Cyswllt Amgylchedd Cymru | Wales Environment Link

WEL Response: Environmental principles, governance and biodiversity targets: White Paper

30th April 2024

Summary

Wales Environment Link members are pleased the Welsh Government is consulting on this White Paper; Wales is several years overdue filling in the gap in environmental governance that arose when the UK left the EU, and it is almost three years since the Senedd declared a nature emergency and the Welsh Government committed to this legislation. Therefore, it is vital that work continues at pace following the end of the consultation and the Bill is laid as early as possible to ensure it is passed before the end of the Sixth Term in April 2026.

Members of WEL were involved with the Stakeholder Task Group that helped to inform the proposals on environmental principles and governance, and we have championed the introduction of statutory biodiversity targets for Wales. We are broadly supportive of all aspects of the White Paper's proposals and are pleased to see that it broadly reflects the work of the Stakeholder Task Group and our advocacy over recent years.

Part A – Environmental Principles

EP1: To what extent do you agree or disagree with the proposals relating to the preparation of guidance that will explain how the environmental principles are intended to be interpreted?

We strongly agree. We support the proposal that the Welsh Ministers will be required to publish guidance as to how the principles are intended to be interpreted and applied. The Bill must set out requirements for public consultation on the guidance.

As detailed further in our response to question EP4, we strongly support the inclusion of the five listed principles – integration, precautionary, prevention, polluter pays, and rectify at source – with an overarching objective, on the face of the Bill.

EP2: The Welsh Government proposes to place a duty on Welsh Ministers to have due regard to the environmental principles and accompanying guidance during the development of their policies and legislation. To what extent to you agree or disagree with this approach.

We welcome the proposal to place a duty on Ministers linked directly to the principles. However, we consider that to 'have due regard' is a weak formulation; a 'duty to **apply**', or to 'act in accordance with' the principles would provide a stronger form of legal accountability.

We note a recent review by the Welsh Government on the effectiveness of a duty to have due regard in advancing human rights in Wales, which noted that:

*"*While the EHRC Wales research concluded that incorporation of the CRC [Convention on the Rights of the Child] had been a positive step forward for children's rights in Wales, it also concluded that the 'due regard' approach had done little to enhance legal accountability for children's rights."

EP3: Do you have any views on whether a separate duty should be placed on Welsh public bodies (other than the Welsh Ministers) to apply the principles and accompanying guidance? If you consider the duty should apply to Welsh public bodies, please set out below which Welsh public bodies and why, as well as any views you have on how the duty should apply to those bodies.

We consider the duty to apply the principles should be placed on public authorities – based on a similar definition to that used in the UK's Environment Act 2021 (rather than based on a list in the legislation), of "A person whose functions include functions of a public nature". This should support all public policymaking and

implementation (including decision making) to be undertaken in a way that avoids harm and promotes improvement of the environment.

We would emphasise the need for guidance to be tailored to different applications, with clear examples to support public authorities. Training and assistance also need to be made available to public authorities, as well as to all Welsh Government departments, to ensure that it is a meaningful duty that has an impact on day-to-day work.

EP4: Do you have any additional comments relating to the Welsh Government's intention to embed the environmental principles and overarching objective into Welsh law that are not captured in your answers to the above questions?

We strongly support the inclusion of the five listed principles – integration, precautionary, prevention, polluter pays, and rectify at source – with an overarching objective, on the face of the Bill.

It should also be emphasised that these are not just environmental principles, but legal principles. The guidance on the principles should reflect this, to ensure they are not only brought to mind when something is an 'obvious' environmental area. The inclusion of the integration principle makes clear – and the guidance must emphasise – that the principles are not only to be considered in relation to policy that is deemed to be environmental, but across all policy and decision making.

We welcome the inclusion of an overarching objective to provide a framing for the application of the principles by all Ministers and public authorities. The objective should centre on securing a high level of environmental protection, and improvement of the natural environment.

The principles should be stated in the legislation, alongside clear definitions. The guidance should provide an explanation on how the principles should be applied with examples of good practice. It will be important to ensure that the guidance on the precautionary principle reflects the importance of taking an evidence-based approach and not waiting for environmental damage to materialise before taking protective measures, i.e. erring on the side of caution.

The precautionary principle is particularly pertinent to the marine environment, as a lack of data and monitoring means that our understanding of the marine biodiversity (and its vulnerability to pressures) is far less developed than it is for terrestrial biodiversity.

We note that there is no proposed principle committing Wales to 'non-regression', i.e. ensuring that standards do not fall below existing levels of environmental protection; we would welcome inclusion in the Bill of a non-regression principle. Although we do acknowledge that this may be difficult in terms of being part of a UK internal market and reliant on trade conditions outside of Welsh Government's control. However, the Welsh Government has committed to not regressing previously. During the Stage 3 debate in the Senedd of the Law Derived from the European Union (Wales) Bill, the then Minister Julie James stated that:

"We've been clear and consistent in our message that Brexit must not result in any dilution of the rights that currently flow from our membership of the EU or of the standards that apply across member states. This includes environmental standards."

This welcome political commitment should also be included in the legislation, which would ensure future Welsh Ministers would have to abide by it and to provide legal clarity. This would provide a strong foundation for environmental protection and would not affect the discretion of Ministers as to how the principles are applied to policy and legislation, nor that of the new governance body as to which issues are investigated and followed up.

There are two additional principles that could also be considered for inclusion:

- Progression: To make clear that non-regression provides the floor, not the ceiling, for improving the Welsh environment.
- Intergenerational Equity: Fairness and justice between present and future generations. In considering impacts on future generations, it is linked to sustainable development and provides a method for considering the longer-term impacts of decisions, as well as aligning with the Wellbeing of Future Generations Act.

