

Agenda – Climate Change, Environment, and Infrastructure Committee

Meeting Venue:

For further information contact:

Video Conference via Zoom

Marc Wyn Jones

Meeting date: 18 January 2024

Committee Clerk

Meeting time: 09.30

0300 200 6565

SeneddClimate@senedd.wales

Private pre-meeting (09.15–09.30)

Public meeting (09.30–11.00)

1 Introductions, apologies, substitutions, and declarations of interest

(09.30)

2 Annual scrutiny of Natural Resources Wales

(09.30–11.00)

(Pages 1 – 29)

Sir David Henshaw, Chair – Natural Resources Wales

Clare Pillman, Chief Executive – Natural Resources Wales

Prys Davies, Executive Director of Corporate Strategy and Development –
Natural Resources Wales

[Natural Resources Wales Annual Report and Accounts 2022–2023](#) (PDF 1 MB)

Attached Documents:

Paper – Natural Resources Wales

Annual Report and Accounts 2022–23 – Natural Resources Wales

Research brief – Annual scrutiny of Natural Resources Wales



3 Papers to note (11.00)

3.1 General scrutiny of the Minister for Climate Change

(Pages 30 – 44)

Attached Documents:

Letter from the Chair to the Minister for Climate Change in relation to the General Scrutiny of the Minister for Climate Change

Response from the Minister for Climate Change to the Chair in relation to the General Scrutiny of the Minister for Climate Change

3.2 Inter–Institutional Relations Agreement

(Page 45)

Attached Documents:

Letter from the First Minister to the Chair of the Legislation, Justice and Constitution Committee in relation to the Inter–Institutional Relations Agreement: British–Irish Council Summit in Dublin

3.3 UK Emissions Trading Scheme

(Pages 46 – 48)

Attached Documents:

Letter from the Minister for Climate Change to the Chair in relation to the UK Emissions Trading Scheme

3.4 UK – EU governance

(Pages 49 – 50)

Attached Documents:

Letter from the Chair of the Legislation, Justice and Constitution Committee to the Chair in relation to the Legislation, Justice and Constitution Committee’s inquiry into UK–EU governance

3.5 Water quality and sewage discharges

(Pages 51 – 54)

Attached Documents:

Letter from Natural Resources Wales to the Chair with additional evidence in

relation to the 9 November water quality and sewage discharges evidence session

3.6 Enhanced Nutrient Management Approach

(Pages 55 – 61)

Attached Documents:

Letter from Wales Environment Link – Land Use Group to the Chair in relation to Enhanced Nutrient Management Approach

3.7 Infrastructure (Wales) Bill

(Pages 62 – 76)

Attached Documents:

Welsh Government response to the Climate Change, Environment, and Infrastructure Committee Infrastructure (Wales) Bill Stage 1 Report

Letter from the Minister for Climate Change to the Chair in relation to the timetable for subordinate legislation arising from the Infrastructure (Wales) Bill

3.8 Ffos-y-Fran opencast coalmine

(Pages 77 – 78)

Attached Documents:

Letter from the Chair to the Minister for Climate Change in relation to the Ffos-y-Fran opencast coalmine

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

(11.00)

Private meeting (11.00–12.00)

Break (11.00–11.10)

5 Consideration of evidence received under item 2

6 Consideration of draft report on performance of Dŵr Cymru

(Page 79)

Attached Documents:

Draft report on performance of Dŵr Cymru

7 Consideration of draft report on Priorities for the Climate Change, Environment and Infrastructure Committee

(Pages 80 – 112)

Attached Documents:

Draft report on Priorities for the Climate Change, Environment and Infrastructure Committee for 2024–26

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

(Pages 113 – 115)

Attached Documents:

Forward work programme

Agenda Item 2

Evidence Briefing

Climate Change, Environment & Infrastructure Committee

Annual Scrutiny of Natural Resources Wales – January 2024

Contents

1. Overview
2. Budget
3. Corporate Plan & Strategic Indicators
4. Strategic Workforce Planning
5. Adfywio / Renewal Programme
6. Water Quality
7. Flooding
8. Natur a Ni (Nature and Us)
9. Board Recruitment

1. Overview

To supplement the detail of our annual report for 2022/2023, we have outlined below some key areas of work in order to update committee members on more recent activity.

2. Budget

As you will be very aware, the public sector is being increasingly challenged with having to meet intensifying service demands whilst coping with funding and budget constraints. This is exacerbated by changing demographics which include an ageing workforce and high vacancy rates in a jobs market in which it is progressively difficult for us to compete. We are also seeing high demand for specialists in key areas where we cannot match private sector pay and this is leading to attraction and retention issues as well.

Natural Resources Wales (NRW) has faced significant additional pressures this year, particularly in relation to managing increased costs as well as the impact of timber income volatility. While we have taken steps to alleviate the pressure on our budget, such as an external recruitment freeze and a reduction of non-staff budgets, serious challenges remain.

We are undertaking a thorough review of all of our activities to make the further budget reductions required, and set us on a sustainable pathway for the next financial year and thereafter. We are committed to maximising efficiencies to protect frontline services but it is clear that we will need to scale back and/or stop some services. To realise those efficiencies, there will need to be investment and we are discussing with Welsh Government (WG), whose officials have been involved throughout this process, the possibility of making an Invest to Save bid. Our Executive Team are considering all our options and know that there will be some difficult decisions to be made which will inevitably impact services that the public enjoy and expect.

This work is ongoing and the initial outcomes will be presented to our Board in early February, with the final budget and business plan due to be agreed by the Board in March. We recognise that we will set a budget of over £250m next financial year, which represents a significant investment to address the nature, climate and pollution emergencies.

3. Corporate Plan & Strategic Indicators

Launched earlier this year, NRW's corporate plan [Nature and People Thriving Together](#) sets out our vision, mission, and well-being objectives to 2030. When we published the plan we committed to strengthening the system for monitoring delivery against our well-being objectives and steps to take, so that we can be held to account by Ministers and the people of Wales.

Since April 2023, we have been working to strengthen our performance management framework, including the development of impact statements accompanied by strategic indicators and supporting narrative. These are the first tier of performance reporting providing strategic level insight into our effectiveness over the long-term in meeting the ambition of the well-being objectives.

We will publish draft impact statements and strategic indicators in January 2024. While ambitious, the draft impact statements are also realistic and achievable, showing the change we want to see for both nature and people to 2030 and beyond. The impact statements are outward facing and clearly recognise NRW cannot achieve them alone.

Twelve draft strategic indicators have also been identified to show progress towards the impacts. These will focus on the trajectories / curves we need to turn (the things that need to change by 2030). Our choice of strategic indicators is focussed on those things that are within NRW's power to influence. Strategic indicators may contribute to several impact statements highlighting the cross-cutting and holistic approach we are taking to monitoring and reporting.

Each of the strategic indicators is accompanied by a supporting narrative to enable us to demonstrate the linkage to the corresponding elements of our operational delivery. The narrative will also outline the broader context in which we work to illustrate dependencies, identify potential risks, and provide clarity on the external constraints and inefficiencies in the wider system that could be a barrier to progress. The supporting narrative will be revised each reporting cycle to reflect changes.

Performance against the draft impacts and strategic indicators will be scrutinised at Executive Team and the Board at well-being objective strategic discussions through the year. These sessions will be framed by the impacts and relevant strategic indicators and informed by the supporting narrative. The primary focus will be on NRW delivery, pulling through the relevant steps to take and associated operational performance metrics. The narrative will also reflect on the wider external context including, Government, partnerships and wider society and international/global approaches.

Next Steps

The impact statements and strategic indicators documentation will be published in draft in January 2024, and will be assessed through to quarter three of 2024/25 to establish their

suitability and the process for monitoring and reporting against them. Using the learning from this testing phase, they will be finalised in the autumn of 2024 with any changes recommended to the Executive Team and Board for approval. Thereafter, the impact statements and strategic indicators will remain fixed to 2030.

In parallel, the performance management framework policy and guidance will be finalised to ensure the learning from the testing phase is embedded; there is clarity on roles and responsibilities; and the controls required to provide assurance at the first and second lines of defence are in place.

4. Strategic workforce planning

We established a People Transformation Programme in August 2022 to deliver our People Strategy (2022-2025). This strategy requires the development of a Strategic Workforce Plan to inform enterprise-wide decision making. We have initially focussed on a few priority areas to test the approach and ensure we deliver the greatest benefit in terms of insights and intervention.

Education and academia

We continue to build relationships with academia via our Internal Evidence Group, seeking opportunities for research collaboration, as well as seeking new and innovative ways to engage with students. Our links with Environment Platform Wales are expanding with increased research opportunities offered as well as support for industry linked modules through work with Aberystwyth University. These opportunities combined with our education and learning programme provide many opportunities for routes into employment to NRW and the wider sector.

Our education and learning programme continues to expand with increased educator/student training opportunities linked to specific careers and work-related experience. Our partnership with STEM UK ensures we are addressing the scarce skills needed to address the nature, climate and pollution emergencies.

Placements

We believe that placements give people the opportunity to gain valuable skills and share experience and expertise whilst also making a significant contribution to the success, equality, and diversity of our business. Our approach to placements is set out in our placement policy and procedure. This is the framework for the recruitment, co-ordination, support, and implementation of placements.

There are currently thirty-seven people participating in paid placements. These opportunities are all remunerated in line with our commitments as a Real Living Wage employer. There are also a variety of unpaid opportunities including various volunteering schemes, which allow us to increase and retain scarce skills, for example, volunteer divers.

These are important routes into paid placement schemes and employment with our organisation and the wider environmental sector.

5. Adfywio/ Renewal Programme

Accommodation

We have published our accommodation strategy which sets out our accommodation vision for the next seven to ten years. It aims to ensure that within the financial and administrative confines placed upon a Welsh Government Sponsored Body, our portfolio will meet the business needs of a Category 1 responder whilst transitioning towards a net zero carbon future, recognising the need to adopt climate adaptation measures to meet the Climate Emergency and contribute to the Nature Emergency by appropriate management of the curtilage around our buildings. We are focussed on reducing emissions, reducing the cost of our built estate, and improving staff wellbeing. This is supported by an accompanying dynamic delivery plan which sets out broadly what we intend to do with our existing accommodation and when.

We have been in discussions with a range of public and third sector partners about shared space and have recently taken some space with Powys County Council in place of opening an office in south Powys.

We have given notice on our Tŷ Cambria offices in Cardiff and are moving to a dedicated wing in the Welsh Government offices at Cathays Park. This project is making good progress, with NRW staff due to have access to the new office in early 2024. This move will make significant emissions and efficiency savings for NRW and the wider public sector. We hope to realise 10-year savings of between £3 and 4million and reduce emissions from heating and lighting by 50% (from 250 t/CO₂e to 125 t/CO₂e based on 219/20 baseline figures).

Travel

We are committed to transitioning our light good vehicles fleet to ultra-low emission (predominately battery electric) by 2030. We are also working to increase the efficiency of our fleet and increase utilisation rates. By the end of 2023/24 10% of our 550 road vehicles will be battery electric. We have introduced an interim vehicle purchasing policy which prevents the introduction of new diesel cars or vans onto the fleet unless there is a clear business case.

A 5-year fleet transition plan has been drafted to drive the switch from diesel to battery electric in the car and light goods category. We are currently working with fleet users to identify suitable battery electric vehicles (BEVs), the Welsh Government Energy Service are providing excellent technical advice to the project.

