

Agenda – Climate Change, Environment, and Infrastructure Committee

Meeting Venue:

Hybrid – Committee room 3 Senedd
and video Conference via Zoom

Meeting date: 13 December 2023

Meeting time: 09.30

For further information contact:

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Private pre-meeting (09.15–09.30)

Public meeting (09.30–11.30)

1 Introductions, apologies, substitutions, and declarations of interest

(09.30)

2 Transport scrutiny with the Minister for Climate Change

(09.30–10.30)

(Pages 1 – 38)

Julie James MS, Minister for Climate Change

Peter McDonald, Director Economic Infrastructure – Welsh Government

Ruth Conway, Deputy Director Public and Integrated Transport – Welsh Government

Attached Documents:

Research brief

Paper – Welsh Government

Break (10.30–10.40)



3 Transport scrutiny with the Minister for Climate Change

(10.40–11.30)

Julie James MS, Minister for Climate Change

Peter McDonald, Director Economic Infrastructure – Welsh Government

Ruth Conway, Deputy Director Public and Integrated Transport – Welsh Government

4 Papers to note (11.30)

4.1 Cable ploughing

(Pages 39 – 44)

Attached Documents:

Letter from the Chair to A Thomas Plant Hire Ltd in relation to cable ploughing

Letter from the Chair to the Minister for Climate Change in relation to cable ploughing

Response from the Minister for Climate Change to the Chair in relation to cable ploughing

4.2 Inter–Institutional Relations Agreement

(Pages 45 – 46)

Attached Documents:

Letter from the First Minister to the Chair of the Legislation, Justice and Constitution Committee in relation to Inter–Institutional Relations

Agreement: 40th British–Irish Council Summit

Letter from the Minister for Climate Change to the Chair in relation to the inter–institutional relations agreement

4.3 Sewage discharge and storm overflows

(Page 47)

Attached Documents:

Letter from Mr Wynne Jones to the Chair in relation to sewage overflows

4.4 Environmental Information Regulations in relation to Wales

(Pages 48 – 67)

Attached Documents:

Letter from the Chair of the Petitions Committee to the Chair in relation to Environmental Information Regulations in relation to Wales

Letter from Guy Linley-Adams to the Petitions Committee in relation to the Environmental Information Regulations in relation to Wales

4.5 Ffos-y-Fran opencast coal mine

(Pages 68 – 82)

Attached Documents:

Letter from the Coal Action Network to the Chair in relation to Ffos-y-Fran opencast coal mine

Letter from the Coal Authority to the Welsh Government in relation to Ffos-y-Fran opencast coal mine

Ministerial advice in relation to Ffos-y-Fran opencast coal mine

5 Motion under Standing Order 17.42 (vi) and (ix) to resolve to exclude the public from the remainder of today's meeting

(11.30)

Private meeting (11.30-12.00)

6 Consideration of evidence received under items 2 and 3

7 Consideration of the Committee's forward work programme – Spring 2024

(Pages 83 – 85)

Attached Documents:

Forward work programme

Document is Restricted



Evidence paper for Minister for Climate Change Transport Matters Scrutiny at CCEI Committee

13/12/2023

Information provided to aid the Committee in advance of the Deputy Minister's attendance to discuss Transport matters on 13 December.

The contents of this paper were prepared before, and are subject to, the forthcoming budget.

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1. Rail services and metro delivery

Background

1. Transport for Wales (TfW) has faced a number of challenges in 2023 in operating high quality rail services. After a number of incidents TfW had to take the difficult, but correct, decision to withdraw significant number of trains for urgent maintenance in the spring. This reduced the number of trains available by a fifth and led to further difficult decisions in allocating the available trains to deliver services across Wales.
2. The reduced number of trains available for services affected passengers on the Heart of Wales Line and the Wrexham to Bidston Line in particular. TfW recognised this impact and implemented a 5 point performance improvement plan for the Wrexham to Bidston line, appointing a dedicated manager to deliver this.
3. Following the poor Spring and Summer period, TfW's rail service performance has improved, including on the key North-South route. This is largely due to the continuing introduction of increasing numbers of more reliable brand-new trains to replace the older inherited fleet, alongside an increased focus on improvements.

Progress

New trains

4. TfW are currently accepting a new CAF train every 7-10 days with most recent deliveries being 3 carriage trains, helping to boost capacity on busy services. These trains are used right across Wales, with TfW recently extending their use to Carmarthen. Extensions further West are planned by the end of 2023. This will mean that it will be possible to travel from Milford Haven to Holyhead entirely on brand-new trains by the end of this year. In South Wales, TfW have received 11 brand-new trains which are currently used on services between Rhymney and Penarth.
5. Overall, brand-new trains now comprise a third of the fleet used by TfW each day. When all the brand-new fleet is delivered TfW will have 484 carriages available to them compared to the 270 inherited in 2018. TfW are confident that performance of services will continue to improve as more new trains are delivered.

Rail services

6. TfW are one of the few operators across the UK who have returned to a full timetable of services following the Covid pandemic. TfW will continue to increase the number of services they operate with the introduction of a new service between Ebbw Vale and Newport from December 2023. The new timetable in December 2023 will also include the return of an hourly TfW service between Chester and Liverpool and a more reliable service between Wrexham and Bidston aligned with the 5 point improvement plan for this line.
7. The performance of TfW's services has also improved, with targets for reducing cancellations and disruption to passengers being met from late summer and into the Autumn months. Many of the causes for cancellation and disruption to TfW's services have been the responsibility of Network Rail in Wales. While TfW continue to work to address those issues that are their responsibility they also work with Network Rail in Wales to reduce the number of infrastructure faults that delay or cancel trains.

Core Valley Lines transformation

Background

8. The Core Valley Lines (CVL) transformation is a £1bn investment which will transform the lines to Treherbert, Aberdare, Merthyr Tydfil, Rhymney and Coryton. The transformation includes electrification, enabling new electric trains to replace the inherited diesel-powered fleet.
9. The work to upgrade the largely Victorian infrastructure has caused disruption for people who live along the routes, but it essential to achieve our vision for a high-quality network fit for future generations. The transformation will reduce journey times and enable more services every hour operated by new trains.

Progress

10. The CVL transformation works were originally planned to be completed by the end of 2023. However, this has been delayed due to the impact Covid has had on the programme, which alongside the high levels of inflation, has also increased the cost of delivery.
11. So far TfW have electrified 60 km of track, including the lines from Cardiff to Aberdare and Merthyr. Six stations on the CVL are being significantly upgraded to ensure they ready for the new trains. 'Access for All' facilities are also being installed to make the Welsh Government's infrastructure as accessible as possible.
12. Work to transform the Treherbert Line necessitated the full closure of this route from 30 April 2023. The transformation work is on time to re-open the line as planned in early 2024 and includes electrification and the replacement of mid-19th Century signalling technology used on the line. TfW are continuing to offer local residents 50% off the cost of tickets to Cardiff Central (using rail replacement services as necessary) during the closure period.
13. The new fleet of trains which will operate services on the transformed CVL is currently being tested. The first of these trains is planned to enter service on the CVL in Summer 2024.

2. Update on 20mph delivery and evidence of impact to date

Background

14. Background information can be found in [previous written evidence](#) recently submitted to the Committee.

Latest developments

Highway authorities

15. Nearly all highway authorities have now completed their signage works. Some of the rural authorities with very extensive road networks will still be completing some of the signage on smaller side roads. Most authorities experienced vandalism of signs, ranging from spray painting to cutting of posts and damage to speed camera equipment. Although vandalism peaked in the first few weeks after the coming into force, some vandalism has been reported as late as mid-November. The vandalism has hampered highway authorities' timely delivery of their programmes.
16. The logistical challenge of changing the signs, compounded with the vandalism and the use of the incorrect term of "blanket" in relation to the default 20mph limit caused confusion amongst drivers. Some of this confusion indicates that drivers may not be very familiar with signing of speed limits.
17. The Minister and Deputy Minister for Climate Change met Council Leaders, Transport Cabinet members and Directors of Transport on 24 October and a [written statement](#) was published the day after, setting out the next steps for supporting highway authorities with the implementation.
18. Feedback sessions – getting a better understanding of how the exceptions criteria have been applied – with highway authorities took place during the month of November. Initial learnings and insights are being collated and shared with all highway authorities.

Evidence base

19. The Office for Statistics Regulation (OSR) [wrote](#) to the Welsh Government on 23 November to outline concerns about the way in the leaflet sent to households about the change of default speed limit on restricted roads presented the analysis supporting the leaflet's claim that most journeys would be around one minute longer following the change. We welcome the feedback from the OSR and accept the recommendations.

Enforcement

20. The GoSafe partnership and Police have started enforcing on pre-existing 20mph and new 30mph exceptions roads (where traffic regulation orders and signage have been checked).
21. GoSafe have committed to begin enforcement on new 20mph sites as soon as policing and GoSafe are confident they can do so legally and legitimately.

22. The Police and fire and rescue teams have done some limited engagement sessions already, where operational capacity and resource have allowed it. The national 'Op Ugain' roadside engagement sessions, delivered by three dedicated regional teams, will be operational from January 2024.
23. GoSafe intends to use a range of media and communication opportunities to inform both the public and partners about the enforcement and the engagement opportunities. This will ensure that policing, GoSafe and the Welsh Government are aligned in being open and transparent with the public and those who use the road networks.

3. Support for bus services and preparations for delivery and implementation of the Bus Bill

Background

24. The Welsh Government made £46m available from bus budgets this year to support the Bus Emergency Scheme (BES) and the Bus Transition Fund (BTF) arrangements for the whole financial year. This funding has also kept the strategic TrawsCymru services running. By the end of this financial year the Welsh Government will have provided over £200m of funding to protect our bus network since the onset of the Covid pandemic.

