

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/2233/23

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

1 September 2023

Dear Huw,

Thank you for sending me the Legislation, Justice and Constitution Committee Report which was published on 14 July 2023 in relation to the Environment (Air Quality and Soundscapes) (Wales) Bill ("the Bill").

I thank the Committee for their conclusions and confirm that I have noted them. Please see my response in the Annex below to the set of recommendations within the report. I have also written today to the Chair of the Climate Change, Environment and Infrastructure Committee and the Chair of the Finance Committee to set out my response to their recommendations.

I have been able, in this case, to provide a response to most of the recommendations in the report in advance of the General Principles Debate. However, normal practice is that Ministers provide an explanation of the Government's response to the recommendations in each Committee report during the Stage 1 debate and in most, but not all, circumstances provide further detail through a formal letter. This response does not indicate a future departure from this practice.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

Yours sincerely,

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

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

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

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

Annex

Response to Recommendations within the Legislation, Justice and Constitution Committee Report which was published on 14 July 2023 in relation to the Environment (Air Quality and Soundscapes) (Wales) Bill (“the Bill”).

Recommendation 1

The Minister should respond to the conclusions and recommendations we make in this report at least 14 calendar days before the Stage 1 general principles debate takes place.

Please find this response as acceptance of this recommendation.

Recommendation 2

The Minister should advise the Committee of any response she receives from the UK Government regarding her correspondence in connection with paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006.

At the time of responding, I have still not received a formal reply from a Minister of the Crown following my correspondence with them in connection with paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006. I will update the Senedd on this matter in the General Principles debate on the Bill, and if a response has not been received by that time, I commit to updating the Senedd as and when a reply is received.

I therefore accept this recommendation.

Recommendation 3

The Minister should explain clearly why the Bill is needed at this time given that regulations under sections 1 and 2 of the Bill may not be brought forward in the next few years and given that there is an existing legislative framework in Part IV of the Environment Act 1995 which permits the setting of targets on air quality.

I accept this recommendation.

The Bill needs to be seen in a broader context, it is a crucial part of the package of measures to improve the air environment that are set out in our Clean Air Plan for Wales.

The Committee has correctly identified that the Welsh Ministers do have existing powers in relation to air quality. But we have identified some areas where we think new powers and duties will complement, strengthen and reinforce the existing legislative framework to deliver our policy aim. These are reflected in the proposals contained in the Bill.

The provisions in the Bill provide powers to set long-term targets and a duty to set a target in relation to PM_{2.5} as well as introducing duties to monitor, review and report on these targets.

In addition, the Bill proposes to place a new duty on the Welsh Ministers to make arrangements for obtaining the air quality data they consider necessary to monitor the progress being made towards meeting any targets set under sections 1 and 2. This data must be published.

Recommendation 4

The Minister should consider tabling amendments to the Bill to incorporate Part IV of the Environment Act 1995 as a way of delivering a consolidated, bilingual and accessible piece of law on air quality.

Improving the accessibility of Welsh law is a well-established priority for this government and consideration was given to consolidating relevant parts of the Environment Act 1995 during the preparation of the Bill. However, to do so would result in a reduction in the executive competence of the Welsh Ministers due to constraints around Senedd legislative competence. In addition, as the Committee will understand, consolidation of existing legislation is a significant and complex task and we do not consider it necessary, at this time, in order to achieve our policy aims on air quality. On this basis, I do not accept this recommendation.

Recommendation 5

As regards the amendments we suggest in recommendation 4, the Minister should provide the text of the proposed amendments to this Committee and the Climate Change, Environment, and Infrastructure Committee by 31 August 2023.

For the reasons set out above, this recommendation is not accepted.

Recommendation 6

The Minister should confirm our understanding that there is nothing in the Bill or any other piece of legislation that will prevent any Welsh Minister - current or in the future – from using provisions in the Environment Act 1995 to set long-term targets for air quality and targets for the annual mean level of PM_{2.5} in ambient air. If our understanding is incorrect, the Minister should explain why this is the case.

