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Llywodraeth Cymru
Welsh Government

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Huw Irranca-Davies MS
Chair of the Legislation, Justice and Constitution Committee
Senedd Cymru
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15 June 2023

Dear Huw,

Thank you for your letter of 25 May which set out a number of questions posed by the Legislation, Justice and Constitution Committee in relation to The Environment (Air Quality and Soundscapes) (Wales) Bill.

The responses to the questions are set out in the Annex to this letter. I hope the Committee finds the responses helpful.

Yours sincerely,

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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

Response to Questions posed in Legislation Justice and Constitution Committee Letter of May 25 2023 to the Minister for Climate Change on the Environment (Air Quality and Soundscapes) (Wales) Bill

Accessibility

1. In September 2021, we recommended in our report on the Welsh Government's Legislative Consent Memorandum for the Environment Bill that a future environmental Bill introduced by the Welsh Government should address devolved issues contained within the UK Government's Environment Bill, following appropriate consultation with stakeholders. You accepted this recommendation in principle. Please can you advise if the Bill contains matters relevant to that UK Bill and if so, how it addresses the recommendation in our report?

There is a complex framework of Environmental law, some of which pre-dates devolution. Through our actions on this Bill, and more generally, we have taken steps to secure the best possible outcomes for Wales. I am aware of the recommendation in the September 2021 Report and our agreement to accept it in principle. That has not changed.

Preparation and planning for the Bill has been ongoing for a long time, and pre-dates September 2021. The Bill aims to fulfil air quality policy commitments in our Programme for Government and Clean Air Plan for Wales. The Bill also takes forward many proposals outlined in the White Paper on the Clean Air Bill which went out to consultation in January 2021.

Our Bill does amend a limited number of provisions inserted into the Environment Act 1995 by the Environment Act 2021. This includes the amendment to give Welsh Ministers a regulation making power to amend the review period for the National Air Quality Strategy, so we do keep Welsh legislation in UK Acts under constant review. However, to incorporate the provisions for which we gave legislative consent in the Environment Act 2021 into our Bill would risk a very fragmented approach.

2. In the evidence session the following comments were made by you and your officials:

“it's a Bill that's intended to fit into other legislation—the attempt to do that in this Bill would have caused ripples across the other legislation in a way that was less than helpful and might actually make the Bill less accessible. So, I understand the sentiment of what you're saying entirely, but, as I understand it, you'd then have to look at the interaction between this and various environment Acts and so on, and then the ripples of that would start to go out and you'd start to be looking at a very different Bill.” [RoP 37].

“in this case, the Bill has got a particular focus, and to carve out parts of the body of environmental law and put them elsewhere—our view is that that results in a partial retelling of the story about air quality, for legislation about air quality. You mentioned the Clean Air Act 1993; taking out Part 3 of that takes it out of its context with other Parts of that Act that are about air quality. So, yes, overall, the view was that it wouldn't improve accessibility of law in this instance to just take those bits out.” [RoP 38]

“the environment Act ... is replete with Secretary of State for England things, which also then apply to Wales. So, it's quite complicated. I defer to the lawyers, and, actually, I'm in awe of who on earth worked their way through this.” [RoP 46]

“It didn't seem necessary or optimal in any way to transfer the entire framework, only to say, 'It's exactly the same, apart from these little bits', really. So, it's part of the same conversation. We've been trying to limit the Bill that this committee is now scrutinising, and, obviously, the policy committees have scrutinised as well, to its own parameters. We've been very clear that it's not an all-encompassing Bill, and a lot of what you're talking about would stretch it back out into starting to take in a whole pile of other things. So, I'm afraid it's part of the same issue, isn't it? And then, for me, there's a big issue about implementation, so do we have to spend the next two years doing consequential amendments before the thing is implementable? I didn't want to get into that. And also, you start to have what should be a fairly straightforward Bill taking up two thirds of the legal resource of the Welsh Government.” [RoP 54]

- A. How are the comments about accessibility consistent with the fact that legislation on air quality will now be set out in one Welsh Act and two Acts covering England and Wales?**

We have made some standalone provision, but many of the aims of the Bill could be achieved via amendments to existing legislation.

This Bill has a particular focus. In considering how to approach drafting we took the view that consolidating the legislation the Bill amends and supplements would result in a partial retelling of the story about air quality. This could be detrimental to accessibility of law.

In some cases, for example in relation to local air quality management provisions, the amendments being made by this Bill are relatively minor. To restate a large portion of the legislation while making such amendments could lead to confusion.

Producing a Bill to consolidate all air quality legislation that relates to Wales would have been a lengthy process and a balance has to be struck between the need for consolidation and the need to implement the provisions of this Bill as quickly as possible.

