to guide all efforts, with detailed secondary targets developed within 18 months from the Bill's primary passage.

#### 2. Cross-Government Duty to Deliver:

- o Mandate Active Delivery: All relevant Welsh Government departments and public bodies must have a statutory duty not merely to "have due regard" but to actively "deliver" or "achieve" these nature recovery targets where their functions impact nature.

These measures will ensure transparency, accountability, and legally binding action for nature recovery, driven by clear targets, independent oversight, and empowered citizen participation, which are all vital for Wales' environmental future.

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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)**

The Environment Bill's Part 1, particularly Clause 3, requires significant strengthening regarding the scope of environmental principles. Unlike broader UK legislation, the Bill's duty applies only to policies "that has, or could have, any effect on the environment," potentially allowing future Ministers to exclude relevant policies.

This narrow framing undermines the crucial integration principle, which demands environmental considerations across all policy fields, not just overtly environmental ones. We propose amending the Bill to mandate that the duty to integrate environmental protections applies to all policymaking. Furthermore, clarification is needed on why public authorities face a weaker "have regard" duty compared to the "special regard" required of Welsh Ministers and NRW.

While welcoming the environmental objective and the principles statement, we have concerns regarding their effectiveness. Including the broad Well-being of Future Generations goals in the environmental objective risks diluting its primary focus on achieving high-level environmental protection and improvement. Additionally, the Bill's vague timetable for publishing and reviewing the environmental principles statement is insufficient. We urge Welsh Ministers to confirm a swift consultation and publication schedule for the first statement and commit to regular reviews, ideally once per Senedd term, to ensure the principles remain current and effectively guide policy.

## **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)**

For Part 2 of the Bill, we advocate for a significantly strengthened Office of Environmental Governance Wales (OEGW) to ensure robust accountability. This requires all nature recovery targets to be legally binding, enabling court action for

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non-delivery.

§ The OEGW must receive ring-fenced, sufficient funding to guarantee its independence and effectiveness.

§ Its remit should be broad and meaningful, extending powers to monitor, investigate, and sanction all public authorities from national to local levels.

§ Crucially, the Bill must establish a clear, accessible, and well-resourced public complaint mechanism, upholding Aarhus Convention principles, and introduce a robust "Polluter Pays" policy with financial sanctions, including the forfeiture of public monies for environmental breaches.

§ The Bill critically lacks robust legal safeguards to ensure the Office of Environmental Governance Wales's long-term independence; the current administration's welcome assurances do not confer enduring legal certainty.

§ We endorse Wales Environment Link's view that the Bill must be strengthened to empower citizens and the OEGW. This means amending the Bill to grant individuals the right to make representations to the OEGW regarding environmental law breaches, with a clear process outlined.

Furthermore, the OEGW requires an explicit power to intervene in legal proceedings, mirroring other UK bodies. Finally, greater clarity is essential regarding the process for seeking High Court orders under Clause 19.

#### **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)**

Part 3 of the Bill introduces a new framework for legally binding biodiversity targets, a welcome step that amends Section 6 of the Environment (Wales) Act 2016. While Ministers must set and meet at least one target in four priority areas and report on progress, we believe this framework lacks the necessary ambition and clarity to genuinely reverse biodiversity loss.

§ To secure nature's recovery, the Senedd must mandate a near-term species abundance target to reverse decline by 2035, mirroring UK precedent and providing urgent direction.

§ The Bill also needs to require both legally binding short-term (interim) and long-term targets across all priority areas, ensuring continuous action and accountability over time.

§ Crucially, targets must be set within 12 months of Royal Assent, not 36, to enable meaningful progress by 2030.

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§ Finally, the Bill must explicitly ensure the suite of targets collectively contributes significantly to halting and reversing biodiversity decline, encompassing all vital facets of nature's recovery. Without these amendments, Wales risks failing to deliver the urgent, transformative change nature desperately needs.

## **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)**

§ Part 4 (General provisions) of the Environmental Governance Bill, encompassing sections 39 to 45 and Schedule 4, is critical as it lays the foundational definitions and overarching powers that will determine the Bill's ultimate workability and effectiveness.

§ Our view is that this section must be meticulously crafted to ensure unambiguous clarity and robustness, preventing any potential for loopholes or ministerial discretion that could undermine the Bill's stated policy intention of strong environmental protection and nature recovery.

§ Without precise and comprehensive general provisions, the ambitious duties and targets outlined in other parts of the Bill risk being diluted, failing to deliver the long-term legal certainty and accountability essential for Wales' environmental future.

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

The Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill aims to strengthen Wales' response to climate and nature emergencies, but several potential barriers to its effective implementation have been identified by our partners, like Wales Environment Link (WEL) and other partners.

### **1. Narrow Scope of Environmental Principles Duty (Part 1, Clause 3):**

The Bill's duty to apply environmental principles only covers policy "that has, or could have, any effect on the environment." This narrower scope, compared to broader UK legislation, creates a risk that future Welsh Ministers could exclude policies from this duty, undermining the "integration principle" which calls for environmental considerations across all policy fields. Additionally, there's a perceived weaker duty ("have regard") for public authorities compared to Welsh Ministers and NRW ("special regard"). The Bill does introduce the duty to apply principles and integrate environmental protection.

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We strongly advocate for amending the Bill to apply the environmental principles duty to all policymaking, not just environmentally specific ones, and to clarify and strengthen the duty for all public authorities to ensure consistent application.

