

IEPAW

Interim Environmental Protection Assessor for Wales

Annual Report 2022-2023

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Foreword



I am pleased to present my second annual report as the Interim Environmental Protection Assessor for Wales (IEPAW) covering the period 1 March 2022 to 28 February 2023.

During this time, 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.

During the past year we received six submissions from the public highlighting concerns about environmental law in Wales. Although this was significantly fewer than those received during the preceding 12 months, they have been valuable in identifying areas where environmental protection can be improved.

Since the last annual report, my team and I 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.

We published our first report during this reporting year, which was submitted to the Minister for Climate Change in February 2023 and related to the potential impact of the proposed Retained EU Law (Revocation and Reform) Bill on environmental protection in Wales. As noted in our report, I consider that this proposed legislation poses serious risks to the legal framework for environmental protection in Wales, and I encourage the Welsh Government to do everything in its power to mitigate such risks.

Looking forward, it is important that we remain focused on our goal of ensuring that Welsh legislation provides robust protection for the environment in Wales, and that the implementation of such legislation results in good environmental outcomes in all parts of the country. I recognize that this is a complex challenge, and I am dedicated to working with stakeholders to find innovative and effective solutions to protect our environment.

In particular, I would like to extend my thanks to the members of the public and stakeholders that have reached out to me over the past year to highlight concerns or to submit evidence to support our work. Your ongoing support is greatly appreciated, and I look forward to working with you over the next 12 months.

Introduction

Since March 2021, [Dr Nerys Llewelyn Jones](#) has undertaken the role of the Interim Environmental Protection Assessor for Wales (IEPAW). Her role is to consider concerns raised by the public about the functioning of environmental law in Wales. This is an interim process that will be in place until a permanent body is established in Wales to oversee compliance with environmental law.

Dr Llewelyn Jones was initially contracted for a period of up to two years, although this was extended for a further year until 29 February 2024.

The IEPAW is independent from the Welsh Government, although Welsh Government officials provide secretariat support to the IEPAW. Our focus is on the functioning of environmental law, not on breaches of that law. Our aims are to:

- provide oversight of the functioning of environmental law in Wales; and
- to consider systemic issues relating to the working or functioning of environmental law in Wales.

Our role does not cover:

- breaches in environmental law;
- areas of non-compliance of environmental law; and
- issues raised that are covered by another complaints mechanism or process.

Our aim is to identify where action can be taken to improve the functioning of environmental law in order to improve environmental outcomes. Details on how to raise a concern about the functioning of environmental law in Wales, as well as our terms of reference, are available at www.gov.wales/interim-environmental-protection-assessor-wales

We have committed to publishing an annual report on the submissions we have received and any action taken in relation to them. This is the second annual report and covers the period 1 March 2022 to 28 February 2023.

Climate Change, Environment and Infrastructure Committee Report

On 30 June 2022, the IEPAW attended an [oral evidence session](#) hosted by the Climate Change, Environment and Infrastructure (CCEI) Committee. This session provided the Committee with an opportunity to scrutinise the operation of the interim environmental governance arrangements and to learn more from Dr Llewelyn Jones about her first year as the IEPAW. Following this evidence session, the Committee published a [report on the operation of the interim environmental governance measures](#).

We are grateful to the Committee for the work they have undertaken in this area and for the recommendations they made for improving the interim environmental governance arrangements. The Committee's recommendations constitute an important package of improvements to ensure the IEPAW can deliver its functions effectively until a permanent environmental oversight body is in place.

Although the recommendations in the report were primarily aimed at the Welsh Government, there are two recommendations that were specifically directed towards the IEPAW. These related to raising public awareness of the IEPAW service and its transparency. We fully agree with the Committee's recommendations in these areas and have taken steps to implement them.

These include:

- the introduction of a series of quarterly stakeholder meetings;
- publishing details of the IEPAW's rolling programme of work on our webpages; and
- reaching out to public advice bodies to ensure that they are aware of the IEPAW service.

We have also refreshed our webpages to make them more navigable for users and to highlight the independent nature of the IEPAW. Additionally, as the role develops and we publish more reports, we are also currently looking into our communications strategy further to ensure that we can reach as wide an audience as possible.

Another key recommendation made in the Committee's report was that the Welsh Government should undertake an urgent review of the resourcing of the IEPAW. This review has now been undertaken, and clear resourcing issues were identified. In response to this review, the Minister for Climate Change has made the following commitments to ensure that the IEPAW has the resources it needs to carry out its functions:

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

We are grateful for the Welsh Government for committing to providing this much-needed additional resource, and we will work closely with them to ensure that these commitments are delivered in full. In particular, the appointment of a deputy

IEPAW would go a long way towards ensuring the service has the capacity to carry out its functions as well as providing additional resilience and cover for the team.