To support the role out of battery electric vehicles (BEVs), we have introduced a further 48 EV chargers at NRW offices and depots bringing the total to 62 charging points. We plan to

procure a contract to supply an NRW wide charging infrastructure in 2024/25, subject to budget being available.

We have trialled several battery electric vehicles across various parts of the business and in different geographic locations. These include all-terrain vehicles (ATV's), 2-wheel drive pickups and several different vans. To decarbonise other areas of our fleet and plant we have introduced the use of hydrotreated vegetable oil (HVO) as a short-term and interim measure. This is being used in our plant, portable generators, and fuel bowsers. Once BEV alternatives become available, we will move away from the use of HVO.

Next Steps

We will be publishing a fleet and travel strategy in 2024/25 which will outline how we intend to accelerate the transition to a battery electric fleet which will involve trialling specialist battery electric vehicles.

We will continue to rationalise our built estate, which will include developing a delivery plan for decarbonising heat whilst working to better understand the scale and impact of climate change mitigation measures required. It should be noted however, that the cost of the measures needed to decarbonise NRW buildings and build in the necessary adaptation measures are expected to be significant and the pace of this work is limited by the staffing resources available.

6. Water Quality

Price Review 2024 (PR24)

Wales' Water Companies submitted their PR24 business plans to Ofwat on 2 October 2023. Ofwat is now reviewing these and will issue draft determinations in May 2024 before final determination in December 2024. The agreed business plan and associated funding will then be delivered from 1 April 2025 to 31 March 2030 during Asset Management Programme period 8 (AMP8).

We welcome the submission of these business plans as they are the culmination of years of work between the water companies and regulators, setting out a significant programme of much-needed investment across Wales in the water environment. The investment will prevent the risks and pressures water company operations place on the environment, and improve the Water Companies' environmental performance.

Ofwat will make the final decision, in line with guidance from Welsh Ministers. Our expectation is that the AMP8 investment programme will support sustainable environmental improvements for the benefit of current and future generations.

Better Water Quality Taskforce

The Taskforce continues to drive delivery of the storm overflow action plan, and in August we issued our first storm overflow report to stakeholders in line with our commitments within that plan. We are working with both DCWW and Hafren Dyfrdwy on improvements to the data and metrics for the 2024 report.

In October, we issued guidance for classifying storm overflows as well as process guidance for permitting un-permitted overflows. This sets clear definitions about the conditions under which a storm overflow is permitted to spill within its environmental permit, and includes definitions for what constitutes a 'dry day discharge' and the required rainfall totals to justify a spill during 'heavy rainfall' using definitions set by the Met Office. It also sets the requirement for the screening of intermittent assets.

We are also working to ensure that our data is more easily available to others. Alongside this we are improving how we manage, process and regulate the use of Water Company data for compliance purposes. This will enable us, as the regulator, to better identify where assets may be causing environmental harm and ensure that water companies better focus their maintenance and capital investment.

SAC Rivers Update

Of the eight commitments allocated to NRW in the First Minister's Action Plan, we have completed five, which includes sharing the Mitigation Measures Menu, the NMB Evidence Pack and Constructed Wetland Policy, as well as undertaking a Review of Permits. As part of the latter, we have varied 31 out of 171 DCWW Wastewater Treatment Works (WwTWs) permits to date and have updated our planning advice to Local Planning Authorities (LPA). Some key permits have been issued to allow the LPA to start making decisions, for example, in the Five Fords and Gresford WwTWs in the Dee catchment. We have also run a series of training events with Local Planning Authorities and with internal staff, outlining changes to advice and consideration in the decision-making process for planning and permitting.

There have been significant delays to issuing variations of permits due to DCWW challenging our approach to applying the phosphate and ammonia limits in particular. The issuing of permits has also been delayed by the lack of monitoring data and agreeing the required timeframes for delivering improvements. Any additional appeals from the water companies will delay Local Planning Authorities being able to make planning decisions as only when the appeal has been concluded can Local Planning Authorities proceed.

Teifi Demonstrator Project

This project will involve a variety of partners, including land and water management sectors, local authorities, and academia, to highlight collaborative approaches to water quality and water resource improvements - building riverine habitat resilience through sustainable land and water management. We will adopt agile and innovative approaches and the learning

developed will be scaled up and out across Wales bringing multiple benefits to other river systems. It is a great opportunity to demonstrate how collaborative interventions can reverse the negative trends we are seeing, improving water quality, ecology and habitat, and supporting the resilience of local communities and the benefits that come from our natural environment.

A project manager has been appointed to develop the work with partners over the next six months, and an evidence analyst will start at the end of January. An initial launch meeting took place with senior representatives from the key stakeholder organisations in Lampeter on 24 November, and an update on this new project was provided at the First Minister's third River Pollution Summit on 30 November in Cardiff. A conference will be held in February taking a "hackathon" approach to further explore collaborative opportunities and innovative ideas with a wider group of stakeholders/citizens.

Water Resources (Control of Agricultural pollution (Wales) Regulations 2021)

We have so far recruited 19 of the 22 roles in the new all-Wales Agriculture Regulation Team who will provide advice to farmers across Wales on compliance with the new Water Resources (Control of Agricultural pollution (Wales) Regulations 2021). This will include taking enforcement action when necessary.

7. Flooding

Technical Advice Note 15 (TAN15)

We are keen to support sustainable development across Wales and recognise its importance in ensuring our communities can remain vibrant and viable. However, we believe that the latest draft of TAN15 is a backwards step from the clear and positive policy direction set out in the 2021 draft, and a worsening of the position provided by the current 2004 TAN.

We have recently written to the Minister for Climate Change suggesting that we should collectively find ways to support regeneration in a sustainable way and identify means to make existing communities and new development more resilient to flood risk and improve their ability to recover quickly after flood events. Suitable routes for access and egress in cases of emergency deployment and evacuation should also be maintained, and new developments should not be exposed to unacceptable risk, reducing as far as possible new highly vulnerable development in areas of significant flood risk so as to protect our future generations.

Appropriate safeguards should also be in place where development sits behind a defence and we should not seek to defend undeveloped areas for the sole purpose of enabling development, when these areas may be needed to make space for water especially with the increased impacts of climate change.

8. Natur a Ni (Nature and Us)

Earlier this year the [Nature and Us Vision](#) was published. Created by the people of Wales, it sets out an inspirational challenge for Government, Public Bodies and the third sector to work together **and with citizens** to find solutions to both the nature and climate emergencies, and the challenges to the services on which our citizens rely. In short, the Vision calls for a 2050 where society and nature thrive together; where people are more involved in decisions that impact on nature.

Now, more than ever, we need to work together as Public Services in Wales so that we can co-develop more inclusive and integrated solutions to overcome these acute challenges, and we draw on this Vision as a beacon for hope for the future. As a commitment to the people of Wales involved in the development of the Vision, we will use our reporting processes to demonstrate the actions we have taken towards it, including where we deliver in partnership with others. We will be clear about the impacts that our collective actions have on people and nature, both directly and indirectly.

In considering those wider determinants we will continue to work through a number of important mechanisms for collaborating with public services – most significantly, as members of Public Services Boards in Wales. We recognise the importance of using these statutory mechanisms for continued innovative collaborations across public services and integrating the outcomes of our work.

9. Board Recruitment

At the request of Julie James MS, Minister for Climate Change, Sir David Henshaw's tenure as Chair of NRW has been extended to October 2025. The board is currently carrying one vacancy and will recruit to this post as part of the wider campaign to appoint to the two other roles whose tenures expire in October 2024. We are working closely with Welsh Government on this and expect the recruitment campaign to begin in the early spring of 2024.

December 2023

**Climate Change, Environment and Infrastructure Committee
meeting - Thursday 18 January 2024.**

Annual scrutiny of Natural Resources Wales:

- [Natural Resources Wales Annual Report and Accounts 2022-2023](#)

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

Document is Restricted

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

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Julie James MS,
Minister for Climate Change

24 November 2023

Dear Julie,

Follow-up from general Minister scrutiny session on 26 October 2023

Thank you for attending the Committee's 26 October meeting to give evidence in connection with policy areas within your portfolio. Following the meeting, the Committee agreed I should write to you to seek clarification and further information on matters raised during the session and to ask you to address other matters that were not reached due to time constraints.

An environmental governance and nature recovery targets bill

In the Welsh Government's [biannual update on the implementation of recommendations arising from the Biodiversity Deep Dive](#), it set out its intention to publish a White Paper for an environmental governance and nature recovery targets bill during 2023. In giving evidence to the Committee, you told us the White Paper is now expected "at the start of next year".

As you know, the Committee is keen to see work on the bill accelerate to enable the new environmental governance body for Wales not only to be established, but to be fully operational, before the end of the Sixth Senedd. We therefore urge you to ensure that the White Paper is not subject to further delay.

During your appearance before the Committee, you told us the proposed legislative framework for setting nature recovery targets will be "very similar" to that for air quality targets provided for in the



Environment (Air Quality and Soundscapes) (Wales) Bill (the Bill). You will be aware that, in our Stage 1 report on the Bill, we expressed concerns about the target-setting framework. In particular:

- the provision of a discretionary power to enable the Welsh Ministers to set air quality targets, rather than a requirement on the Welsh Ministers to set targets for known pollutants;
- the absence of statutory timelines for setting targets; and
- the lack of provision for the Welsh Ministers to set interim targets on a trajectory towards long-term targets.

1. We expect you to reflect on the above when finalising the White Paper proposals for the nature recovery target-setting framework.

Implementation of the Environment (Wales) Act 2016

National Natural Resources Policy

The first National Natural Resources Policy ('NNRP'), required under the Environment (Wales) Act 2016 ('the 2016 Act'), was published in 2017. The 2016 Act requires the Welsh Ministers to review the NNRP "after each general election" and publish a revised NNRP if required. When asked to explain why you have yet to review the NNRP, you told us, "we've undertaken a whole series of exercises and steps to start to inform a review", citing the Biodiversity Deep Dive and the Trees and Timber Deep Dive as examples. You added, "the review has to be in each Senedd term, effectively. And I think it's really important to get the review right, rather than to do it speedily, but there absolutely will be a review before the end of the Senedd term, as is required by the law".

The purpose of the NNRP is to set out the Welsh Government's priorities and policies in relation to achieving sustainable management of natural resources. Given this, we would expect the NNRP to be reviewed towards the start of the Welsh Government's term in office rather than the end.

2.. Can you provide more exact timings for the completion of the review and for the publication of a revised NNRP?

Biodiversity lists

The 2016 Act requires the Welsh Ministers, in consultation with Natural Resources Wales ('NRW'), to publish a list of species and habitats of principal importance for maintaining and enhancing biodiversity. The Welsh Ministers must "take all reasonable steps" to maintain and enhance the species and habitats on that list and encourage others to do so.

The list was originally transposed from the Natural Environment and Rural Communities Act 2006 and has not been updated since the 2016 Act came into force.