Progress to date

25. The funding available will ensure that the majority of current bus services will be protected across Wales.

26. We established Regional Network Planning Teams, consisting of TfW, bus operators and local authorities, and tasked them with planning and costing a network of bus services which could be delivered when the emergency/transition funding ends. These Regional Planning Teams and TfW continue to meet to prepare an overview of the changes that will be made to services. Some services may change to reflect different travel patterns following the pandemic. This work continues at pace so that any potential future network changes are communicated with as much notice as possible.

27. Legislation will be introduced to reform the bus system in Wales by taking public control through a franchised network, allowing people to be put first before profit, and make buses as easy and attractive to use as we can. While legislation is being prepared officials continue to work with key bus industry stakeholders to develop a longer-term sustainable funding model that will bridge the gap to franchising.

Preparations for the Bus Bill

28. The white paper we published last year – ‘One Network, One Timetable, One Ticket’ – set out our proposals for new bus legislation. The First Minister confirmed in his [statement on the legislative programme](#) in July that we intend to introduce a bill during the third year of this Senedd.

29. In line with their updated, multi-modal, remit TfW have been working closely with local partners to prepare for a future in which bus services are franchised across Wales. This includes making organisational preparations to manage the operational processes involved in planning and implementing a franchised bus system. Over recent years TfW have worked closely with local authorities across Wales to consider how bus networks could be improved. This will form the basis of preparations for a franchised network but will need to be continuously reviewed and updated to reflect the fundamental challenges the sector is facing, with a combination of reduced patronage and cost inflation.

30. The written statement issued on 10 November set out some of the progress which has been made. The Regional Network Planning Teams can provide a strong foundation from which to jointly design and monitor a franchised network.
31. TfW are also working with local authorities on practical preparations to consider what further progress we can make ahead of new legislation. For example, where services are being contracted out, they are looking at whether improvements can be made to the network and contractual models updated to reduce the scale of the transition to franchising.

4. Development of Corporate Joint Committees and preparation of Regional Transport Plans

Background

32. Regional Transport Plans (RTPs) are required of the 4 formed Corporate Joint Committees (CJCs) in North Wales, Mid Wales, South East Wales and South West Wales respectively. The first plans will cover 2025-2030. RTPs are intended to deliver the Wales Transport Strategy in the regions. We are keen that they are strongly linked to Strategic Development Plans, so that there is better integration between transport, and land use planning and economic regeneration.

Progress to date

33. Guidance has been issued to the CJCs on how to produce RTPs, what steps we expect them to take and how the Welsh Government and TfW will be involved. Each CJC has submitted an implementation plan setting out how they will deliver their RTP.
34. The Welsh Government has allocated £125,000 for each CJC to support delivery in 2023-24. Allocations for future financial years are being considered. The 'Metro' teams in TfW have transitioned to 'Regional Transport Teams' to support the four regions in RTP development. They offer technical support, including from the TfW Analytical Unit, to do modelling and first principles Origin-Destination work using the regional models.

Key milestones

- 31st October 2023 – CJCs to submit Implementation Plan to Welsh Government [COMPLETE].
- 29th February 2024 – CJCs to submit Regional Transport Plan (RTP) Case for Change including SMART objectives to Welsh Government
- 29th May 2024 – CJCs to submit initial draft RTP, Integrated Wellbeing Appraisal (IWBA) and Regional Transport Delivery Plan (RTDP) to Welsh Government BEFORE public consultation
- 31st October 2024 – CJCs to submit final draft RTP, IWBA and RTDP to Welsh Government
- 29th March 2025 – CJCs to submit final RTP, IWBA and RTDP to Welsh Government
- 30th June 2025 – Welsh Government decision on approval of RTPs

5. Decarbonisation of bus, taxi and PHV – progress towards meeting targets

Background

35. Net Zero Wales' (NZW), our plan to decarbonise the Welsh economy focused on what has to be a decade of action. The targets for bus decarbonisation within NZW are:

- The whole Traws Cymru bus fleet to be zero tailpipe emission by 2026.
- The most polluting 50% of service buses to be replaced by a zero tailpipe emission bus fleet by 2028.
- The remaining 50% of the service bus fleet to be zero emission by 2035.
- To investigate opportunities to reduce the emissions of the less polluting service and school transport buses before their replacement before 2035.
- To review the policy for home to school transport before the autumn of 2022 and bring forward costed plans to replace the balance of the school fleet by 2035.

36. The replacement of the bus fleet in Wales over the next 15 years presents a high value opportunity for the economy in Wales.

37. Taxis and private hire vehicles are regulated by local authorities, some of which use licence conditions to limit the age or emissions of licensed vehicles. In our Programme for Government, we committed to legislate to modernise the taxi and private hire vehicle sector. One of our proposals is to introduce national vehicle standards. These standards will play an important role in making the industry more attractive to passengers and lowering emissions of licensed taxis and private vehicles over time.

Progress to date

Bus

38. The Minister for Economy and the Deputy Minister for Climate Change agreed to the establishment of a Task and Finish Group (TFG) to develop plans for Bus Fleet Decarbonisation and Demand Aggregation.

39. The role of the Task and Finish Group (TFG) was to bring together critical stakeholders from industry, transport, government, and TfW to work collaboratively in identifying the obstacles to progression on this agenda, and to discuss and agree on tangible opportunities to make progress toward delivery. This co-creation formulated recommendations by the TFG in a final paper in March 2022. The recommendations included:

- Inclusion of customer in bus fleet decarbonisation plan development, including plan to change public perceptions
- Undertake a thorough network evaluation based on existing opportunities and fuel or charging requirements, making clear recommendations for fuel type across the network in order to create long-term planning of network upgrades.

- Collaborate with operators to establish a clear understanding of the funding mechanisms and long-term volume of vehicles required, to address concerns raised by operators with regards to fleet transition.
- Develop a fleet transition plan, accounting for the range capability, network demands, volume requirements, and life-cycle of ZEB's in order to deploy ZEB's.
- Develop clear plans about re-charging/re-fuelling infrastructure requirements and how shared depots, resources, assets, and skills can help develop infrastructure in a cost and time effective way.

40. We are investing in and supporting moves to invest in new green zero emission vehicles for use on the local bus services across Wales. Plans for the decarbonisation of the service bus fleet by 2035 are now nearing completion with an outline business to be completed by the end of this financial year

41. Fully electric buses are now in daily service in Cardiff and Newport and we have grant funded fleets of new electric buses in west and north Wales for use on the Welsh Government funded TrawsCymru network. These deployments in Wales mean we are broadly in line with other areas of the UK, in terms of percentage of the service bus fleet having been decarbonised.

42. There are now 14 electric buses operating on the Traws Cymru service in North and West Wales. Newport Bus have purchased 44 EV vehicles and Cardiff Bus 36 EV vehicles. Both Cardiff and Newport bus will be deploying further buses later in this Financial Year.

43. To date the Welsh Government has invested £8.519m in support of electric buses for the Traws Cymru Network and provided a commercial loan to Newport Transport Ltd of £1.85m to purchase electric buses as well as grants to Cardiff and Newport City Councils (£8m and £6.323m respectively).

44. The budget for 2023-24 is £11m but this will also cover some network reform costs and the cost of preparation for franchising. In the remainder of this financial year we will:

- complete an outline business case for fleet transition.
- commence the procurement of the Traws Cymru fleet.
- procure and develop depots for the Traws Cymru fleet.
- commence the procurement of the hydrogen buses for the Swansea pathfinder project.

Taxi and private hire

45. The Deputy Minister for Climate Change has consulted on proposals for a Taxi and Private Hire Vehicles (Wales) Bill. In October 2023, the Deputy Minister published a [summary of consultation responses](#) and made an Oral Statement on the Bill.

46. We remain fully committed to achieving Net Zero by 2050 and decarbonising cars will be an important part of that. However, we recognise that there are challenges for the taxi and private hire vehicle trade including: the cost of buying a ZEV, anxiety about vehicle range and the availability of charging infrastructure. Wales cannot move faster than the rest of the UK on these issues. But we expect the taxi and PHV trade to transition to EV in line with the rest of the car market.

47. To encourage transition to zero emission vehicles, we are:

- Trialling charging points dedicated for electric taxis in key locations to try and make sure they have priority charging when they need it; and,
- Providing funding towards 44 electric taxis used for a “try before you buy” scheme in Wales.

6. Active travel

Background

48. This autumn marked the tenth anniversary of the Active Travel (Wales) Act 2013. In 2022 the Cross-Party Group on the Act undertook a review, led by an expert stakeholder panel, which resulted in a series of recommendations. Throughout 2023, the Welsh Government has been working with TfW, other delivery partners and external stakeholders to strengthen our current active travel delivery framework in response to these recommendations and more widely.

