

Report on operation of interim environmental protection measures 2023-24

October 2024

1. Introduction

1. The role of the Interim Environmental Protection Assessor for Wales (‘the IEPAW’) was established by the Welsh Government to bridge the gap between the end of the Brexit transition period and the establishment of a new environmental governance body for Wales.
2. This is the Climate Change, Environment and Infrastructure Committee’s third report on the operation of the **interim environmental protection measures**. Whereas previous reports have dealt with the broader aspects of this policy area, this report focuses on the Committee’s annual scrutiny of the IEPAW. This reflects the recent progress in this area, including through the publication of a white paper on the future governance arrangements.
3. On 18 July 2024, the Committee took evidence from Dr Nerys Llewelyn-Jones, the IEPAW, and the two Deputy IEPAWs, Anna Heslop and Lynda Warren.



2. Operation of the office of the IEPAW

Resources

4. In its 2023 report, the Committee expressed concern about the capacity and resources of the IEPAW's office. In response, the Welsh Government conducted a review and made several commitments to address the issue, including:

- The creation of the role of a Deputy IEPAW;
- An increase in the number of staff providing secretariat support; and
- An increase in funding to enable the procurement of external drafting support and expertise.

5. The Deputy IEPAW role was advertised in December 2023. Two Deputy IEPAWs, Anna Heslop and Lynda Warren, were appointed in May 2024.

6. Dr Llewelyn-Jones highlighted that resources continued to be a challenge for the office. Although the appointment of the Deputy IEPAWs had added some capacity, the increase in resources had not been as significant as it might first appear, as each deputy is contracted to work two days per week.

7. Staff providing secretariat support had been increased by only a half of a full-time equivalent. Dr Llewelyn-Jones said the current staffing levels were insufficient to address the growing workload for her office. She said that the office had made use of PhD student placements in an attempt to plug the gap, but this was not the same as having permanent staff.

8. Dr Llewelyn-Jones explained that the procurement of external legal expertise had also proved to be a significant challenge over the past year and had taken up time and resources. She suggested that the efficiency and consistency of the IEPAW office's work would be improved by having permanent legal expertise within the team.

Monitoring impact

9. This Committee expressed disappointment in its 2023 report that formal arrangements had not been put in place by the IEPAW or the Welsh Government to monitor the impact of the IEPAW's work.

10. The IEPAW's 2023-24 annual report explained that the office had prioritised the development of a formal review process in relation to submissions it has received. Anna Heslop told the Committee that monitoring the environmental impact of the IEPAW's recommendations could be challenging, particularly as the impact of some recommendations would be longer-term. However, she reassured the Committee that the office was developing ways to monitor and report on this.

11. In reference to the Welsh Government's role in monitoring the IEPAW's work, Dr Llewelyn-Jones said she had not yet received any formal feedback from the Welsh Government in relation to the office's performance.

12. Anna Heslop explained that the IEPAW's office was also developing processes to monitor its internal performance. She said that the detailed nature of this internal monitoring might not be suitable for publication as it could involve sensitive internal discussions. When challenged on this, she reassured the Committee that the IEPAW's office was committed to transparency and that its annual report would include details of its performance.

Engagement with OEP and ESS

13. Dr Llewelyn-Jones highlighted the ongoing work between the IEPAW and its counterparts in England/Northern Ireland and Scotland, the Office for Environmental Protection (OEP) and Environmental Standards Scotland (ESS). In 2022, the three organisations had agreed a Memorandum of Understanding relating to cooperation and information sharing. Dr Llewelyn-Jones said that the IEPAW's office would be hosting a tripartite meeting between the organisations in Cardiff in August 2024. She highlighted the importance of hosting the event in Wales, given the ongoing developments in relation to environmental governance.

Our view

Despite some efforts from the Welsh Government to address resource issues within the office of the IEPAW, it is clear that resource challenges are ongoing. Although the addition of deputy IEPAWs has gone some way to relieving workload pressures, it is too early to see the outcomes that will result from the appointments. The increase in secretariat support appears to fall short of what is needed.

We recognise, of course, that the Welsh Government plans to transition from the interim arrangements to permanent governance arrangements in due course. It is natural, in such circumstances, that focus shifts to the establishment of the

new body. However, it is vital to ensure that the staffing resource in the IEPAW's office is sufficient to ensure that the transition is smooth and efficient. Furthermore, the IEPAW's office must be able to effectively carry out its existing role and responsibilities as the transition progresses.