Applying to Welsh Government payments for farming

A particularly pertinent example of a missed opportunity on applying the principles to Welsh Ministerial decisions is the Sustainable Farming Scheme and the Sustainable Land Management Objectives, as set in the Agriculture Bill. This is highlighted in the White Paper, but as the objectives were set and passed in the Bill before the White Paper was published, the policy was not developed in the context of the proposed legal framework of the overarching objective, principles and guidance. However, the new duty would apply to any revisions of this policy, which would provide an opportunity to consider whether Welsh Government are following the principles in practice.

The objectives have no hierarchy between them, but all must align with the principles if it's to be 'integrated' across all Welsh Government decisions. For example, if the 'polluter pays' principle is truly embedded in all Welsh Ministers' decision-making on agriculture, they would have to ensure that pollution regulation and enforcement is in place, and that public payments are contingent on those regulations being adhered to.

Aarhus Convention – ensuring the public has information, participation in decision making and access to justice

Access to environmental justice – a key pillar of the Aarhus Convention – was supported under the EU arrangements where individuals could submit complaints to the EU Commission. This principle must continue to be secured through the complaints process under the governance body. The submission of complaints and representation must be:

- Accessible and free
- A transparent process, available in English and in Welsh
- Without repercussions, where complaints are not pursued by the body
- Supported by a website, to eliminate barriers to submission
- Be available throughout the transition period to the full body

A 2023 report from RSPB, the Environmental Law Foundation and Friends of the Earth showed that access to environmental justice in the UK through Judicial Review has been significantly undermined by prohibitively expensive legal costs. A free,

accessible complaints process to the governance body is an essential element to secure a meaningful right to access to environmental justice for individuals.

We acknowledge that securing all of the rights enshrined by the Aarhus Convention falls outside the scope of the White Paper. However, in addition to securing access to environmental justice through the governance body, we would encourage Welsh Government to consider – including through a dedicated consultation – how to further secure and progress the full suite of environmental rights, including the right to a healthy environment.

Part B – Establishing an Environmental Governance Body for Wales

GB1: To what extent do you agree or disagree with the proposed purpose and objectives for the new Welsh environmental governance body?

Neither agree nor disagree; we agree in part but would like to suggest some additional elements.

Enshrining a clear purpose and primary objective for the body will be important to provide clarity on its role and to act as a safeguard for its independence. The primary purpose of the body should reflect the objective to secure a high level of environmental protection and the long-term protection and improvement of the natural environment. We welcome the principal objective of the Office for Environmental Protection (the OEP)[1], and would strongly recommend a similar approach for the Welsh governance body:

"(1) The principal objective of the OEP in exercising its functions is to contribute to—(a) environmental protection, and (b) the improvement of the natural environment."

In addition to this primary objective, as mentioned above, the body's ability to operate independently from Welsh Government should be on the face of the Bill, with the Continuity Act, schedule 1 paragraph 1 providing a helpful example.

[1] https://www.legislation.gov.uk/ukpga/2021/30/section/23/enacted

We also suggest that there should be an explicit duty, also on the face of the Bill, on Welsh Ministers to respect the body's independence akin to the Westminster Environment Act, Schedule 1, paragraph 17[2]:

"In exercising functions in respect of the OEP, the Secretary of State must have regard to the need to protect its independence."

We broadly agree with the list of objectives proposed for the body in paragraph 12, but we would add several clarifications, as set out in the table below:

Proposed Objectives	Suggested Amendments and Further Clarification
ii. Receive **complaints / representations** from the public as to alleged failures to comply with environmental law by Welsh public authorities.	ii. Receive [and investigate] complaints/ representations from the public. Based on our experience of the operation of the OEP, we consider it is valuable to refer to both complaints and representations. It should be clear that the body can undertake investigations (as per the next point) *in response* to complaints or representations received, as well as on its own initiative.
iii. Monitor Welsh Ministers and Welsh public authorities' implementation of, and compliance with, environmental law. This includes **investigating** alleged failures to comply and, where necessary, taking enforcement action.	iii. Needs to set out that body must be able to investigate on own initiative not only in response to complaints. See Environment Act 2021, s. 33(2).
v. Provide **expert advice**, as it deems necessary, to Welsh Ministers and Welsh public authorities in relation to environmental law.	v. It should be made clear that the body is empowered to provide advice to the Welsh Ministers on its own initiative, not only at their request.
vii. Exercise its functions **independently** from Welsh Government and with impartiality.	vii. Need to ensure Welsh Government and Ministers will have no power of direction over body. See Sch 1(1) of Continuity Act. We have suggested some further ways to help secure independence in the legislation throughout our response.

[2] https://www.legislation.gov.uk/ukpga/2021/30/schedule/1/paragraph/17/enacted

viii. Work constructively to complement and be compatible **with existing public bodies** established to monitor, scrutinise, advise or hold Welsh public authorities to account, including the Public Services Ombudsman for Wales.	viii. It would be worth specifying some additional bodies here – the Climate Change Committee and the Future Generations Commissioner are key ones. We would anticipate the body would seek to work with these bodies to produce Memoranda of Understanding.
ix. Where appropriate, work collaboratively on areas of shared interest in respect of the functioning and effective implementation of environmental law**, with the OEP and ESS.**	ix. See 27(4) Environment Act 2021 on relationship with OEP, and Scotland Continuity Act s. 23 (3).

GB2: To what extent do you agree or disagree with the governance body's proposed strategy and reporting requirements?

Agree. We would advocate to the body that it undertakes a public consultation on its Strategy, and that it should develop, and consult on, an Enforcement Policy. These are steps that have been taken by the OEP and ESS bodies, with helpful further consultation being done for reviewing their Strategies and Enforcement Polices.

It is essential that the body has complete discretion in the development and publication of its strategy. However, it would be beneficial to for the Bill to set out what is essential or expected for the Strategy to include. It is also important, as mentioned above, that all reporting requirements remain free of potential interference from government and the processes underpinning these retain the highest degree of independence. To ensure this, the body should:

- prepare and publish reports without having to take account of government guidance or direction.
- lay reports in the Senedd and report directly to the Senedd rather than Welsh Ministers. This could for example involve holding evidence sessions on the body's reports, strategy, priorities, appointments, resourcing and use of public funds.