Progress to date

49. In response to the review, the Active Travel Board has been re-shaped and given a stronger scrutiny function. Independent members were appointed to lead the scrutiny role alongside the Board's chair and the secretariat function for the Board is now being undertaken by the Design Commission for Wales. The Board meets bi-monthly and in each meeting scrutinises specific delivery elements, for which it publishes its recommendations and the delivery partners response.
50. The delivery framework for the Active Travel Fund as the biggest strand of capital investment in active travel infrastructure in Wales has matured since its administration. Support functions were moved to TfW in 2021 in order to be able to provide greater levels of support and challenge to local authorities. The fund volume for local authorities was protected at the same level as in 2022-23 at just under £50 million in challenging budgetary circumstances, and £15m of this has been allocated as non-competitive core funding to enable all local authorities to undertake small scale improvements and preparatory work for larger schemes, as well as undertaking promotion and monitoring activities. Over 200 schemes are receiving funding through this core allocation. The remaining £35million has been allocated on the basis of a competitive application process to 43 main schemes and 16 packages of schemes.
51. All 22 local authorities have reviewed and revised their existing active travel routes and further developed their integrated network plans over the last two years. All maps submitted to the Welsh Ministers have now been approved and the full set of Active Travel Network Maps can be viewed on DataMap Wales. In response to recommendations made by the Cross-Party Group and supported by the Active Travel Board, the date for the next submission of revised maps has been moved to 1 December 2026 to allow local authorities more time before the next cycle to focus on delivering active travel improvements.
52. To support local authorities in this work, TfW have developed a national map-based prioritisation tool, that draws on a range of data, such as population densities and location of travel destinations such as schools, shopping centres and services, to provide an assessment of the potential impact on active travel use for each route.
53. Work has begun on developing tailored training programmes for the active travel sector and the first tranche has been delivered to 60 participants in autumn 2023.
54. Increasing the levels of children at both primary school and secondary school age who travel to school by active modes is a key priority for the Welsh Government, as well as the Cross-Party Group and the Active Travel Board. Over the last twelve months we have taken significant steps to build on our successful long-standing programmes like the Active Journey programme and the Safe Routes in Communities Grant with complementary elements. We have commissioned the development and trialling of resources to support the development of easy-to-

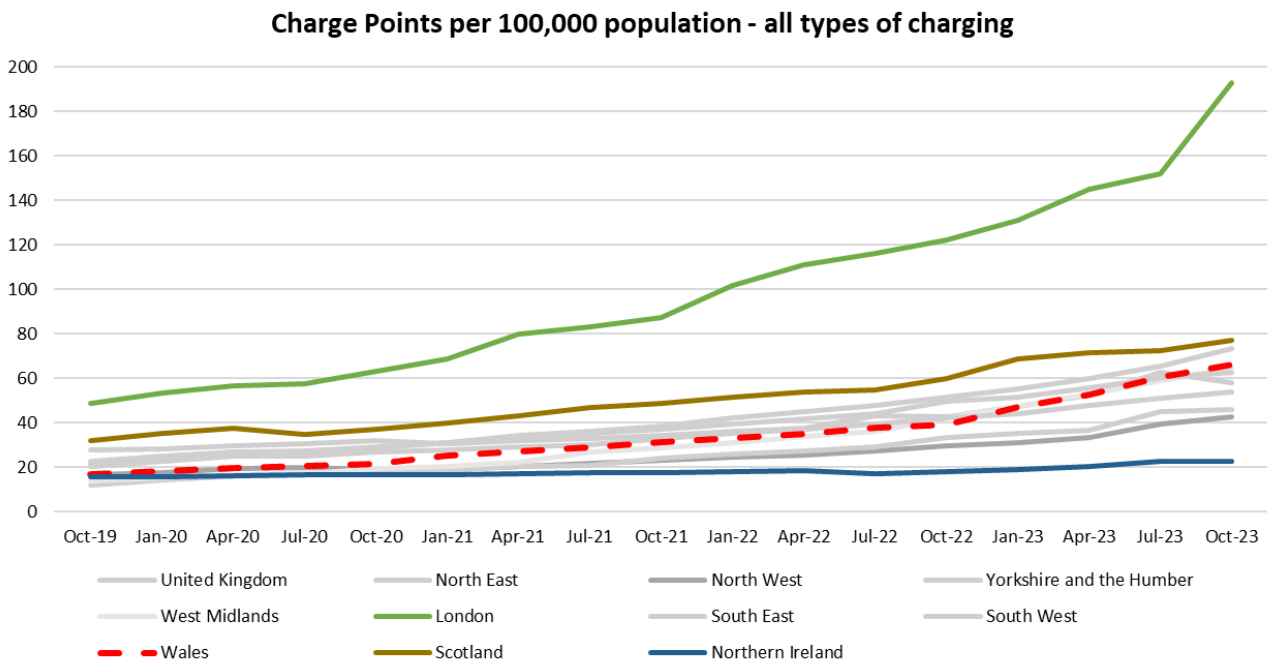
prepare and use Active Travel School Plans, as well as the roll-out of a large scale walk to school programme. We have been working with local authorities and other partners to develop Guidance on the implementation of School Streets, on which the Safe Routes in Communities Grant places increasing emphasis, as a proven way to encourage greater active travel to school and improve safety and air quality. We have also provided additional funding for local authorities to step up delivery of cycle training and funded bike fleets for schools to enable more children to be able to take part in training, as well as provide opportunities for trips during the school day to be undertaken by bike.

55. The recently passed Environment (Air Quality and Soundscapes) (Wales) Bill included provisions for the amendment of the Active Travel (Wales) Act 2013 which we will commence by the end of 2024. The amendments require the Welsh Ministers and local authorities to promote active travel as a way of reducing or limiting air pollution and to report on the steps they have taken at set intervals and provide the Welsh Ministers with powers to extend this duty to other public bodies at a later stage. At the time the amendment is commenced, we will publish Guidance for local authorities and a statement setting out our plans for how we will meet this duty.

7. Delivery of the EV charging strategy and action plan – including the further update on progress against the action plan promised by September in the Welsh Government’s response to the Committee’s report

56. An update on the matters included in the 21 recommendations within the Committee’s report on EV charging infrastructure is being finalised and will be issued by the end of December.

57. The October 2023 report from the DfT indicates that the number of EV Charge Points in Wales has grown 68% annually and total infrastructure per head of population is surpassed only by London and Scotland. The dotted red line on the graph below illustrates this progress.



Electric vehicle charging device statistics: October 2023 - GOV.UK (www.gov.uk)

8. Progress in meeting modal shift targets and development of an approach to behaviour change

National Travel Survey

58. Llwybr Newydd includes a commitment to establish a National Travel Survey for Wales to monitor progress against achieving our priorities and ambitions. The data it collects will enable us to track progress towards our targets on mode shift, active travel, car use per capita and remote working. It will inform policy development across Transport and support robust business cases. TfW has appointed a development and delivery partner to deliver a National Travel Survey. We aim to commence data collection in late 2024.

Behaviour Change

59. To change behaviour will mean people change those choices they habitually make to take the car rather than walk, cycle or take public transport. To do this we will encourage a shift to low-carbon sustainable transport and make using public and active travel the easy thing to do. We will do this by making sustainable transport more attractive and more affordable, and by adopting innovations that make it easier to use.

60. Our delivery programme will embed a strategic approach to behaviour change through application of the 'COM-B' model. The COM-B model is a widely used way of supporting behaviour change. It states that in order to change a behaviour, an individual must have the Capability to do it, the Motivation to do it, and external factors must provide them with an Opportunity to do it. We will apply this to all of our interventions so that we ensure that we are providing:

- the Opportunity to make sustainable transport choices
- the Capability to use sustainable transport
- the Motivation to make a shift away from private car use.

61. TfW has developed a behaviour change strategy to embed the COM-B model in its work. We are also continuing to implement proven behaviour change interventions, including delivering active journeys to schools programmes.

9. Delivery of South East Wales Transport Commission recommendations

Background

62. Lord Burns made 58 recommendations for sustainable alternatives to tackling congestion on the M4 around Newport. His 2020 report set out a plan for a modern public transport system for Newport, which will ease congestion around the M4 and improve services for residents of the city. The Commission's recommendations were all accepted in principle by the Welsh Government and aligned well with the new Wales Transport Strategy.
63. A Delivery Unit in TfW is pressing ahead with making the recommendations a reality. The Board of the Delivery Unit is formed of Welsh Government, TfW, Network Rail and the local authorities of Cardiff, Newport, and Monmouthshire. It is independently chaired by Professor Simon Gibson CBE and Dr Lynn Sloman MBE.
64. Co-working with Local Authorities is essential, and the Delivery Board are working productively and positively with Newport, Cardiff and Monmouthshire Councils.

Progress to date

65. TfW are running a consultation on the five proposed new train stations between Cardiff Central and Severn Tunnel Junction with improved cross border services. Rail infrastructure is not devolved, and officials are working closely with Network Rail and the UK Government, who have funded the current £2.7m stage of work that TfW are doing.
66. The Unit are pressing ahead in developing priority local measures such as:
- improving bus and active travel connections between Cardiff and Newport,
 - improving active travel and bus flow around Old Green Roundabout in central Newport, and
 - enhancing sustainable access to Severn Tunnel Junction rail station.

10. The North Wales Transport Commission

Background

67. The role of the North Wales Transport Commission is to investigate the problems, opportunities, challenges and objectives for realising a sustainable, integrated transport system in north Wales.

68. The group was announced in March 2022, led by Lord Burns GCB. The six commissioners are:

- Professor John Parkin, Professor of Transport Engineering at the University of the West of England and Deputy Director of the Centre for Transport and Society
- Ashley Rogers, Commercial Director of the North Wales Mersey Dee Business Council
- Dyfed Edwards, Deputy Chair of the Welsh Revenue Authority and former Leader of Gwynedd Council
- Dr Georgina Santos, Reader at Cardiff University and economist interested in environmental and transport economics and public policy.
- Sue Flack, Former Director of Planning and Transport at Nottingham City Council, now independent transport consultant specialising in integrating planning and transport.
- Stephen Joseph OBE, Advisor and former Director of the Campaign for Better Transport.

69. The Commission has also been asked to consider how the resilience of the Menai crossings can be improved.

70. A separate report to accompany the main document is being prepared looking at all options to achieve this. Both reports will be published at the same time.

Progress to date

71. On 29 January 2023, the North Wales Transport Commission, chaired by Lord Terry Burns, published its Progress Statement. The Commission's Interim Report, with its emerging conclusions and draft recommendations, was published on 9 June.

72. The Commission subsequently undertook a second round of stakeholder meetings accompanied by a public survey to test the Commission's findings with interested groups and the wider public. The final report and recommendations are due for publication by the end of the year [2023].

73. The Commission has concluded that travel patterns in north Wales need to change, and that change is possible, including in rural areas.

74. Current travel patterns are costly for households; those without car access (17% of households in north Wales) find it difficult and expensive to get around and are disadvantaged as a result. To address these issues, alternatives to car travel should and can become much better and more affordable. Many of the Commission's forthcoming recommendations will focus on public transport and active travel improvements that will provide a genuine alternative to the private car.

