



## Afonydd Cymru Response to Welsh Government’s Consultation on Securing a Sustainable Future: Environmental Principles, Governance and Biodiversity targets for a Greener Wales

22<sup>nd</sup> April, 2024

### Questions

#### Part A – Environmental Principles

<ul style="list-style-type: none"> <li><b>EP1: To what extent do you agree or disagree with the proposals relating to the preparation of guidance that will explain how the environmental principles are intended to be interpreted?</b></li> </ul>				
Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
x				

If you would like to explain your answer, please use the text box below.

We agree with the five principles as outlined to bring Environmental law as primary legislation in Wales. In particular, given the current state of river water quality, Afonydd Cymru supports the Polluter Pays Principle and would welcome a strengthening of enforcement under the new Bill provision to enforce this principle. There is no purpose to new legislation unless there is a clear implementation of enhanced enforcement and regulation against it. We would expect WG to ensure that enhanced Service Level Agreements are in place with NRW to ensure this enforcement and we would expect NRW to be audited against it.

We would expect legislation in Wales to be, as a minimum, aligned with the level of environmental protection in Europe and based on sound, scientific evidence. Politically, we have been promised directly and it has been subject to Senedd debate that standards in Wales would not be diluted however this should be secured within legislation under the Bill.

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- EP2: The Welsh Government proposes to place a duty on Welsh Ministers to have due regard to the environmental principles and accompanying guidance during the development of their policies and legislation. To what extent to you agree or disagree with this approach.**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
x				

If you would like to explain your answer, please use the text box below.

We would also expect Welsh ministers to take account where existing legislation has failed to meet its objectives, for example, we will expect a review of the effectiveness of agricultural regulations to achieve improvements in legal status of our rivers and to take appropriate action to ensure policy and legislation is tightened if necessary.

- EP3: Do you have any views on whether a separate duty should be placed on Welsh public bodies (other than the Welsh Ministers) to apply the principles and accompanying guidance? If you consider the duty should apply to Welsh public bodies, please set out in the text box below which Welsh public bodies and why, as well as any views you have on how the duty should apply to those bodies.**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
x				

If you would like to explain your answer, please use the text box below.

We agree with the proposed bodies as outlined in the Appendix. Evidence over the past year in relation to water quality has indicated that a number of the public bodies detailed will require support and guidance to deliver the necessary duties.

- EP4: Do you have any additional comments relating to the Welsh Government's intention to embed the environmental principles and overarching objective into Welsh law that are not captured in your answers to the above questions?**

There will be a significant challenge to ensure that the over-arching objective is met across all WG commitments, and that the challenge to meet one commitment does not inadvertently impact other environmental principles. A direct example that we would cite here is the current WG commitment for tree planting, which is driving tree planting in areas which do not meet environmental principles for other commitments such as water quality. We expect WG to ensure that all avenues for delivery of commitments are explored to ensure that overarching objectives are maintained.

## Part B Establishing an Environmental Governance Body for Wales

- GB1 - To what extent do you agree or disagree with the proposed purpose and objectives for the new Welsh environmental governance body?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
x				

If you would like to explain your answer, please use the text box below.

Firstly, Afonydd Cymru would like to thank the current Interim Environmental Assessor for Wales, Dr Nerys Llewellyn Jones for her work. We recognise however that her current powers are limited compared to equivalent bodies for England, Scotland and Ireland and feel it is imperative that equivalent enforcement powers are given to the new governance body for Wales.

The new body must be adequately resourced to deliver its remit. To achieve this, the new body must have a secure funding base and we are concerned that proposals for direct WG funding may conflict with its need to be at arms length and also make it subject to budgetary restrictions impacting WG directly.

- GB2: To what extent do you agree or disagree with the governance body's proposed strategy and reporting requirements?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
x				

If you would like to explain your answer, please use the text box below.

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- GB3: We propose that the remit of the governance body should apply to the Welsh Ministers and the relevant Welsh public authorities exercising environmental functions Wales listed in Annex 2. To what extent do you agree or disagree with this?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
	x			

If you would like to explain your answer, please use the text box below.

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- GB4: Are there any other public authorities, or private bodies exercising functions of a public nature, that you think should be added to (or removed from) the list in Annex 2? Please use the text box below to explain your answer.**

We agree with the list in Annex 2.

We remain concerned that cross-border rivers have been subject to a confused and often ineffective governance. This has strongly been influenced by lack of coordination between governments and regulators between England and Wales. We would give the recently published Plan for the River Wye from Westminster as a clear example. This is a plan developed and driven to improve the English part of the Wye, without recognising that the water quality impacts to the Wye are firmly driven by issues in Wales.

We would urge for a solution to cross-border governance, including the remit and scope of the new governance body for Wales. Therefore, the relationship with UK Government must be recognised and detailed as part of the function.

- GB5: To what extent do you agree or disagree with the proposed scope and role for the governance body in relation to monitoring and reporting, including the scrutiny of statutory targets?**

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Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
x				

If you would like to explain your answer, please use the text box below.

<ul style="list-style-type: none"> <li><b>GB6: To what extent do you agree or disagree with the proposed scope and role of the governance body's advisory functions?</b></li> </ul>				
Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
		x		

If you would like to explain your answer, please use the text box below.

WG should clearly define the boundary between the current NRW responsibility and the proposed new governance body. Currently, NRW undertake some of the scope and roles as detailed. To avoid confusion, these should be explicitly defined and resolved prior to setting up of the new body. This is refenced in S44.

We would support an advisory function to support understanding of environmental law. We think this is particularly important given the increasing divergence between Wales and England, and significant confusion as to differences in law in Wales.

<ul style="list-style-type: none"> <li><b>GB7: To what extent do you agree or disagree with the suggested approach for managing complaints and representations</b></li> </ul>				
Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
x				

If you would like to explain your answer, please use the text box below.

We agree with the proposed approach for complaints and representations and would seek that the new body is focussed on the failure of Welsh public authorities to meet their own specific duties. This is in line with the current IEPAW approach.

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- **GB8: To what extent do you agree or disagree with the proposals to enable the body to investigate?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
x				

If you would like to explain your answer, please use the text box below.

We support the ability for the body to issue Information Notices to ensure that investigations can be based upon all necessary evidence and information. The new body must be adequately resourced to undertake independent investigation. The WG should learn from the experience in England and Scotland and note the impact that insufficient resource at the outset had on the abilities for equivalent bodies there to have on investigation.

- **GB9: To what extent do you agree or disagree with the Welsh Government's proposed process for formally handling non-compliance through compliance notices and court or tribunal procedures?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
	<b>x</b>			

If you would like to explain your answer, please use the text box below.

Again, we believe the WG needs to be clear on the specific roles and responsibilities of each organisation and seek for efficiency in the current governance structure. We would suggest that some roles currently held by NRW could be transferred in their entirety to the new body, thus providing NRW with a clearer remit for their role as environmental regulator. Specifically, Afonydd Cymru would like to see a clear governance of the different powers NRW holds in Wales as a single body, and for the new governance body to audit NRW decisions on their own operations.

As an example, we would hope that this would end the obvious and reputationally damaging conflict between NRW's role in managing the Welsh Government's woodland estate and its role as environmental regulator. This conflict should not continue. Managing woodland puts the regulator in a position where the regulator itself can commit environmental offences. There may be other examples of similar conflicts of interest but this is an obvious and significant example.

- **GB10: To what extent do you agree or disagree with the Welsh Government's proposal to include improvement reports / plans as an enforcement stage to provide space for resolution where systemic issues are evident, and a compliance notice is not considered the optimal mechanism to address the issue.**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
<b>x</b>				

If you would like to explain your answer, please use the text box below.

Necessary legislative change, even on serious matters where change is urgently needed, can take years to achieve. This can be due to a lack of focus and coordination on the part of those seeking change or lack of parliamentary time.

This procedure will make the governance body a focus for action and highlight the need to review and amend the relevant legislation itself and consider the impact of cumulative and in-combination impacts and their contribution to systemic failure.

An example of current frustrations where this procedure might have resolved the issues is the perceived failure of local authorities to consider the impact of cumulative and in-combination impacts and their contribution to systemic failure in relation to planning applications for poultry units in the Wye catchment.

- **GB11: To what extent do you agree or disagree with the proposal for the governance body to, by exception, be able to apply for judicial review and / or intervene in civil proceedings**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
	<b>x</b>			

If you would like to explain your answer, please use the text box below.

The governance body should have as wide a range of regulatory and enforcement options as possible so be able to institute judicial review or civil proceedings, or joining in civil proceedings, is welcome. We agree with the exception principal.

- **GB12: The Welsh Government consider financial penalties would be an ineffective and, in some cases, counterproductive method by which to remedy the non-compliance of Welsh public authorities with environmental law. To what extent do you agree or disagree with this position?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
			<b>x</b>	

If you would like to explain your answer, please use the text box below.

Whilst we agree with the general proposition regarding financial penalties, we would ask the Welsh Government to consider the following points in favour of having financial penalties available in circumstances where non compliance with



environmental law is the responsibility of an individual or group of individuals within a authority.

We include below regulation 46 of the **Water Resources (Control of Agricultural Pollution)(Wales) Regulations 2021 (CoAPR)**.

**46.**—(1) Subject to paragraph (2), any person who contravenes any provision of these Regulations is guilty of an offence and liable on summary conviction, or on conviction on indictment, to a fine.

(2) A person who contravenes regulation 32 is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(3) Subject to paragraph (4) where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

(a)

any director, manager, secretary or other similar person of the body corporate, or

(b)

any person who was purporting to act in any such capacity, that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) Paragraph (3) does not apply to contraventions under regulations 24(1), 24(4), 25(1), 30(5) or 32.

(5) For the purposes of this regulation, “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Regulation 46(3) specifically recognises that corporate failures are often caused by, or the responsibility of, those with responsibility for managing the corporate body. We argue that a similar provision should be available in respect of public bodies. The availability of financial penalties would allow enforcement against individuals when appropriate.

- **GB13: Our preferred model for the governance body is a ‘Commission’, but consider alternative models, such as an arms-length body, could provide similar benefits. To what extent do you agree or disagree with this approach?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
	x			

If you would like to explain your answer, please use the text box below.

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- **GB14: To what extent do you agree or disagree with the Welsh Government's approach in respect of appointing members and allocating resources to the governance body?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
	x			

If you would like to explain your answer, please use the text box below.

Commission body – the new body must have full-time resource to head up the body, and not a part-time representative given the scale of the work of the body. There was significant challenge to the delays in setting up and commissioning in England with the OEP, and this is a challenge that must be resolved by adequate commitment to staff and funding from the outset. We should learn from this and the process in Scotland.
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- **GB15: Are there any other views you would like to provide in relation to our proposals to set up a governance body?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree

If you would like to explain your answer, please use the text box below.

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## Part C: Targets for the Protection and Restoration of Biodiversity

<ul style="list-style-type: none"> <li><b>BT1: To what extent do you agree or disagree with the inclusion within the Bill of the Wales Nature Recovery Framework proposed in the paper?</b></li> </ul>				
Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
		x		

If you would like to explain your answer, please use the text box below.

We agree with its inclusion but we remain concerned that the current Nature Recovery Framework does not meet the ambition required to ensure that biodiversity targets are met in Wales. Currently, only 3% of protected sites are in favourable condition therefore delivery of a target of 30% by 2030 will require a significant step change. From the perspective of our freshwaters, Afonydd Cymru has raised frequent challenges on the implementation of actions and recovery on our riverine waterbodies, the lack of ambition, the lack of action plans and delivery targets. Therefore, we need to see the Bill implementing measures to accelerate change and to hold Welsh public authorities accountable for their duties against these targets.

<ul style="list-style-type: none"> <li><b>BT2: To what extent do you agree or disagree with the inclusion within the Bill of the statutory nature positive headline target: <i>'to reverse the decline in biodiversity with an improvement in the status of species and ecosystems by 2030 and their clear recovery by 2050'</i></b></li> </ul>				
Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
		x		

If you would like to explain your answer, please use the text box below.

Please see response to BT1.

The focus needs to be on the actions required to deliver the target. To achieve this we would expect the target to include measurable and specific outcomes.

Given the same failings specifically for water quality, we need WG to define specifically the term 'biodiversity', we need clarity on how favourable conditions should be measured and evidenced and we need to define how improvement will be defined.

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- **BT3: To what extent do you agree or disagree with the proposal to include a duty that the Welsh Ministers must set statutory biodiversity targets in secondary legislation?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
x				

If you would like to explain your answer, please use the text box below.

We would strongly support the inclusion of targets in secondary legislation. We fear currently that Wales is behind other devolved nations in its delivery of nature recovery and that clear plans are not in place to reverse the current decline.

We also support CIEEM recent publication on concerns regarding Area Statements and delivery. From the perspective of a river catchment, Area Statements have only contributed to disjointed decisions. Improvements for rivers can only be achieved if the river is considered on a catchment whole.