- be required – like the OEP[3] - to publish a statement setting out whether it is receiving sufficient resources to fully perform its functions as part of its annual report and accounts.

In addition to the annual reporting requirements of the Strategy and need for an Annual Report, the body could also submit an annual statement to the Senedd, setting out (amongst anything else MSs would find useful) whether it is receiving enough resources to perform its stated functions and purpose.

GB3: We propose that the remit of the governance body should apply to the Welsh Ministers and the relevant Welsh public authorities exercising environmental functions Wales listed in Annex 2. To what extent do you agree or disagree with this?

As stated earlier, we would encourage the Welsh Government to consider, instead of a list, using a comprehensive definition of public authorities to which the Act applies. Using a definition within primary legislation will ensure a greater degree of future-proofing, as the Act will immediately apply to new bodies formed, and avoid the need to amend primary legislation with the formation of a new public body (or for there to be any unintended loopholes created in future).

For example, a similar definition could be used from the UK Government's corresponding legislation (with the obvious difference that here we are concerned with devolved functions). In Section 31 (3) of the UK Government's Environment Act 2021, it sets out:

"In this Part "public authority" means a person carrying out any function of a public nature that is not a devolved function, a parliamentary function or a function of any of the following persons— (a) the OEP; (b) a court or tribunal; (c) either House of Parliament; (d) a devolved legislature; (e) the Scottish Ministers, the Welsh Ministers, a Northern Ireland department or a Minister within the meaning of the Northern Ireland Act 1998."

[3] As set out in the Environment Act 2021, Schedule 1, para 14(3) A statement of accounts must include an assessment by the OEP of whether, in the financial year to which the statement relates, the Secretary of State provided it with sufficient sums to carry out its functions.

In addition, the definition of 'environmental functions' should be broad, as many decisions not mindful of the environment at the outset still have an impact on it, and this is a large part of the system change we need to set Wales on a path to nature recovery, i.e. to consider the environment including nature as part of every decision.

GB4: Are there any other public authorities, or private bodies exercising functions of a public nature, that you think should be added to (or removed from) the list in Annex 2? Please use the text box below to explain your answer.

As noted in our answer to GB3, we advocate a definition-based, rather than a list-based approach. We would also urge to ensure that the new governance body's remit also covers private companies that exercise functions of a public nature. Based on this, we consider there are bodies that undertake devolved public functions in Wales that are missing from the list in Annex 2 – for example, The Crown Estate and UK Government departments.

There is an issue when it comes to transboundary issues given that environmental problems to not respect the England-Wales border any more than the environment itself does. Securing good condition of our rivers and seas also depends on English and UK reserved authorities acting in England. Furthermore, challenges with delivery of environmental law can be common across all four countries of the UK. For this reason, it is vital that Wales' new governance body has a clear remit to work with its counterparts on cross-border issues.

It's also worth noting that the UK Marine Strategy, whilst very much part of Wales' goals of Good Environmental Status in our seas, also stems from the UK Government as the member state signed up to it. Therefore, the arrangements as to how the new Welsh body would work with its counterparts is very important to ensuring there are no gaps in oversight.

Other relevant targets from the Global Biodiversity Framework

The Global Biodiversity Framework (GBF) also includes goals to: 'Reduce risk from pesticides by at least 50% by 2030; Reduce nutrients lost to the environment by at least 50% by 2030; Reduce pollution risks and negative impacts of pollution from all

sources by 2030 to levels that are not harmful to biodiversity and ecosystem functions.' These are not mentioned in the White Paper but should be considered in developing the broader suite of targets. This emphasises the need to align well with the Sustainable Farming Scheme, as this is the clearest area where change can be enacted in partnership with farmers. Support, advice and guidance – both from an overarching farming body and peer to peer – will be essential to putting these in train.

Water pollution in general could also come under this banner, with nutrient management being a core issue in our rivers, as WEL has set out in a previous briefing. The most recent Enhanced Nutrient Management Approach is unlikely to go far enough to put us on the path to healthy rivers, but we hope that this time will be used to learn how to best enact the original intention of the Agricultural Pollution Regulations. This could be an area for the new body to investigate, as part of its oversight of ecosystem health.

Marine aspects of nature targets

As mentioned under BT4, targets should be aligned with the UK Marine Strategy's targets for achieving Good Environmental Status (GES) on its descriptors. This means that – although a Marine Protected Area (MPA) target is needed, and will align with existing monitoring mechanisms – marine targets should be wider than just MPAs. The OEP made a similar point in its advice on English environment targets:

"Marine Protected Areas only cover 38% of UK territorial waters and focus on the condition of designated features rather than considering entire ecosystems and the pressures they face. To provide coherency in protecting all marine areas, the target needs support from the wider marine environment targets contained in the UK Marine Strategy. As proposed, the marine target addressing protected areas will be insufficient for meeting the 25 YEP goal to reverse the loss of biodiversity in all of the UK's seas and restore it".

We note that UK Government proposed, in the Nature Recovery Green Paper: "*splitting the high-level GES target into individual descriptor level GES targets and assigning specific timelines for achieving GES for each component.".* Although GES remains a UK-level objective, we encourage the Welsh Government to take an

ecosystem-based approach when developing marine targets. We are encouraged, therefore, to see the intention in the White Paper that the targets also address wider drivers and pressures. We hope that this means that pressures such as marine litter and water quality (descriptors within the UK Marine Strategy) are also encapsulated in the targets; appreciating the need not to replicate, but to complement.

In England, their Marine Protected Area (MPA) target is that "70% of designated features in MPAs to be in favourable condition by 2042, with the remaining features in recovering condition". We'd ask that this is expanded to not only designated features but also supporting features. Management should be central to an MPA target, and, given the poor record of meeting commitments on MPAs, interim targets will be important. In addition, in line with the recommendations from the Biodiversity Deep Dive, we urge that the potential for Other Effective Area-Based Conservation Measures to be included into the marine targets is considered. We submitted a paper with more detailed proposals on OECMs in this paper, put together as part of stakeholder input to the Deep Dive.

