

Establishing an environmental governance body: a comparative analysis

Research Briefing

May 2025



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The Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill is expected to be introduced this summer. It is anticipated to include powers to establish an environmental governance body for Wales - which would hold the Welsh Government and other public authorities to account on environmental performance. These powers are being proposed to address, what stakeholders refer to as, the 'environmental governance gap' following EU-exit.

Wales is the last of the UK nations to establish an environmental governance body. The Office for Environmental Protection (OEP) (covering England and Northern Ireland) and Environmental Standards Scotland (ESS) became statutory environmental governance bodies in 2021.

Wales therefore has the benefit of being able to learn from the establishment of these bodies when setting up its own.

This briefing compares the Welsh proposals to the OEP and ESS, highlighting differences in their functions and exploring their legal foundations. It examines issues raised during legislative scrutiny in the UK Parliament and Scottish Parliament of the Bills establishing the OEP and ESS. It also draws on lessons learned now those bodies have been functioning for a number of years. It concludes with key questions to consider for the establishment of the Welsh body.



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1. Introduction

To start, this section outlines the context around the need for an environmental governance body. It discusses the ‘environmental governance gap’ following EU exit, the other UK environmental governance bodies, interim measures in Wales, and the anticipated Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill.

The post-EU ‘environmental governance gap’

When the UK left the EU, it left the EU’s system of environmental governance.

In this briefing ‘environmental governance’ refers to an accountability system, whereby implementation and compliance with environmental law by public authorities is monitored, improved and (where needed) enforced by an independent body or “watchdog”. This is for the overall purpose of environmental protection.

In the EU, the European Commission monitors Member States’ implementation of, and adherence to, EU environmental laws. Citizens and organisations can complain to the Commission if they believe a breach of environmental law has taken place. If the Commission believes there is a case to answer, it can refer cases to the Court of Justice of the EU (CJEU). This can result in enforcement action (including fines) against Member States breaching those laws.

For example, in 2016, the CJEU ruled that the UK had failed to limit emissions from Aberthaw power station, and ordered the UK Government to pay the associated legal costs. The breach came to light following the Commission’s enquiries as part of its monitoring of large combustion plants. The coal-fired station, which closed in 2020, was found to be emitting illegal amounts of nitrogen oxides between 2008-2011. The CJEU took the UK Government to court as the Member State, however the responsibility rests with the Welsh Government as pollutant emission is a devolved area.

The EU referendum triggered concern amongst environmental stakeholders of an ‘environmental governance gap’ in the UK. There were calls for replacement domestic environmental governance arrangements to hold public authorities to

account on their environmental performance, out of the EU.

UK domestic environmental governance bodies

Statutory domestic environmental governance bodies have been established for the other UK countries:

- **The Office for Environmental Protection** (OEP) for England and Northern Ireland. The OEP was legally established by the **Environment Act 2021** (the UK Environment Act); and
- **Environmental Standards Scotland** (ESS). ESS was legally established by the **UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021** (the Scottish Continuity Act).

Prior to receiving their statutory powers, both the OEP and ESS were set up as interim/shadow bodies.

Both the **OEP** and **ESS** have published strategies setting out details of their operation and remit. These are discussed in detail throughout this briefing.

Interim measures in Wales

The Welsh Government **first committed** to legislate to address the governance gap in 2018. While the Welsh Government has been developing the necessary legislation, it has established interim measures to bridge the gap between EU exit and the creation of a permanent replacement body.

An **Interim Environmental Protection Assessor for Wales (IEPAW)** - Dr Nerys Llewelyn Jones - **was appointed** in February 2021. The post was originally intended for two years, however it has been extended multiple times and is still in operation.

The IEPAW's role is to consider the functioning of environmental law, which Dr Llewelyn Jones **described as**:

... looking at the environmental law that we have in Wales at the moment, how that achieves the objectives that it was set out to do, but also, maybe, whether or not those objectives are still the right ones ... I'm also able to look at issues where there are practical problems with the functioning of that environmental law.

The IEPAW **does not** have the statutory investigation and enforcement powers to address complaints about public authorities' non-compliance with environmental law. The **Welsh Government advises citizens** to pursue existing means of domestic redress (e.g. judicial review), to bring a challenge in relation to compliance

with environmental law.