**BT4: Potential suite of supporting targets, to underpin the headline target, are likely to be:**

- **Species – distribution abundance and extinction risk;**
- **Habitat – protection, management and restoration; and**
- **Ecosystem health and resilience – recognising the key role and contribution of ecosystems**

**To what extent do you agree or disagree with the key areas proposed for the biodiversity targets to be introduced in secondary legislation in the Wales Nature Recovery Framework?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
	<b>x</b>			

If you would like to explain your answer, please use the text box below.

The effectiveness of targets is reliant on robust evidence and monitoring to substantiate the risk of extinction, the current status of the species and habitat in Wales and to understand ecological resilience. We do not currently believe this is adequately understood in Wales. Even SAC rivers currently have insufficient data on which to base compliance assessments, condition status of rivers have not been assessed since 2006 and significant 'current' status of our rivers is based on historical, out of date monitoring. Non SAC rivers are therefore often overlooked and data is even less readily available.

We need to recognise that delivery against targets is dependent upon an understanding of current status.

- **BT5: To what extent do you agree or disagree that Natural Resources Wales reports on the biodiversity targets as part of the State of Natural Resources Report?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
	<b>x</b>			

If you would like to explain your answer, please use the text box below.

However, we would expect information to be more transparent and easily accessible. We have learnt through the failure to meet water quality freshwater targets that information is difficult to obtain on protected sites. We are also concerned that whilst NRW reports on WFD targets through WaterWatchWales, there is no transparent reporting against SAC targets which show an even greater failure and should drive even greater action.

We welcome the recent work on the Data Gateway and suggest that solutions to data and evidence presentation against targets could be adopted through this approach for all protected sites.

- **BT6. To what extent do you agree or disagree that Welsh Ministers publish a statement, before the Senedd, to report whether the statutory biodiversity targets have been met by the date specified in regulation?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
		<b>x</b>		

If you would like to explain your answer, please use the text box below.

We strongly agree with the requirement for Welsh Ministers to make, and publish, a statement before the Senedd, to report whether the statutory biodiversity targets have been met.

However, as written the framework against how targets are to be met and the failure to deliver against them is weak. We seem to have accepted decline historically without taking the necessary steps or actions to reverse decline. In the case of freshwater protected sites we have waited until all 'protected' habitats and species are in unfavourable condition without taking any decisive action to halt the decline at the outset, or in fact, until that decline impacted an economic driver of housing.

We need therefore to see a robust framework against which to monitor improvement and a robust framework which will take action on those with legal duty should there be no improvement.

- **BT7. To what extent do you agree or disagree with the proposal that Welsh Ministers be required to produce a statutory long term Wales Nature Recovery Strategy, outlining the approach to delivery of the statutory targets as well as the Welsh Government's response to the Global Biodiversity Framework?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
<b>x</b>				

If you would like to explain your answer, please use the text box below.

We strongly agree with this proposal as it is ultimately WG that have made commitments to global biodiversity targets. We would expect the principles to be entwined across all of WG remit and principles.

- **BT8. To what extent do you agree or disagree that the Wales Nature Recovery Action Plan sets out a detailed programme of work required to deliver the statutory biodiversity targets?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
x				

If you would like to explain your answer, please use the text box below.

This plan must recognise and understand the funding requirements to deliver the biodiversity targets and WG must support with necessary funding. This should include a review of effectiveness of delivery of solutions and where this is best placed between the public authority and the eNGO sector. This needs to set targets for terrestrial, freshwater and marine environments.

- **BT9. To what extent do you agree or disagree that there should be a duty on public authorities which requires them to contribute to the delivery of the statutory biodiversity targets?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
x				

If you would like to explain your answer, please use the text box below.

- **BT10. To what extent do you agree or disagree that named public authorities should produce a Local Nature Recovery Action Plan to outline local action and priorities for delivery of the statutory biodiversity targets?**

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
x				

If you would like to explain your answer, please use the text box below.

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- **BT11. Please indicate whether you would prefer the duties proposed in this section to apply to:**

	Please indicate preference
a) List of Welsh public authorities has been included at Annex 2	<input checked="" type="checkbox"/>
b) The shorter list of Welsh public authorities included at Annex 6	<input type="checkbox"/>

If you would like to explain your answer, please use the text box below.

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**Are there any other views you would like to provide in relation to the proposals in this White paper?**

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