

EPGBTWB 41 - Tystiolaeth gan | Evidence from: Justin Groves (MCIEEM)

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?

Its needed, and positive, fundamentally in my view because Section 6 Duties are not legally binding with respect the Environment (Wales) Act 2016. Equally, because the seriousness of the Nature Emergency is just not getting through to those individuals in local government or councils to act on environmental matters, as it genuinely could be too late.

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)**

☐ It concerns me that it is not explicitly clear how there are links between local authorities under Section 5 and how they are expected to help with the Welsh Governments Duties under Section 3. It should specifically reference Local Authorities "will comply" with Welsh Government Duties.

☐ Use of "have regards" is not clear enough "must comply" would ensure local authorities comply. "Have regard" is too flexible to force local authorities to comply, when other excuses for delivering on biodiversity result in ignorance to the serious problems faced for humans and wildlife. This applies to section 5 (1), 5 (3) etc.

☐ Under Section 6, surely it should cover objectives? Neither would I say its clear under Part 1 of this bill who will write the objectives. Yet there are many

statements in Part 1 about complying with objectives. I do not believe it is clear “who” is developing the environmental principals or objectives via this Act.

Under Section 7 (1) surely it could include those who the OEGW consider appropriate?

Am I correct that this Bill is ordered; principles, objectives and then targets as part of the delivery of this Act?

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)**

It concerns me what under Section 11 (1) OEWG will actually look at. Why not make the local authority (or other relevant organisations) BRED Reports and Targets legally binding (Targets could then cover compliance with legislation across all departments etc, with SMART targets written for all aspects with a timeframe to be achieved by said organisation). But unless you are auditing a local authority for instance by talking to all departments about compliance with law/best practice, I struggle to see how the OEWG will prove compliance or not either way. Also that audit would need to be done with County Ecologists/Environmental departments without meddling in what is handed over by senior managers. Otherwise, the only time OEWG might otherwise know there was a problem is if the Police told OEWG for instance that a bat roost has been disturbed, destroyed etc and were concerned there was not oversight in place to prevent that.

On the OEWG enforcing environmental law, how has this been discussed with the Police? The laws are currently a mess with respect who enforces what; this can include planning enforcement, NRW or the Police. Adding the OEWG, unless enforcement powers are taken from those mentioned, just adds an extra layer of confusion.

Overall, I am concerned OEWG will become a quango that will get rightly criticised if it’s not clear what they will actually audit for compliance.

I have also commented previously that another “quango” is not needed and this should have been a higher level within NRW to undertake this work. NRW

needs funding and I fear many of its teams are being watered down and prevented from working in a more holistic manner for the environment.

□ The compliance procedure sounds very much like planning enforcement, in planning enforcement, there are far too many “get out clauses” with respect the environment. This cannot be allowed to happen with the OEWG. I see little on fines, fines which could be ploughed back into environmental protection or funds available.

□ 24 (3) will result in failure, this cannot be allowed, the OEWG will not receive truthful information, I am aware of how I have raised serious concerns myself within a council about non-compliance with the Section 6 duty of “maintain” and “enhance” biodiversity, where this in effect swept under the carpet, this includes actions on council land or where planning applications did not actually meet Net Benefits for Biodiversity. It will almost have to be a legally binding duty to hand over all documents. 24 (3) needs to be rethought and written as “will” be required, all information should be considered as stated and handed over.

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)**

□ Section 33 is not explicit enough use of “may” with respect targets gives far to much scope for future devolved government or the incumbent to not act, by deferring action or saying something else is more important (I agree there may be parallel priorities) but we have to act for all our futures more so future generations, who will “pay” for change that did not happen when it was required.

□ Regulation is also likely to be very slow to deliver those targets. Surely it would be better to include some targets in the updated Environment (Wales) Act 2016 sections straight of the bat? I would start by saying the actions of the “Biodiversity and Resilience of Ecosystems Duty (BRED) Report” is legally binding, with the OEGW reviewing and agreeing the targets, and reviewing and investigating the outcomes as part of OEWG functions. The OEGW can then investigate non compliance with such targets, WHICH would be very helpful. In essence at the moment the BRED Reports are not legally binding and failing to achieve serious action, change or investment by the organisation that has written the documents. Welsh Government investment in the grant schemes for the environment is very poor with respect other aspects of the economy.

□ Given Section 33 (6) (b-l) I think the target setting will be very difficult, as ministers, being minsters (imagine “Yes Minister”) are unlikely to set a target that overly ambitious just in case it “doesn’t go well” and it “has to be explained” at the Senedd. Thought needs to be given on how this is delivered, it might be better delivered to the Senedd by OEGW somewhat being “neutral”.

□ Under Section 33 (6) (f) its needs to be clearer about local authorities meeting environment targets (or objectives) that apply to them, not necessarily designating a specific authority to do so (although I expect that may also be useful). I would also link this back to legally binding targets in local authority BRED reports. This could be added under the proposed 36 (1) by adding a c) Comply with targets set under the relevant authorities BRED Report. So that those “local” BRED targets are met, that will together with any national ones, see change. I would also change b) where subsection (2A) applies, to contribute to meeting the target in relation to any relevant national target which applies. I am concerned about targets being linked to specific authorities when it would better to have targets that are “relevant” and local authority targets being legally binding.

□ Section 38 (2) needs more though in legislation how that might be achieved, its too wishy washy as to achieving an outcome. This could be greatly expanded upon.

□ Whilst is seems a little trivial we are likely to have two pieces of legislation that will be somewhat abbreviated to the same “Environment (Wales) Act”, now 2016 and a 2026.

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)

I would seriously consider Section 44 coming in to force sooner.

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

The barriers are certainly on the language of the Bill such as “have regard” should be “must comply” with etc.

Equally, I am concerned by target setting and reporting at the Senedd somewhat “frightening off” ambitious targets as ministers may have to report bad outcomes.

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?

Unless the language is improved i.e. to “must comply”, I feel there is still too much scope to indicate X does not apply to an organisation, thus avoid action on pressing environmental emergencies.

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 investment should have been in NRW, not a new body the OEWG.

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

Whilst it discusses carbon sequestration trees are not mentioned. Equally, it needs to be stronger on pre-emptive clearance of a site for development purposes as a big no, reflecting on planning policy.