3. What work has been undertaken to date to review the species and habitats lists with a view to updating them?

4. What timelines are you working towards for the publication of the updated lists?

Decarbonising the private housing sector

Improving energy efficiency standards

In our report, *Decarbonising the private housing sector* (February 2023), we acknowledge the role of more stringent Minimum Energy Efficiency Standards ('MEES') in accelerating retrofit in the private rented sector ('PRS'). We therefore share your frustration that the UK Government has chosen to scrap the requirement for the PRS to achieve an EPC rating of C for all new tenancies by 2025, and for all tenancies by 2028. We are concerned about the impact of this on the delivery of Wales' net zero commitments and efforts to tackle fuel poverty.

5. Since the UK Government's announcement, what discussions have you had with representatives of the PRS to discuss alternative options for increasing energy efficiency standards across the sector outside of the MEES?

6. What consideration have you given to introducing more stringent energy efficiency standards as a condition of Wales' landlord registration and licensing?

In giving evidence, you referred to several policies and proposals being taken forward to encourage the PRS to improve energy efficiency standards, for example, Leasing Scheme Wales ('LSW'). We understand that, currently, 15 out of 22 local authorities have signed up to the LSW. When asked about the number of landlords engaged with LSW, you said it was "in the hundreds, rather than the thousands".

7. What steps have you taken, or do you intend to take, to encourage the remaining seven local authorities to engage with the LSW?

8. Can you provide more exact numbers of landlords engaged with the LSW, broken down by local authority area?

Property Linked Finance

In giving evidence to us, you explained that work on financial options for the owner-occupier sector to meet the upfront cost of retrofit was ongoing.

9. Can you provide an update on work towards the development of proposals for Property Linked Finance?

Planning and Permitted Development Rights

During the evidence session, we asked you to clarify the timescales you are working towards for reviewing permitted development rights with a view to relaxing the requirement that no part of an air

source heat pump can be installed within 3 metres of a property's boundary. You told us you were undertaking research to better understand the noise impacts of reducing the 3-metre requirement.

In response to our report, *Decarbonising the private housing sector*, you said the findings from your research "will provide a contribution to a wider study of noise from air source heat pumps being undertaken by the UK Government. The conclusions of this work will be used when a comprehensive review of the PDR is undertaken".

We understand that the UK Government study was due to be completed in summer 2023. However, the findings of the study have been published.

10. When will the findings from the Welsh Government's research into air source heat pump noise and permitted development rights be published?

11. Can you set out your understanding of the timescales the UK Government is working towards for completing its wider study of noise from air source heat pumps?

12. What timescales are you working towards for the completion of the comprehensive review of permitted development rights?

Since the publication of our report, the UK Climate Change Committee ('UK CCC') has recommended you "Conduct an **urgent review** [emphasis added] of planning policies (including the details of permitted development rights) which may restrict installations of low-carbon heating and energy efficiency measures, and amend regulations where appropriate".

13. What consideration have you give to undertaking such a review?

Residential GHG emissions

14. Can you clarify whether emissions estimates provided by the Welsh Government to the UK CCC to inform its latest Progress Report take account of residential electricity use? If not, why not?

Circular economy

Deposit Return Scheme

It has now been almost five years since the Welsh Government consulted jointly with DEFRA and Northern Ireland's Department of Environment on the introduction of a Deposit Return Scheme ('DRS'). Progress towards the development of a DRS since then has been slow. At the beginning of the year, you told us the DRS would be up and running in October 2025. We are disappointed to hear that the scheme could now be subject to further delay as a result of the UK Government's decision to exclude glass from the scope of the scheme in England, contrary to the initial proposal.

In your evidence, you said, “we’re continuing to meet at official level almost on a daily basis with counterparts in England, Scotland and Northern Ireland to discuss the scheme”.

15. We would like you to provide an update on progress towards reaching a resolution on the scope of the DRS before the end of spring term 2024.

16. In the event that an agreement to include glass in the scope of the scheme cannot be reached, what are your next steps in relation to the DRS in Wales?

Statutory recycling

Currently, the Welsh Government’s minimum target for the recycling of waste is 70% by 2025 for waste from households and commercial and industrial businesses. In the UK Climate Change Committee’s *Progress Report: Reducing emissions in Wales* (June 2023), it notes that recycling rates in Wales remain higher than the rest of the UK, but “improvements have stalled in recent years”. The UK CCC calls on the Welsh Government to “set ambitious recycling targets for 2030 and beyond, improving on the 70% target for 2025”.

17. What work have you undertaken to date on the development of recycling targets for 2030 and beyond? What timelines are you working towards for setting any such targets?

Water quality

Storm overflows

We welcome the recent publication of the Storm Overflow Evidence for Wales (‘SOEfW’) Report, in line with the commitment given in the [Environmental regulation of overflows: action plan](#) (‘the action plan’). According to the action plan, the intention is for the Report to inform the Better River Quality Taskforce’s (‘the Taskforce’) work in developing short, medium and long-term targets for the prevention of ecological harm of Wales’ waterways. However, the action plan does not provide an indication of the timescales the Taskforce is working towards for the development of targets.

18. Given the Welsh Government is a member of the Taskforce, can you clarify the timescale the Taskforce is working towards for the development of targets to prevent ecological harm in Wales’ waterways?

Control of agricultural pollution

The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 (‘the 2021 Regulations’) aim to address the causes of water pollution from agriculture. The 2021 Regulations include a 170kg/ha annual holding nitrogen limit, initially due to be implemented on 1 January 2023. The Welsh Government agreed, through its Co-operation Agreement with Plaid Cymru, to postpone

implementing the 170kg/ha limit to April 2023. It also agreed to consult on a licensing scheme allowing qualifying farms to apply the higher 250kg/ha limit.

We are aware of the Welsh Government's recent announcement to introduce an Enhanced Nutrient Management Approach rather than the licensing scheme. Under this approach, farm businesses must notify NRW where 2024 nutrient management plans show the annual rate of 170kg/ha nitrogen from livestock manures is likely to be exceeded. They must also undertake actions consistent with the proposed licence conditions consulted upon.

19. What work has the Welsh Government undertaken to assess whether/how the proposed Enhanced Nutrient Management Approach will impact the effectiveness of the 2021 Regulations in tackling the causes of water and air pollution from agricultural activities?

Sustainable Farming Scheme

We recognise the crucial role of the SFS in supporting the delivery of Wales' climate change commitments and reversing nature's decline.

In giving evidence to the Committee in February 2023, Lord Deben, the then Chair of the UK CCC, said the UK CCC had been "ready and waiting" to engage with the Welsh Government on the development of the SFS but that it had not been involved thus far.

20. Can you clarify whether and how the Welsh Government has engaged the UK CCC in the development of the proposed Sustainable Farming Scheme? If there has been no engagement, please explain why.

Before finalising the SFS, we expect the Welsh Government to consider whether and how it could best utilise the UK CCC's expertise to ensure that the scheme is capable of driving deep emissions reduction in the agriculture sector and increasing the size of the carbon sink.

Retained EU (Revocation and Reform) Act 2023

21. Can you provide an update on the intergovernmental discussions on potential replacement arrangements for the National Emissions Ceiling Regulations 2018 (the 2018 Regulations)?

22. If the replacement arrangements referred to above do not materialise, does the Welsh Government intend to use its powers under the REUL Act 2023 to replicate the duties placed on the Secretary of State by the 2018 Regulations (to prepare a national air pollution plan for the five air pollutants and consult the public when doing so) so that they apply to Welsh Ministers from the end of 2023 when the 2018 Regulations expire?

I look forward to receiving your response no later than Friday 22 December 2023.

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 AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: JJ/PO/441/2023

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

18 December 2023

Dear Llŷr,

Thank you for your letter of 24 November following the Committee's Ministerial scrutiny session which I attended on 26 October.

I have provided further information in relation to the Committee's questions below:

Target setting framework powers and lessons for the proposed Bill providing for biodiversity targets

I am grateful to the Committee for its work on the Environment (Air Quality and Soundscapes) (Wales) Bill and the engagement which shaped the final provisions on target setting. I have asked officials working on the proposed approach to biodiversity targets to reflect on the learning from the development of the Air Quality target setting framework. It remains the case, though, that targets must be developed based on evidence and work to drive meaningful action.

Review and publication of a revised National Natural Resources Policy

A working group will start work in January to review the progress to date and undertake a review of the policy. The review is due to complete in October 2024. The publication of a revised policy will follow.

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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.

Review of the species and habitats lists and timing of publication of revised lists

The Environment (Wales) Act transposed the Section 42 list as the interim Section 7 list. Whilst no timeframe was set in the Act for the publication of an updated list, the task has proven complex and time consuming.

Stage 1, led by Natural Resources Wales (NRW) has been completed. Over 2900 species have been assessed by NRW specialists, resulting in more than 1100 being proposed for inclusion the Stage 1 list. In addition, NRW also engaged species and habitats experts from Wales Environment Link (WEL) members and other key technical organisations in a series of independently facilitated virtual workshops. We are very grateful to the experts and organisations for the help they have provided.

Welsh Government has now reviewed the Stage 1 lists and related spreadsheets. This process gave rise to a number of queries and requests for further information, particularly around commercial marine species and some definitional issues around some of the proposed mosaic habitats. NRW are currently working on the responses needed before the lists can progress to Stage 2 where they need to be formally agreed and published by Welsh Government. Stage 2 will also include guidance on interpretation and implementation for users and We aim to publish the revised section 7 list in the spring 2024 with further guidance on interpretation and implementation to follow.

Discussions with representatives of the Private Rented Sector (PRS) to discuss alternative options for increasing energy efficiency standards across the sector

We have yet to have any direct discussions with the private rented sector on this. However, our Green Paper Call for Evidence did seek views on whether it could be appropriate to link the EPC rating of a property to the rent that could be charged as a means of encouraging investment in improving the EPC rating.

Officials are currently analysing the responses to the Green Paper, and this evidence will inform the development of a White Paper.

Consideration of introducing more stringent energy efficiency standards as a condition of Wales' landlord registration and licensing?

The Welsh Government have control over the Code of Practice that licensed landlord and agents must abide by. The mandatory part of the Code of Practice can only reflect what is currently law in Wales. However, energy is a reserved function of the UK Government, any changes to EPC standards are a matter for the UK Government.

Other than the Code of Practice set by an Order of the Senedd, licence conditions are a matter for the licensing authority, Rent Smart Wales (RSW). The Housing (Wales) Act 2014 gives them the power to set licence conditions that they feel are appropriate for the licence. If RSW were to propose a new condition, it would need to be in relation to the letting and management practices of a landlord's properties. RSW themselves have no jurisdiction over anything in relation to the fabric of the property, so a fundamental change to rules surrounding the fabric of a property is not within their remit.

I have always been clear that I want to see more energy efficient properties across Wales, and we are delivering using the levers that we have, particularly through new-builds and retrofitting existing properties. The UK Government, unfortunately, scrapped their plans to bring in a minimum "C" EPC rating to new and existing properties in England and Wales.

This, coupled with sufficient money back-up the plans and to encourage and help landlords to meet the new standards, would have helped tenants in Wales immeasurably in terms of energy efficiency and rising fuel costs. Landlords would have also benefitted from having upgraded and more marketable properties. The UK Government have the power to act, and they need to for the sakes of landlords and tenants.

Steps to encourage the remaining seven local authorities to engage with the Leasing Scheme Wales?

The aim is to get all-Wales coverage for Leasing Scheme Wales. There is already a package of funding to help local authorities develop and manage the scheme. Since the schemes inauguration there has been active engagement with relevant senior managers in the local authorities who have not yet joined. As a result, there are now 16 local authorities participating and a further authority has now applied to join making 17.

