

**EPGBTWB 37 - Tystiolaeth gan: Gwasanaeth Tân ac Achub De Cymru |
Evidence from: South Wales Fire and Rescue Service**

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?

SWFRS act as first responders to climate change exacerbated incidents such as wildfires and floods, with increasing frequency and have a direct interest in policies that build environmental resilience in both our primary statutory duties and our corporate work. Clarity on biodiversity targets will allow us to plan more effectively within our climate and nature corporate plans.

SWFRS supports the Bill's principles and agrees legislation is needed to address the climate and nature emergencies more generally, and deliver the policy's intentions. The general principles align with environmental management best practice and make a great deal of sense in non-emergency contexts but not in relation to incident response. Operational experts from the Welsh Fire Services should be consulted in the development of OEGW processes.

The principles need further clarification within an emergency response context and should include some level of exemptions for emergency responders where environmental damage is an unavoidable consequence of fulfilling their primary statutory duty.

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 principles in Part 1 are unworkable for emergency responders without further clarification. The precautionary and prevention principles make sense in non-emergency functions but when a FRS has been mobilised, prevention has already failed, and life-saving action can not be delayed based on the precautionary principle. The "rectified at source" principle aligns well with existing FRS best practice of containing pollution on-site.

There is particular concern around adherence with the polluter pays principle in an emergency response context. Depending on the stringency of enforcements, there may be potential risks around decision paralysis or delay on the incident ground which could jeopardise public safety and/ or have financial implications for the public purse. Applying this principle also transfers liability from the party originally responsible for the incident (if there is one) to the public body. It is worth noting that often during incident response, where one type of unavoidable environmental damage is being instigated, it is limiting another kind of environmental damage often with more significant consequence. Any environmental damage caused by a FRS in this context is a direct result of fulfilling its statutory duty so it is not a principle that seems appropriate or workable.

The legislation must include an exemption to cover incident response scenarios and avoid fear of sanctions affecting decision-making. Emergency responders can apply the other principles in other ways around increasing training around environmental protection during incident response or with more defined clean up responsibilities.

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)**

SWFRS are supportive of the establishment of the OEGW and will be ready to co-operate with reasonable assistance, and hope that it will bring further clarity around emergency service responsibility and exemptions in post-Brexit environmental law however the below concerns arise:

- The power to serve compliance notice for perceived failures without a clear threshold for what constitutes a "serious" failure is a concern alongside the lack of special considerations.

-The absence of exemptions subjecting good-faith operational decisions to investigation and sanction, which could in turn undermine operational effectiveness and have financial consequences in the form of fines to be paid and internal resources to co-operate with investigations.

-The OEGW is not currently required to have expertise in emergency response which may lead to a failure to comprehend the high-pressure context of operational decisions, leading to disproportionate enforcement actions based on a misunderstanding of the unavoidable trade-offs involved with fulfilment of primary statutory duty.

-The Improvement Reports and Plans noted in this section seem like more workable tools for Fire Services emergency response operations.

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)**

SWFRS supports the ambition to set biodiversity targets and welcomes more clarity on public body responsibility to feed into our Biodiversity Action Plan. We directly protect Wales's biodiversity through responding to incidents that pose threats to sensitive habitats. Internally, we have green spaces and biodiversity enhancing infrastructure across the vast majority of our estate. However, the

new duty in Section 34 for public authorities to "take action to contribute to meeting the target" is a significant, unfunded mandate which lacks clarity currently.

Meaningful action beyond our existing response function and greening activities within the current estate will require new investment and without a clear "new burdens" funding commitment from the Welsh Government, this duty has the potential to divert funds from other activity or remain unfunded and conceptual.

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)**

The provisions for the Act's phased entry into force appear logical, public bodies will need ample lead-in time to prepare staff for compliance with OEGW regs and processes. Overall support for this Part is contingent on the FRS being a statutory consultee in the development of all subordinate legislation affecting FRS operations.

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

1 - operational conflict between the primary duty to preserve life and new environmental duties creating legal uncertainty for Commanders, risking a dangerous "decision paralysis" on the incident ground and financial implications of increased fines and investigations.

2- mandates without corresponding funding commitments including comprehensive new training for all operational staff, a new administrative workload for OEGW compliance, or investment in specialist equipment and planning for an enhanced biodiversity role. These costs are substantial and cannot be absorbed by already stretched budgets.

3 - a lack of specialist guidance for the emergency response sector and no mandated operational expertise within the OEGW itself. This risks creating a governance system disconnected from the operational realities of the bodies it oversees.

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 bill should be amended to make the three Welsh Fire and Rescue Authorities statutory consultees for any subordinate legislation that could impact our functions, duties, resources, or operational procedures, including regulations on biodiversity targets, the environmental principles statement, and the OEGW's strategy. This will ensure regulations are practical and effective.

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

1. A decision paralysis on the incident ground. The threat of retrospective investigation by the OEGW could cause hesitation in making time-critical and lifesaving decisions. This delay could allow an incident to escalate, ultimately causing greater harm to both people and the environment.

2. If the mandates of the bill remain unfunded for new equipment, training, and administration this will force budget cuts elsewhere perhaps affecting core functions or rendering targets unachievable.

3. The Bill could create an adversarial and ineffective governance system. Currently the Welsh services enjoy a collaborative partnership with the environment agencies which is required for the problem-solving approach needed for effective environmental protection at incidents whereas the OEGW could develop into more a regulator than a partner and hinder some of this collaborative work.

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 is inadequate and fails to quantify the significant new costs the Bill imposes on Fire and Rescue Services.

There will be a significant new administrative burden for OEGW compliance, requiring dedicated staff time to respond to information notices, participate in investigations, and report on biodiversity targets.

Fulfilling the new biodiversity duty will necessitate investment in specialist equipment and resources for proactive planning

We request a full "new burdens" assessment and a dedicated, ring-fenced funding stream to cover all new costs.

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

An iteration of providing legal protection for the FRS from OEGW investigation or enforcement when a good-faith operational decision is made in a time-critical emergency, where there may be unavoidable environmental consequences. The Explanatory Memorandum offering a "special regard" duty is insufficient. Incident Commanders need legal certainty so that they can act decisively without fear of retrospective sanction.

The OEGW's strategy and operational protocols must be co-designed with emergency services to ensure they are proportionate and informed by operational reality and any guidance must align with best practice, such as the NFCC's National Operational Guidance on Environmental Protection, to ensure a consistent and proven approach.