

Environment (Principles, Governance and Biodiversity Targets) Bill
Supplementary written evidence from Green Alliance

Green Alliance is grateful for the opportunity to give evidence in person to the Committee on 17 July, alongside our colleagues from RSPB Cymru and WWF Cymru. This submission provides supplementary evidence on three matters which arose during that oral evidence session.

1. Review processes operated by other enforcement bodies

While we support the principle that public authorities should be able to ask the Office of Environmental Governance Wales (OEGW) to review a compliance notice, as we explained in our written and oral evidence, we are concerned about the impact of the provisions in Paragraph 10 of Schedule 1 of the bill on the ‘vested authority’ and independence of the OEGW.

Paragraph 10(3) would undermine the governance and the independence of the OEGW. This is because it would effectively outsource important decisions on compliance with environmental law on which the OEGW will have legal authority vested in it. Furthermore, the panel would comprise individuals appointed from a list maintained by the Welsh Government, which could have a real and perceived impact on the independence of the OEGW, especially in relation to compliance notices relating to the Welsh Government. Our preference would be for reviews of compliance notices to be conducted solely by persons employed by the OEGW, subject to certain safeguards.

We note that the other environmental governance bodies in the UK are not subject to a similar review provision. While [section 36](#) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 provides for an appeal process for public authorities on compliance notices issued by Environmental Standards Scotland, this is constituted differently because of the different nature of the respective systems. Appeals are determined by a sheriff and not individuals appointed by Scottish Ministers.

In the UK Environment Act 2021, the Office for Environmental Protection (OEP) has an escalating enforcement process culminating in environmental review. There is no provision for a review or appeal process of information or decision notices (the broad equivalent to compliance notices), although section 36(4) of the Act allows a public authority to set out its response to the failure to comply with environmental law described in the decision notice.

We have surveyed the review and appeal processes of other bodies which issue compliance notices or make regulatory decisions. In these examples, a review is conducted within the relevant body and not ‘delegated’ to persons who are not employed by that body in an executive or non-executive capacity. This is an important principle which we think should apply to the OEGW.

We agree that the OEGW review process should be fair and impartial. This could be achieved through a requirement that the persons appointed by the OEGW to undertake a review should not have been involved in the decision-making process on the compliance notice, which is a standard requirement of other review processes. Paragraph 10(2) of Schedule 1 could be amended to specify this.

Body	Process
Civil Aviation Authority (CAA)	The CAA operates an internal review process for decisions. Reviews are handled by someone independent of the original decision who has had no previous involvement in the decision-making process relating to the case.

	Following an internal review, you can access the review process established by Regulation 6 of the Civil Aviation Authority Regulations 1991. A regulation 6 review panel comprises CAA Non-Executive Board Members who have had no previous involvement in the case and makes the regulatory decision on behalf of the CAA.
Gambling Commission	<p>If you disagree with the decision of the Executive Team, you can ask for a review within 28 days of the date the decision was communicated to you.</p> <p>Appeals of decisions at stage one will be resubmitted to a member of the Executive Team for review.</p> <p>Appeals at stage two of the process will be conducted by a panel of two Commissioners who have had no previous involvement with the application.</p>
Scottish Public Services Ombudsman	The Ombudsman operates a review process , which is conducted within the body and not outsourced to third parties.
Welsh Public Services Ombudsman	The Ombudsman operates a review process , in which you can ask for a decision on a complaint to be reviewed. This process is managed by a Lead Review Officer who is not involved in the day-to-day handling of cases to provide impartiality and a fresh pair of eyes.
Welsh Language commissioner	<p>The Commissioner operates a process to appeal compliance notices if these are considered to be unreasonable or disproportionate.</p> <p>The Commissioner can nullify, replace or vary the compliance notice.</p> <p>There is a right to appeal to the Welsh Language Tribunal.</p>

2. The meaning of “special regard”

We welcome the duties in the bill which will require Welsh Ministers and Natural Resources Wales to have “special regard” to environmental principles in their policy making.

“Special regard” duties have been included in legislation concerning heritage matters, for example in [Section 96](#) of the Historic Environment (Wales) Act 2023, [Section 66](#) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and [Section 102](#) of the Levelling up and Regeneration Act 2023.

The Court of Appeal clarified that “have special regard to” means that decision makers must apply “considerable importance and weight” to the relevant matter (reference – the Barnwell Manor wind farm [case](#)).

“Special regard” is, however, a less familiar construct in environmental law. The Welsh Government should clarify the intended meaning of “special regard” in the Environmental Principles and Integration Statement and in an accompanying written ministerial statement.

3. Public authority accountability gap

Section 30 of the bill defines a “public authority” as a devolved Welsh authority (within the meaning given by [section 157A](#) of the Government of Wales Act 2006) or listed in paragraph 9(2) or (6) of [Schedule 7B](#) to that Act.

Public authorities are within the scope of the OEGW if their functions are exercisable only in relation to Wales and are wholly or mainly functions that do not relate to reserved matters.

A definitive list of public authorities that will be subject to oversight by the OEGW should be published to aid transparency and public understanding.

We have provided examples below of public authorities likely to exercise functions on reserved matters in Wales, which could have significant implications for Welsh environmental law.

Our understanding is that these authorities will be outside the jurisdiction of the OEGW but would fall within the remit of the OEP, although clarity on this would be welcome given the number of authorities and the public interest in the functions they will be undertaking.

The OEGW should set out in its strategy how it intends to work with the OEP on matters of non-compliance with environmental law by a reserved public authority discharging reserved functions.

Reserved public authorities that undertake devolved public functions in Wales – for example, The Crown Estate – would appear to fall outside the jurisdiction of both the OEGW and the OEP.

The Welsh Government should clarify which public authorities would be outside the remit of both the OEGW and OEP and set out how it expects this accountability gap to be addressed.

Examples of public authorities likely to exercise functions on reserved matters in Wales

Transport-sector

- [UK Civil Aviation Authority](#): regulates aviation safety, airspace and the environmental impact of aviation on local communities.
- [Maritime & Coastguard Agency](#): enforces standards for ship safety, security, pollution prevention and seafarer health, safety and welfare. It promotes maritime standards, encourages economic growth and minimises the maritime sector’s environmental impact.
- [Network Rail](#): owns, operates, maintains and develops the railway infrastructure in Wales.

Energy-sector

- [Department for Energy Security & Net Zero](#): retains UK-wide control over energy consents, including Contracts for Difference allocations, and other market regulations.
- [Ofgem](#): regulates the electricity and gas markets across Great Britain, including enabling infrastructure for net zero.
- [National Electricity System Operator](#): ensures the day-to-day operation of the electricity grid in Great Britain, including strategic planning of transmission infrastructure.
- [North Sea Transition Authority](#): regulates licensing, exploration and production of oil and gas, offshore hydrogen and carbon storage industries for the UK Continental Shelf.
- [Office for Nuclear Regulation](#): oversees GB nuclear facilities (eg decommissioning of Wylfa – alongside the Nuclear Decommissioning Authority), regulating nuclear safety and security.