There have been recent discussion and dialogue highlighting the benefits of the scheme with the five remaining local authorities, who are now re-considering their position.

Numbers of landlords engaged with the Leasing Scheme Wales by local authority area

Local Authorities engage landlords and prospective landlords through a wide variety of mechanisms such as social media, newsletters, forum meetings and general day to day contact. As such, it is difficult to quantify exactly how many have been engaged.

The information below sets out the number of properties taken on board. It may be some landlords have more than one property, so the exact number of landlords will require further investigation with local authorities. The freezing of Local Housing Allowance rates over the last four years has been a huge impediment to encouraging landlords to join the scheme. However, with Local Housing Allowance rates now being uplifted from next April, this will help to make Leasing Scheme Wales a more attractive proposition to landlords, who may previously have declined to join the scheme.

The scheme remains in its early deployment, however the number of properties which form part of the scheme by local authority is as follows:

Cardiff	62
RCT	29
Conwy	29
Gwynedd	13
Ceredigion	13
Anglesey	7
Pembrokeshire	9
Wrexham	11
Denbighshire	8
Merthyr Tydfil	2
Carmarthenshire	3
Newport	0
Blaenau Gwent	0
Monmouthshire	0
Neath Port Talbot	0
Powys	0
Total	186

There are a further 90 properties in the pipeline and there is every indication these will be brought on board by the end of the financial year.

Update on work towards the development of proposals for Property Linked Finance?

A work programme focused on exploring innovative funding solutions for the decarbonisation of Welsh homes is underway. This work includes undertaking test and learn projects to help understand models further, test their viability, measure success and assess the scalability potential. I hope to launch the first test and learn project which will focus on able to pay owner occupiers in the 2024/2025 financial year (subject to budget approvals).

Work has begun to bring together social landlords, finance industry experts and Welsh Government officials to explore innovative methods of funding decarbonisation works. Two sessions have been held which have focused on exploring potential finance models being investigated by Welsh social landlords (particularly focussed on save/share financing models linked to micro-generation) and those being used in other jurisdictions.

Officials are also working to keep sighted on developments wider than this working group, for example maintaining links to the outputs from wider UK Government work (such as the pilot projects under the green home finance accelerator projects and wider work such as the recent round table event hosted by Barclays and work ongoing led by Trustmark).

The net zero carbon hwb which is due to be launched in early 2024 will also have an area with a specific focus on finance for members to discuss options and proposals in this area.

Publication of findings from the Welsh Government's research into air source heat pump noise and permitted development rights

The findings will be published before the Christmas recess.

Welsh Government's understanding of the timescales the UK Government is working towards for completing its wider study of noise from air source heat pumps

The Department for Energy Security and Net Zero (DEZNEZ) published 'Review of Air Source Heat Pump Noise Emissions, Permitted Development Guidance and Regulations' on 30 November. This report was commissioned to assess whether, and in what ways, current guidance and planning regulations are fit-for-purpose for the larger-scale deployment of Air Source Heat Pumps (ASHPs) in England.

On the same day, Microgeneration Certification Scheme launched their consultation on 'MCS 020 Planning Standard for Permitted Development Installations of Air Source Heat Pumps'. This consultation is on MCS 020 and the proposed changes include improving the definition of a solid barrier, background noise level assumptions and updated guidance on location. Proposals are designed to make installing a ASHPs easier and more accessible. Both the DEZNEZ report and the MCS consultation are important in shaping changes to UK ASHP permitted development rights and will provide insight to the Welsh Government on the main issues. It is understood that the Department for Levelling Up, Housing & Communities will undertake a consultation on changes to ASHP permitted development rights in January 2024.

Timescales for the completion of the comprehensive review of permitted development rights and considerations within the review

As noted in this letter, a range of work is underway to support a review of permitted development rights in Wales. No specific dates have been set at this stage. It is anticipated the formal review process will commence in Spring 2024.

The Welsh Government is actively undertaking a range of work looking at ASHPs and their associated permitted development rights with the intention of undertaking a review of permitted development rights in 2024.

The Noise and Soundscape Plan for Wales 2023-2028 was published at the start of December 2023. The Plan highlights that, in 2022 the Welsh Government commissioned Sustainable Acoustics Ltd and Apex Acoustics Ltd, to review all the available evidence on this topic and provide expert advice to inform potential changes to permitted development rights in Wales. In 2023, the findings of this review have begun to feed into a wider piece of work by the UK Government, which we hope will lead to improvements to the Microgeneration Certification Scheme, the industry-led quality assurance scheme underpinning the planning rules for ASHPs in both England and Wales.

The Welsh Government welcomes the Microgeneration Certification Scheme Charitable Foundation's willingness to work with the Welsh and UK Governments to introduce rapid improvements to the MCS 020 assessment methodology. We anticipate that these improvements, once implemented, will enable us to update the rules for permitted development rights for domestic ASHPs in Wales in a way that does not expose people in densely populated areas to an unacceptable risk of noise nuisance from the rollout of this important decarbonising technology.

The Welsh Government would welcome improvements being made to the MCS, which underpins the planning rules for ASHPs. Once the Microgeneration Certification Scheme has been reviewed and updated, we will take the best available and most up-to-date evidence on the noise risks associated with heat pumps into account as we review and update the rules for permitted development rights for ASHPs in Wales.

The Welsh Government intends to publish before Christmas a two-part report reviewing the latest evidence in relation to ASHP noise. The report entitled 'Air Source Heat Pump Noise & Permitted Development Rights in Wales' looks at the effects of noise and current permitted development rights on ASHP deployment across Wales, and how to overcome the obstacles. It concludes by recommending simplified permitted development rights requirements.

The Welsh Government recently consulted on its Heat Strategy for Wales. The Strategy focusses on our approach to decarbonising space heating and hot water for our buildings in Wales, our higher demand industrial heat, and how our energy networks will be transformed to support a low carbon future. The consultation sought views on whether the current permitted development rights related to heat pumps are a barrier to heat pump installation rollout.

The responses to this consultation are currently being analysed and will inform our work reviewing ASHP permitted development rights.

Clarify whether emissions estimates provided by the Welsh Government to the UK Climate Change committee (UK CCC) to inform its latest Progress Report take account of residential electricity use?

The UK CCC's progress report draws on the Welsh Greenhouse Gas Inventory (GHGI), which reports Welsh territorial emissions in-line with the international reporting guidelines set by the Intergovernmental Panel on Climate Change (IPCC).

The GHGI accounts for residential electricity use via the power stations that produce it, rather than allocating it to households directly. Any emissions generated by electricity produced in Wales will be reported as Welsh emissions in the GHGI, regardless of where that electricity is ultimately consumed. Equally, if electricity is produced outside of Wales and imported for use in Welsh homes, those emissions will not be reported as Welsh emissions but rather they will be accounted for in the country that hosts that power station.

Whilst there is a duty on Welsh Ministers to estimate consumption emissions too, the approach we take to our statutory targets, which considers territorial emissions, aligns with UN processes.

Update on progress towards reaching a resolution on the scope of the Deposit Return Scheme (DRS) before the end of spring term 2024 and next steps in relation to Wales

My officials have been working on a daily basis with their counterparts in Defra, Northern Ireland and Scotland on the development of the Deposit Return Scheme and have worked with industry and experts in the sector on its design. Significant progress has been made on finalising the scope and addressing interoperability issues, with the Scottish scheme now progressing on the same timeline as that for the rest of the UK. I have recently also met with the new Defra Minister responsible for the development of the DRS in England to discuss progressing the scheme. The next stage will be to start the final drafting of the regulations required to implement the scheme.

There is no reason why agreement cannot be reached on the scope of the scheme since the current situation reflects the final scheme design which was jointly published and agreed by the UK Government. The next step will be the development of the legislation for Wales, which will be developed in parallel with that for England and Northern Ireland. We are also working closely with the other governments on the development of the application process and guidance for the appointment of the scheme operator, in readiness for the establishment of a body to administer the scheme.

Work undertaken on the development of recycling targets for 2030 and beyond?

Work is being undertaken in partnership with the Local Authorities to develop the pathway for the targets for recycling post the 70 per cent statutory minimum target which comes into place in 2024 to 2025.

The first step was to commission a new study of the composition of residual municipal waste, and the [results were published in July 2023](#).

Clarify the timescale the Taskforce is working towards for the development of targets to prevent ecological harm in Wales' waterways?

The Better River Quality Taskforce is reviewing the Storm Overfall Evidence for Wales Report with a view to developing an achievable and affordable short-, medium- and long-term programme for the prevention of ecological harm of our riverine waters. The Taskforce will decide the format of the plan, including any associated targets. The programme and priorities will be communicated more widely in due course.

The River Basin Management Plans [Natural Resources Wales / River basin management plans](#) provide the overarching programme of work and plans for the prevention of ecological harm of our riverine waters, in accordance with the requirements of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.

Assessment of whether / how the proposed Enhanced Nutrient Management Approach will impact the effectiveness of the 2021 Regulations in tackling the causes of water and air pollution from agricultural activities

A [Regulatory Impact Assessment](#) on the Enhanced Nutrient Management approach was laid before the Senedd on 29 November.

How the Welsh Government has engaged the UK CCC in the development of the proposed Sustainable Farming Scheme

The Sustainable Farming Scheme (SFS) is the responsibility of the Minister for Rural Affairs, North Wales and Trefnydd. It being designed with strong input through co-design with the industry and with relevant Welsh Government policy teams. As part of this process the UK CCC reports and recommendations have been considered and have influenced policy design and the schemes development. The SFS proposals is currently at consultation phase, however we have adapted some proposals to link more closely with UK CCC findings for improvement, such as the inclusion of a highly modified peatland and riverine SSSI's in our universal layer to support the improvement in 'nature' and 'working land and seas'.

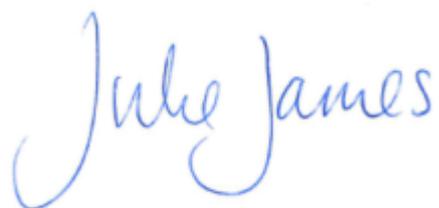
The SFS framework is designed to be an iterative process so officials will continue to engage with the UK CCC to as appropriate.

Update on the intergovernmental discussions on potential replacement arrangements for the National Emissions Ceiling Regulations 2018 and plans to replicate in Wales if it is not addressed at UK level

The National Air Pollution Control Programme (NAPCP) provisions in the National Emissions Ceiling Regulations will be revoked on 31 December under Schedule 1 of the Retained EU Law (Revocation and Reform) Act 2023. The decision by UK Government to remove the NAPCP provisions from the National Emission Ceilings Regulations via this Schedule was made without consideration through the Air Quality Common Framework. We are currently working with Defra and the other Devolved Governments via the Air Quality Common Framework Working Group to inform Defra's proposed alternative arrangements. Transparency and public scrutiny are important aspects of the Environment (Air Quality and Soundscapes) (Wales) Bill, introduced to the Senedd in March, and I am keen to see them applied here.

We are also continuing to engage with Defra and the other Devolved Governments to seek an open and collaborative approach in the development of potential alternative processes.