Targets for fish should also link together, given that they are covered under different Marine Strategy descriptors, and ensure compliance with the fisheries objectives in the UK Fisheries Act 2020.

GB5: To what extent do you agree or disagree with the proposed scope and role for the governance body in relation to monitoring and reporting, including the scrutiny of statutory targets?

Strongly agree. We broadly support this and think the body is well placed to advise on the adequacy of delivery plans and strategies. The body should be able to undertake monitoring at its own initiative, as well as being able to monitor on request from Ministers, and able to take enforcement action, if appropriate, based on its monitoring. The legislation should include clear requirements for Ministers and public authorities to respond to its reports and recommendations within a proscribed period.

The monitoring function should extend to providing independent assessment of the policies, strategies and programmes put in place to deliver on statutory targets, by

both Welsh Government and public authorities (we advocate for a similar process to the OEP's annual progress report on the UK Government's Environmental Improvement Plan).

Ministers should be required to respond to the body's reports and address any issues raised or improvements recommended by the body. In addition to the proposed reporting requirements, the body should report annually on whether it is sufficiently resourced to carry out its functions effectively.

GB6: To what extent do you agree or disagree with the proposed scope and role of the governance body's advisory functions?

We agree and would add that we need to ensure it has the resources, independence and power to give advice, even when it's not directly requested from Welsh Ministers or other bodies. The body should be adequately resourced to draw on expertise from other bodies, as needed.

GB7: To what extent do you agree or disagree with the suggested approach for managing complaints and representations?

Partly agree. We strongly support and welcome the inclusion of civil society complaints and representations to the body.

We note that 'complaints' and 'representations' can carry different meanings, and we welcome the inclusion of both terms. Complaints, related to individual breaches on environmental law, and representations, related to systemic failings of environmental law. Together, complaints and representations provide a comprehensive process for raising concerns, and retaining the distinction between them is important. Therefore, we would propose a clarification in the listed table of functions to 'complaints **and** representations'.

To function effectively the body will need the flexibility to prioritise and choose which complaints and representations to focus on. We would advocate that it should set out its criteria for prioritisation and its approach – e.g. it might choose to group complaints or representations of a similar nature.

We do not agree that the Bill should preclude the body from considering complaints about individual decisions (e.g. licences or consents). There may be a decision of such an important nature (due to scale or precedent setting, for example) that the body would consider a priority for investigation based on the body's primary environmental objective.

GB8: To what extent do you agree or disagree with the proposals to enable the body to investigate?

Strongly agree. It's extremely important the body can investigate potential breaches of environmental law, both those that arise from complaints from third parties and on its own initiative. As mentioned above, we believe the body should have discretion to determine what, and when, to investigate. We agree that to be able to effectively carry out its investigation function, the body will need to be able to request relevant information from public authorities and welcome the duty to co-operate (proposed in paragraph 27 of the White Paper). We also welcome the proposed power to issue Information Notices, requiring a response within a set time.

This has been a significant gap in Wales since the UK left the EU, as the Interim Environmental Protection Assessor for Wales (IEPAW) has no formal investigatory powers and lacks resource so has only been able to receive and collate concerns about the functioning of environmental law. The IEPAW cannot consider complaints about failures to comply with or implement environmental law, and has no powers to investigate. While the IEPAW has received a substantial number of representations, it is possible that the number would have been higher if the IEPAW had powers to address such failings.

GB9: To what extent do you agree or disagree with the Welsh Government's proposed process for formally handling non-compliance through compliance notices and court or tribunal procedures?

We agree with the proposed process, although recommend evaluating it in future to see how effective it is in terms of behaviour change. We would also welcome

consideration on managing the governance gap between the Bill being passed and new Welsh tribunals being established.

GB10: To what extent do you agree or disagree with the Welsh Government's proposal to include improvement reports / plans as an enforcement stage to provide space for resolution where systemic issues are evident, and a compliance notice is not considered the optimal mechanism to address the issue.

We agree with this proposal and believe it will help with transparency in terms of scrutiny on what and how issues are expected to improve. It will also be a useful tool in addressing and preventing systemic breaches of environmental law.

GB11: To what extent do you agree or disagree with the proposal for the governance body to, by exception, be able to apply for judicial review and / or intervene in civil proceedings?

We welcome the suite of enforcement powers outlined. As this develops, we would welcome more information on how these will work together, and in what order these enforcement powers can be exhausted, as appropriate.

We agree that advising and working with public bodies to identify solutions will be preferable to taking formal enforcement actions in many cases. However, there must be clarity over the changes required and by when they must be delivered in order to ensure that this process generates meaningful action leading to improved outcomes. Success will also depend on good co-operation by public authorities.

The use of more formal enforcement mechanisms should be determined by the seriousness of the issue at stake, as well as the success or otherwise of the more informal approach referred to above. The ultimate enforcement routes will need to be robust and effective, to act as a powerful incentive for public authorities to ensure full implementation of environmental law.

GB12: The Welsh Government consider financial penalties would be an ineffective and, in some cases, counterproductive method by which to remedy the non-

compliance of Welsh public authorities with environmental law. To what extent do you agree or disagree with this position?

Avoidance of damage, or rectification of damage secured by the responsible public authority, should be the main goal of enforcement. However, we advocate that the power to issue financial penalties be included, but with discretion in how it is used, as we consider the possibility of financial penalties would provide a strong incentive to ensure compliance. It is important that the funding remains within Wales and contributes to improving the environment.

GB13: The Welsh Government proposes that the governance body should set out how it intends to co-operate with the organisations specified, including how they will avoid duplication and overlap when exercising their functions? To what extent do you agree or disagree with this approach?

