

IEPAW

Interim Environmental Protection Assessor for Wales

Annual Report 2021/2022

Contents

Foreword	3
Introduction	4
Initial activities undertaken by the IEPAW	4
Reporting to the Welsh Ministers	9
Process review	10
Feedback	10

Foreword



The role of the Interim Environmental Protection Assessor for Wales (IEPAW) was created to consider concerns about the functioning of environmental law in Wales. It has been a

privilege for me to occupy this position since its inception in March 2021 and I'm glad to present my first annual report in this role.

Preserving the natural environment is one of the greatest challenges currently faced by humanity. From the impact of greenhouse gases in the atmosphere, to the quality of the water in our rivers and the protection of our forests, the environment touches upon the lives of every person in Wales and in other countries as well. Consequently, it is vital that we have the strongest possible legal framework in place to ensure its protection.

The first year of the IEPAW has been both rewarding and challenging. The volume of submissions that I have received during this time clearly demonstrate that there is a high degree of public engagement with the subject of environmental protection and an appetite to ensure that the law protects the environment in Wales. During this time, my team and I have been working hard to set up a service that ensures the concerns of the public about the functioning of environmental law are properly considered and highlighted to policy makers and regulators in Wales.

I am grateful for the opportunity I have had to carry out this important role over the last 12 months and look forward to the challenges that lie ahead.

Introduction

Dr Nerys Llewelyn Jones was appointed as the Interim Environmental Protection Assessor for Wales (IEPAW) in March 2021 to consider concerns raised by the public about the functioning of environmental law in Wales. This is an interim process that will be in place until a permanent body is established in Wales to oversee compliance with environmental law.

Dr Llewelyn Jones was contracted for a period of up to two years with the option of a one-year extension. She was contracted for a minimum of 20 days per annum. In practice, she has worked for between two and three days per month on IEPAW business.

The IEPAW is independent from the Welsh Government, although Welsh Government officials provide secretariat support to the IEPAW. Our focus is on the functioning of environmental law, not on breaches of that law.

Our aims are to:

- provide oversight of the functioning of environmental law in Wales; and
- to consider systemic issues relating to the working or functioning of environmental law in Wales.

Our role does not cover:

- breaches in environmental law;
- areas of non-compliance of environmental law; and
- issues raised that are covered by another complaints mechanism or process.

Our aim is to identify where action can be taken to improve the functioning of environmental law in order to improve environmental outcomes.

Details on how to raise a concern about the functioning of environmental law in Wales, as well as our terms of reference, are available at gov.wales/raising-concern-about-functioning-environmental-law

We have committed to publishing an annual report on the submissions we have received and any action we have taken in relation to them. This is the first annual report and covers the period 1 March 2021 to 28 February 2022.

Initial activities undertaken by the IEPAW

During the first 6 months, our primary focus was on putting in place the relevant processes and resources to enable us to carry out our role. This preparatory work included publishing information on the IEPAW, agreeing terms of reference, and putting in place a secretariat team to support the IEPAW.

Given that this is a new role, it has also been important in the first year to ensure that there is awareness of our function and how we can assist with ensuring that environmental law in Wales functions as it should. As such, stakeholder engagement has been an important part of the work we have undertaken over the last year.

Since March 2021, we have undertaken stakeholder engagement with a number of key regulators, partners and organisations across Wales' environmental and regulatory landscape.

With the aim of establishing an extensive professional network across Wales, we have met with representatives from a number of partner organisations including (non-exhaustively): the Auditor General for Wales; Natural Resources Wales (NRW); DEFRA; the Future Generations Commissioner for Wales; the Public Services Ombudsman for Wales; the Welsh Local Government Association; and the Law Commission. In addition, the IEPAW regularly meets with the UK's other environment bodies (further details below).

We have also engaged with a number of other organisations including the United Kingdom Environmental Law Association (UKELA), Greener UK/Green Alliance, RSPB Cymru, the National Farmers' Union (NFU), Wales Environment Link, the Environmental Governance Stakeholder Task Group, Dŵr Cymru, the Independent Environmental Advisory Panel (IEAP) to Dŵr Cymru Welsh Water and Environmental Platform Wales.

