

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Llŷr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee
Senedd Cymru
Cardiff Bay
CF99 1SN

8 June 2023

Dear Llŷr,

I hope this letter finds you well. I am writing to provide you with an update on the review conducted to assess the resourcing requirements of the Interim Environmental Protection Assessor for Wales (IEPAW).

This review was initiated in response to a recommendation in the CCEI's report on the operation of the interim environmental governance measures. The aim of the review was to evaluate the current level of resourcing available to the IEPAW in order to identify any gaps that may be preventing them from carrying out their role of overseeing the functioning of environmental law in Wales. Further details of the review are available in the annex below.

Based on the findings of the review, it is evident the IEPAW requires additional resources to continue to effectively carry out her important work. As a result, I am pleased to inform you the Welsh Government intends to take the following steps to ensure the IEPAW has the resources she needs to carry out this work:

- The appointment of a Deputy IEPAW,
- The recruitment of designated staff to provide secretariat support to the IEPAW, and
- Further money to be made available to the IEPAW to secure additional drafting support and expertise, including through a call-off contract.

This additional resource will ensure the Interim Assessor can carry out her work effectively and will ensure the IEPAW has greater resilience. This, in turn, will help support the transition to longer term environmental governance arrangements as we work towards bringing forward a Bill to establish a permanent environmental governance body during this Senedd term. The level of resourcing of the IEPAW will be kept under review and we may take further action if additional resourcing needs are identified.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I would like to thank the Committee for the work it has done in relation to the interim environmental governance arrangements. It is important we ensure these interim arrangements work as effectively as possible until a permanent environmental governance body is in place. The Committee's continued engagement and recommendations have been greatly appreciated.

Should you have any further questions or require additional information, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change,

ANNEX: REVIEW OF RESOURCING OF THE IEPAW

Background

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 and to report recommendations to Welsh Ministers to assist in improving environmental outcomes. In looking at the functioning of environmental law, the IEPAW can consider whether laws are fit for purpose, still relevant, whether they are appropriately explained or if there are practical issues preventing their appropriate implementation.

The IEPAW is independent from Welsh Government although Welsh Government officials provide her with secretariat support. The role is intended to continue until a permanent body is established to oversee environmental law within Wales.

The IEPAW has been in post for nearly two years. During this time, she has received 27 submissions from the public on the functioning of environmental laws in Wales and has issued one report to the Minister for Climate Change. This report was issued on 16 February 2023 and relates to the UK Government's proposed Retained EU Law (Revocation and Reform) Bill.

The IEPAW has an annual budget of £45,000.

CCEI Committee report on the operation of the interim measures

In September 2022, the Senedd Climate Change, Environment and Infrastructure (CCEI) Committee published a report on the interim environmental protection measures. This report raised concerns with the capacity of the IEPAW and resource constraints had led to delays in producing reports on the functioning of environmental law. In response, the Committee recommended the Welsh Government undertake an urgent review of the IEPAW's resources. The Welsh Government accepted this recommendation and committed to report back to the Committee on the findings of this review as soon as practicable.

To undertake the review, the Deputy Director of Landscapes, Nature and Forestry met with the IEPAW to discuss her resourcing needs and any additional support requirements. This paper sets out the results of those discussions.

IEPAW Commitments for 2023/2024

The IEPAW is currently working on, or has committed to undertake, a number of reports before the end of her appointment on 29 February 2024. These reports cover the following areas:

- Woodlands and forestry
- Hedgerow protection and management
- Protected sites
- The use of civil sanctions in environmental law
- Water quality

The IEPAW has also undertaken some initial scoping work on other issues, although it is not yet clear whether these will result in reports during the 2023/2024 reporting year.

In addition to the work on drafting reports, there exist a number of other pressures on the IEPAW's time. These include stakeholder engagement, participation in public events, and correspondence with submitters. The stakeholder engagement, in particular, has taken a considerable amount of the IEPAW's time over the last two years.