It is essential that there is a co-design of arrangements to ensure governance bodies are legally required to cooperate. It should enable the sharing of expertise and coming together on common issues, such as invasive non-native species or cross border protected sites. Beyond the five Welsh bodies listed in the paper, it's important the governance bodies across the UK nations can also work together, so that a complaint made in any country can be assured to be considered by the appropriate governance bodies, with transparent communication between each other and with the complainant.

In addition, we welcome the proposal that public authorities under the remit of the governance body will have a duty to cooperate with it.

This is set out in Scotland and England's legislation as below.

- From Continuity Act s. 23 (1): "A public authority must co-operate with Environmental Standards Scotland, and give it such reasonable assistance as it requests (including the provision of information), in connection with the exercise of its functions."
- From Environment Act s. 27: "Co-operation duties of public authorities and the OEP: A person whose functions include functions of a public nature must co-operate with the OEP, and give it such reasonable assistance as it requests

(including the provision of information), in connection with the exercise of its functions under this Act."

GB14: Our preferred model for the governance body is a 'Commission', but consider alternative models, such as an arms-length body, could provide similar benefits. To what extent do you agree or disagree with this approach?

We note the Welsh Government has updated its thinking and terminology, and now proposes a 'Non-Departmental Public Body' (NDPB) as the appropriate model for the new governance body. We support this.

Given the existing four Commissioners for older people, children, the Welsh language and future generations, different language would help people to distinguish between different bodies' roles and functions. There are also concerns about the potential blurring of governance as has happened with some other Commissions.

We support a NDPB model for the body, with a Board led by a Chair and comprising a small number of other board members, and supported by an executive staff team lead by a Chief Executive.

GB15: To what extent do you agree or disagree with the Welsh Government's approach in respect of appointing members and allocating resources to the governance body?

As a NDPB, the governance will still be funded by Welsh Government, and it is important that despite this, it is not only independent, but perceived by the public as independent too. To assist in its role, the new body must not fear its resources being cut if it criticises the implementation of environmental law by the Welsh Government or singles out a public authority as needing to do better.

In terms of funding, the White Paper sets out that it could be funded either by Welsh Government or the Welsh Consolidated Fund (the latter funding the Wales Audit Office). It proposes Welsh Government on the basis that it allows for more "budgetary flexibility, enabling capability for swift financial intervention if additional resource is required and the ability to transfer underspends easily within overall

ministerial budgets". However, this advantage can also easily be a disadvantage, in that it could also be subject to cuts when Ministers face difficult budget management. WEL would want to see the Body funded well enough, and with sufficient funding protections, so that it doesn't need unexpected additional resource.

We encourage the Welsh Government to consider adopting a comparable funding model to the Office for Environmental Protection in England, where a ring-fenced and multi annual budget is agreed through negotiation and the governance body has a power to report to the Senedd on whether it feels it is receiving adequate funding to discharge its functions.

Appointments

We agree with the proposal to appoint a Chair and Board. We also agree with the proposal to appoint by public appointment process, and we welcome the intention to include one or more independent members on the interview panel. Once the Chair has been appointed, they should play a leading role in the appointment of the other Board members.

Given the particular nature of this body, in order to secure its long-term independence, it will be essential for Senedd to have a meaningful role in the appointment process. We suggest this should go beyond the consultation process currently adopted for the usual appointment process of advisory Commissioners.

Resources

The body must be resourced adequately to enable it to carry out its functions. The Body should receive a 5-year indicative Budget to ensure long-term independence and security, and we would welcome further consideration of the possibility of ringfencing the relevant budget.

As mentioned above, resources should not be subject to financial pressures from other parts of government, and the body will also need enough capacity to be reactive. Its body of work will be hard to predict, and it would be dangerous if it had to dismiss an issue because of understaffing.

The equivalent body in England and Northern Ireland, the OEP, has – as of March 2023 – 71.2 full-time equivalent (FTE) staff and 13.9 FTE seconded into it from different public authorities and entities. They estimated that they will need around 95 staff when fully established. Environmental Standards Scotland has 20 staff members, plus five board members.

Bearing these figures in mind, it's important that the Welsh Government considers its 'ramping up' expectations when it comes to resourcing the body. The resourcing can only be determined when the body's functions are known, but we would expect it to be at least of similar size to the ESS when fully established. We note though, that ESS does not currently have functions relating to statutory biodiversity targets, which are proposed for the Welsh governance body – these additional functions must be taken into account.

The resourcing outlines of £2.5 – £3M appears to be an appropriate scale , although we note this will ultimately need to be determined once the body's full suite of functions is clear. The body should be resourced through newly allocated funds, and not re-allocated from existing environmental commitments. The funding must also be seen alongside the wider investment needed to deliver on targets, with a guarantee that the funding of the body will not detract resources from delivery on nature recovery.

GB15: Are there any other views you would like to provide in relation to our proposals to set up a governance body?

As legal expertise is one of the most costly to procure, and given its direct focus on environmental law, the body should have in-house legal expertise. Plus, given concerns over a potentially small talent pool to cover the ideal knowledge base, some consideration could be given to upskilling and training of environmental experts into legal issues (and vice versa).

An often-overlooked area is the marine environment, so we think it's very important that the body includes marine expertise. As the Wales National Marine Plan covers the offshore as well as inshore area of Wales' territorial sea, it's important that body includes this in its parameters. The Welsh Government has fisheries responsibilities

in the offshore area, and advisory powers for it have been transferred from the Joint Nature Conservation Committee (JNCC) to Natural Resources Wales. Therefore, the principles and governance arrangements need to match this. The OEP in England does not cover the exercise of devolved functions in the Welsh offshore area, so without the Welsh body's oversight, it could be an area under no governance oversight.

