

## The need for a 'Nature Positive' Bill in Wales

### April 2023

### Introduction

In June 2021, the Senedd [declared](#) a nature emergency and called for stronger action to address biodiversity loss, including statutory biodiversity targets and the establishment of a statutory governance body for Wales.

The Welsh Government supported this declaration, which is reflected in the updated Programme for Government embedding the [Co-operation Agreement](#) with Plaid Cymru. The Welsh Government has repeatedly promised legislation on environmental principles, governance and nature recovery targets; most recently it has been included in the [commitments](#) arising from the Biodiversity Deep Dive. However, the timeframe for bringing forward this vital legislation remains unclear.

In March 2023, WEL joined over 300 organisations under the banner of Climate Cymru in [writing](#) to the First Minister calling for the promised Bill – a 'Nature Positive Bill' – to be brought forward in the July 2023 legislative statement.

### Why do we need a Nature Positive Bill?

We need this Bill to do two key things:

- Help Wales to avoid another lost decade for nature by establishing a duty on Welsh Ministers to achieve a Nature Positive Wales, implemented via a framework of legally binding nature recovery targets.
- Create a robust, independent environmental governance body to close the environmental governance gap that has existed in Wales since the UK left the EU.

In December 2022, the long-awaited Convention on Biological Diversity COP15 summit agreed the Kunming-Montreal [Global Biodiversity Framework](#). It embeds a global mission to halt and reverse the loss of nature by 2030 and achieve recovery so

that, by 2050, nature is thriving once more, “sustaining a healthy planet and delivering benefits essential for all people”. This is in line with the [Nature Positive](#) goal called for by organisations around the world in the years leading up to COP15.

The new Global Framework includes outcome-oriented goals and targets, to: halt extinctions and recover species abundance; tackle ecosystem loss; restore degraded ecosystems; effectively protect and manage 30% of land and sea (the ‘30 by 30’ target); reduce pollution from all sources; and drive sustainable production.

There is a clear consensus that the new global targets must be more effective in driving action to stop and reverse biodiversity loss than their predecessors have been. We cannot afford another ‘[Lost Decade](#)’ of inaction and decline, [when 1 in 6 species are already at risk of extinction](#) in Wales.

[‘Putting Wales on a Path to Nature Recovery’](#), a report published in 2021 by RSPB Cymru and WWF Cymru and supported by Wales Environment Link, drew on evidence around targets from a range of different countries and policy examples. The report set out a clear case that an ambitious, legally binding set of long term and interim targets should be introduced to bolster Wales’ current environmental legislation, and drive action for nature recovery at a pace and scale commensurate with the nature and climate emergency.

Legally binding targets, against which the Welsh Government can be held to account, will provide a strong imperative for the necessary mainstreaming of action for nature across all Ministerial portfolios and provide clarity for the public, voluntary and private sectors. They will help drive delivery of the wider suite of Biodiversity Deep Dive commitments, including transforming our protected sites, unlocking the potential of our designated landscapes, and supporting communities to drive nature’s recovery. WEL’s recently launched report – [Pathways to 2030](#) – sets out some 10 key areas where public investment in nature’s recovery needs to be increased.

There is precedent within the UK for this approach: nature recovery targets for England have been [established](#) in law under the [Environment Act 2021](#). This Act also established the Office for Environmental Protection (OEP), a new independent

environmental watchdog, whose [remit](#) includes scrutinising and advising the UK Government on its delivery against these targets.

## **What should the legislation include?**

### **1. A clear headline goal – Nature Positive Wales**

As an overarching headline goal, we want to see a duty on Welsh Government to achieve a Nature Positive Wales. As the Minister for Climate Change has [said](#), ‘nature positive’ is the rallying cry that nature needs. Achieving a Nature Positive Wales would mean:

- The systemic loss of nature has been stemmed by 2030 and nature is demonstrably on the path to recovery, with species and habitat indicators showing improvement against a 2020 baseline.
- Recovery of species and habitats by 2050 against a baseline of circa 1970, so that species abundance and distribution is on average rising, extinctions have ceased, and habitat quality and extent are increasing to the benefit of biodiversity.

This definition should be set out clearly in primary legislation so that Nature Positive is both meaningful and measurable. There should be key milestones along the way (e.g. 2035, 2040) to see species populations and habitats improving – so that nature decline is halted, site protection is enhanced, and recovery is well underway. This will be necessary to establish sufficient ambition, provide impetus for immediate action, direct the necessary finance and ensure maximum accountability for meeting the targets.

### **2. A framework of targets to measure progress against**

Success in achieving a Nature Positive Wales will need to be measured based on a number of components. The primary legislation should include a duty to set long-term and interim, outcome-based targets in secondary legislation for: species abundance, species distribution, species extinction risk, habitat quality and habitat extent (including condition of protected sites and 30x30 (area protected and

effectively managed for nature)). Each component should be assessed across terrestrial, freshwater and marine biomes.

This set of targets aligns well with the concept of the 'resilience of ecosystems' set out in the Environment (Wales) Act, which lists diversity, extent and condition along with connectedness and adaptability as key aspects of ecosystem resilience. The [State of Natural Resources Report](#), which NRW is required to publish towards the end of every Senedd term, provides an appropriate vehicle for reporting on these targets along with other environmental targets, although more regular updates on progress could also be required.

### **3. Reporting and accountability**

Ministers should be required to set out detailed plans for delivering the targets, based on independent advice, and to report on progress. If adequate progress is not made, and/or interim targets are not met, Ministers should be required to set out their plans to remedy this to the Senedd and provide regular updates.

