

# Report on the Environment (Air Quality and Soundscapes) (Wales) Bill

July 2023



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July 2023



# About the Committee

The Committee was established on 26 May 2021. Its remit can be found at [www.senedd.wales/SeneddLJC](http://www.senedd.wales/SeneddLJC)

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Current Committee membership:



**Committee Chair:**  
**Huw Irranca-Davies MS**  
Welsh Labour



**Alun Davies MS**  
Welsh Labour



**James Evans MS**  
Welsh Conservatives



**Adam Price MS**  
Plaid Cymru

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The following Member was also a member of the Committee during this inquiry.



**Peredur Owen Griffiths MS**  
Plaid Cymru

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## 1. Introduction

On 20 March 2023, Julie James MS, Minister for Climate Change (the Minister) introduced the Environment (Air Quality and Soundscapes) (Wales) Bill (the Bill),<sup>1</sup> and accompanying Explanatory Memorandum (the EM).<sup>2</sup>

1. The Senedd's Business Committee referred the Bill to the Climate Change, Environment, and Infrastructure (CCEI) Committee on 28 February 2023, and set a deadline of 14 July 2023 for reporting on its general principles.<sup>3</sup>
2. On 22 March 2023, the Minister issued a statement of policy intent for subordinate legislation to be made under the Bill.<sup>4</sup>
3. The Minister states in the EM:

*“Our Programme for Government for 2021 to 2026 reiterated our commitment to introduce a Clean Air Act for Wales, consistent with World Health Organisation (WHO) guidance and to extend the provision of air quality monitoring. This will include taking account of the latest scientific information, including the updated WHO guideline levels, alongside taking independent expert advice, to inform the development of new air quality targets.”<sup>5</sup>*

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<sup>1</sup> Environment (Air Quality and Soundscapes) (Wales) Bill, as introduced

<sup>2</sup> Environment (Air Quality and Soundscapes) (Wales) Bill, [Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes](#), March 2023

<sup>3</sup> Business Committee, [Timetable for consideration: Environment \(Air Quality and Soundscapes\) \(Wales\) Bill](#), March 2023

<sup>4</sup> [Statement of Policy Intent for the Environment \(Air Quality and Soundscapes\) \(Wales\) Bill](#), 22 March 2023

<sup>5</sup> EM, paragraph 3.13

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## The purpose of the Bill

4. The long title of the Bill states that it is to:

*"make provision for improving air quality in Wales; for a national strategy for assessing and managing soundscapes in Wales; and for connected purposes".<sup>6</sup>*

5. The Minister states in the EM that:

*"The overarching aim of the Bill is to bring forward measures that will contribute to improvements in the quality of the air environment in Wales and reduce the impacts of air pollution on human health, biodiversity, the natural environment and our economy".<sup>7</sup>*

6. The Minister notes in the EM that "The Bill includes changes to existing legislation which will streamline, strengthen and complement existing processes to make them more effective and accessible."<sup>8</sup>

7. The Minister also states in the EM that the Bill needs to be seen in a broad context and:

- is a crucial part of a package of measures set out in the Welsh Government's Clean Air Plan<sup>9</sup> to reduce airborne pollution and improve the air environment in Wales;<sup>10</sup>
- complements existing legislation on noise (the Environmental Noise (Wales) Regulations 2006<sup>11</sup>).<sup>12</sup>

8. In summary the Bill proposes to:

- provide a framework for setting national air quality targets;

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<sup>6</sup> Environment (Air Quality and Soundscapes) (Wales) Bill, as introduced

<sup>7</sup> EM, paragraph 3.1

<sup>8</sup> EM, paragraph 1.4

<sup>9</sup> Welsh Government, [The Clean Air Plan for Wales. Healthy Air. Healthy Wales](#), August 2020

<sup>10</sup> EM paragraph 3.2

<sup>11</sup> S.I. 2006 / 2629 (W. 225)

<sup>12</sup> EM, paragraphs 3.2 and 3.240

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- amend existing legislation relating to:
  - the national air quality strategy,
  - local air quality management,
  - smoke control,
  - clean air zones/low emission zones, and
  - vehicle idling;
- place a duty on the Welsh Ministers to promote awareness of air pollution;
- and to publish a national soundscapes strategy.<sup>13</sup>

### **The Committee's remit**

**9.** The remit of the Legislation, Justice and Constitution Committee is to carry out the functions of the responsible committee set out in Standing Orders 21 and 26C. The Committee may also consider any matter relating to legislation, devolution, the constitution, justice, and external affairs, within or relating to the competence of the Senedd or the Welsh Ministers, including the quality of legislation.

