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Senedd Cymru | Welsh Parliament

**Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change,
Environment, and Infrastructure Committee**

**Bil yr Amgylchedd (Ansawdd Aer a Seinweddau) (Cymru) | The Environment
(Air Quality and Soundscapes) (Wales) Bill**

Ymateb gan Dr Victoria Jenkins, Athro Cysylltiol, Ysgol y Gyfraith HRC, Prifysgol
Abertawe | Evidence from Dr Victoria Jenkins, Associate Professor, HRC School of
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Evidence to the Committee on Climate Change, Environment and Infrastructure on the Environment (Air Quality and Soundscapes) (Wales) Bill.

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Overview

Please note: these comments relate only to the air quality provisions of this Bill.

The Bill is very timely in addressing the important issue of air quality in Wales in light of increasing scientific evidence of the effects of a range of pollutants on human health and the environment.

Air quality is clearly a matter that requires a multi-level governance approach. It is important, especially in the context of Brexit, to ensure that the Welsh Government has the necessary powers to address air pollution concerns at a national and local level and contribute to wider UK and international goals.

There are several key considerations in developing air quality legislation. First, recognising the pressing nature of the problem and the need to adopt targets that are achievable and enforceable. Secondly, understanding the complexities of the problem: the fact that air pollution has multiple sources, that pollutants may interact with one another and that the issue is transboundary in nature. Air pollution is also an area that is subject to continuing developments in scientific understanding. For all these reasons the law needs to be flexible/adaptable, but without losing sight of the importance of accountability and legal certainty.

In Wales, it is also important to ensure that any new laws comply with the principles of the well-being of future generations. This is particularly important with respect to key environmental legislation such as this. Those principles require the legislation to: provide for long term thinking; support preventive action; ensure a collaborative and participative approach; and recognise the interconnections between air quality and other social, economic, environmental and cultural goals.

The Bill aims to strengthen the existing law on the development of targets for air quality and adopt a strategic, action focused approach to meeting those targets. It will also address some specific concerns around the regulation of smoke and fuels in smoke control areas and vehicle emissions.

Going forward it is very important that the Welsh Government bring forward proposals to set up an environmental body that will have the powers to hold it to account in relation to air quality targets under current national legislation (including EU retained law) as well as this new legislation.

Air Quality Targets

The aim of the new framework for air quality targets was to “enable Welsh Ministers to tighten existing air quality targets and to introduce targets for newly identified pollutant risks based on evidence as it emerges in the future.”

Framework for the introduction of long-term targets.

EU retained law, introduced on a Wales only basis, creates a framework for achieving limit values for a range of pollutants whilst UK legislation provides for national emission ceilings for some of these and others. This new legislation will, however, provide Welsh Government with a power to introduce long-term targets for air pollutants. There is no obligation to do so with the exception of targets for PM 2.5 (see section below). This provides flexibility but raises issues of accountability and may need further consideration.

When creating a legislative framework for target setting it is important to support the introduction of: (i) appropriate targets; (ii) in an appropriate time frame; (iii) that can be achieved; and (iv) that will be carefully monitored and measured.

‘Appropriate’ air pollution targets – This depends on scientific understanding which, of course, develops over time. In the Bill this will rest on the duty of Welsh Government to: seek advice from persons they consider to be independent and to have relevant expertise; and to have regard to scientific knowledge on air pollution. This allows Welsh Government quite wide discretion in this respect, especially the reference to Welsh Government adopting its own view of what is an independent source and the expertise of that source. The ‘have regard’ duty with respect to ‘scientific knowledge’ also provides Welsh Government with discretion. However, in

an area where there will undoubtedly a number of experts, who may change over time and have competing views, this discretion may be necessary to ensure the practicability of the system.

Appropriate time frame – providing for more long-term thinking on environmental matters is generally viewed as a pressing need across the board. It is a concern that is supported by the well-being legislation. With that in mind the inclusion of 10 year plus targets is to be welcomed. The introduction of system of 5 year reviews of those targets will also ensure that action by Welsh Government remains focused. That said the provisions for review are fairly stringent and it will be important to ensure that, in practice, the system does not become ‘process oriented’ rather than ‘action focused’. However, this will perhaps be alleviated by the ability to draw on evidence from the annual reporting system.