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

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

15 December 2023

Dear Huw,

Inter-Institutional Relations Agreement: British-Irish Council Summit in Dublin

Further to my letter of 23 November regarding the inter-institutional relations agreement and a British-Irish Council Summit being held in Ireland, I would like to draw your attention to my [written statement](#) of today, and to the BIC [communiqué](#) summarising the outcomes of the Summit.

Whilst at the Summit, I took the opportunity to hold bilateral meetings with the Minister for Public Expenditure and Reform, Paschal Donohoe TD, the Taoiseach Leo Varadkar TD, the First Minister of Scotland the Rt Hon Humza Yousaf MSP, and the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations the Rt Hon Michael Gove MP.

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

Yours sincerely,



MARK DRAKEFORD

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Our ref: JJ/PO/435/2023

Llyr Gruffydd MS Chair, Climate Change, Environment and
Infrastructure Committee
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Cardiff
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18th December 2023

UK Emissions Trading Scheme (UK ETS) publications December 2023:

- **Free Allocation Review consultation;**
- **Future Markets Policy consultation;**
- **UK ETS Long-term Pathway; and**
- **UK ETS 2023 Review**

Dear Llyr,

I am writing to update you on progress related to the UK Emissions Trading Scheme (UK ETS) following the Government Response to the “Developing the UK ETS” consultation, published in July this year. This response committed to a series of consultations to continue the development of the scheme.

The UK ETS Authority (formed of Welsh Government, UK Government, Scottish Government, and Northern Ireland Executive) have today published two consultation documents: Free Allocation Review; and Future Markets Policy. These consultations are key to ensuring the scheme continues to function as effectively as possible and encourage industry to transition to net zero. The Authority has also announced two other publications: the UK ETS Long-term Pathway and UK ETS 2023 Review. The Review is a retrospective assessment of how the scheme has operated thus far. The Long-Term Pathway sets a long-term trajectory of the scheme towards 2050.

The Free Allocation Review consultation is the second phase of the process of assessing free allocations, which are used as a way of protecting trade-exposed UK industry from global competitors not subject to carbon pricing (carbon leakage). The first phase looked at the top-down aspect of free allocations by the re-setting of the industry cap, thereby limiting the number of free allocations within the scheme. This was the top-down element as contained within the “Developing the UK ETS” consultation, for which a Government Response was published on 3 July. The consultation published today explores the bottom-

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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.

up methodology and looks at ways to better target free allocations for those most at risk of carbon leakage, making sure they are supported in the transition to net zero. It will allow the Authority to provide UK ETS participants with certainty over their future free allocations. This is particularly key for Wales as some of our industries, such as steel, are very trade exposed and harder to decarbonise. They therefore currently receive high levels of support through free allocations. It is important we do not disadvantage Welsh industry; failing to do so will result in these industries relocating to countries that do not have the same climate ambitions, risking increased global emissions and an unfair transition to net zero as a result.

The Markets consultation aims to review ETS markets policy to ensure that it remains fit for purpose and is effective in managing the risks faced by an established and maturing scheme. Effective functioning of the market lies at the heart of the scheme, with auctions and trading of emissions allowances between participants generating the carbon price signal that will spur investment in decarbonisation. The consultation seeks views on the mechanisms and approaches used to keep the scheme functioning effectively.

The UK ETS Long-term Pathway is the Authority response to Mission Zero: Independent Review of Net Zero, chaired by Chris Skidmore MP. Whilst the independent review was commissioned by the UK Government, it contained recommendations for the UK ETS including setting a long-term pathway. The review received strong endorsement by all parts of the Authority regarding the importance of carbon pricing and of the central role the UK ETS will continue to play in enabling market-led delivery of net zero. The document published today therefore gives certainty that a net-zero aligned UK ETS will continue until at least 2050 and reaffirms plans to explore future development and expansion of the scheme.

Also published today is a review of the operation of the UK ETS since its launch – this review fulfils a statutory commitment. The review draws on previous consultations, market and compliance data, and an independent monitoring and evaluation study commissioned by the Authority. The Review concludes that UK ETS has been achieving its purpose and continues to be a key policy instrument for net zero. It also reiterates the Authority's commitments to build on the current operation with policy and operational improvements.

Overall, I believe that the UK ETS remains a highly influential policy lever in achieving net zero in Wales and provides a crucial platform for encouraging businesses to invest in and adopt decarbonisation technologies. The Government Response to the "Developing the UK ETS" also committed to further consultations on expanding the scheme, which the Authority intends to publish in due course. I will of course write to you again when these are published. Collectively, the information gathered will aid us in refining the scheme, allowing us to create more robust mechanisms that will incentivise innovation, drive emission reductions, and secure a resilient, sustainable future for Wales.

I am copying this letter to Huw Irranca-Davies, Chair of Legislation, Justice and Constitution Committee.

Yours sincerely,



Julie James AS/MS

Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Llyr Gruffydd MS

Chair, Climate Change, Environment, and Infrastructure Committee

Paul Davies MS

Chair, Economy, Trade, and Rural Affairs Committee

Delyth Jewell MS

Chair, Culture, Communications, Welsh Language, Sport, and International Relations Committee

Jenny Rathbone MS

Chair, Equality and Social Justice Committee

19 December 2023

Dear Chairs,

Inquiry into UK-EU governance

You will be aware that the Senedd's Legislation, Justice and Constitution Committee considers the constitutional impact of Wales's external affairs, including the governance and implementation of UK-EU agreements.

We have recently undertaken a short inquiry into UK-EU governance to build on our early findings on the role and representation of the Welsh Government and Senedd in post-Brexit UK-EU relations, as outlined in our [submission to the House of Lords European Affairs Committee](#) in October 2022.

Due to the work that your Committees undertake within your remit in relation to UK-EU agreements, we agreed to draw your attention to our [report](#) on the inquiry.

For information, we intend to hold a debate on the report on 21 February 2024.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair



Follow up to Climate Change, Environment and Infrastructure Committee Session



9 November 2023

Thank you for the opportunity to speak with the Committee as part of its Inquiry into Water Quality in Wales.

The following seeks to address some of those questions that were taken away as part of the discussion, and provide some additional insight into Natural Resources Wales' position.

If there are any further questions, please do not hesitate to contact us via government.business@cyfoethnaturiolcymru.gov.uk.

1. The impact of changes to the Control of Agricultural Pollutions Regulations

We noted the revision of Control of Agricultural Pollution Regulations (COAPR) laid in Nov 2023 which details the requirements of the Enhanced Nutrient Management Approach (ENMA).

The revision proposes no changes to the requirements of the ENMA as detailed in Welsh Government's consultation. The changes within the legislation are restricted to the process by which land managers notify NRW of their intention to use the option of the ENMA. The ENMA is time limited until 31 December 2024.

We do not see these changes as reducing protection of the environment. For those sites where a land manager has notified NRW of their intention to use the ENMA, compliance with its requirements will take place during as part of our programme of CoAPR inspections.

2. NRW's Enforcement Role

Strong regulation underpins our purpose to protect, maintain and enhance Wales' natural resources so that people can live better and healthier lives and our wildlife can thrive. We regulate a range of activities and apply a suite of enforcement responses for non-compliant or wholly illegal activities to protect our environment, prevent pollution and tackle the climate and nature emergencies.

Our [Enforcement and Sanctions Policy sets out how we undertake enforcement](#), to ensure that environmental offences are dealt with in a firm, fair and proportionate manner, in line with the Regulator's Code, with a focus on preventing and deterring further harm to the environment. Our [Offence Response Options](#) outline the range of enforcement tools available to us, including advice, warnings, enforcement notices, some civil sanctions, and prosecution.

These enforcement interventions aim to protect the environment by:

- Stopping the offence(es).
- Restoring or remediating the environmental consequences.
- Taking formal action when in the public interest
- acting as a deterrent to others from wilfully or negligently polluting or damaging the environment
- Preventing reoffending.
- Supporting compliance with the regulatory regimes and ensuring a level playing field for legitimate business.

The choice of enforcement tool depends on the severity and nature of the offence, as well as the willingness of the offender to comply with regulatory requirements. We adopt a risk-based approach to enforcement, taking action where there is evidence of an environmental offence and where there is public interest.

Some offences may be minor or unintentional. In these cases, we may see greater benefit in seeking to educate or use less formal approaches. This might include providing advice and guidance to prevent similar offences from occurring in the future, or by using voluntary arrangements to encourage companies and individuals to take steps to address the environmental harm caused by their actions.

However, some offences are serious or are undertaken by offenders who do not care about complying with legal obligations. NRW is wholly committed to using prosecution for the most serious of offences across those we regulate. We take companies or individuals to court where other enforcement tools have been ineffective or where the offence is particularly serious and in the public interest.

Our approach emphasises the importance of collaboration and partnership working between regulators, local communities and businesses to prevent environmental offences from occurring in the first place or ensure an environmentally protective response to any offence committed. This involves raising awareness of environmental issues and promoting good environmental practice, as well as working with businesses to help them comply with environmental laws and regulations. It is worth noting that our success in this area is less obvious and harder to measure. However, it is likely to result in lower levels of formal enforcement, such as prosecution.

Our [Annual Regulatory Reports](#) set out our regulatory performance and the effectiveness of our regulatory approach. The reports look at compliance, pollution incidents, crime and enforcement activity, and how we have delivered on our regulatory and enforcement duties each calendar year.

Since 2019 we have recorded over 3,600 new enforcement cases, comprising 3,350 offenders, with over 5,100 separate enforcement charges. The reason that there are more charges than cases is because an offender can often face multiple charges. Please see the figures in the table below:

Year	Total cases	Total charges	Total offenders
2019	640	938	632
2020	639	903	646
2021	1,010	1,350	968
2022	884	1,246	610
2023 (to 3 rd October)	497	673	495

The following table highlights our use of the full range of enforcement and sanctioning tools that are available to us, in combination if necessary, to achieve the best outcomes for the environment and for people:

Enforcement output	2020	2021	2022
Advice and Guidance	153	348	304
Warning Letters	324	479	449
Formal Caution	30	44	34
Prosecutions:	68	54	66
Court Fines	£25,097	£262,414	£510,156
Costs Awarded	£33,784	£131,027	£110,613
No further action	39	67	43
Enforcement notices	19	31	27
Fixed penalty notices	7	1	8
Civil sanctions	3	8	4
Permit revocation	-	2	2

It is important to highlight that there is an unavoidable time lag in our reporting. This is normally due to the nature of our investigative and enforcement work, given the time it can take to investigate an incident, identify potential offenders, obtain legal opinion, and update our systems on progress and enforcement outcomes. The number of enforcement outputs reported is likely to increase, as many cases remain ongoing across calendar years. We understand the ongoing questions around increasing prosecutions, but the key point is that prosecution in isolation does not lead to compliance or remedy of the root cause. Other regulatory and enforcement tools may result in a better outcome.