The IEPAW has been **receiving submissions** from stakeholders and the public where there are perceived issues on the functioning of environmental law. Her role is to produce reports to the Welsh Government on these issues to improve environmental outcomes. To date, **one report** has been produced, on the Retained EU Law (Revocation and Reform) Bill.

The environment sector has **raised concerns** that the interim arrangements do not go far enough, and have been calling for a Welsh Bill to establish a fully functioning governance body as a matter of priority. The interim measures have been subject to **annual scrutiny** by the Senedd's Climate Change, Environment and Infrastructure (CCEI) Committee.

Stakeholders and the CCEI Committee have been in eager anticipation of a Bill to establish a Welsh body **for a number of years**; it has been seven years since the Welsh Government committed to legislate. In 2023, **the CCEI Committee concluded** 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”.

Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill

The Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill is expected to be introduced to the Senedd **in June 2025**.

The Welsh Government consulted on a **White Paper for the Bill** between January and April 2024. It included proposals to:

- introduce overarching environmental principles to underpin all future policy decision-making;
- establish a permanent environmental governance body to ensure public authorities uphold environmental law; and
- introduce a framework to protect and restore nature, including biodiversity targets.

This briefing focuses on the powers to establish a permanent environmental governance body - Part B of the White Paper. More detail on the other proposals in the White Paper can be read in our **Senedd Research article** (July 2024).

The White Paper's proposals followed a consultation carried out in 2019 on

environmental principles and governance in Wales post-EU exit. In 2020, a Welsh Government convened **Stakeholder Task Group** carried out further work to shape the proposals.

Following the White Paper consultation, the Welsh Government **published its response**. This set out adapted proposals based on stakeholder views. These proposals are the most up-to-date picture of the path the Welsh Government may take and form the basis of this briefing.

2. Comparison with other UK governance bodies

This section explores factors in the design of a Welsh environmental governance body and associated legislation. For each theme, the analysis highlights what has been proposed in Wales and compares it to the OEP and ESS, and their legislative foundations – the UK Environment Act and Scottish Continuity Act respectively. Table 1 provides an overview of differences.

Public authorities within scope

Welsh proposals

The White Paper initially proposed the governance body would have remit over Welsh Ministers and Welsh public authorities listed at **Annex 2 of the consultation**.

This list included bodies the Welsh Government considered to have powers/duties impacting on the environment. It included (amongst others) Natural Resources Wales (NRW), local authorities and private bodies exercising functions of a public nature e.g. water companies.

Following the White Paper consultation, **the Welsh Government highlighted** caution from stakeholders around listing individual bodies within the Bill. It agreed that an approach which captures relevant public authorities within a 'general definition' would be more encompassing and future proof.

The OEP and ESS

The UK Environment Act and Scottish Continuity Act use the approach of defining public authorities within scope rather than listing them. Both define a public authority as a person carrying out functions of a public nature (with some exceptions such as a court or tribunal, the OEP and ESS themselves, and the UK and Scottish Parliaments).

Functions of the body

Welsh proposals

As proposed, the body would monitor the effectiveness and implementation of environmental law. It would advise and investigate public authorities under its remit, including the Welsh Government. It would have a range of enforcement powers to hold those public authorities to account on non-compliance with environmental law.

Monitoring and reporting

The White Paper proposed powers enabling the governance body to monitor the effectiveness and implementation of environmental law, as well as compliance with environmental law by public authorities within its remit.

The governance body would also assess the delivery of statutory environmental targets including **anticipated biodiversity targets**, targets in the *Environment (Wales) Act 2016* and targets in the *Environment (Air Quality and Soundscapes) (Wales) Act 2024*. In addition to domestic targets, the White Paper proposed it would report and advise on wider environmental targets as they relate to Wales, such as those within international conventions.

The body would report to the Welsh Ministers on its work annually. The annual report would be laid in the Senedd.

Providing advice

The White Paper proposed powers for the governance body to proactively provide expert advice to Welsh Ministers and other public authorities. This would include on changes to environmental law and wider policy implementation, following consideration of complaints and systemic compliance issues. The body would act on its own initiative, rather than being limited to requests for advice. Advice given to Welsh Ministers would be published by the governance body.

It was proposed that it would **not** be mandatory for the governance body to provide advice when requested. However, if it does not provide evidence it must explain why.

The Welsh Government has been considering the merits of the body being able to issue advisory notices recommending improvements to processes or guidance.