To promote independence, we recommend the Bill includes an explicit provision that the body will not be subject to direction or control by the Welsh Ministers (as is the case for Environmental Standards Scotland). We would be happy for Welsh Ministers to be able to request advice but not to have any formal power to issue guidance to the body on how it undertakes its functions. It is important that, as for all public bodies, the governance body is accountable for its use of public resources, but we think that this oversight should be provided by the Senedd and not the Welsh Government who the body will be holding to account.

We would like to express a real concern for the timeframe in which the individual elements of the new frameworks proposed by the White Paper will be delivered, especially given the initial 2030 biodiversity target, and would stress the need for concurrency. With the passing of the Bill, or as soon as possible thereafter, the following elements should be in place:

- Guidance on application of the principles .
- A functioning governance body.
- Secondary legislation to introduce the biodiversity targets framework.

Part C: Targets for the Protection and Restoration of Biodiversity

BT1: To what extent do you agree or disagree with the inclusion within the Bill of the Wales Nature Recovery Framework proposed in the paper?

We welcome the proposal for a new, statutory nature recovery framework and broadly support its elements – a headline goal or target in primary legislation; a suite of supporting statutory targets introduced in secondary legislation; a long term national strategy; a shorter term national delivery plan; and a process to support and

secure delivery at a more local level. We are pleased to see this come together, as called for in our Nature Positive Bill briefing from 2023.

We would also like to highlight the recommendations in the RSPB and WWF report, supported by WEL, 'Putting Wales on a Path to Nature Recovery'. It includes case studies from New Zealand and the Netherlands, as well as inside the UK, demonstrating how nature targets have driven positive change, including unexpected benefits like more desirable jobs within the environment sector.

BT2: To what extent do you agree or disagree with the inclusion within the Bill of the statutory nature positive headline target: 'to reverse the decline in biodiversity with an improvement in the status of species and ecosystems by 2030 and their clear recovery by 2050'.

We strongly welcome the proposal to include a headline target on the face of the Bill, and to align this with the 'nature positive' goal. We note that this aligns with the National Milestone (and National Indicator 44) under the Well-being of Future Generations Act. However, for a headline target in primary legislation, we think the wording should be made more specific, as must the headline duty to deliver the target. In addition, we suggest an additional 2040 reference point. For example:

The Welsh Ministers must take all necessary steps to reverse the loss of biodiversity by 2030 and to restore biodiversity by 2050.

To 'restore biodiversity' means the process of assisting the recovery of species populations, habitats and ecosystems towards or to healthy and resilient levels.

The loss of biodiversity is reversed if the status of biodiversity (species, habitats and ecosystems) has improved by the end of 2030 relative to a 2020 baseline.

Biodiversity is recovering if by 2040, the status of species, habitats and ecosystems has improved substantially relative to 2030.

Biodiversity is restored if by 2050, the status of species, habitats and ecosystems has improved substantially relative to 2040; is considered to have increased to healthy and resilient levels / has improved relative to a [1970s] baseline.

These components must be additive; biodiversity can only be considered to be 'recovering' in 2040 if, in 2030, the loss of biodiversity had been reversed (i.e. if the status had improved in 2030 relative to a 2020 baseline). Similarly, biodiversity could only be considered 'restored' in 2050 if the 2040 reference point had previously been met.

An extensive review of evidence and careful consideration should be undertaken to explore the possibility and value of establishing a robust 1970s baseline as a reference point, noting that not all of the metrics reported in the most recent State of Nature Wales report date back to the 1970s. The alternative approach would be to set out what is considered 'healthy and resilient levels', again based on a wider review of data and modelling.

The Bill should include a requirement for Welsh Ministers to set out how they will measure biodiversity for the purposes of assessing whether these goals have been met, including by reference to measurement of progress towards the individual nature recovery targets set in secondary legislation.

BT3: To what extent do you agree or disagree with the proposal to include a duty that the Welsh Ministers must set statutory biodiversity targets in secondary legislation?

We strongly agree with this proposal. The duty placed on Welsh Ministers should include a list of the topics that **must** be included in the suite of targets (see answer to BT4, below) but should also make clear that the Welsh Ministers may set targets in additional areas that are relevant to achieving the headline target.

The Bill should include requirements for the Welsh Ministers to obtain and publish advice, including from independent experts, before setting the targets. If Ministers do not follow the advice, they should be required to explain why. The governance body should also have a role in advising on the sufficiency of targets and on any

reviews undertaken by government.

The duty to set targets should be time-bound and we suggest the time limit must be short – e.g. six months / 180 days after the Bill attains Royal Assent – so that targets can be set early in the next Senedd and embedded in both Welsh Government and Senedd programmes. We recognise that this will require work to develop the targets and progress at the same time as the Bill is being developed and are keen to support this work. We would also welcome a provision in the Bill that enables Ministers to make further targets beyond the initial suite of targets.

BT4: Potential suite of supporting targets, to underpin the headline target, are likely to be: Species – distribution abundance and extinction risk; Habitat – protection, management and restoration; and Ecosystem health and resilience – recognising the key role and contribution of ecosystems. To what extent do you agree or disagree with the key areas proposed for the biodiversity targets to be introduced in secondary legislation in the Wales Nature Recovery Framework?

We broadly agree with the proposals and have been fully supportive of embedding these as soon as possible, as our Environment Links UK briefing – 'A Global Goal for Nature and People' set out.

We strongly agree that key species measures – abundance, distribution and extinction risk – will be needed. We also agree that habitat targets are needed, covering protection, management, and extent and condition of protected areas (addressing the '30 by 30' target), as well as wider restoration.

Habitat and species targets should be required to be developed for terrestrial, freshwater and marine environments. We should also be mindful of the Good Environmental Status of our Sea targets form the UK Marine Strategy, and ensure that these are not forgotten, but are complementary and aligned with biodiversity targets set within this Bill. Marine habitat targets could also include blue carbon creation / protection.

Species and habitats are perhaps the most important indicators of ecosystem health and resilience. We welcome further discussion on other important measures – such

as air, water and soil quality. We note the risk of the framework of targets under the Water Framework Directive ceasing to apply in Wales in the near future. This Bill could be used as an opportunity to ensure they remain a part of Wales' statutory framework.