- B. We are unclear why the opportunity was not taken to use the Bill to update, improve and simplify elements of the Environment Act 1995 related to air quality in order to make the legislation more accessible. For example, air quality is covered in the Environment Act 1995 in 11 sections (Part 4 of the Bill). Why couldn't these self-contained provisions be transposed into this Bill and updated where necessary?**

As noted above, our view is that restating a large portion of legislation while also making specific and relatively discreet amendments could be confusing and would amount to a partial retelling of the story of air quality.

C. Was the decision not to consolidate air quality law into one Bill influenced by the capacity and resource constraints you refer to?

As was made clear during the Committee session, resourcing implications do have to be considered when embarking on a Bill process. However, the decision was borne out of an assessment of the existing provisions and the nature of the amendments we were seeking to make.

3. Given that regulations under sections 1 and 2 of the Bill may not be laid until the Seventh Senedd, why was a more all-encompassing, comprehensive environmental Bill on air quality not introduced until later in the Sixth Senedd, which could potentially have delivered better outcomes through primary legislation and be consistent with the Welsh Government's objective to improve the accessibility of Welsh law?

The Bill is comprehensive. Its provisions, when implemented, will result in demonstrable improvements in the air environment, both in terms of air quality and soundscapes. We are in a climate and nature emergency. Consequently, the Bill was prioritised for introduction early in this Senedd term, so its provisions could be scrutinised and the Bill, hopefully, passed to enable us to proceed with implementation. Delayed introduction would result in delayed implementation, which I do not think any of our stakeholders have advocated.

Also, delaying the Bill's introduction would not impact upon its provisions. For reasons I have outlined, targets are not to be set on the face of the Bill. They need to be set in regulations, so we have the flexibility to amend and keep them up to date in accordance with scientific evidence and advice.

We are prioritising work to set a target for PM 2.5 which, evidence shows, causes the most damage to health. There is a significant amount of complex work to be done to set a stretching but achievable target, which will be subject to public consultation and expert evidence and advice. That is why we have placed a duty on Welsh Ministers to set a target within 3 years of Royal Assent.

Alongside this a second phase of work is already progressing to consider target options for the other pollutants covered by the WHO guidelines and ammonia. There is more work to do in relation to those pollutants, and so we are working to a longer timeline. Officials anticipate being in a position to provide initial advice to Ministers on target proposals for these other pollutants by summer 2025. Future action will then be dependent on Ministerial consideration at this time.

Air Quality – National Targets

4. Please can you summarise the existing air quality legislative framework, including by providing information about existing air quality targets and the basis on which they have been set?

The air quality legislative framework in Wales and the UK is currently derived from a mixture of domestic and international legislation and consists of three main strands:

1. Legislation regulating concentrations of pollutants in ambient air – the Air Quality Standards (Wales) Regulations 2010. Welsh Ministers are responsible for reporting on and complying with a range of pollutant target types. For example, pollutants with targets include nitrogen dioxide, particulate matter, sulphur dioxide, ground level ozone and heavy metals. The targets were based on analysis and negotiation at an EU level, and economic analysis of the costs and benefits in the UK was undertaken by UK Government.
2. Legislation regulating total national emissions of five air pollutants (nitrogen oxides, sulphur dioxide, non-methane volatile organic compounds, fine particulate matter and ammonia) – the National Emission Ceilings Regulations 2018 and the Gothenburg Protocol to the UNECE Convention on Long-range Transboundary Air Pollution. The Secretary of State is responsible for reporting and compliance on targets agreed at a UK wide level; and
3. Legislation regulating emissions from specific sources, such as industrial emissions to air and domestic burning, including the Environmental Permitting (England and Wales) Regulations 2016 and the Clean Air Act 1993.

Under the Environment Act 1995, which predated the EU Directives from which much of the above legislation stemmed, Welsh Ministers have broad powers in relation to air quality. Under the Act, local authorities are required to tackle air quality issues at a local scale through the Local Air Quality Management process (LAQM). LAQM requires local authorities to review and assess air quality, producing action plans where air quality is found to be poor and at risk of breaching air quality objectives. The standards (levels) were based on the work of the UK Government's Expert Panel of Air Quality Standards (EPAQS) and other expert groups.

Separate to this legislation, local authorities have duties to investigate nuisance smoke, fumes, odours and dust complaints made by members of the public under the Environmental Protection Act 1990.

5. What does this Bill enable you to achieve on air quality targets that you cannot achieve within the existing air quality legislative framework?

The Bill builds on a very broad regulation making power in Section 87 of the Environment Act 1995, which enables the Welsh Ministers to make provision in relation to air quality which could include setting long or short-term targets in relation to air quality.

