

Report on operation of interim environmental protection measures 2022-23

September 2023

1. Introduction

1. This is the Climate Change, Environment and Infrastructure Committee's second report on the operation of [interim environmental protection measures](#) ('the interim measures'). It builds on the conclusions and recommendations in our [first report](#) (September 2022) and includes suggested next steps towards the establishment of permanent governance arrangements in Wales.
2. The interim measures, headed by the Interim Environmental Protection Assessor for Wales ('the IEPAW'), were put in place 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.
3. Dr Nerys Llewellyn-Jones took up post as the IEPAW in March 2021 for a two-year period. She has since been reappointed for a further year. Her appointment is due to come to an end in February 2024.

Our approach

4. On [21 June 2023](#), the Committee took evidence from Dr Nerys Llewellyn-Jones. The session was informed by the [IEPAW's Annual Report 2022-23](#), June 2023 ('the Annual Report 2022-23').



5. The Committee also took evidence from Dame Glenys Stacey, Chair, Office for Environmental Protection ('OEP'); Natalie Prosser, Chief Executive, OEP; and Mark Roberts, Chief Executive, Environmental Standards Scotland ('ESS'). The purpose was to gain insight into the establishment and operation of the permanent environmental governance bodies elsewhere in the UK to learn lessons ahead of the establishment of a new Welsh body.

6. Following the evidence session, the Committee wrote to the OEP and ESS to request additional information. Copies of the exchanges in correspondence can be found on [Senedd Cymru's website](#).

7. On [8 June 2023](#), the Committee held a one-off session with stakeholders on biodiversity and the nature emergency. Evidence received during that session has also informed this report.

8. We would like to thank everyone who contributed to this report.

2. The second year of the IEPAW

Overview

9. In the Annual Report 2022-23, Dr Llewelyn-Jones summarises the IEPAW's work during its second year, stating, "my team and I have been working hard to assess the effectiveness of legislation related to environmental protection in Wales and to provide recommendations for improving and strengthening this legislation". She added, "we have been working hard to drive forward reports in a number of key areas as well as taking steps to ensure the service we provide is more transparent for the public and our stakeholders".

10. Dr Llewelyn-Jones told the Committee that the interim measures were "working well", recognising that the IEPAW's remit differs from those of permanent governance bodies in other parts of the UK. She added, "in terms of the remit I have at present, I feel that we should be very proud of what we've been able to achieve during the past year and these first two initial years".

Working to improve processes

11. During the 2022-23 reporting period, the IEPAW's office introduced a submission form to help ensure it receives the information it requires at the outset. According to the Annual Report 2022-23, the form has been effective, reducing the time and resources spent following up on concerns. Additionally, "there has been a marked decrease in the number of submissions being received that are outside the remit of the IEPAW".

12. The IEPAW has produced a signposting guide on different environmental regulators (May 2023) to help direct concerns to the most appropriate body. The IEPAW has also developed prioritisation principles (April 2023) for deciding which submissions warrant a report to Welsh Ministers.

Responding to submissions

13. The Annual Report 2022-23 explains that the IEPAW received six submissions during the reporting period, all of which were responded to within 20 days of receipt. The submissions related to: the protection and management of protected sites; water quality; planning (deemed outside the scope of the IEPAW process); contamination by polychlorinated biphenyls (PCBs); and forestry.

14. The number of submissions received in 2022-23 was significantly fewer than the 21 received in 2021-22. When asked about this, Dr Llewelyn-Jones explained that the number of submissions in 2021-22 was much higher than anticipated by the Welsh Government. She said when the IEPAW service was established, “they foresaw that there would be about five or six per year...it now has levelled out to what the expectation was”.

Raising public awareness and improving transparency

15. The Committee’s first report recommended that the IEPAW seeks ways to raise public awareness of the service and improve transparency in relation to the IEPAW’s work. The Annual Report 2022-23 explains that the IEPAW has taken steps to implement the Committee’s recommendations, including:

- the introduction of a series of quarterly stakeholder meetings;
- publishing details of the IEPAW’s rolling programme of work on its web pages; and
- reaching out to public advice bodies to ensure that they are aware of the IEPAW service; and
- refreshing the IEPAW’s webpages to make them more navigable for users and to highlight the independent nature of the IEPAW.

16. Dr Llewelyn-Jones told the Committee she is keen “to prioritise spending more money on publicising the [IEPAW’s] role and also engaging with stakeholders...Doing the day-to-day work has been a huge task, never mind those things that I would have liked to have done if I'd had the time and resources to do so”.

Reporting to the Welsh Government

17. The IEPAW is responsible for considering relevant issues submitted about the functioning of environmental law and producing reports of advice to the Welsh Government on them as deemed necessary.