We continue to see pressures on our natural environment, and regulatory non-compliance, crime and pollution incidents inflict needless, yet significant damage. This, in turn, impacts communities and undermines legitimate businesses. Our

outputs can be limited by the powers held by us and regulatory and data limitations. NRW is pursuing opportunities to help improve the range, efficiency and outcomes from our criminal and civil enforcement interventions, to ensure those responsible for causing harm contribute to improving or reinstating our environment. At the moment NRW only has limited civil sanction powers and would be keen to work further with WG on opportunities to introduce additional civil sanctions for activities with environmental permits

December 2023

Llyr Gruffydd MS, Chair of Climate Change, Environment and Infrastructure Committee
Welsh Government
Tŷ Hywel
Cardiff Bay
CF99 1NA

8 December | 2023

Dear Llyr,

Re: Enhanced Nutrient Management Approach

Wales Environment Link members have serious concerns about the impact of the [amended Control of Agricultural Pollution Regulations](#), and Enhanced Nutrient Management Approach, on air, soil and water quality and the consequent impacts on nature. WEL members strongly feel that the ENMA waters down the original policy intent of the Control of Agricultural Pollution Regulations and makes it more difficult for the Welsh Government to meet key objectives on biodiversity, air quality, ammonia and particulate matter whilst contributing to reducing greenhouse gas emissions. In particular, we believe the ENMA is at odds with Welsh Government's COP15 commitment to reduce nutrient inputs by a minimum of 50% by 2030. We are also not aware of any investigation that was carried out to assess the impact of the change to the Agricultural Pollution regulations on the current state of rivers in Wales, many of which are already in poor ecological health. This is a source of great concern to WEL members.

According to the summary of responses to the November 2022- February 2023 consultation regarding a time-limited license scheme 'the majority of respondents indicated strong support for the principle of a limited license scheme alongside controls to mitigate potential environmental risks'.

We believe that licensing would provide NRW with a means to:

- withhold permission to undertake an activity;
- recover costs of monitoring and inspection using license fees; and
- take enforcement action if license conditions are not met.

In this respect the ENMA does not offer good value for money and, by not providing a public register of farms participating in the ENMA, it also lacks transparency. We believe that the ENMA increases the risk that pollution events will go unnoticed, and we have particular concerns about risks to SAC rivers.

WEL is keen that the ENMA does not continue after the first year, and we would like to see the original Control of Agricultural Pollution Regulations limit on the amount of nitrogen in livestock manure that may be applied to a holding (170 kg/N/ha) reinstated at the end of this period. If the Welsh Government does choose to continue with this approach, it must introduce a licensing scheme following the first year of ENMA, to increase transparency and resources for monitoring and enforcement. To meet the COP15 commitment to reduce nutrient inputs by a minimum of 50% by 2030, licensing should be regarded as a transition step to the original policy intent of the Control of Agricultural Pollution Regulations.

River pollution is clearly a priority for the Welsh Government given their commitment to holding a series of river pollution summits, attended by the First Minister, his colleagues and multiple stakeholders, the third of which recently took place in Cardiff. We believe the amendments to the Agricultural Pollution Regulations are an inadequate response to river pollution at a time when the level of public concern across Wales about the state of our rivers has never been higher.

We have enclosed a short briefing which explains WEL's concerns in more detail, and we request that the wider environmental impacts of this change be investigated by the Climate Change, Environment and Infrastructure Committee, and that the new regulations should also be considered by the Committee.

Yours sincerely,



Andrew Tuddenham, Co-Chair, WEL Land Use Group

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Implementing the Control of Agricultural Pollution Regulations

December 2023

Introduction

The Minister for Rural Affairs has announced that, following the consultation in early 2023 “Nutrient management: managing the application of livestock manures sustainably”, an Enhanced Nutrient Management Approach (ENMA) will be taken for holdings or part of holdings not previously situated within an NVZ. This approach will allow higher levels of nitrogen application (up to 250kg/n/ha) from livestock manure, until the end of 31 December 2024, subject to crop need and well-defined environmental controls. This will not be a licensing scheme as was proposed in the consultation. Instead, it would require farmers wishing to take this approach to notify Natural Resources Wales of their intention, subject to meeting certain environmental requirements.

WEL members strongly feel that this approach takes us further away from the original policy intent of the Control of Agricultural Pollution Regulations, which sought to reduce nutrient inputs by setting a 170kg/n/ha limit. It will also make it more difficult for the Welsh Government to achieve its COP15 commitment to reduce nutrient inputs by a minimum of 50% by 2030.

Key Areas of Concern

Monitoring, Compliance and Enforcement

We know that further regulations are expected, which will provide more detail on the ENMA. These need to set out how compliance with the new rules will be monitored. Farmers wishing to apply a higher level of nitrogen from livestock manures to their land will need to notify NRW, but it is unclear how NRW will be able to identify farms that are spreading a higher level of nitrogen which haven't notified them of their intention. WEL's response to the Welsh Government consultation strongly supported the introduction of a license scheme because we believed it would provide:

- a means whereby permission to undertake an activity can be refused e.g because of the unsuitability of the site or skill set of the operator;
- a means of raising income to fund monitoring and compliance checking, reducing reliance on taxpayer funding and following the “polluter pays” principle;
- a basis for public transparency as to the extent and location of the licensed activity, who is undertaking it and the standards they have to meet;
- a demonstration that farmers are (assuming they are compliant with license conditions) meeting the required standards;
- an ability to regulate and take enforcement action where necessary if the licence conditions are not met.

The new approach is so far unclear on whether a notification of the intention to spread higher levels of nitrogen could be refused, and how NRW will assess compliance with ENMA environmental conditions. It is also unclear if NRW will be able to sanction farmers if there is evidence of non-compliance. We also believe that this is a missed opportunity to provide NRW with additional resources to monitor compliance and take any necessary enforcement action, creating an increased risk of pollution events going unnoticed. In accordance with the Polluter Pays Principle, other sectors, such as the water industry, waste and recycling industry and construction industry, pay the cost of NRW compliance checking through their regulatory fees and charges. We are concerned that the Polluter Pays Principle will not be applied in this case, resulting in compliance checking costs falling on the taxpayer.

Impact on Rivers

We believe this new approach brings a higher risk of pollution to our rivers. If appropriate conditions for higher levels of spreading are to be effectively monitored and enforced, NRW will need additional resources to avoid further pollution incidents. We are particularly concerned at the lack of evidence that this approach will not harm SAC rivers, many of which are already in an unfavourable ecological condition. Given that other sectors must undertake assessments to demonstrate their proposals meet Habitats Directive nutrient neutrality requirements, we would like to know what assessment has been made of the impact of enabling higher

nitrogen spreading levels on SAC rivers, particularly those which already exceed target levels of nutrients.

In England, the Environment Agency has stated that within SAC catchments, farmers seeking a NVZ derogation to apply up to 250kg N/Ha must provide an assessment of the impact on the SAC. Derogations may be refused if an adverse impact is likely. We are concerned that the Welsh regulations appear to have no similar provision for preventing additional nutrient impacts in SAC catchments.

Now that the regulations have been published, we are pleased to see that phosphorus testing has been included as part of the conditions for spreading above the limit of 170kg/n/ha, given NRW's finding that 61% of Welsh SAC waterbodies were failing phosphate targets. We know that in certain areas of Wales, such as the Wye catchment, soils already exceed safe phosphorus levels. It is critical that these areas do not receive further phosphorus inputs.

Recommendations

- Welsh Government and NRW to publish a clear process for farmers to follow when notifying NRW, specifying information requirements, including crop need, recent soil nutrient data, site suitability, and detail on type of fertiliser and application methods and timing.
- Welsh Government and NRW to publish clear outline of the options and actions which NRW can apply in response to either notifications, subsequent spreading activity, or environmental consequences.
- NRW must be able to take enforcement action for non-compliance with the amended Control of Agricultural Pollution regulations. The Precautionary Principle must apply, and protection should not be weakened by restricting action to cases where there is evidence of a serious pollution event having occurred. The regulations are there to prevent pollution and non-compliance must be enforced, with data on non-compliance published transparently.
- The Senedd should review Welsh Government's Regulatory Impact Assessment, as previously committed, considering the economic and environmental impacts of the 170kg/ha annual holding nitrogen limit to ensure that evidence.

- There needs to be an assessment, either, at a strategic level or on a farm-by-farm basis, of the impact of the ENMA in SAC designated catchments, with applications above 170kg N/ha not permitted if an adverse impact on the SAC is likely.
- There needs to be full transparency concerning implementation of the new regulations, including data from NRW on the levels of compliance, farm visits undertaken by NRW, and any action taken.

WEL is keen that the ENMA does not continue after the first year, and we would like to see the original Control of Agricultural Pollution Regulations limit of 170kg/n/ha reinstated at the end of this period. If the Welsh Government does choose to continue with this approach, it must introduce a licensing scheme following the first year of ENMA, to increase transparency and resources for monitoring and enforcement. To meet the COP15 commitment to reduce nutrient inputs by a minimum of 50% by 2030, licensing should be regarded as a transition step to the original policy intent of the Control of Agricultural Pollution Regulations.

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

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



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Agenda Item 6.7

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-JJ-3057-23

Llŷr Gruffydd MS
Chair
Climate Change, Environment, and Infrastructure Committee
Senedd Cymru
Cardiff Bay
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CF99 1SN

15 December 2023

Dear Llŷr

Thank you for the Climate Change, Environment, and Infrastructure Committee Report in relation to the Infrastructure (Wales) Bill, published on 24 November 2023.

Please see my responses to the set of recommendations within the report in Annex 1. I am copying this letter to the Chair of the Finance Committee and the Chair of the Legislation, Justice and Constitution Committee for information.

Yours sincerely

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

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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.

Annex 1

Infrastructure (Wales) Bill

Responses to the Climate Change, Environment and Infrastructure Committee recommendations

Recommendation 1. The Committee recommends that the Senedd supports the general principles of the Bill.

I accept this recommendation.

Thank you for supporting the general principles of the Bill.

Recommendation 2. The Welsh Government should publish a detailed timetable for the preparation, publication, and, where appropriate, consultation, of the subordinate legislation arising from the Bill.

I accept this recommendation.

I will provide an update on the implementation plan during the Bill's passage. This will be set out in a letter to the Committee.

Recommendation 3. The Welsh Government should publish in draft key pieces of subordinate legislation and consult stakeholders before final versions are taken forward.

I reject this recommendation.

I understand the importance of engaging stakeholders and local communities early in the legislative process in an inclusive and meaningful way.

I want stakeholders to be involved in setting the provisions, ensuring that as well as certainty, all stakeholders consider the provisions to be workable in practice. The danger of consulting on draft regulations is stakeholders may perceive that we have already decided on our proposals and may lead to less meaningful engagement.

Recommendation 4. The Minister should ensure there is sufficient time available for Senedd committees to consider the key pieces of subordinate legislation in the Bill that will follow the affirmative procedure.

I accept this recommendation.

It is my intention to follow Standing Orders.

Recommendation 5. The Minister should ensure that digital versions of the secondary legislation arising from the Bill, and associated guidance and documents, are available in one place on the internet that is easily accessible to the public, public bodies and developers.

I accept this recommendation.

I will seek to ensure all subordinate legislation and guidance published to supplement the Bill is as accessible as possible for all stakeholders.

Recommendation 6. The Minister should publish an indicative timetable setting out when the transitional arrangements to the new regime will be determined.

I accept this recommendation.

In response to Recommendation 2, I have agreed to provide an implementation plan in relation to the programme of subordinate legislation. Transitional arrangements will follow the same timeline.

It is also my intention to provide further clarity on transitional arrangements prior to the wider consultation on subordinate legislation. I intend to publish a revised statement of policy of intent which will set out in detail our current proposals. I intend to undertake focused engagement on these proposals prior to the wider consultation. The result of these consultations will help inform the final form and content of the transitional provisions taken forward.