We were pleased to receive assurance from the IEPAW's office that it is developing frameworks for performance monitoring. We recognise that a lack of resources has made this difficult up to now. We believe this should continue to be a priority over the coming months, as the new team develops its working arrangements and prepares for the transition to a permanent environmental protection body.

We welcome the IEPAW's close working with the OEP and ESS and we believe this will be particularly important for the transition to permanent governance arrangements. Similarly, we expect the Welsh Government to engage with the OEP and ESS as it develops its permanent environmental governance arrangements.

Recommendations

Recommendation 1. The Cabinet Secretary should engage with the IEPAW to ensure her office has sufficient resources to deal with its workload. This is particularly important to ensure its work is not lost as focus shifts to the transition to the new body.

Recommendation 2. The Cabinet Secretary should engage with the IEPAW to consider whether staffing arrangements can be put in place, including through secondments, to facilitate the transfer of experience and expertise during the transition period.

Recommendation 3. The IEPAW's office should include in its next annual report details of the work it has undertaken to monitor its performance and the impact of its work.

3. The work of the IEPAW

Reports

14. In its 2023 Report, this Committee expressed disappointment about the lack of reports issued by the IEPAW's office, with only one report - on the Retained EU Law (Revocation and Reform) Bill (REUL Bill) – having been submitted to Welsh Ministers. The Committee, however, acknowledged that capacity and resource constraints were key issues contributing to the delays in the production of reports.

15. In June 2022, Dr Llewelyn-Jones informed the Committee that she was completing a report on forestry and hoped it would be published "in the very near future". During the June 2023 scrutiny session, she indicated that the forestry report "will be available very soon". At the time of writing this report, this work was yet to be published.

16. When she appeared before the Committee in July 2024, Dr Llewelyn-Jones said she was "disappointed that I haven't been able to publish reports during this recent period". She went on to explain that:

"There are five reports in progress at the moment: forestry, hedgerow, protected sites, civil sanctions and water quality. The preparation of these reports has extended beyond the initial timeline because of issues emerging, including further submissions for consideration on these issues, and also the additional workload that's come to us during the past year."

17. Dr Llewelyn-Jones noted that significant progress had been made in the past two months, particularly with the forestry and hedgerow reports, which were nearing completion.

Submissions

18. In the 2023-24 period, the IEPAW received nine submissions, which was an increase from the six submissions received in the previous year. The submissions covered topics such as protected sites, water quality, ammonia emissions from agricultural sources, tree preservation orders, local development planning, and opencast coal mining. However, not all submissions had been taken forward by the IEPAW's office.

19. Dr Llewelyn-Jones suggested that the reason for the increase in submissions was public awareness of the IEPAW's role. To further improve public awareness, a

new communications strategy was being developed, with the aim of increasing the office's visibility and clarifying its role to the public. She did caution, however, that an increase in submissions resulting from improved public awareness would have an impact on the office's resources.

Advising public bodies: Engagement with Natural Resources Wales

20. Dr Llewelyn-Jones emphasised the importance of maintaining regular communication with NRW. She said meetings between the IEPAW's office and NRW allow both organisations to share feedback and discuss areas where environmental law in Wales could be improved.

21. Dr Llewelyn-Jones said that engagement with NRW had led to it creating a regional advisory committee as a sub-body of its land management committee and the creation of a public register to allow members of the public to obtain information on pollution matters in Wales. She said this could have a significant impact:

"That is an example of how, perhaps, the way we work, the liaison we have, the good relationships that we've built can actually achieve results and change without, necessarily, the expense and the cost of a report and the time being spent in relation to that."

Our view

Our scrutiny highlighted the continued challenges in relation to the production of reports, and this has been primarily due to resource constraints. While the appointment of deputies has increased the office's capacity, delays in publishing important reports, such as those on forestry and hedgerows, remain a concern. We will expect to see improvements in this area over the coming year.

We note the ongoing efforts by the IEPAW and her office to enhance public awareness and the IEPAW's view that the increase in submissions reflects growing recognition of the IEPAW's role. However, challenges remain in ensuring that the public is fully informed about how to engage with the office effectively. Furthermore, it is possible that increases in recognition will mean a further increase in submissions, which will likely affect the office's capacity. This matter must be kept under review by the Welsh Government.

We note the positive comments from the IEPAW about her office's close work with NRW. This informal engagement and relationship-building is an important aspect of the office's work that needs to continue to be developed, although we recognise that this, again, will require resources.

Recommendations

Recommendation 4. The IEPAW should keep under review the potential impact of increasing public submissions on the IEPAW's capacity, with a view to making the case for additional resources to manage future demand, if necessary.