The provisions in the Bill build on this by providing specific, rather than general, powers to set long-term targets and a duty to set a target in relation to PM_{2.5} as well as placing a duty on the Welsh Ministers to ensure the targets are met.

The Bill establishes a framework for producing targets and specific duties require the Welsh Ministers to obtain and publish air quality data that they consider necessary to monitor the progress being made towards meeting these targets. Targets must also be reviewed and reported on.

Therefore, with the Bill, we have taken the opportunity to introduce measures that both strengthen and complement the existing legislative framework; placing duties on Welsh Ministers where none currently exist.

The provisions in the Bill will ensure not only that targets are set but that the current and future Welsh Governments are held to account for these targets.

6. How will Part IV, Air Quality of the Environment Act 1995 interact and work with Part 1 of the Bill? Specifically how will sections 1 and 2 of the Bill interact with section 87 of the 1995 Act (Regulations for the purposes of Part IV)?

Section 87 contains a broad regulation making power that applies to regulations made under Part IV of the Environment Act 1995.

Section 87 provides Welsh Ministers with power to make regulations relating to air quality.

Section 87 will complement Part 1 of the Bill, in particular the new, enhanced powers and duties we have taken in sections 1 and 2. There is potential for future regulations relating to air quality to be made using powers in both section 87 and sections 1 and/or 2 of the Bill.

As set out above in relation to question 5, the provisions in Part 1 of the Bill go beyond the provisions in Part IV of the Environment Act 1995. Therefore, the legislative framework has been strengthened by taking these new powers and duties.

7. Section 1 gives the Welsh Ministers a general regulation-making power to set long-term targets in respect of any matter relating to air quality in Wales. Why is such a broad power needed?

It is part of a framework setting the Welsh Ministers' powers to make long term targets. It is supplemented by the additional duties set out in section 3 (which sets the target setting process), section 4 (the effect of targets), section 5 (reporting), section 6 (review) and section 7 which places a new duty on Welsh Ministers to make arrangements for collecting data about air quality to monitor the progress towards meeting targets set under the Bill.

As set out above in the response to question 5, the powers and duties in Part 1 of the Bill go beyond and complement the existing powers and duties placed on Welsh Ministers in existing legislation relating to air quality.

The power in section 1, and more broadly in Part 1 reflects the nature of Welsh Ministers' ambitions in this area.

8. Why is there no definition of air quality on the face of the Bill?

Air quality is not defined in primary legislation. For example, there is no definition of air quality in Part IV of the Environment Act 1995. Similarly, it is not defined in the Environment Act 2021. The expression is intended to have its ordinary meaning and so a definition is not required.

9. If air quality is to have its ordinary meaning, what do you understand that ordinary meaning to be?

Air quality is a term used to describe how polluted the air we breathe is. When air quality is poor, pollutants in the air may be hazardous to the environment and to people, particularly those with lung or heart conditions. Pollutants may be emitted from man-made or natural sources.

10. In order to understand how the regulation-making power in section 1 could be used, we would be grateful if you could address the following:

- A. Are there any matters in the Clean Air Plan for Wales that would not be covered by the regulation-making power?**
- B. What matters, if any, outside of the Clean Air Plan for Wales could be addressed by the regulation-making power?**
- C. Are there any industries, bodies or premises that could not be subject to regulations made under section 1?**
- D. Could regulations under section 1 be used to control matters related to air quality such as, for example, public nuisance or odours?**

The power in section 1 allows Welsh Ministers to make regulations to set long term targets in respect of any matter relating to air quality in Wales.

The purpose of any new air quality targets is to reduce the harm caused by exposure to poor air quality to human health, nature and the environment. Alongside providing a 'minimum' level of air quality across Wales, we also want targets to drive long-term continuous improvement to reduce exposure to pollution whilst maximising the associated benefits.

The Clean Air Plan for Wales covers a range of actions, which go beyond the setting of regulations. For example, promotion of cultural change to deliver air quality improvements through means such as raising public awareness about air pollution. Therefore, there are actions in the Plan which are beyond the scope of a regulation making power. However, the purpose of the air quality targets that may be set under section 1 is wholly consistent with the overarching aim of the Plan, which is to improve air quality in Wales.

In terms of industries, bodies or premises that could not be subject to regulations made under section 1, it is Welsh Ministers who would be subject to regulations made under section 1. It is the Welsh Ministers who must ensure (in accordance with section 4(1)(a)) that targets set under sections 1 and 2 of the Bill are met. Regulations under section 1 will set targets relating to air quality in Wales. They will not be source specific i.e. they will not specify particular industries, bodies or premises. It is actions taken outside the regulations that will enable the targets to be achieved.

