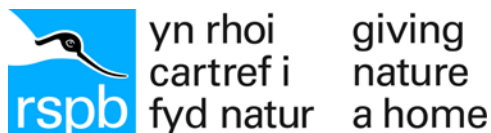


Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith /  
Climate Change, Environment and Infrastructure Committee  
Adferiad Gwyrdd a Mesurau llywodraethu amgylcheddol dros dro/  
Green Recovery and Interim environmental governance arrangements  
GR / IEG 02  
Ymateb gan / Evidence from RSPB Cymru



## Interim Environmental Governance Measures

RSPB Cymru paper to the Climate Change, Environment and Infrastructure Committee

### 1. The operation of the Interim Environmental Governance measures in Wales

#### Introduction

When the UK left the EU, the role of the EU institutions in providing oversight and enforcement of EU environmental laws ended. This governance framework provided accountability and access to justice for citizens, who were able to raise complaints with the European Commission, free of charge, if they felt their national government was failing to implement or abide by the law. The Commission could investigate, advise, and ultimately take enforcement action. Our departure from the EU also meant the loss of a framework of high level, guiding environmental principles enshrined in the EU Treaties.

The Welsh Government recognised this governance gap, and promised in 2018 to take the first legislative opportunity to bring these environmental principles into Welsh law and to introduce new domestic arrangements for environmental governance. Ministers have since accepted the recommendations of a specially convened stakeholder task group on how to do this. These recommendations included:

- enshrining the core environmental principles, with a high level environmental objective, into Welsh law, with a duty on Ministers to apply them; and
- establishing a new, independent environment Commission to oversee the implementation of environmental law in Wales, including providing a route for citizens to raise complaints, powers to investigate breaches, undertake inquiries, and take enforcement action where necessary.

Equivalent laws have now been enacted for Scotland, England and Northern Ireland, and new bodies – Environmental Standards Scotland and the Office for Environmental Protection (for England and Northern Ireland) – have been created. We are extremely concerned that in Wales there is still no clear timeframe to bring this legislation forward. This leaves us with a gap in our environmental legislation and a de facto weakening of

protection, as well as a reduction in citizens' rights, in spite of the Welsh Government's commitments to the contrary.

Following the Senedd declaration of a nature emergency, we welcomed the Climate Change Minister's commitment to bring forward legislation on environmental governance and principles and nature recovery targets in one environment protection bill; this commitment is backed up in the revised Programme for Government following the co-operation agreement. This makes sense, as the environmental governance body should have a role in advising government as to whether delivery matches up to ambition.

As set out in the RSPB Cymru/WWF Cymru report 'Putting Wales on Path to Nature Recovery', statutory targets are a key missing piece in Wales' framework of legislation relating to the natural environment. In other policy areas, such as waste and climate change, ambitious targets have been a catalyst for action. We advocate setting high level targets in primary legislation, with a framework setting out requirements for a detailed suite of SMART long term and interim targets in secondary legislation. The primary legislation should include a duty on the Welsh Government to halt and begin to reverse the loss of biodiversity by 2030 and achieve substantive recovery by 2050. This aligns with the international call, in the lead up to the 15th Conference of Parties under the UN Convention on Biological Diversity (CBD), for governments to commit to a new global goal to be Nature Positive by 2030.

#### Interim Environmental Governance Measures – experience to date

RSPB Cymru welcomes the role of Interim Environmental Protection Assessor for Wales (IEPAW) as a short term stop gap while permanent measures are developed. Our chief concern is that the work to develop permanent, statutory measures has stalled and there is a risk that the interim measures will be in place longer than the two years originally envisaged by the Welsh Government.

It is clear that the IEPAW role is no substitute for the promised statutory measures. In particular, the IEPAW cannot consider complaints regarding perceived breaches of or non-compliance with environmental law (the IEPAW Annual Report indicates that a number of the issues raised represented potential breaches and therefore could not be considered). As is made clear on the Welsh Government web-page regarding the IEPAW role, such matters would need to be pursued via existing mechanisms such as Judicial Review.

RSPB Cymru has had the opportunity to meet with IEPAW both directly and as a member of the Welsh Government's stakeholder task group on environmental governance (although this task group has not met for many months and we have no indication of future plans). We note that, in the email circulation of the annual report it was indicated that IEPAW would put quarterly stakeholder meetings in place, which we welcome.

The IEPAW role, as far as we are aware, has not been widely promoted and finding the relevant Welsh Government web-page depends on people knowing what to look for online. We note that a submission form has only very recently been added to the web-page, to help people to provide sufficient information for consideration.

Examples of relevant environmental matters that have not been addressed since the disapplication of the EU governance structures in Wales following EU withdrawal

The IEPAW's annual report states that six of the 21 submissions received were deemed out of scope because they related to potential breaches of environmental law or were subject to potential or ongoing legal action. It is not clear which area or areas these fell into – nature and wildlife protection, SSSI management, air quality, water quality, waste, access to environmental information, hedgerows or forestry – or whether they are matters which might in the past have been raised with the European Commission as breaches of EU law.