#### 2. Dilution of the Environmental Objective (Part 1, Section 1(a)):

The inclusion of a reference to achieving the broader well-being goals from the Well-being of Future Generations (Wales) Act 2015 might dilute the environmental objective's primary focus on achieving a high level of environmental protection and improvement. The Bill establishes an environmental objective aimed at high-level protection and improvement. We suggest removing or refining the reference to the broader well-being goals within the specific environmental objective to maintain its sharp focus on environmental outcomes.

#### 3. Timetable for Environmental Principles Statement (Part 1, Clause 6(5)):

The Bill allows Welsh Ministers to review the environmental principles statement "from time to time," which is seen as too vague and potentially slow. There's concern that without a clear, swift timetable, the principles won't meaningfully inform policy quickly. The Bill requires Welsh Ministers to consult on and publish the statement. We propose confirming a swift timetable for the first statement and mandating regular reviews (e.g., once per Senedd term) to ensure the guidance remains current and effective.

#### 4. Independence and Powers of the Office of Environmental Governance Wales (OEGW) (Part 2):

Concerns have been raised that the Bill lacks sufficient legal safeguards to protect the OEGW's long-term independence and financial security, unlike equivalent bodies in England and Scotland.

There are also worries about potential government influence over OEGW's board appointments, budgets, and enforcement decisions, and that its remit may not be broad enough to cover all public authorities effectively.

The Bill establishes the OEGW as an independent environmental governance body with scrutiny, advisory, complaint, and enforcement functions, including the power to issue compliance notices and take authorities to the High Court.

We call for ring-fenced, sufficient funding, explicit legal safeguards for independence (e.g., over appointments and enforcement decisions), a broader remit covering all public authorities, and a clear, accessible public complaint mechanism (Aarhus Convention compliant).

#### 5. Strength and Urgency of Biodiversity Targets (Part 3):

While the Bill introduces a framework for legally binding biodiversity targets, critics argue it lacks ambition and urgency.<sup>7</sup> Specifically, there's no explicit requirement for a near-term species abundance target (like England's 2030 halt), the timeframe for setting targets (36 months post-Royal Assent) is too long, and it's unclear if both short-term and long-term targets are mandated. Concerns exist

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that the targets may not collectively contribute significantly to overall biodiversity recovery.

## **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)**

The Environment Governance Bill grants Welsh Ministers extensive powers for subordinate legislation. However, concerns persist that these risks diluting the Bill's ambition and accountability, particularly regarding biodiversity targets and environmental principles. By leaving too much detail to secondary legislation, the primary Bill lacks the necessary ambition and legal certainty "on the face of the Bill." This is particularly highlighted for biodiversity targets, where the specific targets themselves are not in the Bill, leading to fears of delayed or weaker targets. Crucial details are left to future regulations, potentially weakening oversight and delaying urgent action. The appropriateness of these powers' hinges on robust amendments to the primary Bill, ensuring clear, legally binding commitments and a truly empowered, independent oversight body to prevent the erosion of environmental protections.

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

The Environment Governance Bill, while a crucial step, faces potential unintended consequences that could hinder its effectiveness. There's a risk of "greenwashing", where the broad scope of principles or the flexibility of subordinate legislation allows for superficial compliance rather than genuine environmental improvement.

If the Office of Environmental Governance Wales (OEGW) lacks true independence and robust enforcement powers, it could become a symbolic body, leading to public disillusionment and a continued lack of accountability for environmental breaches.

An overly narrow definition of "environmental effect" in policy could inadvertently exclude crucial areas from the principles' application, creating blind spots where environmental harm could still occur.

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## **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 Welsh Government's financial assessment in the Explanatory Memorandum for the Environment Governance Bill outlines costs for the OEGW, principles, and targets.

However, we have concerns regarding the adequacy and ring-fencing of OEGW funding to ensure its independence and effectiveness.

There are also significant questions about whether the long-term investment needed for ambitious nature recovery is fully accounted for. Without robust and realistic financial provisions, the Bill's transformative potential risks being undermined by under-resourcing.

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

Beyond the points already raised, additional concerns include its clarity on transboundary environmental issues, particularly how it will facilitate effective collaboration with England on shared ecosystems, like river catchments and marine areas.

While a public complaint mechanism is welcome, the Bill could be strengthened by explicitly detailing broader public participation in environmental decision-making, aligning more fully with all pillars of the Aarhus Convention.

We propose an Environmental Justice Access Fund (EJAF) for Wales

To ensure everyone in Wales can challenge environmental harm, we propose an Environmental Justice Access Fund (EJAF) within the new Office for Environmental Governance Wales.

This fund would remove financial barriers, allowing individuals and communities to:

Access legal advice

Fund expert reports

Cover administrative and court fees

The EJAF would empower citizens to hold polluters accountable, deter

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environmental damage, and strengthen Wales's commitment to environmental justice under the Aarhus Convention. It makes taking action against polluters truly within reach for all.

Our concern revolves around the long-term legal security of the Bill's provisions. Robust legislative infrastructure must be embedded to safeguard this critical work against potential future political reversals or attempts to renege on its foundational principles.

We must ensure that the Bill is sufficiently fortified to withstand any such attacks and prevent the watering down of its environmental protections, thereby empowering our partners and the public to uphold its integrity for generations to come.

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