**10.** In our scrutiny of Bills introduced in the Senedd, our approach is to consider:

- matters relating to the competence of the Senedd, including compatibility with the European Convention on Human Rights (ECHR);
- the balance between the information that is included on the face of the Bill and that which is left to subordinate legislation;
- whether an appropriate legislative procedure has been chosen, in relation to the granting of powers to the Welsh Ministers, to make subordinate legislation;
- any other matter we consider relevant to the quality of legislation.

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<sup>13</sup> EM, paragraph 1.5

- 11.** We took evidence from the Minister on 15 May 2023.<sup>14</sup>
- 12.** Following our evidence session, we wrote to the Minister on 25 May 2023 with a series of additional questions in relation to the Bill.<sup>15</sup> The Minister responded on 15 June 2023.<sup>16</sup>
- 13.** On 28 June 2023, the Minister wrote to the Chair of the CCEI Committee about a proposed amendment to the Bill relating to smoke control.<sup>17</sup>
- 14.** The Plenary debate on a motion to approve the general principles of the Bill is likely to take place early in the autumn term.<sup>18</sup>

**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.

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<sup>14</sup> [Legislation, Justice and Constitution \(LJC\) Committee](#), RoP transcript, 15 May 2023

<sup>15</sup> [Letter to the Minister for Climate Change](#), 25 May 2023

<sup>16</sup> [Letter from the Minister for Climate Change](#), 15 June 2023

<sup>17</sup> [Letter from the Minister for Climate Change](#), 28 June 2023

<sup>18</sup> This assumption is based on the timetable agreed by the Business Committee which states that Stage 2 proceedings should be completed by 20 October 2023, subject to the general principles of the Bill being first agreed by the Senedd.

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## 2. Legislative competence

The Welsh Government is satisfied that the Bill would be within the legislative competence of the Senedd.<sup>19</sup>

**15.** We considered the Bill under the reserved powers model of legislative competence, as set out in section 108A of the *Government of Wales Act 2006* (the 2006 Act).

**16.** In her statement on legislative competence, the Llywydd, Elin Jones MS, stated that the Bill as introduced would be within the legislative competence of the Senedd.<sup>20</sup>

**17.** When the Minister gave evidence to us on 15 May 2023 she confirmed that she was satisfied that the Bill was within the Senedd’s legislative competence,<sup>21</sup> noting that “There are no provisions in the Bill that require the consent of various Secretaries of State under Schedule 7B” of the 2006 Act.<sup>22</sup> She added:

*“In relation to section 19 and Schedule 2 of the Bill, we’ve written to the Lord Chancellor, Secretary of State for Justice and the Chief Secretary to the Treasury, in accordance with paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006, but, unfortunately, we have not had a response to date.”<sup>23</sup>*

**18.** We asked the Minister what account she had taken of human rights in preparing the Bill and to explain why the EM does not mention human rights issues. In response the Minister said:

*“So, we’ve carried out the usual suite of impact assessments, including the equality and socioeconomic duty impact assessments. Obviously, the key aim of the Bill is to improve air quality to reduce airborne pollution and its negative impacts. In*

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<sup>19</sup> EM, Member’s Declaration, page 1

<sup>20</sup> [Presiding Officer’s Statement on Legislative Competence](#), 20 March 2023

<sup>21</sup> LJC Committee, 15 May 2023, RoP [4]

<sup>22</sup> LJC Committee, 15 May 2023, RoP [6]

<sup>23</sup> LJC Committee, 15 May 2023, RoP [7]

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*as much as it might impact on A1, P1— article 1, protocol 1— in terms of individual rights, we think that any impact on that is fair and proportionate. (...) We don't think it has any conceivable issue with human rights. I'm sure the committee will come on to this, but the only impacts, really, are in changing the penalties for particular parts of the regime, and in making something a civil matter instead of a criminal one. It's very hard to see how that particularly impacts on anyone's individual freedoms.”<sup>24</sup>*

## **Our view**

**19.** We note the evidence in relation to matters of legislative competence from the Minister. We also note the Llywydd’s statement that, in her view, the provisions of the Bill would be within the legislative competence of the Senedd.

**20.** We note that in accordance with paragraph 11(2) of Schedule 7B to the 2006 Act, there is a need for Minister of the Crown consultation to bring certain provisions within the Senedd’s legislative competence and that this applies in relation to section 19 of, and Schedule 2 of the Bill. We note this consultation has taken place and that there is no requirement for acknowledgment from the Minister of the Crown. At our evidence session the Minister noted that she had not received a reply to her letter to the Lord Chancellor about paragraph 11(2) of Schedule 7B to the 2006 Act.