Ensuring the targets are met – there is a very clear obligation on Welsh Government in ss3 and 4 to set targets that are achievable and to meet those targets. This is important because targets are clearly only useful if they are achievable and achieved. There are also detailed provisions allowing Welsh Government to reduce existing targets in some circumstances. There is, of course, a need to balance a duty to meet targets with a means of providing an exception. The circumstances for reducing targets are also clearly defined in this Bill and there is a duty to refer to the Senedd if this power is used.

The introduction of a novel framework for setting targets that are achievable and achieved is to be welcomed. However, it is also important to ensure that the targets set are ambitious and there is nothing in s3 to support this. That said, given the novelty of the provisions, it may well be appropriate to move forward with this approach and review the implementation of the legislation in due course in order to see how it plays out in practice.

Monitoring and measuring progress.

There is a clear and stringent framework for reporting on the targets. As outlined above, this should feed into the 5 year reviews. There are, however, wide discretionary powers for Welsh Government with respect to monitoring. Given the significance of data to the reporting system and measurement of progress this may be an area that requires further consideration.

PM 2.5 targets

Special provision is made in the Bill for the introduction of a target on PM 2.5. s2 (1) provides Welsh Ministers with a duty to introduce at least one target in this respect.

The Clean Air Advisory Panel has “determined the strongest body of evidence connecting an air pollutant with mortality and other morbidity effects involves fine particulate matter. Therefore, we have addressed this by identifying a target for fine particulate matter (PM2.5) as a first priority.”

It is notable however, that s2(2) states that a ‘PM2.5 air quality target may be a long-term target but need not be so’. This means that, overall, the legislative framework only allows for the introduction of a shorter-term target for PM 2.5. It may be that this provision was included to address discrepancies between this and other limit values and emissions ceilings for air pollutants; to ensure the priority of PM 2.5; or because there is a particular reason why a short term target might be appropriate to PM 2.5. However, the legislative framework will have significant longevity and it is not clear that PM 2.5 is the only air pollutant that might benefit from shorter term targets in future.

The Legislative Framework and Future Challenges.

The need to ensure the legal framework is fit for purpose in providing for emerging pollutant risks is demonstrated by the example of ammonia.

In the White Paper Welsh Government stated that the aim of the legislation was to “place a particular focus on protecting vulnerable individuals and sensitive habitats from the harmful effects of air pollution.” Environmental groups such as the United Kingdom Environmental Law Association and Wales Environmental Link are clear that one of the biggest threats to the environment and sensitive habitats is from ammonia.

There are currently emission ceiling standards for ammonia but no limit values. Whilst Welsh Government have stated that there needs to be more evidence on this, they are also open to introducing targets in this respect in future. This is also in line

with the ambition to provide a legal framework that will allow them to “introduce targets for newly identified pollutant risks based on evidence as it emerges in the future.” It may be the case that it would be beneficial to introduce short term as well as longer term targets in this respect, but this would not be possible under the legislation in its current form.

It may be argued that the Bill is deliberately trying to focus attention on long-term targets but, if that is the case, there is still a need to understand the justification for a different approach for PM 2.5.

Other Provisions on Air Pollution

General duty for Welsh Government on Public Awareness

The duty on Welsh Government to take steps to promote awareness in Wales of the risks to human health and the natural environment caused by air pollution; and ways of reducing or limiting air pollution is to be welcomed. However, note the specific issues with respect to public knowledge and understanding set out below in the sections on Smoke Control and the Accessibility of Welsh Law on Air Pollution.

National Air Quality Strategy (NAQS)

The Bill includes a number of provisions to amend the parts of the Environment Act 1995 that relate to the creation and implementation of the National Air Quality Strategy.

Time for review - The provisions on the power to amend the time for review of the national air quality strategy appear to be appropriate.

Consultation on the strategy - There are also changes to the way the strategy is consulted on. The new provisions are more relevant to the situation in Wales, including for example reference to Public Health Wales. It is notable that this has resulted in dropping the reference to ‘any other body the Welsh Ministers consider appropriate’. Whilst discretionary powers need to be considered carefully this may be appropriate in this instance given the need to account for future developments in our understanding of air pollution and its effects on human health and the environment.