Achievements during 2022-2023

One issue identified during the last annual review period was that many submissions lacked sufficient detail to allow us to determine whether a report to the Welsh Ministers may be warranted. This often meant we have had to enter into further correspondence with the submitters, as well as other interested parties, to obtain the information needed to assess whether to take a submission forward and even to provide an initial decision as to scope. In addition, we also received a significant number of submissions that fell outside of the scope of our remit. Dealing with these issues have placed additional pressures on our limited resources.

To mitigate these issues, we introduced a [submission form](#) for use by submitters. The aim of this form is to ensure that we receive the information we require at the outset, reducing the time and resources spent following up on concerns. We hope that this has also assisted submitters in their consideration and assessment of whether the concern they have is within the remit of the IEPAW at the outset and

before a submission is made. Based on the submissions received during 2022-23, it appears that this process has been effective in ensuring that the right information is received first time, thus reducing the amount of time that we need to spend seeking further information from submitters. Additionally, there has been a marked decrease in the number of submissions being received that are outside the remit of the IEPAW.

As noted in last year's Annual Report, to ensure that users are able to direct their concerns to the most appropriate regulatory body, we have developed a [signposting guide](#) of different environmental regulators. This is available on our website and can be used when responding to submitters but also as a tool for those who have concerns to direct them to the most appropriate body as soon as possible. We have also published our [prioritisation principles](#) which set out how we determine which submissions may warrant a report for the Welsh Ministers.

Stakeholder engagement

In 2022, we set up a series of quarterly stakeholder meetings. These meetings are an opportunity to update interested parties on the work of the IEPAW as well as for stakeholders to raise any new or emerging issues. These sessions have been well-attended and have proved to be a valuable source of information for us and have allowed us to provide a greater level of transparency around our work. We have also met with a number of stakeholders individually to discuss specific issues, including the RSPB, the Association of Environmental Clerks of Works (AECoW), and the Green Alliance.

At the 2022 Royal Welsh Show we hosted a panel discussion on hedgerow management and protection. This was organised in response to a number of submissions received on this topic during 2021-22. The event was well attended and led to a lively discussion on the topic. After the event, we launched a call for evidence to seek evidence on whether the Hedgerow Regulations 1997 meet their stated aim of protecting hedgerows effectively. The evidence received will be used to inform a report for the Welsh Ministers to be published in 2023.

In November 2022, we hosted a stakeholder roundtable event on protected sites at Machynlleth. This included a tour of the nearby Ynyshir Nature Reserve so participants could experience first-hand some of the issues on how such sites are managed. This in-person, on-site event was particularly effective in understanding the issues of concern and in informing the call for evidence that we launched on the

management and protection of protected sites in Wales. We intend to publish a report on this topic in Summer/Autumn 2023.

We meet regularly with representatives from Natural Resources Wales (NRW) to discuss new and emerging issues. These meetings have proved particularly helpful as a forum for raising issues directly with the regulator, including concerns that we have received in submissions that do not fall within our remit. These include:

- The Forestry Act 1967 requirement for NRW to maintain a Regional Advisory Committee (RAC) to provide advice on specified forestry functions. In response NRW has confirmed their Board approved the establishment of an RAC as a sub-group of the existing Wales Land Management Forum (WLMF) in May 2022. NRW are aiming for the first meeting of the RAC to take place by September 2023.
- The Environment Permitting Regulations 2016 duty on NRW to maintain a full public register which includes the information specified in Schedule 27 of the Regulations. In response, NRW has confirmed that the duty is fully met. NRW said that while software compatibility issues may have caused difficulty for some users to access information their website explains how to obtain the details successfully.

Alongside the stakeholders listed above, we also meet with relevant officials within Welsh Government policy teams to discuss submissions received as well as relevant new and emerging issues.

Cross-border engagement

Given the cross-border nature of many environmental issues, it is important that we maintain constructive working relationships with our counterparts in the other nations of the United Kingdom. For this reason, we regularly meet with representatives from the Office for Environmental Protection (OEP) (representing both England and Northern Ireland) and Environmental Standards Scotland (ESS). Although each body has slightly different remits and powers, these meetings are an invaluable forum for cooperation and exchange of information, enabling the three bodies to discuss our shared priorities, flag emerging issues, and share information on best practice.

To strengthen this relationship further, the three bodies have agreed a tripartite [memorandum](#) of understanding setting out how the three bodies will seek to cooperate and share information.

The three bodies meet regularly to discuss specific environmental protection issues. These include regular meetings to discuss the bodies' ongoing work in relation to protected sites as well as to keep each other informed of developments in relation to water quality. The three bodies are seeking to collaborate as much as possible in relation to these issues.

