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Llywodraeth Cymru  
Welsh Government

# **Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill**

**Explanatory Memorandum**  
incorporating the  
**Regulatory Impact Assessment and  
Explanatory Notes**

**June 2025**

# **Explanatory Memorandum to the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill**

This Explanatory Memorandum has been prepared by the Climate Change & Environmental Sustainability Directorate of the Welsh Government and is laid before Senedd Cymru.

## **Member's Declaration**

In my view the provisions of the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill, introduced by me on the *02 June 2025*, would be within the legislative competence of Senedd Cymru.

## **Huw Irranca Davies MS**

Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

Member of the Senedd in charge of the Bill

02 June 2025

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## Glossary of Acronyms and Abbreviations

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2016 Act	Environment (Wales) Act 2016
Agriculture Act	The Agriculture (Wales) Act 2023
AONB	Area of Outstanding Natural Beauty
BAU	Business As Usual
CaDW	
CBA	Cost Benefit Analysis
CCEI	Climate Change, Environment and Infrastructure Committee
CJEU	European Court of Justice
COP15	Convention on Biological Diversity
EIA	Environmental Impact Assessment
EC	European Commission
EMFF	European Maritime Fisheries Fund
EIR	Environmental Information Regulations
ESS	Environmental Standards Scotland
EU	European Union
FTE	Full Time Equivalent
FUW	Farmers Union of Wales
GBF	Kunming-Montreal Global Biodiversity Framework
GDP	Gross Domestic Product
GDPR	General Data Protection Regulations
GoWA	Government of Wales Act 2006 (amended by the Wales Act 2017)
ICO	Information Commissioner's Office
IIA	Integrated Impact Assessments
IEPAW	Interim Environmental Protection Assessor for Wales
IUCN	International Union for Conservation of Nature
JR	Judicial Review
JSII	Justice System Impact Identification
JNCC	Joint Nature Conservation Committee
KAS	Knowledge and Analytical Services
MoJ	Ministry of Justice
NRAP	Nature Recovery Action Plan
NNRP	National Natural Resources Policy
NPV	Net Present Value
NRW	Natural Resources Wales
OEGW	Office of Environmental Governance Wales
OfWat	The Water Services Regulation Authority
OEP	Office for Environmental Protection
PfG	Programme for Government (commitment)
RIA	Regulatory Impact Assessment
RSPB	Royal Society for Protection of Birds
SEA	Strategic environmental assessment
SLM	Sustainable Land Management
SMNR	Sustainable Management of Natural Resources
SoNaRR	State of Natural Resources Report
SSSI	Site of Special Scientific Interest

TCA	UK-EU Trade and Cooperation Agreement
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UKBI	UK Biodiversity Indicators
UK	United Kingdom
UN	United Nations
WFG	Well-being of Future Generations (Wales) Act 2015
WG	Welsh Government
WWF	Worldwide Wildlife Fund (for nature)

## **PART 1 – EXPLANATORY MEMORANDUM**

### **1. Description**

1.1. The Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill (“the Bill”) supports the commitment in the [Programme for Government](#) to “work towards the establishment of an Environmental Governance Body, a statutory duty and targets to protect and restore biodiversity”. The impacts and benefits of the provisions will fall across multiple sectors and will enhance our collective ability to address and respond to the climate and nature emergencies. The collective aim of the Bill is to strengthen and enhance our response to the climate and nature emergencies.

1.2. The Bill establishes certain environmental principles and an environmental objective. It will require the Welsh Ministers and Natural Resources Wales (NRW), when making policy, and certain other public authorities, when carrying out strategic environmental assessment (SEA), to apply the principles, and to integrate environmental protection.

1.3. The Bill will establish a statutory body “The Office of Environmental Governance Wales” who will be responsible for ensuring public authorities comply with their duties under environmental law in Wales.

1.4. The Bill amends the Environment (Wales) Act 2016 to establish a biodiversity target setting framework.

1.5. The Bill, which comprises 4 Parts, will make provision for:

### **PART 1 – ENVIRONMENTAL OBJECTIVE AND PRINCIPLES**

1.6. Part 1 of the Bill makes provision about an environmental objective, environmental principles and the integration of environmental protection.

1.7. Places duties on the Welsh Ministers and Natural Resources Wales (NRW), when making policy, to have special regard to the environmental principles and to integrate environmental protection

1.8. Places a duty on certain public authorities to have regard to the environmental principles and to integrate environmental protection when carrying out environmental assessment. under the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 or any corresponding provision replacing those Regulations..

## **PART 2 – THE OFFICE OF ENVIRONMENTAL GOVERNANCE WALES**

1.9. Establishes the Office of Environmental Governance Wales (OGEW) to provide independent strategic oversight of the effectiveness, application and implementation of environmental law, including any failures by public authorities to comply with environmental law.

1.10. As part of its role, the OEGW will monitor and report on the effectiveness of environmental law. Through this monitoring, they will gather information around non-compliance by public authorities, including through representations made by the public or other organisations, to support investigation into areas of concern. Following this investigation, they will determine how to best resolve these concerns, which could be in the form of, informal resolution, recommendations where improvements can be made and, if necessary, formal enforcement.

1.11. The Bill will empower the OEGW to act independently and use its own expertise as to the most appropriate and effective mechanism towards achieving resolution, in line with its overall purpose.

## ***PART 3 – BIODIVERSITY TARGETS***

1.12. Amends Part 1 of the Environment (Wales) Act 2016 to introduce a biodiversity target setting framework.

1.13. Provides the Welsh Ministers with a power to set biodiversity targets in regulations, provided they are satisfied that meeting the target would contribute to halting and reversing the decline in biodiversity, in particular through increasing the abundance of native species, enhancing the resilience of ecosystems, or increasing genetic diversity.

1.14. Places a duty on the Welsh Ministers to set at least one target in each of the following priority areas:

- Reducing the risk of the extinction of native species;
- The effective management of ecosystems;
- Reducing pollution;
- The quality of evidence relating to biodiversity, access to that evidence and its use and application;

and to lay a draft of those target regulations before the Senedd within three years of Royal Assent.

1.15. Enhances the Welsh Ministers' planning and reporting functions under section 6 of the Environment (Wales) Act 2016, to include the action they intend to take to achieve biodiversity targets, monitoring and reporting progress toward achieving targets (including setting indicators), as well as a new evaluation report assessing the impact and effectiveness of those policies and actions.

1.16. Provides Welsh Ministers with a power to designate public authorities which will have the effect of requiring those public authorities to take action to contribute to achieving the biodiversity target for which they have been designated.

1.17. Places a duty on the Welsh Ministers to promote awareness in Wales of the importance of, and threats to, biodiversity.

#### *PART 4 – GENERAL*

1.18. Sets out the regulation powers throughout the Bill and when each provision under the Bill will come into force.



*SCHEDULE 1 - THE OFFICE OF ENVIRONMENTAL  
GOVERNANCE WALES*

*SCHEDULE 2 - THE OFFICE OF ENVIRONMENTAL  
GOVERNANCE WALES: STRATEGY*

*SCHEDULE 3 - STAFF TRANSFER SCHEMES*

*SCHEDULE 4 - CONSEQUENTIAL AMENDMENTS*

## **2. Legislative Competence**

2.1 Senedd Cymru ("the Senedd") has the legislative competence to make the provisions in the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill ("the Bill") pursuant to Part 4 of the Government of Wales Act 2006 ("GoWA 2006") as amended by the Wales Act 2017

## Chapter 3 - Purpose and intended effect of the legislation

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### ***Introduction***

3.1 A healthy environment is essential for our well-being. It supports our prosperity, our health and is a key part of our culture and identity. It provides the natural resources which are fundamental to our lives and livelihoods, for current and future generations. We depend on our natural resources for raw materials, water and energy; from our individual needs to the needs of our key industries. Effective environmental governance policy and structures are essential in protecting the environment, enabling us to tackle the urgent challenges of climate change, biodiversity loss, and other harms to the environment, such as pollution.

3.2 Our Programme for Government 2021 to 2026<sup>1</sup> recognised the need to embed our response to the climate and nature emergency in everything we do. Additionally, the updated Programme committed to working towards a statutory duty and targets to protect and restore biodiversity. Tackling the climate and nature emergencies are a priority for this Government.

### ***Climate change and nature emergencies***

3.3 In April 2019, the Welsh Government declared a climate emergency, recognising the urgent need to address the threat of climate change. The declaration highlighted the climate crisis is a serious and immediate threat to health, and to the economy, society, infrastructure, and natural environment in Wales, and that urgent action is needed to reduce greenhouse gas emissions and adapt to the impacts of climate change.

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<sup>1</sup> [Welsh Government - Programme for Government - Update](#)

3.4 In 2021, the Senedd declared a nature emergency in response to the alarming decline of biodiversity in Wales. This declaration recognised the urgent need to address the threats posed to wildlife and natural habitats by human activities, such as habitat loss, climate change, and pollution.

3.5 To address these dual crises, the Welsh Government has, for example, set emissions targets for a reduction in all greenhouse gases (described further below), as well as made a number of policy commitments, such as restoring 30% of protected areas by 2030. It has also implemented various initiatives to protect biodiversity and restore natural habitats. These efforts aim to balance short-term challenges with long-term environmental improvement.

3.6 The climate change and nature emergencies provide a fundamentally important and pervasive context for this legislation.

### ***Climate change***

3.7 Carbon emission-generating human activity is speeding up the global warming that causes climate change and creating negative impacts around the world in many ways, from increasingly frequent extreme heatwaves and storms to disruption of food systems and a rise in disease. Climate change is also a significant threat to Welsh communities, particularly through impacts like flooding, water shortages, wildfires and changes to air quality. Threats include:

- Rising temperatures: Wales recorded its highest temperature of 37.1°C at Harwarden Airport, Flintshire in 2022. Without further action, average annual temperatures in Wales are projected to further increase by 2.0°C by the 2040s and a significant 3.3°C by the 2080s, compared to the 1961-1990 baseline..
- Changing rainfall patterns: Summer rainfall is expected to decrease, leading to drier conditions, particularly in eastern and southern Wales. Conversely, winters are projected to become wetter with more frequent and intense rainfall events. This

places locations in Wales at risk of more severe and more frequent flooding events.

- Sea level rise: The relative sea level around Wales is, without action, predicted to rise by 36cm by the 2080s, putting coastal areas at greater risk of flooding and erosion.

3.8 To address these threats, Wales aims to reach net zero by 2050, which would mean greenhouse gases removed from the atmosphere would be in balance with emissions.

3.9 In support of this objective, the Welsh Government announced a climate emergency in 2019, highlighting the significance of evidence from an Intergovernmental Panel on Climate Change Special Report on the impacts of global warming of 1.5°C.

3.10 The current emissions target for 2050 is a reduction in all greenhouse gases by 100%<sup>2</sup> (relative to a baseline of 1990 or 1995, depending on the greenhouse gas). Interim target of a 27% reduction by 2020 were set and a series of 5-yearly carbon budgets established. The next interim target has been set as a 63% reduction in emissions by 2030, and 89% by 2040<sup>3</sup>.

3.11 These remain a key priority for the Welsh Government.

## ***Nature Emergency***

3.12 The 2025 State of Natural Resources Report<sup>4</sup> states that:

*“Globally, around 1 million species of plants and animals are now threatened with extinction. Reflecting this global trend, Wales’ wildlife is continuing to decline, mainly because of the way we manage our land*

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<sup>2</sup> Section 29, Environment (Wales) Act 2016.

<sup>3</sup> Section 30, Environment (Wales) Act 2016 and regulation 2, Climate Change (Interim Emissions Targets) (Wales) Regulations 2018.

<sup>4</sup> [Natural Resources Wales / State of Natural Resources Report 2025 - interim report summary \(2024\)](#)

*for agriculture, the effects of climate change, pollution, over exploitation and invasive species. This loss of nature threatens ecosystem resilience and nature's ability to support our society and well-being, and nature's capacity to adapt to and mitigate against climate change."*

3.13 Evidence from State of Nature's 2023 report on Wales<sup>5</sup> shows species figures from the report, by way of example and to illustrate the scale of the crisis include:

- 18% (663 species) of the 3,897 species assessed are threatened with extinction from Wales.
- The abundance of 380 terrestrial and freshwater species has on average fallen by 20% across Wales since 1994.
- Moth species on average showed the strongest decline: 43%.
- Atlantic salmon (*Salmo salar*) abundance has declined markedly across Wales in the past decade, and in 2021 all river stocks were assessed as 'at risk' (91%) or 'probably at risk' (9%).

### ***The nature and climate emergencies and environmental protection***

3.14 The causes and impacts of these emergencies are broad, complex and cut across most aspects of society. They are also interconnected. For example, deforestation can drive biodiversity loss (which in turn can accelerate deforestation) and create significant environmental crises that are closely linked with climate change, such as, for example, increased flooding.

3.15 Biodiversity contributes towards mitigating and adapting to man-made climate change by supporting conditions which lessen the impact of carbon emissions. Forests, for example, make up our most effective above-ground carbon sinks. Climate change can accelerate forest and

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<sup>5</sup>State of Nature – Wales – Summary Report 2023, page 3: [stateofnature.org.uk/wp-content/uploads/2023/09/TP26053-SoN-Wales-summary-report-v10.pdf](https://stateofnature.org.uk/wp-content/uploads/2023/09/TP26053-SoN-Wales-summary-report-v10.pdf)

biodiversity loss, in turn making it more difficult to meet policy goals and comply with regulatory requirements.

3.16 There is, therefore, a clear synergistic relationship between climate change, biodiversity loss and environmental protection. By protecting the environment we can mitigate and manage the impact of these emergencies for the well-being of present and future generations.

3.17 Other aspects of environmental protection, such as how waste is treated, and how we manage air pollution and clean water, are also all impacted by, and relevant to, combating the impacts of climate change and nature loss. By way of an example of these complex interactions, climate change can fuel heavy rain that washes pollutants from land into waterways. This nutrient overload can trigger explosive algae growth, leading to oxygen depleted 'dead zones' and increased methane release, further accelerating climate change.

3.18 Since the UK's departure from the EU, there is no longer a statutory framework to apply environmental principles at a strategic level. We consider the absence of an environmental protection 'foundation' to policy making, together with an appropriate overarching objective, undermines the effectiveness of policy responses to these dual emergencies and wider environmental risks that those emergencies may exacerbate and that may be exacerbated by them. Accordingly, this legislation makes provision that aims to respond effectively and with urgency to these fundamental crises

### **Environmental Principles**

3.19 The aim of the environmental principles provisions is to establish a robust framework for environmental governance in Wales. This framework seeks to address three core challenges: combating the combined impact of climate and nature emergencies, protecting the environment from harm, and responding to changes in environmental governance structures following the UK's departure from the EU

- 3.20 The provisions are intended to contribute to a high level of environmental protection and to improve the environment, aligning with wider Welsh policy and legislative contexts, and effectively implementing international commitments. The principles, and the duty to integrate environmental protection, apply to policy-making across all areas, not just those directly related to the environment. This holistic approach ensures that the principles and environmental protection are embedded in the planning and execution of various policies, thereby promoting sustainable development and mitigating the negative impacts of climate change and biodiversity loss.
- 3.21 The environmental principles are the precautionary principle, the principle of prevention, the principle that environmental damage should be rectified at source, and the polluter pays principle. These principles are increasingly well-established and widely recognized in international law and policy, guiding decision-making to ensure environmental protection is implemented effectively and appropriately.
- 3.22 Provision is made to impose duties on the Welsh Ministers and NRW, when making policy, to have special regard to the environmental principles and to integrate environmental protection. These duties emphasise the importance of the principles in policy making, ensuring they are given considerable importance and weight. By integrating environmental protection into policy-making, the provisions aim to reinforce the response to climate and nature emergencies and other environmental risks. Alongside this, duties will be placed on certain public authorities undertaking strategic environmental assessments to have regard to the principles, and to integrate environmental protection, so as to contribute to a high level of environmental protection in the preparation and adoption of relevant plans and programmes.
- 3.23 Provision is also made requiring the Welsh Ministers to prepare and publish an environmental principles and integrating environmental



protection statement, which will provide guidance on the interpretation and application of the principles. This statement will enhance understanding, accessibility, and scrutiny, and allow for appropriate adjustments based on new evidence or developments.

### **The Office of Environmental Governance Wales**

3.24 Part two of the Bill establishes the Office of Environmental Governance Wales (OEGW) as a statutory body providing strategic oversight of environmental law compliance by public authorities in Wales. The oversight provided by the body is raised after the UK's exit from the EU, which left a gap in the oversight provided by the European Commission and the Court of Justice of the European Union.

3.25 The OEGW will monitor, report, and enforce environmental law compliance, ensuring public authorities adhere to environmental regulations effectively and consistently. It will not replace existing front-line regulators like Natural Resources Wales (NRW) but will sit above this tier of regulation, enabling a strategic oversight role.

3.26 The Bill includes provisions for establishing the OEGW's operational framework, including its membership, staff, and committees. It emphasizes the need for members to have expertise in environmental law, policy, and science to ensure informed decision-making and effective governance. To support transparency and accountability, the OEGW is required to prepare and publish a strategy detailing its approach to executing its functions, including monitoring, reporting, investigating, and enforcing environmental law compliance. This strategy will be subject to regular review and consultation with Senedd Cymru and other relevant bodies.

3.27 The OEGW will have powers to issue compliance notices and improvement reports, addressing both individual failures and systemic issues within environmental governance. It will adopt an escalatory

approach to enforcement, working collaboratively with public authorities to resolve compliance concerns before resorting to formal action.

3.28 Interim arrangements include the appointment of an Interim Environmental Protection Assessor for Wales (IEPAW) to manage environmental law issues until the OEGW is fully operational. The IEPAW's remit is limited compared to the intended scope of the OEGW but provides a temporary mechanism for oversight and recommendations. The Bill also outlines the OEGW's duty to cooperate with other environmental oversight bodies in the UK, like the Office for Environmental Protection (OEP) and Environmental Standards Scotland (ESS), ensuring cross-border environmental issues are addressed collaboratively.

3.29 In summary, the Bill seeks to rectify the oversight gap left by the UK's departure from the EU, strengthening environmental governance in Wales through the establishment of the OEGW. It aims to enhance the effectiveness of environmental law by ensuring compliance, providing strategic oversight, and fostering collaboration among public authorities and environmental bodies.

### **Biodiversity**

3.30 The overarching aim of this part of the Bill is to maintain and enhance biodiversity in Wales to help tackle the nature emergency. The Bill will amend the Environment (Wales) Act 2016 by introducing a biodiversity target setting framework, which will provide the Welsh Ministers with powers to set (and a duty to meet) biodiversity targets, alongside strengthening the existing planning, monitoring and reporting functions in section 6 of the Environment (Wales) Act 2016, and a new duty on the Welsh Ministers to promote awareness in Wales of the importance of biodiversity and the threats to biodiversity.

3.31 The Bill should not be looked at in isolation. It forms part of and builds upon wider work within the Welsh Government's Biodiversity Programme

which aims to tackle the nature and climate emergencies. Such work includes:-

- Implementing recommendations from the “biodiversity deep dive<sup>6</sup>” that focussed on Wales’s response to the “30 by 30 target<sup>7</sup>” from the Kunming-Montreal Global Biodiversity Framework (“the GBF”)<sup>8</sup>, which is a global target to protect and manage 30 per cent of our land, freshwaters and seas by 2030.
- The Nature Networks Programme<sup>9</sup> which aims to improve the condition and connectivity of our protected sites network. This programme also encourages community engagement whilst increasing capacity to develop a range of projects to enable our most precious habitats and species to thrive.
- Initiatives such as the National Peatlands Action Programme<sup>10</sup>, Local Places for Nature<sup>11</sup> and the National Forest for Wales.<sup>12</sup>
- Ensuring nature restoration is a key component of the Sustainable Farming Scheme<sup>13</sup> which is due to be launched in 2026.
- Updating Planning Policy Wales<sup>14</sup> to provide clarity on securing net benefit for biodiversity through the application of the step-wise approach, (which requires developers to follow a mitigation hierarchy to firstly avoid, minimise, mitigate, and as a last resort compensate for damage to biodiversity and ecosystems) a stronger emphasis on taking a proactive approach to green infrastructure and strengthened the protection of sites of special scientific importance (“SSSIs”).
- The Marine Protected Area Network Management Grant Scheme<sup>15</sup> which supports proposals to improve understanding of pressures and

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<sup>6</sup> [Written Statement: Biodiversity Deep Dive \(3 October 2022\) | GOV.WALES](#)

<sup>7</sup> [Target 3](#)

<sup>8</sup> [Kunming-Montreal Global Biodiversity Framework](#)

<sup>9</sup> [Natural Resources Wales / Nature Networks - information on nature projects](#)

<sup>10</sup> [Natural Resources Wales / The National Peatland Action Programme](#)

<sup>11</sup> [Local Places for Nature Programme | GOV.WALES](#)

<sup>12</sup> [National Forest for Wales | GOV.WALES](#)

<sup>13</sup> [Sustainable Farming Scheme | GOV.WALES](#)

<sup>14</sup> [Planning Policy Wales - Edition 12](#)

<sup>15</sup> [Marine Protected Area Network Management Grant Scheme: guidance | GOV.WALES](#)

the introduction of measures to enhance the management of our marine protected area network.

### ***The decline of biodiversity in Wales (and globally)***

3.32 Biodiversity refers to the variety of all living things, including all species of plants and animals, the variety of different habitats and ecosystems which these species inhabit, in addition to the genetic variety within and between species.

3.33 Biodiversity and healthy ecosystems are critical for human survival, providing us with clean air, water, food, medicines, fuel, fibre and timber, as well as supporting our health and wellbeing.

3.34 Biodiversity underpins the healthy functioning of ecosystems and their ability to continue to deliver essential ecosystem services or benefits for human well-being. These services, such as the provision of clean water, climate regulation, flood risk, soil health for food production and many more are being degraded by biodiversity loss.

3.35 Globally biodiversity has been in decline, with a 69% decline in relative abundance of monitored wildlife populations between 1970 and 2018.<sup>16</sup> In the UK, the abundance and distribution of species has also, on average, declined since the 1970's.<sup>17</sup> Prior to the 1970's, depletion had already occurred for centuries, so this decline follows an already degraded baseline.

3.36 The State of Nature Report, prepared by the State of Nature Partnership in 2023,<sup>18</sup> states that Wales, along with the other countries of the UK and like most other regions worldwide, has experienced a significant loss of biodiversity. The trends in nature in this report cover, at

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<sup>16</sup> WWF, 2022.

<sup>17</sup> Hayhow et al., 2019.

<sup>18</sup> [State of Nature 2023 - report on the UK's current biodiversity](#)

most, 50 years, but follow on from major changes to Wales' nature over previous centuries. As a result, Wales is now one of the most nature depleted countries on Earth.

3.37 The World Economic Forum's Global Risks Report 2025<sup>19</sup> identified biodiversity loss as the second most severe risk on a global scale over the next 10 years.

### ***The climate and nature emergencies***

3.38 A recent report<sup>20</sup> on halting and reversing biodiversity loss by the Senedd's Climate Change Environment and Infrastructure Committee recognised commitments that the Welsh Government has made to halt and reverse the loss of nature by 2030. The report also recognised that we all have a part to play in saving Wales' nature. The Welsh Government's nature commitments and targets are meaningless without the actions—and, most importantly, the people—who deliver them.

### ***International response to the biodiversity emergency***

3.39 The GBF, agreed at the fifteenth Conference of the Parties to the UN Convention on Biological Diversity in December 2022 ("COP15"), aims to catalyse, enable and galvanize urgent and transformative action by Governments, and subnational and local authorities, with the involvement of all of society, to halt and reverse biodiversity loss, to achieve the outcomes in the GBF's Vision, Mission, Goals and Targets.

3.40 The GBF is action and results-oriented and aims to guide and promote, at all levels, the revision, development, updating, and implementation of policies, goals, targets, and national biodiversity strategies and actions plans, and to facilitate the monitoring and review of progress against the targets at all levels in a more transparent and responsible manner. The

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<sup>19</sup> [WEF Global Risks Report 2025.pdf](#)

<sup>20</sup> [Halting and reversing the loss of nature: Progress towards the 30 by 30 target](#)

GBF includes 23 “action-orientated” targets “to drive action be implemented immediately and achieved by 2030”. These targets will help guide how the Welsh Ministers develop biodiversity targets to address the nature emergency.

3.41 The GBF is accompanied by a detailed monitoring framework comprised of a set of agreed indicators for tracking progress towards the GBF’s goals and targets. The monitoring framework includes headline indicators which are recommended for national, regional and global monitoring, and more detailed component and complementary indicators. The intention is for the monitoring and reporting introduced through the Bill to align with the GBF to ensure that data collected for our biodiversity targets can also be used to report internationally, nesting alongside other domestic and national reporting. This includes through the UK National Biodiversity Strategy which sets out how the four countries of the UK will work together to address biodiversity loss<sup>21</sup>.

## ***The Environment (Wales) Act 2016***

3.42 Part 1 of the Environment (Wales) Act 2016 provides an adaptive delivery framework which aims to ensure we are sustainably managing our natural resources. Key components of that framework were introduced to help plan and manage Wales’ natural resources at a national and local level, through specific requirements for a State of Natural Resources Report (SoNaRR), a National Natural Resources Policy (NNRP) and area statements.

3.43 Section 6 of the Environment (Wales) Act 2016 imposes a duty on public authorities to seek to maintain and enhance biodiversity in the exercise of their functions in Wales and in so doing promote the resilience of ecosystems . This “section 6 duty” is aimed at reversing the decline and securing the long-term resilience of biodiversity and ecosystems in Wales.

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<sup>21</sup> [UK national biodiversity strategy and action plan - GOV.UK](https://www.gov.uk/government/consultations/uk-national-biodiversity-strategy-and-action-plan)

3.44 The section 6 duty also requires public authorities to prepare and publish a plan setting out what they intend to do to comply with that duty and also to report on the action they have taken to comply with their section 6 duty every three years. This Bill will build on the framework introduced through the Environment (Wales) Act 2016 in further refining the ask on public authorities to tackle the nature emergency.

### ***Wellbeing of Future Generation (Wales) Act 2015***

3.45 The Well-being of Future Generations (Wales) Act 2015 is about improving the social, economic, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals. This Act also introduced the five ways of working which are collaboration, integration, involvement, long term and prevention. The sustainable development principle and seven well-being goals provide a framework for public authority decision-making which must be reflected in developing and implementing our nature positive framework. The well-being goal ‘a *Resilient Wales*’ sets out that Wales is a nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).

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## **The Environment (Principles, Governance and Biodiversity Targets (Wales) Bill**

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### **PART 1 – ENVIRONMENTAL PRINCIPLES**

#### ***Introduction***

3.46 In making legislative provision for environmental principles in this Bill, Welsh Ministers are seeking to address three core challenges as a matter of policy:

- (i) combatting the combined impact of ever-increasing threats posed by the climate and nature emergencies;
- (ii) taking further action to protect the environment from harm (including but not limited to harm from biodiversity loss and climate change);
- (iii) responding to changes to environmental governance structures, following the UK's departure from the EU.

3.47 Our intent is to establish an approach to ensure the application of the principles contributes to a high level of environmental protection, as an important part of the urgent and ongoing response to the consequences of climate change, biodiversity loss and other forms of environmental harm, including water, air and other forms of pollution. In so doing, the policy intention is to align these provisions with the wider Welsh policy and legislative context and to contribute to the effective implementation of international commitments.

### ***Environmental Principles in the European Union (EU) and Internationally***

3.48 The environment has been a key part of EU policy and law for decades<sup>22</sup>, and much of the environmental law in Wales is derived from EU environmental law, either directly effective or transposed by appropriate domestic provision. As such, a significant body of environmental law in Wales (and the rest of the UK) has developed from EU law. In turn, EU environmental law has developed in a wider international context in which environmental principles have received substantial recognition. These include key international agreements, such as the 1972 Stockholm Declaration<sup>23</sup> and the 1992 Rio Declaration<sup>24</sup>. This agreement, signed by 172 governments, including the UK, at the 1992

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<sup>22</sup> The Treaty of Maastricht (1993) made the environment an official EU policy area, though EU environment policy dates back to the European Council held in Paris in 1972.

<sup>23</sup> [United Nations Conference on the Human Environment, Stockholm 1972 | United Nations](#)

<sup>24</sup> [United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992 | United Nations](#)



Earth Summit sets out 27 principles to guide the achievement of sustainable development.

3.49 Further, environmental principles have helped to inform other important international agreements such as the UN Convention on Biological Diversity<sup>25</sup>, the UN Framework Convention on Climate Change<sup>26</sup>, and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention<sup>27</sup>), which help to set an international framework for addressing crucial challenges including biodiversity loss, climate change, and public participation in environmental decision-making. Environmental principles also feature in international jurisprudence<sup>28</sup>.

3.50 Within this broader international context, the EU has made provision, through the Treaty on the Functioning of the European Union (the “TFEU”) and the Treaty on European Union (the “TEU”), for key environmental principles and objectives which aim to ensure high levels of environmental protection<sup>29</sup>.

3.51 Article 191(1) of the TFEU states:

*“Union policy on the environment shall contribute to pursuit of the following objectives:*

- *preserving, protecting and improving the quality of the environment,*
- *protecting human health,*
- *prudent and rational utilisation of natural resources,*

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<sup>25</sup> [15/4. Kunming-Montreal Global Biodiversity Framework](#), Montreal, Canada, 19 December 2022

<sup>26</sup> [UNFCCC](#)

<sup>27</sup> [Text of the Convention | UNECE](#)

<sup>28</sup> For example, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010).

<sup>29</sup> For example, Articles 11, 114(3) and 191(1) and (2), TFEU ([Consolidated version of the Treaty on the Functioning of the European Union \(legislation.gov.uk\)](#)) and Article 3(3) TEU ([Consolidated version of the Treaty on European Union \(legislation.gov.uk\)](#)).

- *promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.*”

3.52 Article 191(2) continues:

*“Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay”.*

3.53 Therefore, the environmental principles set out in Article 191(2) of the TFEU are:

- (a) Precautionary;
- (b) Prevention;
- (c) Rectification at source; and
- (d) Polluter pays.

3.54 The principles are not further defined in the TFEU. The meaning and understanding of the principles is more developed in some cases than others, and the interpretation and application of the principles continues to develop, through case law, international declarations and agreements and as scientific understanding progresses, for example.

3.55 In addition, Article 11 of the TFEU states that “environmental protection requirements must be integrated into the definition and implementation of the Union’s policies and activities, in particular with a view to promoting sustainable development”. The aim is to ensure environmental protection is integrated into all policies and activities, ensuring environmental protection is part of every policy and action, not just those about the environment.

3.56 Article 114(3) TFEU and Article 3(3) TEU make further provision about aiming at a high level of environmental protection and improving the quality of the environment in connection with the Commission, the European Parliament and Council and the EU internal market.

3.57 The European Court of Justice (the “CJEU”) also applies the principles in the interpretation of EU legislation, including the Treaties. The CJEU has relied on the principle of prevention, the precautionary principle, integration, and the principle of rectification at source to help reach its conclusions in various cases in relation to animal health<sup>30</sup>, habitats<sup>31</sup> and waste<sup>32</sup>, for example.

### ***EU environmental law in the UK and EU exit***

3.58 The majority of environmental law in Wales (and the rest of the UK) over the last forty years has been derived from the EU. EU environmental principles and environmental protection objectives flow through the EU’s policies and are adopted in EU legislation, and in this way have had a very significant effect on environmental law in Wales (and the rest of the UK).

3.59 Prior to the UK’s exit from the EU, EU legislation either took direct effect in the UK, such as, for example, the EU Regulation on REACH<sup>33</sup>, or was transposed by domestic legislation, such as the Waste (England and Wales) Regulations 2011, implementing the Waste Framework Directive<sup>34</sup>. In this way, EU legislation and EU environmental principles have shaped

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<sup>30</sup> Case C-180/96 *UK v Commission* [1998] ECR ([EUR-Lex - 61996CJ0180 - EN - EUR-Lex \(europa.eu\)](#)). See, for example, paragraphs 99 and 100 for an application of the prevention principle and integration.

<sup>31</sup> Case C-127/02 *Landelijke Vereniging tot Behoud van de Waddenzee v Staatssecretaris van Landbouw* ([EUR Case C-127/02](#)). See, for example, paragraphs 44 and 56 for an application of the precautionary principle.

<sup>32</sup> Case C-2/90 *Commission v Belgium* ([EUR-Lex – 61990CJ0002 – EN – EUR-Lex \(europa.eu\)](#)). See, for example, paragraphs 34 and 35 for an application of the rectification of source principle.

<sup>33</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals.

<sup>34</sup> Directive 2008/98/EC of the European Parliament and of the Council.

domestic policy and legislation. The principles have also been referenced in domestic case law<sup>35</sup>.

3.60 Oversight of environmental law was previously provided by the European Commission, the CJEU, and the UK's domestic courts. If a Member State, including the UK, had failed to fulfil its obligations under EU law, the European Commission could investigate and bring enforcement proceedings. The CJEU's role includes ensuring the correct interpretation of EU law, deciding whether Member States have fulfilled their obligations under EU law, and to provide interpretations of EU law when requested by national judges. As explained already, CJEU caselaw plays an important role in the development of general principles of EU law and the application of the environmental principles.

3.61 Following the UK's exit from the EU, the European Commission no longer has this oversight role. Further, domestic courts can no longer refer questions of interpretation of EU law to the CJEU.

3.62 Furthermore, following the end of the Brexit transition period (31 December 2020), the UK is no longer bound by EU Treaties nor any new EU law that would previously have had direct effect (such as EU Regulations), and nor is it required to transpose any new non-direct effect EU law such as EU Directives.

3.63 The European Union (Withdrawal) Act 2018 (the "Withdrawal Act") ensured that certain laws made while the UK was a member of the EU would continue to apply after Brexit. In doing so a new category of UK law was developed known as retained EU law. This included certain EU-derived domestic legislation and direct EU legislation that was in effect immediately before exit day, as well as certain rights and interpretive effects (at sections 4 and 6, for example). In an environmental law context,

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<sup>35</sup> See, for example, *Re Bluestone Chemicals Ltd (in liquidation)* [1999] 4 All ER 684 and *R (on the application of) v Environment Agency & Ors* [2007] EWCA Civ 611.

the body of EU environmental law was retained. General principles of EU law recognised by the CJEU before the end of the transition period were also incorporated onto the UK statute book under the Withdrawal Act, but with some restrictions, so that they may only be used as an aid to the interpretation of retained EU law.

3.64 The Retained EU Law (Revocation and Reform) Act 2023 (the “Retained EU Law Act”) abolished the remaining effects of retained general principles of EU law so that they no longer influence the interpretation of EU law that had been retained on the UK statute book. As well as the abolition of general principles of EU law, the Retained EU Law Act removed other features of EU law which influenced how retained EU law was interpreted and applied by domestic courts, including the principle of EU law supremacy, consistent interpretation, direct effect and directly effective rights (sections 2 to 4). Retained EU law, as stripped of these features, has been known as ‘assimilated law’ from the end of 2023.

3.65 The Retained EU Law Act also introduced new tests for the courts to apply when deciding whether to depart from assimilated case law aimed at making it easier for courts to do so. However, there is a large volume of CJEU case law supplementing how specific pieces of EU environmental law should be interpreted through the lens of the EU environmental principles. In this context, there remains a degree of uncertainty as to how such legislation will be interpreted by domestic courts when applying domestic principles of statutory interpretation after these reforms.

3.66 This is especially important in Wales at present given the absence of environmental principles from its statute book. The Welsh Government’s intention in bringing forward primary legislation now is to incorporate environmental principles to meet a range of policy challenges and opportunities, and which take account of changes arising from the UK’s exit from the EU, so that environmental principles are implemented clearly and effectively on a statutory basis once the Act comes into force. This will provide a foundation and strategic framework to policy making, and

strategic environmental assessment, which will help strengthen the response to a range of important policy matters, including in particular the climate and nature emergencies, described earlier in this chapter.

### ***UK-EU Trade and Cooperation Agreement***

3.67 On 1 May 2021, the UK-EU Trade and Cooperation Agreement (the “TCA”) entered into force<sup>36</sup>, setting out the terms of the future UK-EU relationship. The preamble to the TCA acknowledges the parties' commitment to high standards of environment protection (and to strive to continue to improve those standards) and the fight against climate change. Provision relevant to the environment can be found throughout the TCA on a wide range of areas, including climate change, air quality, water quality, and biodiversity.

3.68 Part 2, Heading 1, Title XI, Chapter 7 makes particular provision about the environment. Title XI, Chapter 7 affirms the right of each party to set its policies and priorities in the areas covered by that Chapter (environment and climate), to determine the environmental levels of protection and climate level of protection it deems appropriate and to adopt or modify its law and policies in a manner consistent with each party's international commitments. Each party agrees not to weaken or reduce, in a manner affecting trade or investment between the parties, its environmental levels of protection or its climate level of protection below the levels that are in place at the end of the transition period, including by failing to effectively enforce its environmental law or climate level of protection. Each party also agrees to strive to increase their respective environmental levels of protection or their respective climate level of protection referred to in that Chapter<sup>37</sup>.

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<sup>36</sup> [EU-UK Trade and Cooperation Agreement 24.12.2020.pdf \(publishing.service.gov.uk\)](#).

<sup>37</sup> EU-UK Trade and Co-operation Agreement, Part 2, Heading 1, Title XI, Article 391.

3.69 The UK and EU also commit to respecting the internationally recognised environmental principles to which they have committed in particular:

- the principle that environmental protection should be integrated into the making of policies, including through impact assessments;
- the principle of preventative action to avert environmental damage;
- the precautionary approach referred to in Article 356(2)<sup>38</sup> [Right to regulate, precautionary approach and scientific and technical information];
- the principle that environmental damage should as a priority be rectified at source; and
- the polluter pays principle<sup>39</sup>.

3.70 This legislation will help to implement the commitments set out in the TCA to respect those principles.

### ***The environmental objective***

3.71 Provision is made for an “environmental objective” to clearly express the policy ambition and to guide the application and implementation of the duties to apply the environmental principles and integrate environmental protection. The Welsh Ministers, when making policy, and certain “public authorities”, when carrying out environmental assessment, must apply the principles and integrate environmental protection, for the purpose of contributing to the objective. The interpretation and application of the objective and the principles, and certain related matters, will be articulated further through the environmental principles and integrating environmental protection statement (“the environmental principles statement”), which is described further within this Chapter.

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<sup>38</sup> “The Parties acknowledge that, in accordance with the precautionary approach, where there are reasonable grounds for concern that there are potential threats of serious or irreversible damage to the environment or human health, the lack of full scientific certainty shall not be used as a reason for preventing a Party from adopting appropriate measures to prevent such damage” (Article 356(2)).

<sup>39</sup> EU-UK Trade and Co-operation Agreement, Part 2, Heading 1, Title XI, Article 393.

3.72 The objective does not apply to the duties to be imposed on NRW.

NRW has already its own general purpose<sup>40</sup>, which is to

(a) pursue sustainable management of natural resources in relation to Wales, and

(b) apply the principles of sustainable management of natural resources,

in the exercise of its functions, so far as consistent with their proper exercise.

3.73 As NRW has its own general purpose already, aimed at the sustainable management of natural resources (“SMNR”), it is not considered appropriate to apply the environmental objective to NRW. The general purpose, and the environmental objective, are complementary and mutually supportive and together will focus action on improved outcomes. NRW’s general purpose will continue to apply to NRW and NRW will be required to have special regard to the environmental principles, and to integrate environmental protection, within the context of that purpose.

3.74 The environmental principles statement will explain how the duties to be imposed on the Welsh Ministers and NRW, when making policy, and certain public authorities, when carrying out SEA, relate to each other. This is explained further below.

3.75 The primary focus of the environmental objective is the attainment of a high level of environmental protection and improving the quality of the environment. This nests the principles and the duty to integrate environmental protection in a strategic context and provides a clear policy focus for their consideration and application. Definitions of “environmental protection” and the “environment” are provided to help clarify the scope of the objective. These definitions apply across this Bill.

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<sup>40</sup> Article 4(1), Natural Resources Body for Wales (Establishment) Order 2012, as substituted by section 5, Environment (Wales) Act 2016.



3.76 In addition, the objective emphasises a number of specific outcomes which are to result from contributing, through the application of these duties, to the attainment of a high level of environmental protection and an improvement of the environment. These are:

- (i) meeting the needs of the present without compromising the ability of future generations to meet their own needs and contributing to achieving the well-being goals in section 4 of the Well-being of Future Generations (Wales) Act 2015
- (ii) maintaining and enhancing the resilience of ecosystems and the benefits they provide
- (iii) mitigating and adapting to climate change
- (iv) contributing to halting and reversing the decline in biodiversity.

3.77 These specific outcomes associated with the objective indicate specific aims that the attainment of a high level of environmental protection and improved environment should look to achieve, whilst it is also recognised that attaining a high level of environmental protection and improving the quality of the environment]can also achieve other outcomes and benefits. The specific outcomes are discussed next.

#### *The Well Being of Future Generations (Wales) 2015 (“WFG Act”)*

3.78 Provision is made to align the objective with the WFG Act. The WFG Act imposes a duty on public bodies, including the Welsh Ministers, to pursue sustainable development in a way that enhances the social, economic, environmental, and cultural well-being of Wales. This duty is guided by the sustainable development principle and aims to achieve well-being goals. The sustainable development principle means that a public body must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs<sup>41</sup>.

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<sup>41</sup> Section 5(1), WFG Act.

3.79 Carrying out sustainable development must include the setting and publishing of objectives (called “well-being objectives”) that are designed to maximise the contribution to achieving each of the well-being goals, and the taking of all reasonable steps (in exercising its functions) to meet those well-being objectives<sup>42</sup>.

3.80 These duties imposed by the WFG Act are broad and holistic, focusing on improving Wales’s overall well-being. We consider these duties are closely linked to the desired policy outcomes of the environmental objective. In reflection of this, our approach is intended to contribute to the well-being goals (where relevant) and to meet the needs of the present without compromising the ability of future generations to meet their own needs, establishing consistency with the WFG Act and supporting its wider implementation, and forming a coherent and complementary policy narrative.

#### *The “ecosystems approach”*

3.81 Part 1 of the Environment (Wales) Act 2016 (“the 2016 Act”) imposes duties on NRW, the Welsh Ministers, and other public bodies regarding SMNR. SMNR is about using natural resources and taking other action that maintains and enhances the resilience of ecosystems and the benefits they provide<sup>43</sup>. These duties are based, therefore, on an ecosystems approach, an approach which also features in the WFG Act<sup>44</sup> and the Agriculture (Wales) Act 2023 (“the Agriculture Act”)<sup>45</sup>.

3.82 We consider this ecosystems approach to be crucial as it considers the complex interrelationships within ecosystems, promoting holistic decision-making rather than addressing issues in isolation. By placing emphasis on

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<sup>42</sup> Section 3(2), WFG Act.

<sup>43</sup> SMNR is defined at section 3, 2016 Act.

<sup>44</sup> See, for example, the “resilient Wales” goal to “A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change)” (section 4, WFG Act).

<sup>45</sup> Section 1(4) and (7), Agriculture Act.

maintaining and enhancing ecosystem resilience within the environmental objective, our approach also aligns with the 2016 Act, the WFG Act, and the Agriculture Act, ensuring consistency across legislation.

3.83 The specific factors relevant to the resilience of ecosystems established by the 2016 Act (section 4(i)) as part of the SMNR principles<sup>46</sup>, and included as part of the Sustainable Land Management objectives under the Agriculture Act (section 1(7)), are set out to emphasise their importance in maintaining and enhancing ecosystem resilience and to complement existing policy approaches and legislative provision.

*(iii) mitigating, and adapting to, the effects of climate change*

3.84 Climate change significantly impacts the world we live in, from altering weather patterns to influencing species distribution. As detailed earlier in this chapter, the effects of climate change will be widespread and significant, including rising temperatures, changing rainfall patterns leading to drier summers and wetter winters, and sea level rise. These impacts can result, for example, in flooding, water shortages, wildfires, and changes to air quality. Integrating environmental protection and the environmental principles into policy making to contribute to the environmental objective will play a crucial role in supporting our ability to mitigate and adapt to the effects of climate change, promoting environmental and ecosystem health and ensuring that actions taken are responsive to immediate and future environmental challenges.

*(iv) contributing to halting and reversing the decline in biodiversity.*

3.85 Integrating environmental protection and the environmental principles into decision making to contribute to the environmental objective will also play a significant role in halting and reversing the decline in biodiversity by enabling us to better foster policies that prioritize conservation and the SMNR. As highlighted earlier, biodiversity is vital for a high level of environmental protection and an improved environment, for example,

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<sup>46</sup> Section 4, 2016 Act.

through the stability and productivity of ecosystems, providing essential services such as pollination, water purification, and climate regulation. By embedding environmental principles and environmental protection into policymaking, we can curb habitat loss, protect endangered species, and restore degraded ecosystems. This proactive approach is expected to combat the immediate threats to biodiversity and also ensure long-term health and resilience of our natural environment, benefitting both wildlife and human societies alike.

### ***The environmental principles***

3.86 Provision is made for certain environmental principles to establish a new environmental governance framework. These are intended to be the foundation of a new approach which places environmental protection at the heart of policy making in Wales, and to respond, in particular, to the climate and nature emergencies.

3.87 Importantly, the principles have been developed to work with, and complement, the unique legislative provision about the environment and sustainability made already in Wales, in particular the duties to carry out sustainable development and to act in accordance with the sustainable development principle, including the five ways of working<sup>47</sup>, established under the WFG Act and the SMNR provisions, including the SMNR principles, established under Part 1 of the 2016 Act.

3.88 Provision is made, therefore, for the following environmental principles:

- the precautionary principle so far as relating to the environment;
- the principle that preventative action should be taken to avoid environmental damage;
- the principle that environmental damage should as a priority be rectified at source;
- the polluter pays principle.

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<sup>47</sup> Section 5(2).

3.89 In addition, provision is made requiring the integration of environmental protection, discussed further below.

3.90 The interpretation of these principles is increasingly well established and continues to develop in different contexts, with complex interplays between international commitments, international law, domestic legislation and case-law. A brief background is provided below on how the principles have been interpreted and applied, and a fuller explanation and detail on the application and interpretation of the principles in the context of these duties will be set out in the environmental principles statement to be published under the Act.

3.91 The **precautionary principle** is a well-established and widely recognised principle in international law and policy, aimed at preventing potential risks to public health, safety, and the environment and guiding decision-making to prioritise the environment, safety and sustainability over economic interests. It justifies action where the cause and effect of potential risks are understood and where there is scientific uncertainty as to the cause and effect of potential risks, or the risks are not fully understood.

3.92 **The prevention principle** is closely associated with the precautionary principle and they are in practice almost always used together. The prevention principle is fundamentally important to ensure environmental damage is avoided or limited as it allows or requires action to be taken at an early stage<sup>48</sup>. The focus is on preventing damage occurring, rather than repairing damage after it has occurred. This seeks to avoid environmental degradation, which otherwise may be irreversible or excessively expensive to repair.

3.93 The **rectification of environmental damage at source principle** means that environmental damage should be addressed, as a priority, at

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<sup>48</sup> See, for example, *R v Minister of Agriculture* (C-157-96) and *United Kingdom v Commission* (C-180/96) for application of the prevention principle and also integration.

its source, rather than in the wider environment, and (alongside the polluter-pays principle) by the polluter, rather than wider society. It may be used to prioritise action at source across a range of areas (for example, climate change, waste generation, deforestation and pollution) where environmental damage cannot be wholly prevented.

3.94 The **polluter-pays principle** is intended to ensure those who cause environmental damage bear the costs of the damage or remedying it, rather than the wider community. It is intended to ensure accountability for environmental harm, promote sustainable practices and align with broader environmental goals. It moves the financial costs of environmental pollution to the person causing the pollution and away from those affected and wider society.

### ***Welsh Ministers' duties when making policy***

3.95 Provision is made so that the Welsh Ministers must, for the purpose of contributing to the environmental objective, have special regard to the environmental principles when making policy in relation to Wales that has, or could have, any effect on the environment, and integrate environmental protection into the making of such policy.

3.96 This direct and clear duty is essential as an important part of the response to the climate and nature emergencies, and to other environmental risks, including pollution. It will contribute to and be consistent with the existing legislative framework, including in particular the WFG Act, Part 1 of the 2016 Act (SMNR) and Part 1 of the Agriculture Act (SLM). It will enable the Welsh Ministers to respond to changes following the UK's withdrawal from the EU and to strengthen and make specific provision for environmental principles and an environmental protection objective in Wales. Furthermore, it will support effective implementation and delivery of international agreements, including relevant provisions of the TCA.

3.97 Provision is made to impose a duty on the Welsh Ministers to integrate environmental protection (as defined) into policy making, rather than include as an integration principle. This contrasts with examples elsewhere in UK legislation<sup>49</sup>, but we consider this approach places a clearer obligation on Welsh Ministers. As with the principles themselves, this duty will apply not just to ‘environmental policy’, but to all areas of policymaking in relation to Wales which has or could have an environmental impact. This aims to ensure environmental protection is considered across all policy areas, as the greatest damage to the environment occurs in other areas, not from within the framework of environmental policy.

3.98 “Wales” is defined broadly to include so far as policy relates to fishing, fisheries or fish health, the area off the Welsh zone beyond the seaward limit of the territorial sea (in addition to the land area of Wales and the territorial sea adjacent to Wales pursuant to the definition of “Wales” in the Legislation (Wales) Act 2019). “Welsh zone” is defined by Schedule 1 to the Legislation (Wales) Act 2019.

3.99 Provision is made for the Welsh Ministers to have “special regard” to the environmental principles when making policy. A duty to have “special regard” to a particular matter requires the decision maker to which the duty applies to give “considerable importance and weight” to that matter. This means that the Welsh Ministers are required to give special attention of considerable importance and weight to the principles when making policy that has, or could have, any effect on the environment.

3.100 This contrasts with a “due regard” style duty, where the weight to be given to relevant factors is a matter for the decision maker so that on careful consideration in a particular case they may be given little, if any, weight (provided the decision maker does not act unreasonably).

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<sup>49</sup> For example, section 17(5), Environment Act 2021 and section 13(1), UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

- 3.101 As with a duty to have “due regard”, it remains the case that there is a balancing exercise to carry out, but in the case of a “special regard” duty, those factors to which the decision maker is to have special regard are to be given particular importance in the balancing exercise. In this case, this means that the environmental principles must feature prominently in the balancing exercise.
- 3.102 This strengthens the role of environmental principles in policy making, reflecting their importance while also maintaining flexibility that will be necessary across diverse policy areas. The “special regard” duty ensures that environmental principles feature prominently in decision-making, whilst also enabling the Welsh Ministers to balance the environmental principles with other relevant considerations (e.g., public health, costs) depending on the context.
- 3.103 For example, the circumstances may mean that other important considerations or countervailing factors, such as for example public health considerations, excessive costs or other impacts, should be given greater weight than the principles. In some cases, it may be appropriate, in all the circumstances, to give a greater effect to one or more of the principles. In cases with minimal environmental impact, the principles may have limited or even no effect. The intent of the approach taken is to emphasise the importance of the principles, to avoid mere “lip service” to their application, while accommodating diverse areas and factors to be considered by the Welsh Ministers when making policy in relation to Wales.
- 3.104 In complying with their duties to have special regard to the principles, and integrate environmental protection into policy making, the Welsh Ministers must have regard to the environmental principles statement. This important document will explain how the principles and integration duty apply in different circumstances and what they mean for those circumstances. Further details on the statement are described below.