Conclusions of the interim report

Rail

75. The Commission welcomes the commitment to investment in north Wales rail from UK Government and agrees that improving the North Wales Main Line is a priority due to its pivotal role in the regional rail network. The Commission recognises the importance of both the North Wales Main and Borderlands Lines to transport in north Wales, for connections to the northwest of England, and beyond.
76. The forthcoming report and recommendations will set out the steps identified to improve rail in north Wales, starting with a first phase of infrastructure improvements on the North Wales Main Line and work to address capacity constraints at Chester station. Following second and third phase improvements, electrification would then be the final step in transforming the North Wales Main Line.
77. The Commission also identifies a range of work to improve access to and from Liverpool along the Borderlands line, with better interchange between this line and the North Wales Main Line at Shotton.

Bus

78. The Commission fully supports the legislative changes proposed by Welsh Government for buses as outlined in the white paper – ‘One Network, One Timetable, One Ticket’ – which offers a significant opportunity to address the issues identified in relation to the bus network. The Commission will recommend a revised bus network that at a whole-region level can effectively connect main locations and rail main lines. The services within the core network that connect directly to railway stations across the region will improve interchange between modes.

Active Travel

79. The Commission wants to see strengthened mechanisms for delivering comprehensive, attractive and comfortable active travel networks. A method for achieving this is with an extended remit for TFW and better collaboration with local highway authorities.
80. Priority areas for extensive active travel route development are identified, with enhancements supported for locations such as the Wrexham Industrial Park, Deeside Industrial Park, Parc Menai, and the Caernarfon Road retail strip in Bangor.

Integration

81. The Commission is interested in better regional ticketing integration, and improved access to information.

11. Transport links between north and south Wales (Cooperation Agreement)

Background

82. The Cooperation Agreement includes the following commitment on public transport:

- We will ask TfW and other partners to explore how transport links between the north and south of Wales can be developed, including how to protect potential travel corridors along the western coast of Wales from Swansea to Bangor.
- We will ask TfW to form a partnership with local authorities in the North West of Wales and the Welsh Government to develop delivery plans for an integrated transport system for the region.
- We will continue to press ahead with metro developments in different parts of Wales, focusing on how we can improve connectivity to achieve modal shift.

Progress to date

83. The rail infrastructure needed to reopen the lines between north and south Wales is not a devolved matter.

84. TfW have carried out a WelTAG stage 1 study into options to improve transport links between north and south Wales, including how to protect potential travel corridors along the western coast of Wales from Swansea to Bangor. As part of this work they are undertaking an initial feasibility study on the route between Bangor and Afon Wen, which will identify the best alignment for a connection and current constraints. This will help refine the land requirements for the route further, to help support any future decision on protecting the alignment in whole or part. They are also looking at the development of a Full Business Case for North to South Strategic Coach links. These are aimed at exploring a route between Bangor –Carmarthen (via Aberystwyth) with a circa 4.5 hour end to end journey time.

12. An update on plans to ban pavement parking, and work on unadopted roads (including delivery of the recommendations included in the unadopted roads task force report)

Pavement parking

85. The Wales Pavement Parking Taskforce (WPPT) was set up in 2019 and it recommended giving Local Authorities powers to tackle pavement parking by introducing subordinate legislation to allow civil enforcement (Report October 2020).
86. For this approach to work, the Welsh Government needed the UK Government to amend existing regulations on obstruction of the road – expressly separating out obstruction of the pavement. The UK Government committed to this, but this was reliant on parliamentary time being found, which is challenging.
87. The WPPT reconvened in April 2022 to explore the feasibility of using the existing offence of obstruction of the road to address the issue of pavement parking and produced an Addendum to the WPPT Report, recommending using the existing offence of the unnecessary obstruction of the road and to begin public consultation. The Addendum and its recommendations were accepted by Ministers in January 2023.
88. The public consultation and proposed laying of legislation were delayed because of pressures on local authorities and a written statement to this effect was published in April 2023.
89. Our aim is to consult on our proposals in January 2024 and for legislation to come into force by the end of 2024.

Unadopted roads

90. A written statement published in October 2020 set out the response to the report and recommendations from the Unadopted Roads Taskforce. Building on this, the Task Force undertook some follow up work, making further recommendations.
91. All local highway authorities were contacted and asked to identify the priority unadopted road issues and asked to provide cost estimates for improvements; any proposals would need to be justified in terms of need based on national and local priorities.
92. We decided to proceed on a pilot basis to address local unadopted road priorities, with the development of a process for distributing a potential future Unadopted Roads fund fairly and equitably across Wales, subject to the findings of the pilot.
93. Two pilot trials were funded, one in 2021 and another one this financial year. The pilots have been on hold due to local authority resource constraints. Nevertheless, we anticipate that local authorities will invest up to £600,000 in Welsh Government grant funding this financial year.
94. A suite of Common Standards was published for use by Local Highway Authorities and developers and annual funding was rewarded to enable these to be reviewed and updated regularly by the County Surveyors' Society Wales.

95. In addition we have also published a [Highways Adoption Advice Note](#).

—
**Climate Change, Environment,
and Infrastructure Committee**

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—
Welsh Parliament
Cardiff Bay, Cardiff, CF99 1SN
SeneddClimate@senedd.wales
senedd.wales/SeneddClimate
0300 200 6565

A Thomas Plant Hire Ltd
T/a ATP Cable Plough
Pencader
SA39 9BX

13 October 2023

Dear Mr Thomas,

Thank you for your correspondence in relation to cable ploughing.

The Committee considered several pieces of correspondence in relation to this matter in its meeting on 20 September.

In the first instance, the Committee has agreed to write to the Minister for Climate Change to enquire about the Welsh Government's current stance and consideration of cable-ploughing. The Committee has also agreed to seek further information from those parties who have recently corresponded with us on this matter.

Therefore, I would be grateful if you would provide the Committee with any detailed information you may have on the following:

Research on Technologies: You mentioned the importance of recognising technological advancements, especially when comparing cable ploughing to older methods like open trenching. Could you provide any research or studies highlighting these technological advancements, particularly cable-ploughing?

Comparative Costs: Your letter alluded to the potential similarities in costs between cable-ploughing and traditional methods involving pylons and overhead lines. We would be grateful for more detailed insights into the lifetime costs of projects, considering maintenance, energy transmission losses, and the wear and tear of infrastructure. We appreciate the issues of commercial confidentiality highlighted in your letter – we would reassure you that we would not publish such information without your agreement.

Comparative Carbon Footprints: The environmental impact is a significant concern for us. Can you point us towards data or findings that compare the carbon footprints of underground lines achieved through cable ploughing versus overhead lines?

International Collaboration: It is heartening to know that ATP Cable Plough operates in the UK and Europe. Could you share more about domestic and international projects that involve undergrounding by cable ploughing?

The Committee will consider its next steps once it has received correspondence from the Minister and further information from the various parties it has consulted. I must highlight, however, that given the Committee's current workload, it is unlikely to be able to conduct any work on this matter this side of Christmas.

Yours sincerely,



Llyr Gruffydd MS,
Chair, Climate Change, Environment, and Infrastructure Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Julie James MS
Minister for Climate Change

5 October 2023

Dear Minister,

The Climate Change, Environment and Infrastructure Committee has recently received various correspondences in reference to the under-grounding of cables via cable-ploughing.

The Committee has agreed to seek clarification from you, in the first instance of the Welsh Government's position on this technology. In particular, we would be grateful if you could provide information on the following:

Research on technologies

Details of any research or studies undertaken by the Welsh Government regarding technologies available for less impactful energy infrastructure, particularly focusing on cable-ploughing.

Comparative costs

Your latest understanding of the comparative costs of technologies such as cable-ploughing, including costs incurred over the entire lifetime of a project, factoring in elements like maintenance costs, energy loss relating to overhead lines, and the additional wear and tear faced by pylons exposed to the elements.

Comparative Carbon Footprints

Data or research findings on the comparative carbon footprints between underground and overhead lines.

International Collaboration



Any discussions or correspondence regarding projects within the UK and internationally concerning undergrounding by cable ploughing.

This information will enable the Committee to consider its next steps concerning this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Llyr', is centered on a light yellow rectangular background.

Llyr Gruffydd MS,
Chair, Climate Change, Environment and Infrastructure Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref JJ-PO-369-2023

Llyr Gruffydd MS
Chair,
Climate Change, Environment and Infrastructure Committee

28 November 2023

Dear Llyr Gruffydd,

Thank you for your letter of 5 October about our position on cable ploughing.

As you are aware, the UK Government retains full responsibility for energy networks and related decisions and so the Welsh Government does not maintain a significant evidence base on these matters.

In terms of research on cable ploughing, my officials met the senior team from ATP Cable Ploughing and gained an overview of the methodology, the benefits it can offer and its key limitations. Our current understanding is that this method of laying cables is in wide use for distribution infrastructure and can offer benefits in terms of land use and reduced disruption. I understand the technique of cable ploughing is being used internationally and my officials have identified its use for direct current (DC) transmission networks up to 220 kv However, its use for undergrounding alternating current (AC) transmission infrastructure as used in the UK has not been demonstrated. The National Grid publish a useful overview of the issues in undergrounding these cables: [Undergrounding high voltage electricity transmission lines.](#)

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

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Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I understand National Grid have commissioned the Institution of Engineering and Technology to develop a new study on costing of electricity transmission. NGET have informed my officials that the report will be similar to the 2012 report, which can be found [here](#). I understand it should be published in January 2024.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

23 November 2023

Dear Chair

Inter-Institutional Relations Agreement: 40th British-Irish Council Summit

I am writing in accordance with the inter-institutional relations agreement to notify you of the 40th Summit meeting of the British-Irish Council, which will take place this week and is being hosted by the Government of Ireland.

I will be attending the summit in person. As well as the usual opportunity for a general update on issues, the theme of the Summit is 'Transforming Children's Lives: Tackling Child Poverty and Improving Wellbeing'

A communiqué will be agreed by the Council at the Summit detailing the discussions held, and I will write to share these with you. I will also update the Senedd with a written statement in due course.