This would be to reduce the risk of a public authority's future non-compliance with environmental law.

Complaints and representations

The White Paper outlined how the governance body would handle external complaints on alleged breaches of environmental law by public authorities. The body would also receive complaints on the functioning and implementation / effectiveness of environmental law. Complaints would not be accepted in relation to specific decisions made by public authorities (e.g. issuing licences or planning consents) unless they related to broader issues around compliance with environmental law. The Welsh Government highlighted the body would not be expected to act on every submission it receives.

Responses **to the White Paper** outlined concerns about the inability of the body to handle complaints about specific decisions. Suggestions included that the body should be able to log these forms of complaints to monitor whether they amounted to a pattern of non-compliance. Many organisations suggested the body should be allowed to investigate specific decisions on an exceptional basis, e.g. those of significant environmental impact.

Investigation

The White Paper proposed the governance body would have the power to investigate alleged breaches of environmental law by public authorities. These investigations could be initiated by the body itself, based on findings from its own monitoring, as well from public complaints and representations.

As part of the investigation function, the body would issue 'information notices' (requiring information from public authorities, with deadlines for responses) and take enforcement action against public authorities that do not comply with these notices.

Enforcement

The White Paper proposed a range of enforcement powers for when the governance body considers public authorities have failed to comply with environmental law. The body would prioritise informal resolutions and advice before resorting to formal enforcement action such as referral to court. Enforcement options would include:

- **Compliance notices** would be the primary formal method to resolve non-compliance. This notice would detail the steps taken during investigation, outline the specific failure, and specify the actions the Welsh public authority must take to remedy or mitigate the non-compliance, including the timeframe for actions.
- **Referrals to the court** would be available, but only as a last resort. If the Welsh Ministers/other public authorities unsuccessfully appealed and/or otherwise chose not to take action in line with a compliance notice, the governance body would be empowered to refer non-compliance to the High Court of England and Wales. Failure to adhere to the court order could result in a contempt of court under existing powers of the court, providing access to the normal range of remedies available (which could include financial penalties).
- **Judicial review and intervention in civil proceedings** would be available in exceptional circumstances. The governance body could apply for judicial review, or apply to join judicial review proceedings, without first going through the above enforcement process. For example, where the conduct of a Welsh public authority constitutes a serious failure to comply with environmental law and it is necessary to urgently prevent/mitigate serious damage to the natural environment or human health.

The body would not have the power to issue fines to public authorities itself. The White Paper said it would be ineffective, arguing fines may circulate money within the public sector without fixing the problem. The Welsh Government said issuing fines would sit better with the courts.

Improvement reports

Improvement reports would be issued by the governance body to Welsh Ministers and, where relevant, other public authorities, where a matter cannot be effectively addressed by a compliance notice. The reports would contain recommendations and could be used to address systemic compliance issues, such as when multiple public authorities fail to comply with similar aspects of environmental law. Improvement reports could also be used to report on the ineffectiveness of environmental law. The improvement report would be laid in the Senedd. The Welsh Ministers would have a duty to respond to these reports with an **improvement plan** outlining their actions or reasons for rejecting any recommendations.

The OEP and ESS

The OEP and ESS have similar functions with what has been proposed for

the Welsh body. Differences between the bodies and the Welsh proposals are highlighted below and summarised in Table 1.

Monitoring and reporting

The OEP has powers to monitor progress against the UK Government's Environmental Improvement Plan and the environmental targets set under the UK Environment Act. It also has a general duty to monitor the implementation of environmental law.

ESS has powers to monitor Scottish Ministers' and other public authorities' compliance with environmental law and also the effectiveness of environmental law and how it is implemented and applied. Its functions include reviewing implementation of international obligations which is more akin to the Welsh proposals, while the OEP **does not** have the jurisdiction to monitor international law.

The ESS Strategic Plan 2022-25 specifically highlights its role in monitoring whether Scotland is 'keeping pace' with environmental standards in the EU (this relates to the Scottish Government policy commitment to continue to align with EU standards "where appropriate").

There are no specific powers in the Scottish Continuity Act for the ESS to monitor statutory targets (unlike the UK Environment Act and Welsh proposals). This could change from next year as the Natural Environment (Scotland) Bill aims to introduce biodiversity targets with ESS as the review body that will monitor progress against them.