Recommendation 7. The Welsh Government and public bodies must work together to find the most effective means of delivering the specialist advice necessary across different geographical locations. The Minister should report back to this Committee on progress within the next 6 months.

I accept this recommendation.

I will ensure that Welsh Government and public bodies work together with regard to delivering specialist advice. An update on the progress of this will be provided in 6 months.

The skills and expertise can be very specialised depending on the nature of the scheme. There is potential to pool or share this expertise to help in the consenting process, through formal and informal means.

I continue to engage with stakeholders on the Bill and will work with local authorities to ensure there is adequate resource available.

Recommendation 8. The Welsh Government should engage with stakeholders on the criteria in Part 1 to resolve concerns before the Bill completes its passage through the Senedd.

I accept this recommendation.

My officials are continuing engagement with stakeholders, in particular with Natural Resources Wales and the energy industry with regards to hydrogen production and other means to store energy.

Currently, hydrogen use is captured by the Bill either as a means to generate energy or as an energy carrier associated with a different type of energy generation.

There is no specific threshold for hydrogen production because to date we do not have enough evidence to understand what an appropriate threshold for these types of projects would be. Currently, hydrogen production will be captured by the Bill as associated development of a Significant Infrastructure Project (“SIP”), or, it could be directed to be a consented in the new regime under section 22 of the Bill.

With regards to pipelines, following a review of the evidence brought to the attention of this committee, I am considering bringing forward amendments to Part 1 to the Bill to include pipelines, subject to the limitations imposed by the Wales Act 2017.

I am happy to confirm that, the 50MW thresholds for solar farm will be the inverter rating (AC).

With regards to the concerns expressed by Dwr Cymru, I will engage further with them.

Recommendation 9. The Minister should clarify her position on the inclusion of an “opt-in” provision to the SIP regime and explain whether she considers that the power in section 22 of the Bill could be used to facilitate such a procedure.

I accept this recommendation.

I do not intend to include an “opt-in” provision in the Bill as I believe it would bring less clarity to the new consenting regime.

Section 25 of the Bill allows developers to submit a qualifying request to the Welsh Minister. The form of the request will be set in regulations and it will allow the developer to explain why they think their project should or should not be considered a SIP, similarly to other qualifying requests such as EIA screening request. It will then be for the Welsh Ministers to determine if a project is of national significance and should be SIP.

Recommendation 10. The Minister should clarify why the fields in section 17 do not have their associated criteria included on the face of the Bill.

I accept this recommendation.

Section 17 of the Bill is intended to amend Part 1 should there be a need to add a new significant infrastructure project or to amend the existing thresholds in the future. This section is to future proof the Bill in line with technological advances. To place criteria and thresholds in section 17 of the Bill would defeat the purpose of this power.

Recommendation 11. The Minister should bring forward amendments to section 25 to mandate the publication of guidance in relation to the circumstances when Welsh Ministers can use the section 22 or 24 powers of direction.

I accept this recommendation in part.

I fully intend to publish guidance on how these powers of direction will be applied but I do not believe this should be placed on the face of the Bill. It would also be inconsistent with the rest of the Bill.

Recommendation 12. The Minister should bring forward amendments to section 25 to specify a time limit within which the Minister must respond to a qualifying request from a developer for a direction under section 22 or 24.

I accept this recommendation in part.

Section 26 of the Bill already states that regulations may make provision about the time limits for making decisions following a request for directions. Therefore, there is no need to amend section 25 of the Bill.

Recommendation 13: The Minister should bring forward amendments to the Bill to provide more clarity in relation to consultation and publicity processes. The Minister should consider as a starting point, the provisions of the Planning Act 2008.

I accept this recommendation in principle.

I note the Committee's comments regarding the need to provide more clarity in relation to consultation and publicity processes. I have set out in detail the minimum requirements for consultation and engagement which would likely be included in subordinate legislation in the Statements of Policy Intent which accompany the Bill.

These statements are a starting point, which will be subject to wider public consultation as the subordinate legislation is developed. Therefore the detailed requirements may change based on any representations received from stakeholders.

I have adopted the approach of setting a minimum standard in subordinate legislation as it applies minimum requirements to all proposed developments captured by the Bill. This provides certainty and clarity to stakeholders and local communities on what they can expect as part of a consultation and engagement exercise. It also allows us to change and adapt to any new and emerging methods of engaging and consulting which could be incorporated into the new consenting process as a minimum standard at the earliest opportunity.

This goes beyond the Planning Act 2008, which sets no minimum standards and offers little certainty and consistency from one application to another.

However, I acknowledge the merit in prospective applicants holding discussions with relevant local planning authorities (“LPA”) on how they could potentially go beyond any minimum consultation and engagement requirements, particularly as they have knowledge of local community groups, suitable venues for events and other information which may be useful when undertaking consultation and engagement. Therefore, subject to identification of suitable body for offshore developments, I can commit to requiring prospective applicants to engage in discussions with the relevant LPA.

The Bill provides the power to specify in subordinate legislation minimum requirements for engagement and consultation. Given this, the requirement for a developer to engage with the LPA (and possibly another body) would be best placed in subordinate legislation, along with the minimum requirements.

Furthermore, I have always acknowledged the importance of engaging and consulting with as wide a range of stakeholders as possible, which is why I have requested any specific recommendations from the Committee and others. Unfortunately, such recommendations have yet to be made.

To make you aware I have also commissioned Planning Aid Wales to undertake research into this matter, with a view that specific recommendations will be made and incorporated into the consenting process.

Recommendation 14: The Minister should, in her response to this Report, set out the timelines for making regulations under section 30. Given the centrality of public consultation to the new regime, the Minister should publish and consult on the draft regulations.

I accept this recommendation in part.

Please see my response to recommendations 2 and 3 of the report which set out my proposals for providing a timetable for making and consulting on regulations, including those made under section 30 of the Bill.

Recommendation 15: The Minister should publish guidance for stakeholders on best practice and expected standards for community consultation.

I accept this recommendation.

I am committed to publishing guidance for prospective developers on best practice when undertaking consultation and engagement with communities and other stakeholders.

Recommendation 16. The Minister should, in response to this Report, set out the circumstances where she considers that an application could be determined by means of an inquiry.

I accept this recommendation.

I expect the majority of infrastructure applications to be examined by the written representations or hearing procedure. The written representation procedure is appropriate where the issues are not complex, can be clearly understood from the documents, do not need to be tested at an oral event and there is limited public interest.

For more complex applications a hearing provides an informal setting for addressing any issues identified by the Inspector. Those attending may bring professional advisors with them, however there will be no formal presentation of evidence, cross-examination or formal submissions.

An inquiry is the most formal of the procedures and is only likely to be arranged where there are complex issues or technical evidence. Although it is not a court of law, the proceedings will often seem to be quite similar. An inquiry is open to the public and provides for the investigation into, and formal testing of, evidence, usually through the questioning (cross examination) of expert witnesses and other witnesses. Parties may be formally represented by advocates. Therefore, this is likely to only be required for the largest or most technical of projects.

Recommendation 17. The Minister should bring forward amendments to ensure that Welsh Ministers are the default decision-makers for significant infrastructure projects. Notwithstanding this, the Minister should ensure the Bill contains provisions to enable the Welsh Ministers to direct that an examining authority has the function of deciding the application in certain, specified circumstances. Regulations should specify the criteria that must be applied in making such a direction.

I reject this recommendation.

The Welsh Ministers are already the default decision-makers for significant infrastructure projects.

Section 52(1) of the Bill provides that the examining authority has the function of deciding an application for infrastructure consent for a development of a kind specified in regulations. Section 52(2) of the Bill provides that the Welsh Ministers have the function of deciding any other application for infrastructure consent.

The effect of these provisions means that only projects specified in regulations are to be determined by the examining authority. If no regulations are made then all applications would be for the Welsh Ministers to determine.

Section 52(4) of the Bill specifies that the Welsh Ministers may direct that an examining authority has the function of deciding an application for infrastructure consent instead of the Welsh Ministers, or visa-versa. The effect of this provision means that only projects directed on an individual case-by-case basis would not be determined by the Welsh Ministers. If no Directions are made then all applications would be for the Welsh Ministers to determine.

Should evidence indicate that a certain type of application can, in the majority of instances, be determined by the examining authority then this application type can be specified in regulations, and it would not be reliant on an individual direction being made in each case.

I do not consider that regulations should specify the criteria that must be applied in making a direction under 52(4). The matters that must be considered would include:

- proposals giving rise to substantial controversy beyond the immediate locality;
- proposals which raise novel planning issues;
- proposals which raise significant legal difficulties;
- proposals to which a Central Government Department has objected.

Given the nature of these matters I consider they are more appropriate for guidance, which I intend to publish.

Recommendation 18. The Minister should publish the criteria for deciding on a direction under section 52.

I accept this recommendation.

I will publish the criteria for deciding whether to issue a direction under section 52 of the Bill. Similar criteria in relation to deciding whether to recover an appeal in the planning system is already published.

Recommendation 19. The Minister should explain why the issue of the primacy of infrastructure policy statements over national plans was still being considered after the introduction of the Bill.

I accept this recommendation.

I have carefully considered the various approaches available to provide a robust policy framework against which infrastructure applications can be considered, which has included a review of the evidence presented to the Committee.

During this review, further consideration was given to the relationship between the Wellbeing of Future Generations Act 2015 (“WFG Act”), the existing national plans and policies and any future infrastructure policy statements. In line with the principles of the WFG Act, my clear preference is for holistic rather than thematic policy documents and we already have a comprehensive suite of national planning policy. If new planning policy is required to help consider these schemes, the best place to provide this is in our existing policy documents.

These statements will be as supporting documents, filling policy gaps for new or novel issues. Given this, the likelihood of conflict between documents is low, and it is more appropriate for the decision maker to make a balanced judgement should one exist.

On this basis I am looking to bring forward an amendment that will provide the decision maker with the ability to make a balanced judgement on policy. This process of making balanced judgements on policy considerations for the determination of infrastructure applications is established practice, including for those schemes submitted to the Welsh Ministers under the current ‘Developments of National Significance’ process.

Recommendation 20. The Welsh Government should engage with stakeholders to address concerns about the need for infrastructure policy statements under section 53 to fill policy gaps in national plans.

I accept this recommendation.

We have a comprehensive suite of national policy in the form of the National Development Framework, the Marine Plan, Planning Policy Wales and supporting Technical Advice Notes. Existing planning policy provides a holistic approach which is well established whereby local issues and impacts are accounted for by decision makers weighing up the different thematic policy considerations on a case-by-case basis.

This provides for the necessary flexible and pragmatic approach to allow for infrastructure schemes to come forward in the right locations across Wales. If any gaps are identified which require the production of infrastructure policy statements in accordance with standard practice, all relevant stakeholders will be consulted.

Recommendation 21. The Minister should bring forward amendments to ensure that infrastructure policy statements are subject to consideration and agreement by the Senedd.

I reject this recommendation.

The intention is these statements will be prepared in exceptional circumstances where our existing plans and policies cannot be updated within required timescales to support the new infrastructure consenting regime. Where they may be prepared in future, they are not intended to be a long-term measure and existing policy documents will eventually be updated to incorporate their content.

The preparation of policy statements would follow a similar route to that taken for updates to Planning Policy Wales. Given the need to respond to new or novel issues and advancements in technology rapidly as well as the short lifespan of these documents, I do not consider it appropriate to require their consideration or approval by the Senedd.

