





Llywodraeth Cymru
Welsh Government

Justice System Impact Identification

Form

This document will be split up and shared with several departments so please do not use abbreviations.

Overview

Welsh Government officials are submitting this form

- For assessment by the Ministry of Justice

The Welsh Government's assessment of the impacts of this legislation on the justice system is that it has

- Low potential impact

This is because:

It is anticipated that the proposed Environment (Governance, Principles and Biodiversity Targets) (Wales) Bill ("the Bill") will only impact on the justice system following a referral to the High Court by the Welsh Environmental Governance Body ("the Body"), planned in the legislation, to address a Welsh Public Authority's failure to comply with a compliance notice issued by the proposed Body. Such referrals are only intended to be made as a method of last resort once all other methods of enforcement to address such a failure had been explored, including informal resolution, information notices and compliance notices. As such referrals are not anticipated very often (between 0 and 1 cases expected annually), it's likely there'll be minimal impact on the justice system on this basis.

Moreover, the experience of the Office of Environmental Protection ("OEP") and Environmental Standards Scotland ("ESS"), the England/Northern Ireland and Scotland counterpart bodies to the proposed Welsh Environmental Governance Body, supports this forecast. Since ESS and the OEP were formally established in October 2021 and November 2021 respectively they have made no referrals of cases to their respective courts/tribunals. This is despite the ESS and OEP covering populations nearly double and twenty times larger than Wales respectively. Further detail on the OEP's engagement with the court system, apart from referrals of cases, is outlined in the response to Question 4.17 below.

1. Bill Title

1.1. Working title of Bill

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

2. Policy lead contact details

2.1. Name / Job Title

2.2. Department / office /
business area

2.3. Telephone number

2.4. Email address

2.5. a) Date of submission of
this form

Date of Submission: *31 January 2025*

2.6. b) When is a response
required?

Response *11 April 2025*

3. Additional contact details

3.1. Legal Contact

3.2. Telephone number

3.3. Email address

4. General information

- 4.1. Please provide a) contact details of your lead official for the appraisal of costs or savings
b) the Justice Policy lead if known.

a)
b)

- 4.2. Have you notified the judicial office of your proposals by completing Desk Instruction 7? (please seek advice from your legal advisors)

- ☐ Yes
☒ No (please explain why)

Notification is being sent to the Office of the Lady Chief Justice once there are draft provisions to share.

- 4.3. In brief, what is your proposal? (no more than half a page) (This information is provided to help MoJ officials to understand the intent of the proposed change in order to be able to comment as fully as possible on its potential impacts).

The proposed Environment (Governance, Principles and Biodiversity Targets) (Wales) Bill, known as “the Bill”, will:

- *incorporate environmental principles into Welsh law and place duties on Welsh Ministers and other public authorities to apply them,*
- *strengthen environmental governance in Wales by establishing a governance body to oversee compliance with environmental law by Welsh public authorities, and*
- *introduce a new and ambitious biodiversity targets framework to combat the ongoing nature emergency.*

We consider the main interface with the justice system following the introduction of this legislation will be due to action taken by the proposed Welsh Environmental Governance Body (“the Body”) to address a Welsh public authority’s failure to comply with environmental law (including Welsh Ministers). The functions of the proposed Body are to include monitoring compliance with environmental law by the Welsh public authorities (to be defined in the Bill), including Welsh Ministers, investigating public representations about environmental law breaches by public authorities and taking enforcement action where necessary, as well as advising the Welsh Government on environmental law and policy. It is planned for the Body to have the powers to make referrals to the High Court where a Welsh public authority, including Welsh Ministers, has failed to comply with a compliance notice issued by the Body.

The impetus for the establishment of the Body is the legislative architecture and the requirements of international agreements following the UK’s exit from the European Union (EU). Oversight of environmental law and the accountability of European Union (EU) Member States was provided by the European Commission before the UK left the EU. As the Commission no longer has this oversight role leading to a governance gap, Welsh Government has determined Wales needs a body to fulfil this role. Also, Article 394 of the UK-EU Trade and Co-operation Agreement states each Party shall ensure that:

- (a) *domestic authorities competent to enforce the relevant law with regard to environment and climate give due consideration to alleged violations of such law that come to their attention...” and*
- (b) *national administrative or judicial proceedings are available... to bring actions against violations of such law “*

Evaluation of the legislation's success will include an assessment of its impact on environmental protection in Wales and other measures.