Process

We aim to provide an initial response to submission forms received within 20 working days of their receipt. During this year, we have responded within this timeframe for 100% of the submissions received.

When a submission is received, it is subject to a scoping exercise to determine whether it relates to the functioning of environmental law in Wales and so can be considered by us. If the submission is

within scope, then it will also undergo a prioritisation exercise to decide whether it should be the subject of a report for Welsh Ministers. It is not possible to produce a report in response to every submission received. Instead, we aim to target our resources to the issues that we consider to be of the highest priority in line with our published prioritisation principles.

Submissions received

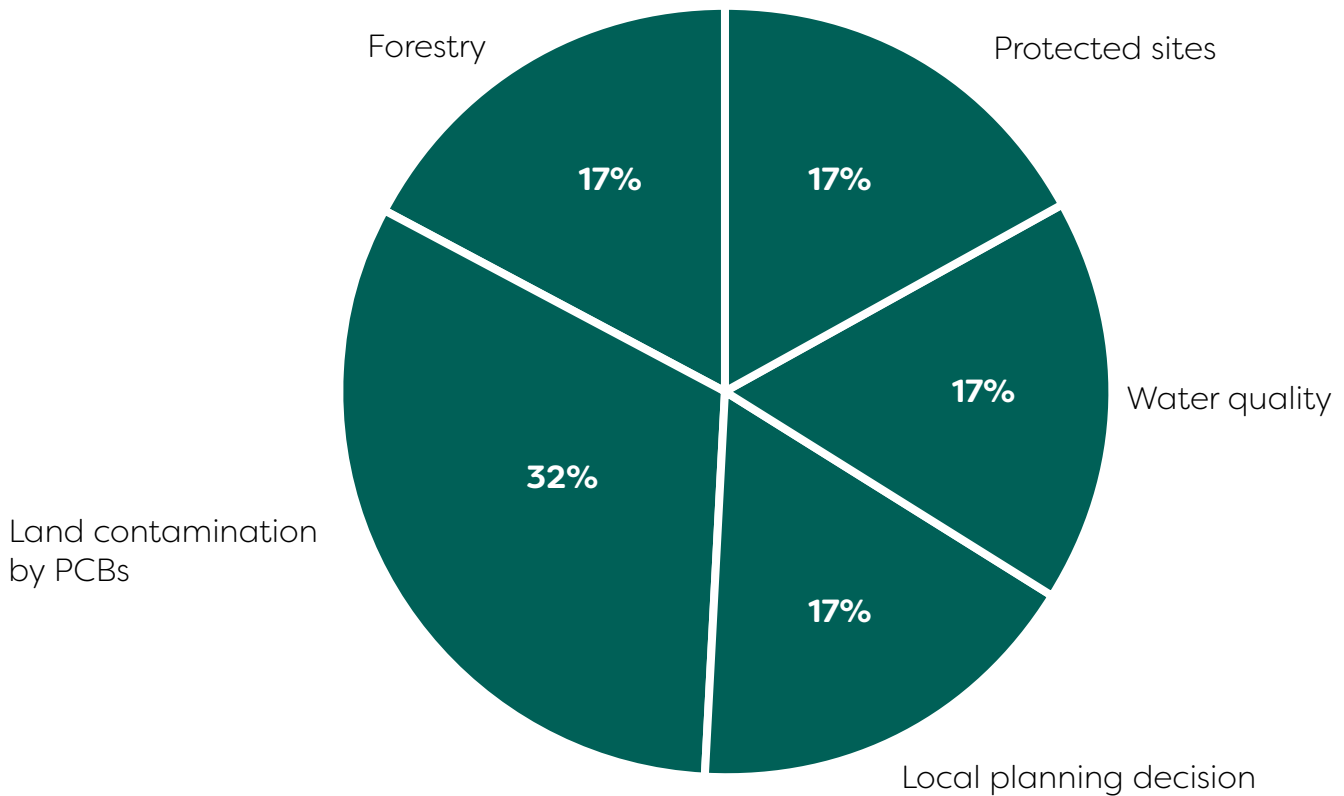
During 2022-23, we received six submissions raising concerns about the functioning of environmental law in Wales. This was significantly fewer than the number of submissions received in the previous year. The submissions received included:

- One submission related to the protection and management of protected sites
- One submission on water quality
- One submission relating to a local planning application

- Two submissions on contamination by polychlorinated biphenyls (PCBs), and
- One submission on forestry matters.

Of these submissions, one was considered to be outside the scope of the IEPAW process so was not taken any further. This submission related to a planning application and was deemed to be a complaint about an alleged compliance issue, so was not within the scope of the IEPAW process.