The regulation making power was not developed to control matters relating to public nuisance and odour. It will set long term targets (to be achieved at least 10 years after the date the target is set) for improving air quality. There is existing legislation that covers nuisance for matters including emissions of smoke, dust, gases and odours, set out for example in the Environmental Protection Act 1990.

11. When will regulations under section 1 be first laid, and why is there no end period by which the first set of regulations must be laid (as there is for regulations under section 2)?

We intend for regulations setting a target for fine particulate matter (PM_{2.5}) to be laid within 36 months of the Act receiving Royal Assent. However, this is a time limit to allow for the completion of the important groundwork to get it right, not an aim.

We have existing air quality standards which continue to have effect in Wales, providing continuity and ensuring standards are maintained.

The Welsh Government is considering the range of updated WHO air quality guidelines in developing new target proposals, alongside independent expert advice, evidence and analysis on a diversity of factors.

As set out in relation to question 3 above, we are prioritising work to set a target for PM_{2.5} which, evidence shows, causes the most damage to health. There is a significant amount of complex work to be done to set a stretching but achievable target that has been subject to public consultation and expert evidence and advice. That is why we have placed a duty on Welsh Ministers to set a target within 3 years of Royal Assent.

Alongside this a second phase of work is already progressing to consider target options for the other pollutants covered by the WHO guidelines and ammonia. There is more work to do in relation to those pollutants, and so we are working to a longer timeline. Officials anticipate being in a position to provide initial advice to Ministers on target proposals for these other pollutants by summer 2025. Future action will then be dependent on Ministerial consideration at this time.

We want targets to be ambitious, credible, cost-effective and supported by society. It is therefore critical that specialists and stakeholders' input into this process to ensure that relevant evidence is properly gathered, scrutinised and tested.

12. Section 2(4) says that regulations setting a PM_{2.5} air quality target may make provision defining "ambient air". Why is this definition only relevant to PM_{2.5} air quality targets and why is it to be defined in regulations rather than appearing on the face of the Bill?

Section 1 creates a general power to set long term targets in respect of air quality. It may not always be the case that these targets will be set in relation to the level of particular pollutants in ambient air. For example, targets could be set for total emissions of an air pollutant in Wales. Therefore, the concept of "ambient air" may or may not be relevant for these purposes and as the term is not used in section 1 there is no need for a definition of this term to be applied to section 1.

By contrast section 2 contains a power to create a very specific type of target in relation to the levels of particulate matter in the ambient air. It is therefore necessary to define what is meant by "ambient air". This definition is left to regulations to enable the Welsh Ministers to have sufficient flexibility to set an appropriate target, and indeed to be able to set more than one target if required.

Data Quality

13. In the Explanatory Memorandum you state the Welsh Government will be developing a delivery plan with stakeholders which could cover improving air quality data (paragraph 3.82).

A. What delivery plans are you referring to and what is their statutory basis?

We have proposed to implement the promoting awareness duty by developing a delivery plan with stakeholders.

The purpose of the delivery plan is to ensure that Welsh Ministers are proactively discharging our duty under this provision.

The explanatory memorandum set out possible actions that could be included in the plan. For example, this may include improvements to the way existing air quality data is presented and ensuring it is easy to understand. But it may also include initiatives that actively engage communities in air quality improvement, such as citizen science or anti-idling activities.

It is important to develop the plan collaboratively with stakeholders to ensure it is effective. However, we have provided example actions to indicate the broad range of activities we could take in implementing this duty.

B. Why is there no statutory duty to collect data and / or improve its quality? How will data collection and quality be improved under the Bill as drafted?

The Bill does strengthen data collection requirements. Section 7 places a new duty on Welsh Ministers to make arrangements for obtaining such data about air quality in Wales as they consider appropriate to monitor progress towards meeting targets set under sections 1 and/or 2 of the Bill. All data obtained must be published. This will undoubtedly improve the quality and quantity and transparency of air quality data in Wales.

The existing air quality monitoring networks are kept under regular review to ensure they meet robust data quality and assessment criteria set out in legislation. National air quality monitoring is also supplemented with air quality modelling to provide spatial coverage and an estimate of the contributing pollution sources.

Local authorities manage air quality at a local level through the Local Air Quality Management process to tackle local hotspots. This involves reviewing air quality by taking account of statutory policy and technical guidance provided by the Welsh Government. Where risks are identified, air quality monitoring may be used to help understand local levels of pollution, the sources, and compliance with local air quality objectives.

The majority of local authority monitoring does not form part of the national monitoring network as they fulfil a different purpose, focusing on hotspots, and because they may not meet the strict data quality and location criteria of national networks.