

EPGBTWB 32 - Tystiolaeth gan | Evidence from: Interim Environmental Protection Assessor for Wales

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?

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)**

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)**

Independence of the OEGW

The Welsh Government has clearly stated its view that the OEGW will be independent. The IEPAW welcomes this commitment but is not confident that future governments will necessarily hold the same views. We note that the legislation establishing the ESS expressly states its independence from ministerial interference and we think it would strengthen the provisions in the Bill if a similar

statement were made. It would also make it clear to the public that the OEGW is working independently of government when it provides advice and guidance under clauses 12 and 13.

Sufficiency of Resources

The ability of the OEGW to effectively deliver its purpose will be dependent on it receiving sufficient resources. We accept that it is difficult to put a figure on 'sufficient'. However, we think that the OEGW should be required to include in its annual report an assessment of whether the resources allocated to it in the relevant financial year were sufficient to enable it to perform its functions.

Submissions by Members of the Public

One of the strategic objectives of the IEPAW is to provide members of the public with an independent mechanism to raise submissions about the functioning of environmental law in Wales. Since its establishment 40 submissions have been made. We commented in our Lessons Learned Report on how invaluable engagement with stakeholders and the public has been to our work. It has set a framework for the way of working for an environmental governance body that is unique to Wales. We note that Schedule 2(2) of the Bill requires the OEGW to set out in its strategy how it intends to enable people to make representations but we don't think this part of the work should be hidden away in Schedule. We think it would be helpful to state on the face of the Bill that the OEGW has power to accept submissions on the functioning of environmental law from members of the public. This could be done by the addition of a subclause to clause 13 of the Bill.

Review of Compliance Notices

We have serious reservations about the provisions for the establishment of a review committee. The Bill provides for an escalatory enforcement provision which allows plenty of opportunity for interactions between the OEGW and a public body under investigation with a view to resolving issues. The compliance notice is the penultimate stage of that process followed by a referral to court if there is a failure to comply. We would expect the OEGW to thoroughly review the grounds for issuing a compliance notice using both internal expertise and, where appropriate, seeking external expert advice. It would be for the Board to make a final decision on issuing a compliance notice. We think that the establishment of mandatory review committee, especially one with external representatives would have serious negative impacts on the ability of the OEGW to hold public authorities to account. Our reasons are as follows:

- The opportunity to seek a statutory review adds further delays to the resolution of an issue. Given that the OEGW is required to set up a review committee, we think it is almost inevitable that appeals will be lodged in the hopes of avoiding being taken to court.
- The inclusion of at least 2 co-opted members selected from a list maintained and published by Welsh Ministers undermines the independence of the OEGW and amounts to interference by Welsh Ministers.
- If and when the OEGW reviews its grounds for issuing a compliance notice, it will wish to seek advice from the most appropriate suitably qualified person or persons rather than have 2 co-opted members that might not have the relevant knowledge.
- The role of the review committee to confirm, withdraw or vary a compliance notice amounts to a delegation of the OEGW's power to a body with external members.
- Any decision of the review committee will only come at the end of a long escalation process. It would completely undermine the authority of the OEGW if the review committee reversed the OEGW's approach.
- The establishment of the review committee seems to be an attempt to set up a pseudo-judicial body with powers to interfere with the OEGW's decision-making. This is a role for the Court.

Judicial Review

Both OEP and ESS have express powers to apply for judicial review and to intervene in proceedings. We think it is essential for the OEGW to have similar powers. We are not convinced that reference to the supplementary powers in Part 9 of Schedule 1 for the OEGW to 'do anything it considers appropriate etc.' will provide the necessary powers. The OEGW will have to convince the court that it has these powers. Including them on the face of the makes it clear that it does – which is presumably why it was decided to state the powers on the face of the legislation establishing OEP and ESS.

We understand that, because judicial matters are not devolved, there were concerns that it would be necessary to work with the Ministry of Justice to expressly provide for these powers in Wales and that would delay the Bill and possibly prevent it being laid this session. If this is the case, we think it important that work to make the necessary changes is undertaken as soon as possible. If this

cannot be concluded in time for the Bill to be amended, there should be a commitment to amend the Act as soon as practicable.

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?