Providing advice

The OEP has the power to advise Ministers on any proposed change to environmental law, or any other matter relating to the natural environment. Unlike the Welsh proposals, the OEP **must** provide advice if it has been requested by Ministers.

While the Welsh proposals include advice to other public authorities in addition to Welsh Ministers, the OEP advisory functions are limited to Ministers.

The Scottish Continuity Act does not provide ESS with the same advisory duty. While ESS will, where appropriate, contribute to the development of environmental policy and law, it emphasises that it is not an advisor to the Scottish Government.

In practice, ESS does produce reports with recommendations for the Scottish Government and other public authorities, for example a recent [scoping report on soils](#).

Complaints and representations

The OEP can receive complaints if a person believes a public authority has failed to comply with environmental law. This does not go as far as the Welsh proposals, which say complaints could be received about the wider functioning and implementation of environmental law, as well as alleged breaches of environmental law by public authorities.

ESS receives public representations on the effectiveness of environmental law as well as compliance by public authorities.

Investigation

Similarly to proposals for Wales, the OEP and ESS can investigate a public authority which may have failed to comply with environmental law. This can be initiated following a public complaint, or from the bodies' own information. Both bodies have the power to issue information notices to the public authority under investigation.

Enforcement

OEP has the power to issue **decision notices**, and the ESS issues **compliance notices** – these are similar to the proposed Welsh compliance notices.

The OEP may apply to the court (in England, the High Court) for an **environmental review** where it has issued a decision notice and continues to consider there is serious failure to comply with environmental law. In the case of Northern Ireland, this would be a **review application** (Northern Ireland High Court). If the court finds the authority has failed to comply with environmental law, it must make a statement to that effect. The court may also grant any remedy available, including to impose fines.

ESS can report a public authority to the **Court of Session** if it fails to comply with a compliance notice. The court may make an order for enforcement as it considers appropriate, and/or deal with the matter as if it were a contempt of the court.

Judicial review (and intervention in an existing judicial review) is available to both

the OEP and ESS if urgent action is needed to prevent or mitigate serious harm.

ESS is restricted from using its enforcement powers in relation to individual regulatory decisions, which has been an area of debate. The Scottish Continuity Act restricts ESS's remit in cases when a failure to comply with environmental law arises out of any public authority decision, when exercising its regulatory functions, in relation to a particular person or case. This might include, for example, a decision on an application for a licence or a decision on regulatory enforcement in a specific case. ESS uses public representations on individual cases like this to assess if they could be **part of a more systematic issue**.

This is different to the OEP as the UK Environment Act does not exclude these individual decisions from its remit. It has **issued guidance** to emphasise any applicable complaints process of the relevant public authority must be fully exhausted before it can consider the complaint.

Like the Welsh proposals, ESS can issue **improvement reports** where it considers that the actions of a public authority represents a 'systemic failure', recommending measures that Scottish Ministers and other public authorities should take to ensure compliance with environmental law and/or improve its effectiveness. The Scottish Government is then required to produce an **improvement plan** and submit it to the Scottish Parliament for approval. This requirement for parliamentary approval goes further than the Welsh proposals or UK Environment Act provisions.

Form of the body and appointments

Welsh proposals

Operating model

The design of the body and appointment of its members is a key issue when considering its independence.

The Welsh Government is proposing the body would have a board of experts, which can advocate for the environment and provide strategic direction. It says the board should be supported by a strong executive function to deliver the direction, with the Chief Executive sitting as a member of the board.

The White Paper stated the Welsh Government intends to establish a robust public appointments process to "balance the independence, impartiality and integrity of the body against specialist knowledge and policy alignment". It said Welsh Ministers

would consult the appropriate Senedd committee when appointing the Chair and ‘commissioners’ (board members).

Size of the body

The White Paper suggested the governance body would be led by a board of 8-9 members. It would be provided with twelve support staff. **The Welsh Government said** it would develop this further with a view to balancing direction and delivery.

The OEP and ESS

Operating model

The OEP is an ‘**executive non-departmental public body**’. It has a Chair (who is a non-executive member) and may have up to five other non-executive board members. There is a Chief Executive, and at least one, but not more than three, other executive members.

The Chair is appointed by the Secretary of State (acting jointly with the Northern Ireland Department after the first Chair is appointed). The Chair is subject to a pre-appointment hearing in the UK Parliament.