It is proposed that public authority requests for a review following the serving of a compliance notice will be conducted by the Body's review committee. Further details are in Section 5.3 of this JSII form.

- 4.4. Please indicate when you will be undertaking a post-implementation review of this legislation and the enforcement actions arising from it.

It is anticipated the post-implementation review of this legislation will be undertaken within 5 years of its introduction. Please see the response to question 4.7 below on when this legislation is due to be implemented and the timing for the impact of any enforcement actions arising from it.

- 4.5. Is this legislative proposal similar in any way to legislation being brought forward in England? If the legislation has no substantive difference from that in England, there may be no need to complete all parts of the JSII form.

The main aspects of the proposed Bill are similar to aspects of the Environment Act 2021 which includes provisions which extend (variously) to England, Northern Ireland, Scotland and Wales (section 146). However, the approach of the proposed Bill will differ to the provisions applying to England in certain ways. Each of these main aspects are outlined below.

Environmental Principles

Sections 17 to 19 of the Environment Act 2021 make provision about environmental principles. Section 17 requires the Secretary of State to prepare a policy statement on environmental principles. The statement is required to explain how the environmental principles should be interpreted and proportionately applied by Ministers of the Crown when making policy. Section 18 makes provision about the process for preparing the policy statement. Section 19 imposes duties on Ministers of the Crown to consider the policy statement when making policy.

The Bill will impose duties on the Welsh Ministers and Natural Resources Wales, when making policy, to have special regard to certain environmental principles and to integrate environmental protection. Duties will also be placed on other authorities to have regard to the environmental principles and to integrate environmental protection when carrying out functions in connection with the assessment of plans and programmes relating solely to Wales or to any part of Wales under the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 (S.I. 2004/1656).

Provision will be made for an environmental objective aimed at the attainment of a high level of environmental protection and an improvement of the environment in Wales, to which the Welsh Ministers and other public authorities (but not NRW) must contribute in the exercise of the duties to be imposed on them.

Provision will be made for a statement and guidance. The Welsh Ministers, NRW and other public authorities will be required to have regard to the statement or guidance (as the case may be) in complying with the duties to be imposed on them.

Welsh Environmental Governance Body ("the Body")

Part 1, Chapter 2 and Schedule 1 of the Environment Act 2021 outline the provisions for the Office of Environmental Protection (OEP) in England. This is England's counterpart to the proposed Welsh Environment Governance Body ("the Body") in the Welsh legislation.

The main differences of approach in this proposed Welsh legislation concern:

- **Purpose:** Section 23 (1) of the Environment Act 2021 outlines the principal objective of the OEP in exercising its functions. The proposed Welsh legislation will require that the Body must exercise its functions for the general purpose of contributing to the environmental objective. This "environmental objective" will be the attainment of a high level of environmental protection and an improvement of the environment in Wales, with a view to:
 - (a) meeting the needs of the present without compromising the ability of future generations to meet their own needs and contributing to achieving the well-being goals in section 4 of the Well-being of Future Generations (Wales) Act 2015
 - (b) maintaining and enhancing the resilience of ecosystems and the benefits they provide,
 - (c) mitigating, and adapting to climate change, and
 - (d) contributing to halting and reversing the decline in biodiversity.
- **Scope:** Section 31(3) of the Environment Act 2021 explains how public authorities are defined with regard to the OEP. In the context of the Body, it is proposed that in the Welsh legislation a "public authority" means a person, other than the Body, who is (a) a devolved Welsh authority within the meaning given by section 157A of the Government of Wales Act 2006 (c. 32), or (b) listed in paragraph 9(2) or (6) of Schedule 7B to that Act.
- **Advising function:** Section 30(1) of the Environment Act 2021 provides the OEP must give advice to a Minister in certain circumstances. In this proposed Welsh legislation, the Body will have discretion over how such requests for advice from Ministers are dealt with. It will not be mandatory for the Body to provide advice, but if the Body determines not to provide the advice requested it must explain why.
- **Reference to complaints:** Section 32 of the Environment Act 2021 provides that a person may make a complaint to the OEP if they believe a public authority has failed to comply with environmental law. Under the proposed Welsh legislation, it is planned to refer to 'representations' rather than complaints although in the main part the effect is the same.
- **Provision of information:** Section 35 of the Environment Act 2021 provides that the OEP may give an information notice to a public authority if (a) the OEP has reasonable grounds for suspecting that the authority has failed to comply with environmental law, and (b) it considers that the failure, if it occurred, would be serious. In contrast, in the proposed Welsh legislation an information notice will require a public authority to give the Body information that it reasonably requires for the purposes of exercising all its functions. Failure to comply with an information notice could lead to a public authority being issued with a compliance notice.
- **Investigations:** Section 33(1) of the Environment Act 2021 outlines the OEP may carry out an investigation when there is an indication that (a) a public authority may have failed to comply with environmental law, and (b) if it has, the failure would be a serious failure. In the proposed Welsh legislation, the circumstances in which the Body may carry out an investigation will be broader. The Body may investigate any matter relating to (a) whether a public body is failing, or has failed, to comply with environmental law, (b) how environmental law is implemented and applied, or (c) the effectiveness of environmental law.
- **Decision/compliance notices:** Section 36(1) of the Environment Act 2021 provides that the OEP may give a decision notice to a public authority if (a) the OEP is satisfied, on the