Alongside these stakeholders, we also meet with relevant officials within Welsh Government to discuss submissions received as well as relevant new and emerging issues.

Cross-border engagement

Given the cross-border nature of many environmental issues, it is important that we build and maintain constructive working relationships with our counterparts in the other nations of the United Kingdom. For this reason, we regularly meet with representatives from the Office for Environmental Protection ("the OEP") and Environmental Standards Scotland ("ESS"). These meetings are an invaluable forum for co-operation and exchange of information, enabling the three bodies to discuss our shared priorities, flag emerging issues, and share information on best practice. These meetings have been particularly useful given that, over the past year, all three bodies have been going through a period of establishment.

To strengthen this relationship further, we are currently working towards agreeing a tripartite memorandum of understanding with the OEP and ESS that will set out how the three bodies will seek to cooperate and share information. We intend to agree this memorandum during the course of 2022. The memorandum will be published on the IEPAW webpages once it has been agreed.

Process

We aim to provide an initial response to submissions within 20 working days of their receipt. During this year, we have responded within this timeframe for all but one of the submissions received. In this case, further analysis of the submission was required and a response was issued one day after the deadline.

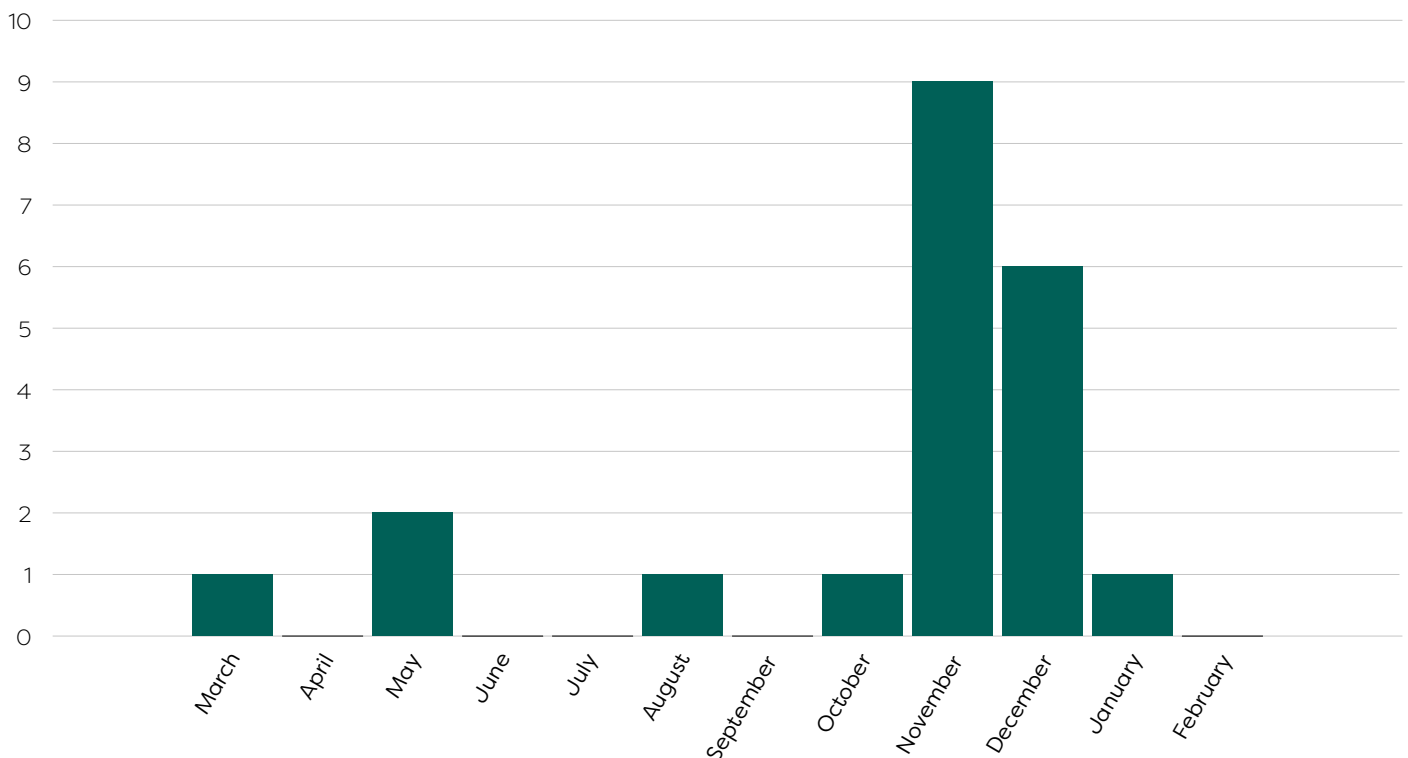
When a submission is received, it is subject to a scoping exercise to determine whether it relates to the functioning of environmental law in Wales and so can be considered by us. If the submission is within scope, then it will also undergo a prioritisation exercise to decide whether it should be the subject of a report for Welsh Ministers. Given the volume of submissions we receive, it is not possible to produce a report for each of them. Instead, we aim to target our resources to the issues that we consider to be of the highest priority.