ESS is set up as a ‘**non-ministerial office**’.

ESS is made up of members, with a Chair, appointed by Ministers subject to approval by the Scottish Parliament.

The members of ESS have formed a board to run the organisation and to discharge its functions. ESS has permanent staff, who are civil servants, led by a Chief Executive.

Both the UK Environment Act and Scottish Continuity Act set out the legal independence of the OEP and ESS from government.

Size of the body

At 31 March 2024 the OEP had six non-executive board members, three executive board members and two Directors. There were 86 operational staff-in-post.

At 31 March 2024 ESS had seven board members, 21 permanent staff and two fixed-term staff.

Funding

Welsh proposals

The budget allocation to the governance body is important when considering its independence.

The White Paper considered the merits of funding directly through Welsh Government budgets, or the Welsh Consolidated Fund. It concluded that direct funding by the Welsh Government was the preferred option, providing more budgetary flexibility. The Welsh Government recognises potential conflicts of interest in respect of a Welsh Minister setting the budgetary allocation for a scrutiny body. It suggested measures needed to ensure independence e.g. decisions on funding the governance body, could be made by the Minister responsible for finance rather than the environment.

The Welsh Government acknowledged White Paper respondents' calls for a sufficient and ring-fenced budget for the body.

The OEP and ESS

The OEP is funded by DEFRA in England and the Department of Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland.

The ESS is funded through the Scottish budget as part of the net zero and energy portfolio.

The most recent annual report and accounts for the OEP and ESS reported for the financial year 2023-2024:

- **OEP:** DEFRA and DAERA together made available **£10.8m**.
- **ESS:** received a budget allocation of **£2.9m**, but agreed to return £150,000 mid-year in response to a call for public service reform savings.

The **2025-26 Scottish Budget** allocated **£3.8m** to ESS. The 2025-26 budget for the OEP has not been published at the time of writing.

Relationship with other bodies

Welsh proposals

The White Paper proposed the governance body must include within its strategy

how it will collaborate effectively with other organisations and avoid duplication. The Public Service Ombudsman was highlighted, as well as the OEP and ESS.

The White Paper also recognised the governance body will not be a front-line regulator itself and will not duplicate the work of existing regulators like Natural Resources Wales (NRW).

To avoid “mission creep” and potential overlap with other bodies **the Welsh Government has said it**: “will seek to develop a ‘principal purpose’, to be set out on the face of the bill, that will provide further clear direction”.

The OEP and ESS

Both the UK Environment Act and the Scottish Continuity Act provide that the OEP/ESS strategies, respectively, must set out how the bodies intend to avoid any overlap and cooperate with relevant bodies. The OEP puts emphasis on avoiding overlap with the UK Committee on Climate Change (UK CCC).

Both the OEP and ESS strategies state memorandums of understanding have been established with other public bodies on how they will cooperate.

Transition

In 2023, the Senedd’s **CCEI Committee recommended** early establishment of a shadow body for Wales ahead of the relevant legislation coming into force. This could allow much of the groundwork to be laid in advance of the statutory governance body’s launch. A shadow body has not been set up.

The OEP and ESS were set up as interim/shadow non-statutory bodies before the relevant legislation was passed. This allowed staff recruitment and accommodation, development of their strategies and collection of public complaints. The bodies were legally formed quickly once the relevant legislation was passed. For example, the OEP **was launched** as an interim body in July 2021. It was then **legally formed** on 17 November 2021 following the passing of the UK Environment Act by the UK Parliament on 9 November 2021.

The Welsh Government’s Cabinet Secretary for Climate Change and Rural Affairs, Huw Irranca-Davies MS, says Wales is coming from a different starting point to the other nations. He argues Wales has interim measures (IEPAW) in place, but acknowledges this doesn’t constitute a shadow body.

Table 1. Differences between the Welsh proposals, OEP and ESS.