18. The Committee’s first report raised concern that constraints on capacity and resources within the IEPAW’s office were a barrier to timely reporting. This was because, during the 2021-22 reporting period, the IEPAW had not submitted any reports to the Welsh Government, although a report on forestry was expected in the summer of 2022.

- 19.** According to the Annual Report 2022-23, the IEPAW submitted one report to the Welsh Government during the reporting period. This report related to the potential impact of the Retained EU Law (Revocation and Reform) Bill on environmental protection in Wales. The report on forestry had been subject to further delay, and reports on hedgerow protection, protected sites and civil sanctions were still “under development”.
- 20.** The Committee asked Dr Llewelyn-Jones to explain why the forestry report had still not been submitted to the Welsh Government. She highlighted that this had been her first piece of work, and, in hindsight, she would have taken a different approach to evidence gathering. She added, “in terms of capacity, it's been difficult to spend the time drafting that report based on the evidence received”.
- 21.** Dr Llewelyn-Jones also explained, “since committing to undertake that work [on forestry], we've had a number of other submissions on similar issues in that field. So, every time we got close to completion, something else has been raised that we need to take into account”. She said she was keen for the report to be comprehensive and impactful, and she was hoping it would “be available very soon”.
- 22.** Dr Llewelyn-Jones explained that work on the REUL Bill had been included in her work programme “at short notice” and had been prioritised, given it was time critical. The Minister published a response to the report in May 2023, three months after the report was submitted, rather than within the agreed six weeks.
- 23.** Dr Llewelyn-Jones said she was committed to ensuring all reports currently under development would be submitted before her appointment ends in February 2024.

Monitoring and evaluation

- 24.** The Committee sought clarification on steps the IEPAW had taken during the 2022-23 reporting year to monitor the impact of its work on Welsh Government decisions and environmental outcomes. Dr Llewelyn Jones told the Committee:

“There hasn't been a formal process...That is something that we are looking at in detail at the moment. Clearly, we've had one report published, and I'm looking at how we can monitor the response, in a way, to the recommendations that have been

made to the Welsh Government on that, and I'm speaking to other stakeholders about that at present."

25. She added, "it's a very difficult thing to measure, in terms of what the impact has been".

Increasing capacity and resource

26. The Committee's first report questioned whether the IEPAW had sufficient resources to carry out its role and responsibilities effectively. The Committee recommended that the Welsh Government undertake an urgent review of resources available to the IEPAW. The Minister accepted the recommendation and committed to report to the Committee on its findings as soon as practicable. The Committee has yet to receive this information.

27. According to the Annual Report 2022-23, the review has been completed and identified "clear resourcing issues". In response to the review findings, the Minister for Climate Change has committed:

- to appoint a Deputy IEPAW;
- to recruit designated staff to provide secretariat support to the IEPAW; and
- to further budget for the IEPAW to secure additional drafting support and expertise, including a call-off contract.

28. Dr Llewelyn-Jones welcomed the above commitments. However, she explained that a Deputy IEPAW had yet to be appointed and raised concerns about a potentially lengthy appointment process. She added, "I could do with having someone in place now".

29. In commenting further on resources, Dr Llewelyn-Jones said, "Between now and when my role comes to an end at the end of next February, we have four reports to publish. So, that is a huge task. And I hope that the plan we have in place, and the resources will be sufficient. But, clearly, that's a significant amount of work to undertake".

Our view

The IEPAW service has now been in place for over two years. During its second year, it has continued work commenced in year one; responded to six new

submissions; completed work on the REUL Bill; and has sought to improve its processes and practices and raise its public profile.

Notwithstanding the above, we would have expected, by now, to have seen more by way of outputs from the IEPAW's work, with only one report having been submitted to the Welsh Ministers. We acknowledge that capacity and resource constraints have been a key contributing factor to delays in reporting. It is regrettable, therefore, that the resource review recommended by this Committee took so long to complete. We expect the provision of additional drafting support and expertise to help address the backlog of reports during the coming year.

Despite the Minister's commitment to report to us on the findings of the resource review, we have yet to receive this information. We expect the Minister to address this issue. We also expect additional resources to be made available to the IEPAW in a timely manner, including in the form of a Deputy IEPAW.

We are concerned that, two years into the operation of the interim measures, neither the IEPAW nor the Welsh Government have arrangements in place to monitor the impact of the IEPAW's work.

We would expect the IEPAW to have arrangements in place for tracking the implementation of recommendations made to the Welsh Government, for following-up progress where appropriate, and for monitoring the impact of its work on environmental outcomes.

In our first report, we sought clarification from the Welsh Government on arrangements for monitoring and evaluating the ongoing effectiveness of the interim measures, including the IEPAW's role. In its response, the Welsh Government said there were no formal monitoring arrangements in place, although it had been "considering options". It added, "consideration is being given to how such an evaluation process could be used to inform the design and development of a permanent environmental governance body for Wales". We would welcome an update from the Minister on this matter.