The 'have regard' duty – This provides Welsh Government with powers to introduce Regulations defining the Welsh public authorities who will be subject to a duty to have regard to the NAQS. It will be important to carefully consider the nature of a Welsh public authority in Regulations produced under this legislation. There are now several pieces of legislation with different definitions of this which may be appropriate but also causes some confusion.

Regulations on the implementation of the NAQS, EU retained law on air quality, international agreements and the assessment and management of air quality.

s87 Environment Act 1995 sets out detailed provisions on the powers of Welsh Ministers to create Regulations to meet these wide objectives. The Bill includes provision to change the sections on consultation on these Regulations in line with those discussed above with respect to the NAQS.

However, it is notable that these Regulations may, inter alia, prescribe standards relating to the quality of air and/or objectives for the restriction of the levels at which particular substances are present in the air. This Bill presents the opportunity to provide a power or duty to ensure that, as with target setting, these are based on independent, expert advice in line with scientific knowledge. This may not be necessary if those standards and objectives align entirely with those set out in other areas of law (which will be based on this advice and knowledge). However, it may be useful when considering an appropriate contribution through local action to a particular target, especially given the power to provide different provision for different cases including different provision in relation to different localities. As a result, it may be an issue that is worthy of further consideration.

Local air quality reviews

The provisions to strengthen the requirement to carry out a review every 12 months rather than from 'time to time' is appropriate given the urgency of the need to tackle air quality. Clearly, however, there are significant resource implications here for local authorities which were raised in many responses to the consultation on the White Paper.

The Bill also strengthens current provisions in the Environment Act 1995 on action planning by local authorities to meet the standards and objectives set out in the

Regulations referred to above. These provisions also appear to be appropriate. However, the review of such plans may be carried out 'at any time'. This leaves local authorities with wide discretion in this regard. This may, however, be appropriate to ensure the system does not become 'process driven' and unnecessarily resource intensive.

Smoke Control

The Bill includes detailed provisions around offences for the acquisition and sale of certain fuels; the emission of smoke in a Smoke Control Area (SCA) and the exemption of certain fireplaces in this regard. It is undoubtedly sensible to focus on the standards of fireplaces and fuels rather than rely on domestic approaches to the control of smoke. However, there are important gains to be made through public knowledge and understanding. There is a real need for better public information on the best practice in the use of domestic burners (in terms of both appliances and fuels) as well as the risks they pose to air quality. This should perhaps, therefore, be a priority in furthering the new general duty on public awareness.

Beyond the need for general advice to householders there are important offences in this legislation with respect to the emission of smoke in Smoke Control Areas. With this in mind, there is an urgent need for publicly accessible information on Smoke Control Areas. At present, SCAs are introduced through a Local Order but there is no duty to ensure this information is made publicly available; or at least in a way that is clearly accessible, for example by publishing this information on the local authority website. This means there are duties in place to publish the lists of fuels and fireplaces that are prohibited in Smoke Control Areas but not to make clear where those areas are. This is an issue that needs to be urgently addressed and this Bill would provide an opportunity to do so.

The Accessibility of Welsh Law on Air Pollution.

Air pollution is complex and the responses to it are necessarily driven by detailed and in-depth scientific evidence. The need for different approaches in terms of targets, limit values and emissions ceilings is linked to this complexity. However, there is still a need to ensure public understanding of Welsh Government action on air quality and their responsibilities under air quality law. The latter is particularly important given the significance of recent litigation in holding governments in the UK to account in meeting air quality standards.

This new legislation will in some respects create an additional 'layer' of legislation. In other respects, it will amend existing laws, such as the Environment Act 1995, which include provisions relevant to nations across the UK. This will undoubtedly increase the complexity of Welsh law on air pollution. This should perhaps be considered a priority for consideration under the Legislation (Wales) Act 2019.

The Enforceability of Welsh Law on Air Pollution.

The point made in the introduction about the importance of a Welsh body on environmental protection is very important to the future success of this legislation.