**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*.

**Conclusion 1.** We note the Minister’s comments on human rights but believe that, as a matter of good practice, an Explanatory Memorandum should always include a commentary on the consideration given to the human rights implications of a Bill.

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<sup>24</sup> LJC Committee, 15 May 2023, RoP [14]

## 3. General observations

### Policy background on air quality

**21.** We asked the Minister to provide a summary of the existing air quality legislative framework, including by providing information about existing air quality targets and the basis on which they have been set. We reproduce the Minister's response below:

*"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.”<sup>25</sup>*

## **Need for the Bill**

**22.** We asked the Minister what the Bill enables the Welsh Government to do that it cannot do within the existing legislative framework. In response the Minister said:

*“...this isn't a Bill that's an all-encompassing Bill in its own right. This is part of a suite of things that we're doing around environmental improvement, particularly in the air, and so it needs to be seen as part of a package of measures to improve air in Wales, and that's set out as part of the clean air plan (...) It's part of a whole series of things that we're doing in the air space, (...) So, we need to make sure that, in and of itself, it sits neatly in there and makes some sense and is not making the law less accessible, for example.*

*So, we want to change some things that we can't change without the Bill (...) We want to change the sanctions regime for smoke control from criminal to civil. (...) We want to change the*

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<sup>25</sup> Letter from the Minister for Climate Change, 15 June 2023, response to question 4

*penalties for anti-idling in particular. And we want to change Welsh Ministers' powers in terms of road user charging schemes, which are difficult at the moment, just to make them more understandable and accessible. (...) We have some broad powers under the environment Act, but the broad powers are very broad, and we think they're too broad, really, to achieve what I want to achieve, which is to hold this Government's and future Governments' feet to the fire around making sure that we're proactively doing something about our air quality all the time, and, as the data changes, we have the ability to change the targeting and so on."*<sup>26</sup>

**23.** In order to further understand the need for the Bill, we asked the Minister two specific questions in our letter of 25 May 2023.

**24.** We asked the Minister what the Bill enables the Welsh Government to achieve on air quality targets that cannot be achieved within the existing air quality legislative framework. The Minister replied:

*"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<sub>2.5</sub> 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.*

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<sup>26</sup> LJC Committee, 15 May 2023, RoP [17 and 18]

*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.”<sup>27</sup>*

**25.** Section 1 of the Bill includes the power to set long term targets by regulations in respect of any matter relating to air quality, while section 2 includes a power to set at least one target for PM<sub>2.5</sub><sup>28</sup> in ambient air. Section 4(2) of the Bill provides that nothing in Chapter 1 (sections 1 to 7 on national air targets) affects the Welsh Ministers power under section 87 of Part IV (Air quality) of the *Environment Act 1995* (the 1995 Act) to make regulations in relation to the assessment or management of air quality. We therefore asked the Minister to explain the relationship between Part IV of the 1995 Act and the Bill. The Minister said:

*“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*

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<sup>27</sup> Letter from the Minister for Climate Change, 15 June 2023, response to question 5

<sup>28</sup> Section 2(3) of the Bill states that PM<sub>2.5</sub> means particulate matter with an aerodynamic diameter not exceeding 2.5 micrometres.

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*Environment Act 1995. Therefore, the legislative framework has been strengthened by taking these new powers and duties.”<sup>29</sup>*

**26.** We asked what air quality targets are currently in place and whether they were meaningful. An official accompanying the Minister said:

*“There are a range of targets and emission limits as well. A lot of that's from existing EU legislation and international standards, which have now been brought into domestic law (...) Some are similar to what the existing World Health Organization guidelines had in place. We're in a reasonably good place with most of those at the moment, but the WHO guidelines take us quite a lot further than where we are now.”<sup>30</sup>*

**27.** Subsequently, in her letter of 25 May 2023, the Minister told us:

*“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.”<sup>31</sup>*

## **Timing of the Bill**

**28.** Given that regulations under sections 1 and 2 of the Bill may not be brought forward until the Seventh Senedd,<sup>32</sup> in our letter of 25 May 2023, we asked the Minister why a more all-encompassing, comprehensive environmental Bill on air quality was not introduced until later in the Sixth Senedd, to potentially deliver better outcomes through primary legislation and to be consistent with the Welsh Government's objective to improve the accessibility of Welsh law. The Minister responded:

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<sup>29</sup> Letter from the Minister for Climate Change, 15 June 2023, response to question 6

<sup>30</sup> LJC Committee, 15 May 2023, RoP [87]

<sup>31</sup> Letter from the Minister for Climate Change, 15 June 2023, response to question 11

<sup>32</sup> LJC Committee, 15 May 2023, RoP [69 and 109]

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*“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.”<sup>33</sup>*

## **Accessibility**

**29.** Under the *Legislation (Wales) Act 2019*, the Welsh Ministers and the Counsel General must prepare and lay before the Senedd a programme to improve the accessibility of Welsh law. Each programme must make provision to consolidate and codify Welsh law, maintain codified law, promote awareness and understanding of Welsh law, and facilitate use of the Welsh language.

