

EPGBTWB 17 - Evidence from: Welsh Local Government Association

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?

The WLGA generally supports the need for the new legislation for the purpose of filling the vacuum post Brexit, especially around the need to formalise accountability.

However, we would like to note that new legislation to meet the aims of Parts 1 and 3 may not have been necessary from a council perspective. Instead, Welsh Ministers could have opted to build on the good working relationship with local government and work more closely with us in these areas.

It is the view of local government that new environmental legislation may not be the best way to drive improvement in environmental protection. This area has suffered disproportionately from real term cuts in funding over recent years. We need to ensure legislation does not place new financial burdens on councils who are already having to make significant cuts to services. The Partnership Agreement recognises that any new legislative requirements need to be properly funded (or else it must be identified clearly what areas of current delivery can be stopped in order to free up resources - in terms of both time and expertise).

We understand that most environmental infringements are caused by individuals or certain sectors. An increase in financial penalties or civil prosecutions might act as deterrents rather than seeking to use new legislation placing duties on councils and other public bodies. Such bodies are usually compliant but often limited in their ability to 'do more' due to resource constraints.

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)

WLGA understands the need, post-Brexit to incorporate the environmental objective and principles into national (UK) and Welsh policy and legislation. It is important to note, though, that, the application of the objective and these principles is already common practice in Wales and the UK, as there was compliance previously with the 4 core EU Principles (which are integral to the broader framework of EU environmental law).

We support the emphasis of Part 1 of the legislation on Welsh Ministers and Natural Resources Wales, and a more proportional approach for other public bodies. To ensure consistency of application, there will be a need for Welsh Ministers to issue guidance to other public bodies at the same time as the Bill is enacted on how Part 1 should be considered as part of environmental assessment.

More specifically, the wording around environment objective 1 (1) 'the attainment of a high level of environmental protection and an improvement of the environment' is vague and may be challenging to measure. Success will also depend on how this legislation is integrated with other legislation which has a key role in supporting this objective, for example Environment (Wales) Act, Town & Country Planning Act, etc. It raises the question of whether (if it has not already been undertaken) this new legislation will require WG to review all existing legislation for compliance.

The wording in Part 1 (5) (a) have regard to the environmental principles when carrying out functions is again subjective and open to different interpretations which may lead to disagreement of interpretation between councils, other public bodies and the OEGW. It will be paramount for Ministers in their statement as set out in 3 (a) to clearly define what to have regard means and how it can be evidenced.

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)**

WLGAs understand the need to create the Office of Environmental Governance in Wales to ensure consistency across the UK and replace the EU Commission role in monitoring environmental compliance in Wales.

We support the general principles of Part 2, especially the advisory nature of the Body's role and escalating steps before reaching enforcement. However, considering the suggested level of staffing as set out in Schedule 1 and the breadth of work of the OEGW, we are concerned about its ability to deliver what is required of the Body

Perhaps reflecting on the 10-years anniversary of the Well-Being of Future Generations Act and the major challenges of the Commissioner's Office to drive the changes necessary to embed the Act, the OEGW may face an equivalent challenge as the proposed level of staffing is similar. This in turn may lead to pressure over time for additional funding to meet running costs, if more staff or external support is required to ensure the body is able to fulfil its duty? However, councils' concern is that if this were to reduce the funding available for front line service delivery it is likely have the opposite effect to that intended. Ensuring that the new body operates in a streamlined way, for example sharing back-office functions with other bodies where appropriate, should therefore be a primary objective.

Under 23 (2) (making reasonable efforts to resolve issues or to agree on remedial action) the steps to be followed, and how this would be monitored, are unclear. The draft legislation does not currently seem to cover this element.

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)**

The concept of setting biodiversity targets in legislation raises a number of issues. While WLGA and councils fully endorse the principles of environmental protection and nature recovery, it is very difficult to measure progress against targets relating to nature and biodiversity. Results may take years before being measurable and there will many other intervening factors over that period beyond the control of councils (and other bodies). For example, good work in habitat restoration could be undone by industrial pollution or coastal flooding of inland waterways.

There are also several existing targets through other legislation, and these do not seem to have worked in reversing biodiversity decline over the years. It is therefore unclear how these new targets and outcomes would be any different. It is also likely to create confusion if there is a lack of integration of various nature and biodiversity related targets. For example, how would the existing targets and indicators relate to the WFG Act and Sustainable Drainage guidance link to these new ones?

Based on the current wording of the legislation it is challenging to identify and foresee how workable the provisions will be and if they will deliver the stated policy intention. WG will therefore need to work in partnership with local government when setting any targets where councils will be required to take action to contribute to meeting them.

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)**

No specific comments for this section.

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

Some of the most common barriers to implementation, especially when duties are placed on public bodies and councils, are:

- a lack of clarity leading to differing interpretation and application of the provisions
- lack of supporting tools to enable public bodies and councils to consistently implement and interpret the legislation (these are usually created years after implementation)
- inaccurate financial impact assessment of the legislation, and no additional funding given to public bodies to support any new duty.

Another aspect which is likely to impact on the implementation of the provisions is the ability of the Bill or WG to 'pass on' the delivery of the policy intention to others. As an example, it has been extremely challenging for Local Planning Authorities to impose conditions relating to biodiversity enhancement in planning permissions because they do not have legal powers to do so. Indeed, some have been challenged on appeal for acting outside their powers and being unreasonable.

As it stands then, we anticipate that Part 3 biodiversity targets will require councils to rely on the activity of others, for example developers. We do not believe the legislation in this format will give the powers to councils to require this. The impact assessment of this legislation does not appear to have sufficiently considered the ramifications for, and changes required to, other legislation.

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)

No specific comments. It is anticipated that Welsh Government will follow established procedures for Welsh Ministers when making subordinate legislation, including appropriate consultation.

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

There will likely be an increased burden for councils linked with enforcement for breaches as they embed targets into local policies. We know that enforcement and successful prosecution cases are already few and far between and this is often linked with a lack of capacity for councils and NRW to pro-actively enforce but also the success rate in court.

There could be a range of other unintended consequences which we are not currently able to identify.

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?

No specific comments on WG's assessment of the financial implications of the Bill although it is noted that the options considered highlight "no additional costs to local authorities". There is no rationale to explain how this was concluded, and it is important to stress that similar financial assessments have in the past proven to be incorrect. For example, the financial impact assessment for the Sustainable Drainage legislation concluded that there would not be any additional costs to local authorities. Since 2019 however, local authorities have delivered the function at a loss with no financial support to increase resources.

WLGA therefore reserves its view on the assessment of the financial implications until more detail is available.

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

No specific comments for this section.