I accept this recommendation and can confirm that the Committee's understanding is correct, as the Bill provisions currently stand. Section 4(2) of the Bill also confirms this point. However, the Committee should note that as a result of our proposal to bring forward amendments in relation to maintaining air quality standards achieved under this Bill, a small restriction of the 1995 Act powers will be necessary to ensure that any standards achieved cannot be lowered or revoked unless specific criteria is met.

Recommendation 7

The Minister should table amendments to the Bill to insert overview sections in line with our comments in paragraph 71 to make the Bill more accessible.

I welcome the Committee's ongoing commitments to improving the accessibility of Welsh law, and the Committee will be aware the Government considers there is a role for overview sections in some Bills. In this case, we do not consider that the accessibility of the Bill would be enhanced with such a provision. The table of contents and the sections themselves, in addition to the Explanatory Notes to the Bill, are, in the Welsh Government's opinion, sufficiently clear.

Therefore, although we accept in principle the intent behind the Committee's recommendation, the Government does not intend to table an amendment to the Bill.

Recommendation 8

The Minister should state what priority the Welsh Government is attaching to consolidating law on the environment given her comments about its complexity and specifically, when law on air quality is likely to be consolidated in the future.

I accept this recommendation.

Environmental law comprises a significant proportion of the statute book in relation to Wales and it derives from a number of sources – which of course adds to its complexity. Improving the accessibility of all Welsh law, including the ultimate codification of environmental law, is a well-established priority of this and earlier Governments. As the Committee has highlighted, our commitments are now underpinned by Part 1 of the Legislation (Wales) Act 2019.

The Committee is aware of our programme of work, set out in *The Future of Welsh Law: a programme for 2021 to 2026*. This does not include a project to consolidate air quality legislation at the present time, and the Committee has taken evidence on this matter during its scrutiny of this Bill.

Nonetheless, I can reassure the Committee that this Government will keep environmental law in its sights. I am sure it will also be a matter of interest to future Governments. I will ensure that the Counsel General is aware of the Committee's remarks on this matter, given his responsibility for *The Future of Welsh Law* programme.

Recommendation 9

The Minister must urgently clarify the interdependencies between the matters dealt with in this Bill and the retained EU law listed on Schedule 1 to the 2023 Act relating to air quality, emissions and air pollution that will be revoked on 31 December 2023.

This recommendation is dealt with below, together with Recommendation 10.

Recommendation 10

The Minister should clarify whether the Welsh Government plans to preserve the retained EU law relating to matters dealt with in the Bill using powers granted to the Welsh Ministers by the 2023 Act. other than the power to exclude retained EU law from Schedule 1.

I accept recommendations 9 and 10. I do not believe there are interdependencies between the matters dealt with in this Bill and the retained EU law listed on Schedule 1 to the 2023 Act relating to air quality, emissions and air pollution that will be revoked on 31 December 2023. Therefore, in my view no issue arises in relation to the preservation of retained EU Law in connection with this Bill.

Recommendation 11

The Minister should address our concerns regarding the potential confusion by defining retained direct EU legislation as primary legislation in light of section 9 of the Retained EU Law (Revocation and Reform) Act 2023.

I accept this recommendation. I propose to table an amendment to remove the reference to retained direct EU legislation from section 26 of the Bill to address the Committee's concerns.

Recommendation 12

The Minister should table amendments to section 1 of the Bill:

- **to provide detail about the policy and principles (rather than the process) underpinning the setting of targets including detail about the specific purposes for which the powers will be used (covering for example the matters for which targets could be set);**
- **to detail any limitations on how the regulation-making power may be exercised.**

I understand the Committee's wishes to provide clarity in this area and agree with the spirit of this recommendation. However, having considered this recommendation, it is my view the policy and principles in relation to setting targets are already contained within the Explanatory Memorandum and Regulatory Impact Assessment. In particular, these contain policy about the use of section 1 powers. The details are intentionally broad, so the use of the powers is not constrained in advance of determining the targets necessary to achieve the overall objectives of the Bill.

The specific policy and principles of each target to be set will be within the regulations and their associated Explanatory Memoranda, alongside associated impact assessments. These will be subject to consultation and the affirmative procedure.

Recommendation 13

The Minister should table an amendment to the Bill to provide information about the actions that will be required to deliver the targets set by regulations under section 1 and to who those actions will apply.