I have also copied this letter to the Climate Change, Environment, and Infrastructure Committee, the Local Government and Housing Committee, the Culture, Communications, Welsh Language, Sport, and International Relations Committee, and the Equality and Social Justice Committee.

Yours sincerely

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Mark.Drakeford@llyw.cymru
Correspondence.Mark.Drakeford@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: JJ/PO/416/2023

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee

Llŷr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee

Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

4 December 2023

Dear Huw, Llŷr,

I am writing in accordance with the inter-institutional relations agreement, to report on the latest meeting of the Net Zero, Energy and Climate Change Inter-Ministerial Group, held on 15 November 2023. The meeting focused the Prime Minister's 20 September Announcements watering-down net zero policies and collaboration on green skills.

The meeting also was attended by Mairi McAllan MSP, Cabinet Secretary for Net Zero and Just Transition; Graham Stuart MP, Minister of State Energy Security and Net Zero; and Katrina Godfrey, Permanent Secretary at the Northern Ireland Department of Agriculture, Environment, and Rural Affairs.

Yours sincerely,

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

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Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Agenda item 4.5

From: [REDACTED]

Sent: Monday, November 20, 2023 7:15 PM

To: Climate Change, Environment, and Infrastructure Committee | Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith <SeneddClimate@senedd.wales>

Subject: Dwr Cymru Welsh Water [DCWW] - Sewage overflows in 2022

Llyr Gruffydd MS,
Chair, Climate Change, Environment and Infrastructure Committee
Welsh Parliament
Cardiff Bay, Cardiff, CF99 1SN

My Ref: NCC/WJ/112/CCEIC / Your Ref:
Date: 20 November 2023

Dear Llyr Gruffydd

Subject: Dwr Cymru Welsh Water [DCWW] - Sewage overflows in 2022

I refer to the above subject and attach for your information my letter - dated 20 November 2023 - to Natural Resources Wales. I would be grateful if you could draw the content of the letter to the attention of C C E I C members.

In view of the information provided, does your Committee have continued confidence in Natural Resources Wales [NRW] as an environmental regulator and, specifically, confidence in the current protocol that allows Dwr Cymru Welsh Water to monitor its own pollution incidents and report breaches of environmental permits to NRW. Do you consider that NRW - as environmental regulator - should have a separate monitoring system in place for pollution from sewage overflows in Wales?

I understand that these matters will now be examined by a parliamentary committee in Westminster.

I look forward to your observations at your convenience. Thank you.

Yours sincerely
Wynne Jones

----- Forwarded Message -----

Subject:Dwr Cymru Welsh Water [DCWW] - Sewage overflows in 2022

Date:Mon, 20 Nov 2023 17:21:04 +0000

From: [REDACTED]

To:NRW_Enquiries <enquiries@naturalresourceswales.gov.uk>

Customer Hub
Natural Resources Wales [NRW]
Ty Cambria
29 Newport Road, Cardiff, CF24 0TP

My Ref: NCC/WJ/112 / Your Ref:
Date: 20 November 2023

Dear Customer Support Team

Subject: Dwr Cymru Welsh Water [DCWW] - Sewage overflows in 2022

Your attention is drawn to a website available at the following hyperlink.

<https://top-of-the-poops.org/company/dwr-cymru-welsh-water>

Data is provided, in the public domain, confirming DCWW was responsible for 81,937 sewage overflows in 2022. Does NRW - as environmental regulator - accept the data presented or wish to challenge the data with supporting evidence?

I look forward to your observations when you have had an opportunity to liaise with the the relevant internal department. Thank you.

Yours sincerely
Wynne Jones

Llyr Gruffydd MS

Chair

Climate Change, Environment, and Infrastructure Committee

Tŷ Hywel

Cardiff Bay

CF99 1SN

Welsh Parliament

Cardiff Bay, Cardiff, CF99 1SN

Petitions@senedd.wales
senedd.wales/SeneddPetitions
0300 200 6565

28 November 2023

Dear Llyr

Petition P-06-1368 The Welsh Govt should take steps to save the Environmental Information Regulations in relation to Wales

The Petitions Committee considered the above petition at our meeting on 13 November, alongside correspondence from the Minister for Climate Change and the Petitioner.

At the meeting Members agreed to write to the Welsh Government sharing the petitioner's correspondence, and to request answers to the questions outlined in their response.

In addition, Members agreed to write to your Committee in order to bring the petition to your attention and share the correspondence received from the petitioner, as you are currently monitoring these regulations.

Further information about the petition, including related correspondence, is available on our website at: <https://business.senedd.wales/ielssueDetails.aspx?Ild=42010&Opt=3>.

If you have any queries, please contact the Committee clerking team at the e-mail address below, or on 0300 200 6454.

Yours sincerely



Jack Sargeant MS

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

P-06-1368 The Welsh Govt should take steps to save the Environmental Information Regulations in relation to Wales, Correspondence – Petitioner to Committee, 31.07.23

Dear Clerk to the Petitions Committee

I am writing in reference to [The Welsh Govt should take steps to save the Environmental Information Regulations in relation to Wales - Petitions \(senedd.wales\)](https://www.senedd.wales/petitions/2023-24/petition-06-1368).

I am the named Petitioner, acting for a group of students at Cardiff University's School of Land and Politics.

I need to alert you that, since the Petition was opened, changes to the REUL Bill, now enacted as the Retained EU Law (Revocation and Reform) Act 2023, have, to an extent, taken the 'sting' out of the Bill as it was and the threat it poses to the Environmental Information Regulations 2004.

However, the petition remains a very useful exercise and I would hope the Committee can still consider it.

Particularly, it makes reference to a short report produced by the students, which deals with how the Environmental Information Regulations might be amended to improve them, by and for Wales.

In order to assist the Committee when it comes to consider this petition later this year, I attach that report and would commend the suggestions and proposals therein to the Committee.

Please do not hesitate to contact me if I can assist the Committee at any stage.

Yours faithfully

Guy Linley-Adams
Solicitor
Lecturer in Law



Pro Bono and
Employability

Pro Bono ac
Cyflogadwyedd

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The Environmental Information Regulations 2004

**Report of the Freedom of Information sub-group of the
pro bono Climate and Environment Project of Cardiff
University's School of Law and Politics 2022/2023**

1. Introduction.

The Climate and Environment Project is a pro bono extra-curricular project for law students at the School of Law and Politics at Cardiff University.

The Project is not formally part of the assessment for any degree or professional course and the students volunteering on the Project range from second-year undergraduates to postgraduates to those on solicitor and barrister professional courses.

In 2022 into 2023, the Project sub-group on freedom of information, particularly in the environmental field, examined the Environmental Information Regulations 2004, the rights they underpin, from which European and international law and convention they derive, and how are they administered in the UK.

More particularly, the group considered and discussed how the 2004 Regulations could be improved in Wales.

The members of the FOI sub-group in 2022/23 were:

Amira Shazlin Binti Zulkifli
Ahanaf Taksin Ar-Rafee
Hann Qiang Liew
Asha Thirunavukkarasu
Max Pullen
Beulah Lee
Sarah Curran
Izabela Poniewierska
Maja Wojczak
Kian Nah
Olivia Thomas
Toby Clark

The group was assisted by Guy Linley-Adams, Lecturer in Law at the School of Law and Politics.

2. Background to the Environmental Information Regulations 2004.

The group examined how the Environmental Information Regulations 2004 provide for a right of access for the public to environmental information held by UK public authorities.

The 2004 Regulations came into force on 1st January 2005, under the authority then provided by the European Communities Act 1972, covering England, Wales and Northern Ireland. Scotland has its own Environmental Information Regulations (Scotland) 2004. The Regulations implemented European Council Directive 2003/4/EC on public access to environmental information. That Directive in turn has its origins in the Aarhus Convention.

The 2004 Regulations provide a right of access for the public to environmental information, upon request, subject to a number of exceptions, as well as requiring public bodies to make environmental information available proactively.

The group strongly supported the role the 2004 Regulations play, as part of the UK's implementation of its obligations as a party to the Aarhus Convention, in encouraging transparency from public authorities as part of a process of enabling the public to be informed about the environment and to participate in environmental decision-making from a position of knowledge.

3. The potential effect of the Retained EU Law Bill on the Environmental Information Regulations 2004.

The group was concerned at the potential effect on the 2004 Regulations of the Retained EU Law (Revocation and Reform) Bill ('the REUL Bill'), making its way through Parliament.

It was (and remains) unclear whether the Bill will be enacted in its current form, but what follows must be re-considered in the light of what is finally enacted.

However, as the REUL Bill stands, clause 1 will trigger the sunset of EU-derived subordinate legislation and retained direct EU legislation, unless otherwise saved, on 31st December 2023.

Clause 1 reads:

- (1) The following are revoked at the end of 2023—*
- (a) EU-derived subordinate legislation;*
 - (b) retained direct EU legislation.*
- (2) Subsection (1) does not apply to an instrument, or a provision of an instrument, that is specified in regulations made by a relevant national authority.*
- (3) The revocation of an instrument, or a provision of an instrument, by subsection (1) does not affect an amendment made by the instrument or provision to any other enactment.*
- (4) In this section “EU-derived subordinate legislation” means any domestic subordinate legislation so far as—*
- (a) it was made under section 2(2) of, or paragraph 1A of Schedule 2 to, the European Communities Act 1972, or*
 - (b) it was made, or operated immediately before IP completion day, for a purpose mentioned in section 2(2)(a) of that Act (implementation of EU obligations etc), and as modified by any enactment.*

The group expressed its general concern that the practical effect of the REUL Bill on the Environmental Information Regulations 2004 is that, unless the 2004 Regulations are later saved pursuant to the provisions clause 1(2), in the case of Wales, by the Welsh Government, the 2004 Regulations would cease to have effect in Wales at the end of 2023.

The group was clear that, quite apart from the wholly negative effect on the right of access to environmental information, that scenario would put the UK in clear breach of the Aarhus Convention.