We note there appears to be a tension in the White Paper between the proposed list of topics – which are largely (though not exclusively) outcome-based measures – and the desire for targets to be action-focused. We need both. It is important that the national targets articulate the outcomes we need to achieve to meet our global biodiversity commitments, as well as addressing the drivers of biodiversity loss.

Wider areas to consider in setting targets should draw on the goals and targets of the Global Biodiversity Framework, including reducing threats to biodiversity through spatial planning, addressing over-exploitation, invasive non-native species, pollution and climate change; and meeting people's needs through sustainable production. Scottish Environment Link's 2023 report's calls for nature recovery targets as part of Scotland's proposed Natural Environment Bill is a useful reference on how different types of targets might be formulated. Setting targets related to particular sectors, and land and sea use, has the potential to provide the basis for greater impact and success of Wales' proposed statutory Nature Recovery Action Plan, compared to the current, non-statutory version.

As noted in Annex 5 to the White Paper, the Sustainable Land Management (SLM) duty and objectives, and associated indicators and targets, must contribute to the new biodiversity targets. It is important that both the SLM objectives and the objective for the Sustainable Management of Natural Resources, set out in the Environment (Wales) Act, are updated in the light of this new biodiversity legislation, to reflect the clear need for nature recovery and restoration.

It is essential that targets be set, not only in line with the long term (e.g. 2050 goals) but also for interim goals along the way, so that progress is regularly checked, and action cannot be delayed to future government terms.

BT5: To what extent do you agree or disagree that Natural Resources Wales reports on the biodiversity targets as part of the State of Natural Resources Report?

We strongly agree that NRW should present data on the metrics on which the biodiversity targets are based on in the SoNaRR report, together with other targets (e.g. on air quality) that exist in separate legislation but are highly relevant. This will involve a process of assimilating monitoring data gathered by NRW and by other bodies, as is currently the case for the SoNaRR. Increasing the scope and detail of the report will require an uplift in resourcing. The quality of the data available to NRW will also depend upon monitoring programmes that are much more comprehensive and better resourced than at present.

However, as mentioned above, and as proposed in the White Paper, we believe that Ministers should be responsible for reporting as to whether or not targets have been met. While NRW (along with the governance body and independent experts) will need to contribute to the assessment as to whether targets have been met, the assessment itself should not be owned by NRW.

Ministers should be required to publish an annual report (and lay it in the Senedd) on progress in implementing the proposed National Biodiversity Strategy and Action Plan, outlining how these are being delivered to achieve the targets.

We also consider that the body should report regularly on how the Welsh Government and public authorities are contributing to, and achieving, environmental targets. This must explicitly relate to the governance body's independent assessment as to whether the policies, strategies and plans put in place by the Welsh Government and other Public Authorities are sufficient in their ambition, and in their implementation, to meet the targets. This is akin to the annual progress report published by the Office for Environmental Protection. The Ministers should be required to respond to the governance body's report in good time.

This raises the possibility of the governance body having a role in evaluating and challenging whether data is fit for purpose. As stated before, marine data in particular is often not robust. WEL has previously suggested a process to help bring together both sector priorities and marine data needs; a form of duty or requirement on businesses which conduct exploratory work for development should have to share their data with Welsh Government or Natural Resources Wales, who can use that to

improve management of our seas. This would benefit existing and future developments, utilising all existing work without duplicating unnecessarily. Developers have expressed difficulties in this upfront work and so having this available would also help encourage investment into sustainable use of our marine resources, without compromising biodiversity. This, in turn, could be used a baseline data for biodiversity targets at sea.

BT6: To what extent do you agree or disagree that Welsh Ministers publish a statement, before the Senedd, to report whether the statutory biodiversity targets have been met by the date specified in regulation?

We partly agree with this proposal. We strongly agree with the requirement for Welsh Ministers to make, and publish, a statement before the Senedd, to report whether the statutory biodiversity targets have been met.

However, the White Paper suggests that, if a target has not been met, Ministers must set out the reasonable steps they will take to meet the target as soon as practicable. This framing is very weak and risks downgrading the importance and impact of the targets. We recommend this requirement be significantly strengthened so that Ministers are required to set out the necessary (rather than 'reasonable') steps they will take to meet the target and to report back to the Senedd on progress on a regular basis. Rather than 'as soon as reasonably practicable', a revised timeframe should be set based on advice from the body.

As noted above, the statutory targets should include interim, as well as long term targets, so that action cannot be delayed and each successive government can be held to account for progress.

BT7: To what extent do you agree or disagree with the proposal that Welsh Ministers be required to produce a statutory long term Wales Nature Recovery Strategy, outlining the approach to delivery of the statutory targets as well as the Welsh Government's response to the Global Biodiversity Framework?

We agree with this proposal. A long-term strategy must make clear the connection between Wales' legal nature recovery framework and the Global Biodiversity Framework.

The Nature Recovery Strategy must make clear that delivering the nature recovery targets is the responsibility of the Welsh Government as a whole and should be clear about the changes required across and within portfolios. It must clearly show the connections between the Welsh Government's ambitions for nature recovery and the key drivers – such as farming, forestry, planning and infrastructure, flood and coastal erosion risk management, management of the public estate, water supply and wastewater treatment.

BT8: To what extent do you agree or disagree that the Wales Nature Recovery Action Plan sets out a detailed programme of work required to deliver the statutory biodiversity targets?

We strongly agree that this is needed, but – for clarity – this is not provided by the current NRAP. The NRAP must be a clear delivery plan with SMART actions, making clear where responsibility lies for each (and it must be clear that responsibility does not rest entirely with NRW or the Climate Change department, but that all government departments are potentially responsible for specific actions). As with the long-term strategy, it must be cross-cutting, recognising the role of various sectors (e.g. farming, forestry, infrastructure planning) and provision in delivering the nature recovery targets.