	Welsh proposals	Office for Environmental Protection	Environmental Standards Scotland
Statutory functions	Monitoring Investigation Receiving complaints Enforcement Advice	Monitoring Investigation Receiving complaints Enforcement Advice	Monitoring Investigation Receiving complaints Enforcement
Monitoring	Monitoring the effectiveness and implementation of environmental law (including progress against targets), as well as compliance with environmental law by public authorities. Domestic and international obligations.	Monitors progress on the Environmental Improvement Plan and the environmental targets set under the UK Environment Act. Has a general duty to monitor the implementation of environmental law Domestic only.	Monitors the effectiveness of environmental law and how it is implemented and applied, as well as public authorities' compliance with environmental law. Domestic and international obligations. There is no statutory monitoring of targets currently.
Advice	Advice to Ministers and other public authorities. There would be no requirement for the body to provide advice if requested by Ministers.	Advice to Ministers only. The OEP must provide advice if it has been requested by Ministers.	ESS does not have an equivalent advisory duty in legislation. However it may make recommendations in respect of its functions.

Complaints and representations	Representations could be received on alleged breaches of environmental law by public authorities, and also the functioning and implementation of environmental law.	Receives representations on alleged breaches of environmental law by public authorities.	Receives representations on alleged breaches of environmental law, or the effectiveness of environmental law.
Improvement reports	Improvement reports would be issued by the body to Welsh Ministers and other Welsh public authorities. A duty would be placed on Welsh Ministers to respond with an improvement plan.	The UK Environment Act doesn't have comparable provisions on improvement reports and plans. However the OEP can issue reports in response to investigations to which the government must respond.	Improvement reports are issued by ESS to Scottish Ministers and public authorities. Scottish Ministers must respond with an improvement plan, submitted to the Scottish Parliament for approval.
Enforcement	Compliance notices. Referral to court. Judicial review and intervention in civil proceedings. The body's remit would not include decisions on specific cases made by public authorities.	Decision notices. Referral to court. Judicial review and intervention in civil proceedings. The UK Environment Act does not exclude specific decisions made by public authorities on individual cases from the OEP's remit.	Compliance notices. Referral to court. Judicial review and intervention in civil proceedings. The Scottish Continuity Act excludes public authorities' individual decisions from ESS's remit.

Appointment of Chair	Appointed by Welsh Ministers, Senedd consulted.	Appointed by Secretary of State (acting jointly with the Northern Ireland Department after the first Chair is appointed). Pre-appointment hearing in UK Parliament.	Proposed by Scottish Ministers, approved by Scottish Parliament.
Size of body	8-9 board members, 12 support staff (proposed).	Six non-executive board members and three executive board members. Two directors, 86 operational staff (at 31 March 2024).	Seven board members, 21 permanent staff and two fixed-term staff (at 31 March 2024).
Budget	To be decided	<u>In the financial year 2023-2024,</u> DEFRA and DAERA together made available £10.8m.	<u>In the financial year 2023-24</u> ESS received a budget allocation of £2.9m. ESS agreed to return £150,000 mid-year in response to a call for public service reform savings.

Sources of content: **White Paper and Welsh Government response UK Environment Act, OEP Strategy and Enforcement Policy 2024** and **OEP Annual Report 2023/24, Scottish Continuity Act, ESS Strategic Plan 2022/25** and **ESS Annual Report 2023/24**.

3. Issues arising during legislative scrutiny of the Bills introducing the OEP and ESS

In anticipation of the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill's passage through the Senedd, this section explores the types of issues discussed during scrutiny of the UK Environment Bill and Scottish Continuity Bill, which established the OEP and ESS respectively.

OEP

During passage of the UK Environment Bill (which became the UK Environment Act) the following issues were considered during scrutiny:

- **Degree of the OEP's independence from the UK Government:** powers for the Secretary of State to issue guidance to the OEP on its enforcement policy and functions (included as a **Government amendment**) were debated in the context of the body's independence. The mechanisms for appointing, paying and reappointing the members of the OEP were considered in terms of independence.
- **The remedies available for effective redress:** **scrutiny of the Bill** included efforts to strengthen the remedies available to the OEP for effective redress for breaches of environmental law. **This included** debate as to whether the Bill should clarify that the tribunal has the power to issue fines in instances of non-compliance with a ruling. Also, whether to give the tribunal the power to require a public authority to make amends for environmental harm.
- **The conditions around judicial enforcement:** **government amendments** were made to the Bill to limit the OEP's powers to intervene in judicial review proceedings to "serious" cases, and to limit the OEP's powers to initiate judicial review proceedings to "urgent" cases.
- **The role of the UK Parliament in appointments:** **Members considered** the role of the UK Parliament in scrutiny of the appointment of the Chair and other non-executive members of the OEP.
- **The OEP's budget:** **opposition amendments** aimed to allow the OEP to request in-budget increases from government, and to require the OEP to be given a five-year indicative budget.