I agree with the Committee that Welsh Ministers should provide information on action required to meet targets set by regulation under section 1. However, I do not think an amendment to the Bill is necessary as the national air quality strategy will outline the policies and cross-Government and sector measures to achieve our objectives for cleaner air in Wales. This will include action to ensure any new air quality targets are met.

Work to set targets will consider the range and scale of interventions that may be required to reach different target levels by different target dates. This is necessary to estimate how future concentrations may respond to specific interventions and how, taken as a whole, concentrations could change under particular scenarios. It is important that differing levels of interventions are explored to assess the future achievability of target levels but to also understand what it would require in terms of the interventions or restrictions on our everyday lives to reach different target levels, before these targets are set. It is not the intention to outline future cross-sector policy and legislative pathways for delivering the targets under the section 1 provisions.

Recommendation 14

The Minister should table an amendment to the Bill to place a duty on the Welsh Ministers to make regulations under section 1.

As this recommendation has potentially significant implications, we are in the process of considering it fully. The effects of accepting would be cross-cutting and detailed consideration must be given across multiple policy areas. In addition, factors including potential financial, health, environmental, economic and socio-economic impacts must be assessed. I will write back to you separately on this matter in due course.

Recommendation 15

The Minister should table an amendment to the Bill to require the Welsh Ministers to lay a draft of regulations under section 1 before the end of the period of 3 years beginning with date on which the Bill receives Royal Assent.

This recommendation needs to be read in conjunction with recommendation 14 above. As this recommendation has potentially significant implications, we are in the process of considering it fully. The effects of accepting this recommendation would be cross-cutting and detailed consideration must be given across multiple policy areas. In addition, factors including potential financial, health, environmental, economic and socio-economic impacts must be assessed. I will write back to you separately on this matter in due course.

Recommendation 16

The Minister should table an amendment to the Bill to provide information about the actions that will be required to deliver the targets set by regulations under section 2 and to who those actions will apply.

As stated in my response to Recommendation 13, I agree with the Committee that Welsh Ministers should provide information on action required to meet targets set by regulation under section 1. However, I do not think an amendment to the Bill is necessary as the national air quality strategy will outline the policies and cross-Government and sector measures to achieve our objectives for cleaner air in Wales. This will include action to ensure any new air quality targets are met.

Recommendation 17

The Minister should state whether or not the definition of ambient air is likely to change over time.

I accept this recommendation. The definition of ambient air, in terms of where it applies, is necessarily target specific to ensure the target is able to drive the actions necessary to achieve its objectives. Where targets apply, it is therefore necessary to define the term within the relevant regulations, which will be subject to public consultation and Senedd scrutiny. Therefore, the definition may be different depending on the context of the target being set. Section 2 of the Bill allows for more than one target to be set for PM_{2.5} and different definitions of ambient air may be needed in each case. I intend to table an amendment to allow for this.

Recommendation 18

The Minister should table an amendment to section 2 of the Bill to include a definition of ambient air.

While I understand the Committee's position on the need for clarity on definitions, it would be unduly restrictive to define ambient air on the face of the Bill when targets for PM_{2.5} are still under development. A definition in the Bill would preclude the possibility of having different definitions for different purposes. However, after considering the matter, I intend to accept recommendation 19, below to commit to defining ambient air in regulations.

Recommendation 19

If recommendation 18 is not accepted, the Minister should table an amendment to the Bill making it a duty to define ambient air in regulations.

I accept this recommendation. We can commit to tabling an amendment to the Bill which makes it clear that regulations setting a PM_{2.5} air target must make provision defining "ambient air".

Recommendation 20

The Minister should explain the implications, if any, of having two definitions of ambient air in legislation at the same time: a definition introduced as a consequence of this Bill and a definition in The Air Quality Standards (Wales) Regulations 2010.

I accept this recommendation. If regulations made under section 2 of the Bill include a definition of the term "ambient air" it will be for the purposes of those regulations only and specific to the target being set. The definition that exists in the Air Quality Standards (Wales) Regulations 2010 applies in relation to those regulations only. Whilst it is not uncommon for different pieces of legislation to contain definitions of the same term, we will ensure regulations made under section 2 and the accompanying documents make the application of the definition clear.

Recommendation 21

The Minister should table an amendment to the Bill to require a super-affirmative procedure to apply to the making of regulations under sections 1 and 2 of the Bill, following the procedure set out in section 53 of the Agriculture (Wales) Bill, as passed.

I resist this recommendation. It is my opinion that the affirmative procedure, coupled with the Welsh Government's commitment to consult on regulations, provides sufficient opportunity for the Senedd to scrutinise the target setting regulations made under sections 1 and 2 of the Bill.

The super affirmative procedure is only used in rare instances where affirmative procedure is considered to be insufficient, which is not considered to be the case in relation to sections 1 and 2.

In the Agriculture Act that has been cited as the example, it is worth noting the super affirmative procedure only applies to regulations that amend the definitions of "agriculture" and "ancillary activity", terms that are fundamental to the content of the Bill. There is a much stronger argument for using super affirmative procedure for those sections of the Agriculture Bill than there is for sections 1 and 2 of our Bill.

A super affirmative procedure along the lines suggested would necessarily lengthen the timetable for making the regulations and thus risk failing to comply with the statutory duty to lay regulations by 3 years post-Royal Assent.

Recommendation 22

If the Minister does not accept recommendation 21, the Minister should table an amendment to the Bill such that regulations to be made under sections 1 and 2 are subject to a duty to consult in line with section 87(7) of the 1995 Act as amended by section 12 of the Bill.

While I recognise the importance of consultation and agree with the spirit of this recommendation, I do not believe that a statutory duty to consult is required. I have already made a commitment to consult in relation to regulations made under sections 1 and 2. I restate that commitment here.

Recommendation 23

The Minister should table an amendment to the Bill to require the collection of data for the purpose of setting targets.

I fully appreciate the importance of the collection of data for the purpose of setting targets. It is not practically possible to set targets without robust, reliable data. Setting a target without giving due consideration to its achievability, how it may be achieved, along with the associated costs, benefits and social implications could lead to actions which are neither cost effective nor proportionate. However, I do not believe an amendment is necessary.

The steps to set a target are explained in the Explanatory Memorandum. As I have explained in Committee and set out in the technical briefing that was provided to the Climate Change, Environment and Infrastructure Committee in June, it is a complex process. It includes collecting data from a range of stakeholders and sources to underpin the modelling of future emission reduction scenarios and their effects. This is required to develop the cost-benefit analysis and socio-economic analysis associated with target proposals. These considerations are in turn necessary to ensure that, based on the best available evidence, proposed targets are achievable and affordable whilst able to drive the ambitious changes we need to the environment. These analyses are all integral components of any Regulatory Impact Assessment that would be prepared for future regulations. This work is already underway to develop the target proposals.

Recommendation 24

The Minister should table an amendment to the Bill to ensure that the arrangements it makes for obtaining data on air quality are published.

While I fully agree with the need for transparency in this area, the approach to, and arrangements for, setting targets is described within the Explanatory Memorandum. The outcome of the assessments will be provided within the Explanatory Memoranda and Regulatory Impacts Assessments supporting the target-specific regulations. Therefore, an amendment is not necessary.

Recommendation 25

The Minister should table an amendment to section 8 of the Bill to ensure that the Welsh Ministers are under a duty to promote the awareness of clean air as well as the risks associated with air pollution.

I am supportive of what the committee is trying to achieve. However, I do not, agree that an amendment to the Bill is necessary. In promoting awareness of the risks of air pollution, the benefits of non-polluted “clean” air will be implicit. As explained in the Explanatory Memorandum, the purpose of this provision is to raise awareness of the risks posed by air pollution to help reduce exposure and drive improvements in air quality. The focus of section 8 is therefore on raising awareness in relation to air pollution.

Highlighting the positive aspects of clean air is already part of our approach in promoting awareness, for example through ‘Clean Air Day’. We will make it clear in the Explanatory Memorandum and Explanatory Notes that promoting awareness of clean air is part of our approach.

Recommendation 26

The Minister should table an amendment to the Bill to place the Welsh Ministers under a duty to prepare a delivery plan setting out the actions the Welsh Government intends to take to promote awareness about the benefits of clean air and the risks associated with air pollution.

I have already committed to publishing a delivery plan in the Bill's supporting documents and this approach has broad support from stakeholders. I therefore do not believe that an amendment is necessary.

Recommendation 27

The Welsh Ministers should report annually setting out its progress in delivering its plan for promoting awareness about the benefits of clean air and the risks associated with air pollution.

I accept this recommendation. We have already committed to report annually on the national air quality strategy and are expecting the delivery plan to form part of this. Due to the timing of this report however, the delivery plan will need to be reported on separately in the first instance to meet this timescale. I am willing to make this commitment in the Explanatory Memorandum.

Recommendation 28

The Minister should table an amendment to the Bill to consolidate section 80 of the 1995 Act into the Bill and make it clear that it is the Welsh Ministers, not the Secretary of State, who is under a duty to prepare and publish an air quality strategy for Wales.

Whilst I agree this is a point that would benefit from clarity, there are many references to 'Secretary of State' on the statute book with regard to older legislation which need to be read in conjunction with applicable Transfer of Functions Orders and relevant provisions contained within the Government of Wales Act 2006. Making a change to the Secretary of State references in section 80 would create inconsistency and confusion. I can, however, commit to clarifying this point in the Explanatory Memorandum and/or the Explanatory Note.

With regard to consolidation, I refer you to my previous response in relation to recommendation 4.

Recommendation 29

The Minister should table an amendment to the Bill to place a duty on the Welsh Ministers to consult prior to the introduction of a trunk road charging scheme.

I fully understand and agree with the importance placed on public consultation by the Committee. In this case, however, a duty to consult would not add value considering the existing imperative to do so. I reiterate my commitment to consult before making a trunk road charging scheme for the purpose of reducing or limiting air pollution.

Furthermore, the Welsh Transport Appraisal Guidance (WelTAG) outlines the importance of stakeholder involvement and public engagement in gathering evidence of the need for an intervention. WelTAG is a collaborative process, requiring the involvement of people who may be affected by decisions whilst gathering evidence on the impacts of proposed options and the consequences of doing nothing.

Recommendation 30

The Minister should table an amendment to include a definition of soundscapes on the face of the Bill.

I agree that there needs to be clarity on the meaning of soundscapes but a definition on the face of the Bill would reduce flexibility and not allow us to be responsive to change. I agree instead to insert a definition into the Explanatory Memorandum as suggested by the Climate Change, Environment and Infrastructure Committee in their report on the Bill at Recommendation 32, as well as into the national soundscapes strategy itself.

Recommendation 31

In conjunction with recommendation 30, if necessary, the Minister should table an amendment to the Bill to permit the definition of soundscapes to be amended by regulations subject to the affirmative procedure.

I resist this recommendation. I agreed in the response to recommendation 30 that a definition of soundscapes should be inserted into the Explanatory Memorandum and the national soundscapes strategy itself, therefore this suggested amendment is unnecessary.

Recommendation 32

The Minister should explain:

- **why it is necessary to use the Bill to take powers to amend the Environmental Noise (Wales) Regulations 2006;**
- **why the powers being taken are limited to regulations 7(2) and 17(3)(b) only;**
- **what the effect would be of not taking the powers;**
- **whether there are existing powers to amend the Environmental Noise (Wales) Regulations 2006.**

I accept this recommendation. The Environmental Noise (Wales) Regulations 2006 (the “2006 Regulations”) set a cycle for the production of noise maps and the review of noise action plans. In future, the noise maps and noise action plans that are produced by the Welsh Ministers will form part of the national soundscapes strategy (“the Strategy”). The Strategy will be reviewed every 5 years, as set out in section 22 of the Bill, but there is provision in section 22(7) to allow this review cycle to be altered. For example, in the event of an extraordinary Senedd election. I am of the view that it is appropriate to take powers to amend the 2006 Regulations. This is because they enable amendment of the review cycles for the Welsh Ministers’ noise maps and action plans in the regulations to keep them aligned with the review cycle for the Strategy. Broader powers were not considered necessary because it is only the maps and plans that are the responsibility of the Welsh Ministers which will form part of the Strategy.

Taking specific powers to amend the 2006 Regulations in the narrow circumstances prescribed, is necessary and it is highly likely that any use of these powers would be combined with section 22(7) of the Bill.