Alongside these commitments, it is envisaged that the IEPAW will need to devote additional time during the next 12 months and beyond to liaise with Welsh Government officials to inform the development of the permanent environmental governance arrangements.

The IEPAW was contracted for a minimum of 20 days per annum. In practice, she has devoted between two and three days per month on IEPAW business.

Resourcing need

The principal gaps identified by the IEPAW are legal research and the drafting of reports. Dr Llewelyn Jones noted she is satisfied with the support she receives from the individuals in her existing Secretariat Team but had concerns about their being Welsh Government policy officials with other demands on their time and potential conflicts in relation to her perceived independence. She considered the IEPAW would benefit from additional legal expertise.

To date, the IEPAW Secretariat has been seeking to fill these gaps through individual small tenders with academics and legal professionals. These tenders have been used to commission research papers used to form the basis of IEPAW reports. This has allowed the IEPAW to make progress on several reports and offers the advantage that individuals with specific expertise can be identified to work on specific issues.

However, this approach has its limitations. Firstly, the use of individual tenders for specific reports has placed a degree of administrative burden on the IEPAW's small Secretariat Team. Secondly, the use of different experts creates the risk there will be a lack of consistency across the IEPAW's reports.

It is for these reasons the IEPAW considers a more permanent solution is required.

Approaches to increase the capacity of the IEPAW

Discussions with the IEPAW identified three possible options to increase the capacity of the service. These approaches would be complementary and advancing all of them is likely to achieve the best outcome.

Approach 1: Appoint a Deputy IEPAW

This option is for the Welsh Government to appoint a deputy for Dr Llewelyn Jones via the public appointments process. This would give the IEPAW Team added resilience in case the IEPAW is ever indisposed and would also free up the IEPAW to focus more on the strategic aspects of the role.

The Deputy role would broadly mirror that of the existing IEPAW and would require legal expertise, thus ensuring the existing skills gap within the team is filled. As with the existing IEPAW, this would be advertised as a part time role.

Approach 2: Appoint additional staff to carry out the Secretariat function

Another option discussed with the IEPAW was to appoint additional staff to provide her with secretariat support.

Currently, the IEPAW has a Secretariat Team composed of two Welsh Government officials. Although the IEPAW indicated she is satisfied with the support she has received from these officials, she has concerns the IEPAW secretariat work is only one part of their roles. Both staff are also responsible for other work areas, and so cannot devote all their time to IEPAW work.

It was noted the use of Welsh Government officials who were not solely focused on IEPAW work could be perceived as being incompatible with the independent nature of her role. The IEPAW was of the view that having in place a designated team that was solely focused on IEPAW business would help to bolster this independence.

Looking to the longer term, the IEPAW also suggested the Welsh Government should consider the possibility of putting in place a 'shadow' environmental governance body that could support the IEPAW and carry out certain functions of the permanent body before it is established. It was recognised that this approach was unlikely to be deliverable in the short-term, but the IEPAW suggested the Welsh Government should give further consideration to this option as work towards establishing the permanent body progresses.

Approach 3: Call-off contract

This option would involve the Secretariat Team putting in place a call-off contract with an external provider to provide legal research and drafting support to the IEPAW.

It is anticipated the contracted party would be responsible for undertaking the initial scoping work associated with submissions received by the IEPAW, the initial analysis of stakeholder evidence received, and the production of draft reports for the IEPAW. The IEPAW role would be in providing expertise in considering the reports, quality assurance, producing recommendations, as well as setting the overall strategic direction of the service.

Consideration had been given to using the existing Welsh Government Legal Services Procurement Framework to procure this work. The costs of this approach could be significant, though, so it is likely additional budget would be required.

Conclusions

The Welsh Government thanks the IEPAW for the work she has undertaken over the last two years, and for her assistance in preparing this review. Officials will give further consideration to the approaches identified above and will report back on the decisions taken in light of this review.