- **Coordination with other bodies:** a **Government amendment** was introduced to ensure that the OEP would not duplicate the work of the UK CCC, and require the two bodies to prepare a Memorandum of Understanding. **Another amendment** included a new duty for the OEP to set out in its strategy how it intends to interact with devolved environmental governance bodies.

ESS

During passage of the Bill (which became the Scottish Continuity Act) the following issues were considered during scrutiny.

- **The equivalence of the proposals to the system of EU environmental governance from which the UK had departed:** **the Scottish Parliament's Environment, Climate Change and Land Reform (ECCLR) Committee noted** that the Bill focused on the European Commission elements of governance. It highlighted gaps in the ability to pursue matters at the level of an individual case. It highlighted gaps around investigation of cases in which the environment is an element but not the core of the matter, and in relation to climate governance. The Committee noted the possibility that cases may not be fully resolved.
- **Enforcement action on individual cases:** **stakeholders raised** the issue that the ESS would not be able to take enforcement action on individual decisions by public authorities. The Scottish Government **clarified its position**, stating:

... the limitation is only on the use of the enforcement powers with respect to individual regulatory decisions of public authorities, such as decisions on an individual permit or permissions... It is the Scottish Government's intention that it should be possible for regulatory decisions to be taken, and deemed to be final, without the new body having to take a view on every occasion.
- **Parliamentary role in considering improvement reports:** the ECCLR Committee welcomed the Scottish Parliament's ability to reject an improvement plan whilst also noting parliamentary committees' capacity and access to expertise in considering these reports.
- **The extent to which citizens have access to justice on environmental matters:** the Scottish Parliament considered the compatibility of the provisions with obligations under the **Aarhus Convention** (a United Nations Economic Commission for Europe (UNECE) Convention on public rights on environmental matters, to which the UK is party). In particular the obligation to ensure citizens have access to justice on environmental issues.

- **ESS relationship with other bodies:** the ECCLR Committee considered that relations with other relevant bodies should be included in the strategy and included in Schedule 2 of the Bill.
- **Degree of independence from the Scottish Government:** the degree of independence of the ESS as a non-ministerial office from the Scottish Government was explored. This included the appointments process; safeguards around the membership of the board; the functions of ESS; and, the resources to carry out its job independently.
- **Monitoring developments in international law:** Members explored the role of ESS in terms of the oversight of international obligations to which the UK is a signatory, such as the **Ramsar Convention** and the **Bern Convention**.

More detail and amendments to the Bill on these issues are detailed in a **Scottish Parliament Information Centre briefing**.

4. What can be learnt from the OEP and ESS since their establishment?

This section looks at the operation of the OEP and ESS, which have been functioning since 2021, and what can be learnt following their establishment.

OEP

The House of Commons Environmental Audit Committee 2024 **legacy report** (May 2024) stressed that despite the concerns raised during the passage of the UK Environment Bill, the OEP is demonstrating its independence from UK Government. It highlighted this is apparent through certain tensions identified between DEFRA and the OEP, for example, regarding the provision of data from DEFRA to the OEP.

The OEP carried out a **consultation and published feedback** on its strategy in November 2024. This was used to update its strategy and enforcement policy. Although some changes have been made to the strategy and enforcement policy following this feedback, **the OEP felt** the strategy and enforcement policy has “broadly stood the test of time”. Some issues identified from the consultation included:

- better transparency in how the OEP prioritises issues;
- improved public awareness;
- better explanation of relations with other bodies including ESS and IEPAW;
- better explanation of what complainants can expect from the process (including timescales);
- a more active role in scrutinising the design of goals and targets, as well as progress towards them;
- greater emphasis in the strategy on the OEP’s role to highlight gaps in evidence and data to support environmental improvement;
- greater flexibility in the scale and depth of scrutiny of environmental law, so that more reviews can be undertaken;
- concern that the requirement for a complainant to have exhausted a public authority’s complaints process (required by the UK Environment Act) may prove a barrier to accessing the OEP complaints service; and

- concern that the OEP is yet to use all of the enforcement tools provided in the UK Environment Act.

An independent review of DEFRA's regulatory landscape (April 2025) included a recommendation for the OEP:

The Office for Environmental Protection (OEP) plays an important role in providing independent scrutiny to Government action on the environment. However... the OEP must ensure its focus is on outcomes not just process. Their recent report on the previous Government's progress towards delivering the Environment Act targets helpfully supports the need to go further and faster. Consideration should be given as to **how the OEP can increase focus on the outcomes that are desired and support regulators to take more risk** to achieve those goals within the Government's wider objectives.

Examples of the work the OEP has undertaken can be found in its **annual reports**.

ESS

The Scottish Continuity Act requires the Scottish Government to consult and report on whether the Act has ensured effective environmental governance following EU withdrawal. In June 2023, the Scottish Government published its first **progress report**. The Scottish Government subsequently **laid a statement** on the effectiveness of environmental governance arrangements (another requirement of the Scottish Continuity Act).

The progress report highlighted how ESS has taken different approaches to resolving issues in different cases. The report highlights the flexibility built into the provisions, and the encouragement for ESS and public authorities to cooperate to resolve issues informally, is working effectively.

The report highlights one instance to date – an investigation into air quality – where the provisions for an improvement report have followed all stages. **The Scottish Parliament approved** the Scottish Government's improvement plan in response to ESS's tabled improvement report.

The progress report says public authorities are responding positively and cooperating, as required by the Act, in sharing information for investigations, and seeking to resolve concerns.

The exclusion of public authorities' individual decisions from ESS's remit was a key issue discussed during the passage of the Scottish Continuity Act, and is still an area of debate. However, **the Scottish Government maintains** it should not be the role

of ESS to act as a point of appeal for individual planning and consenting decisions. It acknowledges that the exclusion of individual cases can add friction to the system; where an individual who has concerns they want to submit to the ESS must first demonstrate they have tried all other routes. However, it highlights regulators are generally subject to statutory time limits for considering any representations. It advocates for good communication between ESS and regulators.

The Scottish Government highlighted in its 2023 report, several observations including the continued focus of the Scottish Parliament being critical to the effectiveness of the arrangements.

In response to the 2023 progress report, **ESS highlighted** the EU role of centralised data gathering and analysis, as a form of monitoring, has not been replaced. It also highlighted lack of oversight by the CJEU, stating that the CJEU could take a more holistic view of an issue, considering complex evidence and reviewing the legality of a complaint.

In April 2025, the Scottish Parliament debated the extent to which Scotland is complying with the Aarhus convention. The Convenor of the Scottish Parliament Net Zero, Energy and Transport Committee said ESS does not have the powers to address non-compliance with the Aarhus convention, citing the fact that ESS cannot investigate individual cases.

5. Conclusion and next steps

This section summarises key scrutiny questions to consider when the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill passes through the Senedd and if/when the new body is established.

Learning from the other UK governance bodies will be useful in setting up a new governance body for Wales. Of course Wales has its own considerations, including the legislative context provided by the ***Environment (Wales) Act 2016 and Well-being of Future Generations Act 2015***, as well as the functions of other Welsh public bodies including NRW and the Future Generations Commissioner.

Below are some key questions raised from the matters explored throughout this briefing:

- Should a shadow body be established, ahead of the Welsh governance body receiving its legal powers, to smooth transition?
- How will the legislation ensure the body's independence from government, including in regard to funding arrangements, appointments and the role of the Senedd?
- Do the body's functions appropriately replace what was available under the EU environmental governance system?
- Should the body be responsible for monitoring progress towards international obligations, as well as domestic targets and laws?
- Would the enforcement powers available lead to effective redress for breaches of environmental law by public authorities?
- Do citizens have appropriate access to justice on environmental matters?
- Are the public authorities, captured within the remit of the body, appropriate?
- Should specific decisions made by public authorities (e.g. issuing licences or planning consents) be included in the body's remit?
- Is there sufficient provision to ensure the body works co-operatively and effectively with other relevant bodies and avoids duplication of functions (including the UK CCC, NRW, Future Generations Commissioner and other UK governance bodies)?

- Will the body have enough resource (budget and staff) to effectively carry out its functions?
- Should there be a timeline for establishment of the body in the legislation?

With the Welsh Bill expected to be introduced this summer, and a Senedd election planned for 2026, it is unlikely the Welsh statutory body will be established during this government's term of office.