The Bill must also, as promised by the Welsh Government, establish a new environmental governance body for Wales. This body should have a remit to hold the Welsh Government to account in respect of its plans to meet the statutory targets, and progress made; Welsh Ministers should be required to show how they are taking account of the new body's recommendations.

The primary legislation must also include a duty to periodically review targets in light of available evidence and independent expert advice, supported by a power to amend targets to make them more ambitious where a need for this is identified.

### **The governance gap**

When the UK left the EU, the role of EU institutions in providing oversight and enforcement of EU environmental laws ended. This governance framework provided accountability and access to justice for citizens, who were able to raise complaints with the European Commission, free of charge, if they felt their national government was failing to implement or abide by the law. The Commission could investigate,

advise, and ultimately take enforcement action. Our departure from the EU also meant the loss of a high-level framework of guiding environmental principles enshrined in the EU Treaties.

The Welsh Government recognised this governance gap, and promised in 2018 to take [“the first proper legislative opportunity”](#) to bring these environmental principles into Welsh law and to introduce new domestic arrangements for environmental governance. Ministers have since accepted the recommendations of a specially convened stakeholder task group on how to do this. These recommendations included:

- legislating to embed the core environmental principles - with a high level environmental objective - into Welsh law, with a duty on Ministers to apply them; and
- establishing a new, independent environment commission to oversee the implementation of environmental law in Wales, including providing a route for citizens to raise complaints, powers to investigate breaches, undertake inquiries, and take enforcement action where necessary.

Equivalent laws have now been enacted for Scotland, England and Northern Ireland, and new bodies – Environmental Standards Scotland and the Office for Environmental Protection (the latter covering England and Northern Ireland) – have been created. In Wales, there is still no clear timeframe to bring this legislation forward, leaving us with a gap in our environmental legislation and a de facto weakening of protection, as well as a reduction in citizens’ access to environmental justice (a right that is enshrined in the [international Aarhus Convention](#)).

### **Interim arrangements do not fill the gap**

In lieu of legislation, the Welsh Government has produced internal guidance to support continued application of the environmental principles, and appointed an Interim Environmental Protection Assessor for Wales (IEPAW) who came into post on 1<sup>st</sup> March 2021. The initial two year tenure of the IEPAW has been extended by a further year, to February 2024.

The interim measures are welcome, but they are no substitute for statutory measures. The IEPAW's role is to consider concerns raised regarding the functioning of environmental law and provide advice to ministers (with ministers' responses to be published along with IEPAW reports). While people can raise relevant concerns free of charge, IEPAW cannot investigate challenges regarding compliance with environmental law by Welsh Government or other public bodies. Such challenges would need to be pursued via Judicial Review, which is inaccessible and costly.

In its [report on the interim arrangements](#), the CCEI Committee stated: *“Despite continuous calls from this Committee, and from our predecessor committee in the Fifth Senedd, for the Welsh Government to prioritise legislation to establish a statutory oversight body, there will be no Bill in year two of the legislative programme. As pointed out by the First Minister in his recent letter to us, the Welsh Government has committed to bringing forward several Bills in the coming year “aimed at creating a greener Wales”. As welcome as this new law may be, it is imperative that environmental law is underpinned by a robust governance framework that provides effective oversight of implementation and accountability of government when it fails to deliver. This is sorely missing in Wales.”*

The report went on to say: *“It would be unthinkable for a statutory oversight body not to be in place before the end of the appointment [of the IEPAW] in February 2024.”*

The Interim Assessor [affirmed](#) that “clearly, these interim arrangements are not as powerful as what was in place previously, and clearly that's something that we need to put in place in Wales so that we have more permanent arrangements in place”.

### **Example: The Environment (Clean Air and Soundscapes) Bill highlights the governance gap**

In March 2021, the Court of Justice of the EU [ruled](#) that the UK had systematically and persistently failed to fulfil its obligations under EU rules on air quality (after the European Commission started proceedings against the UK in 2014). Failures on air quality standards, by both UK and Welsh Governments, have also been challenged successfully in the domestic courts by Client Earth.

The Environment (Clean Air and Soundscapes) Bill establishes a framework for Ministers to set air quality targets for Wales. The Bill includes a process for Reporting on Targets (clause 5) under which Ministers have to report to the Senedd as to whether or not a target has been met. If a target has not been met, Ministers have to lay before the Senedd a report explaining why not, and the steps to be taken to rectify this.

The equivalent framework for England (under their 2021 Environment Act) includes an additional layer of scrutiny: the OEP reports regularly ([e.g. this report on improving England's natural environment](#)) on the UK Government's progress including assessing compliance with targets and commenting on the adequacy of policy measures to meet them. The UK Government is required to respond to the OEP's recommendations.

The OEP will also be able to consider any future challenges or complaints from citizens about failures to deliver on air quality targets, by the UK Government or other public bodies in England, filling the vitally important gap of providing access to justice for citizens once more. The IEPAW does not have the powers or remit to do either of these things. Until we have fixed this gap through legislation, the risk of environmental damage gone unchecked will only increase.



Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales. WEL is a respected intermediary body connecting the government and the environmental NGO sector. Our vision is a thriving Welsh environment for future generations.

This paper represents the consensus view of a group of WEL members working in this specialist area. Members may also produce information individually in order to raise more detailed issues that are important to their particular organisation.



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