Wales' existing Nature Recovery Action Plan has not historically included the marine environment. The fact that we are still waiting for the UK Marine Strategy Part Three to be published makes this gap all the more concerning. This new statutory Nature Recovery Strategy and Action Plan must include the marine environment and marine biodiversity.

BT9: To what extent do you agree or disagree that there should be a duty on public authorities which requires them to contribute to the delivery of the statutory biodiversity targets?

We strongly agree with this proposal, which should be clearly linked to the Nature Recovery Strategy and Action Plan. A requirement to contribute to the delivery of the statutory biodiversity targets (the headline and supporting targets) would provide additional clarity and purpose to the current biodiversity (and resilience of ecosystems) duty. To be clear, this duty should be applied to all public authorities operating in Wales, not only a subset.

Part of the step change needed to deliver Wales' biodiversity commitments must come from public authorities being required to embed biodiversity recovery as a strategic priority, and to use all the powers and tools they have to contribute to it. We suggest the duty should also be clearly linked to the delivery of the Nature Recovery Strategy and Action Plan, which will need to be specific about the actions that should be taken by the different parts of the public sector.

The design of this new duty should aim to ensure it is more effective than the section 6 duty. Along these lines, we would also welcome the publication of the evaluation of the Section 6 biodiversity duty from the Environment (Wales) Act, that OB3 Research was commissioned to carry out by Welsh Government in 2021, to see if there are any lessons that can be learned to ensure that new duties work as best as they can. Along those same lines, concerns about how Area Statements are best utilised – as set out by CIEEM in this recent letter – should also be addressed so we can use them as a functioning and helpful evidence base, with some form of common framework of how each is done for each area.

BT10: To what extent do you agree or disagree that named public authorities should produce a Local Nature Recovery Action Plan to outline local action and priorities for delivery of the statutory biodiversity targets?

We agree that there is a need for public authorities to contribute to the delivery of national nature recovery targets and that a robust biodiversity planning process is a necessary part of this. We read the proposals as biting on individual public authorities' functions rather than an area basis, but would welcome further discussion to gain a clearer understanding of what the Welsh Government vision is for LNRAPs and to help develop this element of the legislative proposals.

Powers and tools will differ between public authorities – from direct control over how nature reserves and forests are managed, to planning, permitting and licensing duties, for example. As a minimum, a public authority charged with producing a LNRAP should be required to set out the ways in which it can contribute to the delivery of the national biodiversity targets, and how it will ensure biodiversity targets are effectively integrated and acted upon within its diverse functions. In this regard, we welcome the reference to LDPs and Green Infrastructure Plans in paragraph 89 of the White Paper. We would welcome further information and discussion on how the LNRAP will link with other public duties – e.g. on National Park management plans, the management of SSSIs, NNRs and the public forest estate. We note that the success of this proposal will depend on resourcing – both in terms of the capacity needed for public authorities to produce their plans, and delivering change on the ground. Influencing the management of privately owned (particularly farmed) land will be key to whether nature recovery targets can be delivered. Consideration should be given to specific potential tools and frameworks that may need to be developed to support LNRAPs – such as a more formalised system of net biodiversity benefit from development.

We welcome the proposal that the Ministers will issue statutory guidance on the content, process, monitoring and reporting, but we urge the Welsh Government to consider whether there is also a role for secondary legislation to set out the requirements for LNRAPs in detail. Direction and guidance will be needed on how to identify priority species, habitats and sites so as to ensure LNRAPs contribute effectively to the NRAP and the national biodiversity targets. We welcome England's approach to identifying biodiversity priorities for their Local Nature Recovery Strategies.

The new governance body should undertake an assessment of how LNRAPs, in combination with the NRAP, are fit for the purpose of delivering on the statutory biodiversity targets. It should advise as to any improvements needed, and the Welsh Government and other public authorities should be required to respond to this advice.

Application to designated landscapes

Covering around 25% of land in Wales, Designated Landscapes (National Parks and National Landscapes) hold a significant amount of potential to drive nature recovery in Wales. However, as Campaign for National Parks' Health Check report demonstrates, nature is doing no better inside the boundaries of Welsh National Parks than outside.

It is therefore important that Designated Landscapes are considered as one of the key areas where a specific, timebound and ambitious Nature Recovery Action Plan should be set as a key delivery mechanism of the statutory biodiversity targets.

Although not perfect, in England the Protected Landscapes Targets and Outcomes Framework gives clarity over the role National Parks and landscapes have to play in delivering environmental improvements.

We welcomed the commitment, under the Biodiversity Deep Dive, to consider the need for legislation "to reform the statutory purposes, duties and governance arrangements for designated landscape bodies to equip them better to drive nature's recovery", and recognising the potential of these landscapes to realign "priorities to enhance and accelerate nature recovery". It will be important that the new statutory framework (including the headline targets) are reflected in updated statutory National Park purposes (currently set out in s62 of the Environment Act 1995), their management plans and a strengthened and aligned public duty which 'seeks to further the statutory purposes' of National Parks. Care will be needed to ensure that overlapping duties do not confuse matters so that all relevant parties feel confident in how they are contributing effectively to both existing statutory Management Plans in the National Parks and the biodiversity duties set out in the White Paper.

BT11: Please indicate whether you would prefer the duties proposed in this section to apply to the longer list of public authorities included in Annex 2, or the shorter list included in Annex 6?

The biodiversity duties proposed in this section should apply to the same public authorities that are required to comply with the existing biodiversity duty under

Section 6(9) of the Environment (Wales) Act 2016. The acts of non-devolved bodies in Wales should also be subject to these revised duties.

Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales. WEL is a respected intermediary body connecting the government and the environmental NGO sector. Our vision is a thriving Welsh environment for future generations.

This paper represents the consensus view of a group of WEL members working in this specialist area. Members may also produce information individually in order to raise more detailed issues that are important to their particular organisation.

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