The group did not consider that the Welsh Government should countenance the Environmental Information Regulations 2004 being allowed to fall as a consequence of the REUL Bill.

Recommendation 1

In the event that the REUL Bill is enacted in a form which would otherwise lead to 2004 Regulations ceasing to have effect in Wales as part of the planned ‘sunset’ of retained EU law, the groups recommends that Welsh Government should act swiftly to save the 2004 Regulations.

The group noted that information rights are not a reserved matter – and so are devolved to Wales.

Given the maturity of Welsh devolution, the group considered it appropriate for the Welsh Government to consider if it should, in addition to amending the 2004 Regulations, as they apply in Wales, per the Scottish model, create and appoint a dedicated Welsh Information Commissioner.

If the REUL Bill is to be enacted and lead to the Environmental Information Regulations 2004 ceasing to have effect within England, it would be incongruous for an Information Commissioner based in England to be hearing complaints from Wales, but not from within England.

Recommendation 2

In the event that the REUL Bill is enacted in a form which will lead to the 2004 Regulations ceasing to have effect in England as part of the planned ‘sunset’ of retained EU law, Wales should consider establishing its own Information Commissioner for Wales.

4. Problems with the Environmental Information Regulations 2004 and possible solutions.

The group considered that, especially if the Welsh Government finds itself required to save the 2004 Regulations shortly, it would be an effective time, almost 20 years since the 2004 Regulations were passed, to consider certain improvements to the 2004 Regulations. This would ensure they work better in practice, to enhance the right of the Welsh public to environmental information held by Welsh public authorities.

Such a progressive approach would be entirely in line with the position Wales has adopted on the environment, not least via the Well-being of Future Generations Act 2015, and the well-being goals for Wales.

Therefore, the group analysed real-world examples of problems that have arisen over the nearly 20 years since the 2004 Regulations came into effect, that the group considers the Welsh Government could now address, in order to make the systems work more effectively as providing timely and wider access to environmental information for the Welsh public.

These are:

- Ensuring public authorities respond (including to refuse) as soon as possible, and do not always default to responding at 20 working days.
- Preventing authorities from 'resetting the clock' by asking for clarification, but only at 20 working days
- Reducing time for internal review from 40 working days to 20 working days (as in Scotland)
- Requiring the Commissioner to accept a complaint if there has been no in-time response to an initial request.
- Limiting an applicant's obligation to requesting an internal review on one occasion only
- Improving proactive publication and public authorities learning from regular requests
- Learning from Commissioner Decisions to avoid using unlawful exceptions for the same type of information.
- Remedying the inability of public to take the lack of proactive publication to the Commissioner.
- Remedying public authorities' ability to raise different exceptions at refusal, at review, at Commissioner's investigation or at Tribunal.
- Addressing the use of private emails
- When 'harm' should be required and not required, when applying exceptions under Regulation 12

4.1 Ensuring public authorities respond (including to refuse) as soon as possible, and do not always default to responding at 20 working days.

The group considered that the effective right granted to the public by the Aarhus Convention would not be delivered without timely access to environmental information.

Even though the provisions of the 2004 Regulations require that a public authority has to respond as soon as possible to a request for environmental information, and no later than 20 working days after a request, there is no metric against which to measure what 'as soon as possible' means.

The group heard that the practical effect has been that there has been nothing to prevent public authorities from routinely, by default, taking the full 20 days to respond. There is a belief, for example in environmental NGOs, that some public authorities may even do this in what might be termed 'bad faith', particularly where the requested information may be considered to be controversial, or the authority concerned might prefer that the information were not released promptly.

The group considered that this problem - of taking 20 working days by default – could be addressed by requiring public authorities to issue an acknowledgment to any request, perhaps within 5 working days, providing, with reasons, an estimate of the time likely to be taken for a substantive response to be given.

This would enable any person requesting information to understand why up to 20 working days may be required to respond and would enable the matter to be raised in any request for internal review (per Regulation 11), or ultimately to be brought to the Commissioner (per Part 5 of the Regulations).

The group considered that this proposal would effectively balance the interests of the public requesting information and the resource demands for the public authorities involved.

Recommendation 3

The group proposes that public authorities should be required to acknowledge requests within 5 working days and, in that acknowledgement, give an estimate of the time that will be taken to respond substantively to the request. This can be achieved by an amendment to Regulation 5, adding a new Regulation 5(1A):

“5(1A) A public authority shall acknowledge the receipt of any request within 5 working days;”

4.2 Preventing authorities from ‘resetting the clock’ by asking for clarification, but only at 20 working days.

The group heard that under the 2004 Regulations, per Regulation 9, public authorities can effectively extend the period within which they must respond to a request by 20 working days, by asking applicants to clarify their request.

The group considered that while asking for such clarification may be entirely reasonable, this provision does potentially allow the ‘reluctant’ public authority to delay responding substantively to a request, by re-setting the 20 working days clock, by asking for clarification, but only after 20 working days have almost elapsed. Such practices dilute the public’s right to receive information in a timely manner.

The group therefore proposed a provision that would require public authorities to ‘triage’ requests received at an early stage, and if necessary, make a request for clarification within 5 working days. This would fit well with the proposed provision (above) under Regulation 5 on acknowledgment of requests.

Recommendation 4

The group proposes that public authorities should be required to seek any clarification that may be required from applicants on the requests made within 5 working days of receipt of a request. This can be achieved by an amendment to Regulation 9(2)(a), so that it reads:

“9(2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall - (a) ask the applicant no later than 5 working days after the date of receipt of the request to provide more particulars in relation to the request; and”

4.3 Reducing time for internal review from 40 working days to 20 working days (as in Scotland).

In examining the regimes in England and Wales, and in Scotland, the group noted that there is a mismatch between the time allowed for internal review for public authorities in different parts of the UK.

In Scotland, an internal review should only take 20 working days. In England and Wales, the law allows for 40 working days. The relevant UK and Scottish provisions are shown below:

“Representations and reconsideration

11.—(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant’s request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

*(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and **no later than 40 working days** after the date of receipt of the representations”.*

“Review by Scottish public authority

16.—(1) Subject to paragraph (2), an applicant may make representations to a Scottish public authority if it appears to the applicant that the authority has not complied with any requirement of these Regulations in relation to the applicant’s request.

*(4) The Scottish public authority shall as soon as possible and **no later than 20 working days** after the date of receipt of the representations notify the applicant of its decision”.*

The group considered that there can be no justification for a longer period to be allowed for in England and Wales, as opposed to Scotland. Welsh public authorities should be no less able to deliver a review in 20 days than their Scottish counterparts.

Recommendation 5

The group proposes a simple amendment to Regulation 11 of the 2004 Regulations (applying to Wales) to allow for a 20 working days maximum period for an internal review.

4.4 Requiring the Commissioner to accept a complaint if there has been no in-time response to an initial request.

The group considered the scenario, under the 2004 Regulations, of a public authority failing to respond at all to a request for information and note that there exists no mechanism to address in a timely manner the situation in which the public authority, to whom a request for information has been made, simply does not respond.

In line with the Regulations, if there is no response, the person requesting information has to request an internal review, before the matter can be taken to the Commissioner.

That is the practical effect of section 50(2)(a) of the Freedom of Information Act 2000, which, per Regulation 18, provides for the enforcement mechanism for the 2004 Regulations, and requires that a complainant to the Commissioner must have “exhausted any complaints procedure which is provided by the public authority in conformity with the code of practice under section 45...”.

In short, a complainant must have asked for an internal review by the public authority of its failure to respond, before the matter can be taken to the Commissioner.

The group noted that what this means in practice is that the ‘reluctant’ public authority can safely sit back and wait for a request for information to run past its 20 working days for the initial response, at which point the person requesting will need to make a request for internal review, which then gives the authority a further 40 working days to address the matter.

In effect, any public authority can therefore safely ignore a request unless an applicant ‘asks twice’, with those requests 20 working days apart.

If a public authority does not wish to provide information (for example, if the requested information is somehow embarrassing, or might be used to ‘fuel’ a legal challenge), it has a total of 60 working days minimum to respond substantively to any request, without fear of any sanction or referral to the Commissioner.

The group considered that such length of delay could be highly detrimental to the value of the requested information to an applicant. Moreover, that such an approach is possible at law undermined the purpose of initial 20 working day time limit for answering requests.

Recommendation 6

The group proposes that an amendment is required to allow an applicant to go directly to the Information Commissioner for a decision to prevent such abuse and uphold the right of access to environmental information in a timely manner, by inserting paragraph 18(1A) into Regulation 18:

18(1A) The enforcement and appeals provisions of the Act shall be read for the purposes of these Regulations such that section 50(2)(a) of the Act does not apply if a public authority fails to respond to a request within the time limits specified in Regulation 5.

4.5 Limiting an applicant's obligation to requesting an internal review on one occasion only.

The group examined a particular matter in relation to the requirement on applicants that they have gone through a public authority's internal review procedure before a matter can then be raised with the Commissioner.

In the case of the Friends of the Earth v DEFRA, Decision Notice IC-102916-C8Q5, 13th June 2022, the Commissioner sought to require Friends of the Earth to request an internal review from DEFRA on a second occasion, having initially complained about a lack of a timely response in a first internal review request. In that matter, Friends of the Earth in fact refused to go to a second internal review and, albeit reluctantly, the Commissioner agreed to deal with the matter by way of a Decision, despite advising Friends of the Earth to go for a second internal review on the substance of the matter.

The group considered that no applicant for information should be required by law or by the Commissioner to go to a second internal review because that would enable the 'reluctant' public authority to add further delay to a process of disclosure of information, undermining the right granted by the Aarhus Convention of timely access to information.

Recommendation 7

The group recommends amending Regulation 18 so as to require the Commissioner to issue a Decision if a complainant has made at least one request for internal review by a public authority.

Insert a new Regulation 18(11):

“For the purposes of these Regulations, section 50 of the Act shall be read as requiring the Commissioner to make a decision as to whether a public authority has dealt with a request in accordance with the requirements of these Regulations where a complainant to the Commissioner has made any representation to a public authority pursuant to Regulation 11. An applicant shall not be required to make more than one representation to a public authority under regulation 11”.