Recommendation 1. The Minister should report back to the Committee on:

- the findings of the resource review, including when additional resources will be made available; and

- steps that have been taken to date to appoint a Deputy IEPAW. This should include an indicative timetable for the remaining stages of the appointment process.

Recommendation 2. The IEPAW should establish a formal process to monitor the impact of its recommendations on Welsh Government decisions and environmental outcomes. This will allow the IEPAW to assess its impact.

Recommendation 3. The Minister should:

- provide details of the proposed options for monitoring and evaluating the effectiveness of interim measures;
- clarify when an evaluation of the interim measures will be undertaken; and
- explain how the findings of the evaluation will be used to inform the design and development of a permanent environmental governance body for Wales.

3. What next for environmental governance in Wales?

An IEPAW beyond February 2024?

30. As mentioned earlier in this report, Dr Llewellyn-Jones took up post as IEPAW in March 2021 for a two-year period. She has since been reappointed until February 2024.

31. The Committee asked Dr Nerys Llewellyn-Jones whether the Welsh Government had discussed the potential for extending her appointment beyond February 2024 with her, given that a permanent environmental governance body will not be established before then. Dr Llewellyn-Jones said:

"I've questioned the Minister on this, because it's important not just for the role, but also in terms of the capacity and the work that we're taking on. I don't want to commit to work that I don't feel that I will be able to complete without knowing what's happening for the future. So, clearly, these are very important issues."

32. She added, "What I have had from the Minister is confirmation that there will be no gap between my interim role and any permanent arrangements".

Growing calls for an environmental governance body

33. Since the Fifth Senedd, the environmental sector in Wales has been calling for the Welsh Government to bring forward an environmental governance Bill to establish a new environmental governance body. More recently, other organisations have added their voice to the call.

34. In February 2023, over 300 organisations under the banner of Climate Cymru wrote an [open letter to the First Minister](#) calling for him to bring forward a 'Nature Positive Bill' in year three of the Legislative Programme that:

- Enshrines a commitment to a Nature Positive Wales in law, underpinned by legally binding nature recovery targets; and
- Ensures environmental justice for the people of Wales by establishing an independent environmental governance body.

35. The letter states:

“Wales is the only home nation not to have taken meaningful action to fill the environmental governance gap (after leaving the EU). We alone lack an independent body which can oversee and enforce the delivery of environmental targets and protections. Action to address this has been pushed back year after year in Wales.”

36. In June 2023, the Welsh Government was presented with letters and messages from more than 2,000 members of the public and 350 organisations calling for “urgent action for nature including legally binding targets for nature’s recovery and restoration, and an independent environmental watchdog”.

37. Despite the above, the First Minister’s Statement on the Legislative Programme (June 2023) ruled out a Bill to establish a new environmental governance body in year three. The Welsh Government has, however, committed to publishing a White Paper for a Bill before the end of 2023.

38. Following the above Statement, the Committee wrote to the First Minister to express disappointment that, once again, the Welsh Government had chosen not to prioritise a Bill to establish a new environmental governance body. In response, the First Minister provided assurance that a Bill would be brought forward during this Senedd term.

Learning lessons from elsewhere in the UK?

39. All other UK nations already have permanent environmental governance bodies. The Office for Environmental Protection (‘OEP’), which mainly covers England and Northern Ireland¹, was established in November 2021 and became fully operational in early 2022. Environmental Standards Scotland (‘ESS’) was established in October 2021.

40. Before the OEP and ESS proper, both were operating as interim/shadow bodies:

- In England, DEFRA set up an Interim Environmental Governance Secretariat (‘IEGS’) to receive complaints against public bodies suspected of failing to comply with environmental law. The IEGS was

¹ The Officer for Environmental Protection has jurisdiction in Wales and Scotland in relation to non-devolved environmental law.

able to conduct initial assessments of any complaints but not act on them. An interim OEP was subsequently established.

- In Scotland, ESS was set up on an interim basis from early 2021 when a shadow/interim board was appointed.

41. The Committee sought the views of representatives of the OEP and ESS on lessons learnt from the establishment of their respective bodies.

42. Dame Glenys explained the IEGS provided an opportunity “to test [the OEP’s] embryonic complaints procedure”. Natalie Prosser said, “it was very helpful having that function in place to allow complaints to be received and triaged before they were passed on [to] the OEP proper”. However, she added, “for those complainants who had to essentially wait for the OEP to be on a statutory footing, we had to take a lot of care to support and manage them because there was a delay, and I’m sure that that was the cause of some frustration.”

43. Dame Glenys told the Committee that the establishment of the interim OEP allowed for the appointment process for members of the OEP Board to be completed at an early stage. This meant Board members could “steer and shape” the organisation’s development. She explained:

“being able to get key senior staff and board members in early...did enable us to hit the ground running...and it gave us thinking time. There’s no point in having thinking time if you haven’t got the right people doing the thinking. You don’t want an interim secretariat doing that thinking for you, when you’re thinking about how you prioritise matters or what your approach to enforcement might be, or what the priorities might be for you. You need the people who will be the bedrock of the organisation doing that thinking with you, and we were able to get those on board.”

44. Natalie Prosser added, “The material benefit of the OEP being on an interim footing is...the ability to do the building of the organisation, which is a substantial resource investment of recruiting, establishing all of your operational protocols, finding premises and so on”.

45. In the case of the interim/shadow ESS, Mark Roberts told the Committee, a small transition team was set up, which prioritised three key areas: the establishment of the organisation and its governance; setting up investigatory

processes; and determining a draft strategic plan for the ESS. He said, “there was a comparatively short period of time when the board was operating in that shadow capacity”. This is because legislation to establish the ESS was in place by January 2021, with the interim/shadow ESS set up shortly after, and the ESS proper established by October 2021.

46. The Committee asked the OEP and ESS whether the Welsh Government had engaged them in discussions about lessons learnt from the establishment of their respective bodies. Mark Roberts said, “To date, the Welsh Government has not been in contact with Environmental Standards Scotland with regard to the development of future environmental governance arrangements for Wales”. Natalie Prosser reported the OEP is “in regular dialogue” with the IEPAW and has had some discussions with the IEPAW and the secretariat on establishing and operating the OEP.

Our view

In our first report, we raised concern about the inadequacy of Wales’ interim environmental protection measures. Our evidence session with the Office for Environmental Protection and Environmental Standards Scotland only exacerbated our concern, providing a sharp illustration of what Wales is missing out on. It is clear that the IEPAW, with its narrowly defined role and limited resources, is no comparison to the environmental governance bodies that are in place elsewhere in the UK.

The IEPAW’s appointment will come to an end in a matter of months. We are deeply disappointed to find ourselves, once again, having to seek clarity on whether the Minister intends to extend it for another year.

We have previously said it would be “unthinkable” for Wales’ new environmental governance body not to be in place before the end of the IEPAW’s current appointment (which has already been extended). We set out our expectation for a Bill to establish the new body to be brought forward in year three of the Legislative Programme. A year on, nothing has changed. The IEPAW’s appointment will end in February 2024, and there is still no sign of a Bill. Yet again, the Welsh Government has chosen to ignore our call, and those of countless organisations and Welsh citizens, to legislate to address the environmental governance gap.

It is now seven years since the EU referendum when the environmental sector first raised concerns about an environmental governance gap and five years

since the Welsh Government committed to legislate to address that gap. The absence of a Bill in year three of the Legislative Programme means the new body is likely to be at least two years away. It will be an unforgivable failure of this Welsh Government if the new body is not fully operational before the end of its term in office.

While time is rapidly running out for the Welsh Government to deliver on the above, the promise of a White Paper for a Bill before the end of 2023 provides some assurance that work is finally progressing. We expect the Welsh Government to commit to publishing its response to the White Paper within six months of the consultation's end and to bring forward a Bill in year four of the Legislative Programme.

Experience in England and Scotland has shown that once legislation is in place, a new body could be fully operational within months. Early establishment of an interim/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.

We were disappointed to hear the Welsh Government has not engaged in discussions with the OEP and ESS to understand the lessons learned from the establishment of their respective bodies. This would help identify best practices and potential challenges to inform the development of Wales' new body. We urge the Welsh Government to do this as a priority. We expect the outcome to be reflected in the forthcoming White Paper for the Bill.

Recommendation 4. The Minister should clarify whether she intends to seek to reappoint the IEPAW when her current appointment comes to an end in February 2024. If this is not the Minister's intention, she should explain how she will ensure "there will be no gap between [the IEPAW's] role and any permanent [environmental governance] arrangements".

Recommendation 5. The Welsh Government should commit:

- to publishing its response to the forthcoming White Paper on a Bill to establish an environmental governance body and introduce statutory biodiversity targets within six months of the consultation's end;
- to bringing forward the Bill in year four of the Legislative Programme; and

- to ensuring the new environmental governance body is fully operational before the end of the Sixth Senedd.

Recommendation 6. The Minister should commit to establishing an interim/shadow environmental governance body at the earliest opportunity.

Recommendation 7. The Minister should engage the OEP and ESS in discussion to understand the lessons learned from the establishment of their respective bodies. The outcome should be reflected in the forthcoming White Paper for the Bill.