4. Permanent governance arrangements

22. In early 2024, the Welsh Government consulted on a **White Paper** with proposals for an environmental governance body, environmental principles and biodiversity targets. The associated Bill **is expected** in the last year of this Senedd term. The Cabinet Secretary for Climate Change and Rural Affairs **told this Committee on 26 June** that it is unlikely that the new body will be established during this Senedd term.

Permanent governance arrangements

23. Both Dr Llewelyn-Jones and Anna Heslop emphasised the urgency of establishing a permanent environmental governance body. Dr Llewelyn-Jones also stressed the importance of ensuring a smooth transition from the interim arrangements to the permanent body. She said this issue was being discussed with the Welsh Government's environmental governance team.

24. Dr Llewelyn-Jones said that her office had met stakeholders to gather their views on the establishment of the permanent body. She indicated she was considering preparing a report on the experiences of the interim assessor, focusing on "the lessons learned over the past three years".

25. In response to a question, Dr Llewelyn-Jones acknowledged the advantages of establishing a shadow body to facilitate the transition, similar to the approach taken with the OEP and ESS. She assured the Committee that "those are the sorts of discussions we are having with the department that's developing this".

26. In reference to the recently published White Paper on the proposals for the new governance body, Dr Llewelyn-Jones indicated that the IEPAW did not have any specific comments at this stage.

Succession arrangements

27. Dr Llewelyn-Jones was appointed as the IEPAW by the Welsh Government on 24 February 2021, initially for a term of up to two years. Given the evolving needs of the office and the progress of developing permanent environmental governance arrangements, her role was extended first from February 2023 to February 2024 and again to February 2025.

28. Dr Llewelyn-Jones addressed questions about the steps being taken to ensure a smooth transition to her successor. She said discussions were ongoing

regarding the future of her role beyond February 2025, including whether there might be a further extension or the appointment of a new assessor.

29. In terms of the office's resilience, Dr Llewelyn-Jones added that the deputy assessors had been appointed for a three-year term to ensure continuity and to prevent potential gaps emerging during the transition to the permanent body.

Our view

Several years have passed since the Welsh Government committed to legislate to address the environmental governance gap. Of course, we welcome the publication of the White Paper earlier this year and the commitment that legislation will be brought forward in June 2025. However, we are disappointed by the lack of pace and priority afforded to this important policy area.

We have, on many occasions, called for a permanent governance body to be established and operational by the end of this Senedd term. The previous Minister said that she was aiming to "get the new office up and running before the end of the Senedd term." More recently, the current Cabinet Secretary has said the body is unlikely to be established before the next Senedd election. The drift in the timetable is a concern for this Committee. Now that the White Paper has been published and the Welsh Government has responded, it should set out the timescale for the establishment of the new body. This is particularly important given that there will be a need to appoint commissioners to the new body and staff (up to approximately 20, according to its response to the White Paper), and there will be a need to transition to the new arrangements from the existing regime. As set out in our 2023 report, experience in England/Northern Ireland and Scotland has shown that once legislation is in place, a new body could be fully operational within months. Early establishment of a shadow body, as was the case for the OEP, will allow much of the groundwork to be done in advance of the statutory body, allowing a smooth transition. However, the Cabinet Secretary has said that a shadow body will not be necessary in Wales, as interim arrangements are already in place. We would be grateful, then, for further details from the Cabinet Secretary about how the transition between the two set-ups will be managed.

We would encourage the IEPAW and her office to share their expertise and valuable experience to inform the transition process. We endorse the IEPAW's suggestion that her office would prepare a "lessons-learned" report as part of that work.

As set out in Chapter 1, we believe the Welsh Government should engage with equivalent governance bodies in England/Northern Ireland and Scotland to inform the development of the proposed permanent arrangements and the transition to it.

Recommendations

Recommendation 5. The Cabinet Secretary should set out a clear and detailed timeline for the establishment of the new environmental governance body.

Recommendation 6. The Cabinet Secretary should outline specific steps for managing the transition from interim arrangements to the new governance body, and provide clarity on how this will be achieved effectively without a shadow body.

Recommendation 7. The IEPAW should produce and publish a “lessons learned” report, based on her experience of the interim arrangements, to inform the transition to a permanent governance body. The Welsh Government should commit to publishing a response to the IEPAW’s report.

Recommendation 8. The IEPAW should ensure that its next annual report sets out details of how it is feeding into establishment of the new body.

Recommendation 9. The Cabinet Secretary should ensure that Welsh Government officials engage with the OEP and ESS to inform the development and smooth transition to the permanent environmental governance arrangements in Wales.