balance of probabilities, that the authority has failed to comply with environmental law, and (b) it considers that the failure is serious. Decision Notices do not place a duty on public authorities to comply with that decision notice. In contrast, in the proposed Welsh legislation, a Compliance Notice (rather than Decision Notice) served by the Body must specify the action the Body requires the public authority to take if the Body considers that the public authority is failing to comply with environmental law or has failed to comply with environmental law in circumstances that make it likely that the failure will repeated.

- **The Body's review of compliance notices:** Details on the review of compliance notices are outlined in Section 5 of the Justice System Impact Identification (JSII) form below.
- **Escalation to the courts:** Section 38 of the Environment Act 2021 provides that where the OEP has given a decision notice to a public authority it may apply to the court for an environmental review, but only if (a) it is satisfied, on the balance of probabilities, that the authority has failed to comply with environmental law, and (b) it considers that the failure is serious. Where the court makes a statement of non-compliance it may grant any remedy that could be granted by it on a judicial review other than damages, but only if certain conditions are met. In contrast, under the proposed Welsh legislation, where the Body considers that a public authority has failed to take the action specified in a compliance notice served on it in the period within which the action is required to be taken the Body may apply to the High Court for an order requiring the public authority to (a) take the action specified in the compliance notice, or (b) take such action as varied by the Court as it sees fit.
- **Improvement Reports:** The Environment Act 2021 does not provide for Improvement Reports. In contrast the proposed Welsh legislation will provide that the Body may publish an improvement report if it considers that a public authority is failing or has failed to (a) comply with environmental law, or (b) implement or apply environmental law effectively.

Biodiversity

Sections 1, 4, 6 and 7 - 16 of the Environment Act 2021 make provision about environmental targets, environmental improvement plans and environmental monitoring. The main differences of approach in this proposed Welsh legislation concern:

The Environment Act 2021 granted the Secretary of State power to set targets in relation to biodiversity and imposed a duty on the Secretary of State to set a species abundance target within 12 months of Royal Assent. There will be a similar power to set biodiversity targets granted to the Welsh Ministers through the Bill, but it is proposed that targets cannot be set unless the targets will contribute to certain criteria, such as halting and reversing the decline in biodiversity. There will also be a duty on the Welsh Ministers to lay draft regulations before the Senedd that set certain priority targets within 36 months of Royal Assent of the Bill.

The Environment Act 2021 requires the Secretary of State to prepare an environment improvement plan that cover periods no shorter than 15 years. These plans are also accompanied by an annual report and a five-year review period. Welsh legislation already includes various duties on the Welsh Ministers to prepare reports on biodiversity, such as in sections 6 and 9 of the Environment (Wales) Act 2016, although not covering a 15-year timeframe. The Bill proposes a new report that provides an evaluation of the impact of the Welsh Ministers' policies set out in the plan required under section 6 of the Environment (Wales) Act 2016.

The proposed Welsh legislation also includes a duty on Welsh Ministers to promote awareness of the importance of biodiversity and the drivers of biodiversity loss. A similar duty is not present in the Environment Act 2021.

4.6. Please specify the name of any other related legislation. How do you expect the relevant provisions of this (new) legislation to be enacted?

- *Government of Wales Act 2006*
- *Well-being of Future Generations (Wales) Act 2015 and Environment (Wales) Act 2016*
- *European Union (Withdrawal) Act 2018*
- *European Union (Future Relationship) Act 2020 and related secondary legislation refers to the UK/European Union and the European Atomic Energy Community: Trade and Cooperation Agreement¹. (See paragraph 4.3 above)*
- *The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 established the Scotland counterpart to the proposed Body*
- *The Environment Act 2021 established the England and Northern Ireland counterpart to the proposed Body*
- *Retained EU Law (Revocation and Reform) Act 2023*
- *Agriculture (Wales) Act 2023*
- *Environment (Air Quality and Soundscapes) (Wales) Act 2024*

The provisions of this Welsh legislation are due to be enacted by Royal Assent and by commencement order where applicable.

- 4.7. Please indicate the anticipated date when a) the legislative changes are expected to come into force and b) the date when the first anticipated impact on the justice system will arise.

The Body will be established 2 months after the legislation receives Royal Assent. This is expected to be around Spring 2026 when the Provisions will only be commenced for certain purposes such as appointing members, staff and undertaking preparatory works including developing policies and a strategy using commencement provisions or commencement orders allowing development of those areas in accordance with the Bill requirements.

Furthermore, the Body's monitoring and enforcement powers would be commenced by regulation when preparations are completed, likely 2027 and as such there will be a considerable period of implementation required before the Body is fully operational and we would expect any impacts on the justice system to arise. This is because the powers will sit with the Body to establish its own procedures and strategies and the expected times to recruit to the key roles.

- 4.8. If altering or introducing an offence, sanction or penalty, which of the following groups will the proposal affect and in what circumstances? (Tick all that apply)

- ☐ Individuals
- ☒ Private Institutions (e.g. Businesses)
- ☒ Public Institutions (e.g. Government Departments)

¹ UK/EU and EAEC: Trade and Cooperation Agreement [TS No.8/2021] - GOV.UK (www.gov.uk)
Justice System Impact Identification (version 19 - August 2024)

Welsh Environmental Governance Body

The Body will have oversight of devolved public authorities in Wales and this will include private companies exercising public functions where that function mainly relates to environmental protection. This approach will capture statutory undertakers, such as Water Companies, who through the course of their public functions can have a significant effect on the environment. In so doing, only the 'public functions' of these private companies will be within the scope of the Body's oversight.

This oversight will be restricted to the devolved bodies which includes a devolved Welsh authority within the meaning given by section 157A of the Government of Wales Act 2006 ("GoWA 2006") (which includes Schedule 9A to GOWA and those bodies listed in paragraph 9(2) or 9(6) of Schedule 7B to GoWA 2006.

It is not intended that a list of specific organisations within scope of this duty should be listed on the face of the Bill. However, when combined with the restriction around environmental law, the intended outcome will be that any "Welsh public authority" (as defined in the Bill) that has duties under Welsh environmental law which mainly relates to environmental protection will be overseen by the Body. This legislation proposes that 'environmental law' means any devolved provision to the extent that it wholly or mainly relates to environmental protection and does not relate to (i) disclosure of, or access to, information; (ii) taxation, finance or budgets.

- 4.9. Does your legislation only have impact in Wales or are you working jointly with other administrations? Tick all that apply and provide brief details as appropriate, including whether your proposal will create different laws in Wales compared to England, Scotland and / or Northern Ireland.

Please note that, with the exception of the devolved tribunals, the Ministry of Justice (MoJ) administers the justice system in England and Wales only. Please talk directly to the MoJ devolution unit if you anticipate your proposal could have an impact on courts or prisons in Scotland or Northern Ireland.

- ☒ Wales only
☐ England
☐ Scotland
☐ Northern Ireland
☐ Other (Please Specify)

It is anticipated this Welsh legislation will only have impact in relation to Wales. This is because the proposed legislation will:

- incorporate environmental principles into Welsh law,*
- strengthen environmental governance in Wales by establishing a governance body to oversee compliance with environmental law (as defined in the Bill) by Welsh public authorities, and*
- introduce a new and ambitious biodiversity targets frameworks to combat the ongoing nature emergency.*

Collaboration

it is intended the Body should seek to collaborate with other bodies (including the Office of Environmental Protection and Environment Standards Scotland) or any other persons the Body considers appropriate. There will be a requirement for the Body to set out in its strategy how it intends to fulfil this duty.

Due to the cross-border nature of biodiversity, it is intended that Welsh Ministers should collaborate with the UK Government, other Devolved Administrations and any other organisation considered appropriate to achieve the biodiversity targets. However, the Bill will not make express provision for this.

Differentiation of laws

This proposal will create different laws in Wales compared with England, Scotland and Northern Ireland. Further details are outlined in the response to question 4.5 above. It isn't anticipated the proposal will have an impact on courts or prisons in Scotland or Northern Ireland.

4.10. If your legislation could directly impact visitors to Wales or other people not normally resident in Wales, or if your legislation is significantly different from elsewhere in England, Scotland or Northern Ireland;-

- a) what arrangements have you made to ensure ongoing awareness raising of the different legislative approach on this issue in Wales?
- b) what will be the implications on the enforcement agencies of taking forward action against individuals not usually resident in Wales?

It is not envisaged this legislation would directly impact visitors to Wales or other people not normally resident in Wales. However, visitors to Wales or other people not normally resident in Wales will be able to submit a representation to the Body if they wish.

- a) *A widespread awareness raising exercise has already been undertaken to highlight the White Paper consultation published on these legislative proposals on 30 January 2024 and the Welsh Government response published on 30 July 2024. This was undertaken using social media, Ministerial announcements, direct emails and on-line face to face engagement. It is likely the Welsh Government will do further publicity as the legislation progresses.*
- b) *Action will not be taken against individuals, including those not normally resident in Wales.*

4.11. What are the options under consideration and how does this change the existing situation?

Not introduce new legislation

This option would not have an impact on the justice system. This is because Wales does not yet have a permanent statutory environmental governance body in place. An Interim Environmental Protection Assessor for Wales (IEPAW) was appointed on 1 March 2021. However, as their role is only to consider the functioning of Environmental law in Wales their remit and powers fall short of the arrangements that existed previously under the EU environmental governance framework. In particular, the IEPAW doesn't have statutory investigation and enforcement powers to address concerns about compliance with environmental law by public authorities. If the option to do nothing is pursued it is likely Wales will not meet the requirements of Article 394 of the UK-EU Trade and Co-operation Agreement as outlined in the response to question 4.3 above.

Introduce new legislation

Criminal enforcement:

As the proposed Welsh legislation primarily concerns oversight of public authorities rather than individuals, criminal enforcement is not felt to be an appropriate option.

Civil enforcement:

This is the preferred option as the proposed legislation primarily concerns public authorities. Civil enforcement provides a deterrent and if necessary, the requirement to comply with the Court. It is proposed that there is an escalatory approach to enforcement with referral to the justice system considered to be a method of last resort. As such, all other methods of resolution should have been explored before enforcement needs to be carried out by way of a Compliance Notice or eventually through the courts/tribunal system. There will be a duty on a public authority to meet the requirements of the Compliance Notice and any failure to do so could be referred to the courts. If the court upholds the Compliance Notice, the proposed legislation will ask the court to issue an order to that effect. It would be open to the Body to make an application for contempt of court if a subsequent court order is not adhered to by the Welsh public authority. It is also open to the court to instigate contempt of court proceedings themselves where they consider there is a failure to comply with an order of the court.

Informal resolution:

Where the Body considers public authorities have failed to comply with environmental law, early corrective action is favoured ahead of an enforcement response. The legislation will empower the Body to work constructively with Welsh public authorities to reach an informal resolution where possible. Public authorities should be given opportunities to address non-compliance without the matter being referred to the courts.

4.12. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

Only the provisions relating to the proposed Body are expected to create new civil sanctions, by way of a Compliance Notice placing a duty on a public authority and providing the matter will be referred to the courts if they fail to comply. In this respect, we anticipate the courts which could deal with this would be primarily the High Court of England and Wales.

Criminal Offences and Civil Penalties and Sanctions

4.13. Which of the following are you creating / amending? (Tick all that apply)

- ☒ Civil Sanctions
- ☐ Fixed Penalties
- ☒ Civil Orders
- ☐ Criminal Sanctions
- ☐ Criminal Offences
- ☐ Other (Please Specify)

There will be requirement for civil orders in this proposed legislation and the ultimate sanction would be considered a civil sanction.

4.14. If you are creating a criminal offence, is it:

- ☐ Summary Only (heard before a bench of lay magistrates / judge only)
- ☐ Triable Either Way
- ☐ Indictable Only (heard before a judge and jury)

In cases where the maximum penalty is to be an unlimited fine, and a triable either way offence is warranted, please explain why a summary only offence is not considered appropriate. This is especially relevant if few, if any, cases are anticipated.

Not applicable.

4.15. If you are creating provisions which provide for civil sanctions, have the Welsh Ministers consulted the relevant Secretary of State?

The proposed provision for the Body to issue Compliance Notices would be a civil sanction.

The Department for Environment, Food and Rural Affairs (DEFRA) has been consulted on proposals to date and further contact will be made on the latest position following the issuing of this draft JSII.

4.16. Enforcement

This section requires you to demonstrate how your legislation will be enforced and what specific discussions you have held with enforcement agencies. You must show that you have identified whether there will be an increased or reduced need for enforcement action as a result of your legislation, what any cost implications of enforcement will be and how any new or additional costs will be funded.

Have you advised the Welsh Government Police Liaison Unit of your proposals? *No - Not applicable.*

If you consider prosecution will be needed in a criminal court, have you consulted with the Crown Prosecution Service? *No - Not applicable*

This legislation proposes the Body would be responsible for enforcement of non-compliance with environmental law by Welsh public authorities as outlined in the response to question 4.3 and 4.5 above. It is likely there will be some increased need for enforcement action as a result of this proposal. The costs to carry out enforcement would be borne by the Body, save for once the matter is escalated to the Courts. It is appreciated there would be costs for submitting a case to the High Court. It is anticipated the costs, once the matter is escalated to the courts, would be minimal as such referrals would only be made as a method of last resort once all other methods of enforcement, including informal resolution, had been explored. So, there would only be a maximum of one case each year referred to the High Court, with a considerable number of years having no cases referred by the Body. Please note the response to Q.17 below.

To fulfil its role of overseeing the compliance of Welsh Public Authorities with environmental law it is anticipated the proposed Body will be provided with sufficient resource by the Welsh Government.

4.17. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

It is anticipated there will be a maximum of one case each year referred to the High Court, with a considerable number of years having no cases referred.

It is anticipated, a referral by the Body to address a Public Authority's failure to comply with Environmental Law would only impact on the justice system in a minimal number of cases. Such referrals would only be taken as a last resort once all other methods of enforcement to address such a failure had been exhausted.

Environmental Standards Scotland (ESS) and the Office of Environmental Protection (OEP), the Scotland and England/Northern Ireland are the counterpart bodies to the proposed Body. They

have been formally established since October 2021 and November 2021 respectively. Despite both being in existence for over 3 years and covering populations nearly double (ESS) and twenty (OEP) times larger than Wales neither body has referred any cases to their respective justice systems to date.

It should be noted, the OEP has been given permission to intervene in 3 judicial reviews brought by third parties. The first was in the appeal of *R (Finch) v Surrey County Council* at the Supreme Court in June 2023 by way of written submissions only. Secondly, the OEP was given permission to intervene, again by way of written submissions only, in the Court of Appeal case of *R (Pickering Fishery Association) v SoSEFRA and Environment Agency* which is being heard in January 2025. Thirdly, the OEP has been given permission to intervene by way of written submissions and brief oral submissions in the Court of Appeal case *R (Rights Community Action Ltd) v SoSHCLG* which has not yet been listed for hearing but is due to be heard by December 2025.

The OEP has also applied to intervene in the Supreme Court appeal of *CG Fry & Son Ltd v SoSHCLG and Somerset Council* which is due to be heard in February 2025. In addition, the OEP issued a Judicial Review Pre-Action letter in Northern Ireland which did not progress through the court system further as the necessary outcome was achieved by the issue of the letter.

There is no evidence currently available which implies that the lack of compliance by Welsh public authorities is significantly different in Wales than in England/Northern Ireland or Scotland.

4.18. Do you expect proceedings to be heard in the Magistrates' Court, the Crown Court, or a Civil Court? What will the proportions be?

It is anticipated that, where appropriate, proceedings would be referred to a Civil Court only - the High Court of England and Wales.

4.19. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine or custody, please indicate and explain the circumstances which would result in a custodial sentence upon conviction and the proportion of custodial penalties which will be at the maximum level.

Not applicable. None outlined on the face of the Bill

4.20. Please itemise details of any proxy or current offences and / or penalties on which the proposed penalties are based. If mirroring / comparing existing legislation, ensure that reference is made to the most recent versions of the legislation (via Westlaw, the online legal research service) as this is not always available online. Please refer to page 8 of the JSII guidance on how to obtain data relating to the number of cases brought forward under the legislation you have identified.

Legislation / Section	Offence	Number of cases
Not applicable		

4.21. If you are considering creating a new criminal offence, or amending an existing offence, please confirm that the proposals for the offences and penalties are in line with the available from the [Ministry of Justice guidance](#)

In the case of an amendment to existing legislation, please confirm its details.

Not applicable.

4.22. What will be the short, medium and lifelong implications for an individual found guilty of this offence, and how is this proportionate to the offence created?

Not applicable.

4.23. Does this legislation impose any duty on the public sector? If so, please provide your assessment of the likelihood of individuals or businesses taking action against the public sector for non-compliance with this legislation.

This legislation imposes duties on Welsh Public Authorities (relating to targets, principles and compliance with environmental law) including Welsh Ministers as outlined in the responses to questions 4.3 and 4.5 above. Further there are duties on the Body in carrying out the functions set out in the legislation.

The new duties imposed on public bodies will give rise to potential action by businesses and individuals against those public authorities subject to the duties, but this will be by way of judicial review rather than an express powers on the face of the Bill.

Further the duties imposed on the new Body itself will give rise to potential challenge if a business or individual is of the view the Body is not exercising its functions fairly or lawfully. Again, there are no express powers on the face of the Bill and existing routes of challenge would need to be considered.

5. HM Courts & Tribunals Service and the Welsh Tribunals Service

Estimating the change to caseload of the Courts and Tribunals Service (including devolved tribunals)

- 5.1. Do you expect there to be a change in Court or Tribunals process or an increase / decrease in applications / cases to HM Courts and Tribunals Service and / or the Welsh Tribunals through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

It is not expected this legislation will result in a change in Court or Tribunals processes. As outlined in the answer to Question 4.17 it is anticipated that between 0-1 cases will be referred to the High Court per year.

- 5.2. Please confirm if the courts / tribunals would be under any duty to inform any regulatory authorities of any convictions made under this offence.

- ☒ No
☐ Yes (please provide details)

No - *It is not anticipated that any convictions, as such, would be made under these proposals.*

Appeal Rights

- 5.3. Does your proposal create a new right of appeal, onward appeal, or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service or the Welsh Tribunals, and will the appeals be suitable for a virtual hearing)?

- ☐ No
☒ Yes (please provide details)

These legislative proposals will create a new right of 'appeal' for Welsh public authorities against the serving of Compliance Notices by the proposed Body. It is planned for the legislation to provide for a public authority to request a review following the serving of a compliance notice. It is not expected to engage with HM Courts and Tribunals Service (HMCTS) for this purpose. However, we acknowledge the possibility that a Welsh public authority, including the Welsh Ministers, could challenge through the courts using existing mechanisms, any decision made by the Body in connection with its internal appeals process. It is anticipated if this was to happen, it would be very rarely. Please see the response to Q.4.23 above for additional details.

- 5.4. Who will hear appeals arising from any enforcement action undertaken under the proposed legislation?

- ☐ UK First-Tier Tribunal
☐ UK Upper Tribunal
☐ Welsh First-Tier Tribunal
☐ Welsh Appeal Tribunal
☐ Magistrates Court
☐ Crown Court
☒ Other (please provide details)

Review of compliance notices by committee of the Body

It is proposed that public authority requests for review following the serving of a compliance notice by the Body shall be conducted by an internal review committee of the Body. This approach aims to minimise administrative burdens on public authorities and expedite the review process, enabling urgent cases to be considered within seven days.

To facilitate urgent cases, an "urgent compliance notice" process has been established for instances which, in the Body's view, require immediate enforcement action to prevent or mitigate a risk of serious and imminent damage to the environment or to human health.

This process mandates a seven-day response period from the public authority and a seven-day decision window for the review committee. This ensures the exhaustion of internal appeals within a two-week timeframe, enabling the Body (as a last resort) to refer the public authority to the high court for non-adherence to the compliance notice more quickly, as well as seek remedies such as injunctions or prohibitions.