Figure 1: Breakdown of submissions received



Further details on concerns received

Protected sites

In this submission, the submitter stated that the management and protection of protected sites in Wales did not match up to legal and policy requirements. They argued that many such sites are damaged, they are not appropriately managed, and that biodiversity continues to decline in Wales. The submitter also considered that the suite of powers available to NRW to protect and secure appropriate management for terrestrial protected sites was not being applied to its full potential.

We have decided to take this issue forward and are in the process of drafting a report on this topic. Further information is provided below.

Water quality

This submission raised concerns about high e coli readings in a Welsh river resulting from pollution events. In particular, the submitter raised concerns about the monitoring of water quality and had considered that the quality of such monitoring was low. The submitter also highlighted difficulties they had experienced in liaising with the appropriate regulators to help identify the cause of the high e coli readings.

We have received a number of similar submissions on water quality and are looking to start work on a report in this area during 2023.

Land contamination

We have received two submissions raising concerns about contamination by polychlorinated biphenyls (PCBs) at a number of sites in Wales. In particular, there were concerns raised about the classification of contaminated land under the Environmental Protection Act 1990, as well as concerns that the statutory guidance for this legislation may be undermining its intention.

We are in the process of considering whether to take forward a report in response to these submissions. In the meantime, we have sought further information from NRW and the Welsh Government to help inform our decision.

Forestry

This submission raised concerns about a perceived lack of protection for trees and woodland in existing legislation in Wales. The concerns raised in the submission included a perceived lack of effective enforcement by the regulator and local authorities; no account being taken in the legislation of the carbon stored in woodland and woodland soils; a lack of awareness of the regulations; and cumulative damage to habitats and carbon storage caused by individual or small numbers of trees being removed under exemptions in the legislation.

We are currently in the process of drafting a report into legislation relating to the protection of trees and woodland. This submission is being considered within the context of this report.

Reporting to the Welsh Ministers

During the period 1 March 2022 – 28 February 2023 we submitted one report to the Welsh Ministers. This report related to the UK Government’s Retained EU Law (Revocation and Reform) Bill and was submitted on 16 February 2022.

Our report into this issue identified a number of concerns relating to this Bill and its potential impact on environmental legislation. In particular, we had grave concerns around the sunset clause proposed in this Bill that could see thousands of pieces of retained EU law fall away without sufficient time to consider the impacts of such a dramatic change, let alone put in place suitable alternative legislation.

In our report, we call on the Welsh Government to use whatever levers are at its disposal to seek changes to the proposed Bill, as well as to take whatever steps are necessary to mitigate any negative impacts on the legal framework in Wales.

The Welsh Government responded on 12 May 2023. Unfortunately, this response took longer than the agreed upon six weeks. However, we were glad to see that the Welsh Government shared our concerns and engaged positively with the recommendations made in our report. We welcome the Government’s response to our report and note that the contents of the response were broadly consistent with our recommendations. Both the report, and the Government’s response, are available at www.gov.wales/retained-eu-law-revocation-and-reform-bill-report.

Reports under development

Work is continuing on our report on **forestry**. This report is taking longer than originally expected, but the aim is to publish it during 2023. The report will focus on tree preservation orders, the forestry act, and related issues. We are also taking in to account further submissions received on similar issues relating to forestry as part of the drafting of that report.

We are currently drafting a report on hedgerow protection and management. This will consider whether the Hedgerow Regulations 1997 meet their stated aim of protecting hedgerows effectively. This follows an IEPAW panel discussion on the issue during the Royal Welsh Show and a public call for evidence that ran until the end of September 2022. This report is nearing completion and will be issued shortly.

We are also working on a report into the legal framework in relation to **protected sites**. This report is being informed by evidence gathered through a stakeholder roundtable event in November 2022 and a public call for evidence. We aim to complete this report in 2023. This issue is also under consideration by the other UK environmental governance bodies, and we meet with them regularly to discuss the progress of our respective projects.

We are also looking to start work on a report into the use of **civil sanctions** in environmental law. The intended aim of this report will be to consider whether regulators in Wales have the tools they need to ensure compliance with environmental law, and whether expanding civil sanctions would improve environmental outcomes. We are also continuing to follow developments relating to **water quality** in Wales, particularly on sewage discharges into Welsh rivers.

Conclusion

The IEPAW is an interim position, and we look forward to hearing shortly the Welsh Ministers' plans for the longer term in relation to environmental governance in Wales. We welcome comments and feedback in relation to the role and its work. If you have any comments about this report or the role, wish to be added to the mailing list, or wish to raise a concern about the functioning of environmental law in Wales, please contact IEPAW@gov.wales.