4.6 Improving proactive publication and public authorities learning from regular requests.

Access to environmental information is recognised as a right under the Aarhus Convention, but the Convention also requires proactive publication of environmental information, obviating the need for specific requests to be made by the public.

Effective public participation in decision-making processes requires more proactive publication of environmental information. The more information in the public domain, the greater the public engagement, which can also lead to insights and ideas of great value to public authorities. Proactive publication would mean a greater level of access to information and as such would also support open-source research.

The group was generally very supportive of proactive publication.

Proactive publication also reduces pressure on public authorities having to process requests for information.

However, the group considered that experience suggests public authorities do not always learn from previous requests and start proactively publishing information that is regularly requested, or which they have been ordered by the Commissioner to publish.

The group suggested that information of any type or character that has been requested and provided on more than, say, three occasions by the public authority should be considered as a matter of law for future proactively publication.

Recommendation 8

In order to encourage more proactive publication, the group recommends an amendment adding a new subsection to Regulation 4(4)(c) requiring public authorities to ‘learn’ from repeat requests, such that Regulation 4 then reads:

Dissemination of environmental information

4.—(1) Subject to paragraph (3), a public authority shall in respect of environmental information that it holds—

(a) progressively make the information available to the public by electronic means which are easily accessible;

...

(4) The information under paragraph (1) shall include at least—

...

(c) information of any type or character that has been requested and provided on more than three occasions by a public authority or following decisions issued the Commissioner

4.7 Remedying the inability of public to take the lack of proactive publication to the Commissioner.

The group examined how, under the 2004 Regulations, and the enforcement and appeal provisions provided for under the Freedom of Information Act 2000, an applicant for environmental information cannot take the matter of a lack of proactive publication to the Commissioner.

The enforcement and appeal provisions of the 2004 Regulations are in effect, borrowed from the 2000 Act, by virtue of Regulation 18:

18.—(1) The enforcement and appeals provisions of the Act shall apply for the purposes of these Regulations as they apply for the purposes of the Act but with the modifications specified in this regulation.

Section 50 of the 2004 Act, subsection 1, provides that a person can take a matter to the commissioner when “a request for information” has not been dealt with in accordance with, in this case, the 2004 Regulations.

However, when a person is taking issue with a lack of proactive publication, that would not be considered “a request for information” under section 50 of the Act.

The group considered that a person should be able to complain to the Commissioner and secure a Decision from the Commissioner if there is breach of the duty under the 2004 Regulations on proactive publication.

Recommendation 9

The group recommends an amendment with the effect that a person can complain if there is a breach of duty under the 2004 Regulations on proactive publication, by inserting a new Regulation 18(1)(A):

18(1A) The enforcement and appeals provisions of the Act shall be read for the purposes of these Regulations, such that a request for information as defined in section 50(1) of the Act, shall be taken to include circumstances in which a public authority has, in the opinion of the applicant or complainant, failed to comply with the duty under Regulation 4.

4.8 Learning from Commissioner Decisions to avoid using unlawful exceptions for the same type of information.

The group heard examples of how public authorities do not always appear to learn from previous Decisions from the Commissioner, or from Tribunal or higher Courts as to when, and to what information, they can and cannot apply exceptions provided for by Regulation 12.

These can be decisions made by the Commissioner either against the authority itself, or against other public authorities, in relation to when it is appropriate to apply particular exceptions under regulation 12 and when it is not.

This adds considerably to the time and trouble faced by applicants for information.

It is not resource-efficient for public authorities repeatedly to put applicants to the trouble of complaining to the Commissioner on points that the Commissioner has already addressed in previous Decisions. By repeating the same incorrect application of exceptions to requests, internal review and Commissioner investigations are triggered on points that have been addressed previously.

That can take many months.

Most importantly, the group considered that, in practical effect, reliance on exceptions to withhold information, where public authorities should already understand that such reliance is unlawful, undermines the right of the public to have access to environmental information in a timely manner.

Recommendation 10

The group recommends an amendment adding add a new subsection to Regulation 12 requiring public authorities to ‘learn’ from Decisions, Tribunal or higher Court rulings, by inserting a new Regulation 12(1A):

“A public authority may not refuse to disclose environmental information by applying any exception to disclosure under paragraphs (4) or (5) if the public authority should reasonably be aware from decisions of the Commissioner or judgments of the Tribunal or any higher Court that an exception does not apply to the environmental information requested”.

4.9 Remediating public authorities' ability to raise different exceptions at refusal, at review, at Commissioner's investigation or at Tribunal.

The group examined the effect of the case of *Birkett v DEFRA* [2011] EWCA Civ 1606 which ruled that a public authority could rely upon a different exception or exceptions in proceedings before the Commissioner and/or the Tribunal for refusing to disclose environmental information.

The group considered whether there should be a regulatory or statutory limit on the number of attempts that a public authority can make to involve the correct exception under Regulation 12.

The group noted, as the Tribunal stated in *Department for Business, Enterprise and Regulatory Reform v ICO and Friends of the Earth* (EA/2007/0072, 29 April 2008, that "it was not the intention of Parliament that public authorities should be able to claim late and/or new exemptions without reasonable justification otherwise there is a risk that the complaint or appeal process could become cumbersome, uncertain and could lead public authorities to take a cavalier attitude towards their obligations. This is a public policy issue which goes to the underlying purpose of FOIA".

The group noted that *Birkett* in effect means that different exceptions be applied (at refusal, at review, at the stage of investigation by the Commissioner and at Tribunal) giving a public authority four attempts to 'get it right'.

This is patently unfair to applicants.

The group proposed an amendment preventing the Commissioner from making a Decision applying exceptions not already raised by the public authority at the initial refusal or internal review stages. Two attempts at 'getting it right' was considered more reasonable for both the applicant and the public authority to ensure a balance between timely access to information, while ensuring the public authority still has an opportunity to revise its reasons for refusing to disclose information.

Recommendation 11

The group proposes an amendment to Regulation 18:

"18(1A) The enforcement and appeals provisions of the Act shall be read for the purposes of these Regulations such that the Commissioner may not make a Decision applying any exceptions under Regulation 12 that have not been raised reasonably by the public authority as part of its reconsideration under Regulation 11".

4.10 Addressing the use of private emails.

The group noted that use of private emails or other private 'channels' of communications has been an issue on a number of occasions recently and there has been increasing use of private email accounts by people working in public authorities for their work-related communications.

There is an increasing concern of the use of private emails by public bodies/authorities to avoid disclosure under freedom of information for work-related purposes.

However, information from private emails would be difficult to locate, which in turn, makes it practically very difficult to disclose.

The group noted the cases of Hillary Clinton, Suella Braverman and Matt Hancock and considered whether adding a new provision to the 2004 Regulations, expressly to include the use of private emails to hold or communicate information relating to the functions of a public authority within the definition of information susceptible to request under the regulations, might work.

Screening private communications may be considered in some circumstances to be too invasive.

However, the group considered that an amendment to the 2004 Regulations could provide that information to be disclosed should include any information that is received, held, stored or communicated through private communications channels, if it related to the functions of a public authority.

Recommendation 12

The group proposes an amendment to Regulation 12(4)(a), so that it reads:

“12(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

(a) it does not hold that information when an applicant’s request is received and, where there is reason to consider that private communications may contain that information, such search of private communications as can be made lawfully has been made”

4.11 When ‘harm’ should be required and not required, when applying exceptions under Regulation 12.

The group examined and noted that under regulation 12, which deals with the exceptions to the duty to disclose environmental information, the exceptions are divided into two groups per regulation 12(4) and regulation 12(5).

The exceptions provided for in 12(4) are what is known as absolute exceptions, whereas those in 12(5) apply only where the disclosure of the information requested would adversely affect the subject matter of the exception. If there is no harm, the exception cannot be applied.

In other words, Regulation 12(4) exceptions do not require harm to be shown by a public authority seeking to rely on them, whereas Regulation 12(5) exceptions do require harm.

The group considered that there is no logical reason why the exceptions provided for at Regulation 12(4)(d) and (e) should not also require there to be harm before the exception applies. There was nothing that logically means that information that is still in the course of completion (per Regulation 12(4)(d)) or information that is internal communications (Regulation 12(4)(e)) should not be disclosed if the disclosure of that information causes no **harm**.

Recommendation 13

The group therefore recommends that Regulation 12(4) and (5) are amended such that the current regulation 12(4)(d) and (e) appear as regulation 12(5)(h) and (i) respectively.

Agenda Item 4.5

From: [REDACTED]@coalaction.org.uk>

Sent: Monday, December 4, 2023 2:40 PM

To: Climate Change, Environment, and Infrastructure Committee | Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith <SeneddClimate@senedd.wales>

Subject: Ffos-y-fran: request for a Committee Inquiry

Dear Andrea,

Me were in contact in May this year over the sprawling and then-illegal Ffos-y-fran opencast coal mining.

On the 30th November, it does appear to be the case that active coal mining has ceased at Ffos-y-fran, 15 months after it legally should have. Now it seems the restoration promised to the population of Merthyr Tydfil is being reneged on. Merthyr Tydfil County Borough Council is engaging with a consultant that Merthyr (South Wales) Ltd has put forward to propose an alternative that'll do the bare necessities on around 10% of the budget estimated necessary for the original restoration plan. This is Merthyr (South Wales) Ltd attempt at getting back the £15m locked out of its reach in an Escrow account after it has evading funding the other ~90% of the cost it's contractually obliged to by siphoning millions in revenues off into linked companies. We've started a petition to deliver the restoration originally promised to the population of Merthyr Tydfil after they've paid the price with 16 years of coal dust and noise pollution.

In the Climate Change, Environment, and Infrastructure Committee meeting of 08th June, Jenny Rathbone suggested a short Committee inquiry into Ffos-y-fran at 331 which you seconded at 333.