To facilitate these requirements, the bill requires the body to establish a review committee. To enhance transparency and public confidence, the legislation minimizes discretionary power within the review process, outlining specific requirements.

- 5.5. Do you expect to expand an existing jurisdiction or establish a new tribunal jurisdiction? If so, has this been discussed with the Welsh Tribunals Unit / Ministry of Justice?

There are no plans to provide for appeals to the Welsh Tribunals structure in the immediate future.

- 5.6. What costs do you anticipate will be incurred and does your policy division have the necessary funding in place to set up the proposed enforcement regime and appeal mechanisms within the Welsh Tribunal structure?

There are no plans to provide for appeals to the Welsh Tribunals structure in the immediate future.

- 5.7. When do you anticipate your proposed legislation will be implemented and the first appeal hearings will be heard?

The Body will be established 2 months after the legislation receives Royal Assent. This is expected to be around Spring 2026 when the Provisions will only be commenced for certain purposes such as appointing members, staff and undertaking preparatory works including developing policies and a strategy using commencement provisions or commencement orders allowing development of those areas in accordance with the Bill requirements.

Furthermore, the Body's monitoring and enforcement powers would be commenced by regulation when preparations are completed, likely 2027 and as such there will be a considerable period of implementation required before the body is fully operational and we would expect any impacts on the justice system to arise. This is because the powers will sit with the Body to establish its own procedures and strategies and the expected times to recruit to the key roles.

Alternative Dispute Resolution

- 5.8. To what extent could the use of alternative dispute resolution (ADR) procedures (including mediation) be appropriate? How will success in ADR be measured?

Apart from the informal resolution mechanisms outlined in the response to question 4.11 there are no further alternative dispute resolution procedures anticipated/proposed.

Prosecution and Enforcement

- 5.9. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please identify who will prosecute.

Not applicable.

- 5.10. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

It is understood the enforcement mechanism for the Civil sanction of a Compliance Notice would be referral to the court and associated costs would be borne in line with existing practice. The court would be responsible for enforcement ultimately by imposition of contempt of court - either on application of the Body or the court itself.

HMCTS Procedural Rules, Sentencing and Penalty Guidelines

- 5.11. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

The provisions in the Bill do not amend the civil procedure rules although they may be applicable to proceedings carried out under the Bill.

- 5.12. Will the proposals require sentencing and / or penalty guidelines to be amended?

Not applicable - the proposals do not amend sentencing or penalty guidelines.

6. Legal Aid and Court Fees

6.1. What evidence is there that individuals affected by your proposal will be able to secure and afford:

- a) legal representation and legal advice in order to secure a fair hearing of their case
- b) associated court fees

What legal costs for a typical case could each party bear and what provisions exist for a party found innocent to recover all or any of their legal costs?

Individuals will not be affected by this legislation. The purpose of this legislation is oversight of public authorities - not individuals.

6.2. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- ☐ Criminal
- ☐ Civil (including Family)
- ☐ Asylum
- ☐ Legal aid not available (please provide supporting evidence)

Not applicable.

6.3. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

Not applicable.

7. Prisons and Offender Management Services

Impact on HM Prison Services

7.1. Will the proposals result in a change in the number of offenders being committed to custody (including on remand) or probation (including community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and the source for your information.

There will be no impact because these proposals concern civil matters.

7.2. Does the proposal create, remove or change an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison / probation service? If so, please provide details, including the expected impact on probationary services.

Not applicable.

8. Main Justice System Impacts Identified

8.1. Volumes (please lengthen if necessary):-

NB in all cases, assume an average annual figure or make clear if a different timespan is being considered. Where there may be significance variance from average in the first years of implementation, please add additional information in the notes below.

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Additional Information
Criminal Offences and Sanctions	Not applicable		
Civil Penalties	0-1 a year		
HM Courts & Tribunals Services	0-1 a year		
Welsh Tribunals	Not applicable		
Legal Aid	Not applicable		
	High Court - For volumes please see above		

8.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):

Offence	Maximum Penalty	No. of prosecutions brought per annum (numeric estimate and min-max range)	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given
Not applicable				
Notes:				

Please be aware that any costs or savings identified as a result of any changes to the justice system /additional work must be factored into the financial assessment of your legislation.