3.105 Provision is made to clarify the meaning of “policy” and “making policy” in connection with the Welsh Ministers’ duties. The provision clarifies “policy” includes proposals for legislation, and “making policy” includes developing, adopting or revising policies. It is made clear that administrative decisions in relation to a particular person or case are not within the scope of these duties.

3.106 The Welsh Ministers’ duties are not intended to apply to individual regulatory, planning or licensing decisions made by the Welsh Ministers (or authorities acting on their behalf). These include, for example, “called-in” planning decisions under the Town and Country Planning Act 1990. Such decisions would be made within the planning policy framework. In preparing this planning policy framework, the Welsh Ministers, as a matter of making policy, would be subject to the duties to integrate environmental protection and apply the principles. In this respect, the duties will have been applied to the policy framework, and this framework will inform individual administrative decisions. We consider this approach is effective and appropriate and avoids applying the principles to individual administrative decisions which would be complex, challenging and potentially duplicative, so as to be unfeasible, with limited benefit.

3.107 In practice, Welsh Government policymaking is typically developed by Welsh Government departments on behalf of the Welsh Ministers and often takes the form of advice submitted to Ministers for consideration and approval. In respect of wider public authorities, in most cases their functions do not include making policy on behalf of the Welsh Government.

3.108 However, it is recognised that certain public authorities may develop policy proposals for the Welsh Ministers in connection with specific areas. These matters will be considered on a case-by-case basis as to whether they would fall within scope of Welsh Ministers’ policy making, as defined by the Bill. However, illustrative examples of this could include (but are not limited to):

- The Animal and Plant Health Agency developed policy proposals for Ministers which recommended a revised fees framework<sup>50</sup>.
- The Food Standards Agency provides policy advice and guidance to the Welsh Ministers, for example on the approach that Competent Authorities should take, as set out in the Food Law Code of Practice, which is issued by Welsh Ministers<sup>51</sup>.

3.109 The duties on the Welsh Ministers to have special regard to the principles, and integrate environmental protection into policy making, will apply where other authorities develop policy (including proposals for legislation) for the Welsh Ministers' approval. The Welsh Ministers will need to demonstrate compliance with the duties whether or not policy is prepared by the Welsh Ministers or another authority on their behalf. Appropriate administrative arrangements will be made with relevant authorities to address this scenario.

### ***Natural Resources Wales' duties when making policy***

3.110 Provision is made to require NRW to have special regard to the environmental principles when making policy in relation to Wales, and to integrate environmental protection (as defined) into the making of such policy. This reflects the wide ranging regulatory and other responsibilities NRW has in relation to the environment, which is not comparable to most other organisations. As such, we consider NRW's role and remit distinguishes it from other public authorities (many of whom will be subject to the narrower duty in connection with environmental assessment described further below). This means the approach in respect of NRW more closely aligns with the duties to be imposed on the Welsh Ministers.

3.111 NRW's policies, which frame its ways of working, have a significant environmental impact and therefore should be directly guided by the

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<sup>50</sup> [Charges for statutory services provided by APHA: proposed changes - GOV.UK](#)

<sup>51</sup> [Food Standards Agency consultation overview](#)

environmental principles and a duty to integrate environmental protection. NRW's role includes (but is not limited to):

- **Adviser** to Welsh Government on Natural Resources Policy, and adviser to industry and the wider public and voluntary sector, and communicator about issues relating to the environment and its natural resources.
- **Regulator** of the marine, forest and waste industries (amongst others), including granting permits, undertaking compliance assessment and taking enforcement action, where appropriate.
- **Designator** of Sites of Special Scientific Interest – areas of value for their wildlife or geology, Areas of Outstanding Natural Beauty (AONBs), and National Parks, as well as declaring National Nature Reserves, and describing Marine Character Areas.
- **Responder** to about 9,000 reported environmental incidents a year as a Category 1 emergency responder.
- **Statutory consultee** to about 7,000 development planning applications a year.
- **Manager/Operator:** managing seven per cent of Wales' land area including woodlands, National Nature Reserves, water and flood defences, and operating five visitor centres, recreation facilities, hatcheries and a laboratory.
- **Partner, Educator and Enabler:** collaborator with the public, private and voluntary sectors, providing grant aid, and helping a wide range of people use the environment as a learning resource; acting as a catalyst for others' work.
- **Evidence gatherer:** monitoring the environment, commissioning and undertaking research, developing knowledge, and being a public records body.
- **Employer** of almost 1,900 staff, as well as supporting other employment through contract work, and work experience.

3.112 Furthermore, as an environmental regulator, NRW has responsibility for a wide range of activities. Examples include:

- major industry (refineries, chemicals, cement, power stations, iron and steel, food and drink etc.)
- waste industry (storage, treatment, disposal)
- Sites of Special Scientific Interest - consents and assents
- radioactive substances (nuclear and non-nuclear)
- licenses for work that effects protected species
- marine licensing
- tree felling licensing
- water discharges (surface and groundwater)
- water resources (abstraction, impoundment, drought)
- packaging regulations and trading schemes
- commercial fisheries (eels, salmon, shellfish)
- Countryside and Rights of Way Act 2000 – access restrictions, open access land.

3.113 It is in the above context that we consider placing a duty on NRW to apply the environmental principles and to integrate environmental protection when making policy will be beneficial to ensure consistent and effective environmental protection. The policy intention is to place a specific emphasis on the environmental principles and the integration of environmental protection by ensuring they are considered and applied as a fundamental part of NRW policy making.

3.114 This provision is made by amendment to the Natural Resources Body for Wales (Establishment) Order 2012, which nests these new obligations within NRW's wider roles and responsibilities. As noted above, this includes NRW's general purpose at article 4 of the Order, which requires NRW to:

- (a) pursue sustainable management of natural resources in relation to Wales<sup>52</sup>, and
- (b) apply the principles of sustainable management of natural resources<sup>53</sup>,

in the exercise of its functions, so far as consistent with their proper exercise.

3.115 The duties will help to give effect to the general purpose, and the duties and purpose are considered complementary and mutually supportive. Requiring NRW to apply the principles and to integrate environmental protection to policy making will contribute to maintaining and enhancing the resilience of ecosystems and the benefits they provide, and be consistent with and complement the application of the SMNR principles. This will be explained further in the environmental principles statement.

3.116 The duty on NRW to apply the environmental principles is a duty to have "special regard" to the environmental principles when NRW is making policy (in a similar way to the duty imposed on the Welsh Ministers described above). The purpose and effect of the "special regard" duty is discussed above in the context of the duty imposed on the Welsh Ministers.

3.117 As explained above in more detail, a duty to have "special regard" means NRW must give "considerable importance and weight" to the environmental principles when making policy. The duty ensures that environmental principles feature prominently in policy making, whilst also applying necessary flexibility, enabling NRW to balance the environmental principles with other relevant considerations. This framework is considered appropriate for NRW to consider all relevant factors, including the SMNR principles, in pursuing its general purpose.

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<sup>52</sup> The "sustainable management of natural resources" is defined by section 3, 2016 Act (article 4(2), The Natural Resources Body for Wales (Establishment) Order 2012).

<sup>53</sup> The "principles of sustainable management of natural resources" has the meaning given by section 4, 2016 Act (article 4(2), The Natural Resources Body for Wales (Establishment) Order 2012).

3.118 Furthermore, the duty to integrate environmental protection will ensure environmental protection is an essential part of policy making and positively contribute to NRW's general purpose.

3.119 In the context of NRW's duties, "policy" and "making policy" are to have the same meaning as in relation to the duty on Welsh Ministers (and detailed above). Again, it is made clear that administrative decisions in relation to a particular person or case are not within the scope of these duties.

3.120 "Wales" is also defined in the same way, to achieve a broad effect that includes, so far as policy relates to fishing, fisheries or fish health, the area of the Welsh zone beyond the seaward limit of the territorial sea (in addition to the land area of Wales and the territorial sea adjacent to Wales pursuant to the definition of "Wales" in the Legislation (Wales) Act 2019). "Welsh zone" is defined by Schedule 1 to the Legislation (Wales) Act 2019.

3.121 In complying with its duties to have special regard to the principles, and integrate environmental protection into policy making, NRW must have regard to the environmental principles statement which will set out guidance about how to comply with these duties and related matters.

### ***Environmental assessments: public authorities' duties***

3.122 Provision is made requiring certain public authorities (described later in this Chapter) for the purpose of contributing to the environmental objective, to have regard to the environmental principles and integrate environmental protection (as defined). These duties apply when carrying out functions in connection with the assessment of plans and programmes (also known as Strategic Environmental Assessment or "SEA") relating

solely to Wales or to any part of Wales under the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 (the “2004 Regulations”).

- 3.123 The requirement to carry out SEA originates from EU Directive 2001/42/EC, which requires EU Member States to make an environmental assessment for plans and programmes which are likely to have significant environmental effects and aiming “....for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development...” (article 1).
- 3.124 That Directive was implemented by the 2004 Regulations, as regards plans and programmes relating solely to the whole or any part of Wales. The Directive was also implemented by other legislation in respect of other parts of the UK, including the Environmental Assessment of Plans and Programmes Regulations 2004 (the “SEA Regulations”), in respect of plans and programmes which relate solely to England or to England and another part of the UK (including therefore cross-border plans and programmes).
- 3.125 The 2004 Regulations require the "responsible authority" to conduct an SEA for specific plans and programs likely to have significant environmental effects, including those setting frameworks for development consent in certain sectors.
- 3.126 The assessment involves preparing an environmental report detailing likely significant environmental effects and reasonable alternatives, along with extensive consultation, including with NRW and Cadw. The plan or programme cannot be adopted until account is taken of certain matters, including the environmental report for the plan or programme and consultation. After adoption, the responsible authority must publish the plan or programme, the environmental report, and a statement explaining how the report was considered and how environmental considerations

have been integrated into the plan or programme. They must also monitor the plan or programme's implementation for unforeseen adverse environmental effects and being able to take appropriate remedial action.

3.127 By making provision for a targeted duty on certain public authorities to have regard to the environmental principles, and to integrate environmental protection, when carrying out SEA, a balanced approach is taken that will enhance environmental protection without imposing undue burdens.

3.128 This approach is also intended to complement the wider, policy making duties on the Welsh Ministers, and NRW, by focusing consideration of the principles and environmental protection beyond policy making on scenarios of significant environmental impact. Environmental assessment leads to improved environmental protection, more robust plans, and further consideration of alternatives. As such, this provision provides further, targeted opportunity to better achieve the underlying legislative goals, in particular to contribute to a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of relevant plans and programmes.

3.129 The duties apply to plans or programmes that relate solely to Wales or to any part of Wales under the 2004 Regulations and not to other SEA legislation. This avoids potentially significant complexity in relation to cross-border plans and programmes (which are dealt with by the SEA Regulations made by the Secretary of State).

3.130 The duties are framed to apply to the 2004 Regulations as amended, revoked and replaced or re-enacted from time to time, so that the duties apply however provision is made for environmental assessment of plans and programmes that relate solely to the whole or any part of Wales (and does not simply end if the 2004 Regulations are revoked or amended).



3.131 A duty to “have regard” is the regard that is “appropriate in all the circumstances”<sup>54</sup>. The duty must be exercised in substance, with rigour and with an open mind<sup>55</sup>. A public authority may attach such weight as it considers fit in its judgment to the need to achieve the statutory objectives<sup>56</sup>. This is subject to review by the courts on irrationality grounds<sup>57</sup>.

3.132 A duty to “have regard” to the environmental principles is appropriate in this case given the targeted application of the duty to SEA. The SEA regime is focussed on the environmental impacts of certain plans and programmes and in that context it is not necessary to add further weight and emphasis to the application of the principles as with the “special regard” duties that apply to Welsh Ministers’ and NRW policy making. The “special regard” approach taken for the duties to apply to Welsh Ministers’ and NRW policy making has been developed to ensure all policy making that affects the environment gives the principles the added weight and emphasis that a duty to have ‘special regard’ provides.

3.133 Provision is be made so that the application of these duties by certain public authorities contributes to the environmental objective in the same way as that objective applies to the duties that apply to the Welsh Ministers. The aims of the environmental objective (detailed further above) are equally relevant and appropriate to the application of these duties in the context of SEA, taking account of the purpose and policy ambition of SEA and this legislation.

3.134 These duties apply to certain public authorities. Those authorities are defined as a person who is (a) a devolved Welsh authority within the meaning given by section 157A of the Government of Wales Act 2006, or

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<sup>54</sup> *Hotak v Southwark LBC* [2015] UKSC 30, at para 74 per Lord Neuberger PSC.

<sup>55</sup> *R (Brown) v Secretary of State for Work and Pensions and another (Equality and Human Rights Commission intervening)* [2009] PTSR 1506 at para 82.

<sup>56</sup> *R (on the application of Baker and others) v Secretary of State for Communities and Local Government and another* [2008] LGR 239 at para 34.

<sup>57</sup> *R (Brown) v Secretary of State for Work and Pensions and another (Equality and Human Rights Commission intervening)* [2009] PTSR 1506 at para 82.

(b) listed in paragraph 9(2) or (6) of Schedule 7B to that Act, but not including the Welsh Ministers or NRW (in respect of whom alternative provision is made as described above).

3.135 In complying with their duties to have regard to the principles, and to integrate environmental protection when carrying out SEA, public authorities must have regard to the environmental principles statement, which will set out guidance about how to comply with these duties and related matters.

### ***Environmental principles and integrating environmental protection policy statement***

3.136 Provision is made to require the Welsh Ministers to prepare and publish a document (called the “environmental principles and integrating environmental protection statement”). The purpose of this statement is to clarify and explain how the environmental principles are to be interpreted and applied, and to cover a range of related matters. As highlighted above, the interpretation and application of the environmental principles is increasingly well established and continues to develop. Their interpretation to date has derived from a number of sources, including the EU context. Furthermore, the principles and environmental objective must be applied in a way that is coherent with and complements the existing legislative landscape in Wales, in particular the WFG Act, the 2016 Act and the Agriculture Act.

3.137 The publication of the environmental principles statement, and the process to be prescribed for its preparation, is intended to provide an opportunity to improve understanding of the interpretation and application of the principles and the duty to integrate environmental protection, enhance accessibility and facilitate scrutiny and engagement. The environmental principles statement will also provide appropriate flexibility to update the interpretation and application of the principles, for example

to reflect relevant new evidence, or other scientific, technological and global developments.

3.138 Provision is made to detail the requirements of what must be included in the environmental principles statement. This includes detail of how the Welsh Ministers propose to comply with their duties to have special regard to the principles and integrate environmental protection when making policy. In so doing, the environmental principles statement will need to explain how the principles apply in different circumstances and what they mean for those circumstances. It is not intended to set out details of specific policies and how the principles relate to them but may include illustrative examples to demonstrate how the duties will be complied with.

3.139 The provision also sets out important interactions to be captured by the environmental principles statement, such as how the environmental principles and the duty to integrate environmental protection relate to the environmental objective, how the duties relate to wider legislation and how the principles relate to each other. Provision is also made requiring the environmental principles statement to explain how the duties imposed on the Welsh Ministers, NRW and other public authorities relate to each other.

3.140 The environmental principles statement must also include guidance to both NRW and public authorities on how to comply with the duties imposed on them. In the case of NRW, this must also explain how to do so in a way that gives effect to its general purpose, set out in article 4 of the Natural Resources Body for Wales (Establishment) Order 2012. The guidance must also include certain other specified matters including how the duties relate to other powers and duties.

3.141 Provision is also made to allow for the environmental principles statement to cover any other matters considered appropriate by the Welsh Ministers.

3.142 Provision is made so that the Welsh Ministers may from time to time review and revise the environmental principles statement.

### ***Environmental principles and integrating environmental protection statement: Procedural requirements***

3.143 Before publishing the environmental principles statement or a revised statement, the Welsh Ministers must consult NRW, the Future Generations Commissioner for Wales, the Office of Environmental Governance Wales, and such other persons as they consider appropriate. The Welsh Ministers must also lay before Senedd Cymru a copy of the environmental principles statement (or revised statement) and a document giving details of the consultation carried out. The purpose of these provisions is to increase transparency, engagement and accountability, including with key organisations through which these provisions will have an impact (such as NRW) or would have a close interest (such as the Future Generations Commissioner).

3.144 Provision is made to enable the Welsh Ministers to meet these consultation requirements before this provision comes into force. This is to enable the environmental principles statement to be progressed as efficiently and effectively as possible ahead of commencement of the Bill's provisions.

## **PART 2 – THE OFFICE OF ENVIRONMENTAL GOVERNANCE WALES**

### ***Introduction***

3.145 The environment has been a key part of EU policy and law for decades and much of the environmental law in the legal jurisdictions of the United Kingdom (“the UK”) is derived from EU environmental law; either through

directly effective EU Treaties and Regulations, or EU Directives transposed into domestic law.

3.146 The Bill is intended to set out in legislation a requirement for The Office of Environmental Governance Wales (“OEGW”) to provide strategic oversight of any requirements on a public authority (as defined the Bill) to comply with environmental law, to make effective environmental law and to implement / apply environmental law effectively.

3.147 Oversight of environmental law and the accountability of EU Member States was previously provided by the European Commission (“EC”) and the Court of Justice of the European Union (“the CJEU”), the latter in addition to the UK’s domestic courts. If a Member State failed to fulfil its obligations under EU law, such as failing to implement an EU directive or to apply it correctly, the European Commission could investigate and bring enforcement proceedings<sup>58</sup>. The European Commission brought such infringement proceedings (also known as “infraction” proceedings) against the UK in an environmental law context. For example, where it considered the UK failed to comply with an urban waste- water treatment directive (Directive 91/271/EEC)<sup>59</sup> and failed to comply with ambient air quality requirements under the Air Quality Directive (Directive 2008/50/EC).<sup>60</sup>

3.148 Following the UK’s exit from the EU, the European Commission no longer has this oversight role.<sup>61</sup> This has led to concern about the oversight of environmental law in the UK, as there is no independent body with equivalent oversight of whether the UK is complying with environmental law. While Judicial Review (“JR”) remains a potential avenue of challenge where a public authority has allegedly failed to comply with environmental law, subject to an applicant’s standing and

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<sup>58</sup> <sup>58</sup> See, for example, Article 258 of the [Treaty on the Functioning of the EU](#) (“the TFEU”).

<sup>59</sup> See [IP/09/1488](#).

<sup>60</sup> <sup>60</sup> See also the CJEU judgment against the UK in [European Commission v United Kingdom \(C-664/18\)](#).

<sup>61</sup> <sup>61</sup> After 31 December 2020 (the date given for “IP completion day” under section 39(1) of the European Union (Withdrawal Agreement) Act 2020), the UK was no longer bound by the TFEU, which was not saved as part of retained EU law through the European Union (Withdrawal) Act 2018, section 3.

other considerations, it is a limited remedy and does not appear to policy to wholly address the gap in oversight left by the UK's withdrawal from the EU. And, of course, JR was available while the UK was a member of the EU and subject to the oversight of the European Commission.

3.149 A number of public bodies are “front-line regulators” of environmental law, such as NRW. These front-line regulators are granted specific regulatory powers, either directly in legislation or have such functions delegated to them by the Welsh Ministers, to bring prosecutions and other enforcement action against persons who breach environmental law in specific cases. Our intent for the OEGW is to sit above this tier of regulation and provide strategic oversight of the effectiveness, application and implementation as well as any failures by public authorities to comply with environmental law, which could include, as an example, bringing enforcement action against such front-line regulators themselves.

3.150 Further, there is a wider framework of other domestic institutions that deliver environmental functions and can, in limited circumstances, hold the Welsh Government and other bodies to account on environmental matters. These include:

- **The Future Generations Commissioner for Wales** reports on the progress public bodies have made and should make in relation to setting and meeting well-being objectives in line with the sustainable development principle under the Well-being of Future Generations (Wales) Act 2015. They can provide advice to public bodies as well as carry out reviews into how public bodies are taking account of the long-term impact of their decisions.
- **The Public Service Ombudsman for Wales** receives complaints about the delivery of functions by public bodies and hold them to account and matters of maladministration.
- **The Auditor General for Wales**, as the external auditor for most of the Welsh public sector, examines how public bodies manage

and spend public money, including how they achieve value in the delivery of public services.

- **The Information Commissioner's Office (ICO)** is the independent regulatory office dealing with the Data Protection Act 2018 and the General Data Protection Regulation, the Privacy and Electronic Communications (EC Directive) Regulations 2003 across the UK; and the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 in England, Wales and Northern Ireland and, to a limited extent, in Scotland.

3.151 Beyond these institutions, established legal frameworks for environmental protections can be used to enforce existing domestic environmental legislation through the court system. However, seeking remedies through the legal system for environmental enforcement purposes can be lengthy, time consuming and expensive. Relying on these limited court measures as a recourse to environmental justice would, in our view, insufficiently support the access to justice commitments set out in the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ( the [Aarhus Convention](#)) to which the UK, and therefore Wales, is a signatory).

3.152 In addition to the above, on 1<sup>st</sup> May 2021, the UK-EU Trade and Co-operation Agreement (“TCA”) entered into force<sup>62</sup>, setting out the terms of the future UK-EU relationship. The TCA was implemented by the European Union (Future Relationship) Act 2020. The TCA includes ongoing co-operation on environmental commitments in a wide range of areas, including climate change, air quality, water quality, and biodiversity, as well as a commitment not to “weaken or reduce... its environmental levels of protection... below the levels that are in place at the end of the transition period... including by failing to effectively enforce its environmental law or climate level of protection”. Articles 394 (enforcement

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<sup>62</sup> [EU-UK Trade and Cooperation Agreement 24.12.2020.pdf \(publishing.service.gov.uk\)](#).

of non-regression from levels of protection) and 395 of the TCA (co-operation on monitoring and enforcement) are particularly relevant.

### ***Interim arrangements***

3.153 Although Wales does not yet have a permanent environmental governance body in place, an Interim Environmental Protection Assessor for Wales (“the IEPAW”) was appointed on 1 March 2021<sup>63</sup>. The role of the IEPAW is to consider issues in relation to the functioning of environmental law in Wales and to submit reports on such issues to the Welsh Ministers setting out their recommendations. The IEPAW also provides members of the public with a mechanism to raise submissions about the functioning of environmental law in Wales, who then considers their validity and can make recommendations for any action they consider may need to be taken by Welsh Ministers.

3.154 The IEPAW has carried out a valuable role in relation to the functioning of environmental law in Wales, but their remit and powers fall short of the arrangements that existed under the EU environmental governance framework. In particular, the IEPAW does not have statutory investigation, information and enforcement powers to address complaints about compliance with environmental law by public authorities.

### ***Other Administrations***

3.155 The UK Parliament and the Scottish Parliament have already legislated to address the concerns around the lack of oversight of environmental law by establishing environmental governance bodies in England and Northern Ireland and Scotland respectively.

3.156 The Office for Environmental Protection (“the OEP”) was established by the Environment Act 2021 (“the EA 2021”). Broadly speaking, the OEP has an oversight function in respect of public bodies exercising

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<sup>63</sup> See [here](#) for further information on the IEPAW.



environmental functions in the UK, except for functions within the legislative competence of Senedd Cymru or the Scottish Parliament.

3.157 Environmental Standards Scotland (“ESS”) was established by the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (“the Scottish Act”).

3.158 Due to the drafting of the Environment Act 2021, there are functions being carried out in, or in relation to Wales which are not covered by the OEP. There is no equivalent governance body to the EC in Wales with oversight of environmental law that is a “devolved function” and within the legislative competence of the Senedd.

3.159 As part of our approach we have reflected on the lessons learned from both organisations and stakeholders in the establishment of these bodies. We have sought to build upon positive elements from each whilst also ensuring the Welsh body nests appropriately and effectively in the Welsh context.

### ***Establishment of the Office of Environmental Governance Wales***

3.160 The provision set out in this Bill reflects the overall vision and policy intent Welsh Ministers have for the OEGW, including its purpose, scope and functions.

3.161 We consider placing environmental governance on a statutory basis in Wales is necessary to support a significant range of policy measures and ensure environmental law is being implemented effectively and individual organisations are complying with their obligations under environmental law. Fundamental change to environmental governance structures following the UKs departure from the EU, has led to the diminishing of environmental governance oversight, with no existing body in Wales suitable to, or capable of fulfilling the role previously held by the EU

commission in respect of EU environmental law, whether directly applicable or implemented into domestic law.

3.162 This Bill also presents an opportunity to strengthen this environmental governance role by focusing a future body's remit beyond EU environmental law, enabling it to have a more encompassing and responsive oversight of environmental law in Wales. This oversight is intended to be inherently 'supportive' rather than authoritarian, and we have specifically designed enforcement provision to be escalatory in nature, reflecting the need to work collaboratively across the public sector to address the impacts of environmental harm, whilst also providing sufficient 'teeth' to galvanise remedial action.

3.163 In essence, through the exercising of its functions, the OEGW will provide a core supporting role to wider environmental policy and legislation, thereby 'locking in' the benefits of these policy measures through effective enforcement, as well as recommending improvements. In doing so, it is expected the OEGW will contribute towards driving up environmental protection and improving the quality of the environment in Wales.

3.164 To deliver this, we consider it necessary to establish an independent board with relevant and suitable environmental expertise, and appropriate administrative support, with tools to more closely monitor the effectiveness of environmental law, as well as empowering them to take action when they have concerns around compliance and / or effectiveness of that environmental law.

3.165 The OEGW will be an independent oversight body. It will hold public authorities, as defined in the bill, and including the Welsh Ministers, to account, in respect of their environmental obligations through powers provided to it in this Bill. In this respect, its independence is of paramount importance to its effective operation, and we have taken opportunities to strengthen this as part of our approach.

3.166 The OEGW will have a core role in monitoring and reporting on the effectiveness of environmental law. Through this monitoring, they will gather information around non-compliance by public authorities, including through representations made by the public or other organisations, to support investigation into areas of concern. Through this investigation, the OEGW will determine how to best resolve these concerns, which could be in the form of, informal resolution, recommendations where improvements can be made and, if necessary, formal enforcement action. We have empowered the OEGW to use its own expertise as to the most appropriate and effective mechanism towards achieving resolution, in line with its overall purpose.

3.167 The OEGW will be able to investigate representations made by persons or organisations, or to act on their own initiative to undertake an investigation. If they determine action is necessary, they will undertake an escalatory approach to enforcement to ensure public authorities can move towards compliance as quickly and efficiently as possible. If necessary, the OEGW will be able to take enforcement action against breaches by public authorities.

3.168 The OEGW will not be a front-line regulator, and it is not intended to replace individual regulators such as NRW or OfWat. It must also fit cohesively within the matrix of wider organisations which undertake similar oversight roles. These include (but are not limited to)

- Public Service Ombudsman for Wales
- Auditor General for Wales
- Information Commissioner's Office
- Future Generations Commissioner

3.169 The OEGW will be required to act impartially, objectively, proportionately and transparently in pursuance of its general purpose. They will be responsible for producing a strategy for publication which will

detail how the OEGW intends to use its functions in pursuit of its overall purpose.

### ***General purpose etc.***

3.170 Provision is made for the OEGW to exercise its functions for the general purpose of contributing to the environmental objective, which is detailed further earlier in this chapter.. The general purpose is intended to provide strategic direction by clarifying the policy outcomes the Welsh Ministers expect the OEGW, in exercising its functions, to contribute towards. The OEGW is expected to use its functions to achieve a high level of environmental protection and improve Wales' overall environment. This includes addressing present needs without compromising future generations, aligning with the well-being goals of the Well-being of Future Generations (Wales) Act 2015, maintain and enhance resilience of ecosystems and the benefits they provide, mitigating and adapting to climate change and contributing to and halting and reversing the decline in biodiversity.

3.171 The OEGW's contribution towards this objective will be in relation to its functions, which are focussed on compliance with environmental law, the implementation and application of environmental law as well as assessing the effectiveness of environmental law (and detailed further in the following paragraphs). In this respect, we do not anticipate the OEGW would provide advice or produce reports in relation to policy matters which do not fall within the scope of 'environmental law'. This is undesirable as it would not only be outside of the policy design of the OEGW but could also create further confusion and overlap with the responsibilities of wider organisations, such as NRW (e.g. in relation to natural resources policy) and the Future Generations Commissioner (in relation to Sustainable Development).

3.172 The OEGW will also be required to act impartially, objectively, proportionately and transparently. These are expectations of all public bodies but are of particular importance in relation to the OEGW in the

context of providing significant and, in our view, necessary, independence from Welsh Ministers. In this respect, it is essential that the public have confidence that the OEGW is acting with propriety, and this is strengthened through this legal duty placed upon the OEGW to do so.

### ***Duty to prepare and publish strategy***

3.173 The OEGW is placed under a duty to prepare and publish a strategy setting out how it intends to exercise its functions. The OEGW will also be required to exercise its functions in accordance with the strategy. The purpose of this provision is to aid transparency and understanding of the OEGW's functions, and their application, by requiring a public facing document upon which the OEGW will be required to be consult and also to publish. Schedule 2 sets out detailed provision about what, in particular, the strategy must contain, and the procedural requirements associated with producing the strategy. This is covered in more detail below.

### ***Monitoring and Reporting***

3.174 The Bill provides the OEGW with functions to monitor public authorities' compliance with environmental law, as well as the implementation and application of environmental law. This monitoring and reporting is intended to form a key part of the OEGW's assessment of whether environmental law is effective or not. This function is also expected to provide additional intelligence around whether environmental law is being complied with by public authorities in addition to the information received in direct representations from the public

3.175 As an output of this monitoring activity, the OEGW is expected to publish reports. These reports could relate to public authorities' compliance with environmental law, the implementation and application of environmental law, or otherwise any matter concerned with the making of environmental law or its effectiveness. These monitoring and reporting powers are intended to complement more targeted functions of the OEGW (such as the powers to issue compliance notices and improvement reports) enabling the OEGW to independently assess and subsequently

detail any findings which relate to environmental law. This intent is further supported by a duty for the OEGW to publish any reports so produced, as well as lay copies of these reports before Senedd Cymru. In turn, this is expected to enhance public understanding and accountability in respect of the workings of the OEGW.

3.176 The OEGW will also have a role in monitoring any statutory targets relating to the environment as elements of ‘environmental law’, which is intended to include, but is not limited to, the biodiversity targets that will be set in relation to part 3 of the Bill. We have not sought to specify targets, or any specific facet of environmental law, to provide the OEGW with sufficient scope to act independently and determine its own priorities, based on its own expertise.

3.177 This flexibility also provides scope for the OEGW to work with other organisations which assess and/or advise on environmental targets, particularly in a cross-border context, such as the OEP, ESS and the Climate Change Committee. However, to ensure the OEGW reflects on ensuring these targets are effective and public bodies comply with them, Schedule 2 requires the OEGW to, among other things, set out in its strategy how it will monitor any targets relating to the environment set by, or under, environmental law, not necessarily in relation to specific targets but a more general overview.

### ***Advising the Welsh Ministers***

3.178 The Bill makes provision that the OEGW may give advice to the Welsh Ministers in relation to

- a) a proposal for the making of a new environmental law or other new enactment relating to the environment in Wales,
- b) a proposed change to environmental law or other enactment relating to the environment in Wales, or
- c) any other matter relating to environmental law.

3.179 The intention of this provision is to enable the Welsh Ministers to access the substantial expertise expected to be provided by the OEGW in relation to environmental law in pursuit of developing or improving policy outcomes for the environment. It will also enable the OEGW to provide advice pro-actively on such matters (for example, by providing advice on legislative proposals relating to the environment). This provision is intended to operate over and above any consultation requirements on the Welsh Ministers in other legislation.

3.180 The decision as to whether to give advice rests solely with the OEGW. Whilst the Welsh Ministers may request advice, the OEGW may determine not to provide the advice requested, though must provide a statement as to its reasoning. This approach is intended to balance the ability of the Welsh Ministers to access expert advice whilst also preserving the independence of the OEGW and also its capability to prioritise resources as it sees fit.

3.181 The Welsh Ministers will also be under a duty to have regard to any advice so given by the OEGW in relation to this function.

3.182 Section 12(6) is intended to provide clarity in relation to the extent of the OEGW scope regarding any other new enactment relating to the environment in Wales. The effect is that the OEGW's advice may relate to fishing, fisheries or fish health in the area of the Welsh zone beyond the seaward limit of the territorial sea (which is outside the meaning of "Wales" given by the Legislation (Wales) Act 2019)

### ***Advice, guidance and assistance on environmental law***

3.183 Provision is made for the OEGW to give guidance (whether general or specific), or advice or other assistance to any person, on any matter relating to environmental law. This provision would, for example, allow the OEGW to advise on areas where a public authority's environmental law compliance or implementation doesn't warrant enforcement, though their

advice isn't intended to be limited to these cases. This scenario could occur following investigation of a public authority's compliance with environmental law, whereby the OEGW may have concerns with a public authority's implementation or application of environmental law which does not represent a clear case of non-compliance. They may, therefore, recommend improvements to processes or guidance to mitigate the risk of future non-compliance with environmental law associated with these concerns.

3.184 This is not intended to be the 'default' way in which the OEGW deals with non-compliance but provides an additional mechanism for the OEGW to limit the risk of future non-compliance and the intended escalatory process to be adopted by OEGW. This 'preventative' approach is further supported by provision whereby, if the OEGW provides advice to a public authority which includes recommendations relating to the authority's application or implementation of environmental law, the OEGW may require the authority to respond to the recommendations within a period specified by the OEGW. This is to ensure the advice of the OEGW has been taken into account, and, if the OEGW is not satisfied this is the case, it may choose to continue monitoring this situation if they consider there to be a reasonably high risk of future non-compliance with environmental law.

3.185 To ensure transparency and accountability, the OEGW will be required to publish any guidance provided using the powers in this section.

### ***Information notices***

3.186 Access to up to date and accurate information is an essential component of enabling the OEGW to monitor and investigate effectively those areas of concern relating to environmental law. Public authorities will be under a general duty to cooperate with the OEGW (detailed later in this chapter). It is expected that, for the majority of cases, this should enable the OEGW to access information it needs in a timely manner. However, if a public authority does not respond voluntarily to an information request



from the OEGW, or the OEGW considers it is not appropriate to rely on a voluntary approach, the OEGW has the power to issue an information notice which requires a public authority to supply information that the OEGW reasonably requires for the purposes of exercising its functions, and with which the public authority must comply.

3.187 The purpose of this provision is to expressly support the OEGW's capability to monitor and investigate any concerns around the effectiveness of environmental law, or non-compliance with environmental law by public authorities, by setting a clear procedure which can be escalated in instances where the information requested has not been provided.

3.188 When issuing an information notice the OEGW must fulfil specific criteria for the notice to be valid. The notice must specify:

- a) the information, or the nature of the information, that is to be given,
- b) the purposes for which the information is required,
- c) how the information is to be given, and
- d) the period within which the information is to be given.

3.189 To provide public authorities with sufficient time to consider and comply with the information notice, the time within which the public authority must comply is at least 2 months beginning with the day the notice is served. It will be open to the OEGW to provide a longer period of time for the provision of this information if they think this is appropriate, for example, when considering the volume of information to be provided.

3.190 Public authorities will be able to make representations against the information notice if they do not consider, for example, it is appropriate or possible to provide the information that has been requested. These representations will be considered by the OEGW and the stated timescale in which the information is to be provided is, in effect, paused whilst the representation is considered. The OEGW has the power to withdraw or vary an information notice for any reason.

## ***Investigations***

3.191 The power to investigate potential failures to comply with environmental law as well as the implementation, application and effectiveness of environmental law, will be a key power of the OEGW. In most cases it will form the first step in the enforcement process and it would be very difficult, if not impossible, to effectively enforce any requirements without first having the power to thoroughly investigate any failure to comply with, or application, implementation or effectiveness of, environmental law. For this reason, provision is made to enable the OEGW to investigate any matter relating to

- a. whether a public authority is failing, or has at any time failed, to comply with environmental law,
- b. how environmental law is implemented and applied, or
- c. the effectiveness of environmental law.

3.192 The power to investigate whether a public authority is failing, or has at any time failed, to comply with environmental law is intended to support the functions of the OEGW in respect of non-compliance and enforcement. They are expected to take necessary steps to gather information and intelligence around whether there has been non-compliance with environmental law and determine what steps would be needed to correct this non-compliance. The OEGW will be able to launch an investigation based on any instance where they have a reasonable belief that a public authority has failed to comply with environmental law, and this can be because of the OEGW's own initiative or in response to any representations made to it by any person.

3.193 The provision allows the OEGW to consider failures to comply which have commenced at any time, which could include prior to the establishment of the OEGW.

3.194 The powers to investigate how environmental law is implemented and applied, and the effectiveness of environmental law is intended to support

the functions about improving and advising on environmental law. It is expected these powers will be relied upon, but not limited to, investigation into areas of concern which relate to systemic issues concerning environmental law. In this instance the OEGW may not consider an issue would be wholly resolved through compliance action, and would more appropriately be dealt with through either the preparation of improvement reports, or strategic advice to the Welsh Government and others where appropriate in respect of the effectiveness of environmental law, and what change might be necessary to improve its effectiveness.

3.195 To aid with transparency and accountability for both the public authorities and the general public, the OEGW will be required to set out its investigation policy as part of its strategy.

### ***Compliance notices***

3.196 As highlighted earlier in this chapter The Bill deliberately leaves room for any areas of concern to be resolved through alternative measures, such as through informal resolution or the provision of advice. However, it will be for the OEGW to determine whether it would be appropriate or effective to resolve these areas of concerns through those mechanisms. In any event, the OEGW will have the power to issue a compliance notice, with which public authorities must comply.

3.197 The OEGW has the power to serve a compliance notice in two scenarios

- a. in circumstances where a public authority is failing to comply with environmental law, or
- b. Where an information notice has been issued but a public authority has failed to comply with it.

3.198 “Circumstances where a public authority is currently failing to comply with environmental law” is intended to capture ongoing failure to comply with environmental law by public authorities, regardless of when the failure to comply started. By way of example, this could relate to provision whereby a public authority is required to set out, in guidance, pesticides and biocides which are permitted for use for local development. If the OEGW investigated and found that the guidance is not implementing or applying environmental law effectively as, for arguments sake, it allows developers to use a substance that is banned elsewhere in legislation and / or known to cause significant environmental damage, the OEGW would be able to take compliance action against the public authority responsible for the guidance, requiring remedial action to be taken.

3.199 It is important to note that, in this example, compliance action is taken against the public authority responsible for the guidance, and not the developers who have followed the guidance. This is because, from the developer’s perspective, they have followed legislative requirements implemented through the guidance, even if at the time it was incorrect. If there is non-compliance by a developer and they have failed to comply with the regulatory regime, this would be more appropriately and effectively dealt with by regulatory bodies, and any mitigation considered as part of that process. This bill specifically does not legislate in this area as there is already provision for such action to be undertaken by the regulator where necessary.

3.200 The second scenario applies to circumstances where an information notice has been issued but has not been complied with by the public authority (i.e. the information has not been provide). This provides an opportunity for escalation of these notices, enabling the OEGW to issue a compliance notice enforcing the steps in the information notice to be taken. In other words, the information requested must be provided.

3.201 Provision is also made to set out the specific elements which must be specified within a compliance notice for it to be valid. For circumstances

where a public authority is currently failing to comply with environmental law, or has at any time, failed to comply with environmental law in circumstances that make it likely that the failure will be repeated, these are:

- a. the environmental law to which the alleged failure relates,
- b. the conduct that has caused the OEGW to consider that the public authority is failing, or has failed, to comply with environmental law,
- c. one or more actions the OEGW requires the authority to take in order to address the failure (which may include action intended to remedy or mitigate, or prevent any repeat of, the failure), and
- d. the period within which each action must be taken.

3.202 The period within which action must be taken for an ordinary compliance notice cannot be earlier than 30 days (beginning with the day the notice was served). This is to provide the public authority with reasonably sufficient time to consider the notice and, if necessary, request a review if they do not agree with the content of the compliance notice. However, this does not apply in the case of urgent compliance notices (detailed later in this chapter)

3.203 Where a compliance notice has been served in relation to non-compliance with an information notice, it must specify

- a. the respects in which the OEGW considers the public authority has failed to comply with the information notice,
- b. the action the OEGW requires the authority to take in order to address the failure, and
- c. the period within which the action must be taken.

3.204 All compliance notices must also include information about the right to request a review of a compliance notice, including the period within which the request must be made, and an explanation of the consequences of failing to take the action specified in the notice. Procedures around review

of compliance notices and referrals to the High Court of England and Wales, are dealt with later in this EM.

3.205 Provision is made to enable the OEGW may, by giving notice to the public authority, withdraw or vary the notice as it sees fit. This provides sufficient scope for discussion and negotiation, if necessary, following the issuing of a compliance notice, in keeping with the escalation process previously referred to earlier in the EM.

3.206 Specific provision is made to clarify that a compliance notice may not require any action to be taken in respect of an administrative decision taken by a public authority in relation to a particular person or case (for example, a decision on an application for planning permission, funding or a licence, or a decision on regulatory enforcement in a specific case). It is not the intent of the OEGW to alter decisions made, for example, by a regulatory body, such as in relation to a planning or licensing decision, but it is expected that the OEGW could consider these decisions if they point to a broader issue within the scope of the OEGW's strategic oversight role. This is on the basis that these decisions may provide evidence more broadly of a public authority failing to comply with environmental law or failing to implement or apply environmental law effectively.

### ***Urgent compliance notices***

3.207 Specific provision has been made to enable the OEGW to act swiftly to resolve compliance concerns, which applies in instances where actions specified in a compliance notice need to be taken urgently by a public authority to prevent or mitigate an imminent and risk of serious damage to the environment or to human health. This is known as an 'urgent compliance notice'.

3.208 The primary distinction between urgent and ordinary compliance notices is that urgent compliance notices may specify actions to be taken within a 7 to 30-day period. The rationale for a 7 day period is to provide

reasonably sufficient time for a public authority to consider the urgent compliance notice and, if they are so minded, request a review of the notice, whilst accounting for further engagement and clearance mechanisms within larger organisations, as well as accounting for non-business days. It is not considered necessary, nor reasonable, to enable the OEGW to require action shorter than 7 days, as they are not a front-line regulator and are unlikely to be dealing with matters of such urgency that would result in significant harm to the environment unless immediately resolved.

3.209 Nevertheless, we envisage there could be instances where non-compliance could be enabling imminent and risk of serious of damage to the environment or to human health where it would not be appropriate to wait for the 30-day time period set out under the ordinary compliance notice which in reality would lead to a far greater period of time before any actions were actually taken.

3.210 If the OEGW decides to issue a compliance notice to a public authority that specifies actions to be taken with a period of less than 30 days, it must indicate that it is an urgent compliance notice for the purposes of the legislation.

### ***OEGW's review of compliance notices***

3.211 After a compliance notice has been issued to a public authority, they may request a review of the compliance notice if they do not agree with the actions required by the notice.

3.212 The public authority must request a review by giving notice to the OEGW within either;

- a. 30 days for an ordinary Compliance Notice
- b. 7 days for an urgent compliance notice

3.213 The review must be conducted by a committee established by the OEGW (referred to as ‘the review committee’, which is detailed later in this chapter).

3.214 The grounds for requesting a review must be material and not frivolous. The Bill provides the review committee may disregard any such failure, defect or error in the notice if the committee considers it not to be a material one. This could include, for example, a typographical error. The purpose is to ensure there is no unnecessary delay in rectifying matters of non-compliance.

3.215 Following the review, the review committee must either

- a. confirm the compliance notice,
- b. withdraw the compliance notice, or
- c. vary the compliance notice.

3.216 This is to ensure the findings of the review committee cannot be overridden by the OEGW as a wider body and to ensure the independence of the review committee from the OEGW as far as is practicable. The Bill outlines further steps to ensure the independence of the committee from the OEGW, where appropriate, and this is detailed further in Paragraph 10 of Schedule 1 to the Bill, which concerns the review committee.

3.217 The review committee will be required to give notice of its determination on a review directly to the public authority that requested the review. The review committee’s determination is final; the OEGW will not be able to override this, and no further requests for a review may be made in relation to the same compliance notice. A varied compliance notice will not be considered to be the same notice.

3.218 In considering the review, the review committee may require further information to come to a determination. As a result, the public authority that has requested the review must provide the review committee with such further information as they may reasonably require.



3.219 When a review has been requested, the time in which action is required to be taken within the compliance notice will, in effect, be paused until the committee has made its determination to confirm, withdraw or vary the notice. The ‘stopping of the clock’ begins on the day the public authority requests the review and ends with the day the review committee gives its determination.

### ***High Court review after failure to take specified action***

3.220 This section details the circumstances where the OEGW has issued a compliance notice but a public authority has failed to take the action specified within the set period and no review has been requested or has been unsuccessful. In such circumstances, the OEGW may refer the matter to the High Court of England and Wales, applying for an order requiring the public authority to either take the action specified in the compliance notice, or otherwise take such action as the Court sees fit. The intent of this provision is to provide a further opportunity for escalation if public authorities do not take the steps to resolve non-compliance detailed in the compliance notice and to enable the actions to be enforced to the extent the High Court thinks appropriate.

3.221 The Bill provides, unless the compliance notice is an ‘urgent compliance notice’ this application to the Court may not be made before the later of either:

- i. the end of the period within which the public authority is required to take the action, or
- ii. any time limit that applies to the commencement of judicial review for questioning the alleged conduct in respect of which the compliance notice was served.

3.222 This is to for any parties to bring judicial review of the conduct of the notice within the time period for judicial review. This considers only the ordinary timescales applied to judicial review procedures, and not any

extension for the application to which the Court may agree which would be outside the scope of this legislation.

3.223 In cases where an urgent compliance notice has been served, the application to the courts may not be made before the end of the period within which the public authority is required to take the action. This is to allow sufficient time for the action to be taken, whilst also enabling a court referral to happen more swiftly than under 'ordinary' compliance notices. The requirement to factor in the period in which an application for judicial review could be made does not apply, which is intended to reflect the urgent circumstances under which these compliance notices are issued.

3.224 The Bill makes provision about what any order, following a review of a compliance notice, must and may include. If minded towards granting an order, the Court must specify the period within which the action is required be taken. If the Court considers that a compliance notice or a part of a compliance notice is unreasonable, the Court must require the OEGW to withdraw the notice or (as the case may be) the part of a notice.

3.225 In considering whether the compliance notice, or part thereof is unreasonable, the Court are likely to consider whether the non-compliance which has been set out in the notice, is in their view, non-compliance. This is based on the presumption it would not be reasonable to make such a non-compliance notice as there had not been non-compliance. The Court will otherwise determine its own process for dealing with such referrals ensuring reference to the Bill requirements where applicable.

### ***Improvement reports***

3.226 In considering areas of concern relating to environmental matters, the OEGW may determine that the issue is of a strategic nature that would not be dealt with effectively by a compliance notice, whether in whole or part. This could, for example, be because the effectiveness of compliance with environmental law goes beyond the actions of a single public authority,

and instead points towards a structural flaw in the system. Such a flaw might arise because of environmental law which has not been made effectively (pointing towards a flaw in the legislation) or could also be a failure to implement or apply environmental law effectively (for example, supporting statutory guidance which does not adequately reflect or implement the legislation).

3.227 For this reason, the OEGW has the power to issue and publish an improvement report in circumstances similar to the compliance notice, that is, if it considers that a public authority is failing or has at any time failed to either comply with environmental law or implement or apply environmental law effectively. However, the nature of an improvement report is intended to be different from a compliance notice.

3.228 A compliance notice will enforce compliance through specific actions that must be taken by a singular public authority. Conversely, an improvement report will look at the wider circumstances which is driving this non-compliance and provide recommendations as to how these circumstances can be improved. By way of example, an improvement report could contain recommendations to address an environmental duty on public authorities which has, in the OEGW's view, been made in such a way that it is not achieving the intended legislative outcome. In this example, a compliance notice would not be appropriate as there is no 'non-compliance'.

3.229 The Bill allows for the OEGW to publish an improvement report if it considers a public authority has failed to make environmental law. This is to provide for the limited circumstances in which a PA, such as NRW, has powers to make secondary legislation or byelaws.

3.230 A single improvement report may also relate to a failure by two or more public authorities but only if the OEGW is satisfied that all the authorities concerned have exercised their functions in such a way as to lead to the same, or similar, alleged failure. This provision is designed to capture

‘systemic flaws’ which may be driving non-compliance by public authorities. In this context, it may not be proportionate or reasonable to take action against a single public authority when the system itself is at fault, and therefore an improvement report would be the most effective mechanism for resolving the underlying issue.

3.231 When the OEGW publishes an improvement report, it must send a copy to the public authority whose failure led to the investigation and, if the public authority in that instance is not the Welsh Ministers, they must also send a copy to the Welsh Ministers. This is because the issues flagged through an improvement report are, in almost all cases, likely to be strategic and cross-cutting. It is expected the recommendations in an improvement report are, therefore, wholly or mostly going to require action by the Welsh Ministers. For this reason, a copy of the improvement report must also be laid before Senedd Cymru to increase accountability and transparency.

### ***Improvement reports: content***

3.232 Provision is made to set out the specific elements that must be included within each improvement report for it to be considered valid. The improvement report must

- a. set out the details of the alleged failure to
  - i. comply with environmental law,
  - ii. implement or apply environmental law effectively, or
  - iii. make effective environmental law;
- b. explain the OEGW’s reasons for considering that there has been such a failure;
- c. set out the impact or possible impact of the failure;
- d. recommend actions for the Welsh Ministers to take in response to the failure;
- e. propose a timescale for taking those actions.

3.233 As with compliance notices, provision is made to clarify that improvement reports cannot revoke or vary individual administrative decisions (like planning permissions). However, the OEGW can review these decisions to identify systemic failures in environmental law compliance. This allows them to suggest broader improvements, without overturning specific case outcomes, which sit outside of the remit of the OEGW and are subject to alternative route of challenge.

### ***Improvement plans***

3.234 Where the OEGW publishes an improvement report, the Welsh Ministers are required by law to respond to the recommendations in that report by preparing an improvement plan. This ‘improvement plan’ must set out what the Welsh Ministers propose to do in response to the recommendations in the improvement report, including in particular—

- i. the actions the Welsh Ministers propose to take to implement the recommendations (in full or in part),
- ii. the proposed timescales for implementing the recommendations,
- iii. the arrangements for reviewing, and reporting on, progress in implementing the recommendations

3.235 It is important the Welsh Ministers make clear their response to the separate points in an improvement report. As a result, the expectation is the Welsh Ministers will provide a response to each of the recommendations in an improvement report. If the Welsh Ministers do not intend to implement the recommendations (in full or in part), they must also set out their reasons for not doing so. Welsh Ministers will also be required to publish the improvement plan and lay a copy of it before Senedd Cymru to aid transparency and accountability.

3.236 In most circumstances Welsh Ministers will be required to respond to an improvement report within 6 months of being sent the improvement report. However, in circumstances where it will be necessary to consult

any person(s) about the plan, this window can be extended to up to 9 months to allow for a consultation period.

### ***Co-operation duties***

3.237 A duty is placed on public authorities to co-operate with the OEGW, and give it such reasonable assistance as it requests (including the provision of information), in connection with the exercise of the OEGW's functions. Furthermore, public authorities must also make all reasonable efforts to

- a. swiftly resolve any matter that the OEGW raises concerning the authority's failure to comply with environmental law, to implement or apply environmental law effectively, or to make effective environmental law, and
- b. reach agreement with the OEGW on any remedial action the authority should take for the purposes of environmental protection.

3.238 The purpose of this duty is to support the OEGW in the exercise of its functions and enable room for 'informal' mechanisms to obtain information and resolve concerns without the need to resort to more substantive enforcement action. For example, if the OEGW were to determine, following investigation, that a public authority has breached environmental law but, during the course of this investigation, the public authority has worked with the OEGW to resolve the concerns proactively, there would be no need to use tools such as the compliance notice to resolve the issue. The intention of this approach is to give the OEGW sufficient flexibility to, where possible, utilise an escalatory approach to enforcement and to welcome collaboration in pursuit of resolution environmental issues swiftly. Furthermore, the general duty to co-operate will ensure public authorities are also taking opportunities to enable the effective working with the OEGW.

## ***Disclosure of information to the OEGW***

3.239 Provision is made to enable a public authority to share information with the OEGW, when exercising its functions, without breaching any obligation of confidence owed by the public authority, or any other restriction on the disclosure of information (however imposed).

3.240 This provision applies to the following sections of the Bill

- a. Where information is requested in relation to information notices (section 7(1))
- b. Where information is reasonably required for the purposes of reviewing a compliance notice (section 11(10))
- c. Information required in connection with a public authority's general duty to co-operate with OEGW (section 16(1))

3.241 The purpose of this provision is to ensure the OEGW is able to work effectively whilst recognising that some information may be of a sensitive nature. The effect of the provision is to provide reassurance to public authorities that, in providing such information that is reasonably required by the OEGW in relation to its functions, they would not be in breach of any obligation or restrictions concerning the disclosure of this information. Similarly, it would not be appropriate for a public authority to refuse disclosing such information on the basis of wider obligations or restrictions that, in its view, prevent the disclosure of the information as this may hinder the work of the OEGW.

3.242 However, express provision is also made to clarify that a public authority is not required to provide the OEGW with information that

- a. the authority would be entitled to refuse to provide in civil proceedings on the grounds of legal professional privilege, or that the authority would be entitled, or required by any rule of law, to refuse to provide in civil proceedings on the grounds of public interest immunity, or

- b. requires or authorises the disclosure [or use] of information that would contravene the data protection legislation (but the duty or power is to be taken into account in determining whether the disclosure [or use] would contravene that legislation).

3.243 This is to ensure that legal profession privilege is maintained, and the information could not be used to prejudice any future civil proceedings. The provision will also not require the public authority to provide information which it could refuse to provide in civil proceedings for the reason of public interest immunity.

3.244 Similarly, provision is made to provide that nothing in this Part of the Bill requires or authorises a public authority to contravene data protection legislation within the meaning given in the Data Protection Act 2018.

### ***Confidentiality requirements: the OEGW***

3.245 The previous section highlights how the OEGW may receive information that would otherwise be privileged, or sensitive, and not normally disclosed. This provision is made to set out how the OEGW may, or may not, disclose the information it receives. The OEGW must not disclose information which has been provided to it by virtue of section 14(1) (information notices), section 18(10) (requirement to provide information for review purposes) and section 23(1) (duty to cooperate). The OEGW must not disclose correspondence between the OEGW and a public authority that relates to a particular information notice or compliance notices, or the preparation of a particular improvement report. The OEGW must also not disclose correspondence that is, or contains an information or compliance notice, or an unpublished draft of an improvement report.

3.246 The requirement on the OEGW to not disclose in particular circumstances does not extend to the following situations:

- a. disclosure made with the consent of the public authority that provided the information or correspondence;



- b. a disclosure made for purposes connected with the exercise of the OEGW's functions;
- c. a disclosure that relates only to a matter in relation to which the OEGW does not intend to take any further action under this Part, e.g. following the conclusion of an investigation.
- d. a disclosure made for the purposes of civil proceedings;
- e. a disclosure made for the purposes of a criminal investigation or criminal proceedings or for the purposes of the prevention or detection of crime;
- f. a disclosure made in pursuance of an order of a court or tribunal;
- g. a disclosure made in accordance with an enactment requiring or permitting the disclosure.

### ***Confidentiality requirements: public authorities***

3.247 In parallel to the OEGW's confidentiality requirements, duties are placed on public authorities to maintain confidentiality in relation to the OEGW's functions to preserve the integrity of any investigation etc. until it has reached an appropriate conclusion.

3.248 As such, a public authority must not disclose correspondence between the OEGW and itself, or any other, public authority which relates to a particular information notice or compliance notice, or to the preparation of a particular improvement report, or contains such a notice or an unpublished draft of such a report.

3.249 A number of exceptions are also provided for public authorities to ensure that information relevant to its wider functions can still be disclosed under certain criteria. These include:

- a. a disclosure that relates to a particular information notice or compliance notice, or to the preparation of a particular improvement report, made with the consent of the OEGW and

the public authority with which the OEGW was corresponding (if not the public authority making the disclosure);

- b. a disclosure that contains such a notice or an unpublished draft of such a report. made with the consent of the OEGW;
- c. a disclosure made for purposes connected with co-operating with an investigation under section 8 of the Bill
- d. a disclosure made for purposes connected with an information notice or compliance notice; (e) a disclosure made for purposes connected with a High Court review under section 12, a statutory review or civil proceedings;
- e. a disclosure made for the purposes of a criminal investigation or criminal proceedings or for the purposes of the prevention or detection of crime;
- f. a disclosure made in pursuance of an order of a court or tribunal;
- g. a disclosure made in accordance with an enactment requiring or permitting the disclosure.

3.250 In relation to this criteria, the OEGW may not consent to the disclosure of a notice or an unpublished draft of a report in accordance with subsection unless the notice or draft report relates only to a matter in relation to which the OEGW does not intend to take any further action under this Part. This is intended to ensure that any ongoing investigation or preparation of an improvement report is not undermined by the premature release of information. Furthermore, if the public authority's request for consent to disclose information relates to notices or improvements, and the OEGW does not intend to take any further action, the OEGW may not withhold its consent.

### ***Application of Environmental Information Regulations 2004***

3.251 Section 27 applies where information referred to in section 25(1) and held by the OEGW, or referred to in section 26(1), and held by a public

authority, is "environmental information" for the purposes of the Environmental Information Regulations (EIR) 2004.

3.252 The effect is that the information will be in connection with confidential proceedings for the purposes of those Regulations, therefore allowing a public authority the potential right to refuse disclosure under those Regulations. If the OEGW's enforcement proceedings are ongoing, the information referred to in sections 25 and 26 may qualify for an exception from the EIR allowing a public authority the potential right to refuse disclosure if it would compromise the confidentiality of the proceedings by that public authority where such confidentiality is legally protected

### ***Staff transfer schemes***

3.253 This section gives effect to schedule 3 which provides for the Welsh Ministers, if necessary, to make provisions for the transfer of staff from the Welsh Government to OEGW to support the swift and smooth implementation of the OEGW. This is detailed further in the relevant section on this schedule.

### ***Meaning of "environmental law"***

3.254 Provision is made to set out the meaning of "environmental law". This is a significant definition as it effectively sets the scope of the OEGW's functions which are defined by reference to public authorities compliance with environmental law, as well as whether environmental law has been made, implemented and applied effectively.

3.255 The definition clarifies that environmental law only relates to "devolved provision". This sets out the parameters of the OEGW's oversight to any legislation that has, or could be, made by Senedd Cymru. This has been framed to capture any future changes. It is the converse of section 46 of the Environment Act 2021, which for the purposes of the OEP, excludes devolved legislative provision from the scope of the EA 2021 definition of environmental law. In this respect, there is intended to be very little

legislative overlap with the functions of the OEP, given the respective definitions of environmental law to include or exclude devolved provisions

3.256 The definition clarifies that environmental law relates to any devolved provision which “wholly or mainly relates to environmental protection”.

3.257 This is aimed at specific provisions/functions within an enactment, rather than ‘an enactment itself. Some provisions of an Act could qualify as environmental law (ie wholly or mainly relating to environmental protection) while other provisions in the same Act may not fall within this scope. By way of example, the Forestry Act 1967 section 1(3A) (balancing forestry with conservation) would, in our view, be mainly concerned with environmental protection therefore fall within the scope of environmental law.

3.258 Conversely, section 1(2) (promoting forestry) of that same act is focussed on promoting the industry, and therefore not relating wholly or mainly to environmental protection. In our view, it would therefore not be considered as environmental law under the definition proposed. It is intended the OEGW should have oversight in relation to the specific provision, even though it may not have oversight in relation to the enactment as a whole.

3.259 The OEGW will assess, on a case-by-case basis, whether a legislative provision falls under the definition when determining its legal authority to act in that area, and therefore, whether it has the scope to exercise its functions in respect of that particular legislative provision. Generally, it is anticipated that the conclusion will be evident and agreed upon by all parties involved. However, in instances of uncertainty or disagreement, it may be necessary for the courts to ultimately decide whether a specific provision meets the definition of environmental law.

3.260 The disclosure of, or access to, information is carved out of the scope of environmental law which the OEGW oversees. This is to ensure that the

OEGW does not replicate and / or overlap with the functions of the Information Commissioner's Office, which plays a crucial role in overseeing how public authorities handle environmental information in the UK (including through enforcing the EIR).

3.261 Additionally, "taxation, finance or budgets" is also excluded from the definition of environmental law. This is to ensure the OEGW does not seek to restrict the allocation of resources within Government and ensures the scrutiny of the OEGW remains focussed on its intended purpose. For example, it is not intended for the Body to oversee what the Welsh Ministers choose to allocate from financial resources for environmental protection.

### ***Meaning of "public authority"***

3.262 The definition of public authorities aims to capture public authorities within the legislative scope/competence of Senedd Cymru, including private companies who exercise public functions (such as water companies). However, whilst the definition is deliberately broad and future proofed, in practice only those who are exercising functions relating to environmental law (discussed above) will be overseen by the Body. In other words, it includes any public authority that has any single environmental function, not only those bodies that are operating solely for environmental purposes. The OEGW is not a public authority for the purpose of this Bill.

3.263 The definition does not extend any further in its scope. As the Bill will not include oversight powers for OEGW in respect of certain reserved bodies operating in Wales (such as the Ministry of Defence) and the OEP does not have oversight powers in respect of such bodies, there will be an oversight "gap". The OEGW could, however, seek to address such matters if possible, in cooperation with the OEP and the relevant bodies on a voluntary basis.

3.264 In essence, the definition aims to carefully navigate the complexities of the devolved competence of the Senedd whilst maximising the scope of public authorities which fall within the OEGW oversight within these limitations.

### ***Meaning of “effectiveness of environmental law”***

3.265 A definition of the ‘effectiveness of environmental law’ is provided to give clarity to the OEGW and the public more broadly. It is based on similar concepts highlighted within the environmental objective, which guides the OEGW at a strategic level, and is focussed on whether the law is achieving its intended effect by reference to its contribution to environmental protection (which is also defined).

### ***Meaning of “failing to comply with environmental law”***

3.266 The meaning of “failing to comply with environmental law” will be fundamental to the OEGWs decision as to whether to issue a compliance notice. For this reason, the Bill clarifies that failing to comply with environmental law is a reference to a public authority exercising its functions in a way that is contrary to environmental law or is failing to exercise its functions where the failure is contrary to environmental law. This means that failure to comply could be a result of a wrong action (e.g. a regulatory or local authority authorising activity which is not compliant with environmental law) as well as inaction. By way of example, inaction could arise in circumstances where a regulator is responsible for protecting the environment and natural resources and preventing environmental harm but has not been proactive in respect of inspecting risks to special areas of conservation and instead has only taken action after environmental harm has been committed.

## PART 3 – BIODIVERSITY TARGETS ETC.

### ***Introduction***

3.267 The main purpose of this Part of the Bill is to drive action to maintain and enhance biodiversity in Wales. The Bill will achieve this by introducing powers to set targets to drive the level of ambition and trajectory required to respond to the nature emergency.

3.268 The objectives of this Part of the Bill are:

- For the Welsh Ministers to set statutory targets which set the trajectory for improvement and guide the actions needed to halt and reverse biodiversity loss.
- To strengthen the Welsh Ministers' planning, monitoring and reporting functions in the Environment (Wales) Act 2016 to provide clear accountability and transparency in delivery for biodiversity.
- To raise awareness in Wales of the importance of, and the threats, to biodiversity.

3.269 Collectively all of the bullets points above aim to bring about transformative action to address the nature emergency in Wales.

### ***Summary of provisions***

3.270 Recognising the need to address the nature emergency, the provisions within Part 3 are focussed on enabling action to halt and reverse biodiversity loss in Wales and to maintain and enhance biodiversity to put nature on a path to recovery for the benefit of people in Wales.

3.271 The Bill will amend Part 1 of the Environment (Wales) Act 2016 to introduce a biodiversity target setting framework as follows:

- A new power for the Welsh Ministers to set biodiversity targets in regulations, provided they are satisfied that meeting the target would contribute to halting and reversing the decline in biodiversity, in particular through increasing the abundance of native species,

enhancing the resilience of ecosystems, or increasing genetic diversity.

- A duty on the Welsh Ministers to set at least one target in each of the named priority areas and to lay a draft of those target regulations before the Senedd within three years of Royal Assent.
- Enhancing the Welsh Ministers' planning and reporting duties under section 6 of the Environment (Wales) Act 2016 by requiring them to include in their section 6(6) plan the action they intend to take to achieve biodiversity targets, as well as monitoring and reporting progress toward achieving targets (including setting indicators) in their section 6(7) reports, and the addition of a new evaluation report assessing the impact and effectiveness of the policies and actions in their section 6(6) plan.
- A power for the Welsh Ministers, in regulations, to designate public authorities which will have the effect of requiring those public authorities to take action to contribute to achieving the biodiversity target for which they have been designated, and
- A duty on the Welsh Ministers to promote awareness in Wales of the importance of biodiversity and of the threats to biodiversity.

3.272 Collectively these provisions, alongside the existing provision in Part 1 of the Environment (Wales) Act 2016, provide us with a framework to tackle the nature emergency, and this framework is referred to throughout this Explanatory Memorandum as the “nature positive framework”. The purpose of this nature positive framework is to provide a pathway to halt and reverse biodiversity loss in Wales.

3.273 In accordance with Senedd Standing Order 26.6C, Annex 3 of this Explanatory Memorandum sets out the wording of the Environment (Wales) Act 2016 as amended by the Bill.



## ***Detailed provisions***

3.274 Section 33 of the Bill will insert a biodiversity target setting framework into Part 1 of the Environment (Wales) Act 2016 as new sections 6B to 6I of that Act. The sections referred to below are, unless otherwise stated, references to the new sections inserted into the Environment (Wales) Act 2016 by the Bill.

## ***Setting biodiversity targets***

### ***The Welsh Ministers' power to set biodiversity targets***

3.275 Section 6B provides the Welsh Ministers with a general power to set, in regulations, targets in respect of any matter relating to biodiversity, which includes addressing biodiversity loss and the drivers of biodiversity loss in Wales.

3.276 However, the Welsh Ministers may only exercise this power if they consider that meeting the target will contribute to halting and reversing the decline in biodiversity in Wales, in particular through one or more of the following fundamental elements of biodiversity conservation and nature recovery:

- a. increasing the abundance of native species,
- b. enhancing the resilience of ecosystems, or
- c. increasing genetic diversity.

3.277 The Welsh Ministers' duty in section 6(1) of the Environment (Wales) Act 2016 will be engaged when exercising this power and, as such, the Welsh Ministers must exercise this power to set biodiversity targets in a way that seeks to maintain and enhance biodiversity and promote the resilience of ecosystems.

3.278 The intention is to develop targets to align, where relevant, with the UN Convention on Biological Diversity. Currently this means aligning with the GBF, which was developed to address the key drivers of biodiversity loss

and recognises targets must be developed in a systematic way to address the nature emergency. Targets will not only need to reflect the biophysical elements of biodiversity but also to address the wider drivers, pressures and levers to tackle biodiversity loss.

3.279 In considering whether a target would contribute to increasing the abundance of native species, the Welsh Ministers must have regard to the list published under section 7 of the Environment (Wales) Act 2016. This is a list of the organisms and habitats which are of principal importance for the purposes of maintaining and enhancing biodiversity in Wales.

3.280 The Bill defines native species as any species which naturally occur or have in the past naturally occurred in Wales. This includes regularly occurring migratory species (both breeding and non-breeding) and natural colonists, and species that have been reintroduced in Wales following past extinction. Natural colonists mean species that arrived in Wales of their own accord and have become established, including those that become migratory species. This therefore excludes invasive alien species from being included in targets to increase the abundance of native species, as any targets should not contribute towards an increase in invasive non-native or alien species.

3.281 To ensure the targets drive the necessary change, targets should follow the SMART criteria, which means they should be specific, measurable, achievable, relevant, and timebound<sup>64,65</sup>. To achieve this, each target must:

- state a standard to be achieved, which must be capable of being objectively measured (section 6B(4)(a)),
- be achievable (section 6D(4)),
- contribute to halting and reversing the decline in biodiversity (section 6B(2)), and

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<sup>64</sup> Butchart et al 2016 Conservation Letters <https://doi.org/10.1111/conl.12278>

<sup>65</sup> Green et al 2019 Conservation Biology <https://doi.org/10.1111/cobi.13322>

- state a date by which it is to be achieved (section 6B(4)(b)).

3.282 To facilitate the monitoring of the targets the regulations must include provision about how to measure progress towards achieving a standard, and whether a standard has been achieved, and specify indicators as a means of measuring target achievement. See further information about indicators in the *Monitoring and reporting on biodiversity targets* section below.

3.283 There is no requirement for a target to be set over a minimum period of time, which allows the Welsh Ministers the flexibility to set targets over short to long term periods of time as appropriate for that target.

3.284 In addition, there is flexibility within this power to set targets that are outcome or action based. Action based targets focus on practical action based around an adaptive management approach, whether that be stopping specific activities, expanding others, or making changes to how we go about undertaking activity that could result in biodiversity loss. Meanwhile, outcome-based targets focus on a desired end goal, as opposed to the steps required to achieve it. The type of target set will depend on the best approach for the specific target and will determine the method for developing the target.

### ***Duty to set targets in priority areas***

3.285 Section 6C imposes a duty on the Welsh Ministers to lay draft regulations before the Senedd within 3 years of the Bill's Royal Assent which set a target in respect of at least one matter within each of the following priority areas:

- reducing the risk of the extinction of native species;
- the effective management of ecosystems
- reducing pollution, and
- the quality of evidence to inform decisions relating to biodiversity, access to that evidence, and its use and application.

3.286 These priority areas were developed following an extensive prioritisation exercise with a broad range of stakeholders undertaken around the 23 GBF targets. These priority areas are based on GBF targets 4, 2 and 3, 7, 14 and 21 respectively<sup>66</sup>. The purpose of these priority areas is to ensure that the Welsh Ministers prioritise setting targets in areas which they believe are currently the most important issues for biodiversity in Wales.

3.287 Any targets set in the priority areas must, as a minimum, contribute to halting and reversing the decline in biodiversity in Wales, as well as seeking to maintain and enhance biodiversity and promote the resilience of ecosystems in accordance with the duty in section 6(1) of the Environment (Wales) Act 2016.

#### *Reducing the risk of the extinction of native species*

3.288 This priority area is important because, though some extinctions are the result of natural processes, human actions have greatly increased current extinction rates and risk in Wales. As noted earlier, Wales is one of the most nature depleted countries on Earth. The global increase in extinction and extinction risk is also contributing to the decline of genetic diversity which is critical for the long-term stability, adaptability and resilience of biodiversity, both at the species and ecosystem levels, and it supports the continued provision of nature's contributions to people<sup>67</sup>.

#### *The effective management of ecosystems*

3.289 This priority area is based on the GBF target to restore 30% of all degraded ecosystems and to effectively conserve and manage 30% of land, freshwater and sea by 2030. Ecosystem change and degradation of

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<sup>66</sup> [2030 Targets \(with Guidance Notes\)](#)

<sup>67</sup> [Target 4](#)

habitats is one of the key direct drivers of biodiversity loss in Wales and ecosystem restoration is the process which aims to reverse this damage.<sup>[3]</sup>

3.290 Restoration of ecosystems refers to the process of actively managing the recovery of an ecosystem that has been degraded, damaged or destroyed. The International Union for Conservation of Nature (IUCN) have developed a set of principles on ecological restoration, many of which align with our own legislation and policy such as the framework in sections 4 and 6(2) of the Environment (Wales) Act 2016 for ecosystem resilience.<sup>[4]</sup>

3.291 Ecosystem restoration encompasses a wide range of activities, employed singly or collectively, which aim to repair degraded ecosystems of all kinds and in different states of degradation. The process seeks to recover the integrity and functioning of ecosystems through the creation/re-creation and management of habitats and associated wildlife to a previous more natural state which supports higher levels of biodiversity. Such ecosystems, by being more diverse, more extensive, better connected and in a better condition are more adaptable and resilient to natural and human induced changes and better able to continue to deliver a range of important ecosystem services or benefits for our well-being.

3.292 Protected areas are a vital pillar for nature conservation and recovery, and considerable global momentum has formed around their designation. Well-managed protected areas are critical to the survival of threatened Welsh species and priority habitats.<sup>[5]</sup> The purpose of a target could also include improving the extent and effective management of protected areas to retain and make more space for nature to thrive. Such areas have protected a vital existing core of biological diversity across Wales,

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<sup>[3]</sup> [Principles for ecosystem restoration to guide the United Nations Decade 2021–2030TP26053-SoN-Wales-summary-report-v10.pdf](#)

<sup>[4]</sup> [TP26053-SoN-Wales-summary-report-v10.pdf](#)

<sup>[5]</sup> [TP26053-SoN-Wales-summary-report-v10.pdf](#)

however, many are not effectively managed. Protection ideally needs to be expanded to be more representative of biodiversity in Wales and to prevent the loss of good quality vulnerable sites.

### *Reducing pollution*

3.293 Pollution is one of the main direct drivers of biodiversity loss. Pollution can take various forms. However, pollution from nutrients, such as nitrogen and phosphorus, pesticides and highly hazardous chemicals and plastics has been found to have particularly harmful impacts on biodiversity and ecosystem functions and services<sup>68</sup>.

3.294 The Bill provides that a target cannot be set against this priority area if a target may be set in respect of that matter under the Environment (Air Quality and Soundscapes) Wales Act 2024. This is to make clear there is no intention to duplicate the Welsh Ministers' target setting powers or duties under that Act.

### *The quality of evidence to inform decisions relating to biodiversity, access to that evidence, and its use and application*

3.295 This priority area is based on the GBF targets T14<sup>69</sup> and T21<sup>70</sup> to integrate biodiversity in decision-making at every level and ensure that information is available and accessible to guide biodiversity action.

3.296 The objective of this priority area is to develop targets that aim to ensure the best available biodiversity data, evidence and information are readily available to decision-makers and other relevant actors to support informed biodiversity policy, planning and decision-making processes, as well as for monitoring, reviewing and reporting progress in implementation.

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<sup>68</sup> [Target 7](#)

<sup>69</sup> [Target 14](#)

<sup>70</sup> [Target 21](#)

### ***The target-setting process***

3.297 Section 6D provides the process the Welsh Ministers must follow in setting any target when exercising their regulation making powers in section 6B.

3.298 Before setting a target in regulations under section 6B, the Welsh Ministers must seek advice from independent experts. Engagement and co-design with key experts and stakeholders will be critical when developing targets, both on the target-setting process and the specific targets. The Welsh Ministers have already set up a non-statutory Biodiversity Targets Advisory Panel to support target development. The Biodiversity Targets Advisory Panel have provided advice into the development of the priority target areas. There is also a requirement on the Welsh Ministers to publish a summary of the advice they have received, which is intended to increase transparency over the target development process.

3.299 The Welsh Ministers must also apply the principles of sustainable management of natural resources (SMNR) in section 4 of the Environment (Wales) Act 2016 when setting targets, which will involve, for example, taking account of all relevant evidence. By way of example, this may include taking account of any national indicators published under section 10 of the Well-being of Future Generations (Wales) Act 2015 that the Welsh Ministers consider to be relevant, the most recent SoNaRR published under section 8 of the Environment (Wales) Act 2016, the most recent national NNRP published under section 9 of the Environment (Wales) Act 2016, and the most recent Sustainable Land Management statement published under section 4 of the Agriculture Act 2023, so far as it relates to biodiversity, among others.

3.300 Before the Welsh Ministers can set a target, they must also be satisfied that the target being set or amended can be met e.g., the standard specified can be achieved by the specified date.

***The Welsh Ministers have a duty to meet the targets***

3.301 Section 6E imposes a duty on the Welsh Ministers to ensure that targets set in regulations are met. To enable the effective delivery of this duty, the Welsh Ministers will be required to implement and draw upon all the provisions of the nature positive framework (as well as other relevant powers available to them) to effectively plan, monitor, evaluate and report on target delivery alongside providing leadership and effective engagement to take transformative action to achieve the targets.

3.302 This reflects the duty on the Welsh Ministers to meet targets set under the Environment (Air Quality and Soundscapes) (Wales) Act 2024 (section 4 of that Act).

***Public authorities' duties and the Welsh Ministers' power to designate public authorities to take action to contribute to achieving targets***

3.303 Section 6F provides the Welsh Ministers with a power to designate, by regulations, a public authority within the new subsection (11) of section 6 of the Environment (Wales) Act 2016, in relation to a target set under section 6B. This power should be read with the new subsections (2A) and (11) of section 6 of the Environment (Wales) Act 2016 inserted by section 34(1) & (4) of the Bill.

3.304 Subsection (2A) of section 6 of the Environment (Wales) Act 2016 introduces a new duty on public authorities within subsection (11) of that section, so that if they are designated by the Welsh Ministers in regulations under section 6F they will be under a duty to take action to contribute to achieving the target for which they are designated.

3.305 The public authorities within subsection (11) of section 6 of the Environment (Wales) Act 2016 includes devolved Welsh authorities except for the OEGW, due to the amendment to section 6(9) of the Environment (Wales) Act 2016 by section 34(4) of the Bill, and those reserved



authorities where there is no requirement to obtain Minister of the Crown consent to legislate over, such as water and sewerage undertakers.

3.306 These sections recognise that, whilst the responsibility for meeting the biodiversity targets will rest with the Welsh Ministers, action is required from across whole of government and whole of society to tackle the nature emergency. The power to designate relevant public authorities will assist the Welsh Ministers in meeting the biodiversity targets.

3.307 The duty to contribute is intended to complement the existing duty on public authorities in section 6(1) of the Environment (Wales) Act 2016, which already requires public authorities within section 6(9) of that Act to exercise their functions in a way that seeks to maintain and enhance biodiversity and promote the resilience of ecosystems. Providing a focus for the delivery of biodiversity actions (i.e. a specified target) will also provide greater clarity on the specific contribution that public authorities can make towards maintaining and enhancing biodiversity and complying with their existing duty under section 6(1).

3.308 The intention behind this new duty is that the Welsh Ministers will only propose designating a public authority who they consider can, through their functions (but without prejudice to the proper exercise of those functions), meaningfully contribute to achieving a target. However, before making regulations under this section, the Welsh Ministers must consult the public authority they propose to designate and other interested parties they consider appropriate. This will allow those public authorities to make representations as to whether they consider they can take action to contribute to achieving a target.

3.309 Designated public authorities will be required to report on the actions they have taken pursuant to this duty to contribute, which will help oversee compliance and also aid the Welsh Ministers in monitoring progress toward achieving the biodiversity targets. To avoid increasing the reporting burden on designated public authorities, they will not need to produce and

publish an additional report, instead they will be required, pursuant to amendments made by section 36(1) of the Bill, to report on their actions through the existing three yearly reports under section 6(7) of the Environment (Wales) Act 2016.

3.310 To assist designated public authorities in complying with this duty to contribute, the Welsh Ministers intend to update their guidance for the section 6 duty.

3.311 Section 34(2) of the Bill amends subsection (5)(d) of section 6 of the Environment (Wales) Act 2016 to limit the public authorities (to those set out in section 6(11) of that Act) that are required to have regard to the sustainable land management report published under section 6 of the Agriculture (Wales) Act 2023, when complying with the duty in section 6(1).

### ***Welsh Ministers' plans under section 6 of the Environment (Wales) Act 2016***

3.312 Section 35 of the Bill amends the Welsh Ministers' duty to prepare a plan under section 6(6) of the Environment (Wales) Act 2016, which currently requires the Welsh Ministers to set out how they intend to comply with the duty in section 6(1) to maintain and enhance biodiversity and promote the resilience of ecosystems.

3.313 The new subsection (6A) of section 6 will require the Welsh Ministers to also set out in their section 6(6) plan what action they propose to take to ensure that the biodiversity targets are met and when they propose to take that action, as well as setting out how, if the targets are met, they will contribute to halting and reversing the decline in biodiversity.

3.314 It is important that the steps the Welsh Ministers intend to take to achieve the targets in the regulations are set out, to provide direction for

activity, transparency about their proposed approach, along with details of the baseline by which to monitor and evaluate progress. In doing so, the plan will provide the strategic approach setting the pathway to support delivery and action against the targets by public authorities, other stakeholders and wider society.

3.315 In setting out the proposed approach, the plan should set out a long-term nature positive vision but should also reflect what should be achieved within the time period of each plan. The Welsh Ministers' section 6 plan must set out the policies and proposals that they intend to take to ensure that the target is met for the upcoming section 6 reporting period for the biodiversity targets.

3.316 Alongside biodiversity, the Welsh Government has a number of competing priorities for our land and marine environment such as meeting net zero targets, producing food, supporting communities and well-being. The GBF<sup>71</sup> recognises the need for integrated spatial planning and/or effective management processes to analyse and then effectively allocate the spatial and temporal distribution of activities in each environment to achieve various social, ecological and economic objectives. Given the competing requirements, the section 6(6) plan should adopt an integrated and participatory spatial planning approach to bring together key stakeholders to consider how we deliver for biodiversity on the ground.

3.317 The plan will provide the basis for reporting and evaluation to advise on progress and potential opportunities for an improved approach against the targets.

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<sup>71</sup> [Target 1](#)

## ***Monitoring and reporting on biodiversity targets***

### ***Introduction***

3.318 The nature positive framework is intended to drive the Welsh Ministers' ambition in addressing the nature emergency, to create a sustainable future for both current and future generations and contribute to the well-being goals set out within the Well-being of Future Generations (Wales) Act 2015. In that context, provisions for an effective cycle of monitoring and reporting, supported by insightful evaluation, are critical for ensuring that Wales is on track to meet its duties associated with the nature positive framework as provided for under the Environment (Wales) Act 2016 (as amended by the Bill), and that policies used in delivering this action are effective at doing so.

3.319 A clear and accessible cycle of monitoring and reporting further supports engagement with the public, public authorities, interest groups and the Senedd. It is also essential to assess policy effectiveness and to provide an important and developing evidence base for ongoing policy development, through improving knowledge, innovation and identifying trends.

3.320 It is important that the monitoring and reporting be structured in a way that supports the Welsh Ministers reporting requirement to UK and international commitments. These include, but are not limited to, the UK's National Biodiversity Strategy and Action Plan and the UN Convention on Biological Diversity.

### ***Indicators to measure biodiversity targets***

3.321 Section 6B(5) requires that regulations made under section 6B include provision about how to measure progress towards achieving a target standard, whether a standard has been achieved and to specify indicators as a means of measuring those things.

- 3.322 Indicators will be established as measurable aspects of a biodiversity target. An indicator provides the metrics needed to track changes within a target area as well as supporting policy and decision making.
- 3.323 To ensure an accurate and effective accounting of progress, each target set in subordinate legislation must be aligned with at least one indicator. However, for completeness, a target may be aligned with more than one indicator but, in this instance, together the indicators must be wholly representative of the target to allow progress to be accurately assessed.
- 3.324 For example, a habitat connectivity target set under the priority area of 'the effective management of ecosystems', may be best measured by multiple indicators split between different habitat types. One indicator measuring the connectivity of terrestrial habitats and another focused on the marine environment. This would allow the indicators to reflect fundamental differences between terrestrial and marine habitats and also better incorporate different monitoring methods commonly applied within each environment. Another example would be a freshwater pollution target set for the 'reducing pollution' priority area. This target may be best measured through indicators aligned against each of the major catchments in Wales to better deal with variances across each catchment to include habitat types, land usages, management and urban areas.
- 3.325 Each target must have one distinct primary indicator. Later, further non-statutory indicators may be set to compliment the primary indicator set in regulations for each target to better inform the measurement of progress.
- 3.326 Indicators may cover all or part of Wales as relevant to the target with which they are aligned. Additionally, where relevant, indicators may draw upon data collected outside of Wales. An example of this would be the utilisation of Office of National Statistics data on expenditures of environmental non-profits on nature restoration that is collected from corporate headquarters outside Wales. Another example being flood data

collected on cross-border rivers, such as the River Wye, that is indicative of the performance of natural flood management interventions taking place in Wales.

3.327 To ensure the effectiveness and responsiveness of the indicators to future challenges and changes to monitoring methods, and to take account of progress, the Welsh Ministers may, at any time, revise the indicators and targets by revising and publishing a non-statutory statement of indicators.

***Steps to be taken in preparing or revising indicators***

3.328 When creating these indicators, the intent is to leverage existing data sets and monitoring regimes wherever possible. This is to reduce the reporting burden and retain resources for the delivery of the policies that will support the achievement of the targets. The majority of the GBF targets already have indicators aligned against them. The indicators at the GBF level are for signatories to use when reporting to the CBD on progress. For this reason, the Joint Nature Conservation Committee (JNCC) has developed a suite of UK Biodiversity Indicators (UKBI) for the UK's usage when reporting to the UN Convention on Biological Diversity. Wherever possible, the Welsh Ministers will attempt to utilise disaggregated versions of UKBIs. Usage of indicators aligned to the UKBIs and GBF indicators will reduce the reporting burden.

3.329 As previously noted, in making regulations the Welsh Ministers must apply the principles of SMNR pursuant to section 6D(4), which will equally apply to the process of specifying indicators for each target under section 6B(5).

3.330 Additional examples of other matters to be considered are any reports or statistics from Sustainable Land Management (SLM) policies or Welsh agricultural support and subsidy programmes.

3.331 Considering the above matters will ensure that the biodiversity indicators and reporting are complementary in structure to the indicator reports used at the UK and international levels. Additionally, this will help the indicators and reports take account of existing goals and policies where relevant.

3.332 When specifying an indicator, the Welsh Ministers will include a baseline for that indicator. This baseline will be the point from which any progress (or further decline) is measured.

### ***Reports under section 6 of the Environment (Wales) Act 2016***

3.333 Section 36 of the Bill amends section 6(7) of the Environment (Wales) Act 2016. Section 6(7) currently requires a public authority to publish a report, every three years, setting out what action they have taken to comply with the section 6 duty.

3.334 The Bill will now also require the Welsh Ministers to report on the progress being made towards meeting the targets set in regulations under section 6B and whether they are likely to be met. This is the mechanism by which the Welsh Ministers will report their progress towards achieving the targets, by reference to the indicators.

3.335 Where a public authority has been designated in regulations made under section 6F, that public authority must also include in their section 6(7) report what action they have taken to contribute toward achieving the target in relation to which they have been designated.

3.336 The section 6(7) report may also cover other matters, such as the key priorities, risks, and opportunities in relation to maintaining and enhancing biodiversity, and the effect that the progress made towards achieving the targets has contributed. This will allow the Welsh Ministers to articulate how the targets are driving policy ambition and delivery alongside demonstrating the inherent linkages between environmental policies. Additionally, this will also allow the Welsh Ministers to set out how the

targets relate to wider Welsh Government objectives, such as, but not limited to, the SLM duty, or Wales' net zero 2050 goal.

3.337 These provisions allow for the assessment of progress made during a three-yearly reporting period and the cumulative progress since the Bill provisions come into force.

### ***Target completion statements***

3.338 Section 6I requires the Welsh Ministers to publish, and lay before the Senedd, on or before the date by which a target must be met, a statement setting out:

- If the target has been met,
- If the target has not been met, or
- If the Welsh Ministers are not yet able to determine if the target has been met.

3.339 This statement is known as the target completion statement. It provides the Welsh Ministers with a mechanism to confirm to the Senedd whether they have achieved a target, i.e. whether they have complied with their duty in section 6E.

3.340 Where a target has not been met, the Welsh Ministers have 12 months, from the date the statement was laid, to lay before the Senedd, and publish, a report detailing why the target has not been met, when they think the target will be met, and what actions they will take to achieve the target as soon as reasonably practicable.

3.341 Where the Welsh Ministers are unable to determine if a target has been met, they have six months from the date specified in regulation to lay before the Senedd and publish a further statement containing the required information (if the target has been met or not or if they cannot yet determine that). The intent with this provision is to allow some flexibility in the event data collection cycles do not allow for the necessary information



to be readily available. Additionally, the six-month period provides the Welsh Ministers the opportunity to confirm whether a target has actually been achieved in the event there is uncertainty.

3.342 The purpose of the target completion statement is to provide the achievement of a target with the recognition that it deserves. Also, where a target has not been met, it requires the Welsh Ministers to report to the Senedd and explain why the target has not been met and the actions they are taking to achieve it. This is intended to ensure that Welsh Ministers are held accountable for achieving the targets and the Senedd has appropriate opportunity to scrutinise the Welsh Government.

### ***Evaluation Report***

3.343 Section 37 of the Bill inserts a new section 6A into the Environment (Wales) Act 2016. This new section 6A requires the Welsh Ministers to prepare an evaluation report outlining their assessment of the impact and effectiveness of the proposals set out in their section 6 plans (as required by section 6(6) and (6A)) most recently published by them and the action taken in accordance with those actions.

3.344 The Welsh Ministers must publish an evaluation report before the end of 2031, and then every three years from that date. This timeframe has been chosen so the evaluation report publication cycle aligns with the publication of the section 6(7) report. The intent for publishing the evaluation report alongside the section 6(7) report is to provide an assessment of the Welsh Ministers' policies that supports the review of the section 6(6) plan. The section 6(7) report is intended to report on actions taken and progress made, while the evaluation report is intended to assess the effectiveness of that action and support.

3.345 The intention is for the evaluation report to set out the purposes for which the policy or programme has been put in place and whether the implementation of policies and programmes deliver in terms of

effectiveness but also efficiency (resources), relevance (alignment), and sustainability as set out in the Magenta Book – Central Government guidance on evaluation<sup>72</sup>. The evaluation report will make an assessment if the purposes for which the policy or programme has been implemented has been achieved, and the extent to which the support has contributed to the duty to maintain and enhance biodiversity in Wales.

3.346 Where the assessment determines that the policy has failed to achieve a purpose, it is intended that the evaluation report will include steps to be taken to rectify the failure. For example, this could include how grants are issued. The evaluation may find that the period of time covered by grants is not universally compatible with the breadth of projects being supported. In the case of establishing broadleaf woodland, trees are planted as saplings and take time to grow. The saplings also require regular interventions, like mowing, until they are suitably established. Projects such as this may benefit from a longer financing cycle to provide the certainty of support for maintenance. In the case of wetland creation, such projects may benefit from greater capital upfront due to the construction costs. The assessment will assess if the policy mechanisms are fit for purpose or whether they need to be adapted, in addition to providing an evidence base for additional actions to be considered to achieve the purpose of the support.

3.347 The Welsh Ministers may also include other information within the evaluation report which is considered relevant to the assessment of the impact and effectiveness of the policies and programmes during the reporting period. This could include information on whether actions taken under a policy are still suitable, whether they have been achieved, are still in progress, or whether the administration of any policy is efficient and effective.

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<sup>72</sup> [HMT\\_Magenta\\_Book.pdf](#)

3.348 The provisions seek to ensure effective implementation and appropriate accountability and engagement with the Senedd, interest groups, and others. The evaluation report will be important to assess policy effectiveness and to provide an important and developing evidence base for ongoing policy development, for example through improving knowledge, innovation and identifying trends.

3.349 The evaluation report will also be one of the main data sources for assessing the Welsh Ministers' compliance with, and support of, their section 6 duty to maintain and enhance biodiversity in Wales.

3.350 The evaluation report has also been added to the list of documents which the Welsh Ministers may amend the publication cycle of by regulations made under section 24 of the Environment (Wales) Act 2016. This is to provide flexibility if it is subsequently considered that a different reporting period for the evaluation report is more appropriate.

### ***Reviewing biodiversity targets***

3.351 Evidence in relation to our understanding of biodiversity will evolve over time. It is important that regulations which set targets remain up to date and fit for purpose. In order to ensure that progress towards biodiversity targets set under the nature positive framework remains likely, based on current evidence to halt and reverse biodiversity loss, it is important to review the target ambition from time to time.

3.352 Section 6G provides provision for when the Welsh Ministers may, or must, review biodiversity targets set under section 6B. The purpose of the review is to consider whether the target ambition is still appropriate and will still contribute toward halting and reversing biodiversity loss, as well as considering whether a target is still achievable.

3.353 The Welsh Ministers may review a target from time to time but they must do so if it appears to them that the target may not be met, or that the target may no longer be appropriate.

3.354 If a target has not been met by the specified date, the Welsh Ministers must review all targets set in regulations that are still in force on that date. The purpose of this is to identify whether there are any systemic failures or problems that may impact the ability to achieve any or all other targets too so that changes or improvements can be made.

3.355 In carrying out a review, the Welsh Ministers must seek advice from people they consider to be independent and to have relevant expertise, and they must also publish a summary of the advice they received.

3.356 After carrying out a review, the Welsh Ministers must lay before Senedd Cymru, and publish, a statement noting its conclusions. If the review concludes that a target will not be met or is no longer appropriate, the statement must note the reasons for that conclusion and the steps, if any, the Welsh Ministers intend to take in relation to the target in consequence of the review.

### ***Revoking or lowering targets***

3.357 The review process may lead to a conclusion that a target should be amended or revoked, or that a target may still be met if guidance and policy are improved. In respect of potentially amending or revoking a target, the effect of section 18 of the Legislation (Wales) Act 2019 is that a power to make regulations, such as that in section 6B, can also be used to amend or revoke those regulations.

3.358 The purpose of section 6H is therefore to restrict the Welsh Ministers' power in section 6B to amend a target to make them easier to achieve or to revoke a target entirely. Accordingly, the Welsh Ministers cannot lower the standard of, or revoke, a target unless they are satisfied that:

- because of changes to the evidence to which they had regard when setting the existing target, meeting it would not contribute to halting or reversing the decline in biodiversity. This may include, for example, changes in scientific evidence or changes to the UN Convention of Biological Diversity,
- meeting the existing target would have no significant benefit compared with not meeting it or with meeting a lower target,
- because of changes in circumstances since the existing target was set, the environmental, social, economic or other costs of meeting it would be disproportionate to the benefits, or
- meeting the existing target is no longer achievable:
  - because of changes in circumstances since the existing target was set, or
  - because of changes to the evidence to which the Welsh Ministers had regard when setting the existing target.

3.359 If the Welsh Ministers are satisfied that meeting the existing target is no longer achievable or that because of changes in circumstances since the existing target was set the costs of meeting it would be disproportionate to the benefits, they must first consider lowering a target before revoking the target.

3.360 Before revoking or lowering a target, the Welsh Ministers must lay before Senedd Cymru, and publish, a statement explaining why the Welsh Ministers are satisfied that the above criteria are met.

3.361 The Bill defines lowering the target as replacing the specified standard with a lower standard or replacing the specified date with a later date.

3.362 These restrictions do not apply if the Welsh Ministers wanted to make a target more ambitious, i.e. harder to meet.

## ***Promoting awareness of the importance of biodiversity***

3.363 Section 38 of the Bill inserts a new section 8A into the Environment (Wales) Act 2016, which requires the Welsh Ministers to take steps to promote awareness in Wales of the importance of biodiversity and of the threats to biodiversity.

### ***Purpose and policy objectives***

3.364 The purpose of section 8A is to require the Welsh Ministers to do more to raise awareness in society of the importance of biodiversity and the threats it faces.

3.365 The GBF sets out an ambitious plan to:

- take action to bring about a transformation in our societies' relationship with biodiversity by 2030, in line with the United Nations 2030 Agenda for Sustainable Development and its Sustainable Development Goals<sup>73</sup>, and
- ensure that, by 2050, the GBF's shared vision of living in harmony with nature is fulfilled.

3.366 The GBF recognises that reversing the loss of biological diversity, for the benefit of all living beings, is a common concern of humankind. This is a framework for all; for the whole of government and the whole of society. Its success requires political will and recognition at the highest level of government and relies on action and cooperation by all levels of government and by all actors of society.

3.367 Healthy and resilient ecosystems are crucial to many services we rely on, such as water and air quality, flood risk, food production, well-being, and recreation and tourism. However, human activity and behaviours also underpin many of the drivers of biodiversity loss, such as habitat loss,

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<sup>73</sup> [Transforming our world: the 2030 Agenda for Sustainable Development | Department of Economic and Social Affairs](#)

overexploitation, climate change, pollution, invasive species, and disease<sup>74</sup>.

3.368 Furthermore, many potential targets and strategies will be supported through sustained action and support from the public, e.g., habitat creation, citizen science, consumption patterns, participation in decision-making.

3.369 There is evidence of a growing lack of engagement and knowledge of the natural world. For example:

- One study found that British children are increasingly struggling to name common wildlife and plants.<sup>75</sup>
- Another found that British people were among the least connected to nature in a study of 14 countries.<sup>76</sup>

3.370 There is therefore a strong need for the Welsh Ministers to engage with the public on issues related to biodiversity, to achieve the wider policy objectives of this Part of the Bill.

3.371 As part of this duty, the Welsh Ministers can promote the importance of biodiversity to our health and well-being, with the aim of encouraging positive behavioural change at individual and organisational levels. The duty could also be exercised to support skills acquisition and training. This may be done via implementation of nature positive messaging through campaigns and education, which will draw from expertise to inform design. This expertise will be vital for effective communication and encouraging positive behaviour change in stakeholder groups, such as uptake of sustainable practices and greener technology.

3.372 This duty has been left deliberately broad to allow the Welsh Ministers to choose the most effective approach to raising awareness among the

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<sup>74</sup> Living Planet Report 2024 [Living Planet Report 2024 | WWF](#)

<sup>75</sup> [Chart: British children struggle to name common wildlife and plants | Statista](#)

<sup>76</sup> Miles Richardson. 2022. [Country-level factors in a failing relationship with nature: Nature connectedness as a key metric for a sustainable future](#). *Ambio*, pp. 2201-2213.

public. It is expected that key actions and updates will be shared in the Welsh Ministers' section 6(6) and (7) plans and reports.

### ***Intended effect of Part 3 of the Bill***

3.373 Halting and reversing biodiversity loss in Wales will enhance the benefits biodiversity has to healthy ecosystems and in turn human health and wellbeing. Targets will drive continuous improvement in biodiversity in Wales while maximising the associated benefits to health and well-being biodiversity offers. The new biodiversity targets will complement, rather than replace, existing Welsh Government policy related to biodiversity.

3.374 Setting targets, alongside the section 6 duty and the wider proposals for the Bill (such as incorporating environmental principles into Welsh law and establishing the OEGW), is intended to help drive action in Wales toward tackling the nature emergency

3.375 The targets will also demonstrate the Welsh Ministers' ambition and commitment, as well as the direction for tackling key priorities in the threats facing biodiversity in Wales.



## PART 4 – GENERAL

### ***General Interpretation***

3.376 To provide added clarity around the scope and effect of the environmental objective and duties, provision has been made within part four of the Bill to define “environment” and “environmental protection” .

3.377 “Environment” means air, water and land (including the earth’s crust), plants, wild animals and other living organisms and their habitats, and the natural systems, cycles and processes through which they interact. “Air” is intended to include the air within buildings and the air within other natural or man-made structures above or below ground.

3.378 “Environmental protection” means

- protection of the environment from the effects of human activity;
- maintenance, restoration or enhancement of the environment;
- protection of people, in particular their health, from the effects of human activity on the environment;
- monitoring, assessing, considering, advising or reporting on anything in the matters listed above.

3.379 The reference to health in the third bullet point emphasises the substantial impact the quality of the environment can have on people’s health, which can disproportionately affect children and old people, particularly in relation to air pollution, water pollution and waste management, for example, and the importance of taking action to protect health. It in no way excludes other important aspects of protecting people from the effects of human activity on the environment.

# **Schedule 1 – The Office of Environmental Governance Wales**

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## **Part 1 – Status**

### ***Status***

3.380 This section explains that the Office of Environmental Governance Wales (OEGW) is established as a body corporate. It is explicitly stated that the OEGW is not to be regarded as a servant or agent of the Crown, nor does it enjoy any status, immunity, or privilege associated with the Crown. The property belonging to the OEGW is not considered Crown property. This distinction ensures the separation of the OEGW's assets from those of the Crown.

## **Part 2 - Membership**

### ***Members***

3.381 The members of the OEGW are to consist of:

- a. A chairperson appointed by the Welsh Ministers
- b. A deputy chairperson appointed by the Welsh Ministers
- c. At least 3 and no more than 5 other persons appointed by the Welsh Ministers
- d. The chief executive

3.382 The composition allows for a diverse and balanced leadership structure.

3.383 The chairperson, deputy chairperson, and members appointed under paragraph 3(c) are collectively referred to as non-executive members. This designation differentiates them from executive members like the chief executive.

3.384 Provision is made to enable the Welsh Ministers, by regulations, to alter the number of members as necessary to secure the effective

operation of the OEGW. This is to ensure that decisions can be made as to whether the number of members is sufficient in the future, and any changes would be subject to the approval of Senedd Cymru.

### ***Disqualification***

3.385 Individuals are disqualified from being members of the OEGW if they hold specific positions, such as members of the Senedd, UK Parliament, County Councils, National Park Authorities, Natural Resources Wales, the Welsh Government, Ministers of the Crown, Scottish Government, Northern Ireland Ministers, or specified bodies, including the OEGW's own staff. To manage conflicts of interest effectively, members of certain organisations are deemed to have an automatic and unavoidable conflict, which cannot be addressed by internal rules and procedures. This ensures that members of the OEGW can maintain their focus on the OEGW's objectives without conflicting obligations.

### ***Terms of non-executive members***

3.386 Paragraph 4 explains that non-executive members will be subject to the terms and conditions of recruitment, and may not hold office for a period exceeding 4 years. Provision is made to enable the possibility of serving up to 2 terms. Remuneration, expenses, and allowances are to be determined by the OEGW with the approval of the Welsh Ministers, as Welsh Ministers provide the OEGW with its operating budget.

### ***Removal etc. of non-executive members***

3.387 This paragraph provides the Welsh Ministers with authority to remove or suspend non-executive members if they are deemed unfit or unable/unwilling to exercise their functions. The process requires notifying the member and allowing for representations, except in urgent cases, following consultation with the chairperson and deputy chairperson, unless they are the member concerned.

3.388 Provision is also made to enable non-executive members to resign by giving at least 3 months' notice. Members will cease to be part of the OEGW if they become disqualified, ensuring the integrity of the governing body.

## Part 3: Staff

### ***Chief Executive***

3.389 The OEGW must have a chief executive who will initially be appointed by the Welsh Ministers to enable efficient implementation of the OEGW and allow for appointment processes to be run concurrently for the Chair, Deputy Chair and Chief Executive. Subsequent appointments will be made by the non-executive members of the OEGW on terms and conditions to be determined by those members. This role is essential towards the operational leadership of the OEGW.

### ***Other Staff***

3.390 The OEGW has the power to appoint other staff members, with terms and conditions determined by the OEGW. The OEGW may not determine terms and conditions as to remuneration, expenses, allowances or pension without the approval of the Welsh Ministers as these matters will impact upon the operating budget of the OEGW.

## Part 4: Appointment Requirements

### ***Appointment Requirements***

3.391 The Welsh Ministers must ensure the OEGW's members collectively have experience in environmental law and policy, environmental science, and investigatory and enforcement proceedings. This ensures the OEGW's has the right expertise at a strategic level to operate effectively.

3.392 The Welsh Ministers must consult a committee of Senedd Cymru, for the time being with the remit for environmental protection, when appointing or reappointing the chairperson or deputy chairperson, ensuring transparency and accountability.

3.393 Before appointment of a non-executive member or a chief executive, Welsh Ministers must establish a panel to recommend candidates for appointments and the WMs must have regard to that recommendation. The panel must include one member of Welsh Government staff and two independent members. This is to ensure there is a level independence from Welsh Government during the recruitment process given the scope of the OEGW's oversight role includes Welsh Ministers.

3.394 The Welsh Ministers must be satisfied the panel is appropriately experienced in environmental law and policy, environmental science, and investigatory and enforcement proceedings, to ensure the appointment process is robust and the Welsh Ministers can have confidence in the recommendations.

3.395 The panel requirement is waived for immediate reappointment for a second term to ensure continuity and minimise duplication of procedural requirements.

### ***Disapplication of appointment requirements: interim members***

3.396 This paragraph makes provision to allow for temporary appointments to the OEGW under certain circumstances. The intent of this provision is to ensure the continuity and effective operation of the OEGW in instances where there are unexpected vacancies or suspensions of members, particularly the chairperson or deputy chairperson. This enables the OEGW to maintain a functional quorum and proceed with essential activities without the undue delay or disruption that would be caused by formal recruitment procedures.

3.397 The Welsh Ministers may appoint a person to act as chairperson or deputy chairperson for up to 12 months without adhering to the appointment requirements. This provision applies if the current

chairperson or deputy chairperson has died, resigned, been disqualified, removed from office, or suspended, leading to a reduction in membership below the required quorum.

3.398 The same disapplication applies for appointing non-executive members other than the chairperson or deputy chairperson for up to 12 months under similar circumstances.

3.399 By allowing these interim appointments, the section ensures that the OEGW is not hindered by procedural delays and can maintain its operational efficiency during periods of transition or unforeseen absences.

## Part 5: Committees and Delegation

### ***Review Committee***

3.400 The OEGW must establish a review committee to conduct reviews of compliance notices. The purpose of this committee is to provide a degree of operational separation between the OEGW and those persons who will consider whether the compliance notice was correctly served, or whether any amendments are required to that notice. This enables a route of challenge for public authorities subject to compliance notices, ensuring accountability, without immediately relying on potentially lengthy or costly court processes. However, those options remain available to the public authorities alongside the review process set out in the Bill.

3.401 The review committee may include as its members, OEGW staff, and at least two co-opted members from a list maintained by the Welsh Ministers. The list is to be maintained separately from the OEGW to provide independence and will enable diverse perspectives by ensuring those considering the matters are not simply another part of the OEGW ratifying their colleagues' decisions. The list will be comprised of relevant experts with experience of and capability in environmental law and policy, environmental science, and/ or investigatory and enforcement proceedings

3.402 As a matter of procedure, the review committee must appoint a chairperson. Co-opted members will be able to vote on matters relating to the review of the notice, and any members involved in the serving of the original compliance notice are barred from voting. This is to ensure impartiality and enhance the independence of the review from the original decision made by the OEGW.

3.403 Co-opted members may receive remuneration, expenses, and allowances as deemed necessary by the OEGW to ensure their participation.

### ***Other Committees and Sub-Committees***

3.404 Other committees and sub-committees may be established by the OEGW as it deems appropriate, including co-opted members, ensuring comprehensive governance.

3.405 Co-opted members may be granted voting rights by rules to be set out by the OEGW. This is to try to ensure their meaningful input into decision making

### ***Joint Committees***

3.406 The OEGW may establish joint committees with other persons, paying remuneration and allowances to non-members, to enhance their ability to work collaboratively . For example, the OEGW may wish to establish joint committees with the OEP and ESS to investigate cross-border matters.

### ***Delegation***

3.407 The OEGW may delegate its functions to committees, sub-committees, members, or staff, ensuring efficient operations and flexibility.

3.408 The OEGW may impose restrictions and vary or revoke delegations made by its committees or sub-committees as it deems appropriate, ensuring independent control.

3.409 Delegations made under this paragraph are done so to the extent and on the terms specified by the person making the delegation, subject to the conditions set out in sub-paragraphs (4) and (5) This means that when those with the power to delegate functions other parts of the OEGW (e.g. committees, sub-committees, members, or staff), those who are delegating the functions are able to set the parameters for delegation unless the preceding paragraphs do not allow them to do so. For example, if the committee has already determined that a sub-committee cannot delegate a function.

3.410 Exercising the delegation functions detailed in this paragraph does not prevent the OEGW, committees, or sub-committees from exercising the function and does not affect the OEGW's responsibility, ensuring accountability.

3.411 These delegation powers do not apply to the review of compliance notices nor the review committee for which specific provision is made elsewhere in the Bill.

## Part 6: Procedure Etc.

### ***Procedure***

3.412 The OEGW must establish rules to regulate its procedures, including quorum requirements, to ensure effective process and governance.

3.413 The quorum for OEGW must not be lower than four to ensure adequate representation and expertise across the organisation at a strategic level.

3.414 The OEGW must also establish procedural rules for its committees and sub-committees to ensure control and consistency, although those committees and sub-committees may be empowered by the OEGW to determine their own procedure.



## ***Validity of Proceedings***

3.415 Provision is made to clarify that validity of proceedings and acts by the OEGW, or its committees and sub committees, are not affected by vacancies or defects in member appointments. This ensures stability within the organisation and means that any decisions made during such scenarios are as valid and applicable as any other time

## **Part 7: Financial Matters**

### ***Funding***

3.416 The Welsh Ministers may make payments to the OEGW of determined amounts, times, and conditions, ensuring the OEGW receives its operating budget.

### ***Accounting Officer***

3.417 The chief executive is to act as the accounting officer of the OEGW, although provision is made for nomination of another member of staff if the chief executive is unable to carry out these duties to ensuring financial accountability is maintained. If the chief executive cannot fulfil these responsibilities (for example, long term sickness absence), the OEGW must designate another staff member to serve as the accounting officer temporarily. If the position of chief executive is vacant, the OEGW must appoint a staff member to act as the accounting officer until the position is filled.

3.418 The accounting officer's responsibilities are intended to be specified by the Welsh Ministers and may include (but are not limited to) overseeing the accounts and finances of the OEGW, ensuring propriety and regularity in financial management, promoting the efficiency and effectiveness of resource use. In addition the accounting office must report to the Welsh Ministers, Senedd Cymru and / or its Public Accounts Committee

## **Accounts**

- 3.419 The OEGW must keep proper accounts and prepare a statement of accounts for each financial year, complying with directions from the Welsh Ministers as to the content of the statement of accounts, to ensure transparency.
- 3.420 Directions include specifications on information content, presentation, preparation methods, principles, and accompanying details.
- 3.421 The statement of accounts must be submitted to the Welsh Ministers and the Auditor General for Wales by no later than 31 August each year.
- 3.422 The term "financial year" refers to the period starting from the commencement of section 1 and ends with the second 31 March following that day, and then subsequent 12-month periods. This is to provide sufficient time for the OEGW to become established within its first two years, including recruitment and appointment of Chief Executive, etc.

## **Audit**

- 3.423 The Auditor General is the statutory external auditor for most of the Welsh public sector. Provision is made to make the Auditor General for Wales responsible for examining, certifying, and reporting on the statement of accounts submitted by the OEGW. In doing so, they must examine and report on whether, in their opinion, the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority that governs the expenditure.
- 3.424 A certified statement and report on the statement of accounts must be provided to the OEGW and the Auditor General for Wales must lay a copy of the certified statement and report before Senedd Cymru within four months of submission.
- 3.425 In cases where laying the report within the four-month period isn't feasible, a statement explaining the reasons must be provided, followed by the statement and the report as soon as reasonably possible.

## ***Examination into Use of Resources***

3.426 The Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which resources have been used in the discharging of the OEGW's functions. This examination does not allow the Auditor General for Wales to question the merits of the OEGW's policy objectives. This is solely a matter for the OEGW.

3.427 Before carrying out an examination, the Auditor General for Wales must consult Senedd Cymru and consider its views on whether the examination should be conducted.

3.428 Findings from the examination must be published as soon as reasonably practicable, and a copy of the report must be laid before Senedd Cymru.

## **Part 8: Reporting Requirements**

### ***Annual Report***

3.429 The OEGW must prepare and publish an annual report on the exercise of its functions to ensure transparency and accountability. It must lay a copy of this report before Senedd Cymru to aid that accountability.

## **Part 9: Supplementary Provisions**

### ***Register of Interests***

3.430 The OEGW must establish and maintain a register of its members' interests, and publish entries recorded in this register, to ensure transparency of that membership.

### ***Supplementary Powers***

3.431 The OEGW may do anything it considers appropriate for the purposes of, or in connection with, its functions, or otherwise incidental or conducive to the exercise of those functions. However, it is restricted from charging

fees, borrowing money, investing, making grants, lending money, or accepting gifts, to ensure independence of decision making.

## **Schedule 2 – The Office of Environmental Governance Wales: Strategy**

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3.432 Schedule 2 outlines the requirements for the OEGW when preparing its strategy. The strategy must contain substantive detail around how the OEGW will conduct itself and is an essential component of ensuring public accountability and increasing awareness of its functions, purpose and scope.

### ***Content***

3.433 The OEGW is required to specify in the strategy how it aims to comply with its duties to contribute to environmental objectives, as well as other statutory duties, in particular the duty to carry out sustainable development under Part 2 of the Well Being of Future Generations Act 2015. The OEGW must also set out how it intends to operate impartially, objectively, proportionately, and transparently. It also emphasizes the importance of monitoring developments in environmental legislation beyond Wales, as well as how it will collaborate with the other environmental oversight bodies (OEP and ESS). The strategy will need to set out how the OEGW intends to avoiding overlapping functions with other Welsh oversight authorities, including the Auditor General for Wales, the Future Generations Commissioner, the Information Commissioner, Natural Resources Wales, and the Public Services Ombudsman for Wales.

3.434 The OEGW will oversee environmental targets and has the discretion to prioritise its actions without specific obligations or frequency requirements. However, the OEGW must explain its monitoring approach to help the public understand its priorities and assessment approach.

3.435 The OEGW will also need to set out how the processes by which persons are able to make representations to it, to better support its intelligence as to whether public authorities' are complying with environmental law, and / or whether environmental law is effective. In doing so, it must detail how it will manage these representations, including approaches to publish information relating to them, how it will prioritise, and how it will keep individuals informed of any action being taken.

3.436 The strategy will also need to detail the process by which public authorities can make representations to the OEGW about any information notice with which it has been served .

3.437 The OEGW's investigation process/policy must be set out in the strategy, including how different kinds of information are expected to impact its determination around which investigations to take forward, the circumstances by which it may decline investigations, prioritisation criteria, its approach to engaging authorities under investigation and the publication of investigation details.

3.438 The enforcement policy must also be detailed within the strategy. This will include specifying when it will be appropriate to serve compliance notices, when improvement reports may be more appropriate instead, and circumstances in which OEGW is unlikely to take formal enforcement action. It also addresses urgent compliance notices, High Court referrals, and publication of enforcement information.

3.439 The intended combined effect of these provisions is to ensure the framework for the OEGW's functionality s is clearly outlined, and that its approach to environmental governance is characterised by high levels of transparency, accountability, and impartiality, as required by the Bill. The strategy will outline how the OEGW will fulfil its statutory duties without overlapping with roles of other oversight bodies. Requirements to detail how it will consult regularly with stakeholders, such as the Senedd Cymru's committee and other relevant entities, will foster collaboration,

while periodic reviews and updates are intended to ensure that the OEGW remains responsive to evolving environmental challenges. This comprehensive and transparent approach is designed to maintain public trust in the OEGW's governance procedures and reinforce its commitment to effective environmental oversight.

### ***Procedural Requirements***

3.440 When preparing the strategy, the OEGW is required to consult with the Senedd Cymru committee with oversight of the environment, as well as other appropriate bodies. The strategy must be reviewed at least every four years, and, following this review, the OEGW may choose to revise the strategy. If the OEGW decides to revise the strategy, provision is made to impose the same requirements as detailed previously. The OEGW must publish the revised strategy and lay copies before Senedd Cymru as soon as possible after publication.

## **Schedule 3 - Staff Transfer Schemes**

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### ***Power to make staff transfer schemes***

3.441 This paragraph grants the Welsh Ministers powers to create one or more staff transfer schemes. The purpose of these schemes is to facilitate swift implementation of the OEGW by enabling the transition of Welsh Government staff to the OEGW, should that be necessary. The transfer includes rights and liabilities of the staff and actions performed by the Welsh Government treated as actions by the OEGW. Furthermore, it ensures continuity and validity of previous actions undertaken by the Welsh Government and reassigns references from Welsh Government to OEGW in documents. It enables a scheme to make provision that is the same, or similar, to provision found in the Transfer of Undertakings (Protection of Employment) Regulations 2006, where applicable. It also enables schemes to make consequential, supplementary, incidental, or transitional provisions as necessary.

### ***Modification of staff transfer schemes***

3.442 This paragraph allows the Welsh Ministers to modify an existing staff transfer scheme. If the staff transfer has already taken place, any modification affecting the transferred staff must be agreed upon by the individuals concerned. The adjustments take effect from the original date of the scheme or a later specified date.

### ***Duty to lay staff transfer schemes before Senedd Cymru***

3.443 The Welsh Ministers are required to lay a copy of any staff transfer schemes before Senedd Cymru.

### ***Interpretation***

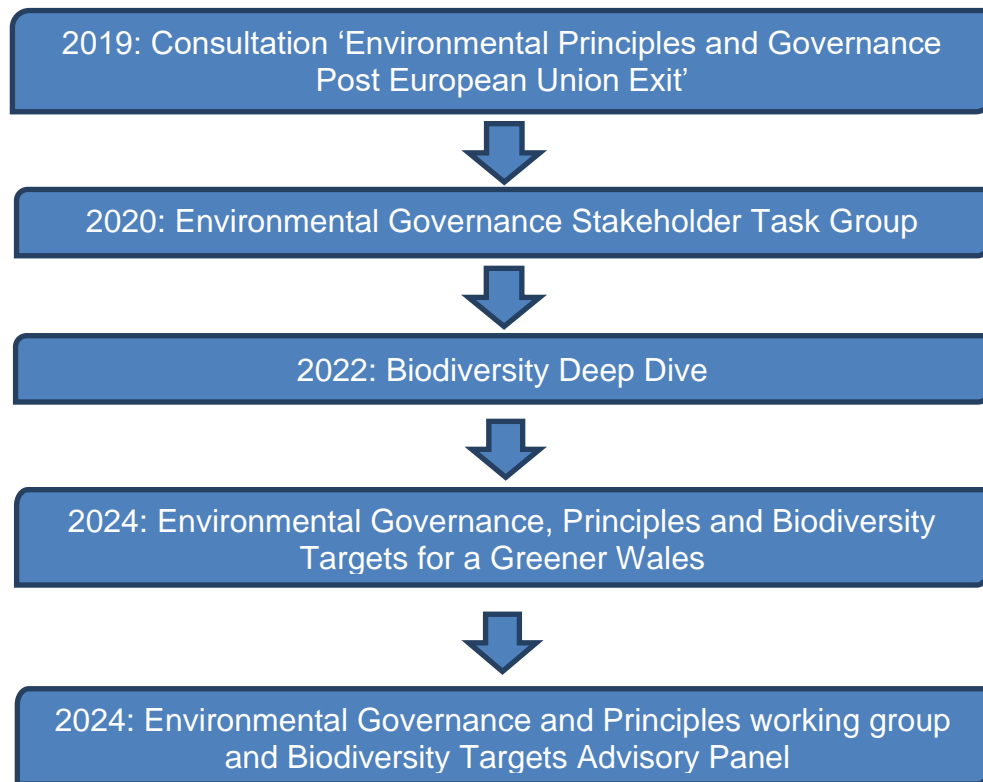
3.444 This paragraph clarifies that individuals employed in the civil service are regarded as employed under a contract of employment, and the terms of their civil service employment constitute the terms of the contract. The civil service refers to the civil service of the State.

## 4. Consultation

### Consultation timetable:

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**Figure 1:** Consultation timetable for policy proposals



### 2019: Environmental Principles and Governance Post European Union Exit

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4.1 In 2019, a twelve-week public consultation was held on the Environmental Principles and Governance Post European Union Exit<sup>77</sup>.

4.2 Respondents were asked to consider nineteen questions on how to address the gaps in environmental principles and governance in Wales arising from the UK's exit from the European Union.

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<sup>77</sup> [Environmental principles and governance in Wales post European Union exit | GOV.WALES](#)



4.3 1,912 written responses were received. 1,851 responses were submitted from two campaigns organised by the World Wide Fund for Nature (WWF) and the Royal Society for the Protection of Birds (RSPB). Of these 257 were identified as duplicates, giving a total of 1,594 campaign based responses recorded. 61 individual responses were received - 12 from individuals and 49 on behalf of organisations. All responses were analysed and a summary of responses was published in September 2019.

## **Outcome of 2019 consultation in respect of Environmental Principles**

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4.4 Respondents to the 2019 consultation were strongly in favour of bringing forward a set of environmental principles to guide the development of Welsh environmental law. However, there were mixed views on what principles should be included and how to achieve this.

4.5 Most respondents supported the inclusion of the four EU environmental principles: precautionary, prevention, rectification at source, and polluter pays. Additional principles were suggested by some, many referencing the integration requirement found under the EU framework.

4.6 Many felt that rather than amending existing legislation, as was being considered at the time, there was value in stating the environmental principles in one piece of legislation as part of an overarching structure. Respondents broadly supported the extension of the sustainable management of natural resources duty to all public bodies in Wales. However, the consensus was that sustainable management of natural resources was at an early stage and that a better understanding of the impact and any implications of extending the duty was required before doing so.

## Outcome of 2019 consultation in respect of Environmental Governance

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4.7 Post-EU environmental governance arrangements were considered in depth during the 2019 consultation on **Environmental principles and governance in Wales post European Union exit**, and particular focus was placed upon developing an independent supervisory body to oversee the implementation of, and compliance with, environmental law in Wales.

4.8 The 2019 consultation sought views on the purpose, objectives, and functions of such a body, including ambitious objectives which would be applied to a wide range of Welsh public authorities. There was clear endorsement of both the approach and level of ambition from consultation respondents.

4.9 A stakeholder Task Group was established following the 2019 Consultation to provide expertise and technical advice in the consideration and development of potential options to present to the Minister.

## 2020 Environmental Governance Stakeholder Task Group

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4.10 The Task Group recommended that the four EU environmental principles (precautionary, prevention, rectification at source and polluter pays) should be provided for in Welsh legislation and that the principles should be supported by an overarching objective setting out environmental ambitions in Wales, including the connections between environmental policy to other policy areas (integration)<sup>78</sup>.

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<sup>78</sup> [ENVIRONMENTAL GOVERNANCE IN WALES POST EXIT FROM THE EUROPEAN UNION](#)

4.11 The Task Group considered that the Environment (Wales) Act 2016 was not a framework for environmental governance, but that it should be viewed as a blueprint for sustainable management of natural resources that may be developed over time. The Task Group therefore concluded that the preferred way to embed the EU environmental principles would be to provide for them in a way that allowed for a more systemic approach which avoided overcomplicating existing legislation. The Task Group also recommended that a duty be imposed upon Welsh Ministers to apply these environmental principles in the development of policies and legislation.

4.12 The then Minister for Rural Affairs, Energy and the Environment accepted those recommendations and also, in principle, accepted a recommendation to explore the extension of the sustainable management of natural resources duty to other public bodies as a separate matter.<sup>79</sup>

4.13 In response to feedback on previous consultations and recommendations listed above, the Welsh Government refined proposals and consulted further.

## **2022: Outcome of the Biodiversity Deep Dive**

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4.14 The Biodiversity Deep Dive, comprising a group of key external experts and practitioners, provided the Welsh Ministers with eight recommendations for collective action to support nature's recovery in Wales. These recommendations were specifically designed to support the delivery of the Global Biodiversity Framework's Target 3, commonly known as "30 by 30," but they also have broader impacts across the entire framework. Additionally, the recommendations build on the duties

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<sup>79</sup> [Response to the report from the Environmental Governance Stakeholder Task Group | GOV.WALES](#)

and approaches outlined in the Wellbeing of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016.

4.15 The Biodiversity Deep Dive recommended the development of primary legislation to set targets for nature recovery, focusing on achieving environmental outcomes and fulfilling Wales's contribution to the post-2020 Global Biodiversity Framework.

4.16 The then Minister for Climate Change accepted those recommendations and committed to continuing the work towards Wales becoming nature positive<sup>80</sup> in an oral statement on 10 January 2023.

4.17 The recommendations of the Biodiversity Deep Dive were taken into consideration when developing the White Paper.

## **2024: Securing a Sustainable Future: Environmental Principles, Governance and Biodiversity targets for a Greener Wales**

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4.18 The White Paper, set out proposals to introduce a Bill into the Senedd to embed environmental principles into Welsh law, strengthen environmental governance in Wales by establishing a governance body to oversee compliance with environmental law by Welsh public authorities, and introduce a new and ambitious biodiversity targets framework to combat the ongoing nature emergency. The proposals reflect our commitment towards “a greener Wales to tackle climate change and the nature emergency”.

4.19 The White Paper set out proposals to cover the three key areas and invited views from interested parties on:

- i. Embedding environmental principles into Welsh law;

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<sup>80</sup> [Written Statement: Biodiversity Deep Dive \(3 October 2022\) | GOV.WALES](#)

- ii. Environmental Governance, including the establishment of an environmental governance body for Wales; and
- iii. A statutory targets framework to protect and restore biodiversity in Wales.

4.20 The Consultation closed on 30<sup>th</sup> April, receiving 1171 responses in total. These contained 161 online responses, five Easy Read responses and 1005 campaign responses. An independent researcher, commissioned by Welsh Government, also hosted five workshops focusing on stakeholders with protected characteristics. Of the workshops two were conducted bilingually in-person and three online, one of which was conducted in Welsh.

4.21 There was broad agreement with Part A (Environmental Principles) and Part C (Biodiversity Targets) of the White Paper. Responses to the proposed Governance Body were more varied, with several key concerns emerging which included:-

- **Independence of the Governance Body:**  
A major concern was ensuring the body is **fully independent** from the Welsh Government and Ministers to maintain credibility and effectiveness.
- **Collaboration and Avoiding Overlap:**  
Respondents emphasized the need to **coordinate with existing bodies** to prevent duplication of efforts. Some stakeholders felt **left out** and called for a **clear remit** and **reporting structure**.
- **Use of Financial Penalties:**  
While opinions varied, many agreed that the Governance Body should have **access to financial penalties** as a **last resort** to enforce compliance.
- **Adequate Resourcing:**  
There were widespread concerns about **long-term funding** for the Governance Body, local authorities, and other partners to

meet **2030 and 2050 targets**. The risk of **costly legislation** during financial hardship was also noted.

- **Clear and Transparent Communication:**

Respondents called for **explicit guidance** on the Governance Body's role, **transparent reporting**, and **accessible complaints procedures** to ensure accountability and public trust.

4.22 An independent analysis of the responses to this consultation has been published. The Bill reflects our policy response to the White paper, which was published shortly after the full consultation, and details changes to approach following substantive engagement with stakeholders and the public. A summary of responses can be found on the Welsh Government website.<sup>81</sup>

4.23 During the 2024 Consultation, Welsh Government officials held a series of workshops and one to one conversations with stakeholders. Twelve one to one sessions were held with key stakeholders to walk through and discuss policy proposals. Two policy workshops were held to discuss the structure of the body and proposed enforcement powers and two further workshops were held with local authorities and public bodies to discuss the Principles and Targets.

### **Biodiversity Target Advisory Panel**

4.24 A Biodiversity Target Advisory Panel was set up in October 2024 to provide greater transparency and rigor during target creation alongside an internal oversight group<sup>82</sup>. The Panel aims to ensure a balance of independent relevant expertise and provided advice and recommendations on the target-setting process and the development of the specific targets.

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<sup>81</sup> [Environmental principles, governance and biodiversity targets: White Paper | GOV.WALES](#)

<sup>82</sup> [Welsh Government Biodiversity Targets Advisory Panel | GOV.WALES](#)

## **Environmental Governance group**

4.25 An external stakeholder working group focusing primarily on the Environmental Principles and the Environmental Governance areas of policy was set up in October 2024.

## ***Further Consultation***

### **Environmental Principles**

4.26 The Bill introduces a duty on Welsh Ministers to prepare and publish a document explaining how the environmental principles and integrating environmental protection duties will be applied. This will include (but not necessarily limited to) details of how

- a. Welsh Ministers will comply with their duty under the Bill,
- b. the environmental principles relate to each other and to the duties
- c. the environmental principles and the duties relate to the environmental objective;

4.27 The statement must include guidance to Natural Resources Wales and Local Authorities around how they are to comply with their own duties within the Bill.

4.28 Welsh Government intends to produce and publicly consult on this statement and guidance during the passage of the Bill, with a view to publish as soon as possible after royal assent. Welsh Government will engage with stakeholders during the preparation of this statement, but then also run a 12-week formal consultation exercise. Through this, stakeholders will be invited to comment and shape the draft of the statement and guidance. Furthermore, feedback on the statement and guidance provided through the scrutiny of the Bill will also be used to inform the finalised guidance.

## **Biodiversity Targets regulations**

4.29 The Biodiversity Targets regulations will be drafted in accordance with the principles of sustainable management of natural resources set out in the Environment (Wales) Act 2016. Two of these principles specifically require officials to ‘make appropriate arrangements for public participation in decision-making’ and to ‘take account of all relevant evidence and gather evidence in respect of uncertainties’. These principles will guide future engagements.

4.30 Officials will engage collaboratively with stakeholders to develop specific biodiversity targets and the levels to be achieved. This collaborative effort will incorporate technical advice from the Biodiversity Target Advisory Panel and inputs from delivery partners, including environmental non-profit organisations, public authorities, and representatives from agriculture, land management and marine sectors.

4.31 These efforts will build upon the previous engagements undertaken to develop the target priority areas listed within the provision. The biodiversity target regulations will also undergo a formal consultation during their development process.

4.32 Due to the extensive consultation already undertaken in relation to the proposals in the Act, and various stakeholder engagement sessions, no additional consultation on a draft Bill was undertaken in advance of introduction to the Senedd.



## **5. Power to make subordinate legislation**

The Bill contains provisions to make subordinate legislation and issue determinations. Table 5.1 (subordinate legislation) and Table 5.2 (directions, codes and guidance) set out in relation to these provisions:

- (i).the person upon whom, or the body upon which, the power is conferred;
- (ii).the form in which the power is to be exercised;
- (iii).the appropriateness of the delegated power;
- (iv).the applied procedure; that is, whether it is “approval”, “annulment”, or “no procedure”, together with reasons why it is considered appropriate.

The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals have been formalised.

**Table 5.1: Summary of powers to make subordinate legislation in the provisions of the Environment (Governance, Principles and Biodiversity Targets) (Wales) Bill**

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 29 (4) - Meaning of “environmental law”	Welsh Ministers	Regulations	A power for Welsh Ministers to provide that a devolved provision specified in the regulations is, or is not, within the definition of “environmental law” in subsection (1). This power is necessary to ensure the definition of environmental law can be future proofed and updated with the latest developments in respect of international and domestic policy.	Approval	This regulation making power may, if exercised, substantially affect provisions of Acts of the Senedd through adding, amending or removing provisions which are relevant to the definition of ‘environmental law’, which has a substantial bearing on the scope of the Office of Environmental Governance’s oversight powers. Therefore, the approval procedure is considered appropriate as it allows for greater Senedd scrutiny over any proposed change to the OEGWs scope.
Section 33(1) – Biodiversity Targets: general - New section 6B(1) of the	Welsh Ministers	Regulations	Power for the Welsh Ministers to set targets in respect of any matter relating to biodiversity. The Welsh Ministers may only exercise this power if meeting a target would contribute to halting and reversing	Approval	The substance of this section (i.e. the targets) is contained in the regulations. The approval procedure will provide appropriate opportunity for scrutiny and accountability

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Environment (Wales) Act 2016			the decline in biodiversity and contribute to the duty in section 6(1) of the Environment (Wales) Act 2016		should the Welsh Ministers decide to exercise the power to make regulations to set biodiversity targets.
Section 33(1) – Designation of public authorities for the purpose of section 6(2A) – new section 6F(1) of the Environment (Wales) Act 2016)	Welsh Ministers	Regulations	<p>Power for the Welsh Ministers to designate a public authority in relation to a target set in regulations made under section 6B of the Environment (Wales) Act 2016, which would impose a duty on that public authority to take action to contribute toward achieving the target. The public authorities within scope of this designation power are devolved Welsh authorities and those reserved authorities excepted from the requirement for Minister of the Crown consent to impose functions upon.</p> <p>This power is appropriate because a designated public authority is one which the Welsh Ministers consider could make a meaningful contribution to achieving a target, and because the authorities to be designated may need to be amended over time.</p>	Approval	The regulation making power, if exercised, would place designated public authorities under a legal duty to take action to contribute to achieving a target set under section 6A(1). Therefore, the approval procedure is considered appropriate as it will allow for greater Senedd scrutiny over the proposed designated public authorities.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Schedule 1 – Membership – Members – paragraph 2 (3)	Welsh Ministers	Regulations	A power to amend sub-paragraph (1)(c) to substitute a different number for either or both of the numbers for the time being specified in that sub-paragraph. This power may be considered appropriate to enable Ministers, with the approval of the Senedd, to increase or reduce members of the body as appropriate. This is necessary to ensure the Office of Environmental Governance Wales can be future proofed and adapted to accommodate any future changes to its scope or remit arising from wider legislation or government decision making.	Approval	This power, if exercised, can significantly impact this Act of the Senedd by altering the number of Office of Environmental Governance Wales members. The approval procedure ensures Welsh Ministers cannot change member numbers without Senedd approval, supporting independence and transparency.
Schedule 1 – Membership – Disqualification – paragraph 3 (1)(i)	Welsh Ministers	Regulations	A power to disqualify a holder of an office, or a member or member of staff of a body specified by the Welsh Ministers. This power may be considered appropriate to future proof the power and enable decisions to be taken around the propriety of preventing certain individuals becoming a member of the Office of	Approval	This power, if exercised, may affect provisions within this Act of the Senedd by adding or removing barriers to membership of the Office of Environmental Governance Wales. The approval procedure is considered appropriate as the provision impact on

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			Environmental Governance Wales by virtue of a clear conflict of interest, subject to the Senedd's approval.		individuals' rights to hold office and supports the independence and transparency of the Office of Environmental Governance Wales.

**Table 5.2: Summary of powers to make directions and to issue codes and guidance [delete as appropriate] in the provisions of the Environment (Governance, Principles and Biodiversity Targets) (Wales) Bill**

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Sections 6 and 7 - Environmental principles and integrating environmental protection statement	Welsh Ministers	Statement (including guidance)	A duty to prepare and publish a statement, including guidance for NRW and certain public authorities on how to meet their duties in respect of applying the environmental principles	No Procedure	This guidance will be prepared for Natural Resources Wales and Public authorities to support them in meeting their duties to apply the environmental principles.
Section 12 - Advising the Welsh Ministers	Office of Environmental Governance Wales	Advice	A power for the Office of Environmental Governance Wales to issue advice to the Welsh Minister on the making of environmental law or other new enactment relating to the environment or any proposed changes to the same, as well as advice on any other matter relating to environmental law.	No procedure	The Office of Environmental Governance Wales will be able to provide advice to the WMs to support them in the making and amending of environmental law and enactments relating to the environment using the information they have received in the course of carrying out their functions. The advice will be published for transparency.

<b>Section</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
Section 13 - advice, guidance and assistance on environmental law	Office of Environmental Governance Wales	Guidance or Advice	A power for the Office of Environmental Governance Wales to issue guidance or advice on any matter relating to environmental law	No procedure	Issuing guidance will be one of the functions of the Office of Environmental Governance Wales to assist public authorities to support them in complying with environmental law. The Guidance must be published by the Office of Environmental Governance Wales. The advice must be published for transparency.

## *Part 2 – Regulatory Impact Assessment*

### **Chapter 6 - Regulatory Impact Assessment (RIA) summary**

#### ***Introduction***

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- 6.1 A Regulatory Impact Assessment below has been completed for the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill (the Bill)
- 6.2 There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

#### **Summary**

- **Regulatory Overview:** The Bill aims to introduce environmental principles, establish a governance body, and set biodiversity targets, with projected total costs of £32.57m over a 10-year appraisal period. These costs are complemented by illustrative delivery costs over 78 year period of £664m and net present value (NPV) of £1,717m in illustrative benefits over a 78-year period for a total potential benefit of £1,024m for the biodiversity targets.
- **Benefits of Legislation:** The legislation aims to enhance environmental outcomes, focusing on improved carbon sequestration, air quality, recreation and public health. There are significant challenges in quantifying and monetising these benefits for the principles and environmental governance body and so costed benefits have been based solely on the biodiversity targets benefits. The estimated benefits for biodiversity targets total £1,717m over a period of 78-years. These values are reflective of 2024 prices and discounted at a rate of 3.5%
- **Options for Environmental Principles:** Five options were considered, ranging from maintaining the status quo to establishing a duty on Welsh



Ministers and public authorities, with varying implications for costs and environmental effectiveness.

- **Options for Environmental Governance:** The assessment evaluates four governance options, including the establishment of a new body or integrating functions into existing authorities, weighing independence against cost implications.
- **Options for Biodiversity Target Framework:** The document discusses three options for setting biodiversity targets, with the preferred option being the introduction of a statutory framework to ensure accountability and effective monitoring of biodiversity efforts.

6.3 The following table presents a summary of the costs and benefits for the Bill as a whole. The table has been designed to present the information required under Standing Order 26.6 (viii) and (ix).

<b><i>Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill</i></b>		
<b>Preferred option:</b> Introduce a Bill which incorporates the following: <ul style="list-style-type: none"> <li>• Environmental Principles with a duty on the Welsh Ministers and NRW when making policy, and on public authorities undertaking Strategic Environmental Assessment (SEA)</li> <li>• an independent environmental governance body and</li> <li>• a statutory biodiversity-target setting framework.</li> </ul>		
<b>Stage:</b> Introduction	<b>Appraisal period:</b> 2025/26 - 2034/35	<b>Price base year:</b> 2024/25
<b>Total Cost</b> <b>Total: £33.64m<sup>83</sup></b> <b>Present value: <u>£32.57m</u></b>	<b>Total Benefits</b> <b>Total: N/A</b> <b>Present value: N/A</b>	<b>Net Present Value (NPV):</b> <b><u>£32.57m</u><sup>84</sup></b>

<sup>83</sup> This value does not include the illustrative costs projected to be needed to deliver the illustrative benefits. These illustrative costs, which are included under 'Other costs' below, have been calculated in present value terms only and have therefore been included in the Present Value of Cost and Net Present Value calculations. As with the illustrative benefits, the actual costs incurred will be dependent on the legislation to which the principles are applied, the cases brought before the OEGW and the length, level and type of biodiversity targets set.

<sup>84</sup> The illustrative costs (included under 'Other costs' below) and illustrative benefits which have used to estimate this NPV have been calculated over a 78-year appraisal period. These have been combined with the administrative and compliance costs which have been calculated over a 10-year period. Extrapolating the administrative and compliance costs over 78 years reduces the NPV by approximately £70m but it remains positive.

<b>Indicative Costs and Benefits:</b> Due to the nature of the provisions, it is challenging to precisely quantify the benefits of their implementation. However, an effort has been made to outline the potential benefits and associated indicative delivery costs, drawing on evidence from the Environment Act 2021 impact assessment. Given that environmental outcomes typically unfold over extended periods, a 78-year appraisal horizon has been adopted, consistent with the benefits evidence base.			
<b>Appraisal period:</b> 2025/26 – 2103/04		<b>Price base year:</b> 2024/25	
<b>Indicative costs:</b> <b>Present value:</b> £664m	<b>Indicative benefits:</b> <b>Present value:</b> £1,717m	<b>Net Present Value (NPV):</b> £1,053m	

### Administrative cost

<b>Costs:</b> The majority of the direct costs associated with the Bill is expected to fall to Welsh Government. These costs include staff costs to implement the environmental principles and to develop and implement biodiversity targets. In addition, there is an ongoing cost, for the 10-year appraisal period of approximately £20m associated with the new environmental governance body and a further cost of approximately £10.3m associated with maintaining and monitoring biodiversity targets.			
<b>Transitional:</b> £2.23m	<b>Recurrent:</b> £30.34m	<b>Total:</b> £32.57mM	<b>PV:</b> £27.79m
<b>Cost-savings:</b> No cost savings have been identified.			
<b>Transitional:</b> £0	<b>Recurrent:</b> £0	<b>Total:</b> £0	<b>PV:</b> £0
<b>Net administrative cost: £32.57m</b>			

## Compliance costs

There are other costs associated with public authorities' compliance with new duties to implement the principles when undertaking SEA (and in NRW's case, making policy). Additionally, public bodies will incur compliance costs associated with participating in OEGW investigations. At this stage, it is not known which public bodies will be subject to investigation.

<b>Transitional:</b> £0	<b>Recurrent:</b> £1.07m	<b>Total:</b> £1.07m	<b>PV:</b> £0.91m
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## Other costs

The RIA includes an illustrative estimate of the potential benefits that will be delivered by the Bill, with the estimate based on the Impact Assessment which accompanied the UK Environment Act 2021. The benefits are expected to be realised through adherence with environmental principles and laws and by meeting the biodiversity targets. At this stage, the costs associated with meeting the biodiversity targets are unknown. However, in order to present a balanced assessment, an illustrative cost (again based on the IA which accompanied the UK Environment Act 2021) has been estimated. This illustrative cost is estimated to be £664m (in present value terms) over a 78-year period.

<b>Transitional:</b> <a href="#">Click here to enter text.</a>	<b>Recurrent:</b> <a href="#">Click here to enter text.</a>	<b>Total:</b> <a href="#">Click here to enter text.</a>	<b>PV:</b> £664m
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## Unquantified costs and disbenefits

The unquantifiable costs and disbenefits include the potential that new duties on ministers may not significantly improve environmental outcomes, making the additional costs less impactful.

In relation to the Environmental Principles, there is concern that an increased compliance burden could limit resources in key areas. There is also a risk of added bureaucracy, potentially increasing permitting times and further burdening the planning system.

In relation to the establishment of the OEPW, establishing a single public authority involves unquantifiable costs related to the time required for it to become operational and effective, and ensuring its clear independence.

In relation to the biodiversity target setting framework there are also unquantifiable costs stemming from the actions and resources needed to meet the specific targets (which will be set out in Secondary Legislation). Further work to estimate costs and benefits will be undertaken as a part of the target setting process

## Benefits

The objective of the legislation is to deliver better environmental outcomes for Wales. However, given the nature of the policies it is hard to attribute benefits to one policy or another within the legislation. As a result, an indicative estimate has been made to quantify the benefits of improved environmental function resulting from Biodiversity Targets based upon the Environment Act 2021 cost-benefit analysis figures. The majority of the benefits identified relate to improved carbon sequestration, air quality, recreation and public health over a period of 78-years.

Due to the framework format of the principles and biodiversity targets, monetised benefits were unable to be calculated for the appraisal period. This is because the policies and legislation to which the principles may be applied, and the topic, metric, extent, and duration of the targets, is currently unknown. Similar constraints apply to the OEGW, with the case topics, and their outcomes, being unknown.

**Total:** [Click here to enter text.](#)

**PV:** £1,717m

## Key evidence, assumptions and uncertainties

To support the development of this Regulatory Impact Assessment (RIA) officials commissioned a third-party researcher and economist to produce a report<sup>85</sup>. The report builds upon the draft RIA that supported the *Securing a Sustainable Future White Paper* and the Environment Act 2021 RIA for the quantification of benefits and used a series of stakeholder interviews and literature reviews to gather further evidence to understand the costs, benefits and disbenefits of the options set out below.

The main uncertainty associated with the quantification of costs and benefits is that the final biodiversity targets will be unquantified during the passage of this primary legislation. Provisions in the Bill introduce a target setting framework, with the targets being introduced through secondary legislation. As a result, indicative targets have been used as a proxy.

Assumptions have also been made on the required Welsh Government staffing levels that would be in place to support the proposals. These assumptions have been carried over into the quantification of costs associated with implementing the policies within the Bill. In relation to the establishment of the OEPW, Officials also used parallel estimations based on the Office of Environmental Protection's caseload to assess the operational cost of the governance body options. Finally, a 3.5% discount rate was applied to future costs in line with HM Treasury's Green Book methodology.

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<sup>85</sup> The Young Foundation - Review and Cost Benefit Analysis of Welsh Government Environmental Governance, Principles and Nature Recovery Bill

## Chapter 7 - Options

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7.1. This section will examine the associated costs and benefits of each legislative proposal in the Bill. Each proposal has considered multiple options to determine the best possible approach to improving environmental policy, protection and biodiversity in Wales.

7.2. A ten-year appraisal period has been used in the analysis, covering the years 2025-26 to 2034-35. All costs are presented in 'real' base year prices, with the effects of general inflation removed. This is in line with the guidance in HM Treasury's Green Book.

7.3. Costs have been rounded to the nearest £100 unless otherwise stated. Some totals may not sum due to this rounding.

### Environmental Principles

7.4. This section of the RIA supports the proposal to introduce a set of environmental principles in Wales.

7.5. Four options were initially considered to achieve the Welsh Government's objective of implementing a set of environmental principles to guide legislative and policy development for the benefit of current and future generations, with a subsequent fifth option considered (a hybrid between options 3 and 4):

- **Option 1** – Business as usual (baseline)
- **Option 2** – Principles only (without a duty on Welsh Ministers or public authorities)
- **Option 3** – Duty on the Welsh Ministers to apply the principles
- **Option 4** – Duty on Welsh Public Authorities, including Ministers, under at least three scenarios (development of legislation, as a responsible authority conducting environmental assessment, or as a competent authority in relation to Environmental Impact Assessments).

- **Option 5** – A duty on Welsh Ministers and NRW when making policy, supported by a duty on public authorities when conducted Strategic Environmental Assessment

### ***Option 1: Business as usual***

#### ***Description***

7.6. Under the current legislative framework, environmental policy in Wales is guided significantly (but not wholly) by the Environment (Wales) Act 2016 and the Well-being of Future Generations (Wales) Act 2015. These acts provide a foundation for sustainable development and environmental protection.

#### **Environment (Wales) Act 2016**

7.7. The Environment (Wales) Act 2016 promotes the sustainable management of natural resources. Key provisions include:

- Sustainable Management of Natural Resources: Ensuring that natural resources are managed in a way that maintains and enhances the resilience of ecosystems.
- Biodiversity Duty: Public authorities are required to maintain and enhance biodiversity, promoting the resilience of ecosystem.

#### **Well-being of Future Generations (Wales) Act 2015**

7.8. The Well-being of Future Generations (Wales) Act 2015 aims to improve the social, economic, environmental, and cultural well-being of Wales. Key provisions include:

- Sustainable Development Principle: Public authorities must act in a manner that ensures sustainable development, considering long-term impacts and preventing problems.
- Well-being Goals: Establishing seven well-being goals, including a resilient Wales and a globally responsible Wales.
- Well-being Duty: Public authorities must set and publish well-being objectives designed to maximize their contribution to achieving the well-being goals.

### ***Disbenefits***

7.9. Maintaining the status quo presents several significant disbenefits. Firstly, it would hinder the further strengthening of environmental protection, making it more challenging to achieve Wales's goals for a greener, carbon-neutral society. The ongoing nature crisis would worsen, leading to long-term impacts on health, well-being, social outcomes, and local area degradation.

7.10. These costs, while difficult to quantify, are substantial. Wales could also risk losing equity and autonomy if it remains the only devolved nation without its own legislation around environmental principles. This could expose Wales to less ambitious frameworks set by the UK government, affecting local strategies and operations.

7.11. Economically, increasing divergence from EU environmental legislation could impact trade, cooperation, and research funding. The inconsistent application of international frameworks by different public authorities could create friction and inconsistencies.

7.12. Additionally, the degradation of the natural environment would negatively impact human well-being, leading to increased costs for public services and the welfare state. Socially, the loss of green space and ecosystem disruption would harm social, economic, heritage, and community outcomes.

### **Costs – Summary**

7.13. There are no additional costs associated with this option as the Environmental Principles would not be developed or introduced to the Welsh statute book.

## **Benefits**

7.14. A potential benefit of doing nothing would be an avoided administrative cost, as other options included increased implementation costs to the taxpayer.

7.15. There would be no additional costs to local authorities or other public or private bodies from this option.

## **Summary**

7.16. Option one is to continue with business as usual by using existing legislative duties to guide the development of future legislation and policy. No new implementation costs would be incurred. However, the current approach would fail to provide a more robust framework to support the Welsh Government's policies for addressing the nature crisis and environment targets.

## ***Option 2: Principles only***

### **Description**

7.17. Under this option, the environmental principles would be introduced to the Welsh statute book. However, there would be no additional requirement, in the form of a duty, for the Welsh Ministers or public authorities to give 'due regard' to the principles.

7.18. In practice this means that the environmental principles would be applied on an ad hoc basis whenever the Welsh Ministers see fit and are able to do so. The environmental principles would serve as guidelines when crafting environmental law and regulations.

### **Disbenefits**

7.19. Introducing the environmental principles to the Welsh statute book without a duty for Welsh Ministers or public authorities to give 'due regard' to them presents several disbenefits. This could lead to situations where environmental principles are introduced but not upheld, resulting in legal



challenges that are ineffective because policies, and the Welsh Ministers, are not required to adhere to the environmental principles.

7.20. There is also the potential for inefficacy and wasted costs in courts' time due to the lack of enforceability. This approach could cause disruption, lack of support, and confusion in application, ultimately leading to minimal impact and compliance. As evidenced by the recent Audit Wales report confusion around implementation and guidance is a trend within Welsh environmental policy<sup>86</sup>. Additionally, there is a risk of the environmental principles being used as a 'shaming' tool, where public authorities and ministers are criticised for not upholding them, which could introduce political risks and polarise voters. This could hinder progress towards achieving environmental outcomes and benefits, as the environmental principles might be seen as a political wedge issue rather than a genuine commitment to environmental protection.

7.21. Furthermore, the lack of a duty to uphold the environmental principles could result in a law that lacks clarity and enforceability, making it difficult to achieve meaningful environmental enhancement.

## **Costs**

7.22. The cost of developing and implementing the legislation necessary to embed the environmental principles into the Welsh statute book will fall to the Welsh Government. This cost will be realised in civil servant time for the development of the legislation. This is estimated to require the time of three full time employed Grade-7 (G7) between 2025 and 2026 to develop the legislation. This equates to £97,317 per person, per annum for the period. The costs were calculated by estimating the costs to the Welsh Government based on the most recent pay scales published by Welsh Government<sup>87</sup>. The full cost breakdown for this option is found in the [Supporting Tables – Cost Benefit Analysis](#).

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<sup>86</sup> [The Biodiversity and Resilience of Ecosystems Duty | Audit Wales](#)

<sup>87</sup> [Welsh Government Pay Policy Statement 2024](#)

**Table [1]: Summary of legislative options, costs and cost calculations – Environmental Principles**

	<b>Option 2</b>
<b>Quantifiable / monetisable costs</b>	Environmental Principles only
<b>Cost figure – real and undiscounted</b>	£584,000

## **Benefits**

7.23. Despite the disbenefits, there are qualitative benefits associated with introducing the environmental principles to the Welsh statute book. One clear advantage is the increased awareness and visibility of environmental protection in Wales. This can help raise public consciousness about the importance of environmental issues and foster a culture of environmental stewardship.

7.24. The introduction of the principles could also help to mitigate the risk of misinformation and ensure public support. Additionally, introduction would allow officials to tailor the principles to the specific context of Wales, considering its unique scale, economy, culture, and procedural approaches. This could lead to greater feasibility, efficiency, and innovation in environmental protection.

7.25. The principles could also enable more precise drafting of environmental protections, potentially leading to stronger environmental outcomes through voluntary compliance and increased political will.

7.26. Although these benefits are unquantifiable, they reflect the potential for a more engaged and proactive approach to environmental protection in Wales.

## **Summary**

7.27. Introducing environmental principles without a duty for Welsh Ministers to uphold them could lead to inefficacy, political risks, and unclear laws.

However, it could raise public awareness, enable the principles to be tailored providing protections to the Welsh context, and foster voluntary compliance. This approach balances visibility and innovation with potential enforcement challenges.

### **Option 3: Duty on the Welsh Ministers**

#### **Description**

7.28. This option builds upon option 2 by going beyond the introduction of environmental principles to the Welsh statute books to include a duty on the Welsh Ministers to apply the environmental principles, and their supporting guidance, during the development of their policies and legislation. The purpose of this duty is to ensure that on a statutory basis, future policies and legislation will be developed with due regard to the environmental principles.

#### **Disbenefits**

7.29. Introducing a duty for Welsh Ministers to apply environmental principles during the development of policies and legislation presents several disbenefits. One significant disbenefit is the possibility of whether this duty will achieve a substantial enough increase in impact and outcomes against the aims of the Bill to justify the additional costs of embedding it within policymaking and ministerial duties.

7.30. The commissioned report highlighted that the duty to have regard to the environmental principles could potentially lead to inefficiencies in policymaking and increased costs to civil service resources and ministerial offices. There is also a political concern that the current growth agenda set out in the UK Government's Plan for Change<sup>88</sup> could put additional pressure on decision-making at the devolved government level, particularly creating tension between application of the environmental principles and other policy areas which are the focus of the growth agenda such as house building or new town development.

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<sup>88</sup> [Plan for Change - GOV.UK](#)

7.31. Additionally, there is a potential disbenefit that the application of the environmental principles at the top level of policymaking would not necessarily ensure the increased support for private sector in applying principles at an operational level such as fisheries or agriculture to adapt to the resulting environmental laws and regulation. This could lead to economic risks for certain sectors or communities, due to their inability to comply with new legislation or policies.

## **Costs**

7.32. The costs for implementing the environmental principles into the Welsh statute book and then complying with the duty to apply them when crafting regulations and policies will fall to Welsh Government.

7.33. As with option two, the costs are primarily associated with the development and implementation of the required legislation and are unchanged from that option. It is also recognised that once the Bill is implemented there will be additional staff time allocated towards familiarisation with the new principles and how they are applied in practice. This cost was not quantified given it is unknown how many civil servants will need to undertake familiarisation nor how long the process will take for each individual. However, if the environmental principles are included within the integrated impact assessment (IIA) process than this familiarisation impact should be minimal, with the principles being included into the overall guidance and training supporting IIA development. Inclusion within the IIA process should limit civil servant exposure to the principles to those serving in policy or regulatory roles, with specialists, such as the Knowledge and Analytical Services (KAS) department being less affected.

7.34. Resources to train and familiarise civil servants with the new duties, and how they should be applied, will be required. The initial preparation of this material is a one-off cost incurred upon the provisions coming into force. It is estimated that it will take approximately 73 hours to develop

this training<sup>89</sup>. This training development will be undertaken by the three G7s that developed the provisions, owing to their intimate knowledge of the subject. This cost is estimated to be £3,900 based on Welsh Government staff costs and average development time for training material of approximately 8,500 words. In adhering to the Welsh Language Standard, this training material will also have to be supported by translation services. An estimate of £5,800 was calculated using an assumption of five documents consisting of 8,500 words of non-legislative text in accordance with cost guidance provided by the Translation Unit. These costs are expected to be incurred in 2026-27.

7.35. There will also be compliance costs associated with the principles and the duty upon the Welsh Ministers to apply them. It is challenging to accurately assess these costs as the final figures will depend on the complexities of the specific policies, plans and programmes that the principles are being applied, along with the size and grade of the policy officials involved in the policy development. It is estimated that the cost of compliance will be about £101,600 per annum, starting in 2026-27. The total cost across the appraisal period is £914,700.

7.36. This cost was calculated using an analogous estimate of compliance cost with an energy efficiency scheme based on a report published by the Department for Energy Security and Net Zero and the Department for Business, Energy and Industrial Strategy<sup>90</sup>. Namely, collation of environmental data, analysis of environmental information and working with an environmental regulator. The report found compliance costs to be £12,700 per annum and per public authority in 2024 prices. It should be noted, however, that the proxy ultimately relates to a specific scheme and specific activities may differ significantly from applying the principles to specific legislation. To convert this to an estimate for the principles the researchers commissioned by policy officials multiplied this cost by eight

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<sup>89</sup> [How Long Does It Take to Develop Training? New Question, New Answers](#)

<sup>90</sup> [Assessment of costs to UK participants of compliance with Phase 2 of the CRC Energy Efficiency Scheme - GOV.UK](#)

to cover the different Main Expenditure Groups within Welsh Government and aligned with Ministerial portfolios. This proxy was chosen because it costs activity that may align with applying the principles. While the Senedd Cymru (Members and Elections) Act 2024 expands the number of Senedd members<sup>91</sup> it is not yet possible to predict how this will affect Ministerial portfolios or if it will lead to a greater number of Main Expenditure Groups, thus the 2025 number of Main Expenditure Groups was used to provide a level of baseline certainty. The full cost breakdown for this option is found in the [Supporting Tables – Cost Benefit Analysis](#).

**Table [2]: Summary of legislative options, costs and cost calculations – Environmental Principles**

	Option 3
Quantifiable / monetisable costs	Duty on the Welsh Ministers to apply the principles
Cost figure – real and undiscounted	£1.51m

**Benefits**

7.37. There are several benefits associated with introducing a duty for Welsh Ministers to apply environmental principles. One primary benefit is the increased independence and autonomy for Wales to lead its own progression on environmental protection and biodiversity. This duty strengthens Wales's ability to mobilise environmental law and achieve tangible impacts from the Bill.

7.38. By incorporating environmental principles into law, Wales can draft more precise and context-specific environmental protections. This ensures that policies are not only effective but also feasible and efficient, considering Wales's unique scale, economy, culture, and procedural approaches. This tailored approach can lead to greater compliance and innovation in environmental protection.

<sup>91</sup> [Senedd Cymru \(Members and Elections\) Act 2024 | Law Wales](#)

- 7.39. Additionally, this will enhance Wales's leadership in environmental policy and innovation, potentially leading to cross-border collaborations that further strengthen our environmental protections.
- 7.40. Another significant benefit is the potential to accelerate progress towards net zero targets (and other environmental targets), with associated positive environmental outcomes.
- 7.41. This duty can help maintain concerted action focussed on the environment and avoid de-prioritisation. The inclusion of the duty to regard the environmental principles can empower Wales to lead its own progression on environmental protection and biodiversity.
- 7.42. By embedding these principles into policymaking, Wales can tailor its environmental strategies to its unique context, ensuring that policies are more relevant and effective. This autonomy allows Wales to go "further, faster" in environmental protection, setting a distinctive example within the UK.

## **Summary**

- 7.43. Introducing a duty for Welsh Ministers to apply environmental principles could lead to inefficiencies and increased costs, with potential political risks and economic impacts on sectors like agriculture, fisheries and other private sector groups. However, it strengthens Wales's independence in environmental policymaking, accelerates progress towards net zero targets, and fosters political recognition and cross-party support for environmental protection. This approach attempts to balance the need for stringent enforcement with the benefits of increased autonomy and proactive environmental action however it does not capture all of the policy and regulation drafting bodies in Wales.

## **Option 4: Duty on the Welsh Authorities**

### **Description**

7.44. This option builds upon option three. Under this option, the environmental principles would be introduced to the Welsh statute book and a duty to apply the Environmental Principles would be applied to Welsh Ministers and relevant public authorities. As under option three, the purpose of this duty is to ensure that future policies and legislation must be developed with due regard to the environmental principles. With a duty to regard extending beyond the Welsh Ministers the relevant public authorities would also have to regard the environmental principles when drafting their own regulations.

### **Disbenefits**

7.45. Introducing a duty for Welsh Ministers and relevant public authorities to apply environmental principles during the development of policies and legislation presents several disbenefits. One significant concern is the increase in costs associated with extending this duty to public authorities, which is estimated to be sixfold compared to previous options<sup>92</sup>. This includes the cost of reporting, compliance, and improving the efficacy of the Bill, which could limit the impact of environmental protection activities on the ground.

7.46. There is the additional disbenefit that, if not suitably resourced, additional responsibilities would be perceived as an overly onerous burden by public authorities, impacting their ability to effectively implement the principles. In a worst-case scenario, this additional burden could potentially discourage public authorities from proactively issuing regulations or policies.

7.47. Local governments operate with limited budgets and resources. Implementing new environmental principles will require additional funding,

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<sup>92</sup> The Young Foundation - Review and Cost Benefit Analysis of Welsh Government Environmental Governance, Principles and Nature Recovery Bill



staff, and training, which may strain already stretched resources. Additionally, many local authorities may lack the necessary expertise to effectively apply environmental principles. This can lead to difficulties in drafting regulations and policies that align with these principles.

7.48. Finally, as with option three, there is a risk that the principles could be applied at the top level of policymaking but without adequate support for sectors to adapt, there is the potential for this to lead to economic uncertainty for certain communities.

7.49. The introduction of the duty may also result in inefficiencies at the local government level, where stretched resources and confusion over implementation could hinder compliance.

## **Costs**

7.50. The costs for implementing the environmental principles into the Welsh statute book will fall to the Welsh Government. Complying with the duty to apply them when crafting regulations and policies will fall to Welsh Government and to the public authorities.

7.51. There is no change from the costs detailed in option three covering legislative development and educational resources. There is also no change to the compliance costs to the Welsh Ministers and Welsh Government.

7.52. Under this option, there will be additional costs incurred by those organisations when complying with their duties. Compliance cost have been estimated based on the same assumption used in option three to provide a per annum cost of £12,700 per public authority. This cost was then applied to the 67 organisations named within Schedule 9A of the Government of Wales Act 2006<sup>93</sup> to estimate the cost of complying with the duty to regard the principles. This gives an additional cost of £952,800

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<sup>93</sup> [Government of Wales Act 2006](#)

per annum, with the cost expected to be first incurred in 2026-27. For option four it is estimated that the cost of complying with the duty to regard the principles, for both the Welsh Ministers and public authorities, will total £8.58m. The full cost breakdown for this option is found in the [Supporting Tables – Cost Benefit Analysis](#).

**Table [3]: Summary of legislative options, costs and cost calculations – Environmental Principles**

	<b>Option 4</b>
<b>Quantifiable / monetisable costs</b>	Duty on Welsh Public Authorities, including Ministers, under at least three scenarios (development of legislation, as a responsible authority conducting environmental assessment, or as a competent authority in relation to Environmental Impact Assessments.
<b>Cost figure – real and undiscounted</b>	£9.17m

## Benefits

7.53. There are also several benefits associated with introducing a duty for Welsh Ministers and relevant public authorities to have a duty to regard the environmental principles. One primary benefit is the strong message and enforceable structure this duty provides to public authorities and local delivery partners. Stakeholders have welcomed the sharing of responsibility for environmental protection and biodiversity restoration, recognising the vital role of public authorities in delivering on environmental law<sup>94</sup>.

7.54. This duty empowers Wales to lead its own progression on environmental protection and biodiversity, allowing for tailored strategies that are more relevant and effective. Another significant benefit is the potential to accelerate progress towards net zero targets, with associated positive environmental outcomes. This duty can help maintain concerted

<sup>94</sup> The Young Foundation - Review and Cost Benefit Analysis of Welsh Government Environmental Governance, Principles and Nature Recovery Bill

action on the environment and avoid de-prioritisation due to scepticism. Additionally, the duty could foster greater political recognition and cross-party support for environmental protection and nature recovery.

7.55. As with option three, comparisons with the Wellbeing of Future Generations Act suggest that the Environmental Bill could elevate the issue of sustainable development among political and public consciousness in Wales. However, with this option, the effects would be magnified by having the environmental principles apply to a wider range of public authorities. There is also a significant opportunity for funded innovation by public authorities and the OEGW, which could present tangible economic gains in terms of research and development and public-private investment.

## **Summary**

7.56. Extending the duty to apply environmental principles to Welsh Ministers and public authorities could lead to significant cost increases, resource constraints, and inefficiencies in local government operations. Public authorities may struggle with the additional responsibilities, potentially limiting the effectiveness of environmental protection efforts. However, this approach could strengthen Wales's autonomy in environmental policymaking, accelerates progress towards net zero targets, and fosters political recognition and support for environmental protection. It may also provide opportunities for innovation, collaboration, and tailored environmental strategies that are more effective and relevant to the Welsh context.

## **Option 5: Duty on the Welsh Ministers and NRW when making policy, and public authorities when undertaking Strategic Environmental Assessments**

### **Description**

7.57. This option would introduce the environmental principles into the Welsh statute book and include a duty on Welsh Ministers and NRW to apply the principles when making policy, and a separate duty on wider public

authorities to apply the principles when undertaking Strategic Environmental Assessments (SEA).

7.58. As under option three the purpose of this duty is to ensure that future policies and legislation must be developed with due regard to the environmental principles. With a duty to regard extending beyond the Welsh Ministers, NRW would also have to regard the environmental principles when drafting their own regulations.

7.59. The duty on the Welsh Ministers and NRW would be further supported by an additional duty on all public authorities to regard the environmental principles when conducting SEA.

### **Disbenefits**

7.60. Introducing a duty for the Welsh Ministers and NRW to apply environmental principles during the development of policies and legislation presents several disbenefits.

7.61. An independent report highlighted that the duty to have regard to the environmental principles could potentially lead to inefficiencies in policymaking and increased costs to civil service resources, ministerial offices and NRW staff<sup>95</sup>.

7.62. A potential disbenefit could also be whether the costs associated with this duty would provide a sufficient increase in the impact and outcomes against the aims of the policy. The current growth agenda set out in the UK Government's Plan for Change<sup>96</sup> could affect decision-making at the devolved government level, particularly in trade-offs between environmental principles and other policy areas such as house building or development slowing the planning process. Again, this may have an

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<sup>95</sup> The Young Foundation - Review and Cost Benefit Analysis of Welsh Government Environmental Governance, Principles and Nature Recovery Bill

<sup>96</sup> [Plan for Change - GOV.UK](https://www.gov.uk/government/consultations/plan-for-change)

impact on the effectiveness of the impact and outcomes against the aims of this Bill.

7.63. Additionally, there is a potential disbenefit that applying the environmental principles only at the top levels of policymaking would not necessarily ensure the increased support for sectors like agriculture and heritage to adapt to the resulting environmental laws and regulation. This could lead to economic uncertainty for certain farming communities, due to their inability to comply with new legislation or policies.

### **Costs**

7.64. The costs for implementing the environmental principles into the Welsh statute book and the implementation will fall to the Welsh Government. The costs of complying with the duty to apply them when crafting regulations and policies will also mainly fall to Welsh Government and, to a more limited extent, NRW.

7.65. The costs for developing and implementing the legislation are unchanged from option three. The costs associated with the educational and training material are also unchanged from option three. When this training material has been developed, this material will be shared with NRW and Public Authorities, minimising their exposure to similar costs as a result of the new duties.

7.66. There will also be compliance costs associated with the principles and the duty upon the Welsh Ministers and Public Authorities will also have to apply the principles through the execution of SEAs. However, due to the format of SEAs it is expected that this will result in minimal to zero additional compliance costs to the public authorities. The estimates for compliance costs described in option three are equally applicable here for the Welsh Ministers. Minimal additional costs are anticipated in relation to the NRW on the basis that similar principles are already applied. This is due to NRW having to operate in compliance with the principles of the sustainable management of natural resources when discharging their

duties<sup>97</sup>. Additionally, NRW and its functions were developed when EU law was applicable in Wales, so the EU version of these principles heavily influenced its development and operation. In this respect, the duties will drive up consistency in application while incurring little additional cost burdens on NRW and wider public authorities. On this basis, the additional cost to NRW has been estimated to be £12,700 per annum, starting in 2026-27. The full cost breakdown for this option is found in the [cost section](#).

**Table [4]: Summary of legislative options, costs and cost calculations – Environmental Principles**

	<b>Option 5 (preferred option)</b>
<b>Quantifiable / monetisable costs</b>	A duty on Welsh Ministers and NRW when making policy, supported by a duty on public authorities when conducted Strategic Environmental Assessment
<b>Cost figure – real and undiscounted</b>	£1.62m

## Benefits

7.67. There are several benefits associated with introducing a duty for the Welsh Ministers and NRW to apply environmental principles. One primary benefit is the increased independence and autonomy for Wales to lead its own progression on environmental protection and biodiversity.

7.68. This duty strengthens Wales's ability to mobilise environmental law and achieve tangible impacts from the Bill.

7.69. By incorporating environmental principles into law, Wales can draft more precise and context-specific environmental protections. The application of a duty to the Welsh Ministers and NRW ensures this benefit is delivered. As the two main drafters of environmental law and regulation, this duty will ensure the benefits of applying the environmental principles

<sup>97</sup> [Environment \(Wales\) Act 2016](#)

are realised by other public authorities through the application of those laws and regulation.

7.70. This option will ensure that the environmental principles are applied in a feasible, efficient and cost-effective way that has the widest impact across Wales. The tailored approach the environmental principles provide can lead to greater compliance and innovation in environmental protection. Additionally, this will enhance Wales's leadership in environmental policy and innovation, potentially leading to cross-border collaborations that further strengthen our environmental protections.

7.71. Through a duty on all public authorities to apply the environmental principles when undertaking their function in relation to SEAs this option applies the principles where most appropriate, at a stage where they will have the greatest impact. This option attempts to achieve the majority of benefits set out in option 4 of the widespread application of the environmental principles. By only mandating the public authorities have regard to the environmental principles in this case, this option attempts to reduce the compliance burdens set out in option four.

7.72. Another significant benefit is the potential to accelerate progress towards net zero targets (and other environmental targets), with associated positive environmental outcomes. This duty can help maintain concerted action on the environment and avoid de-prioritisation. The inclusion of the duty to regard the environmental principle can empower Wales to lead its own progression on environmental protection and biodiversity.

7.73. By embedding these principles into policymaking, Wales can tailor its environmental strategies to its unique context, ensuring that policies are more relevant and effective. This autonomy allows Wales to go "further, faster" in environmental protection, setting a distinctive example within the UK.

7.74. Additionally, the duty could foster greater political recognition and cross-party support for environmental protection and nature recovery. Comparisons with the Wellbeing of Future Generations (Wales) Act 2015 suggest that the Bill could elevate the issue of sustainable development among political and public consciousness in Wales.

## **Summary**

7.75. Extending the duty to apply environmental principles to Welsh Ministers and NRW with an additional duty for public authorities to apply the environmental principles when undertaking function within the scope of SEA could realise the majority of the benefits of option four. This option attempts to mitigate the disbenefits identified in option four by limiting the burden of applying the environmental principles to where they will have the most impact.

7.76. As set out in option four, some public authorities may struggle with the additional responsibilities, potentially limiting the effectiveness of environmental protection efforts. As such, there is likely to be more value in a more nuanced approach where duties are extended to specific public authorities with significant policy responsibility for the Environment, such as NRW, and to wider authorities in specific circumstances where environmental impact is significant (such as when undertaking plans and programmes which fall within the scope of SEA).

## **Office of Environmental Governance – Wales**

7.77. This section of the RIA is to support the proposal to introduce new Governance arrangements to provide strategic oversight over public authorities' compliance with environmental law, and the effectiveness of environmental law in Wales.

7.78. Four options have been considered in pursuance of this proposal:

**Option 1** – Business as usual (baseline)

**Option 2** – Providing existing bodies with functions

**Option 3** – Setting up a dedicated Environmental Governance body.



**Option 4 – Engage UK Government to extend OEP functions to Wales.**

**Option 1: Business as usual (baseline)**

**Description**

7.79. Business as usual in the current context involves continuing with the existing framework where the Interim Environment Protection Assessor Wales (IEPAW) oversees and investigates the functioning of environmental law in Wales without express powers to investigate and, if necessary, take enforcement action. This option relies on the current structure without establishing a new governance body. The IEPAW would continue to operate with its current budget and resources, conducting investigations based on complaints and reports of non-compliance with environmental laws.

**Disbenefits**

7.80. A number of disbenefits have been identified with maintaining the status quo.

7.81. The IEPAW is able to undertake investigations but lacks legal powers to gather information that is not willingly provided or powers to enforce and ensure accountability.

7.82. On this basis, its remit is focussed on ensuring environmental law is functioning and effective, which is important, but incomplete in respect of the policy intent.

7.83. Continuing the existing offer incurs both the running expenses for the IEPAW and any indirect costs for public bodies subject to investigations.

7.84. The absence of a dedicated governance body may lead to inefficiencies and fragmentation in the enforcement of environmental laws. Concerns have been raised by stakeholders about the interim assessor's arrangements, which could be viewed as spotlighting issues

and creating work without being able to “follow through” and ensure compliance.

- 7.85. Fiscal constraints further complicate the situation, as the Welsh Government could be scrutinised for investing in another public authority during tight public finances.

## **Costs**

- 7.86. All costs associated with establishing and operating the governance body for environmental protection in Wales involves ongoing running costs of the Interim Environmental Protection Assessor for Wales (IEPAW) to varying extents. The current IEPAW budget stands at £675,000 per annum, and no uplift has been applied to this figure, reflecting the assumption that costs will remain constant in real terms over the period.

- 7.87. Additionally, there are costs incurred by other public bodies if reported to the IEPAW for investigation are estimated<sup>98</sup>. This cost will depend upon the nature and complexity of the complaint/investigation and is therefore difficult to estimate. For the purposes of presenting a best estimate of the cost in this RIA, we have assumed the cost will be broadly in line with the cost presented in the RIA for the Public Services Ombudsman (Wales) Act 2019 (uprated to 2024-25 prices). Based on the number of complaints reported in the IEPAW's latest report (2023-24), we assume the IEPAW will receive nine complaints per annum, eight of which would proceed to investigation<sup>99</sup>. On this basis, the cost to the public bodies is estimated to be £25,400 per annum. This gives a cost of £700,400 per annum, with the cost expected to be incurred from 2025-26 onwards. The full cost breakdown for this option is found in the [Supporting Tables – Cost Benefit Analysis](#).

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<sup>98</sup> PUBLIC SERVICES OMBUDSMAN (WALES) BILL. Based on costs of staff time to respond to the Ombudsman. The higher unit cost is £357 per complaint

<sup>99</sup> IEPAW Annual Report, 2023-24 (which shows 9 submissions received but 1 not considered in IEPAW's remit)

	Option 1
<b>Quantifiable / monetisable costs</b>	Business as usual (baseline) Continuation of the IEPAW
<b>Cost figure – real and undiscounted</b>	£7.00m

## Benefits

7.88. Despite the ongoing costs and potential inefficiencies, the IEPAW has continued to provide oversight of the functioning of environmental law and assessments, which has been welcomed by numerous stakeholders.

7.89. However, the impact of IEPAW's work is naturally constrained without legislative functions, which has sparked conversations about the need for a more robust regulatory framework to prevent potential increases in individual court cases and challenges.

7.90. The lack of enforcement powers has left IEPAW's best efforts ineffective in following through and ensuring compliance with environmental laws.

## Summary

7.91. Option one is not considered viable as the IEPAW is fundamentally unable to provide effective strategic oversight over public authorities' compliance with environmental law without express enforcement powers to do so.

7.92. Their current role in assessing the effectiveness of environmental law in Wales has value, but the long-term continuation of these interim measures poses substantial inefficiencies and risks due to the lack of enforcement powers, as public authorities could be operating in breach of environmental law without any effective oversight.

7.93. This option is seen as ineffective in driving long-term meaningful environmental compliance and protection.

## **Option 2: Integrate governance functions into an existing Welsh public authority**

### **Description**

7.94. This option involves integrating governance functions into an existing Welsh public authority, providing it with additional resources to deliver strategic oversight over public authorities' compliance with environmental law, and assess the effectiveness of environmental law in Wales.

7.95. This option aims to utilize existing infrastructure and resources to enhance coordination among public bodies.

7.96. This would involve assigning additional responsibilities and resources to an existing organization, such as NRW, to oversee environmental compliance and enforcement.

### **Disbenefits**

7.97. Integrating governance functions into an existing Welsh public authority would present several challenges. These include potential conflicts of interest, as public bodies may end up overseeing their own activities on certain matters. Additionally, there is the possibility of overlap and duplication of functions, which could lead to increased inefficiencies and higher costs.

7.98. The focus on environmental protection may also be reduced compared to other legislation. This overlap and reduction could affect the impartiality and independence of the enforcement functions of the body, with distributed powers possibly undermining the notion of independence and making it likely that public authorities responsible for environmental protection and biodiversity could end up regulating themselves, weakening enforcement and invite scrutiny.

7.99. Furthermore, significant areas of overlap could exist between the new additional functions, leading to duplication in the operations of different public bodies.

## Costs

7.100. Option two proposes integrating the governance functions into an existing Welsh oversight body. This scenario anticipates additional running costs for the selected organization, combining staffing costs and external advice and support, as derived from Environmental Standards Scotland (ESS) reports<sup>100</sup>. Additional costs are expected to be £2.02m<sup>101</sup> per annum starting in 2025-26 (the additional cost drops to £1.34m per annum once the IEPAW ceases operations). The costs for other public bodies under new governance arrangements are estimated similarly to option one, with a one-year time lag for the investigations to commence while the new structure is established. The costs associated with option one would be expected to continue until option two is fully established, with the IEPAW expected to operate at full capacity until around 2027. The full cost breakdown for this option is found in the [Supporting Tables – Cost Benefit Analysis](#).

	Option 2
<b>Quantifiable / monetisable costs</b>	Integrate governance functions into an existing Welsh public authority
<b>Cost figure – real and undiscounted</b>	£14.82m

<sup>100</sup> Based on ESS budget for 2023/24, adding together staffing and external advice and support

<sup>101</sup> Undiscounted costs. In 2025 and 2026 the current running costs of the IEPAW (£675,000) will also be incurred.

## **Benefits**

7.101. Integrating governance functions into an existing Welsh public authority offers potential cost savings by utilizing current infrastructure and resources. This approach could enhance coordination among public bodies and reduce fragmentation, making processes more efficient. Unlike establishing a new body, this option reduces initial setup costs, leveraging the expertise and knowledge already present within bodies like NRW.

7.102. The integration may streamline efforts, minimizing duplication and fostering a more consolidated approach to environmental governance.

7.103. Yet, despite these benefits, the risk of conflicts of interest and overlaps persist, potentially affecting the specificity and effectiveness of environmental protection measures.

## **Summary**

7.104. Option two presents challenges in maintaining independence and avoiding conflicts of interest and duplication.

7.105. While it offers potential cost savings at the outset and enhanced coordination, the risks of dilution of environmental protection specificity and fiscal constraints are significant concerns. The integration of governance functions into existing bodies may lead to inefficiencies and potential conflicts of interest, reducing the overall effectiveness of environmental enforcement.

## **Option 3: Set up a standalone environmental governance body**

### **Description**

7.106. Establishing a standalone Environmental Governance body involves creating a new entity dedicated to overseeing authorities' compliance with environmental law, and the effectiveness of environmental law in Wales.

7.107. This body would hold enforcement powers and operate independently from existing public bodies. The new governance body would be modelled on successful examples of existing bodies and would be developed with the express intent of having sufficient independence from Welsh Government.

### **Disbenefits**

7.108. Establishing a new standalone Environmental Governance body in Wales, while promising greater independence and impartiality, would come with its own set of disbenefits. The most significant issue would be one-off set-up costs, along with recurring expenses needed to maintain the new entity.

7.109. Moreover, there are concerns about the time required for this new body to become fully operational and effective. The establishment of such an entity requires careful planning, recruiting specialized staff, and ensuring clear demarcation of responsibilities, which could take considerable time.

7.110. The setup of a new body might also introduce bureaucracy and additional time burdens, elongating or adding friction to existing processes. Public bodies might face capacity issues as resources becomes strained.

7.111. Furthermore, the recruitment of specialist staff is another challenge. Ensuring that the new body has experts with the necessary skills and knowledge to oversee environmental governance effectively could drain the limited resources that are currently endowed with the experience and expertise of environmental policy, science, and law. The reallocation of such specialized resources may exacerbate capacity constraints in existing public bodies.

### **Costs**

7.112. As with previous options, all costs associated with establishing and operating the governance body for environmental protection in Wales

involves ongoing running costs of the IEPAW to varying extents. For option three the costs of the IEPAW would continue until around 2027 with only half the operating costs being incurred on the final year.

7.113. Setting up a standalone Environmental Governance body, as detailed in option three, entails one-off setup costs of £480,000<sup>102</sup> in 2025-26, followed by recurring costs starting at £2.79m annually from 2026-27, based on Welsh Government budget estimates<sup>103</sup>. This option emphasizes the creation of a tailor-made governance body with sufficient independence from Welsh Government.

7.114. The creation of a new public body may generate additional costs for the Wales Audit Office (WAO) due to their need to audit and engage with the new organisation. At this stage, these costs are unknown.

7.115. The costs for other public bodies investigated under these new arrangements are estimated in the same manner as Option two<sup>104</sup>.

7.116. The IEPAW is expected to continue operating until midway through 2027-28, This is to provide the new body with sufficient time to become fully operational. The current £675,000 per annum operating costs are expected to continue for this period. The full cost breakdown for this option is found in the [cost section](#).

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<sup>102</sup> [cr-ld16322-e.pdf](#)

<sup>103</sup> Estimates based on the running costs of the Environmental Standards Scotland which provides a suitable proxy in terms of size [Environmental Standards Scotland letter on draft budget](#)

<sup>104</sup> [Representations received - Environmental Standards Scotland](#) 35 representations were received by the ESS in 2025, 17 were closed, predominantly through informal resolution. Those open are under investigation. There were no referrals in 2025



**Table [5]: Summary of legislative options, costs and cost calculations – governance body**

	<b>Option 3</b>
<b>Quantifiable / monetisable costs</b>	Set up a standalone Environmental Governance body
<b>Cost figure – real and undiscounted</b>	£20.54m

## **Benefits**

7.117. While establishing a new standalone Environmental Governance body in Wales does come with higher initial costs and time investments, the long-term benefits are substantial. Firstly, this new body would bring greater independence and impartiality to enforcement functions, ensuring that environmental laws are applied consistently and without bias. This is particularly important given the body will oversee Welsh Ministers, as well as other public authorities, meaning their independence from government is crucial.

7.118. Furthermore, the dedicated focus of this body on environmental governance would lead to improved efficacy and efficiency in compliance with environmental law. By having a specialized entity, the oversight and enforcement of environmental law would be more specialised, and therefore more robust, leading to stronger environmental outcomes.

7.119. A new governance body would also benefit from clarity in its operational model, which can be designed to maximize resource allocation and streamline processes, reducing the likelihood of bureaucracy and inefficiency. With the right planning and recruitment strategies, the body can attract and retain highly skilled experts, ensuring that it operates with the utmost professionalism and expertise.

7.120. Moreover, the establishment of this body could enhance visibility and bring tangible benefits to Welsh citizens. It would reinforce efforts towards environmental protection and sustainability, making the commitment to a

greener future more apparent and impactful. This dedicated focus on environmental governance would ultimately foster a more consolidated and effective approach to preserving Wales's natural resources.

## **Summary**

7.121. The establishment of a standalone Environmental Governance body in Wales offers substantial long-term benefits despite initial costs and time investments. This body would ensure greater independence and impartiality in enforcing environmental laws, leading to improved efficiency and stronger environmental outcomes. It would streamline processes, attract skilled experts, and enhance visibility, complementing wider policy and legislation.

7.122. Additionally, this new entity would reinforce efforts towards environmental protection and sustainability, making the commitment to a greener future more apparent and impactful. By operating independently of the existing institutions, it would foster a closer connection between the governance body and Welsh citizens, empowering them to report non-compliance and concerns.

7.123. The dedicated focus on environmental governance would ultimately lead to a more consolidated and effective approach to preserving Wales' natural resources, ensuring lasting benefits for both the environment and the community.

## **Option 4: Extend the functions of the UK OEP to Wales**

7.124. This option involves extending the remit of the Office for Environmental Protection (OEP) and the environmental review mechanism to Wales. It leverages the existing OEP framework to oversee compliance with environmental laws in Wales. The OEP, established under the Environment Act 2021, is a highly regarded governance body with evidence-based action and enforcement capabilities.

## **Disbenefits**

- 7.125. The primary disbenefit associated with this option is around the potential for losing Welsh focus and autonomy in respect of the oversight, and recommendations, flowing from the Governance Body.
- 7.126. Wales has a distinct and unique legislative framework, particularly in respect of environmental law (such as the Environment (Wales) 2016), and law which has a significant environmental component (such as the Well-being of Future Generations (Wales) Act 2015). There would be risks with relying on a UK-wide organisation to reflect on areas uniquely specific to the Welsh Context.
- 7.127. If the OEP's focus was extended towards a remit which covered England, NI and Wales, there would be additional risks of lack of pace in addressing issues in Wales, as the OEP may at any point determine to focus it prioritise on matters which are more acute in England than Wales.
- 7.128. To mitigate some of these disadvantages, substantial financial resources are required to ensure that the organisation is adequately prepared to contribute to policy and legislative priorities in Wales. The perceived savings from assigning these functions to an existing body may be less substantial than initially anticipated if significant financial investments are necessary to expand the organisation.
- 7.129. Furthermore, opting to provide a UK body with oversight functions that are within the remit of the Senedd could inadvertently present a dilution of the benefits of devolution, undermining the rationale for policy and legislative control over environmental protection in Wales, and some of the landmark achievements of the Senedd in this respect.
- 7.130. Importantly, if this disbenefits could be surmounted, then the OEP and the UK Government would still need to agree to such an arrangement, which is by no means guaranteed.

## Costs

7.131. Option four involves extending the remit of the Office for Environmental Protection (OEP) to Wales. The additional running costs are calculated using the median salary for an OEP full-time equivalent (FTE), set at £120,000 based on the regulatory impact assessment published with the Environment Act 2021<sup>105</sup>. This cost was then used to calculate the costs for an estimated 15 additional FTEs to extend the environmental governance function to cover Wales. The 15 FTEs was estimated by policy officials in collaboration with OEP staff on the projected resources needed to cover Wales. On this basis, the additional cost for this option is £1.8m per annum (£1.125m per annum once the IEPAW ceases operations), with this cost expected to be incurred from 2025-26. The current £675,000 per annum operating costs for the IEPAW are expected to continue for this period, ending in 2026-27. The costs for other public bodies under this governance arrangement are estimated similarly to options two and three. The full cost breakdown for this option is found in the [Supporting Tables – Cost Benefit Analysis](#). However, after initial transition costs created by shifting to new format for handling environmental law cases there will be no additional costs upon public authorities beyond the baseline. This is due to while the avenue by which cases are handled is changing policy officials do not anticipate this to change the number of cases raised on an annual basis.

	Option 4
<b>Quantifiable / monetisable costs</b>	Extend the functions of the UK OEP to Wales
<b>Cost figure – real and undiscounted</b>	£12.65m

<sup>105</sup> [Environment Act 2021 publications - Parliamentary Bills - UK Parliament](#)

## Benefits

7.132. Extending the remit of the OEP to Wales offers the advantage of drawing on their established standards and practices, which is well-regarded and considered effective.

7.133. This option offers cost savings as it utilizes the existing OEP framework, reducing the need for creating new infrastructure or allocating additional resources (though its expected significant additional resource would be required given the added coverage).

## Summary

7.134. The benefits of Option four are severely limited due to concerns about autonomy and effectiveness despite the cost-saving advantages.

7.135. Leveraging the OEP framework could ensure high standards and best practices, however the potential loss of Welsh oversight autonomy and fluctuations in commitment are critical issues.

7.136. Stakeholders have stated the need for a governance body tailored to the specific needs and challenges of Wales, ensuring effective and independent enforcement of environmental laws.

## Biodiversity Targets

7.137. This section of the RIA is to support the proposal to introduce a target-setting framework in Wales.

7.138. Three options have been considered to achieve the Welsh Government's objective of developing evidence-based and effective target-setting legislation for the benefit of current and future generations:

- **Option 1** – Business as usual (baseline);
- **Option 2** – Implement a target-setting framework in a non-statutory manner using existing policy mechanisms; and

- **Option 3** – Introduce a new, fit for purpose, biodiversity target setting framework in legislation.

## Option 1: Business as usual

### Description

7.139. This option maintains the current legislative and policy framework obligations supporting biodiversity. The main existing obligations include the Environment (Wales) Act 2016, the Well-being of Future Generations (Wales) Act 2015, and Wales's Nature Recovery Action Plan (NRAP).

7.140. The Environment (Wales) Act 2016<sup>106</sup> sets out the objectives of the Sustainable Management of Natural Resources (SMNR) and its underlying principles based on the ecosystem approach put forward by the UN Convention of Biological Diversity. The objective of SMNR is to maintain and enhance the resilience of ecosystems and the benefits they provide. This objective is supported by the National Natural Resources Policy developed by the Welsh Ministers which outlines priorities, risks, and opportunities for sustainable resource management. The policy is underpinned by the State of Natural Resources Report (SoNaRR) and Area statements which are produced by Natural Resource Wales and assess the state of natural resources, including biodiversity, in Wales. Additionally, a list of species and habitats of principal importance for biodiversity, known as the 'section 7 list,' is maintained and updated periodically. There is also a statutory biodiversity objective under section 6 of the Act. This section requires public authorities, including the Welsh Ministers, to work towards the objective of maintaining and enhancing biodiversity and promoting the resilience of ecosystems.

7.141. The 2016 Act was designed to work in conjunction with the Well-being of Future Generations (Wales) Act 2015<sup>107</sup>, which incorporates the ambition of the UN's Sustainable Development Goals into Welsh

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<sup>106</sup> [Environment \(Wales\) Act 2016](#)

<sup>107</sup> [Well-being of Future Generations \(Wales\) Act 2015](#)

legislation. The 2015 Act includes seven ‘well-being goals’ for public authorities, one of which is ‘a resilient Wales’. Contributing to this goal are a number of milestones, two of which are concerned with healthy ecosystems (Milestone 43<sup>108</sup>) and biological diversity (Milestone 44<sup>109</sup>).

7.142. The NRAP<sup>110</sup> is the Welsh Government’s format for the National Biodiversity Strategy and Action Plan requirement for signatories of the Kunming-Montreal Global Biodiversity Framework. The NRAP is non-statutory but contains objectives for the terrestrial and marine environments along with key actions needed to meet them. The NRAP also represents Wales’s contribution to the UK’s National Biodiversity Strategy and Action Plan.

7.143. Aside from these existing commitments, no further action would be taken by Welsh Government under this option. Option one is provided as a baseline for comparison with the potential benefits of strengthening the current approach through non-statutory targets (option two) and introducing a framework for Welsh Ministers to set new evidence-based biodiversity targets (option three).

## **Disbenefits**

7.144. In January 2025 the Senedd’s Climate Change, Environment and Infrastructure Committee (CCEI) published a report titled *Halting and reversing the loss of nature by 2030*<sup>111</sup> which presented evidence gathered by the committee and its recommendations for addressing the nature emergency. The findings of the report highlight a number of disbenefits associated with continuing under these obligations without change. Recommendations were made in response to the inquiry to strengthen implementation of the Environment (Wales) Act 2016 to help drive action for nature. The report suggests that the Act’s weaknesses lie in both its drafting and implementation, leading to delays and unmet

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<sup>108</sup> [Well-being of Future Generations \(Wales\) Act 2015: the essentials \[HTML\] | GOV.WALES](#)

<sup>109</sup> [Well-being of Future Generations \(Wales\) Act 2015: the essentials \[HTML\] | GOV.WALES](#)

<sup>110</sup> [Nature recovery action plan | GOV.WALES](#)

<sup>111</sup> [Halting and reversing the loss of nature by 2030](#)

commitments. The SMNR objective is criticised for not focusing enough on biodiversity. The report indicates the National Natural Resources Policy is outdated and has had little impact, while Area Statements are not well-utilised. Based on the evidence gathered, the report suggests that the section 6 duty on public authorities to enhance biodiversity is overshadowed by other priorities and needs immediate improvement. The Welsh Government's response to the report and its 30 recommendations was published on 3 March 2025.

7.145. In March 2025 Audit Wales published a report that considered whether the Welsh Government and other public authorities are responding appropriately to their duty under section 6 of the Environment (Wales) Act 2016<sup>112</sup>. Overall, the report found that the nature emergency has not been a high enough priority. It found that the Welsh Government has failed to comply with its own planning requirement, is not effectively monitoring compliance and is unable to assess the overall impact of the duty on biodiversity decline.

7.146. The Audit Wales report also found that weaknesses in implementation of the Environment (Wales) Act 2016 and its guidance leave the duty's coverage and intent open to interpretation. The Welsh Government has also yet to produce a plan under the planning requirements of the duty. The Welsh Government has yet to set biodiversity targets, which the report linked to the inability to assess the impact of the duty on biodiversity. Finally, this option would continue the trend that was highlighted in the responses to the Securing a Sustainable Future White Paper<sup>113</sup>. A number of the respondents highlighted that currently the nature emergency is not given the focus it merits and is often overshadowed by the climate emergency. This downward trend of biodiversity loss is likely to continue under the current set of commitments.

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<sup>112</sup> [The Biodiversity and Resilience of Ecosystems Duty | Audit Wales](#)

<sup>113</sup> [Environmental principles, governance and biodiversity targets: White Paper | GOV.WALES](#)



## Costs

7.147. The costs for adhering with Welsh Government's obligations under the section 6 duty of the Environment (Wales) Act 2016, and reporting of actions taken, will fall to the Welsh Government. Compliance with the duty and its implementation within policies and government functions are embedded across the Welsh Government, thus making the quantification of compliance costs difficult. However, there is staff dedicated to producing the Welsh Government's plan and monitor actions for reporting Table 6. This staff also provides technical biodiversity advice to other policy areas to support implementation.

**Table [6]: Staff time breakdown for Section 6 support**

Position	Hours per year	Percentage of time	Average staff cost (£)	Cost (£)
Deputy Director	47	2.6%	134,146	3,500
Grade 6	235	12.9%	117,941	15,200
Grade 7	141	7.7%	97,317	7,500
Senior Executive Officer	282	15.5%	74,819	11,600
Higher Executive Officer 1	1410	77.5%	59,808	46,300
Higher Executive Officer 2	352.5	19.4%	59,808	11,600
<b>Total staff cost</b>				<b>95,700</b>

7.148. As such, the costs of continuing with business as usual are estimated to be £0.96m over the ten-year appraisal period. The full cost breakdown for this option is available in the [Supporting Tables – Cost Benefit Analysis](#).

**Table [7]: Summary of legislative options, costs and cost calculations – biodiversity targets**

	<b>Option 1 (BAU)</b>
<b>Quantifiable / monetisable costs</b>	Existing costs associated with Section 6 duties and the Global Biodiversity Framework
<b>Cost figure – real and undiscounted</b>	£0.96m

## **Benefits**

7.149. A potential benefit of doing nothing would be an initial cost savings, as other options included increased implementation costs to the taxpayer.

7.150. There would be no additional costs to local authorities or other public or private bodies from this option.

## **Summary**

7.151. Option one is to continue with business as usual by using existing legislative duties and public commitments to manage biodiversity. No new implementation costs would be realised. However, the disbenefits associated with the current trend of biodiversity recovery under the approach will continue to accrue. While the Welsh Government has a number of commitments there tends to be a level of ambiguity that hampers delivery.

## **Option 2: Non-statutory biodiversity target framework**

### **Description**

7.152. Under this option we would strengthen our current approach to managing biodiversity by introducing a series of non-statutory targets supported by a monitoring and reporting structure. This option would incorporate the targets set into existing policy and delivery documents and work to compliment the duties and functions of the Environment (Wales) Act 2016 and expand upon the environmental milestones set under the Well-being of Future Generations (Wales) Act 2015.

7.153. We would seek to derive targets from the GBF and place into a Welsh context, focusing on areas that are in critical need of urgent action. Targets would be introduced under the existing mechanism of the National Natural Resources Policy required by Section 9 of the Environment (Wales) Act 2016. The targets would be a mechanism through which Welsh Ministers could describe and quantify the enhancement of biodiversity they are seeking to achieve. The NRAP would be used to provide further detail on how the Welsh Ministers plan on delivering the targets in the longer-term within the strategy section and how the Welsh targets contribute towards meeting the ambition of the GBF. The action plan of the document would detail the actions Welsh Ministers are taking to implement their strategy for achieving the targets.

### **Disbenefits**

7.154. There are several disbenefits associated with this option. Implementing the non-statutory targets would require additional staffing and resources, which could strain existing budgets and personnel. The exact costs for developing non-statutory targets and supporting their monitoring is dependent on the specific target chosen. However, using the existing resources allocated towards abiding with Section 6 of the Environment (Wales) Act 2016 researchers commissioned by policy officials provided an estimate of the additional costs (Table 8).

7.155. Some costs, particularly those related to compliance costs for public authorities, are unquantifiable and unmonetisable, posing challenges in accurately assessing the financial implications of the framework. While the framework primarily targets public authorities, there could be indirect impacts on businesses, especially those in sectors such as agriculture and land management. Additional regulations or requirements stemming from the biodiversity targets could impose costs on businesses, potentially affecting their profitability<sup>114</sup>. Furthermore, as the targets are non-

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<sup>114</sup> DEFRA (2022), Overarching Impact Assessment for proposed Environment Act (2021) targets (Consultation Stage), [https://consult.defra.gov.uk/natural-environment-policy/consultation-on-environmental-targets/supporting\\_documents/Environment%20Act%20targets%20%20Overarching%20Impact%20Assessment.pdf](https://consult.defra.gov.uk/natural-environment-policy/consultation-on-environmental-targets/supporting_documents/Environment%20Act%20targets%20%20Overarching%20Impact%20Assessment.pdf)

statutory, their success would depend on voluntary compliance by public authorities and other stakeholders. Without legal enforcement, there is the possibility that the targets may not be fully achieved, limiting the framework's effectiveness. There is an additional concern that the targets may be subject to change based on differing priorities of subsequent governments or alternatively focussed on short term delivery such as the target to focus on increasing the amount of land and sea under restoration by over 400,000 hectares.

## Costs

7.156. The costs for implementing a biodiversity target-setting framework, and on-going monitoring and evaluation, will fall to the Welsh Government. This will likely require the time of a core policy team. In addition to this policy resource, policy development will also require the time of interdependent policy teams and other officials to support the development and implementation of the non-statutory biodiversity target-setting framework [Table 8]. This time commitment has been adjusted to monetary values using the Welsh Government's pay scales<sup>115</sup> and a non-wage labour cost is applied, excluding tax and overhead costs. Costs will be incurred during the development and implementation of the framework from financial years 2025-26 up to 2034-35. The staff costs identified under Option one will also be incurred in this option.

**Table [8]: Staff time breakdown for non-statutory targets**

Position	Hours per year	Percentage of time	Average staff cost (£)	Cost (£)
Deputy Director	104	5.7%	134,146	7,700
Grade 6	104	5.7%	117,941	6,700
Grade 7	624	34.3%	97,317	33,400

<sup>115</sup> [Welsh Government pay policy statements | GOV.WALES](#)

Senior Executive Officer 1	624	34.3%	74,819	25,700
Senior Executive Officer 2	962	52.9%	74,819	39,500
Higher Executive Officer 1	962	52.9%	59,808	31,600
Higher Executive Officer 2	962	52.9%	59,808	31,600
Higher Executive Officer 3	624	34.3%	59,808	20,500
Higher Executive Officer 4	156	8.6%	59,808	5,100
Higher Executive Officer 5	962	52.9%	59,808	31,600
<b>Total staff cost</b>				<b>233,400</b>

7.157. This option would have no immediate costs to society. Future costs may be incurred from policies brought forward to support the targets. However, what these policies are, and their associated costs, will be determined by the non-statutory target topics. Additionally, there will be consultation with the NRW and other stakeholders, but costs to these external agencies associated with the consultation process are expected to be minimal.

7.158. Work will need to be carried out to identify what actions will be required to meet any potential targets to ensure they are feasible and effective within any specified timescales. This will inform the potential level of improvement, which is capable of being met, and by when. This work includes determining the appropriate biodiversity metric and reporting capabilities necessary to measure, assess and report on compliance with specific targets. Also necessary will be a scenario modelling exercise to determine the policy pathways needed to support the achievement of the targets stated outcomes. Based on initial conversations with Joint Nature Conservation Committee (JNCC), a sum £370,000 has been estimated to

provide technical consultancy support, with costs anticipated to be incurred over financial years 2025-26. In total the staffing costs and development work for policy and targets is projected to total £3.41m.

7.159. Actions beyond measures to adhere to existing legislative and policy commitments are likely to be required to meet any new targets. However, it is not currently possible to estimate the cost of implementing a new framework as the scope of action required has not been defined. These specific costs are therefore unknown at this stage. There will be costs to business and households if the Welsh Government is required to enact stricter planning or pollution policies to meet targets. These potential costs will vary greatly depending on several factors such as the level set as the target, the deadline for meeting the target, the measures selected to achieve the target and the impacts on biodiversity from other government actions, such as on climate change or agriculture.

7.160. The decision as to when and how to cost effectively achieve targets to be set by Welsh Ministers will be based on independent expert advice. This will in turn determine the costs to business and households and at which point in time they are incurred. Any costs to business and households may be tempered by improved ecosystem services, which may be further improved by government biodiversity targets.

7.161. The framework requires Welsh Ministers to put in place arrangements for data collection to assess progress made towards targets once they have been set under the framework, and to ensure the data are published. Closely related to the duty to specify indicators and report on progress towards the targets is the Welsh Government's obligations to feed into the UK's reporting requirements under the GBF. This includes supporting the development of the UK's National Biodiversity Strategy and Action Plan, detailing commitments and action, and the National Reports which set out signatories' progress towards achieving the GBF targets. Welsh Ministers also have a duty under section 6 of the Environment (Wales) Act 2016 to report on their actions that contribute to maintaining

and enhancing biodiversity. This option, if implemented, could expand the detail being reported within the Welsh Minister’s section 6 report and better support Welsh Government contributions to the UK-level reporting.

7.162. Future monitoring requirements are subject to the development of the specific biodiversity targets, affordability in the context of wider government commitments and Ministerial consideration. Targets are currently being developed by modelling future policy pathways alongside requests for the independent expert advice of the Biodiversity Target Advisory Panel (BTAP) and other government expert advisory bodies.

7.163. However, based on discussions with environmental monitoring experts at JNCC and BTAP, indicative cost estimates to maintain a comprehensive monitoring suite of indicators, including running costs, is approximately £329,000 annually beginning in 2026-27. The full cost breakdown for this option is available in the [Supporting Tables – Cost Benefit Analysis](#).

**Table [9]: Summary of legislative options, costs and cost calculations – biodiversity targets**

	<b>Option 2</b>
<b>Quantifiable / monetisable costs</b>	Development of policy / targets Costs associated with Section 6 duties and future target evaluation mechanisms
<b>Cost figure – real and undiscounted</b>	£5.51m

**Benefits**

7.164. Implementing non-statutory biodiversity targets offers several potential benefits compared to business as usual. This approach could enhance biodiversity management by defining a suite of defined, quantifiable outcomes for conservation efforts to work towards. These targets, derived from the Global Biodiversity Framework and adapted to the Welsh context, would focus on areas in critical need of urgent action, thereby

improving the effectiveness of biodiversity conservation through an alignment of resources and efforts. Integrating these targets into existing policy and delivery documents would augment the Environment (Wales) Act 2016 and the Well-being of Future Generations (Wales) Act 2015, supporting the duties and functions outlined in these Acts.

7.165. The establishment of a monitoring and reporting structure would provide a mechanism for tracking progress towards biodiversity targets, ensuring accountability and transparency. As the targets would be derived from the Global Biodiversity Framework this monitoring structure would also support Wales reporting requirements to the UK as part of its obligations as a signatory, thus reducing redundancy and workload. Regular reporting would help identify areas needing improvement and facilitate adaptive management of policies.

7.166. Improved biodiversity management could lead to benefits such as carbon sequestration, better air quality, enhanced recreational opportunities, and improved physical health for the population. While these benefits are challenging to quantify precisely, they are expected to contribute positively to the environment and society<sup>116</sup>.

## **Summary**

7.167. Overall, while the non-statutory biodiversity target framework offers several potential benefits, including enhanced biodiversity management and policy integration, it also presents challenges related to resource requirements, unquantifiable costs, and reliance on voluntary compliance. Balancing these factors will be crucial in determining the overall impact and feasibility of this option.

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<sup>116</sup> The Young Foundation - Review and Cost Benefit Analysis of Welsh Government Environmental Governance, Principles and Nature Recovery Bill



## **Option 3: Statutory biodiversity target framework**

### **Description**

7.168. This option introduces a framework for setting biodiversity targets.

Welsh Ministers will have the power to establish statutory targets if they believe these targets will help halt and reverse biodiversity decline. The focus will be on increasing the abundance of native species, enhancing ecosystem resilience, and boosting genetic diversity. Welsh Ministers will be required to set at least one target within four priority areas named in the Bill within three years of Royal Assent.

7.169. The existing duties and responsibilities under the Environment (Wales)

Act 2016 will remain in place and are further refined by this option. This includes enhancing the Welsh Ministers' planning and reporting functions under section 6 of the Environment (Wales) Act 2016. Welsh Ministers will be required to include the action they intend to take to achieve biodiversity targets within their plans. They will also need to monitor and report progress toward achieving these targets, using indicators set in the target regulations, within their section 6 reports. Additionally, this option introduces a new evaluation report to assess the impact and effectiveness of those policies and actions outlined in the Welsh Ministers' section 6 plan.

7.170. A target-setting framework will enable additional targets to be set in the future to achieve effective and long-term outcomes for current and future generations. The Environment Act 2021 introduced powers and duties for the UK Government to set environmental targets in England and to plan, monitor and report on progress towards them to protect and improve the environment, including biodiversity. Similarly, the powers and duties to set new legally binding biodiversity targets in Wales can help to create the short- and long-term certainty required to enable sustained investment in policies and actions, improving the environment and realising direct benefits for public health, species, habitats and agriculture.

- 7.171. Welsh Ministers will have the ability to determine the scales, levels and dates of future biodiversity targets, enabling them to set targets based on the evidence base and policy ambition in Wales. This includes considering synergies with agricultural policy, particularly the Sustainable Land Management framework introduced in the Agricultural (Wales) Act 2024, and long-term social, economic and environmental well-being.
- 7.172. Once targets have been set, the framework includes a power for the Welsh Ministers to, in regulations, designate public authorities which will have the effect of requiring those public authorities to take action to contribute to achieving the biodiversity target for which they have been designated. If designated, public authorities will be required to report their contributions towards the relevant target within their section 6 plans.
- 7.173. Setting statutory targets, together with the duty to report progress towards achieving these targets and designating public authorities, will enhance the Welsh Ministers' ability to assess the impact the biodiversity targets and the section 6 duty of the Environment (Wales) Act 2016 on biodiversity in Wales.
- 7.174. In addition to maintaining existing levels of biodiversity and its contributions to people, targets will drive continuous improvement in the status of our species and the health of our ecosystems while maximising the associated ecosystem services.
- 7.175. It is crucial to understand whether actions taken to achieve the targets have been effective and, if not, to identify the causes of issues and therefore potential solutions. Assessing the delivery of action supporting the targets can be challenging but is essential to ensure that limited resources achieve the best value for money. The evaluation report on the Welsh Ministers section 6 actions provides this mechanism. However, it will not offer a policy pathway to achieving the targets. New targets and their supporting delivery policies must be based on sound evidence to ensure they are realistically challenging and likely to achieve the right

outcomes. The process of determining effective, proportionate and practically feasible biodiversity targets is complex and time consuming and will require further analysis and advice as the process develops.

7.176. A preliminary analysis of the impacts of setting targets is provided in the next section. A detailed analysis of the expected impacts of the secondary legislation will be carried out during its development when the specific target details have been finalised.

### **Disbenefits**

7.177. Concerns exist regarding the feasibility and delivery of the targets. The researcher's report has highlighted the need for a clear roadmap outlining the Welsh Government's commitment to nature recovery and protection. Without such a roadmap, there is the possibility that targets may be perceived as unachievable, which could harm public belief in the targets and reduce commitment to them. Additionally, the process of setting realistic, evidence-based targets is complex and time-consuming, requiring further analysis and advice.

7.178. The implementation of statutory targets may face challenges due to resource constraints. The report expressed concerns that the Welsh Government may perceive the introduction of targets as a way to reduce investment in biodiversity, relying on partners and stakeholders to deliver on the targets<sup>117</sup>. This approach may not be effective given the current state of the economy, making it crucial for the government to show leadership and provide clear financial commitments to ensure targets are achieved.

7.179. There is the potential that some targets may be seen as unachievable as soon as they are set, which could harm public belief in the targets and reduce commitment to them. For example, marine protected areas may face challenges due to limited data on conditions, making it difficult to set

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<sup>117</sup> The Young Foundation - Review and Cost Benefit Analysis of Welsh Government Environmental Governance, Principles and Nature Recovery Bill

realistic targets. Ensuring that targets are achievable and meaningful is essential to maintain public and stakeholder support.

## **Costs**

7.180. In addition to the costs of options one and two, option three will incur the additional costs of developing the legislation and the subsequent regulations needed to set statutory targets. This will require, in addition to the staffing costs outlined under option two, 50% of the time of one SEO and two HEOs. Additional to the policy officials, development of legislation will also require the staff time of legal services staff, translation costs and drafting support from the Office of Legislative Counsel. This time commitment has been adjusted to monetary values using the Welsh Government's average staff costs. Costs will be incurred during the development and implementation of the framework over financial years 2026-27 up to 2027-28.

7.181. Modelling cost and policy development cost are projected to be the same as outlined in option two. However, there will be an additional need to consult on the regulations as using the proposed powers would be subject to consultation and appropriate Senedd procedures. These consultation costs are reflected in the additional staff time, comparative to option two, that will be needed to develop and implement the regulations Table 9. The total costs estimated for the development of the targets and their policies is £4.20m over the appraisal period.

7.182. As with option two, the framework will require Welsh Ministers to put in place arrangements for data collection to assess progress made towards targets once they have been set under the framework, and to ensure the data are published. However, due to the legal status of the targets this programme of monitoring and reporting will have to be more robust to ensure Welsh Ministers are meeting their legal obligations. This more robust structure will incur higher costs up front as data pipelines and public facing dashboards are set up. This will require additional staff resources, comparatively to option two, to deliver the strengthened

monitoring and reporting Table 9. These have been modelled from the comparable mechanisms established to monitor and report on Welsh Government's Net Zero commitments. In addition, there is an estimated £6,000 per annum cost for expert advice from the Biodiversity Target Advice Panel. The total nominal cost estimated for implementation and monitoring will be £1,285,500 per annum, with this cost incurred from 2028-29 onwards. The full cost breakdown for this option in the [cost section](#).

**Table [9]: Additional staffing costs for monitoring and reporting provisions**

Position	Percentage of time	Average staff cost (£)	Cost (£)
<b>Monitoring</b>			
Grade 6	50%	117,941	59,000
Grade 7	100%	97,317	97,300
Senior Executive Officer 1	100%	74,819	74,800
Senior Executive Officer 2	100%	74,819	74,800
Higher Executive Officer 1	100%	59,808	59,800
Higher Executive Officer 2	100%	59,808	59,800
Higher Executive Officer 3	100%	59,808	59,800
Higher Executive Officer 4	100%	59,808	59,800
<b>Economists</b>			
Grade 7	100%	97,317	97,300
Senior Executive Officer	100%	74,819	74,800
Higher Executive Officer	100%	59,808	59,800
<b>Total staff cost</b>			<b>777,100</b>
Expert advice from Biodiversity Target Advisory Panel			6,000
<b>Total cost</b>			<b>783,100</b>

**Table [10]: Summary of legislative options, costs and cost calculations – biodiversity targets**

	<b>Option 3 (Preferred Option)</b>
<b>Quantifiable / monetisable costs</b>	Development of targets and legislation  Costs associated with Section 6 duties and future target evaluation and monitoring mechanisms
<b>Cost figure – real and undiscounted</b>	£11.48m

## **Benefits**

7.183. Setting statutory biodiversity targets will focus on increasing the abundance of native species, enhancing ecosystem resilience, and boosting genetic diversity. This approach aligns with global biodiversity frameworks and ensures that Wales contributes to global biodiversity goals while addressing local needs. By improving the health of ecosystems, the targets will support the provision of ecosystem services such as pollination, water purification, and climate regulation, which are essential for human well-being.

7.184. The introduction of statutory targets will create a visible and accountable measure for reversing biodiversity decline. Welsh Ministers will be required to set at least one target within four priority areas named in the Bill within three years of Royal Assent. This accountability will be further enhanced by the requirement for Welsh Ministers to include actions to achieve biodiversity targets within their plans and to monitor and report progress using indicators set in the target regulations. This transparency will help build trust among stakeholders and the public, ensuring that the government is held accountable for its commitments.

7.185. The framework will enable sustained investment in policies and actions aimed at improving the environment. By providing short- and long-term certainty, the statutory targets will encourage investment in biodiversity conservation efforts, benefiting public health, species, habitats, and

agriculture. The ability of Welsh Ministers to determine the scales, levels, and dates of future biodiversity targets based on evidence and policy ambition will ensure that targets are realistic and achievable.

7.186. Additionally, the establishment of a monitoring and reporting structure would provide a mechanism for tracking progress towards biodiversity targets, ensuring accountability and transparency. As the targets would be derived from the Global Biodiversity Framework this monitoring structure would also support Wales reporting requirements to the UK as part of its obligations as a signatory, thus reducing redundancy and workload. Regular reporting would help identify areas needing improvement and facilitate adaptive management of policies.

7.187. The framework will consider synergies with agricultural policy, particularly the Sustainable Land Management framework introduced in the Agricultural (Wales) Act 2024. This integration will promote long-term social, economic, and environmental well-being, ensuring that biodiversity targets complement agricultural practices and contribute to sustainable land management.

## **Summary**

7.188. The introduction of a framework for setting statutory biodiversity targets in Wales presents significant benefits, including enhanced biodiversity and ecosystem resilience, accountability and transparency, long-term investment and policy certainty, and synergies with agricultural policy. However, it also poses challenges related to feasibility, resource constraints, and public and stakeholder reception. Addressing these challenges through clear roadmaps, financial commitments, and realistic target-setting will be crucial to ensure the success of the framework.

## Chapter 8 - Costs and Benefits

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### Costs

#### Environmental Principles

8.1. The cost figures presented for each legislative option reflect a thorough analysis of the financial requirements to establish and operate the proposed options. The preferred option (option five), incorporating the environmental principles into the Welsh statute book along with a duty for the Welsh Ministers and NRW to regard, highlights the importance of accountability, ensuring compliance and taking long-term, consistent action, thereby improving biodiversity actions within Wales. With the inclusion of a duty for the other public authorities to regard the principles when exercising their functions to conduct SEAs the preferred options balances compliance costs with impact.

**Table [11]: Summary of legislative options, costs and cost calculations - principles**

	Option 1 (BAU)	Option 2	Option 3	Option 4	Option 5 (Preferred Option)
<b>Quantifiable / monetisable costs</b>	N/A	Civil servant time to develop legislation	Civil servant time to develop legislation  Educational resources for training and translation	Civil servant time to develop legislation  Educational resources for training and translation	Civil servant time to develop legislation  Educational resources for training and translation



			Ministerial compliance costs	Ministerial compliance costs Public authorities' compliance costs	Ministerial compliance costs
<b>Cost figure – real and undiscounted</b>	N/A	£0.58m	£1.51m	£9.17m	£1.62m

Below outlines the cost profile for the recommended option over a ten-year period. Cost profiles for the other options can be found in the [Supporting Tables – Cost Benefit Analysis](#).

Principles: Duty on the Welsh Ministers and NRW			Year									
Cost (£)	Type	Total	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
<i>Developing the legislation</i>												
Civil servant time	Recurring	583,900	291,900	291,900	-	-	-	-	-	-	-	-
Developing educational resources	One-off	3,900	-	3,900	-	-	-	-	-	-	-	-
Translation services for resources	One-off	5,800	-	5,800	-	-	-	-	-	-	-	-

<i>Complying with the legislation</i>											
Ministerial time	Recurring 914,700	-	101,600	101,600	101,600	101,600	101,600	101,600	101,600	101,600	101,600
Public authority time (NRW)	Recurring 114,300	-	12,700	12,700	12,700	12,700	12,700	12,700	12,700	12,700	12,700
<b>Change from baseline</b>											
Developing the legislation	593,600	291,900	301,600	-	-	-	-	-	-	-	-
Complying with the legislation	1,029,000	-	114,300	114,300	114,300	114,300	114,300	114,300	114,300	114,300	114,300
<b>Total additional cost (undiscounted)</b>	<b>1,622,600</b>	<b>291,900</b>	<b>415,900</b>	<b>114,300</b>	<b>114,300</b>	<b>114,300</b>	<b>114,300</b>	<b>114,300</b>	<b>114,300</b>	<b>114,300</b>	<b>114,300</b>
<b>Total additional costs (discounted)</b>	<b>1,453,200</b>	<b>291,900</b>	<b>401,900</b>	<b>106,700</b>	<b>103,100</b>	<b>99,600</b>	<b>96,300</b>	<b>93,000</b>	<b>89,900</b>	<b>86,800</b>	<b>83,900</b>

## Office of Environmental Governance – Wales

8.2. The cost figures presented for each legislative option reflect a thorough analysis of the financial requirements to establish and operate the proposed governance body. The preferred option (option three), setting up a standalone body, highlights the

importance of clear independence and enforcement potential to uphold the legislation and ensure compliance, thereby improving environmental protection outcomes for Wales.

**Table [12]: Summary of legislative options, costs and cost calculations – governance body**

	<b>Option 1 (BAU)</b>	<b>Option 2</b>	<b>Option 3 (Preferred Option)</b>	<b>Option 4</b>
<b>Description</b>	IEPAW continues	Integrate into existing Welsh Body	Set up a standalone body	Extend the OEP to Wales
<b>Quantifiable / monetisable costs</b>	IEPAW running costs  Other public bodies indirect costs	IEPAW transition  Existing body additional running costs  Other public bodies indirect costs	IEPAW transition  Set up costs for new organisation  Running costs for new organisation  Other public bodies indirect costs	IEPAW transition  OEP additional running costs  Other public bodies indirect costs
<b>Cost figure – real and undiscounted</b>	£7.0m	£14.82m	£20.54m	£12.65m

8.3. Below outlines the cost profile for the recommended option over a ten-year period. Cost profiles for the other options can be found in the [Supporting Tables – Cost Benefit Analysis](#).

Governance body: Option three costs		Year									
Cost (£)	Total	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
<i>Governance body direct costs</i>											
IEPAW costs	1,687,500	675,000	675,000	337,500	-	-	-	-	-	-	-
Set-up costs for new organisation	480,000	480,000	-	-	-	-	-	-	-	-	-
Running costs	25,086,200	-	2,787,400	2,787,400	2,787,400	2,787,400	2,787,400	2,787,400	2,787,400	2,787,400	2,787,400
<i>Other public bodies indirect costs</i>											
IEPAW cases received and taken forward	62,500	25,000	25,000	12,500	-	-	-	-	-	-	-
IEPAW cases received and not taken forward	1,100	400	400	200	-	-	-	-	-	-	-
New body cases received and taken forward to investigation	225,000	-	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000

New body cases received and not taken forward	4,000	-	400	400	400	400	400	400	400	400	400
<b>Change from baseline</b>											
Governance body direct costs	20,503,700	480,000	2,787,400	2,449,900	2,112,400	2,112,400	2,112,400	2,112,400	2,112,400	2,112,400	2,112,400
Other public bodies indirect costs	38,200	-	25,400	12,700	-	-	-	-	-	-	-
<b>Total additional cost (undiscounted)</b>	<b>20,541,900</b>	<b>480,000</b>	<b>2,812,800</b>	<b>2,462,600</b>	<b>2,112,400</b>	<b>2,112,400</b>	<b>2,112,400</b>	<b>2,112,400</b>	<b>2,112,400</b>	<b>2,112,400</b>	<b>2,112,400</b>
<b>Total costs (real, discounted)</b>	<b>17,553,800</b>	<b>480,000</b>	<b>2,717,700</b>	<b>2,298,800</b>	<b>1,905,200</b>	<b>1,840,800</b>	<b>1,778,500</b>	<b>1,718,400</b>	<b>1,660,300</b>	<b>1,604,100</b>	<b>1,549,900</b>

## Biodiversity Targets

8.4. The cost figures presented for each legislative option reflect a thorough analysis of the financial requirements to establish and operate the proposed options. The preferred option (option three), implementing a statutory target-setting framework, highlights the importance of accountability, ensuring compliance and taking long-term, consistent action, thereby improving biodiversity actions within Wales.

**Table [13]: Summary of legislative options, costs and cost calculations – biodiversity targets**

	Option 1 (BAU)	Option 2	Option 3 (Preferred Option)
<b>Quantifiable / monetisable costs</b>	Existing costs associated with Section 6 duties and the Global Biodiversity Framework	Development of policy / targets  Costs associated with Section 6 duties and future target evaluation mechanisms	Development of targets and legislation  Costs associated with Section 6 duties and future target evaluation and monitoring mechanisms
<b>Cost figure – real and undiscounted</b>	£0.96m	£5.51m	£11.48m

Below outlines the cost profile for the recommended option over a ten-year period. Cost profiles for the other options can be found in the [Supporting Tables – Cost Benefit Analysis](#).

<b>Biodiversity: Introducing a robust statutory framework</b>			<b>Year</b>									
<b>Cost</b>	<b>Type</b>	<b>Total</b>	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
<i>Development of policy / targets</i>												
Indicator development and maintenance	Recurring	3,038,600	303,900	303,900	303,900	303,900	303,900	303,900	303,900	303,900	303,900	303,900

Legislative development	Recurring	791,100	-	395,500	395,500	-	-	-	-	-	-	-
One-off costs	One-off	370,000	370,000	-	-	-	-	-	-	-	-	-
<i>Implementation and monitoring</i>												
S6 duties and evaluation mechanisms (Option 3)	Recurring	2,753,600	95,700	95,700	95,700	491,300	329,200	329,200	329,200	329,200	329,200	329,200
Strengthened monitoring, reporting and evaluation		5,481,700	-	-	-	783,100	783,100	783,100	783,100	783,100	783,100	783,100
<b>Change from baseline</b>												
Development of policy / targets		4,199,700	673,900	699,400	699,400	303,900	303,900	303,900	303,900	303,900	303,900	303,900
Implementation and monitoring		7,277,800	-	-	-	1,178,600	1,016,500	1,016,500	1,016,500	1,016,500	1,016,500	1,016,500
<b>Total additional cost (undiscounted)</b>		<b>11,477,500</b>	<b>673,900</b>	<b>699,400</b>	<b>699,400</b>	<b>1,482,500</b>	<b>1,320,400</b>	<b>1,320,400</b>	<b>1,320,400</b>	<b>1,320,400</b>	<b>1,320,400</b>	<b>1,320,400</b>
<b>Total additional cost (discounted)</b>		<b>9,685,500</b>	<b>673,900</b>	<b>675,700</b>	<b>652,900</b>	<b>1,337,100</b>	<b>1,150,700</b>	<b>1,111,700</b>	<b>1,074,100</b>	<b>1,037,800</b>	<b>1,002,700</b>	<b>968,800</b>

## **Benefits**

8.5. The ultimate objective of the Bill is to deliver better environmental outcomes for Wales. The previous Chapter 7 of this Explanatory Memorandum qualitatively described how these beneficial outcomes could arise from each part of the Bill. However, due to the structure of the provisions, there are significant challenges in quantifying and monetising these benefits.

8.6. The values presented within this section are adjusted to remove the effects of general inflation, reflecting the true value of goods or services at a specific point in time. This ensures that the values are presented in base year prices, making them comparable over time. These values take into account the time value of money by applying a discount rate. This means future values are adjusted to reflect their present value, allowing for a more accurate comparison of costs and benefits occurring at different times. The HMT Green Book recommends using a discount rate of 3.5% to account for the social time preference, which reflects the value society places on present consumption over future consumption

### **Environmental principles**

8.7. The environmental principles are intended to function as guidelines to be applied across policy making within Welsh Government and NRW, and when public authorities are undertaking SEA. The ultimate objective of the proposals is to deliver better environmental outcomes. However, there are significant challenges in quantifying and monetising these benefits. To attempt to quantify the monetisable benefits from implementing the environmental principles we would need to first know the future policies and legislation to which they would be applied. Additionally, the application of the principles involves subjective judgment, making it difficult to estimate their benefit without, again, knowing the specific scenario in which they would be applied.



8.8. Notably the impact assessment attached to the UK Parliament's Environment Act 2021<sup>118</sup> also faced similar challenges. It did not monetize the outcomes of the proposals around embedding the principles, using the logic that improved environmental outcomes bring large benefits in general terms, which we concur with.

### **The Office of Environmental Governance Wales (OEGW)**

8.9. The establishment of the Office of Environmental Governance Wales (OEGW) is designed to provide strategic oversight of environmental law in Wales, aiming to deliver better environmental outcomes. The monetisable benefits of the OEGW are challenging to quantify directly, due to the speculative nature of future policies and subjective judgments involved. The areas of environmental law that the OEGW will investigate compliance with is broad and the benefits are contingent in part upon the subjects of the cases brought before the body. Environmental law's effectiveness and application can vary widely. For an analogous example the last three Office of Environmental Protection (OEP) investigations, as of February 2025, covered saltmarsh habitat removal, the environmental status of marine waters, and water pollution from agriculture<sup>119</sup>.

8.10. Given the likely variance the benefits derived from the OEGW is dependent upon conclusions reached, action taken (if any), and the outcomes arising from the interventions. As such, any calculations of specific environmental outcomes would be highly speculative and heavily caveated, rendering them less useful for precise monetisation.

8.11. As a result, whilst direct monetisable benefits of the OEGW are challenging to pinpoint and quantify accurately, the primary benefits arise from improved environmental outcomes and strategic interventions. These benefits, although broader than direct monetisable figures,

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<sup>118</sup> [Environment Bill Impact Assessment.pdf](#)

<sup>119</sup> OEP website, accessed February 2025, <https://www.theoep.org.uk/investigation/investigation-defras-duty-achieve-good-environmental-status-marine-environment>

contribute significantly towards the policy aim to attain high level of environmental protection and improve the quality of the environment.

### **Biodiversity targets**

8.12. Four priority areas are listed on the face of the Bill: reducing the risk of the extinction of native species, the effective management of ecosystems, reducing pollution, and the quality of evidence to inform decisions relating to biodiversity, access to that evidence and its use and application. However, the specific targets, their duration and mandated levels to be achieved are not yet known. Further, these priority areas are only applicable to the first targets the Welsh Ministers must set. After setting at least one target for each of these priority areas the Welsh Ministers may choose to set a target for any area as long as they are satisfied that it will contribute to the halting and reversing of the decline in biodiversity. Thus, without knowing the full remit of the biodiversity targets to be brought forward under the powers this Bill creates, and the target areas and measures it is difficult to provide an accurate accounting of the benefits that the targets will create.

8.13. Given the constraints created by the provisions' format the results presented within this chapter are indicative to provide the best estimate given the available evidence of the benefits to be realised from enacting this Bill. Additionally, the conclusion was reached that attempting to quantify and monetise the benefits for each aspect of the legislation separately offered limited utility. This is primarily because there is too little information on the specific environmental outcomes created because of the legislation. Any calculation would, therefore, be highly speculative, heavily caveated, and of limited use. Hence, the benefits that have been qualitatively described are what those reviewing the costs and benefits of the legislation should focus on in determining the merits of the legislation.

8.14. These challenges of explicitly quantifying the derived benefits were referenced in the impact assessment attached to England's Environment Act 2021. This legislation made provisions for the implementation of biodiversity targets and for an environmental governance body as well. The English impact assessment did not monetise the outcomes of the legislation, using instead the logic that the legislation would improve environmental outcomes and – in general terms – improved environmental outcomes bring large benefits<sup>120</sup>.

8.15. The draft RIA for the White Paper<sup>121</sup> attempted to illustrate the potential benefits resulting from the environmental improvement delivered by the policy proposals. This draft RIA built upon the quantifications found within the Environment Act 2021 impact assessment which attempted to quantify the benefits around the implementation of the environmental targets it was introducing. The following figures are a refinement of that approach based on the work commissioned by policy officials to support the development of this cost-benefit analysis. While it is not a definitive estimate of the benefits because the exact number of biodiversity targets, the metrics, standards and durations aren't yet known it is a useful illustration of the potential benefits to people and the environment resulting from the legislative proposals.

**Table 14: Benefits and their description**

Type of benefit	Description
<b>Carbon sequestration</b>	Benefits calculated by multiplying the value of carbon dioxide equivalent by the estimated amount of carbon dioxide equivalent sequestered through wetland and grassland habitats.
<b>Air quality regulation</b>	Benefits calculated by measuring the human health benefits of removing particulate matter from the air,

<sup>120</sup> DEFRA (2019), Environment Bill IA, <https://publications.parliament.uk/pa/bills/cbill/58-01/0009/Environment%20Bill%20Impact%20Assessment.pdf>

<sup>121</sup> [Environmental principles, governance and biodiversity targets: White Paper | GOV.WALES](#)

	focussing on the reduced healthcare costs from exposure.
<b>Recreation</b>	Benefits calculated by multiplying the number of visits to accessible greenspaces and the welfare value and physical health benefits associated with the visits.
<b>Physical health</b>	Benefits are calculated by estimated by how people gain physical health benefits from being active by visiting created or restored habitats and undertaking recreational activities.

8.16. The commissioned researchers used population ratios and land ratios to convert the identified benefits in England to a Welsh context. It is noted that there are variations, such as geography and land use, that make this an imperfect conversion. However, it is common practice to calculate the benefits of environmental outcomes in relation to population and land area.

8.17. Within this context two headline weightings were applied

- **Population weighting.** Wales has a population 5.5% the size of England.<sup>122</sup>
- **Area ratio.** Wales has a land area 15.9% the size of England.<sup>123</sup>

8.18. Based on these ratios the illustrative benefits were calculated on the following basis:

- **Low scenario.** Applying purely the Wales to England population ratio.
- **Central scenario.** Applying the most relevant of population and land ratios to each of the categories of benefit that could arise from biodiversity targets.
- **High scenario.** Applying purely the Wales to England land ratio.

<sup>122</sup> Based on ONS mid-year 2021 estimates, with Wales having an approximate population of 3.1m and England having an approximate population of 56.0m

<sup>123</sup> Defra (2002), Land by agricultural and other uses, 2002. Wales has an estimated 2,064 hectares of land and England an estimated 12,972 hectares

8.19. In terms of the weightings applied, population ratio was used for air quality, recreation and physical health aspects. This is because those benefits accrue directly to people. The land area ratio was used for carbon sequestration as this benefit is dependent upon the size of the land area under consideration. Table 15 shows the total benefits calculated using this method. The benefits accrue over 78 years – the timeframe that the original Environment Act 2021 impact assessment calculated benefits – and total approximately £1.7bn. The total range of benefits is roughly £1.0bn-£3.0bn at 2024 prices.

**Table [15]: Calculations of benefits on low, central and high scenarios**

	<b>Wider Habitats Targets (£m)</b>	<b>Protected Sites Actions (£m)</b>	<b>Total (£m)</b>
<b>Low (population weighting)</b>	536	497	1,033
<b>Central (mixed population and land weighting)</b>	910	807	1,717
<b>High (land area weighting)</b>	1,549	1,436	2,985

8.20. Factoring in indicative costs to deliver policies to meet the targets produces a net benefit figure. As with the illustrative benefits, these costs are derived from the Environment Act 2021 impact assessment and have been calculated by pro-rating costs on the basis of land ratios. The costs are estimated to be £664m for Wales and create a net present value for benefits of around £1bn on the central estimate. These net present value figures are set out in Table 16.

8.21. The Environment Act 2021 cost figures underpinning the indicative estimates presented above are derived from a combination of policy areas necessary to achieve the target outcomes and deliver the associated benefits. For species and habitat restoration, costs were estimated using a bottom-up approach based on the restoration work required.

8.22. These estimates draw on previous work conducted by ICF Consulting and Efect on behalf of Defra<sup>4</sup>. For water quality improvements contributing to recreational and physical health benefits, costs were

estimated through policy pathway modelling and extrapolation of current water treatment expenses. A similar methodology—combining policy pathway modelling with cost extrapolation—was applied to woodland creation and air quality improvement outcomes.

**Table [16]: Calculations of net benefits on low, central and high scenarios**

	NPV (£m)
Low (population weighting)	369
Central (mixed population and land weighting)	1,053
High (land area weighting)	2,321

## Supporting Tables – Cost Benefit Analysis

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### 8.23. Principles – Option 1: Business as usual

Principles			Year									
Cost	Type	Total	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
Developing the legislation	-	-	-	-	-	-	-	-	-	-	-	-
Complying with the legislation	-	-	-	-	-	-	-	-	-	-	-	-
<b>Totals</b>												
Total costs (real, undiscounted)	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total costs (real, discounted)</b>	-	-	-	-	-	-	-	-	-	-	-	-

#### 8.24. Principles – Option 2: Principles only

Principles			Year									
Cost	Type	Total	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
<i>Developing the legislation</i>												
Civil servant time	Recurring	583,900	291,900	291,900	-	-	-	-	-	-	-	-
<b>Change from baseline</b>												
Developing the legislation		583,900	291,900	291,900	-	-	-	-	-	-	-	-
Complying with the legislation		-	-	-	-	-	-	-	-	-	-	-
Total additional cost (undiscounted)		583,900	291,900	291,900	-	-	-	-	-	-	-	-
<b>Total additional cost (discounted)</b>		<b>574,000</b>	<b>291,900</b>	<b>282,100</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>



## 8.25. Principles – Option 3: Duty on the Welsh Ministers

Principles			Year									
Cost	Type	Total	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
<i>Developing the legislation</i>												
Civil servant time	Recurring	583,900	291,900	291,900	-	-	-	-	-	-	-	-
Developing educational resources	One-off	3,900	-	3,900	-	-	-	-	-	-	-	-
Translation services for resources	One-off	5,800	-	5,800	-	-	-	-	-	-	-	-
<i>Complying with the legislation</i>												
Ministerial time	Recurring	914,700	-	101,600	101,600	101,600	101,600	101,600	101,600	101,600	101,600	101,600
<b>Change from baseline</b>												
Developing the legislation		593,600	291,900	301,600	-	-	-	-	-	-	-	-
Complying with the legislation		914,700	-	101,600	101,600	101,600	101,600	101,600	101,600	101,600	101,600	101,600
Total additional cost (undiscounted)		1,508,200	291,900	403,200	101,600	101,600	101,600	101,600	101,600	101,600	101,600	101,600
<b>Total additional cost (discounted)</b>		<b>1,356,500</b>	<b>291,900</b>	<b>389,600</b>	<b>94,900</b>	<b>91,700</b>	<b>88,600</b>	<b>85,600</b>	<b>82,700</b>	<b>79,900</b>	<b>77,200</b>	<b>74,600</b>

## 8.26. Principles – Option 4: Duty on the Welsh Public Authorities

Principles			Year									
Cost	Type	Total	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
Developing the legislation												
Civil servant time	Recurring	583,900	291,900	291,900	-	-	-	-	-	-	-	-
Developing educational resources	One-off	3,900	-	3,900	-	-	-	-	-	-	-	-
Translation services for resources	One-off	5,800	-	5,800	-	-	-	-	-	-	-	-
Complying with the legislation												
Ministerial time	Recurring	914,700	-	101,600	101,600	101,600	101,600	101,600	101,600	101,600	101,600	101,600
Public authority time	Recurring	7,660,500	-	851,200	851,200	851,200	851,200	851,200	851,200	851,200	851,200	851,200
Change from baseline												
Developing the legislation		593,600	291,900	301,600	-	-	-	-	-	-	-	-
Complying with the legislation		8,575,100	-	952,800	952,800	952,800	952,800	952,800	952,800	952,800	952,800	952,800

Total additional cost (undiscounted)	9,168,700	291,900	1,254,400	952,800	952,800	952,800	952,800	952,800	952,800	952,800	952,800
<b>Total additional cost (discounted)</b>	7,831,900	291,900	1,212,000	889,400	859,400	830,300	802,200	775,100	748,900	723,600	699,100

8.27. OEGW – Option 1: Business as usual

Governance body: costs			Year									
Cost	Type	Total	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
Governance body direct costs												
Running costs	Recurring	6,750,000	675,000	675,000	675,000	675,000	675,000	675,000	675,000	675,000	675,000	675,000
Other public bodies indirect costs												
Number of cases received and taken forward to investigation (BAU)	Recurring	250,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000
Number of cases received and not taken forward (BAU)	Recurring	4,400	400	400	400	400	400	400	400	400	400	400
Total costs (undiscounted)		7,004,400	700,400	700,400	700,400	700,400	700,400	700,400	700,400	700,400	700,400	700,400
Total costs (discounted)		6,029,200	700,400	676,800	653,900	631,800	610,400	589,800	569,800	550,500	531,900	513,900

## 8.28. OEGW – Option 2: Integrated Governance

OEGW			Year									
Cost	Type	Total	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
Governance body direct costs												
IEPAW costs	Recurring	1,350,000	675,000	675,000	-	-	-	-	-	-	-	-
Running costs	Recurring	20,170,000	2,017,000	2,017,000	2,017,000	2,017,000	2,017,000	2,017,000	2,017,000	2,017,000	2,017,000	2,017,000
Other public bodies indirect costs												
IEPAW number of cases received and taken forward	Recurring	50,000	25,000	25,000	-	-	-	-	-	-	-	-
IEPAW number of cases received and not taken forward	Recurring	900	400	400	-	-	-	-	-	-	-	-
Number of cases received and taken forward to investigation	Recurring	250,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000
Number of cases received and not taken forward	Recurring	4,400	400	400	400	400	400	400	400	400	400	400

<b>Change from baseline</b>											
Governance body direct costs	14,770,000	2,017,000	2,017,000	1,342,000	1,342,000	1,342,000	1,342,000	1,342,000	1,342,000	1,342,000	1,342,000
Other public bodies indirect costs	50,900	25,400	25,400	-	-	-	-	-	-	-	-
Total additional cost (undiscounted)	14,820,900	2,042,400	2,042,400	1,342,000	1,342,000	1,342,000	1,342,000	1,342,000	1,342,000	1,342,000	1,342,000
<b>Total additional cost (discounted)</b>	<b>12,928,700</b>	<b>2,042,400</b>	<b>1,973,400</b>	<b>1,252,800</b>	<b>1,210,400</b>	<b>1,169,500</b>	<b>1,129,900</b>	<b>1,091,700</b>	<b>1,054,800</b>	<b>1,019,100</b>	<b>984,700</b>

## 8.29. OEGW – Option 4: Extended OEP functions

Governance body: costs			Year									
Cost	Type	Total	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
<i>Governance body direct costs</i>												
IEPAW costs	Recurring	1,350,000	675,000	675,000	-	-	-	-	-	-	-	-
Running costs	Recurring	18,000,000	1,800,000	1,800,000	1,800,000	1,800,000	1,800,000	1,800,000	1,800,000	1,800,000	1,800,000	1,800,000
<i>Other public bodies indirect costs</i>												
IEPAW number of cases received and taken forward	Recurring	50,000	25,000	25,000	-	-	-	-	-	-	-	-
IEPAW number of cases received and not taken forward	Recurring	900	400	400	-	-	-	-	-	-	-	-
Number of cases received and taken forward to investigation	Recurring	250,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000
Number of cases received and not taken forward (	Recurring	4,400	400	400	400	400	400	400	400	400	400	400

<b>Change from baseline</b>											
Governance body direct costs	12,600,000	1,800,000	1,800,000	1,125,000	1,125,000	1,125,000	1,125,000	1,125,000	1,125,000	1,125,000	1,125,000
Other public bodies indirect costs	50,900	25,400	25,400	-	-	-	-	-	-	-	-
Total additional cost (undiscounted)	12,650,900	1,825,400	1,825,400	1,125,000	1,125,000	1,125,000	1,125,000	1,125,000	1,125,000	1,125,000	1,125,000
<b>Total additional cost (discounted)</b>	<b>11,060,800</b>	<b>1,825,400</b>	<b>1,763,700</b>	<b>1,050,200</b>	<b>1,014,700</b>	<b>980,400</b>	<b>947,200</b>	<b>915,200</b>	<b>884,200</b>	<b>854,300</b>	<b>825,400</b>



### 8.30. Biodiversity Targets – Option 1: Business as usual

Biodiversity targets			Year									
Cost	Type	Total	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
Implementation and monitoring												
S6 duties	Recurring	957,400	95,700	95,700	95,700	95,700	95,700	95,700	95,700	95,700	95,700	95,700
<b>Total costs (undiscounted)</b>		957,400	95,700	95,700	95,700	95,700	95,700	95,700	95,700	95,700	95,700	95,700
<b>Total costs (discounted)</b>		824,100	95,700	92,500	89,400	86,400	83,400	80,600	77,900	75,300	72,700	70,200

### 8.31. Biodiversity Targets – Option 2: Non-statutory framework

Biodiversity targets			Year									
Cost	Type	Total	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
<i>Development of policy / targets</i>												
Indicator development and maintenance	Recurring	3,038,600	303,900	303,900	303,900	303,900	303,900	303,900	303,900	303,900	303,900	303,900
One-off costs	One-off	370,000	370,000	-	-	-	-	-	-	-	-	-
<i>Implementation and monitoring</i>												
S6 duties and evaluation mechanisms	Recurring	3,058,400	95,700	329,200	329,200	329,200	329,200	329,200	329,200	329,200	329,200	329,200
<b>Change from baseline</b>												
Development of policy / targets		3,408,600	673,900	303,900	303,900	303,900	303,900	303,900	303,900	303,900	303,900	303,900
Implementation and monitoring		2,101,000	-	233,400	233,400	233,400	233,400	233,400	233,400	233,400	233,400	233,400
Total additional cost (undiscounted)		5,509,600	673,900	537,300	537,300	537,300	537,300	537,300	537,300	537,300	537,300	537,300
<b>Total additional cost (discounted)</b>		4,761,500	673,900	519,100	501,600	484,600	468,200	452,400	437,100	422,300	408,000	394,200

## Chapter 9 – Integrated Impact Assessment

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9.1. A full Integrated Impact Assessment (IIA) has been undertaken, which covers all provisions in the Environment (Principles Governance and Biodiversity Targets) (Wales) Bill. The full IIA has been published and a summary of the potential impacts is included below for the following topics (the location of these topics within the full IIA is provided in brackets):

- a) Social Wellbeing
- b) Cultural Wellbeing
- c) Economic Wellbeing
- d) Justice System Impacts
- e) Environmental Wellbeing
- f) Children's Rights (Annex A)
- g) Equality (Annex B)
- h) Rural Proofing (Annex C)
- i) Data Protection (Annex D)
- j) Welsh Language (Annex E)
- k) Biodiversity (Annex F)
- l) Socio-economic Duty (Annex G)

### **a) Social Wellbeing**

9.2. Collectively, the proposals contained within the Bill should have a positive impact on people and communities by protecting our natural resources and producing positive health outcomes for the people of Wales. Taking preventative action to reduce the impacts of environmental damage, as well as restore biodiversity will benefit public health, the natural environment and wider society.

9.3. Specifically, this Bill will improve social wellbeing through combating the negative cycles around environmental damage and the loss of biodiversity by:

- a. embedding environmental principles at policy conception, ensuring environmental protection is at the heart of Welsh Ministers decision making.
- b. establishing the Body will consider the functioning of environmental law as well as take necessary action against those who do not comply with their environmental law obligations, many of which are designed to improve and protect the natural environment.
- c. introducing biodiversity targets directly aimed towards protecting and restoring nature.

## **b) Cultural Wellbeing**

9.4. The natural environment of Wales has played a significant role in shaping the language. The rugged landscapes, including mountains, valleys, and coastlines, have historically isolated communities, allowing the Welsh language to develop unique dialects and maintain its distinctiveness<sup>124</sup>. Additionally, the natural beauty of Wales has inspired a rich tradition of Welsh poetry and literature, further embedding the language in the cultural identity of the region. Efforts to preserve the Welsh language are closely tied to environmental policies, as sustainable management of natural resources is seen as essential for maintaining the cultural heritage and well-being of communities throughout Wales including Welsh-speaking communities.

9.5. The primary focus of the Bill is the protection of this natural environment and restoring biodiversity.

- i. Ensuring that the Environmental Principles are considered during policy development, the environment will be at the heart of the decision-making process and future policy providing a safeguard for future populations

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<sup>124</sup> [The history of the Welsh language | Visit Wales](#)

- ii. The overriding purpose of the Office of Environmental Governance Wales (“OEGW”) is to increase the effectiveness of environmental law on public authorities in Wales by ensuring its intended benefits are fully realised. Realising these benefits will provide further protection for Wales’ environment.  
C) By creating ambitious targets for biodiversity, the provisions will increase environmental restoration action across Wales.

9.6. Protecting Wales’s environment will help to ensure that key elements of Wales’s identity are protected for future generations and the cultural heritage associated with Wales’s natural landscape has an opportunity to thrive.

### **iii. Economic Wellbeing**

9.7. The Welsh Government’s approach to sustainable development seeks to balance the need to preserve our natural environment for future generations against opportunities for economic development.

9.8. Strengthening governance arrangements and restoring biodiversity will support a number of policies that aim to create an environmentally sustainable and prosperous green economy. This includes promoting sustainable forestry and agriculture, developing circular economy initiatives aiming to reduce waste and resource consumption, as well as new jobs and businesses in the green economy. Protecting and restoring ecosystems can provide sustainable livelihoods for communities that depend on natural resources for their income and food security.

9.9. Healthy ecosystems can help to buffer communities from the impacts of natural disasters, such as floods, storms, and droughts.

#### **iv. Justice System Impacts**

- 9.10. The functions of the OEGW will include monitoring compliance with environmental law by the Welsh public authorities, including Welsh Ministers, investigating public representations about environmental law breaches by public authorities and taking enforcement action where necessary. Provisions in the Bill seek to provide the OEGW with the powers to make referrals to the High Court where a Welsh public authority, including Welsh Ministers, has failed to comply with a compliance notice issued by the Body.
- 9.11. A copy of the Justice Impact Identification (“JSII”) form will be made available on Bill introduction.

#### **v. Environmental Wellbeing**

- 9.12. The Bill is designed to have a positive impact on environmental wellbeing in multiple ways.
- 9.13. The Bill aims to strengthen and improve environmental law and place environmental considerations at the heart of future decision making. The OEGW will ensure compliance with environmental law and seek ways to strengthen or improve environmental law is.
- 9.14. The Bill will provide Welsh Ministers with the powers to establish biodiversity targets. This will include a general power to set targets in respect of any matter relating to biodiversity, which includes addressing the pressures and drivers of biodiversity loss in Wales and, in so doing, contribute toward halting and reversing the decline of biodiversity in Wales. The Bill also includes a duty for Welsh Ministers to meet the targets.
- 9.15. Collectively, the Bill demonstrates Welsh Ministers commitment towards the environment and global biodiversity, further consolidating

Wales's standing in the international community as a country dedicated to sustainability and environmental action. These measures seek to ensure a sustainable future for generations to come.

#### **vi. Children's Rights**

9.16. The Bill proposals form part of the Welsh Government's wider strategy to address the climate and nature emergencies. Failure to do so will significantly impact on children and future generations.

9.17. Children are uniquely vulnerable to the impacts of environmental harm and climate change. Their developing bodies and brains can be more susceptible to the harmful effects of pollution and extreme weather events. Additionally, children spend more time outdoors than adults, which increases their exposure to environmental hazards.<sup>125</sup> Specific risks include:

9.18. Children are more likely to develop respiratory illnesses, such as asthma and pneumonia, from air pollution.<sup>126</sup>

9.19. Climate change can disrupt food production and distribution, leading to food insecurity and malnutrition. Children may not get the nutrients they need to grow and develop properly, which can have lifelong consequences for their health and well-being.<sup>127</sup>

9.20. Extreme weather events can damage schools and disrupt education. Children may have to miss school to help their families or to find safe shelter. This can lead to missed learning opportunities and hinder their educational progress.

9.21. Children are more likely to be affected by the psychological stress associated with climate change. They may experience fear, anxiety, and

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<sup>125</sup> [EPA - Climate Change and the Health of Children](#)

<sup>126</sup> [Air quality and respiratory health in children - PMC \(nih.gov\)](#)

<sup>127</sup> [Maternal and Child Nutrition \(thelancet.com\)](#)

hopelessness about the future.<sup>128</sup> These emotional problems could then interfere with their social and emotional development.

9.22. By ensuring that the Environmental Principles are considered during policy development, the environment will be at the heart of the decision-making process. Integrating the four environmental principles and environmental protection into policy making will have a particularly positive impact for children by supporting and strengthening environmental policy where there is a disproportionate impact on children's health –especially in relation to air and water quality.

9.23. The role of the OEGW will be to ensure that public authorities comply with environmental law, as well as oversee the wider implementation and effectiveness of the law.

9.24. In a similar vein, children and young people also have an interest in understanding the commitment to the restoration of biodiversity in light of the climate and nature emergencies. The setting of biodiversity targets provides markers of intent not only demonstrating the strength of support for the reversal of biodiversity decline, but a public commitment to – and legal requirement for – action.

## **vii. Equality**

9.25. The Bill seeks to support Welsh Government aspirations around protecting the environment and reversing the loss of biodiversity. In doing so, they will have a significant positive impact on citizens across Wales, including those who share protected characteristics. It will also indirectly support the Welsh Government's further development to affect a 'just transition' away from the fossil-fuelled economy of the past to a new low

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<sup>128</sup> [Climate anxiety in children and young people and their beliefs about government responses to climate change: a global survey - The Lancet Planetary Health](#)



carbon future, where we move to a cleaner, stronger, fairer Wales whilst leaving no-one behind.

9.26. The health risks posed by climate change won't play out evenly across the UK, both in terms of location and generation. Some threats, like novel vector-borne diseases, drought, and wildfires, might hit southern regions first. Others, like sea-level rise and flooding, will primarily impact coastal towns, low-lying areas, and floodplains. An aging population will further amplify national vulnerability to climate-related health issues in the coming decades. These risks will exacerbate existing health disparities and inequalities. People with limited control over their environment, adaptability, or ability to respond to new threats will be most at risk, including children, older people, disabled people, those experiencing homelessness, and individuals residing in specific settings like prisons, schools, armed forces accommodation and social care facilities.<sup>129</sup>

9.27. The burdens and impact of the climate and nature emergencies are not equally distributed. The Bill proposals form part of the Welsh Government's wider strategy to address the climate and nature emergencies. As such, the benefits of the proposals, will be particularly acute in respect of individual health, benefits to people working in Wales, as well as general community and social cohesion.

### **viii. Rural Proofing**

9.28. Collectively, the proposals will drive action in tackling the climate and nature emergency by driving environmental improvement from policy ambition and conception through to providing oversight across all environmental legislation.

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<sup>129</sup> [Health Effects of Climate Change in the UK: state of the evidence 2023 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/115444/Health_Effects_of_Climate_Change_in_the_UK_state_of_the_evidence_2023.pdf)

9.29. By requiring Welsh Ministers and Natural Resources Wales to give special regard towards the principles when making policy, this will ensure key aspects of environmental protection will be considered at the heart of policy making. It will ensure that all policies are developed in a way that seeks to avoid environmental harm, so that they do not adversely contribute to the climate and nature emergencies. There are no anticipated differences in impacts and benefits for those in rural communities from other communities within and across Wales.

9.30. The overriding purpose of the Office of Environmental Governance Wales (“OEGW”) is to increase the effectiveness of environmental law on public authorities in Wales by ensuring its intended benefits are fully realised. In addition to ensuring legislation is properly implemented, it will also identify issues with the functioning of environmental law and advise Welsh Ministers on how to correct them, prevent breaches by having a visible oversight presence so public authorities know they will be held to account. There is no anticipated difference in impacts and benefits for those in rural communities from other communities within and across Wales.

**9.31.** Biodiversity underpins the functioning of ecosystems and having healthy levels of biodiversity ensures that our ecosystems are providing the services<sup>130</sup> (e.g., water cycle regulation or soil health) that our agricultural sector depends upon. The end goal of the proposals within the Biodiversity Targets section of the Bill, is to increase biodiversity across Wales. It is likely that rural people will positively benefit from a healthier environment and improved ecosystem function. This increase in biodiversity will facilitate a richer landscape, both improving links to well-being benefits, e.g., lower stress levels and better mental health <sup>131</sup>. It will also result in improved ecosystem services upon which many agricultural industries rely upon<sup>132</sup>. Moreover, this could provide the opportunity for

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<sup>130</sup> [Biodiversity and ecosystem services: a multilayered relationship](#)

<sup>131</sup> [Nature and mental health: An ecosystem service perspective | Science Advances](#)

<sup>132</sup> [State of Natural Resources Report 2020: Biodiversity assessment](#)

agricultural businesses who are keen to explore diversification options.<sup>133</sup> Effective management and restoration of key habitats can realise multiple benefits such as carbon capture and storage vital in securing the nation's water supply, increasing community and infrastructure resilience to severe weather events, as well as the opportunity for enhancing contribution to the economy through eco-tourism, outdoor recreation and cultural destinations.

#### **ix. Data Protection**

9.32. A Data Protection assessment was undertaken reflecting the provisions in the Bill. The proposals do not meet the criteria for undertaking a full DPIA specified by Article 35(1), 35(3) and 35(4) of the UK GDPR. However, the assessment will be revisited when establishing the OEGW. It will be the OEGW to ensure processes and procedures as compliant with the requirements of the UK GDPR.

#### **x. Welsh Language**

9.33. The proposals contained within the Bill relating to the introduction of environmental principles into Welsh law will neither support nor detract from Theme 2 of Cymraeg 2050. The duties on Welsh Ministers and Natural Resources Wales to consider the environmental principles when making policy, and the integration of environmental protection into their policy making, sit alongside their wider duties and responsibilities, including those towards the Welsh Language.

9.34. In relation to the establishment of the OEGW, the legislation will have a positive effect by providing bilingual communication and including at least one member who is fluent in communicating in Welsh on the board. More broadly, implementation of environmental protection is deeply interwoven with the cultural heritage of Wales, playing a vital role in the nation's history, traditions, and identity. The proposals of the Bill seek to strengthen measures that protect the environment and restore

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<sup>133</sup> [Sustainable Farming Scheme Co-design final report](#)

biodiversity. In this, it will preserve the natural heritage of Wales and in doing so, will ensure that our cultural heritage is also preserved, which will indirectly benefit the Welsh language.

- 9.35. By creating ambitious targets for biodiversity, the provisions will increase environmental restoration action across Wales. The ecosystem services provided by a healthier environment will positively impact our local communities. These benefits can include better well-being, cleaner waters, improved soil health and increased pollinators, which will indirectly benefit the Welsh language through improved quality of life within our local communities.
- 9.36. We recognise that further engagement will need to be sought when policies within the legislation are implemented, for example setting up the OEGW, and setting targets within secondary legislation for Biodiversity.

#### **xi. Biodiversity**

- 9.37. The Bill is introducing legislation to embed environmental principles into Welsh law, strengthen environmental governance in Wales and introduce a biodiversity targets framework to combat the ongoing nature emergency, biodiversity is therefore embedded throughout the proposals. The environmental principles and the OEGW will be relevant to wider environmental law and environmental policy and not just biodiversity, but a key part of these proposals will be the positive impact they will have on biodiversity.
- 9.38. By requiring Welsh Ministers and Natural Resources Wales to give special regard towards the Principles when making policy, this will ensure key aspects of environmental protection (including biodiversity) will be considered at the heart of policy making. It will ensure that all policies are developed in a way that seeks to avoid environmental harm, so that they do not adversely contribute to the climate and nature emergencies.
- 9.39. The overriding purpose of the OEGW is to increase the effectiveness of environmental law on public authorities in Wales by ensuring its intended

benefits are fully realised. In addition to ensuring legislation is properly implemented, it will also identify issues with the functioning of environmental law and advise Welsh Ministers on how to correct them, prevent breaches by having a visible oversight presence so public authorities know they will be held to account.

9.40. The setting of legally binding targets will have a substantial impact on embedding biodiversity. The Bill will work in tandem with the refreshing of our Natural Resources Policy and the publication of Welsh Ministers' Section 6 plan. This will ensure that we have policy delivery mechanisms to reach our new domestic targets and encourage the integration of our policies to maximise the benefits to biodiversity.

#### **L) Socio Economic Duty**

9.41. The proposals within the Bill seek to support Welsh Government aspirations around protecting the environment and reversing the loss of biodiversity. In doing so, they will have a significant positive impact on citizens across Wales, including those who may suffer from socio-economic disadvantage. The proposals will also indirectly support the Welsh Government's further development to affect a 'just transition' away from the fossil-fuelled economy of the past to a new low carbon future, where we move to a cleaner, stronger, fairer Wales whilst leaving no-one behind.

9.42. Low-income communities often face a disproportionate burden of environmental hazards<sup>134</sup>. This can include exposure to air and water pollution from industrial facilities, living near hazardous waste sites, and lacking access to safe drinking water and green spaces. These factors contribute to higher rates of health problems like asthma, cancer, and heart disease in these communities.

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<sup>134</sup> [Disparities in the Impact of Air Pollution | American Lung Association](#)

9.43. The establishment of the OEGW will have an important role in reducing existing environmental hazards alongside preventing the burden of new hazards. The OEGW will provide stronger oversight for breaches to Environmental law providing a greater incentive for public bodies to adhere to and focus on positive environmental outcomes. In doing so, the burden of environmental hazards should reduce. A key function of the OEGW will also be to understand where existing Environmental law is failing and hold Welsh Ministers to account to ensure improvements in Environmental law. In doing so, new hazards, and their associated burden should reduce.

9.44. The biodiversity targets proposals will largely be delivered through the development of secondary legislation. The evidence to underpin the proposals will take account of socio-economic and distributional factors.

### **Competition filter assessment**

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9.45. A Competition Filter Assessment has been undertaken to assess the potential impact associated with the proposals in the Bill. This policy is not expected to have a detrimental effect on levels of competition in Wales or the competitiveness of Welsh firms as the proposals in the Bill do not have any direct effect on businesses or any markets. The results of a filter test (consisting of nine yes/no questions) which support this conclusion are below.

The competition filter test	
Question	Answer Yes or No
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No

Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

## Chapter 10 – Affordability Assessment

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- 10.1 While an RIA assesses social value and therefore includes cultural, social and environmental impacts alongside economic costs and benefits, an affordability assessment is a purely financial assessment. As such, only cash costs and cash-releasing benefits are included. Any environmental, social, cultural and wider economic costs and benefits identified in an RIA would be removed from an affordability assessment.
- 10.2 The regulatory impact assessment identified a number of opportunity costs associated with the time spent by existing members of staff on activities related to the implementation of the Bill and complying with the requirement in the Bill. Since these opportunity costs do not represent an additional financial outlay to the organisations concerned, they have not been included in this affordability assessment.
- 10.3 To this end, the focus of this affordability assessment is on the additional financial costs linked to the following –  
establishment and running of the Office of Environmental Governance Wales (OEGW) and  
establishing a statutory biodiversity target framework
- 10.4 As the benefits considered in this analysis are not cash-releasing, they have not been included in the affordability assessment.



10.5 The cash costs in this assessment have been adjusted to reflect anticipated inflation during the appraisal period. This adjustment has been based on the GDP deflator projections included in the Office for Budget Responsibility's (OBR) Economic and Fiscal Outlook, last published in March 2025<sup>135</sup>. The OBR's projections extended only to 2029-30 but the GDP deflator forecast had settled at 1.9% towards the end of the forecast period and so this figure has been used for the remainder of the appraisal period. Welsh Government will continue to monitor the impact of inflation on the financial costs of the Bill.

10.6 As the GDP deflator rates only go as far as 2028-29, a moving three-year average of the GDP deflator is applied for the remaining period of the assessment.<sup>136</sup> Although inflation is now decreasing, there remains a degree of uncertainty around its future path. Welsh Government will continue to monitor the impact of inflation on the financial costs of the Bill.

## Welsh Government

10.7 The Welsh Government is expected to incur additional financial costs associated with ongoing running costs for the OEGW and for establishing and monitoring the biodiversity targets. These costs are set out in Table 17 below.

**Table 17 - Additional financial costs falling to Welsh Government (£)**

	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34	2034-35
Governance - OEGW running costs	-	2,787,400	2,449,900	2,112,400	2,112,400	2,112,400	2,112,400	2,112,400	2,112,400	2,112,400
Biodiversity - external advice	370,000	-	-	-	-	-	-	-	-	-

<sup>135</sup> [Economic and fiscal outlook – March 2025 - Office for Budget Responsibility](#)

<sup>136</sup> <https://obr.uk/download/long-term-economic-determinants-march-2024-economic-and-fiscal-outlook/?tmstv=1744032306>

Biodiversity - target development and maintenance	303,900	303,900	303,900	303,900	303,900	303,900	303,900	303,900	303,900	303,900
Biodiversity - target monitoring	-	-	-	1,178,600	1,016,500	1,016,500	1,016,500	1,016,500	1,016,500	1,016,500
<b>Total</b>	<b>673,900</b>	<b>3,091,200</b>	<b>2,753,700</b>	<b>3,594,800</b>	<b>3,432,800</b>	<b>3,432,800</b>	<b>3,432,800</b>	<b>3,432,800</b>	<b>3,432,800</b>	<b>3,432,800</b>
<b>Total adjusted for inflation</b>	<b>699,500</b>	<b>3,292,100</b>	<b>2,982,500</b>	<b>3,971,400</b>	<b>3,864,400</b>	<b>3,937,800</b>	<b>4,012,700</b>	<b>4,088,900</b>	<b>4,166,600</b>	<b>4,245,700</b>

10.8 At the current time there is no budget allocated to cover the running costs for the OEGW or biodiversity targets. To ensure that a budget is available and the additional financial costs in the Bill are affordable, the funding will need to be prioritised in future budget discussions or found from within existing resources.

## Other Welsh Public Authorities

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10.9 The direct costs identified in the RIA as falling to other Welsh public authorities (i.e. those associated with responding to OEGW investigations and applying the environmental principles) are considered to be opportunity costs and are therefore excluded from this affordability assessment.

10.10 The Bill provides Welsh Ministers with powers to establish a set of statutory targets to help halt and reverse biodiversity decline. Welsh Ministers will also have powers to require public authorities to take action to contribute to achieving the biodiversity targets. There is the potential that public authorities (including Welsh Government) will incur additional financial costs as a result of the actions they will need to take to achieve the targets. However, at this stage, the specific

targets and the actions required to meet the targets are unknown. Further work will be undertaken to assess costs and benefits during the development of the targets and associated subordinate legislation.

## **Chapter 11 - Post Implementation Review**

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### **Environmental Principles**

11.1 Once implemented we will monitor the impact of the provisions and the accompanying Environmental principles and integrating environmental protection statement and guidance through continued engagement with industry representatives via the Stakeholder group. Work to assess the efficacy of the Environmental Principles will form part of the group's work, and the statement will be updated by Welsh Ministers to reflect changes to the technological and policy landscape, from time to time. There will also be opportunities for sector representatives to provide evidence on how the principles are working in practice.

11.2 The OEGW will have a role in assessing whether the principles are effective environmental law, providing advice and recommendations to the Government from time to time, as it sees fit. Further, the OEGW will oversee compliance of public authorities, including Welsh Ministers, with environmental law, which includes the environmental principles.

### **Office of Environmental Governance Wales (OEGW)**

11.3 The OEGW will be under a duty to monitor public authorities' compliance with environmental law, and the implementation and application of environmental law. They will be responsible for setting out how they will deliver all of their functions, including enforcement and investigation, through a public-facing 'strategy'. This will be subject to formal consultation, be published, as well as laid before the Senedd to aid transparency and accountability.

11.4 The OEGW will also be subject to oversight by the Auditor General for Wales, who will be responsible for examining, certifying, and reporting on their statement of accounts. Certified statements and reports must be provided to both the OEGW and the Senedd within four months of

submission and, beyond the financial audit, the Auditor General can also examine the economy, efficiency, and effectiveness of the OEGW's use of resources.

## **Biodiversity Targets**

11.5 The Welsh Ministers will monitor the implementation of the biodiversity targets provisions through the monitoring, reporting and evaluation provisions that the Bill introduces. These provisions consist of an evaluation report, a specified date statement and amendments to section 6 of the Environment (Wales) Act 2016 to include how targets will be met when Welsh Ministers report.

11.6 The Welsh Ministers are required to prepare a first evaluation report before the end of 2031 and subsequent reports before the end of every third year after 2031. This report will set out the assessment of the impact and effectiveness of the proposals set out in accordance with section 6(6) and (6A) in the plan most recently published.

11.7 The Welsh Ministers will be required to publish a specified date statement specifying whether a Target has been achieved by the date specified in Regulations. In the instance where the statement declares a Target was not met the Welsh Ministers must produce a report within 12-months on why the Target was not met and what actions they will take to achieve the Target in the shortest time reasonably practicable.

11.8 There is also an option, in the case the Welsh Ministers cannot determine if a Target has been met, to produce another statement within six months that states whether the Target was met.

11.9 The provisions also amend section 6(7) of the Environment (Wales) Act 2016 to require the Welsh Ministers to report on their progress towards meeting the Targets. This report is produced on a three-yearly cycle with the first report following Royal Assent due in 2028. However, if the targets regulations are not yet in force by this date the Welsh Ministers may

instead use their 2028 section 6 report to set out the steps they've taken toward target setting, such as describing the outcomes of a consultation on target regulations or publishing baseline indicators for upcoming targets.

11.10 The provisions seek to ensure effective implementation and appropriate accountability and engagement with the Senedd, interest groups and others. The provisions are important to assess policy effectiveness and to provide an important and developing evidence base for ongoing policy development.

11.11 Once implemented we will monitor the impact of the provisions and the accompanying Biodiversity Targets through continued engagement with industry representatives and independent experts.

## **Annex 1: Explanatory Notes to the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill**

# **ENVIRONMENT (PRINCIPLES, GOVERNANCE AND BIODIVERSITY TARGETS) (WALES) BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill (“the Bill”) introduced to Senedd Cymru on XX June 2025.
2. They have been prepared by the Climate Change & Environmental Sustainability Directorate of the Welsh Government in order to assist the reader of the Bill.
3. The Explanatory Notes should be read in conjunction with the Bill but they are not a part of it. They are not meant to be a comprehensive description of the Bill, and where an individual section of the Bill does not require explanation or comment, none is given.

### **GENERAL OVERVIEW OF THE BILL**

4. Part 1 of the Bill makes provision imposing duties on the Welsh Ministers, Natural Resources Wales and certain other public authorities to apply environmental principles and to integrate environmental protection. These duties are essential to contribute to protecting and improving the environment, in particular from the effects of the climate and nature emergencies.
5. Part 2 of the Bill establishes an independent environmental governance body, the Office of Environmental Governance Wales (“the OEGW”) to provide strategic oversight of requirements on public authorities to comply with environmental law, to make effective environmental law and to implement / apply environmental law effectively. The OEGW will hold the Welsh Government, and other public authorities, to account in relation to the environment in Wales in a way that is similar to what happens in the rest of the United Kingdom.
6. Part 3 creates a framework for the Welsh Ministers to set, review, and report on targets to halt and reverse the decline in biodiversity in Wales. This Part creates new duties on the Welsh Ministers including, for example, to ensure that targets they have set in regulations are met, to lay draft regulations before the Senedd within 3 years of Royal Assent of the Bill that set at least one target in respect of four priority areas, and to take

steps to promote awareness in Wales of the importance of, and threats to, biodiversity. This Part also allows the Welsh Ministers to designate certain public authorities in Wales as being subject to a new duty to take action to contribute to achieving the target for which they are designated.

7. The Bill comprises 45 sections and 4 Schedules and is divided into 4 Parts as follows:

**Part 1 – Environmental objective and principles**

**Part 2 – The Office of Environmental Governance Wales**

**Part 3 – Biodiversity targets, etc**

**Part 4 – General**

**Schedule 1 – the Office of Environmental Governance Wales**

**Schedule 2 – the Office of Environmental Governance Wales: Strategy**

**Schedule 3 – Staff Transfer Schemes**

**Schedule 4 – Consequential amendments**

**COMMENTARY ON SECTIONS**

**PART 1 – Environmental objective and principles**

8. This Part of the Bill sets out the environmental objective and principles and in so doing establishes a new framework for environmental governance by imposing duties on the Welsh Ministers, Natural Resources Wales (“NRW”) and certain other public authorities to apply the principles and to integrate environmental protection. These duties are intended to be the foundation which places a high level of environmental protection and improvement of the environment at the heart of policy making, and strategic environmental assessment, in Wales. They are essential to contribute to protecting and improving the environment and to respond effectively and with urgency to the climate and nature emergencies.

**Section 1 – Environmental objective**

9. Section 1 defines “environmental objective” for the purposes of this Part. The objective guides the application and implementation of the duties to apply the environmental principles and integrate environmental protection imposed on the Welsh Ministers, when making policy, (section 3(1)) and certain public authorities, when carrying out environmental assessment (section 5(1)). In each case, those duties must be exercised for the purpose of contributing to the objective. The environmental principles and integrating environmental protection statement (section 6) will, among other things, explain how those duties relate to the objective.
10. The objective does not apply to the duties imposed on NRW. This is explained further below (section 4).
11. Subsection (1) defines the environmental objective as the attainment of a high level of environmental protection and improving the quality of the environment. “Environment” and “environmental protection” are defined to have particular meanings for the purposes of the Bill (see section 42). In addition, the environmental objective emphasises a number of specific outcomes at subsections (1)(a) to (d) which are to result from contributing, through the application of the relevant duties, to the



attainment of a high level of environmental protection and an improvement of the environment.

12. Subsection (1)(a) makes provision to align the environmental objective with the Well-being of Future Generations (Wales) Act 2015 (“the WFG Act”). The WFG Act imposes duties on public bodies, including the Welsh Ministers, to pursue sustainable development in a way that improves the social, economic, environmental, and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals (see section 2 of that Act). These duties imposed by the WFG Act are closely linked to the desired policy outcomes of the environmental objective. To complement this, provision is made to recognise the contribution to the WFG Act well-being goals (where relevant) and to meet the needs of the present without compromising the ability of future generations to meet their own needs, establishing consistency with the WFG Act and supporting its wider implementation.
13. Subsection (1)(b) emphasises the resilience of ecosystems and the benefits they provide. This recognises the “ecosystems approach” which promotes holistic decision-making rather than addressing issues in isolation, and is an important aspect of the Environment (Wales) Act 2016 (the “2016 Act”), the WFG Act and Part 1 of the Agriculture (Wales) Act 2023 (the “Agriculture Act”), ensuring a consistent and mutually supportive approach across legislation. Productive and stable ecosystems are essential to support biodiversity and to provide essential benefits or services such as pollination, water purification, and climate regulation.
14. Subsection (1)(c) emphasises mitigating and adapting to climate change. An example of mitigating climate change is to reduce greenhouse gas emissions from operations and embedded sources, as well as enhancing the capacity of land (including for example, agricultural land) for carbon sequestration. Adapting to climate change may entail taking measures to minimise its impacts, examples of which include modifying practices to sustain the production of food and other goods, implementing natural flood management strategies, and using trees to provide shade.
15. The outcome at subsection (1)(d) is to contribute to halting and reversing the decline in biodiversity, which is vital for a high level of environmental protection and an improved environment. This includes, for example, preventing habitat loss, protecting endangered species and restoring degraded ecosystems.
16. The outcomes set out are intended to be complementary and mutually supportive. They are not exhaustive, and it is recognised that attaining a high level of environmental protection and improving the quality of the environment can also achieve other outcomes and benefits.
17. Subsection (2) sets out factors relevant to the resilience of ecosystems for the purposes of subsection (1)(b), to emphasise their importance in maintaining and enhancing ecosystem resilience and to complement existing policy approaches and legislative provision. Those factors were established by the 2016 Act (section 4(i)), and were also included as part of the Sustainable Land Management objectives under the Agriculture Act (section 1(7)).

## **Section 2 – Environmental principles**

18. Section 2 defines certain “environmental principles” for the purposes of this Part. These are:
- (a) the precautionary principle so far as relating to the environment;
  - (b) the principle that preventative action should be taken to avoid environmental damage;
  - (c) the principle that environmental damage should as a priority be rectified at source;
  - (d) the polluter pays principle.
19. These principles are informed by a number of sources including international agreements and the EU. The interpretation of these principles is increasingly well established and continues to develop in different contexts, with complex interplays between international commitments, international law, domestic legislation and case-law, for example. The environmental principles and integrating environmental protection statement (section 6) will provide further detail on the interpretation and application of the principles.

## **Section 3 - Welsh Ministers’ duties when making policy**

20. Subsection (1) requires the Welsh Ministers, for the purpose of contributing to the environmental objective, to have special regard to the environmental principles when making policy in relation to Wales that has, or could have, any effect on the environment and to integrate environmental protection into the making of such policy. The intention is to ensure that the principles and environmental protection are a fundamental aspect of the Welsh Ministers’ policy making.
21. A duty to have “special regard” to a particular matter requires the decision maker to which the duty applies to give “considerable importance and weight” to that matter. This means that the Welsh Ministers are required to give special attention of considerable importance and weight to the principles when making policy that has, or could have, any effect on the environment.
22. As with a duty to “have regard”, it remains the case that there is a balancing exercise to carry out, but in the case of a “special regard” duty, those factors to which the decision maker is to have special regard are to be given particular importance in the balancing exercise. In this case, this means that the environmental principles must feature prominently in the balancing exercise.
23. This strengthens the role of environmental principles in policy making, reflecting their importance while also maintaining flexibility that will be necessary across diverse policy areas. The “special regard” duty ensures that environmental principles feature prominently in decision-making, whilst also enabling the Welsh Ministers to balance the environmental principles with other relevant considerations (e.g., public health, costs) depending on the context.
24. For example, the circumstances may mean that other important considerations or countervailing factors, such as for example public health considerations, excessive costs or other impacts, should be given greater weight than the principles. In some cases, it may be appropriate in all the circumstances, to give a greater effect to one or

more of the principles. In cases with minimal environmental impact, the principles may have limited or even no effect. The intent of the approach taken is to emphasise the importance of the principles, while accommodating diverse areas and factors to be considered by the Welsh Ministers when making policy in relation to Wales.

25. Provision is made to impose a duty on the Welsh Ministers to integrate environmental protection into policy making. As with the principles themselves, this duty will apply to all areas of the Welsh Ministers' policy making, in relation to Wales, that has or could have an environmental impact. This aims to ensure environmental protection is considered across all policy areas, as significant impacts on the environment occurs in other areas, not only from within the framework of environmental policy.
26. Subsection (2) requires the Welsh Ministers to have regard to the environmental principles and integrating environmental protection statement, or revised statement, published under section 6 when complying with the duty in subsection (1). The statement will explain, amongst other things, how the Welsh Ministers propose to comply with the duties imposed on them.
27. Subsection (3) defines "policy", "making policy" and "Wales" for the purposes of this section. "Wales" is defined broadly to include so far as policy relates to fishing, fisheries or fish health, the area of the Welsh zone beyond the seaward limit of the territorial sea (this extends for these purposes the definition of "Wales" in Schedule 1 to the Legislation (Wales) Act 2019). "Welsh zone" is defined by Schedule 1 to that Act.

#### **Section 4 - Natural Resources Wales' duties when making policy**

28. Section 4 amends the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903 (W.230)) by inserting at subsection (2) a new article 4A
29. Article 4A(1) requires NRW to have special regard to the environmental principles when making policy in relation to Wales, and to integrate environmental protection into the making of such policy. The effect of a "special regard" duty is explained above in the context of the duty imposed on the Welsh Ministers (section 3). The duty to integrate environmental protection ensures that environmental protection forms part of policy making across all of NRW's policy areas. These provisions place a specific emphasis on the environmental principles and the integration of environmental protection by ensuring they are considered and applied as a fundamental part of NRW policy making, given NRW's wide ranging regulatory and other responsibilities in relation to the environment and substantial role in making environmental policy in Wales.
30. The environmental objective does not apply to these duties. NRW has already its own general purpose, which is to (a) pursue sustainable management of natural resources ("SMNR") in relation to Wales, and (b) apply the principles of SMNR, in the exercise of its functions, so far as consistent with their proper exercise (article 4(1), Natural Resources Body for Wales (Establishment) Order 2012).
31. As NRW has its own general purpose already, aimed at SMNR, it is not necessary to apply the environmental objective to NRW. NRW's general purpose, and the environmental objective that will apply to the Welsh Ministers and certain public authorities, are complementary and mutually supportive and together will focus action

on improved outcomes. NRW's general purpose will continue to apply to NRW and NRW will be required to apply the environmental principles, and to integrate environmental protection, within the context of that purpose.

32. Article 4A(2) requires NRW to have regard to guidance included in the environmental principles and integrating environmental protection statement (or revised statement) published under section 6 when complying with the duty in Article 4A(1).
33. Article 4A(3) defines for the purposes of Article 4A, "environmental principles" "environmental protection", "policy", "making policy" and "Wales". "Wales" is defined broadly to include so far as policy relates to fishing, fisheries or fish health, the area of the Welsh zone beyond the seaward limit of the territorial sea (this extends for these purposes the definition of "Wales" in Schedule 1 to the Legislation (Wales) Act 2019). "Welsh zone" is defined by Schedule 1 to that Act.

### **Section 5 - Environmental assessments: public authorities' duties**

34. Subsection (1) requires certain public authorities, for the purpose of contributing to the environmental objective, to have regard to the environmental principles and to integrate environmental protection when carrying out certain functions.
35. Subsection (2) provides that the duty in subsection (1) applies to any functions in connection with the assessment of plans and programmes relating solely to Wales or to any part of Wales under the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 (S.I. 2004/1656 (W.170)). The 2004 Regulations require the assessment of certain plans or programmes, including for example the preparation of an environmental report and consultation. Subsection (2) provides that the duty in subsection (1) also applies to any corresponding provision replacing those Regulations. This means that this duty applies to the 2004 Regulations as amended, revoked and replaced or re-enacted from time to time, so that the duty applies however provision is made for environmental assessment of plans and programmes that relate solely to the whole or any part of Wales.
36. A duty to "have regard" is the regard that is appropriate in all the circumstances. The duty must be exercised in substance, with rigour and with an open mind. A duty to "have regard" to the environmental principles is appropriate in this case given the targeted application of this duty.
37. The intention is to take a targeted and proportionate approach that complements the wider policy making duties imposed on the Welsh Ministers and NRW and focusses consideration of the principles and environmental protection on scenarios of potentially significant environmental impact, to contribute to a high level of protection of the environment in the preparation and adoption of relevant plans and programmes.
38. Subsection (3) specifies that public authorities must have regard to guidance included in the environmental principles and integrating environmental protection statement (or revised statement) published under section 6 when complying with the duty in subsection (1).
39. Subsection (4) defines "public authority" for the purposes of sections 5 and 6.

**Section 6 - Environmental principles and integrating environmental protection statement**

40. Section 6 places a duty on the Welsh Ministers to prepare and publish an “environmental principles and integrating environmental protection statement”. This statement must include guidance to NRW and public authorities about the duties imposed on them. The publication of the statement, and the process prescribed for its preparation, is intended to provide an opportunity to improve understanding of the interpretation and application of the principles and the duty to integrate environmental protection, as well as enhance accessibility and facilitate scrutiny and engagement.
41. Subsection (1) sets out that the statement must explain certain matters relating to the interpretation and application of the duty imposed on the Welsh Ministers by section 3(1). This includes how the Welsh Ministers propose to comply with that duty, how the environmental principles relate to each other and to the duty in section 3(1)(b) and how the environmental principles and the duty in section 3(1)(b) relate to the environmental objective. In so doing, the statement will need to explain how the principles apply in different circumstances and what they mean for those circumstances.
42. The statement must also explain how the duties in section 3(1), section 5(1) and article 4A(1) of the Natural Resources Body for Wales (Establishment) Order 2012 relate to each other.
43. Subsection (2) requires the statement to include guidance to NRW on certain matters relating to the interpretation and application of the duty imposed on NRW by article 4A(1) (inserted by section 4(2)).
44. Subsection (3) requires the statement to include guidance to public authorities on certain matters relating to the interpretation and application of the duty imposed on them by section 5(1).
45. Subsection (4) provides that the statement may also cover any other matters the Welsh Ministers consider appropriate.
46. Subsections (5) and (6) make provision for the Welsh Ministers to review and revise the statement from time to time. This enables the Welsh Ministers to update the statement, for example based on new evidence, or other scientific or technological developments. If the statement is revised it must be published by the Welsh Ministers.

**Section 7 - Environmental principles and integrating environmental protection statement: procedural requirements**

47. Subsection (1) places a duty on the Welsh Ministers, before publishing the statement or a revised statement, to consult (a) Natural Resources Wales, (b) the Future Generations Commissioner for Wales, (c) the Office of Environmental Governance Wales, and (d) such other persons as they consider appropriate.
48. Subsection (2) requires the Welsh Ministers to lay before Senedd Cymru a copy of the statement (or revised statement) published under section 6 and a document giving

details of the consultation carried out under subsection (1) and summarising the representations received and the Welsh Ministers' response to them.

49. Subsection (3) provides that consultation requirements set out at subsection (1) may be met before this section comes into force. This is designed to enable the statement to be progressed as efficiently and effectively as possible ahead of commencement of the Bill's provisions.

## **PART 2 – The Office of Environmental Governance Wales**

50. This Part of the Bill establishes and sets out the requirement for the Office of Environmental Governance Wales ("OEGW") to oversee public authorities (as defined in section 30) compliance with environmental law, and the implementation and application of environmental law in Wales, including the making of environmental law or its effectiveness.. "Effectiveness of environmental law" and "failing to comply with environmental law" are defined in sections 31 and 32 respectively.

### *The Office of Environmental Governance Wales*

#### **Section 8 – Establishment of the Office of Environmental Governance Wales**

51. Section 8 provides for the establishment of the OEGW and for further provision about the OEGW to be set out in Schedule 1.

#### **Section 9 – General purpose etc.**

52. Section 9 provides the general purpose of the OEGW is contributing to the environmental objective, as defined in Part 1, Section 1. This general purpose is intended to provide strategic direction for the OEGW in relation to the outcomes sought by the environment objective, which reflects wider legislative and policy priorities established in Wales. The OEGW will fulfil this purpose in overseeing compliance with environmental law, as well as ensuring environmental law has been made, implemented and /or applied effectively by public authorities.
53. Subsection (9)(b) requires the OEGW to exercise its functions impartially, objectively, proportionately and transparently. This allows the OEGW to be able to hold public authorities (including Welsh Government) to account effectively.

#### **Section 10 – Duty to prepare and publish strategy**

54. Section 10 requires the OEGW to publish a strategy which sets out how it intends to exercise its functions. The purpose of this provision is to aid transparency and understanding of the OEGW's functions, and their application, by requiring a publicly available strategy.
55. Subsections (1) and (2) place a duty on the OEGW to prepare and publish a strategy which outlines how it intends to exercise its functions. Subsection (3) places a duty on the OEGW to exercise its functions in accordance with that strategy.
56. Subsection (4) introduces Schedule 2 of the Bill which provides further details about what the strategy must contain and its procedural requirements.

*Monitoring, reporting and advising functions*

**Section 11 – Monitoring and reporting**

57. Section 11 provides for the OEGW's monitoring and reporting function. These provisions are intended to form a key part of the OEGW's assessment of whether environmental law is effective or not. These provisions are also expected to enable the OEGW to gather additional intelligence around whether environmental law is being complied with by public authorities without being solely reliant on direct representations received from the public.
58. Subsection (1) sets out the matters the OEGW must monitor in relation to environmental law.
- Subsection (2) specifies the OEGW may report on the matters outlined under subsection (1) or any other matter concerned with the making of environmental law or its effectiveness. This section allows the OEGW to report on the matters in both (a) and (b), and there is nothing to prevent the matters from being combined in a single report.
59. Subsection (3) states any reports made under subsection (2) must be published and laid before Senedd Cymru. This is to provide transparency and clarity to stakeholders, and the public, as well as accountability in respect of the way the OEGW carries out its functions.

**Section 12 – Advising the Welsh Ministers**

60. Section 12 sets out the circumstances in which the OEGW may give advice to the Welsh Ministers and to what this advice may relate. The OEGW may provide the advice of its own initiative or on request from the Welsh Ministers, and if the Welsh Ministers make such a request, it will be for the OEGW to determine whether it will provide the advice requested.
61. Subsections (1)(a) to (c) provide the matters on which the OEGW may give advice to the Welsh Ministers.
62. Subsection (2) sets out the OEGW may give advice to the Welsh Ministers on its own initiative or at the request of the Welsh Ministers. This is to clarify the OEGW does not need to wait to be asked for advice from the Welsh Ministers before providing any advice.
63. Subsections (3)(a) and (b) provide where the Welsh Ministers have requested the OEGW's advice and the OEGW determines not to give the advice requested, the OEGW must provide a statement of its reasoning as to why it has not provided the requested advice.
64. Subsection (4) provides the OEGW must publish any advice provided under this section to provide transparency in the role it is carrying out as the body with responsibility for environmental oversight.
65. Subsection (5) places a duty on the Welsh Ministers to have regard to any advice given by the OEGW under section 5.

66. Subsection (6) defines “Wales” for the purposes of subsection (1) to set the extent of the OEGW’s scope when providing advice to the Welsh Ministers.. The effect is that the OEGW’s advice may relate to fishing, fisheries or fish health in the area of the Welsh zone beyond the seaward limit of the territorial sea (which is outside the meaning of “Wales” given by the Legislation (Wales) Act 2019).”

### **Section 13 – Advice, guidance and assistance on environmental law**

67. Section 13 sets out the circumstances in which the OEGW may give guidance, advice or assistance on environmental law to public authorities. The purpose of this section is for the OEGW to provide its expertise on matters it deems appropriate. As one example, this section allows for advice, guidance or other assistance to be given where the OEGW has investigated a public authority’s compliance with environmental law but whilst there is no clear case of non-compliance, the OEGW nevertheless has concerns with a public authority’s implementation or application of environmental law. The OEGW may, therefore, recommend, through advice to the public authority, that they make improvements to processes or guidance to mitigate the risk of any future non-compliance with environmental law associated with these concerns. The OEGW’s power to give advice, guidance and assistance is not intended to be limited to this scenario and is just one of the mechanisms made available to the OEGW in carrying out its oversight of environmental law.
68. Subsection (1) makes provision for the OEGW to issue guidance (whether general or specific), or advice or other assistance to any person, on any environmental law matter. It will be at the discretion of the OEGW to consider whether or how to provide advice.
69. Subsection (2) provides that where the OEGW’s advice under this section includes recommendations relating to a public authority’s application or implementation of environmental law the OEGW may require the authority to respond within a specified period. Requiring a response from the public authority is intended to require the public authority to give some consideration to the advice of the OEGW. This allows the OEGW to ensure its advice has been considered, and, if the OEGW is not satisfied this is the case, it may choose to continue monitoring the situation in accordance with its strategy.
70. Subsection (3) places a duty on the OEGW to publish any guidance issued under this section to enhance transparency.

### *Information notices*

### **Section 14 – Information notices**

71. Section 14 sets out the purpose of an information notice and the circumstances in which they may be served by the OEGW. serving an information notice is an escalation from other functions of the OEGW, to ensure the OEGW can gather information that it reasonably requires from public authorities to exercise its functions, and with which the public authority must comply.
72. Subsection (1) provides the OEGW may serve information notice to a public authority.



- 73. Subsection (2) sets out what an information notice is and provides that the OEGW may only request information which is relevant to the exercise of their functions.
- 74. Subsection (3) makes provision as to what is to be specified in an information notice. It states that an information notice must specify the information that must be given, the purpose for which this information is required, how this information is to be given and the period in which it must be given.
- 75. Subsection (4) makes provision that the minimum time within which the public authority will be required to comply with the information notice is 2 months beginning on the day on which the information notice is served.
- 76. Subsection (5) enables the OEGW to withdraw or vary an information notice served on a public authority, but the OEGW must give notice to the public authority that it is doing so.
- 77. Subsection (6) allows public authorities to make representations to the OEGW about an information notice before the end of the period within which the information is required to be given to the OEGW.
- 78. Subsection (7) sets out that the time the OEGW takes to consider a representation once received, does not count as part of the period within which the information is required to be given.. As an example, if the information notice requires information to be provided to the OEGW within 2 months of the notice being served, the public authority may submit a representation 14 days after being served with the notice. If the OEGW concludes its consideration of the representation 7 days from the date the representation was received and confirms the notice, the information would need to be provided within 2 months and 7 days of the notice being served (i.e. the original 2 months, plus the 7 days it took the OEGW to consider and respond to the representation.).

## *Investigations*

### **Section 15 – Investigations**

- 79. Section 15 outlines the matters which the OEGW has the power to investigate and is not limited to a power to investigate whether a public authority is failing or has failed to comply with environmental law.
- 80. Subsection (1) makes provision for the OEGW to investigate potential failures by a public authority to comply with environmental law as well as the implementation, application and effectiveness of environmental law.
- 81. Subsection (1)(a) provides OEGW with the power to investigate whether a public authority is failing, or has at any time failed, to comply with environmental law. The OEGW can initiate an investigation either on its own initiative or in response to representations made by any person, which allows the OEGW the flexibility to prioritise its own workload. This subsection allows the OEGW to consider failures to comply that began at any time, including before the establishment of the OEGW.

82. Subsection (1)(b) provides the OEGW with the power to investigate how environmental law is implemented and applied, and (1)(c) enables investigation of the effectiveness of environmental law. These are both intended to support the functions of the OEGW. It is anticipated that these powers will be used for, but not limited to, investigating areas of concern related to systemic issues in environmental law. In such instances, the OEGW may determine that the issue cannot be fully resolved through compliance actions alone.
83. Subsection (2) allows the OEGW to carry out an investigation on the OEGW's own initiative or in response to any representations made to it by any person, allowing for the OEGW to govern its own workload and prioritisation.

### *Compliance notices*

#### **Section 16 – Compliance notices**

84. Section 16 makes provision for the OEGW to serve a compliance notice including the timings and content of the compliance notice with which public authorities must comply. The purpose of this section is to provide the OEGW with the power to serve a compliance notice, in specified circumstances, setting out actions with which a public authority must comply.
85. Subsection (1) allows the OEGW to serve a compliance notice on a public authority in the circumstances specified in each subsection.
86. Subsection (1)(a) allows for a compliance notice to be served in circumstances where the OEGW considers a public authority is currently failing to comply with environmental law, regardless of when the failure to comply started, as long as the failure set out in the compliance notice remains ongoing.
87. Subsection (1)(b) applies in circumstances where an information notice has been served but has not been complied with by the public authority (i.e. the information has not been provided). This enables the OEGW to serve a compliance notice requiring for the information to be provided to the OEGW).
88. Subsection (2) places a duty on the OEGW to specify certain information when serving a compliance notice under subsection (1)(a) (failing to comply with environmental law). Subsection (2)(c) provides that a compliance notice may specify more than one action that the public authority is required to take. For example, a shorter-term action in a compliance notice may be for a public authority to provide a written plan to address the failure in environmental law. This would not address the identified failure in and of itself, but may be considered necessary as part of a set of actions (both short and long term) which work towards resolving the failure. This would be particularly relevant in instances where resolving the failure cannot be done swiftly, such as if structural changes to internal practices and guidance were needed.
89. Subsection (3) provides that the period specified for each action in the compliance notice must be at least 30 days beginning with the day the notice was served. This subsection also signposts section 17(2) where an alternative specified period is provided for urgent compliance notices. The minimum period, of at least 30 days,

within which each action must be taken does not apply to urgent compliance notices.

90. Subsection (4) places a duty on the OEGW to specify certain information when issuing a compliance notice under subsection (1)(b).
91. Subsection (5) makes provision for any compliance notice served under either subsection (1)(a) or (1)(b) to also include information about the right to request a review of a compliance notice and to set out the consequences of failing to take the action specified in the notice.
92. Subsection (6) enables the OEGW, by giving notice, to withdraw or vary a compliance notice served on a public authority.
93. Subsection (7) provides that a compliance notice served under subsection 1(a) may not require any action to be taken in respect of an administrative decision taken by a public authority in relation to a particular person or case. (for example, a decision on an application for planning permission, funding or a licence, or a decision on regulatory enforcement in a specific case). This means the OEGW could not, for example, change decisions made by regulatory bodies, such as planning or licensing decisions. However, the OEGW may consider those decisions if they highlight broader issues which would fall within the OEGW's strategic oversight role. Such decisions may indicate a public authority's failure to comply with or effectively apply environmental law. For example, if a planning authority were to determine a planning application in accordance with planning guidance that fails to comply with environmental law, the OEGW could choose to issue a compliance notice in relation to the public authority that issued the planning guidance (but not in relation to the planning authority itself).

## **Section 17 – Urgent compliance notices**

94. Section 17 enables the OEGW to act more quickly to resolve compliance concerns by making provision for urgent compliance notices where the OEGW is of the view there is an imminent risk of serious damage to the environment or to human health.
95. Subsection (1) outlines that the provisions in subsection (2) apply in instances where the OEGW considers that each action specified in a compliance notice served under section 16 needs to be taken urgently by a public authority to prevent or mitigate an imminent risk of serious damage to the environment or to human health.
96. Subsection (2) distinguishes between 'compliance notices' and 'urgent compliance notices' by providing that 'urgent compliance notices may specify actions to be taken within a time period of less than 30 days, but of at least 7 days, beginning with the day the notice is served. For compliance notices which are not urgent compliance notices, the period specified for each action must be at least 30 days beginning with the day the notice was served
97. Subsection (3) provides that the OEGW must set out, in a compliance notice served under subsection (2), that the notice is an urgent compliance notice. This makes it clear to the public authority that the procedures and requirements associated with urgent compliance notices apply.

**Section 18 – OEGW’s review of compliance notices**

98. Section 18 makes provision for the OEGW to review a compliance notice once it has been served. The purpose of this review process is to provide a route for the public authority to contest the contents of a compliance notice with which they have been served.
99. Subsection (1) places a duty on the OEGW to review a compliance notice if requested to do so by the public authority onto whom the notice was served.
100. Subsection (2) provides that any request by a public authority to review a compliance notice must be made by giving notice to the OEGW.
101. Subsections (3) and (4) set out the specified timings for requests to be made for reviews of both compliance notices (30 days) and urgent compliance notices (7 days).
102. Subsection (5) provides that a review must be conducted by the OEGW’s review committee. Further provision regarding the constitution of the review committee is set out in paragraph 10 of Schedule 1. This provides that at least 2 members of the committee must not be members of the OEGW, or members of its staff, and that the initial decision maker(s) involved with issuing the compliance notice may not participate in its review.
103. Subsection (6) provides that where a request for a review of a compliance notice is made on the grounds of a failure to comply with a requirement of the contents of a compliance notice under section 16(2), (4) or (5) or any other such defect or error in connection with a compliance notice, the review committee must disregard that failure, defect or error if the committee considers it not to be a material one. This could include, but is not limited to, a typographical error.
104. Subsection (7) provides that the review committee, following a review under this section, may confirm, withdraw or vary the compliance notice.
105. Subsection (8) sets out the duty of the review committee to notify the public authority that requested the review of the outcome of that review.
106. Subsection (9) provides the review committee’s findings are final and no further review requests can be made to the OEGW in relation to the same compliance notice.
107. Subsection (10) requires that the public authority requesting the review must provide the review committee with such further information as the committee may reasonably require. It is intended an information notice under section 14 is not required for the collection of information associated with a request for review.
108. Subsections (11) and (12) set out that when a review has been requested, the required time in the compliance notice within which an action must be taken is paused until the committee has made its determination to confirm, withdraw or vary the notice. For example, a compliance notice served to a public authority may require an action to be taken within 35 days of the notice being served. The public authority may then request a review of the compliance notice on day 25 following the serving of the notice. If the

review committee concludes its review of the compliance notice 15 days from the date the review was requested and confirms the notice, that action will need to be taken by day 50 after the notice was served (35 days plus the 15 days to review).

109. Subsection (13) sets out that the ‘stopping of the clock’ begins on the day the public authority requests the review and ends with the day the review committee gives its determination.

### **Section 19 – High Court review after failure to take specified action**

110. Section 19 provides for the circumstances in which the OEGW may make an application to the High Court, seeking an order for enforcement of the actions in a compliance notice, or the actions as varied by the High Court, to be taken. A public authority must have been served with a compliance notice and failed to take the actions specified in that compliance notice before the OEGW may make an application to the High Court.
111. Subsection (1) sets out that section 19 applies when the OEGW considers a public authority has not taken the action specified in the compliance notice, within the period specified in that notice.
112. Subsections (2)(a) and (b) make provision for the OEGW to apply to the High Court of England and Wales, for an order requiring the public authority to either (a) take the action specified in the compliance notice, or (b) take such action as varied as the Court considers appropriate.
113. Subsection (3) sets out that an application in relation to an action specified in a notice that is not an urgent compliance notice may not be made before the later of either (a) the end of the period within which the public authority is required to take the action, and (b) any time limit that applies to the commencement of judicial review for questioning the alleged conduct in respect of which the compliance notice was served.
114. Subsection (4) specifies where an urgent compliance notice has been served, the application to the High Court may not be made before the end of the period within which the public authority is required to take the action specified in the urgent compliance notice. This is intended to enable the application to the High Court to take place more swiftly than under a compliance notice which is not an urgent compliance notice.
115. Subsections (5) and (6) establish specific procedural elements of the order provided by the court. If an order on an application under subsection (2) is granted, the Court must specify the period within which the action is required be taken. If the Court considers that a compliance notice or a part of a compliance notice is unreasonable, the Court must require the OEGW to withdraw the notice or (as the case may be) part of the notice.

### *Improvement reports and improvement plans*

### **Section 20 – Improvement reports**

116. Section 20 provides the OEGW with the power to publish an improvement report. The purpose of this section is to provide for a separate vehicle, an improvement report, to

look at the wider circumstances which is driving non-compliance with environmental law and provide recommendations on how these circumstances can be improved. While the grounds for publishing a compliance notice are similar to those of an improvement report their natures are different. A compliance notice will enforce compliance through specific actions that must be taken by a singular public authority. However, an improvement report has scope to address a structural flaw in the system.

117. Subsection (1) provides the OEGW may publish an improvement report, if it considers that a public authority is failing or has at any time failed to either (a) comply with environmental law or (b) implement or apply environmental law effectively. As with the compliance notice provisions, the failure to comply may have started at any time.
118. Subsection (2) states the OEGW may also publish an improvement report if it considers the Welsh Ministers, or other public authority, has failed to make effective environmental law.
119. Subsection (3) allows a single improvement report to be issued relating to a failure by two or more public authorities. This can only take place if the OEGW is satisfied that all the authorities concerned have exercised their functions in such a way as to lead to the same, or similar, alleged failure which may suggest a more systemic failure
120. Subsection (4) sets out the actions expected of the OEGW following publication of an improvement report. The OEGW must send a copy to the public authority in relation to whose alleged failure it is published and if that public authority is not the Welsh Ministers, a copy must also be sent to the Welsh Ministers. The published improvement report must also be laid before Senedd Cymru.

## **Section 21– Improvement reports: content**

121. Section 21 concerns the content of an improvement report.
122. Subsection (1) sets out what must be included in any improvement report published by the OEGW.
123. Subsection (2) makes provision that the recommendations in an improvement report cannot revoke or vary individual administrative decisions taken by a public authority in relation to a particular person or case. For example, a decision on an application for planning permission, funding or a licence, or a decision on regulatory enforcement in a specific case. The OEGW will be able to suggest improvements to the overall legislative framework without altering the specific case outcomes which are the responsibility of other authorities (such as regulators), and which may be challenged through other routes.

## **Section 22 – Improvement plans**

124. Section 22 outlines the requirements that need to be met by the Welsh Ministers following the publication of an improvement report. The purpose of an improvement plan is to provide a mechanism for the OEGW to receive a response to the individual recommendations in its improvement reports, including setting timescales for meeting each recommendation.

125. Subsection (1) places a duty on Welsh Ministers to respond to any improvement report published by the OEGW with a published improvement plan.
126. Subsection (2) details the content and information that must be contained in an improvement plan.
127. Subsection (2)(a) specifies an improvement plan must set out what the Welsh Ministers propose to do in response to the recommendations in the improvement report and the proposed timescales for implementing each recommendation.
128. Subsection (2)(b) specifies that an improvement plan must set out if Welsh Ministers do not intend to implement the recommendations (in full or in part). The Welsh Ministers must also set out their reasons for this within the improvement plan.
129. Subsection (3) places a duty on the Welsh Ministers to publish an improvement plan in accordance with specified timings. These timings are (a) within 6 months of being sent the improvement report or (b) in circumstances where it will be necessary to consult any person(s) about the plan, the timescale is extended to before the end of 9 months beginning with the day they were sent the improvement report to allow for a consultation period.
130. Subsection (4) provides that the Welsh Ministers must lay a copy of any published improvement plans before Senedd Cymru.

#### *Co-operation duties*

### **Section 23 – Co-operation duties**

131. Section 23 places a duty on public authorities to cooperate with the OEGW. This is intended to allow room for ‘informal’ mechanisms to resolve concerns without the need to resort to more substantive enforcement action.
132. Subsection (1) places a duty on public authorities to give the OEGW, such reasonable assistance as it requests (including the provision of information), in connection with the exercise of the OEGW’s functions. This provision allows the OEGW to use ‘informal’ mechanisms to obtain information without needing to resort to the more substantive information notice process outlined in section 14. The duty to co-operate will ensure public authorities are also taking opportunities to enable effective working with the OEGW and seek to prevent escalation to formal methods of enforcement action.
133. Subsection (2) places a duty on public authorities, when assisting the OEGW, to make reasonable effort to (a) swiftly resolve any matter the OEGW raises concerning the authority’s failure to comply with environmental law to implement or apply environmental law effectively, or to apply or make effective environmental law, and (b) to reach agreement with the OEGW on any remedial action the authority should take for the purposes of environmental protection without the need for escalation to formal enforcement action.

#### *Disclosure of information and confidentiality*

## **Section 24 – Disclosure of information to the OEGW**

134. Section 24 outlines the requirements on public authorities when providing information to the OEGW.
135. Subsection (1) makes provision to enable a public authority to share information with the OEGW, in specified circumstances, without breaching any obligation of confidence owed by the public authority, or any other restriction on the disclosure of information which may exist.
136. Subsection (2) sets out the specified circumstances to which subsection (1) applies. These circumstances are where:
- a. information is requested in relation to information notices (section 14(1))
  - b. information is reasonably required for the purposes of reviewing a compliance notice (section 18(10))
  - c. information is required in connection with a public authority's general duty to co-operate with OEGW (section 23(1))
137. Subsection (3) makes provision about the circumstances in which a public authority is not required to provide the OEGW with that information.
138. Subsection (3)(a) provides that a public authority is not required to provide information that it could refuse to provide in civil proceedings or because it is protected by legal privilege. This extends to a right of the public authority to refuse to provide the information where it would be entitled to refuse to provide that information in civil proceedings for reason of public interest immunity.
139. Subsection (3)(b) Subsection (3)(b) provides that nothing in this Part of the Bill requires or authorises a public authority to contravene data protection legislation within the meaning given in the Data Protection Act 2018

## **Section 25 – Confidentiality requirements: the OEGW**

140. Section 25 sets out the confidentiality requirements on the OEGW and the circumstances in which the OEGW may, or may not, disclose information it receives.
141. Subsection (1) (a) specifies the OEGW must not disclose information which has been provided to it by virtue of an information notice (under section 14(1)), a requirement to provide information for a review of a compliance notice (under section 18(10)) or a public authority's duty to cooperate with the OEGW (under section 23(1)).
142. By virtue of subsection (1)(b) the OEGW cannot disclose any correspondence between the OEGW and a public authority, where that information relates to a particular information notice or compliance notice, or the preparation of a particular improvement report
143. Subsection (1)(c) provides that correspondence between the OEGW and a public authority that is, or contains an information or compliance notice, or an unpublished draft of an improvement report must not be disclosed.



144. Subsection (3) provides for exceptions to the prohibition in subsection (1) as described above. For example, the restriction in subsection (1) does not apply to a disclosure once the OEGW has concluded it intends to take no further action.

### **Section 26 – Confidentiality requirements: public authorities**

145. Section 26 sets out the circumstances in which a public authority may, or may not, disclose the information they receive.
146. Subsection (1) places a duty on a public authority not to disclose correspondence between the OEGW and itself, or any other public authority, which relates to a particular information notice or compliance notice, or to the preparation of a particular improvement report, or that is, or contains, such a notice or an unpublished draft of such a report.
147. Subsection (2)(a) to (h) set out exceptions to the prohibition in subsection (1). These include where consent has been obtained, where the disclosure is required for the purposes of an investigation under section 15 and where disclosure is required to be able to respond to an information or compliance notice. It also provides the prohibition on disclosure does not apply for purposes connected with High Court review under section 19, statutory review or civil proceedings, or where disclosure is required for a criminal investigation or proceedings, pursuant to a court order or in accordance with an enactment requiring or permitting disclosure.
148. Subsection (3) specifies the OEGW can only provide consent to the disclosure of a notice or an unpublished draft of a report in accordance with subsection (2) (b) if the notice or draft report relates only to a matter on which the OEGW does not intend to take any further action. This is intended to prevent the premature release of information which could potentially impact upon, or undermine, an ongoing investigation or preparation of an improvement report.
149. Subsection (4) sets out the OEGW may not withhold consent to a public authority's request to disclose information described in subsections (2)(a) and (2)(b) if the OEGW has concluded it intends to take no further action in relation to a particular information notice or compliance notice, or improvement report.

### **Section 27 – Application of Environmental Information Regulations 2004**

150. Section 27 applies where information referred to in section 25(1) and held by the OEGW, or referred to in section 26(1), and held by a public authority, is "environmental information" for the purposes of the Environmental Information Regulations (EIR) 2004.
151. The effect is that the information will be in connection with confidential proceedings for the purposes of those Regulations, therefore allowing a public authority the potential right to refuse disclosure under those Regulations. If the OEGW's enforcement proceedings are ongoing, the information referred to in sections 25 and 26 may qualify for an exception from the EIR allowing a public authority the potential right to refuse disclosure if it would compromise the confidentiality of the proceedings by that public authority where such confidentiality is legally protected

*Staff transfer schemes*

**Section 28 – Staff transfer schemes**

152. Section 28 introduces Schedule 3 of the Bill which makes provision about schemes for the transfer of staff from the Welsh Government to the OEGW.

*Interpretation*

**Section 29 – Meaning of “environmental law”**

153. Section 29 deals specifically with the meaning of “environmental law” and the scope of the OEGW’s functions as they depend on this definition.
154. Subsection (1)(a) provides that environmental law means any devolved provision which wholly or mainly relates to environmental protection and is not excluded under subsection (1)(b).
155. “The effect of the definition is that even if most of an Act or set of regulations does not fall within the definition, any specific provisions in the Act or regulations that do fall within the definitions are “environmental law”.
156. For instance, the Forestry Act 1967 includes specific provisions aimed at environmental protection. Consequently, these provisions would be categorised under the definition of environmental law as defined within this Bill. However, the same Act also includes provisions that wouldn't qualify as environmental law. Specifically, Section 1(3A) imposes a duty on the relevant forestry authority to strive for a reasonable balance between “the development of afforestation, the management of forests and the production and supply of timber” and “the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest”. The latter part of this duty relates to the conservation of the natural environment, thereby falling within the scope of environmental law. However, other elements within the same Act do not fall under this definition. For instance, section 1(2), which requires the appropriate forestry authority to be “charged with the general duty of promoting the interests of forestry, the development of afforestation and the production and supply of timber and other forest products...” Since this duty is concerned with promoting the forestry industry, it is not considered environmental law.
157. Subsection (1)(b) specifically excludes from the meaning of environmental law provisions about the disclosure of, or access to, information (apart from such provisions in this Part of the Bill), and provisions about taxation, finance or budgets).
158. Subsection (3) sets out the meaning of “devolved provision” referred to in subsection (1). This section sets out, by reference to provisions of the Government of Wales Act 2006, the parameters of the scope of the OEGW’s oversight to any provision that is contained in, or created by legislation that has, or could be, made by Senedd Cymru.
159. Subsection (4) provides the Welsh Ministers may make secondary legislation to specify devolved provisions which do or do not fall within the definition of environmental

law. One example of a time this power may be used is to enable future changes to the legislative landscape concerning the environment to be reflected in the definition of environmental law.

### **Section 30 – Meaning of “public authority”**

160. Section 30 defines what is meant by “public authority” in relation to this Part of the Bill and provides that the OEGW is not a public body for the purposes of this Part of the Bill.
161. Section 30 sets out those public authorities over which the OEGW will have oversight when exercising its functions. This definition of public authorities aims to capture public authorities within the legislative scope/competence of Senedd Cymru, including companies that are water or sewerage undertakers. The effect is that a public authority that has any environmental function could be subject to the oversight of the OEGW, not only those bodies that are operating solely for environmental purposes.

### **Section 31 – Meaning of “effectiveness of environmental law”**

162. Section 31 defines what is meant by “effectiveness of environmental law” in relation to this Part of the Bill.

### **Section 32 – Meaning of “failing to comply with environmental law”**

163. Section 32 defines what is meant by “failing to comply with environmental law” in this Part. The Bill clarifies that failing to comply with environmental law is a reference to a public authority (a) exercising its functions in a way that is contrary to environmental law or (b) is failing to exercise its functions where the failure is contrary to environmental law. This means that failure to comply could be a result of a wrong action (e.g. a regulatory or local authority authorising activity which is not compliant with environmental law) as well as inaction. By way of example, inaction could arise in circumstances where a regulator is responsible for protecting the environment and natural resources and preventing environmental harm, but has not been proactive in respect of inspecting risks to special areas of conservation, and instead has only taken action after environmental harm has been committed.

## **PART 3 – Biodiversity targets, etc.**

164. Part 3 amends Part 1 of the 2016 Act to make provision for setting, reviewing and reporting on targets to halt and reverse the decline in biodiversity in Wales, as well as imposing a duty on the Welsh Ministers to promote awareness in Wales of the importance of, and of the threats to, biodiversity.

### **Section 33 – Biodiversity targets**

165. Section 33 inserts eight new sections into the 2016 Act (sections 6B, 6C, 6D, 6E, 6F, 6G, 6H and 6I).

#### *Section 6B – Biodiversity targets: general*

166. Subsection (1) gives the Welsh Ministers the power to make regulations that set targets in respect of any matter relating to biodiversity in Wales.

167. Subsection (2) provides that the Welsh Ministers may only use their power to set targets if they consider that the target would, if met, contribute towards halting or reversing the decline in biodiversity, in particular through one or more of:
- a. increasing the abundance of native species. Species abundance is the number of individuals of a species that exist within a given area and is often used as a tool to measure biodiversity and to inform conservation efforts for species;
  - b. enhancing the resilience of ecosystems, in particular the aspects specified in section 6(2)(a) to (e) of the 2016 Act. These are – diversity between and within ecosystems; the connections between and within ecosystems; the scale of ecosystems; the condition of ecosystems (including their structure and functioning); the adaptability of ecosystems. Resilient ecosystems may be more biodiverse, helping to halt and reverse biodiversity decline, and they are more adaptive to change, including the effects of climate change; or
  - c. increasing genetic diversity. Genetic diversity is the variety of genetic characteristics within a species. It is required for the long-term survival of a species as it ensures adaptability and survivability of a species to a changing environment.
168. When considering whether a target would contribute to increasing the abundance of native species, subsection (3) requires the Welsh Ministers to have regard to the list of species and types of habitats published by them under section 7 of the 2016 Act that are of principal importance for the purpose of maintaining and enhancing biodiversity in Wales.
169. Subsection (7) explains that “native species” means species that naturally occur or have in the past naturally occurred in Wales. This includes regularly occurring migratory species (both breeding and non-breeding) and natural colonists. Natural colonists are species that arrived in Wales of their own accord and have become established, including those that become migratory species. Native species also includes species that have been reintroduced in Wales following past extinction.
170. Subsection (4) requires that any target set under these regulations must specify a standard to be achieved, which must be capable of being objectively measured, and they must specify a date by which that standard is to be achieved. Subsection (8) explains that these are referred to as the “specified standard” and “specified date”, and the references in sections 6D, 6G, 6H and 6I have the same meaning (and they also have the same meaning within these Explanatory Notes). An example of a specified standard might be the extent of land, rivers or sea effectively managed for biodiversity.
171. Subsection (5) requires the Welsh Ministers to make provision within the regulations about how to measure progress toward achieving the specified standard and whether that has been achieved as well as specifying indicators as a means of measuring those things.
172. Subsection (6) explains that a target is set when the regulations setting it come into force.

*Section 6C - Duty to make regulations setting targets: priority areas*

173. Subsection (1) imposes a duty on the Welsh Ministers to exercise the power in section 6B to set a target in respect of at least one matter within each priority area. Subsection (5) requires the Welsh Ministers to lay a draft of the regulations required under subsection (1) before the Senedd within three years of Royal Assent of the Bill.
174. The priority areas are listed in subsection (2):
- a. reducing the risk of the extinction of native species. A target in this priority area may focus, for example, on the creation and delivery of management plans aimed at halting the decline of native species at risk of extinction and/or contributing to healthy and resilient species populations;
  - b. the effective management of ecosystems. A target in this priority area may focus, for example, on the extent of effectively managed protected areas such as sites of special scientific interest;
  - c. reducing pollution. A target in this priority area may focus, for example, on freshwater health by seeking to reduce excess nutrients, pesticides and highly hazardous chemicals, and plastic pollution;
  - d. the quality of evidence to inform decisions relating to biodiversity, access to that evidence and its use and application. A target in this priority area may focus, for example, on improving the provision of and access to the best available evidence about biodiversity.
175. Subsection (3) provides that the Welsh Ministers cannot set a target in relation to the priority area “reducing pollution” if the Welsh Ministers can set a target in respect of that matter under their power to set air quality targets under the Environment (Air Quality and Soundscapes) (Wales) Act 2024.
176. Subsection (4) explains that “native species” in subsection (2)(a) has the same meaning as in section 6B(7).

*Section 6D - Target-setting process*

177. Subsection (1) provides that before the Welsh Ministers make regulations under section 6B they must first seek advice from persons they consider to be independent and to have relevant expertise. Pursuant to subsection (2), the Welsh Ministers must publish a summary of any such advice.
178. Subsection (3) imposes a duty on the Welsh Ministers to apply the principles of sustainable management of natural resources under section 4 of the 2016 Act when they are making regulations setting or amending targets under section 6B. The principles of sustainable management of natural resources are - manage adaptively, by planning, monitoring, reviewing and, where appropriate, changing action; consider the appropriate spatial scale for action; promote and engage in collaboration and co-operation; make appropriate arrangements for public participation in decision-making; take account of all relevant evidence and gather evidence in respect of uncertainties; take account of the benefits and intrinsic value of natural resources and ecosystems; take account of the short, medium and long term consequences of actions; take action to prevent significant damage to ecosystems; take account of the resilience of ecosystems.

- 179. Subsection (4) requires the Welsh Ministers to only set or amend targets they are satisfied can be met.
- 180. Subsection (5) provides that a target is met if the specified standard is achieved by the specified date.

*Section 6E - Duty to meet targets*

- 181. This section imposes a duty on the Welsh Ministers to ensure that targets set in regulations are met.

*Section 6F - Designation of public authorities for the purpose of section 6(2A)*

- 182. Subsection (1) provides the Welsh Ministers with a power to designate, by regulations, a public authority in relation to a target set under section 6B. This power to designate should be read alongside the new duty in section 6(2A) of the 2016 Act, inserted by section 34 of this Bill, which requires a designated public authority to take action to contribute to achieving a target for which they are designated.
- 183. Before making regulations under this section, subsection (2) requires the Welsh Ministers to consult with the public authority they propose to designate and any other persons they consider appropriate.
- 184. The regulations can only designate a public authority within the new subsection (11) of section 6 the 2016 Act, which includes a devolved Welsh authority, as defined in section 157A of the Government of Wales Act 2006, or a body listed in paragraph 9(2) or (6) of Schedule 7B to that Act. They cannot designate the OEGW because it is not a “public authority” for the purposes of section 6 of the 2016 Act pursuant to the amendment of that definition in section 6(9) of the 2016 Act by section 34(3) of the Bill.

*Section 6G - Review of targets*

- 185. Subsection (1) allows the Welsh Ministers to review any targets set under section 6B from time to time, whereas under subsection (2) the Welsh Ministers must review such targets if it appears to them that the target may not be met or that the target may no longer be appropriate.
- 186. In addition, subsection (3) provides that if one target set under section 6B is not met by its specified date, then all existing targets in force on that date must be reviewed.
- 187. Pursuant to subsection (4), the Welsh Ministers must seek advice from people they consider to be independent and to have relevant expertise when they carry out a review. Subsection (5) requires the Welsh Ministers to publish a summary of any such advice.
- 188. After carrying out a review, the Welsh Ministers must, pursuant to subsection (6), lay before the Senedd, and publish, a statement noting its conclusions. If the review concludes that a target will not be met or is no longer appropriate, subsection (7) provides that the statement must note the reasons for that conclusion and the steps, if

any, the Welsh Ministers intend to take in relation to the target in consequence of the review.

*Section 6H - Revoking or lowering targets*

189. Section 6H restricts the circumstances in which the Welsh Ministers can use the power in section 6B to make regulations that either revoke a target already set in regulations or lower a target to make it easier to achieve.
190. Subsection (1) provides that the Welsh Ministers cannot lower the standard of a target or revoke it unless they are satisfied that:
- a. because of changes to the evidence which they had regard to when setting the existing target, meeting it would not contribute to halting or reversing the decline in biodiversity,
  - b. meeting the existing target would have no significant benefit compared with not meeting it or with meeting a lower target,
  - c. because of changes in circumstances since the existing target was set, the environmental, social, economic or other costs of meeting it would be disproportionate to the benefits, or
  - d. meeting the existing target is no longer achievable:
    - i. because of changes in circumstances since the existing target was set, or
    - ii. because of changes to the evidence to which the Welsh Ministers had regard when setting the existing target.
191. Subsection (2) states that if the Welsh Ministers are satisfied that meeting the existing target is no longer achievable because of changes in circumstances since the existing target was set, or because the costs of meeting it would be disproportionate to the benefits, they must first consider lowering a target before revoking the target.
192. Further, before revoking or lowering a target, subsection (3) requires the Welsh Ministers to lay before the Senedd, and publish, a statement explaining why the Welsh Ministers are satisfied that the above criteria are met.
193. Subsection (4) explains that lowering the target means replacing the specified standard with a lower standard or replacing the specified date with a later date. A lower standard may, for example, be a lower percent of land restored compared to the original specified standard.

*Section 6I - Statement about targets*

194. Pursuant to subsections (1) and (2), the Welsh Ministers must lay before the Senedd, on or before each target's specified date, a statement that sets out whether that target has been met or not, or whether the Welsh Ministers cannot yet determine if the target has been met and the steps they intend to take to make that determination.
195. If the target has not been met, then pursuant to subsections (3) and (4), the Welsh Ministers must, within 12 months of the target's specified date, lay before the Senedd, and publish, a report explaining why the target has not been met and what steps the

Welsh Ministers have taken, or intend to take, to ensure the target is met as soon as reasonably practicable.

196. Before deciding on the steps to take to meet the target under subsection (4), the Welsh Ministers must, in accordance with subsection (5), seek advice from persons they consider to be independent and to have relevant expertise. Pursuant to subsection (6), the Welsh Ministers must also publish a summary of that advice.
197. Where the Welsh Ministers lay a statement which says they are not able to determine if a target has been met, then they must, within 6 months of the date that statement was laid, lay before the Senedd and publish a further statement setting out whether the target has been met or not, or whether they are still unable to determine if it has been met. Subsection (8) makes it clear that subsection (2) to (7) apply to any such further statement as they do to the first statement published under subsection (1).

### **Section 34 – Public authorities’ duties**

198. Subsection (1) of section 34 inserts a new subsection (2A) into section 6 of the 2016 Act, which imposes a new duty on any public authority designated in regulations made by the Welsh Ministers under section 6F. This new duty requires any designated public authority, in complying with their existing duty under section 6(1) of the 2016 Act, to take action to contribute to achieving the target in relation to which it has been designated.
199. The duty in section 6(1) of the 2016 Act is a duty on public authorities to seek to maintain and enhance biodiversity in the exercise of their functions in Wales, and in so doing promote the resilience of ecosystems, so far as is consistent with the proper exercise of those functions.
200. This section also makes other changes to section 6 in connection with public authorities. The effects of these changes are (a) to exclude the OEGW from the definition of “public authority” (at section 6(9)) so that the duty in section 6(1) does not apply to the OEGW, (b) to limit the public authorities (to those set out in new subsection (11) of section 6 to the 2016 Act) that are required to have regard to the sustainable land management report published under section 6 of the Agriculture (Wales) Act 2023, when complying with the duty in section 6(1), and (c) to limit the scope of the Welsh Ministers’ power to designate, in regulations made under section 6F, public authorities (to those in new subsection (11)) that must take action to contribute to a biodiversity target set in regulations made under section 6B.

### **Section 35 – Welsh Ministers’ plans under section 6 of the Environment Act**

201. Section 6(6) of the 2016 Act requires public authorities (except for a Minister of the Crown or UK government department) to publish a plan that sets out how they propose to comply with their duty in section 6(1) of the 2016 Act to maintain and enhance biodiversity.
202. Section 35 inserts a new subsection (6A) into section 6 of the 2016 Act. This new subsection requires the Welsh Ministers to also include in their section 6(6) plan what action they intend to take to meet any targets set under section 6B, when they propose



to take that action, and how the targets, if met, will contribute to halting and reversing the decline in biodiversity.

### **Section 36– Reports under section 6 of the Environment Act**

203. Section 6(7) of the 2016 Act requires public authorities to publish a report, every three years from the end of 2019, setting out what they have done to comply with their duty in section 6(1) of the 2016 Act to maintain and enhance biodiversity.
204. Subsection (1) of section 36 amends section 6(7) of the 2016 Act so that any public authority designated in regulations made under section 6F must also include in their section 6(7) report the action they have taken to comply with their duty in section 6(2A) to contribute to achieving the target in relation to which they have been designated.
205. Subsection (2) of section 36 inserts a new subsection (7A) into section 6 of the 2016 Act, which requires the Welsh Ministers to set out in their section 6(7) report what progress is being made towards meeting any targets set in regulations made under section 6B and whether those targets are likely to be met. For example, this may include reporting progress against any indicator specified for the target under section 6B(5)(b).

### **Section 37 – Evaluation report**

206. Subsection (1) of section 37 inserts a new section 6A (Evaluation of action to maintain and enhance biodiversity) into the 2016 Act.
207. Subsections (1) and (2) of section 6A require the Welsh Ministers to prepare an evaluation report assessing the impact and effectiveness of the proposals set out in their most recent section 6(6) plan and the action taken by the Welsh Ministers in accordance with those proposals. This evaluation report will therefore assess both the proposals and steps proposed by the Welsh Ministers to comply with their duty to maintain and enhance biodiversity in section 6(1) of the 2016 Act (as required by section 6(6)) and the steps taken, or proposed to be taken, to achieve any target set in regulations made under section 6B (as required by section 6(6A)).
208. Subsection (3) of section 6A provides that the Welsh Ministers must publish the first evaluation report before the end of 2031 and, subsequently, they must publish an evaluation report before the end of every third year after 2031.
209. Subsection (2) of section 37 amends section 24 of the 2016 Act to include the evaluation report within the list of documents which the Welsh Ministers may, by regulations, amend the date of preparation or publication.

### **Section 38 – Promoting awareness of biodiversity**

210. Subsection (2) inserts a new section 8A (Duty to promote awareness of biodiversity) into the 2016 Act, which imposes a duty on the Welsh Ministers to take steps to promote awareness in Wales of the importance of, and the threats to, biodiversity.
211. Examples of ways in which the Welsh Ministers might discharge their duty might include: by encouraging, supporting and promoting local awareness and volunteering

initiatives related to biodiversity; by improving the provision of biodiversity resources for education and health professionals; or reviewing current publicly-available information on the importance of biodiversity to human health and well-being, as well as the drivers of biodiversity loss, taking into account accessibility and requirements of different groups.

## **PART 4 - GENERAL**

### **Section 39 – Power to make consequential etc. provision**

212. Section 39 provides that the Welsh Ministers may, by regulations, make such supplemental, incidental or consequential provision as they think necessary or appropriate for the purposes of, in consequence of, or for giving full effect to any provision of the Bill. Such regulations may modify any enactment (as defined in Schedule 1 to the Legislation (Wales) Act 2019), other than the provisions contained in this Bill.

### **Section 40 – Regulations**

213. Section 40 makes general provision about regulations made under this Bill and sets out the Senedd Cymru procedure applicable to those regulations.
214. Subsection (1) provides that regulations made under this Bill are exercisable by Welsh statutory instrument.
215. Subsection (2) provides that a power to make regulations under the Bill includes a power to make provision for different purposes, and the power to make ancillary provision (that is, supplemental, incidental, consequential, transitional, or saving provision).
216. Subsection (3) sets out the provisions of the Bill which are subject to the Senedd approval procedure which means regulations may not be made unless a draft of the instrument containing them has been laid before, and approved by resolution of, Senedd Cymru.
217. Subsection (4) sets out where regulations are made under section 39(1) they will also be subject to the Senedd approval procedure if they modify any provision of primary legislation.
218. Subsection (5) sets out any other regulations made under section 39(1) are subject to the Senedd annulment procedure which means such regulations made by the Welsh Ministers are subject to annulment by resolution of Senedd Cymru.

### **Section 41 - Service of notices and other documents**

219. Section 41 makes provision relating to the giving of notices, directions or other documents through the Bill.
220. Subsection (1) applies to the giving of notices, directions and other documents. Examples of the giving of these documents in the Bill includes, but is not limited to; the service of compliance notices under section 16 and the giving of notice of the removal or suspension of a member of the OEGW under paragraph 5(1) and (2) of Schedule 1 etc.

221. Subsections (2) and (3) set out the different methods of service that may be used under the Bill, and the conditions that must be complied with.
222. Subsection (4) provides that where a document or notice etc. is left at an address, unless the contrary is proved, the document or notice is deemed to be served on the day on which it is left.
223. Subsection (5) provides that if document is served via electronic communication outside normal business hours then it will take effect the following working day. If the electronic communication is received within the person's normal business hours, then delivery timing is deemed as instantaneous. For the purposes of this provision, "working day" has the same meaning as given in Schedule 1 to the Legislation (Wales) Act 2019.
224. The purpose of subsection (6) is to avoid any overlap between the provisions in section 41 and the similar (but slightly different provisions) in sections 231 and 233 of the Local Government Act 1972 Act about service on, or by, a county council, a county borough council, a community council or a corporate joint committee.

### **Section 43 – Consequential amendments**

225. Section 43 introduces Schedule 4, which makes consequential amendments to existing legislation..

### **Section 44 – Coming into force**

226. Subsection (1) brings Part 4 of the Bill, apart from section 43 (consequential amendments), into force on the day after the day the Bill receives Royal Assent.
227. Subsection (2) brings the following provisions of the Bill into force at the end of the period of two months beginning with the day on which the Bill receives Royal Assent:
- a. sections 1 and 2;
  - b. sections 8 and 9 and Schedule 1, except paragraphs 10 and 21;
  - c. section 28 and Schedule 3;
  - d. sections 29 to 32;
  - e. Part 3;
  - f. paragraphs 1 and 2 of Schedule 4 (and section 43 in so far as relating to those paragraphs).
228. Subsection (3) brings sections 3 to 6 and subsections (1)(a), (b) and (d), (2) and (3) of section 7 into force at the end of the period of six months beginning with the day on which the Bill receives Royal Assent.
229. Subsection (4) provides that all other provisions of the Bill come into force on a day appointed in an order made by the Welsh Ministers.
230. Subsection (5) allows an order under subsection (4) to make transitional or saving provision or to appoint different days for different purposes.

## **Section 45– Short title**

231. This section gives the short title of the Bill as the Environment (Principles, Governance and Biodiversity Targets) (Wales) Act 2026.

## **SCHEDULE 1 - THE OFFICE OF ENVIRONMENTAL GOVERNANCE WALES**

232. Schedule 1 sets out the composition of the OEGW and how it is expected to operate.

### **Part 1: Status**

233. Paragraph 1 sets out the OEGW is not to be considered as a servant or agent of the Crown, nor is the property of the OEGW to be regarded as the property of the Crown. This clarifies the OEGW is not part of the Crown, unlike government departments.

### **Part 2: Membership**

234. Paragraph 2 sets out the membership of the OEGW. The membership will include a chairperson, a deputy chairperson, at least 3 and no more than 5 other persons and a chief executive. The chief executive is to be a member of the OEGW's staff. Paragraph 6 sets out further detail regarding the appointment of the chief executive.
235. Paragraph 2(3) provides the Welsh Ministers may make secondary legislation, subject to the Senedd approval procedure, to amend the number of members appointed to the OEGW,.
236. Paragraph 3 sets out a list of types of persons that cannot be appointed as a member of the OEGW because of the roles or office they hold.
237. Paragraph 4 sets out that the OEGW may set out the terms of appointment for non-executive members subject to certain limitations. The period of office/appointment period may not exceed 4 years, and a non- executive member may not be appointed for more than 2 periods of office.
238. Paragraph 4(4) clarifies that appointments as chairperson, deputy chairperson and other non-executive roles on an interim basis (meaning a period of 12 months or less), as set out further in paragraph 9 of this schedule, do not count towards the prohibition on appointing for more than 2 periods of office.
239. Paragraph 4(5) allows for the OEGW, with the approval of the Welsh Ministers, to pay its non- executive members remuneration, expenses and allowances as it considers appropriate.
240. Paragraph 5 sets out the circumstances in which a non-executive member can be removed from office and the process that must be followed by the Welsh Ministers before they can remove a member.

### **Part 3: Staff**

241. The chief executive is to be appointed in accordance with paragraph 6. The first chief executive is to be appointed by the Welsh Ministers, with subsequent chief executives

to be appointed by the non-executive members to maintain independence. The terms and conditions of the chief executive must be approved by the Welsh Ministers.

242. Paragraph 7 provides the OEGW may appoint other staff and the terms and conditions must be approved by the Welsh Ministers.

#### **Part 4: Appointment Requirements**

243. Paragraph 8(1) sets out that in appointing non-executive members the Welsh Ministers must have regard to the desirability of ensuring that the members between them, have experience and have shown capability in environmental law and policy, environmental science and investigatory and enforcement proceedings.
244. The rest of paragraph 8 sets out other requirements on the Welsh Ministers including the need to consult a committee of Senedd Cymru when appointing or reappointing the chairperson or deputy chairperson, and the establishment of a panel, with 2 independent members, to make recommendations on the appointment of non-executive members and the chief executive. The panel must have experience of the requirements set out in paragraph 8(1). The Welsh Ministers must have regard to the recommendations of that panel. This process is not required for the reappointment of a non-executive member or the chief executive, where it immediately follows the first period of office.
245. Paragraphs 9 sets out the disapplication of the appointment requirements to allow for interim appointments of 12 months or less, in specified circumstances, and where the OEGW's quorum cannot be met.

#### **Part 5: Committees and Delegation**

246. Part 5 sets out the powers of the OEGW to establish committees and sub-committees. This includes powers in relation to remuneration, voting rights, delegation and the establishment of joint committees.
247. Paragraph 10 makes provision in relation to the establishment of a review committee who will conduct reviews requested by public authorities following the issuing of a compliance notice to them by the OEGW. In particular, the review committee must appoint at least 2 co-opted members from a list of persons with expertise in the field of environmental law and policy, environmental science and investigatory and enforcement proceedings. The list is to be maintained and published by the Welsh Ministers. This is to ensure a measure of independence when the review takes place of the initial decision made by the OEGW to serve the compliance notice.

#### **Part 6: Procedure etc.**

248. Paragraph 14 requires the OEGW to make rules regulating its procedure and the procedure of any of its committees or sub-committees.
249. Paragraph 15 provides that a vacancy in membership of the OEGW or any defect in the appointment of a member, does not affect the validity of actions taken by OEGW or its committees, sub-committees and joint committee.

#### **Part 7: Financial Matters**

250. Paragraph 16 provides that the Welsh Ministers may make such payments as they may determine to the OEGW.
251. Paragraph 17 provides the chief executive is the accounting officer for the OEGW, unless the chief executive is unable to fulfil that role, then another member of OEGW staff must be nominated. The accounting officer's responsibilities about the accounts and finances of the OEGW are specified by the Welsh Ministers.
252. Paragraph 18 sets out the OEGW duties in relation to the preparation and submission of financial accounts and information relating to the preceding financial year. 18(4) provides the financial year following the establishment of the OEGW is to end on the second 31<sup>st</sup> March following the day section 8 is commenced. This is to enable the OEGW to be in an operational position before it is required to prepare and submit financial accounts, whilst still making OEGW accountable from the day it is legally established. Thereafter, accounts will need to be prepared no later than every successive 31 March.
253. Paragraph 19 is intended to ensure independent oversight, transparency and accountability for use of public funds. It sets out the duties in relation to each statement of accounts submitted to the Auditor General for Wales by the OEGW.
254. Paragraph 20 provides that the Auditor General for Wales may examine the OEGW's use of its resources with regards to three categories, economy, efficiency and effectiveness but is not entitled to question the merits of the OEGW's policy objectives. Sub-paragraphs (3) and (4) set out the duties on the Auditor General for Wales when undertaking an examination.

#### **Part 8: Reporting Requirements**

255. Paragraph 21 places a duty on the OEGW to prepare and publish an annual report as soon as possible after the end of each financial year and to lay a copy of the report before Senedd Cymru. This is intended to provide transparency on the performance of the body against its statutory functions and its strategy, helping to ensure accountability for the exercise of its powers and its use of public funds.

#### **Part 9: Supplementary provisions**

256. Paragraph 22 sets out the duties of the OEGW in relation to the registering of its members' interests.
257. Paragraph 23 sets out the supplementary powers of the OEGW, and provides the OEGW may do anything it considers appropriate for the purposes of, or in connection with, its functions, or otherwise incidental or conducive to the exercise of those functions. For example, this could include (but is not limited to) matters such as making applications for judicial review (where all other legal requirements are satisfied) and establishing complaints procedures. However, the OEGW is restricted from charging fees, borrowing money, investing, making grants, lending money, or accepting gifts, to ensure independence of decision making.

### **SCHEDULE 2 - THE OFFICE OF ENVIRONMENTAL GOVERNANCE WALES:**

## **STRATEGY**

258. This Schedule sets out provisions for the content and procedural requirements of the strategy that the OEGW is required to prepare and publish under section 10.

### *Content*

259. Paragraph 1 sets out the content the OEGW must include in the strategy it is required to prepare under section 10. It is not intended that these specified requirements preclude other details from being provided in the strategy.
260. Paragraph 1(1)(a) provides that the strategy prepared under section 10 must set out how the OEGW intends to comply with its duties to exercise its functions for the general purpose of contributing to the environmental objective and its duties under other enactments, in particular under Part 2 of the Well-being of Future Generations (Wales) Act 2015 (anaw2)
261. Paragraph 1(1)(b) requires the strategy to set out how the OEGW intends to operate impartially, objectively, proportionately and transparently.
262. Paragraph 1(1)(c) requires the strategy to set out how the OEGW will monitor developments in the effectiveness of legislation concerning environmental protection that applies, or is made, outside Wales. For example, legislation made by the other UK administrations or by the European Commission.
263. Paragraph 1(1)(d) provides the strategy must set out how the OEGW intends to collaborate with other persons for the purposes of exercising its functions.
264. Paragraph 1(1)(e) provides the OEGW must set out how it intends to seek to avoid any overlap with the exercise of the functions of specified other bodies/commissioners.
265. Paragraph 1(2)(a) sets out how the OEGW intends to, as part of the exercise of its functions, monitor any targets relating to the environment set by or under environmental law. This is to allow the OEGW the flexibility to determine how it intends to approach the monitoring of targets.
266. Paragraph 1(2)(b) and (c) provides the OEGW must also set out how it intends to enable persons to make representations to it about matters relating to public authorities' compliance with environmental law, how environmental law is implemented and applied, and the effectiveness of environmental law. The OEGW should also set out its policy for managing representations including publishing information, prioritising representations and keeping people informed about the response to the representation. This is intended to ensure that the OEGW is accountable for how it intends to manage the process around representations, and transparent about what it will do with each representation, whilst giving the OEGW the flexibility to determine the detail for themselves.
267. Paragraph 1(2)(d) requires the OEGW to set out how it will enable a public authority

to make representations about an information notice.

268. Paragraph 1(3) provides the OEGW must set out its investigation policy including the circumstances in which it may decide not to carry out an investigation, how it intends to carry out that investigation and how it intends to liaise with a public authority when it is at the stage of carrying out, or considering carrying out, an investigation.
269. Paragraph 1(4) provides the OEGW must set out the enforcement policy of the OEGW so that the public authorities over which the OEGW will have oversight are clear on the circumstances which could lead to the serving of a compliance notice, or the publication of any improvement report, including the circumstances in which the OEGW determines not to serve a compliance notice or improvement report. Paragraph 1(4)(d) also requires the OEGW to set out how it will determine whether an urgent compliance notice is required under section 17 or whether to make an application to the court under section 19. This is intended to highlight the different processes given the potential seriousness for a public authority if they are served with an urgent compliance notice or referred to the High Court for review.

#### *Procedural Requirements*

270. Paragraph 2 sets out the process for publishing and revising the OEGWs strategy, which it must prepare under section 10. Both the strategy and any revision of the strategy must be published.
271. Paragraph 2(1) requires the OEGW to consult with the relevant committee of Senedd Cymru, and any other appropriate persons while preparing the strategy.
272. Paragraph 2(2) provides the OEGW must review its strategy before the end of 4 years beginning with the day the strategy is first published and before the end of every subsequent 4 years.
273. Paragraph 2(3) allows the OEGW to revise its strategy following that review. The review of the strategy may identify more effective and efficient ways for the OEGW to exercise its functions, or ways in which the OEGW may need to change its approach to prioritisation as a result of matters that have come to light within that 4 year period. Allowing the OEGW to revise its strategy takes this into account.
274. Paragraph 2(6) requires the strategy (or a revised strategy) to be laid before Senedd Cymru as soon as possible after it has been published. This is intended to provide transparency and clarity to the Welsh Government, Senedd Cymru, and other stakeholders on the operational framework and strategic direction of the OEGW which it has itself determined.

### **SCHEDULE 3 - STAFF TRANSFER SCHEMES**

275. Schedule 3 grants the Welsh Ministers to make, and modify a transfer scheme, for members of staff of the Welsh Government to become members of staff of the OEGW. Any scheme made by the Welsh Ministers must be laid before Senedd Cymru.



## **SCHEDULE 4 - CONSEQUENTIAL AMENDMENTS**

276. Schedule 4 is introduced by section 43. It amends the Acts below by either excluding or including the OEGW in their scope. This is to prevent overlap and potential conflicts of interest that could occur as a result of the OEGW being subject to the same environmental law that it oversees.

### *Environment Act 1995*

277. Paragraph 1 amends section 81B (functions of relevant Welsh public authorities etc.) of the Environment Act 1995 to provide the Welsh Ministers cannot designate the OEGW as a public authority for the purposes of that Act.

### *Active Travel (Wales) Act 2013 (anaw 7)*

278. Paragraph 2 amends section 10B (promotion by local and other authorities of active travel as a way of reducing or limiting air pollution) of the Active Travel (Wales) Act 2013 to provide the OEGW cannot be a public authority for the purpose of that Act.

### *Well-being of Future Generations (Wales) Act 2015 (anaw 2)*

279. Paragraph 3 amends section 6(1) (meaning of “public body”) of the Well-being of Future Generations (Wales) Act 2015 to provide the OEGW is a public body for the purposes of that Act.

## **RECORD OF PROCEEDINGS IN SENEDD CYMRU**

280. The following table sets out the dates for each stage of the Act’s passage through the Senedd. The Record of Proceedings and further information on the passage of this Act can be found on the Senedd website at:

<b>Stage</b>	<b>Date</b>
Introduced	2 June 2025
Stage 1 - Debate	11 November 2025
Stage 2 Scrutiny Committee – consideration of amendments	19 December 2025
Stage 3 Plenary - consideration of amendments	10 February 2026
Stage 4 Approved by the Senedd	24 February 2026
Royal Assent	April 2026

## Annex 2

### Index of Standing Order requirements

Standing order		Section	pages/ paragraphs
26.6(i)	Statement the provisions of the Bill would be within the legislative competence of the Senedd	Member's declaration	Page 9
26.6(ii)	Set out the policy objectives of the Bill	Chapter 3 - Purpose and intended effect of the legislation	Page 10 - 126
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted	Part 2 – Regulatory Impact Assessment	Pages 143 - 225
26.6(iv)	Set out the consultation, if any, which was undertaken on: (a) the policy objectives of the Bill and the ways of meeting them; (b) the detail of the Bill, and (c) a draft Bill, either in full or in part (and if in part, which parts)	Chapter 4 – Consultation	Pages 127 - 135

Standing order		Section	pages/ paragraphs
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended	Chapter 4 – Consultation	Pages 127 - 135
26.6(vi)	If the bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision	Chapter 4 – Consultation	Page 135
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill	Annex 1 – Explanatory Notes	Pages 246 - 280
26.6(viii)	Set out the best estimates of: <ul style="list-style-type: none"> <li>(a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;</li> <li>(b) the administrative savings arising from the Bill;</li> <li>(c) net administrative costs of the Bill's provisions;</li> <li>(d) the timescales over which such costs and savings would be expected to arise; and</li> <li>(e) on whom the costs would fall</li> </ul>	Part 2 – Regulatory Impact Assessment	Pages 143 - 225

Standing order		Section	pages/ paragraphs
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially	Part 2 – Regulatory Impact Assessment	Pages 199 - 225
26.6(x)	<p>Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:</p> <p>(a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;</p> <p>(b) why it is considered appropriate to delegate the power; and</p> <p>(c) the Senedd procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure);</p>	Chapter 5 - Power to make subordinate legislation	Pages 136 - 143
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate	The requirement of Standing Order 26.6(xi) does not apply to this Bill	

Standing order		Section	pages/ paragraphs
26.6(xii)	Set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Act.	Part 2 – Regulatory Impact Assessment	Page 229
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	The requirement in Standing Order 26.6B for a Table of Derivations is not applicable to this Bill as the Bill is a standalone piece of legislation and does not derive from existing primary legislation for the purposes of amendment or consolidation.	
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.	Annex 3 – Schedule of Amendments	Pages 285 - 297

## Annex 3 - Schedule of amendments

### AMENDMENTS TO BE MADE BY THE ENVIRONMENT (PRINCIPLES, GOVERNANCE AND BIODIVERSITY TARGETS) (WALES) BILL

This document is intended to show how the provisions of the following legislation, as they applied in relation to Wales on 2 June 2025 would look as amended by the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill (if enacted as introduced on [insert date of introduction]).

- The Environment Act 1995
- Active Travel (Wales) Act 2013
- The Well-being of Future Generations (Wales) Act 2015
- Environment (Air Quality and Soundscapes) (Wales) Act 2024
- Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903)

Material to be deleted by the Environment (Principles, Governance, and Biodiversity Targets) (Wales) Bill is in strikethrough, e.g. ~~omitted material looks like this~~. Material to be added by the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill is underlined, e.g. added material looks like this. References to the relevant amending provisions of the Bill are provided in the right hand column on each page.

A number of related provisions from the Act, although not being amended, are included to aid understanding of the proposed amendments.

#### Warning

This text has been prepared by officials of the Climate Change and Environmental Sustainability department of the Welsh Government. Although efforts have been taken to ensure that it is accurate, it should not be relied on as a definitive text of the Act or the Bill.

It has been produced solely to help people understand the effect of the Environment (Governance, Principles and Biodiversity Targets) (Wales) Bill. It is not intended for use in any other context.

The Environment (Wales) Act 2016	Amended by
<b>Section 6 (Biodiversity and resilience of ecosystems duty)</b> (1) A public authority must seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions.	



<p>setting out what it proposes to do to comply with subsection (1).</p> <p><u>(6A) The plan prepared and published by the Welsh Ministers under subsection (6) must, in particular, set out—</u></p> <p>(a) <u>what action they propose to take to ensure that the targets set in regulations under section 6B are met and when they propose to take that action, and</u></p> <p>(b) <u>how the targets, if met, will contribute to halting and reversing the decline in biodiversity.</u></p> <p>(7) A public authority must, before the end of 2019 and before the end of every third year after 2019, publish a report on what it has done <del>to comply with subsection (1)</del>—</p> <p>(a) <u>to comply with subsection (1), and</u></p> <p>(b) <u>where subsection (2A) applies, to contribute to meeting the target in relation to which is has been designated”.</u></p> <p><u>(7A) The report published by the Welsh Ministers under subsection (7) must, in particular, report on the progress being made towards meeting the targets set in regulations under section 6B and whether they are likely to be met.</u></p> <p>(8) A public authority that has published a plan under subsection (6)—</p> <p>(a) must review the plan in the light of each report that it publishes under subsection (7), and</p> <p>(b) may revise the plan at any time.</p> <p>(9) In this section—</p> <p>“Minister of the Crown” (“<i>Gweinidog y Goron</i>”) has the same meaning as in the Ministers of the Crown Act 1975 (c 26);</p> <p>“public authority” (“<i>awdurdod cyhoeddus</i>”) means—</p> <p>(a) the Welsh Ministers;</p> <p>(b) the First Minister for Wales;</p> <p>(c) the Counsel General to the Welsh Government;</p> <p>(d) a Minister of the Crown;</p> <p>(e) a public body (including a government department, a local authority, a corporate joint committee and a local planning authority), <u>but not the Office of Environmental Governance Wales;</u></p> <p>(f) a person holding an office—</p>	<p>Section 35</p> <p>Section 36(1)</p> <p>Section 36(2)</p> <p>Section 34(3)</p>
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<p>(i) under the Crown,</p> <p>(ii) created or continued in existence by a public general Act of the National Assembly for Wales or of Parliament, or</p> <p>(iii) the remuneration in respect of which is paid out of money provided by the National Assembly for Wales or Parliament;</p> <p>(g) a statutory undertaker.</p> <p>(10) In subsection (9)—</p> <p>“corporate joint committee” (<i>“cyd-bwyllgor corfforedig”</i>) means a corporate joint committee established by regulations made under Part 5 of the Local Government and Elections (Wales) Act 2021 (asc 1);</p> <p>“local authority” (<i>“awdurdod lleol”</i>) means a council of a county, county borough or community in Wales;</p> <p>“local planning authority” (<i>“awdurdod cynllunio lleol”</i>) has the meaning given by the Town and Country Planning Act 1990 (c 8);</p> <p>“statutory undertaker” (<i>“ymgymerwr statudol”</i>) means any of the following—</p> <p>(a) a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power;</p> <p>(b) an operator of an electronic communications code network (within the meaning of paragraph 1(1) of Schedule 17 to the Communications Act 2003 (c 21));</p> <p>(c) an airport operator (within the meaning of the Airports Act 1986 (c 31)) operating an airport to which Part 5 of that Act applies;</p> <p>(d) a gas transporter (within the meaning of Part 1 of the Gas Act 1986 (c 44));</p> <p>(d) a holder of a licence under section 7 or 7AA of the Gas Act 1986 (c 44);</p> <p>(e) a holder of a licence under section 6(1) of the Electricity Act 1989 (c 29);</p> <p>(f) a water or sewerage undertaker;</p> <p>(g) the Civil Aviation Authority or a holder of a licence under Chapter 1 of Part 1 of the Transport Act 2000 (c 38), to the extent that the person holding the licence is carrying out activities authorised by it;</p>	
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<p>(h) a universal service provider within the meaning of Part 3 of the Postal Services Act 2011 (c 5);</p> <p><u>(11) A public authority is within this subsection if it is-</u></p> <p>(a) <u>a devolved Welsh authority within the meaning given by section 157A of the Government of Wales Act 2006 (c. 32), or</u></p> <p>(b) <u>listed in paragraph 9(2) or (6) of Schedule 7B to that Act.</u></p>	<p>Section 34(4)</p>
<p><b><u>Section 6A Evaluation of action to maintain and enhance biodiversity</u></b></p> <p><u>(1) The Welsh Ministers must prepare a report under this section (an “evaluation report”).</u></p> <p><u>(2) The evaluation report must set out the Welsh Ministers’ assessment of the impact and effectiveness of the proposals set out in accordance with section 6(6) and (6A) in the plan most recently published by them and of action taken in accordance with those proposals.</u></p> <p><u>(3) The Welsh Ministers must publish the first evaluation report before the end of 2031, and, subsequently, before the end of every third year after 2031.</u></p>	<p>Section 37(1)</p>
<p style="text-align: center;"><i><u>Biodiversity targets</u></i></p> <p><b><u>6B Biodiversity targets: general</u></b></p> <p><u>(1) The Welsh Ministers may by regulations set targets in respect of any matter relating to biodiversity in Wales.</u></p> <p><u>(2) The Welsh Ministers may set a target in the regulations only if they are satisfied that meeting it would contribute to halting and reversing the decline in biodiversity, in particular through one or more of the following –</u></p> <p style="padding-left: 20px;"><u>(a) increasing the abundance of native species;</u></p> <p style="padding-left: 20px;"><u>(b) enhancing the resilience of ecosystems (in particular the aspects specified in section 6(2)(a) to (e);</u></p> <p style="padding-left: 20px;"><u>(c) increasing genetic diversity.</u></p> <p><u>(3) In considering whether a target would contribute to increasing the abundance of native species, the Welsh Ministers must have regard to the list published under section 7.</u></p> <p><u>(4) The regulations must, in relation to each target—</u></p>	<p>Section 33(1)</p>

<p><u>(a) specify a standard to be achieved, which must be capable of being objectively measured, and</u></p> <p><u>(b) specify a date by which the standard is to be achieved.</u></p> <p><u>(5) The regulations must—</u></p> <p><u>(a) include provision about how to measure—</u></p> <p><u>(i) progress towards achieving each standard specified under subsection (4), and</u></p> <p><u>(ii) whether the standard has been achieved, and</u></p> <p><u>(b) specify indicators as a means of measuring those things.</u></p> <p><u>(6) A target under this section is set when the regulations setting it come into force.</u></p> <p><u>(7) In this section—</u></p> <p><u>(a) “native species” means species that naturally occur or have in the past naturally occurred in Wales, including—</u></p> <p><u>(i) regularly occurring migratory species (both breeding and non-breeding) and natural colonists, and</u></p> <p><u>(ii) species that have been reintroduced in Wales following past extinction;</u></p> <p><u>(b) “natural colonists” means species that arrived in Wales of their own accord and have become established, including those that become migratory species.</u></p> <p><u>(8) In sections 6D, 6G, 6H and 6I, “specified standard” and “specified date”, in relation to a target set under this section, mean the standard and date specified under subsection (4).</u></p>	
<p><b><u>6C Duty to make regulations setting targets: priority areas</u></b></p> <p><u>(1) The Welsh Ministers must exercise the power in section 6B to set a target in respect of at least one matter within each priority area.</u></p> <p><u>(2) The priority areas are—</u></p> <p><u>(a) reducing the risk of the extinction of native species;</u></p> <p><u>(b) the effective management of ecosystems;</u></p>	

<p><u>(c) reducing pollution;</u></p> <p><u>(d) the quality of evidence to inform decisions relating to biodiversity, access to that evidence and its use and application.</u></p> <p><u>(3) Targets may not be set in respect of a matter within the priority area in subsection (2)(c) if a target may be set in respect of that matter under the Environment (Air Quality and Soundscapes) (Wales) Act 2024 (2024 asc 2).</u></p> <p><u>(4) In subsection (2)(a), “native species” has the meaning given by section 6B(7).</u></p> <p><u>(5) The Welsh Ministers must lay a draft of a Welsh statutory instrument containing the regulations required by this section before Senedd Cymru before the end of the period of 3 years beginning with the date on which the Environment (Principles, Governance and Biodiversity Targets) (Wales) Act 2026 (asc xx) receives Royal Assent.</u></p> <p><b><u>6D Target-setting process</u></b></p> <p><u>(1) Before making regulations under section 6B, the Welsh Ministers must seek advice from persons they consider to be independent and to have relevant expertise.</u></p> <p><u>(2) The Welsh Ministers must publish a summary of any such advice they receive.</u></p> <p><u>(3) When making regulations under section 6B, the Welsh Ministers must apply the principles of sustainable management of natural resources.</u></p> <p><u>(4) Before making regulations under section 6B that set or amend a target, the Welsh Ministers must be satisfied that the target or amended target can be met.</u></p> <p><u>(5) For the purposes of this Part, a target is met if the specified standard is achieved by the specified date.</u></p> <p><b><u>6E Duty to meet targets</u></b></p> <p><u>The Welsh Ministers must ensure that targets set in regulations made under section 6B are met.</u></p> <p><b><u>6F Designation of public authorities for the purpose of section 6(2A)</u></b></p>	
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<p>(1) <u>The Welsh Ministers may by regulations designate a public authority within section 6(11) in relation to a target set in regulations made under section 6B.</u></p> <p>(2) <u>Before making regulations under this section, the Welsh Ministers must consult –</u></p> <p style="padding-left: 40px;">(a) <u>the public authority they propose to designate,</u> <u>and</u></p> <p style="padding-left: 40px;">(b) <u>such other persons as they consider appropriate.</u></p> <p><b><u>6G Review of targets</u></b></p> <p>(1) <u>The Welsh Ministers may, from time to time, review a target set in regulations under section 6B.</u></p> <p>(2) <u>The Welsh Minister must review a target set in regulations under section 6B if it appears to them–</u></p> <p style="padding-left: 40px;">(a) <u>that the target may not be met, or</u></p> <p style="padding-left: 40px;">(b) <u>that the target may no longer be appropriate.</u></p> <p>(3) <u>If a target set in regulations under section 6B has not been met by the specified date in relation to that target, the Welsh Ministers must review all targets set in regulations under section 6B and that are in force on that date.</u></p> <p>(4) <u>In carrying out a review, the Welsh Ministers must seek advice from persons they consider to be independent and to have relevant expertise.</u></p> <p>(5) <u>The Welsh Ministers must publish a summary of any such advice they receive.</u></p> <p>(6) <u>After carrying out a review, the Welsh Ministers must lay before Senedd Cymru, and publish, a statement noting its conclusions.</u></p> <p>(7) <u>If the review concludes that a target will not be met or is no longer appropriate, the statement must note the reasons for that conclusion and the steps, if any, the Welsh Ministers intend to take in relation to the target in consequence of the review.</u></p> <p><b><u>6H Revoking or lowering targets</u></b></p> <p>(1) <u>The Welsh Ministers may not make regulations under section 6B that revoke or lower a target (the “existing target”) unless they are satisfied that—</u></p> <p style="padding-left: 40px;">(a) <u>because of changes to the evidence to which they had regard when setting the existing target,</u></p>	
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<p><u>meeting it would not contribute to halting and reversing the decline in biodiversity,</u></p> <p>(b) <u>meeting the existing target would have no significant benefit compared with not meeting it or with meeting a lower target,</u></p> <p>(c) <u>because of changes in circumstances since the existing target was set, the environmental, social, economic or other costs of meeting it would be disproportionate to the benefits, or</u></p> <p>(d) <u>meeting the existing target is no longer achievable—</u></p> <p style="padding-left: 40px;">(i) <u>because of changes in circumstances since the existing target was set, or</u></p> <p style="padding-left: 40px;">(ii) <u>because of changes to the evidence to which the Welsh Ministers had regard when setting the existing target.</u></p> <p>(2) <u>If the Welsh Ministers are satisfied that—</u></p> <p style="padding-left: 40px;">(a) <u>the costs of meeting the existing target would be disproportionate to the benefits as mentioned in subsection (1)(c), or</u></p> <p style="padding-left: 40px;">(b) <u>meeting the existing target is no longer achievable as mentioned in subsection (1)(d),</u></p> <p><u>they must, before making regulations under section 6B that revoke the target, consider whether to make regulations that lower the target.</u></p> <p>(3) <u>Before making regulations under section 6B that revoke or lower a target, the Welsh Ministers must lay before Senedd Cymru, and publish, a statement explaining why the Welsh Ministers are satisfied as mentioned in subsection (1).</u></p> <p>(4) <u>Regulations lower a target if, to any extent, they—</u></p> <p style="padding-left: 40px;">(a) <u>replace the specified standard with a lower standard, or</u></p> <p style="padding-left: 40px;">(b) <u>replace the specified date with a later date.</u></p> <p><b>6I Statement about targets</b></p> <p>(1) <u>On or before the specified date in relation to each target set under regulations under section 6B, the Welsh Ministers must lay before Senedd Cymru, and publish, a statement containing the required information.</u></p> <p>(2) <u>The required information is (as appropriate)—</u></p> <p style="padding-left: 40px;">(a) <u>that the target has been met,</u></p>	
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<p><u>(b) that the target as not been met, or</u></p> <p><u>(c) that the Welsh Ministers are not yet able to determine whether the target has been met, the reasons for that and the steps the Welsh Ministers intend to take in order to determine whether the target has been met.</u></p> <p><u>(3) Where the Welsh Ministers make a statement that a target has not been met, the Welsh Ministers must, before the end of 12 months beginning with the date on which the statement is laid, lay before Senedd Cymru, and publish, a report.</u></p> <p><u>(4) The report must –</u></p> <p><u>(a) explain why the target has not been met, and</u></p> <p><u>(b) set out the steps the Welsh Ministers have taken, or intend to take, to ensure the target is met as soon as reasonably practicable.</u></p> <p><u>(5) Before deciding on the steps referred to in subsection (4)(b), the Welsh Ministers must seek advice from persons they consider to be independent and to have relevant expertise.</u></p> <p><u>(6) The Welsh Ministers must publish a summary of any such advice they receive.</u></p> <p><u>(7) Where the Welsh Ministers make a statement that they are not yet able to determine whether a target has been met, the Welsh Ministers must, before the end of 6 months beginning with the date on which the statement is laid, lay before Senedd Cymru, and publish, a further statement containing the required information.</u></p> <p><u>(8) Subsections (2) to (7) apply to further statements under subsection (7) as they apply to a statement under subsection (1).</u></p>	
<p style="text-align: center;"><u><i>Biodiversity lists</i></u></p> <p><b>7 Biodiversity lists and duty to take steps to maintain and enhance biodiversity</b></p> <p>(1) The Welsh Ministers must prepare and publish a list of the living organisms and types of habitat which in their opinion are of principal importance for the purpose of maintaining and enhancing biodiversity in relation to Wales.</p> <p>(2) Before publishing a list under this section the Welsh Ministers must consult the Natural Resources Body for Wales (“NRW”) as to the living organisms or types of habitat to be included in the list.</p> <p>(3) Without prejudice to section 6, the Welsh Ministers must—</p>	<p>Section 33(2)</p>





<p><u>In section 6(1) (meaning of “public body”), after paragraph (f) insert— “(fa) the Office of Environmental Governance Wales;”.</u></p>	
<p><b>Environment (Air Quality and Soundscapes) (Wales) Act 2024</b></p> <p>Carve outs for the OEGW</p>	
<p>Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903)</p> <p><b><u>4A Policy making: environmental principles and integrating environmental protection</u></b></p> <p><u>(1) The Body must—</u></p> <p><u>(a) have special regard to the environmental principles when making policy in relation to Wales, and</u></p> <p><u>(b) integrate environmental protection into the making of such policy.</u></p> <p><u>(2) In complying with the duty in paragraph (1), the Body must have regard to guidance included in the environmental principles and integrating environmental protection statement or revised statement published under section 6 of the Environment (Governance, Principles and Biodiversity Targets) (Wales) Act 2026.</u></p> <p><u>(3) In this article —</u></p> <p><u>(a) “environmental principles” has the meaning given by section 2 of the Environment (Governance, Principles and Biodiversity Targets) (Wales) Act 2026,</u></p> <p><u>(b) “environmental protection” has the meaning given by section of that Act,</u></p> <p><u>(c) “policy” includes proposals for legislation, but does not include an administrative decision in relation to a particular person or case,</u></p> <p><u>(d) “making policy” includes developing, adopting or revising policies, and</u></p> <p><u>(e) “Wales” includes, so far as policy relates to fishing, fisheries or fish health, the area of the Welsh zone beyond the seaward limit of the territorial sea.”</u></p>	<p>Section 4(2)</p>
<p><b>Active Travel (Wales) Act 2013</b></p> <p>Section 2(1) of the Active Travel (Wales) Act 2013 is amended as follows:</p> <p><u>In section 10B (promotion by local and other authorities of active travel as a way of reducing or limiting air pollution), after subsection (4) insert—</u></p> <p><u>“(4A) Regulations under subsection (3) may not specify the Office of Environmental Governance Wales.”</u></p>	<p>Paragraph 2(2) of Schedule 4</p>

Please note: this document has been prepared solely to assist people in understanding the [insert name of Bill] (Wales) Bill. It should not be relied on for any other purpose.

<b>Environment Act 1995</b>  <u>Section 1(1) of the Environment Act 1995 is amended as follows:</u>  <u>In section 81B (functions of relevant Welsh public authorities etc.), after subsection (3) insert—</u> <u>“(3A) Regulations under subsection (3) may not designate the Office of Environmental Governance Wales as a relevant Welsh public authority.”</u>	Paragraph 1(2) of Schedule 4
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