The following are examples of past interventions by the European Commission which illustrate the gap that exists in Wales at present:

The RSPB raised a complaint with the Commission in 2012 over concerns that the UK and devolved governments were failing to protect seabirds adequately in line with the EU Birds Directive. The resulting talks between the Commission and the UK Government led to the designation of new marine Special Protection Areas (SPAs) in all four UK countries. In Wales, this included protection for foraging terns off Anglesey, puffins and gannets around the Pembrokeshire Islands, and red-throated diver wintering in Cardigan Bay.

In March 2021 the Court of Justice of the EU (CJEU) ruled that the UK had systematically and persistently failed to fulfil its obligations under EU rules on air quality (after the Commission started proceedings against the UK in 2014); this ruling could lead to financial penalties should the UK Government fail to secure remedial action, but it is not clear whether the case will be pursued now that the UK has left the EU<sup>1</sup>. These failures, by both UK and Welsh Governments, have also been challenged successfully in the domestic courts by Client Earth. The Office of Environmental Protection will be the body to hold UK Government accountable in respect of future challenges; but there is thus far no independent body to hold the Welsh Government to account.

A future environmental governance body in Wales should also have the remit of holding Government to account regarding progress towards its environmental commitments and objectives. As an example, the OEP has recently published a challenging report to UK Government in respect of its 25 Year Environment Plan<sup>2</sup>, highlighting the gap between ambition and delivery. There is substantial evidence of a similar gap in Wales – for example, NRW's baseline assessment of protected sites<sup>3</sup> which found 60% of features (where there is enough data to make a judgement) to be in unfavourable condition; for around half of our SSSIs there is insufficient information available for an assessment to be made. Robust, independent governance is needed to help address this gap.

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<sup>1</sup> See <https://www.clientearth.org/latest/press-office/press/top-court-confirms-uk-has-broken-air-pollution-law/>

<sup>2</sup> [Taking stock: protecting, restoring and improving the environment in England | Office for Environmental Protection \(theoep.org.uk\)](https://www.theoep.org.uk/taking-stock-protecting-restoring-and-improving-the-environment-in-england)

<sup>3</sup> <https://naturalresources.wales/evidence-and-data/research-and-reports/protected-sites-baseline-assessment-2020/?lang=en>

The IEPAW does not have this level of independence from Government; as is clear from the annual report, IEPAW's first issue-based report to the Welsh Government has been supplied directly to Government and will be published alongside the Minister's response.

### Comments on the IEPAW's report

The report is a fairly high level summary and it is not possible to anticipate from it what we should expect to see in IEPAW issue-based reports to Government. In addition to the reflections above, we are struck by the statement that the number of issues raised with the IEPAW has been higher than anticipated. This indicates that there is significant concern in Wales regarding the implementation of environmental law; the governance gap is real and must be addressed.

## 2. Green Recovery

Progress in taking forward the 'priority actions' identified in the [Green Recovery: Priorities for Action](#) report

Besides work on the National Nature Service (NNS – see below), which has been largely independent of the Green Recovery Group and NRW, we are not aware of substantive progress on other priorities identified in the report or budget allocated to take them forward.

Progress in taking forward the recommendations in the [Green Recovery: Supporting the environmental sector in Wales](#) report

A new working group has been established, chaired by Professor Steve Ormerod, on Enabling the Environment Sector; the group has met three times to date (RSPB Cymru is one of the participating WEL representatives). We are keen that this group focuses not only on making the sector *resilient*, but ensuring it has the capacity and capability to succeed in helping to tackle the nature and climate emergency. It is expected that this group will shortly review an update report on the original report, and will develop a roadmap/action plan for implementation.

Key issues remain to be resolved, for example the call for core funding for the sector. The call for multi-year funding programmes is answered to some extent by the Nature Networks Programme, but we note that this fund is not yet open and there is a risk that delay will impede the prospects for delivery of works in the current financial year.

The development of the [National Nature Service](#) for Wales.

Over the past two years, RSPB Cymru has been part of a group of over 100 stakeholders across Wales that has convened to develop a proposal for delivering nature restoration, alongside new pathways for green jobs and skills through a National Nature Service (NNS) for Wales. Research commissioned by RSPB Cymru early in this process indicated that investment in restoring and creating priority habitats, as well as delivering a wide range of ecosystem services or nature-based solutions, has the potential to create around 7000 jobs<sup>4</sup>.

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<sup>4</sup> [\(PDF\) Developing a Green Workforce in Wales Estimating the Scale of the Need and Opportunity | rspb cymru - Academia.edu](#)

The most recent proposal for an NNS has outlined a vision for the Valleys Regional Park to become an 'early adopter'; a powerful opportunity to trial and showcase green job opportunities in an area that would thrive from the social, environmental and economic benefits.

We are delighted that the Welsh Government has now allocated funding to the further development of the NNS, and we are awaiting further information about how this will be taken forward.