I'm following up to find out whether that happened/is happening?

We fear that attention will move on now that active coaling has ceased at Ffos-y-fran, without accountability for the **500,000 tonnes of coal and 1.6 million tonnes of CO2e** that never should have been produced from Ffos-y-fran over the past 15 months - and now a £105 million black hole in the restoration budget, a final betrayal of the Merthyr Tydfil population. The CO2 alone is responsible for **362 additional deaths** from climate change impacts. This points to a mismanagement and apathy on the part of public institutions of epic proportions. **We would respectfully suggest Merthyr Tydfil County Borough Council and the Welsh Government be scrutinised in a full Committee Inquiry across a scope of action and inaction** that includes:

1. failing to take decisive action to prevent the flagrant breach of planning control and subsequent profiteering from illegal activities (and the concerning precedent this sets)
2. breaking contractual obligations exceeding £100 million (restoration estimated between £120 and £175 in the attached ministerial advice)
3. violating the Welsh Government's own anti-coal policies (as expressed in the MTCBC Planning Hearing resulting in the unanimous rejection of the extension application)
4. not preparing adequately for what amounts to the abandonment of the Ffos-y-fran site announced by the mining company (see attached letter from the Coal Authority to the Welsh Government)
5. the Welsh Government failing to take adequate preventative action in response to its own report warning of risk to restoration in 2014, and our report shared in December 2022

6. the transport of illegally gotten coal along railway owned by the Welsh Government (sub-contracted out to Amey Infrastructure Ltd), accounting for revenues gained from this, directly or indirectly.

As we've been in contact on the topic, I felt I should suggest to you first that the Climate Change, Environment, and Infrastructure Committee launches a Committee Inquiry into this matter - but I'm happy to contact the Committee instead if you believe that would be more appropriate?

It is also worth noting that Merthyr (South Wales) Ltd has withdrawn its appeal against the enforcement notice (demonstrating it was indeed a delay tactic), which means that **Minister Julie James is now free to respond to specific questions on Ffos-y-fran from the CCEIC.**

--

Regards,



Coal Action Network

www.coalaction.org.uk

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Help us get the UK's abandoned coal mine 400 football pitches large restored.





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John Howells
Director of Climate Change, Energy and Planning
Welsh Government
Email: john.howells@gov.wales

20 October 2023

Dear John,

Further to our discussions and following last week's workshop led by Merthyr Tydfil Council we are writing to reinforce our key concerns about the lack of preparedness for a potentially imminent abandonment of Ffos-y-Fran surface mine by the operator.

As you are aware, Merthyr Tydfil Council are the primary authority for the regulation of the surface mine, through planning permission and enforcement. The Council will be the responsible body if the site becomes abandoned and if it becomes escheat. Despite advice and appropriate partnership support from ourselves and other partners including Welsh Government over many months, the Council have made very little visible progress in preparing for the closure and / or abandonment of the surface mine.

There is no agreed revised restoration plan or emergency response plan in place if the site should be abandoned. Without a clear plan for 'day 1', 'week 1', 'month 1' etc there is a clear risk to public safety and to the environment if the site becomes abandoned.

Managing the restoration and associated public safety of an open cast mine following closure is a matter for the landowner and local authority. The meeting last week demonstrated there wasn't a robust plan for the site's closure, which could happen at any time. For example, there was no understanding of how rising water levels would be managed nor whether they could use the restoration bond that is held in escrow to manage site security if the operator went into liquidation. These are fundamental questions that should be understood at this stage.

We welcome Merthyr Tydfil Council's wish to proceed with a joint technical working group, however, regrettably, we consider this too little at this stage. The current plan for a site visit in November is also extremely late. As we discussed when we met in Cardiff in August there is an urgent need to establish an incident response team to manage the site's closure, public safety management and safe restoration under a number of potential scenarios.

The Coal Authority will continue to take direct enforcement action in relation to the mining beyond the licensed site boundary at Ffos-y-Fran and keep Welsh Government and Merthyr Tydfil Council informed of this. We will also continue to provide appropriate partnership advice, expertise and support to you both as a close partner and civil contingency category 2 responder.

Thank you for your continued leadership on this matter,

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'L Pinney'.

Lisa Pinney MBE
Chief Executive

A handwritten signature in blue ink, appearing to read 'C Banton'.

Carl Banton
Operations Director

Decision report	This decision does require a Decision Report, which may be published once the suggested letter has been sent to the Council; or if the Ministers decides not to send the letter, once a revised decision letter has been sent to Merthyr County Borough Council.
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ADVICE

Background

1. The East Merthyr Reclamation Scheme sought to remediate areas of old iron and coal working around the town of Merthyr Tydfil. The third phase at Ffos y Fran was intended to be financed through the sale of extracted coal from the site. Progressive restoration has been taking place as the cut has moved eastwards. However, the full volume of coal intended for extraction has not been reached within the timescale originally set by the planning permission granted on appeal by a Planning Decisions Committee of the National Assembly for Wales in 2005. A subsequent planning permission (varying a condition to permit some export of coal from the site by road), granted by a planning inspector on appeal, incorporated the same extraction deadline.
2. Condition 3 set a time limit of 6 September 2022 for coal extraction then a further 2 years 3 months to complete restoration of the site.
3. A few days before the planning permission expired, the mining company submitted a planning application to extend the amount of time allowed to extract the 240,000 tonnes of coal remaining in the extraction area. While Merthyr Tydfil County Borough Council (the local planning authority (LPA)) were determining the planning application, it appears the company continued to mine.
4. The LPA refused the planning application on 27 April 2023. The LPA went on to issue an enforcement notice alleging a breach of planning control on 24 May 2023.

Pre-application Protocol Letter

5. Prior to the determination of the application, both the LPA and Welsh Ministers had received a pre-application protocol letter from campaigners Coal Action Network (CAN) on 3 April and 27 April claiming that the lack of enforcement action by both bodies was unlawful.

■ [REDACTED]

■ [REDACTED]

[Redacted]

[Redacted]

9. A further pre-action protocol letter has been received on 17 July from CAN, who we now understand are supported by the Good Law Project. This supplements their previous letters and challenges the Council's and/or the Welsh Ministers' failure to serve a stop notice to prevent a serious and ongoing breach of planning control by:
- a. failing to proceed with reasonable expedition to decide whether it is expedient to serve a stop notice, or
 - b. deciding that it is not expedient to serve a stop notice to bring the ongoing breach of planning control to an end.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

15. The Welsh Ministers have almost the same enforcement powers as LPAs and can serve both enforcement notices as well as stop notices, set out in sections 182 and 185 of the Town and Country Planning Act 1990 respectively (“the 1990 Act”). Before serving a stop notice or enforcement notice the Welsh Ministers must consult the relevant LPA.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Consequences of either action

- 31. The mining company has contracts with Tata Steel until August or September. The company is likely to continue to extract coal to fulfil these contracts (unless

enforcement action stops this earlier). However, irrespective of when in the next few months extraction stops, officials consider the company is likely to seek administration after this time, although alternatively they may seek to continue to restore the site as long as they can draw down money from the escrow account to fund the work.

- 32. The escrow account is intended to pay for restoration of the site should the company fail. This was set up by the LPA under provisions of the Mid Glamorgan County Council Act 1987. The escrow account currently stands at around £15 million. Restoration of the site to the landforms currently agreed with the Council would cost, according to estimates by the Coal Authority between £120 to £175 million pounds. This is based on the amount of overburden to transport from the three mounds back into the void.
- 33. Officials have discussed the case with LPA officers and understand attempting to progress the restoration through the company has been one reason why they did not serve a stop notice. The plant at the site is all leased and once removed from the site would be costly to bring back. Other reasons include wanting to avoid an immediate loss of 150 jobs. The other reasons are the cost of securing the site to prevent trespass into unsafe surface workings, the maintenance of the two water pumps which prevent the void from filling and the cost of a hydrogeological study to understand the safety consequences of the void filling.
- 34. Once the mine ceases operation, the overburden mounds will in time become subject to the emerging coal tip safety regime. The consequences of the void filling with water however is less certain. At the former Margam opencast site, that has happened and provision has had to be made to deal with water over topping. At East Pit, geological stability issues were identified which required the formation of buttresses before the pumps were switched off and the void allowed to fill. While the mine operator still had involvement at East Pit, in the case of Unity Mine, where the company was dissolved, the land passed to the Crown who disassociated itself from the land due to the extent of the liabilities.
- 35. The Coal Authority, Natural Resources Wales and the local authority have roles to undertake should the Ffos y Fran workings be abandoned. Arguably it is for the Council to take the lead in arranging a risk assessment and setting the priority list of works required to maintain public safety due to the £15 million they would be able to spend.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

Annex 1: ASSURANCE AND COPY RECIPIENTS

CLEARANCE TRACKING

Aspect	Tracking	Yes	No	N/A	Clearance no.
Finance	Financial implications over £50,000?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Group Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Budget & Government Business Division?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Local Government Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Legal	Legal issues?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Cleared by relevant lawyers?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Governance	Novel and contentious issues?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Cleared by Corporate Governance Centre of Excellence?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

DEPUTY DIRECTOR, STATEMENT OF ASSURANCE

In clearing this MA, I confirm that I, Neil Hemington have quality assured this advice, ensuring it is provided on the basis of evidence, accurately presents the options and facts and I am accountable for the recommendations made.

I am satisfied that the recommended decision or action, if agreed, would be lawful, affordable and comply with all relevant statutory obligations. Welsh Government policy priorities and cross portfolio implications have been fully considered in line with delivery of the government objectives.

I have fully considered the statement of assurance contained in the MA guidance to ensure all relevant considerations have been taken into account, appropriate impact assessments have been undertaken and that the actions and decisions take account of regularity, propriety and value for money.

COPY LIST

All mandatory copy recipients (as indicated in the guidance). Additional copy recipients specifically interested in this advice:

- Mandatory CC – Min CC
- PS First Minister
- HoB Planning



Agenda Item 7

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted