

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Newid Hinsawdd,
Amgylchedd a Materion Gwledig
Memorandwm Cydsyniad
Deddfwriaethol (MCD) mewn
perthynas â Bil Amgylchedd y DU
NHAMG (5) EB10
Ymateb gan British Lung Foundation

National Assembly for Wales
Climate Change, Environment and
Rural Affairs Committee
Legislative Consent Memorandum in
relation to the UK Environment Bill

CCERA(5) EB10
Evidence from British Lung Foundation



THE ASTHMA UK AND
BRITISH LUNG FOUNDATION
PARTNERSHIP

Thank you for the opportunity to grant evidence to this committee on the proposals set out in the 'Environment Bill' (the 'Bill') which was introduced to the House of Commons on the 30 January 2020. Understanding that this Bill is primarily reforming environmental law for England, we have granted comments on matters which relate to Wales.

We would like to stress to the committee that although a privilege to review this Bill and its application to Wales, we look forward to the new Welsh Clean Air Bill which may reform similar proposals contained in this Bill. We would like to take this opportunity to raise that Wales can take the lead ahead of the nations of the UK by implementing the Wales Clean Air Plan and reform the current laws around clean air in Wales by legislating for a new Clean Air Bill which will:

- Enshrine in law new WHO (World Health Organisation) air quality guidelines,
- Update legislative instruments to review air quality strategies every five years,
- Increase local monitoring by providing statutory duty on local authorities to assess air pollution
- Review legislative instruments around domestic burning
- Increase regulation to reduce pollution emitted from high polluting sources of fuels such as wet wood and coal.

From our understanding the effect of the Environment Bill in relation to air quality in Wales will be:

- Environmental targets, monitoring and the policy statement on environmental principles and reporting on international law extend to England and Wales but apply only in England;
- The proposal to introduce the new Office for Environmental Protection with functions that will apply to the whole of the UK;
- Environmental recall of motor vehicles which extends and applies to the whole of the UK;
- Schedule 11 provisions which relate to matters such as Local Air Quality Management areas (LAQM) which apply primarily to England only.
- Schedule 12 relates to matters around smoke control and the current reading applies to England, with highlights from Part 2 of the Schedule relating to the need to publish a list of authorised fuels and exempt fireplaces which applies to Wales.

Environmental Targets

The current environmental targets derive from EU law. In Wales the 2008 ambient air quality directive (2008/50/EC) and the 4th air quality daughter directive (2004/107/EC) sets out the legally binding limits which have been legislated through instruments such as the Air Quality Standards (Wales) Regulations 2010 and the Air Quality (Wales) Regulations 2000.

These instruments continue to have the same effect following our official exit from the European Union on 31 January 2020 and remain so during the implementation period by virtue of the Withdrawal Agreement's transition period. On the completion day of the implementation period (currently expected to be 31 December 2020) these targets will be retained in domestic legislation in accordance with the EU (Withdrawal) Act 2018 (as amended).

Asthma UK and British Lung Foundation Wales strongly support amendments to incorporate WHO guidelines into the Bill and to have an attainment deadline for on or before the 1st of January 2030.

There is no application of these targets to Wales, however interestingly there is already a commitment to include WHO guidelines in the new Clean Air Bill for Wales. With reference to the Clean Air Plan for Wales, there is a lack of detail on how these clean air limits will be reviewed in the future. Although the plan has a target to 'not only meet but exceed current WHO limits wherever possible', there is no mechanism in place to review the targets for the whole of Wales. Instead the plan seeks to implement the guidance set by WHO, which is the current guidance referred to at time of drafting the Clean Air Plan.

Asthma UK and British Lung Foundation Wales believes that there should be a mechanism in place in the Act to confer regulatory powers to the Welsh Ministers to update the limits set in the new Clean Air Bill a commitment to review the limits every five years with WHO guidance as the baseline limits.

National Air Quality Strategy for Wales

Asthma UK and British Lung Foundation Wales support the Welsh Government's emphasis in the Legislative Consent Memorandum (LCM) that the Welsh Government is solely responsible for publishing national air quality strategy for Wales.

The Clean Air Plan for Wales sets the ambition to improve air quality to above WHO limits where possible and highlights the challenges that Wales faces in order to improve air quality across the country. For this reason alone, a national air quality strategy for Wales should be reviewed and published by the devolved administration with experts who are already aware and working to improve the air quality.

Experts who can also call upon third party stakeholders to be granted the opportunity to inform the Welsh Government of their expertise to further improve the strategy. By publishing the strategy at a devolved level, all interested parties can seek to support the Welsh Government during the process and cater the plan to the unique geography, demography and economy of Wales.

We further welcome the calls for the strategy to be reviewed at certain time intervals, Asthma UK and British Lung Foundation Wales as members of Healthy Air Cymru call for the review and update of legislative instruments to review air quality strategies every five years.

The Office for Environmental Protection

Asthma UK and British Lung Foundation Wales welcome the provisions in the Bill to establish a new independent regulator that will hold the UK Government to account, the Office for Environmental Protection (OEP).

We agree with the concerns raised by the Welsh Government of proposals for the OEP (a national body) to consult a devolved environmental governance body and be able to investigate a complaint concerning reserved and devolved matters.

However, if such a body should be replicated in Wales, it should be done so with some improvements. The OEP will be a powerful independent body that will be able to hold the Government to account to ensure that they are improving air quality with the ability to addressing matters in court if necessary. To guarantee improved air quality for Wales such a body should be able to take direct action against the Welsh Government by implementing fines or directives for not meeting their set air quality targets. Unfortunately, there has been a need for previous court action in the past and there are concerns that after we leave European Union (EU) unless such a body is established there might be an oversight vacuum.

Although the Clean Air Plan for Wales does promise to improve air quality in Wales to that of above WHO guidelines where possible, previous adherence to air quality levels has not been met. Recent successful court action can be highlighted through the requirement of [Local Authority Plans to address Nitrogen Dioxide Exceedances](#) which was a direct result of Welsh Government's non-compliance with directive 2008/50/EC on Ambient Air Quality and Clean air for Europe.

General views of the proposals of the Bill with Welsh Governments Proposals

The updates in the Bill round LAQM regime and Smoke Control Areas (SCAs) are broadly welcomed by Asthma UK and British Lung Foundation Wales. Such proposals broadly replicate the intentions set out in the Clean Air Plan for Wales and seeks to enhance such regimes by increasing responsibility to local authorities (LA).

We have similar concerns with the proposals set by the Clean Air Plan for Wales as we do with the Bill, that this increases the burden on LA's. In our response as members of Healthy Air Cymru to the consultation, we shared our fear that already financially stretched authorities may not have the sufficient funding to implement the new frameworks to tackle air pollution. The new Clean Air Bill should include an increased financial provision in order to properly enact the proposals.

We further would like to highlight the amendments made by the Environmental Bill to allow LA's to issue financial penalties for emitting smoke from a chimney in a smoke control area in England.

The Environment Bill will amend the 1993 Clean Air Act to issue civil penalty notices, which might improve enforcement of Smoke Control Zones. Asthma UK and British Lung Foundation Wales would welcome such proposals to be replicated in the new Clean Air Bill for Wales in order to improve enforcement and improve air quality.

Further the Environmental Bill will also seek to extend Smoke Control Areas to include moored vessels in a LA. Such a proposal would equally be welcomed in Wales' new Clean Air Bill.

We further welcome the calls to implement a time limitation of when LAQM plans should be reviewed. The Clean Air Plan for Wales does highlight three years as a suggestive recommendation. We agree with this and would like to see more detail around the timetable to which LAQM's will be reviewed throughout 2020 and whether the new legislation developed by 2021 would be the new Clean Air Bill or other legislative measures to improve LAQM's.

Concluding Remarks

Thank you for the opportunity to respond, we welcome developments to improve air quality in the UK and look forward to the developments of the Bill as it progresses.

We are however disappointed that the Welsh Government has not yet introduced a Clean Air Bill. The proposals set out in the Clean Air Plan are very ambitious, however generally the reforms highlighted in the plan are already been discussed at Bill stage for England. Wales has the opportunity to be a World leader on air pollution. We understand that under current pressures that there is no legislative time available to introduce a Bill in this Assembly term. However, we welcome the opportunity that a new Clean Air Bill could bring in the new term and to review the White Paper that will still hopefully be introduced at the end of this term.

Essentially, we need to begin improving air quality for Wales to improve the air that we breathe and to begin to reduce the number of people affected by air pollution. We do not know the long-term implications that air pollution will have to our health, what we do know is that action now can at least limit further damage and prevent future generations' from breathing in poor low-quality air and reduce the impact of further climate damage.

Action now is what is needed, we need to highlight the damage caused by air pollution and influencing behavioural changes as soon as possible. The numerous debates on Clean Air in the Senedd has identified a cross-party consensus and highlighted the frustration of many AM's on the lack of action calling for not only an update on our transport infrastructure but also our planning laws, regulations on clean air zones, funding for local authorities to implement new initiatives and the overall impact on health, the environment and future generations.

It is at this time that a quote attributed to Mark Twain might apply, 'Continuous improvement is better than delayed perfection' although we welcome the consultation process, the Task and Finish group, Expert Panel and the measures to ensure that we implement the best methods to improve air quality in Wales, we call for more decisive action rather than continuous review.

We will be happy to provide the committee any future comments or evidence and we thank you again for the opportunity.

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