Recommendation 22. Where the Welsh Ministers, in accordance with section 124, determine to designate a document as an infrastructure policy statement for the purpose of the Bill, the Minister should notify the Senedd. The Minister should ensure that the Senedd has considered and agreed the document before any such designation can be made.

I accept this recommendation in part.

I accept that Welsh Ministers should notify the Senedd when a policy statement is designated. I do not accept that these statements should be agreed by the Senedd for the reasons outlined in response to recommendation 21.

Recommendation 23. The Minister should bring forward amendments to set out on the face of the Bill a detailed timetable for the 52-week period for deciding on an application.

I accept the principle of this recommendation.

I believe the committee recognise that flexibility is needed in terms of the timetable for deciding on an application, as in recommendation 24 you have identified the need to consult on timeframes. The Bill already contains an overall timescale of 52 weeks and sub-timescales will be set in subordinate legislation.

I note the Committee in recommendation 24, suggest a Henry VIII power to change the timescale in future, mirroring the Planning Act 2008. However, the same effect can be achieved by setting sub-timescales in subordinate legislation, without using a Henry VIII power.

Recommendation 24. The Minister should consult stakeholders at the earliest opportunity to ensure that the timelines on the face of the Bill are appropriate. If, as a result of the consultation, she believes they need to be changed, that can be achieved through subordinate legislation.

I accept this recommendation in part.

I accept engagement with stakeholders on sub timescales should be undertaken. I do not agree with the recommendation to place a new Henry VIII power in the Bill when the overall timescale for deciding an application is already in the Bill.

Subordinate legislation will set sub-timescales and the same level of certainty will be achieved.

Recommendation 25. If the Minister determines to extend the 52-week period in accordance with section 56(2), the Minister must notify the Senedd by means of a written statement. The Minister should bring forward amendments at Stage 2 to give effect to this.

I agree with the recommendation.

An amendment to this effect will be prepared.

Recommendation 26: The Minister should set out the assistance that will be available to local planning authorities where enforcement proceedings are necessary.

I accept the recommendation.

I note the concerns raised by stakeholders during the evidence sessions and my officials contacted those bodies to gain further understanding of their concerns. I can confirm detailed and robust guidance will be made available to provide assistance to LPAs when carrying out any enforcement action.

Recommendation 27. The Minister should consider whether provisions on so-called “padlock powers” in relation to temporary stop notices should be included in the Bill.

I accept this recommendation.

I will consider the need for a padlock power in relation to temporary stop notices.

Recommendation 28. The Minister should clarify in guidance the routes that are open to the public to raise concerns about unauthorised development.

I accept this recommendation.

I will ensure guidance clarifies when enforcement action may be appropriate and necessary, as well as how members of the public can report any perceived breaches to the relevant enforcing authority.

Recommendation 29: The Minister should provide an update during the Stage 1 debate on discussions with consultees, local planning authorities, and other stakeholders about how full cost-recovery will be achieved.

I accept this recommendation.

During the Stage 1 debate I provided an update to the Senedd.

Discussions with all stakeholders has been ongoing throughout the development of the Bill, and during Stage 1 of Senedd scrutiny. I am committed to full cost recovery, and I anticipate this will be achieved through the provisions of chargeable services. I have no further detail at the moment on costs, as this is something that will be formally consulted on alongside subordinate legislation.

I welcome any views that stakeholders or Senedd members may have on this issue.

Recommendation 30. The Minister should explain her understanding of the meaning of a project of “real substance” in section 122, and set out her position on the level of fine that may be given for an offence under this section.

I accept this recommendation.

To demonstrate that the applicant is ‘considering a project of real substance’ the applicant, could, by way of example, provide the following information:

- Whether the applicant has given notification under section 29 of the Bill;
- Whether the applicant has requested pre-application Advice.
- Details about what stage in the pre-application consultation the Applicant has reached on the project; or,
- whether the applicant has requested a screening or scoping opinion.

In addition, to demonstrate that the proposed project is one ‘genuinely requiring entry onto the land’ the applicant should provide an explanation as to why entry is required. Evidence that the applicant may wish to provide to demonstrate this may include details about the proposed surveys and works.

There are no limits to the fine which may be imposed. However, the sentencing guidelines will provide information on the levels of fine to be imposed for a particular offence.

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/JJ/3057/23

Llŷr Gruffydd MS
Chair
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9 January 2024

Dear Llŷr

Infrastructure (Wales) Bill

Thank you for the Climate Change, Environment, and Infrastructure Committee Report in relation to the Infrastructure (Wales) Bill, published on 24 November 2023.

In response to recommendation 2, I agreed to provide a timetable for the subordinate legislation arising from the Bill. The timetable is attached as an annex to this letter.

In preparing for this work, I am mindful that the Bill is subject to further Senedd scrutiny and of our stated intention for the engagement on the subordinate legislation to be open and meaningful. Both of these considerations may impact the content of the subordinate legislation, and its delivery. The timetable therefore is provided as an indication of how we currently expect the legislation to be progressed.

Yours sincerely

Julie James AS/MS
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Minister for Climate Change

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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.

Annex 1: implementation proposals

Timetable

- Transitional statement of policy intent: winter 2023/24
- Engagement / Consultation 1: spring/summer 2024
- Engagement / Consultation 2: summer/autumn 2024
- Regulations autumn/winter 2024/25
- Implementation: mid 2025

Statement of policy intent: transitional provisions.

In response to recommendation 6 I identified it was my intention to provide further clarity on transitional arrangements prior to the wider consultation on subordinate legislation. A revised statement of policy of intent which will set out in detail our current proposals will be published in winter 2023/24.

These proposals will be informed by additional engagement with stakeholders. Conversations with stakeholders have commenced following the scrutiny sessions.

Engagement / Consultation 1

I envisage the first stage consultation will cover fees and pre-application engagement/consultation.

I envisage this consultation will be in a very open 'call for evidence' approach as I want to gather as much evidence as possible before coming to a firm policy direction. The paper will describe the problem to be tackled and objectives to be met and encourage a detailed response.

The evidence gathered will inform a second detailed consultation on these matters.

Engagement / Engagement 2

I envisage the second set of consultations would cover all policy areas. These consultations will contain detailed proposals, enabling focused responses on the content of the final regulations. While I intend to publish detailed proposals I am mindful that our policies will still be at a formative stage, and so are unlikely to include draft legislation.

Subordinate legislation

Development of the subordinate legislation will occur during and after the consultation period. Whilst there are a number of regulation making powers in the Bill, I anticipate that these will equate to 6-8 SIs. I anticipate that the SIs will be grouped as follows:

The Infrastructure (Applications: Prescribed Forms and Procedure) (Wales) Regulations

- Specify matters in relation to obtaining information about land;
- Specify requirements for the pre-application procedure, including notification and publicity requirements;
- Specify requirements for the submission and validation of an application, including forms, content of an application, and timetable for validation;
- Publicity and consultation of the application;
- Specify who must be consulted, i.e. "statutory consultees";
- Specify the application process for changes to consents;
- Procedure for making an order materially different to that applied for;
- Notification of a decision and reasons for the decision.

The Infrastructure Fees (Wales) Regulations

- Set where a fee may be paid for the performance of infrastructure consent functions and services, or a function undertaken through a direction under section 127;
- Set the method of calculation for the fee to be paid.

The Infrastructure (Interested Parties and Miscellaneous Prescribed Provisions) (Wales) Regulations

- Specify matters in respect of Directed applications under section 22 and 24, including period for response to a request, and the categories of applications that may be directed;
- Provide information on the requirements to provide a pre-application services by NRW, Local authority and Welsh Ministers;
- Specifying matters in relation to the keeping of the register and the giving of notices;
- Specify certain consents and licences etc, the requirement for which may be removed in a development consent order;
- Prescribe a number of miscellaneous matters such as the duration of a development consent order and the exclusion of certain actions from the definition of “material operation”.

The Infrastructure (Examination Procedure) (Wales) Rules

- Detail the procedure for the examination of such applications, including the determination of procedure to be followed, and the subsequent procedure to be followed under written representations, hearing or inquiry;
- Modifications where a direction restricting the disclosure of evidence on grounds of national security is issued.

The Infrastructure (Compulsory Acquisition) (Wales) Regulations

- Prescribe the forms which must used in connection with the compulsory acquisition of certain kinds of land;
- Set out the procedure to be followed where it is proposed to include in an order granting development consent a provision authorising the compulsory acquisition of land, which was not included in the application for the order.

Other

- There are also likely to be statutory instruments to deal with consequential amendments and the commencement of the provisions.

Julie James MS

Minister for Climate Change

11 January 2024

Dear Minister,

Ffos-y-Fran opencast mining site

I am writing on behalf of the Climate Change, Environment, and Infrastructure Committee to follow up on our previous correspondence regarding the Ffos-y-Fran opencast coal mine. We appreciate your detailed response of 15 September 2023 to our initial inquiry. However, areas remain where further clarity is needed. We hope you can provide further clarity on the role of the Welsh Government now that the legal action against the site operators has ended.

As you will understand, the committee continues to be deeply concerned about the restoration of the Ffos-y-Fran site, and potentially other opencast mining sites in Wales. It has been widely reported that a significant financial gap exists between the estimated restoration costs and the funds set aside by the mining company.

1. It has been reported that the mining company had put aside only £15 million for restoration. In your letter, you refer to this as a "£15 million pound deposit" that "is intended to fund some restoration in the event the site operator fails to comply with the restoration conditions". Is it the case that the mining company has put aside no funds beyond an initial deposit?
2. Estimated remediation costs for the site reportedly range from £120m to £175m. What, if any, assessment has the Welsh Government made of the total restoration cost for the Ffos-y-Fran site?
3. What measures are available to the Welsh Government to ensure the mining company fulfils its financial obligations for restoration? What contingency planning has taken place should the company fail to meet these obligations?

4. In your letter, you said that, in the absence of adequate funds, it would fall to the Council to make the site safe and, in the longer term, complete the restoration. You explained that multiagency talks are underway to prepare contingency arrangements should the site be abandoned. Could you provide an update on progress?
5. What types of agreements exist across Wales to fund the restoration of sites after operations cease? Are you satisfied there are sufficient safeguards in place to ensure the funds are sufficient for full site restoration or remediation?
6. Are there specific active or inactive opencast sites that raise particular concern that the monies accrued (through bonding and other mechanisms) fall short of the financial liabilities associated with restoration and aftercare to agreed planning conditions?
7. Has the Welsh Government undertaken any work on issues relating to opencast remediation since its 2014 report "Research into the failure to restore opencast coal sites in South Wales"? What, if any, action did the Welsh Government take in light of the report's findings?

The cessation of operations at Ffos-y-Fran will inevitably impact the local workforce. The transition of these workers to new employment opportunities is paramount.

8. In your letter, you refer to several programs and initiatives intended to support former workers at the site. Can you provide an update on the progress of this work and its success so far in finding alternative employment for the workforce?

In conclusion, the Committee emphasises the importance of transparent and effective management of the post-mining transition at Ffos-y-Fran. We believe that addressing these concerns is vital for the area's environmental integrity and its residents' well-being.

I look forward to receiving your response no later than Thursday 22 February 2024.

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.

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Agenda Item 7

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

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