Submissions received

During 2021/2022, we received 21 submissions covering a wide range of different environmental issues.

We received a steady number of submissions during the initial six months of the year, but there was a notable spike in submissions during November and December (15 submissions in these two months alone). These submissions accounted for the majority received during the year.

Figure 1: Number of cases received by calendar month for 2021/2022

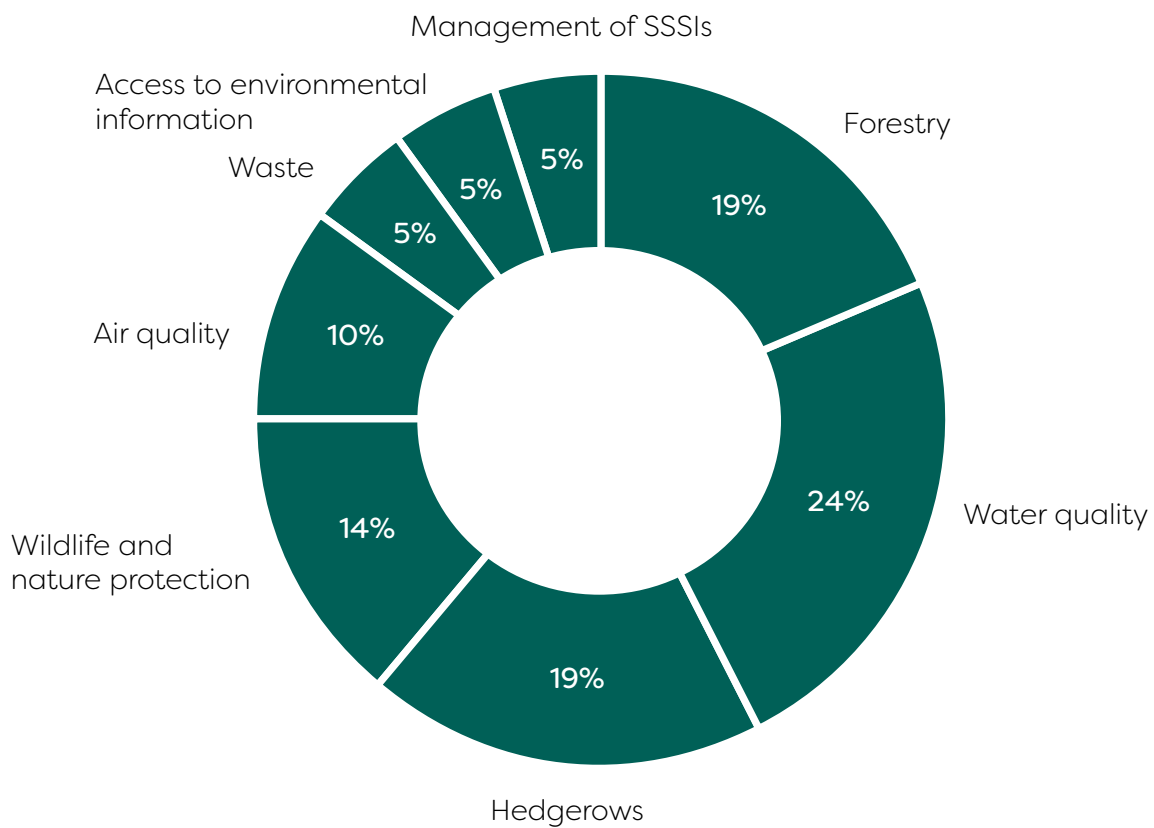


The environmental concerns covered in these submissions included:

- Four submissions related to forestry
- Five submissions related to water quality
- Four submissions related to hedgerows
- Three submissions related to the protection of wildlife and nature

- Two submissions related to air quality
- One submission related to waste
- One submission related to access to environmental information
- One submission related to the management of Sites of Special Scientific Interest

Figure 2: Breakdown of submissions received



Of these submissions, six were considered to be outside the scope of the IEPAW process so were not taken any further. In most cases, this was because the submissions related to potential breaches of environmental law, which we do not have the legal authority to investigate, or because they related to matters that were subject to potential or ongoing legal action. Six submissions were within scope

of the IEPAW process and are currently being considered. We are still determining whether aspects of the remaining submissions are within scope. In some cases, we have sought further information from the submitter or relevant public authorities to establish whether they are in scope and to carry out an initial consideration of the issues raised.

Key themes

Forestry

One of the key themes that emerged from the submissions we received related to forestry issues. In particular, submitters raised concerns about the interaction between tree preservation orders (TPOs), the Forestry Act 1967, and planning law in Wales.

One submitter expressed the following concerns:

- TPOs and felling licences are not effective mechanisms for preventing unlawful felling of trees;
- Planning law does not adequately consider the requirements set in the Forestry Act or the long-term impact of tree felling for development; and
- There should be a more joined-up approach between the different pieces of legislation relating to tree felling.

Another submitter wrote to us to suggest that the Government should amend the Forestry Act 1967 to ensure that wildlife conservation is taken into consideration when tree-felling licences are granted.

Finally, we received a submission about NRW's obligation to maintain a Regional Advisory Committee under the Forestry Act 1967. We did not consider that this submission was within scope. Nevertheless, we raised the issue with NRW directly and sought information on the status of the committee to relay back to the submitter.

We are producing a report on the issues raised in the first two submissions above for the Welsh Ministers. This report, and the Minister for Climate Change's response, will be published in due course.

Water quality

The theme that we received the most submissions on was water quality.

One submitter raised concerns on the following issues in relation to sewage discharges into Welsh rivers:

- The availability and use of enforcement mechanisms in relation to sewage overflow licences issued to private water companies and whether they are fit for purpose; and
- Whether there should be a legal requirement to monitor the volume of sewage released into watercourses by private water companies.

Another submitter expressed the view that NRW was failing to correctly interpret and enforce retained EU law in relation to storm overflows.

A third submitter also raised concerns about human waste in Welsh rivers and expressed the view that the regulator was not taking adequate enforcement action against water companies.

Another concern was raised about illegal pollution in rivers due to slurry, milk, mud, etc. The submitter alleged that this had resulted in the death of thousands of fish and invertebrates. They considered that the regulator was not able to enforce the law effectively due to a lack of resources and ineffective legislation.

Finally, we received a submission on environmental protection in the Severn basin. In particular, this submission raised concerns about the impact of poultry farming on water quality. The submitter also suggested that there was insufficient co-operation between the UK and

Welsh governments and stated that there had been a failure of cross-border environmental governance.

Given the number of submissions received on the theme of water quality and their potential severity, we intend to produce a report on this issue. In line with our role of reviewing the functioning of environmental law, it is likely that this report will focus on the legislative framework on water quality.

We are aware that the Senedd Committee on Climate Change, Environment and Infrastructure (the CCEI Committee) has recently carried out its own inquiry into storm overflows in Wales. The Committee's report is available at <https://senedd.wales/media/v4apg5wb/cr-ld15015-e.pdf>. We are following these developments with interest, and will monitor what action is taken in response to the report's recommendations. Given the timescales set out by the Committee for the various parties to report on their activities, we envisage that our own investigation will commence in the latter half of 2022.

Hedgerows

Another key theme that we identified was the preservation of hedgerows.

One submitter raised a number of concerns in relation to this issue. In their view, the Hedgerow Regulations 1997 do not meet their stated aim to protect hedgerows effectively. They were concerned that the Hedgerow Regulations allowed the removal of a substantial amount of hedgerows. The submitter considered that local authorities either did not understand them or did not have sufficient resources to apply them. They also raised concerns about the fact that the Hedgerow Regulations only applied to farmland and not parks or

gardens, and they considered that there were arbitrary standards about what constituted a hedgerow.

Another submitter wrote to express their concern that grant funding available from the Welsh Government was encouraging farmers to remove overgrown hedges and replace them with new ones. They were concerned that this activity may have an adverse impact on biodiversity.

Finally, we received two submissions regarding the use of bird-deterrent netting on hedgerows, particularly where developers were seeking permission to remove the hedges. These submitters were concerned that such practices would negatively affect bird populations by preventing them from roosting.

We are actively considering the concerns raised in these submissions. Although we have no immediate plans to produce a report on this theme at this time, we do not rule out considering this area of legislation in the future.

Reporting to the Welsh Ministers

During the period 1 March – 28 February 2022 we did not produce any reports for the Welsh Ministers. However, we are in the process of finalising our first report and will issue it to the Welsh Ministers as soon as possible in 2022. As discussed above, this first report will be on the subject of forestry and in response to two separate submissions received by the IEPAW during 2021.

Process review

This has been the establishment year of the IEPAW and therefore significant time has been spent putting in place the relevant processes to enable our work to be undertaken. During that time, we have been constantly reviewing and amending those processes, taking in to consideration the number and type of submissions received, feedback from stakeholders, and lessons learned during our first year of operation.

As part of this review we have put in place new processes for scoping new submissions received to determine whether they are in scope of the IEPAW. As part of this process, we will identify key legislation/case law and any wider issues, including media attention and any work that the Government or other bodies are undertaking in relation to the issues raised.

One key issue identified during the review has been that demand for the service has been significantly higher than originally expected. In light of this, we have been working to put in place more robust processes to ensure that we are targeting our resources at issues where we can add the most value. A key part of this is the development of prioritisation principles that we will use when assessing which submissions may warrant a report for the Welsh Ministers. We will publish further details on these principles in 2022.

Another issue identified was that submissions frequently lacked sufficient detail to allow us to determine whether a report to the Welsh Ministers may be warranted. In many cases, this has meant that we have had to enter into further

correspondence with the submitters, as well as other interested parties, to obtain the information needed to assess whether to take a submission forward. In addition, we also received a significant number of submissions that fell outside of the scope of our remit.

In order to mitigate these issues in the future, we are working to introduce a form for use by submitters. The aim of this form is to ensure that we receive the information we require at the outset, reducing the time and resources spent following up on concerns. Also, this form will hopefully ensure that fewer submissions are received that are not within remit as it will be clear for users what types of issue we may consider. We will publish this form in early 2022.

In addition, we are producing an infographic setting out the different environmental regulators operating in Wales. This will help to ensure that the public are directing their concerns to the most appropriate body.

Feedback

If you have any comments about this report or our role, or if you wish to raise a concern about the functioning of environmental law in Wales, please contact IEPAW@gov.wales.