**30.** We noted that the Bill amends a number of older pieces of English-language only legislation, such as the *Clean Air Act 1993* (the 1993 Act). In the EM the Minister states:

*“Part 3 of the Clean Air Act 1993 has not been consolidated. Instead, a new schedule has been created that mirrors most of the current England-only legislation, targeting specific provisions that are most relevant to Wales. This approach delivers our policy intent and provides general consistency with the provisions currently in force in England.”<sup>34</sup>*

**31.** In view of the approach taken, we therefore asked the Minister if she considered making provision on the face of the Bill to consolidate rather than

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<sup>33</sup> Letter from the Minister for Climate Change, 15 June 2023, response to question 3

<sup>34</sup> EM, paragraph 4.21

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amend other legislation, particularly to enable provisions to be fully bilingual. In response, the Minister stated:

*“...as I understand it, (...) because this isn't an all-encompassing Bill— 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. (...) 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.”<sup>35</sup>*

**32.** An official accompanying the Minister said:

*“...we obviously have considered consolidation. When you're amending primary legislation, it's something that's always considered, particularly when it's English-language legislation. But, 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.”<sup>36</sup>*

**33.** We also asked the Minister to explain why the local air quality management provisions of the 1995 Act were not being transposed into Welsh legislation via the Bill or, indeed, to transpose all air quality provisions from the 1995 Act into the Bill. In response the Minister said:

*“The main elements of the framework are still in place and all we're doing is amending the local air quality provisions in the existing framework. It didn't seem necessary or optimal in any*

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<sup>35</sup> LJC Committee, 15 May 2023, RoP [36 to 37]

<sup>36</sup> LJC Committee, 15 May 2023, RoP [38]

*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. So, I wouldn't want to get into that either, if I were honest.”<sup>37</sup>*

**34.** The Minister also highlighted the complexity of the 1995 Act saying:

*“It is replete with Secretary of State for England things, which also then apply to Wales. So, it's quite complicated.”<sup>38</sup>*

**35.** She added that there was a bill relating to environmental governance to come, and drew attention to the possible future consolidation of environmental law.<sup>39</sup>

**36.** In our letter to the Minister of 25 May 2023, we raised a number of points relating to the accessibility of the legislation.

**37.** We asked how the Minister’s comments, and those of her officials, about the accessibility of the Bill were consistent with the fact that legislation on air quality will now be set out in a Welsh Act and two Acts covering England and Wales. The Minister responded:

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<sup>37</sup> LJC Committee, 15 May 2023, RoP [54 to 55]

<sup>38</sup> LJC Committee, 15 May 2023, RoP [46]

<sup>39</sup> LJC Committee, 15 May 2023, RoP [45 to 49]

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*“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.”<sup>40</sup>*

**38.** The Minister re-iterated some of these views when we queried why the opportunity was not taken to use the Bill to update, improve and simplify elements of the 1995 Act related to air quality in order to make the legislation more accessible.<sup>41</sup>

**39.** We also asked whether the decision not to consolidate air quality law into one Bill was influenced by the capacity and resource constraints the Minister referred to during the evidence session with us. She told us:

*“...resourcing implications do have to be considered when embarking on a Bill process. However, the decision was borne*

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<sup>40</sup> Letter from the Minister for Climate Change, 15 June 2023, response to question 2

<sup>41</sup> Letter from the Minister for Climate Change, 15 June 2023, response to question 2

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out of an assessment of the existing provisions and the nature of the amendments we were seeking to make.”<sup>42</sup>

**40.** In our report on the Welsh Government’s Legislative Consent Memorandum for the Environment Bill,<sup>43</sup> we recommended 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. The Minister accepted this recommendation in principle,<sup>44</sup> and therefore in our letter we asked the Minister if she could advise whether the Bill contains matters relevant to that UK Bill and, if so, how it addresses the recommendation in our report.

**41.** The Minister responded:

*“There is a complex framework of Environmental law, some of which pre-dates devolution. I am aware of the recommendation in the September 2021 Report and our agreement to accept it in principle. That has not changed. (...)*

*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.”<sup>45</sup>*

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<sup>42</sup> Letter from the Minister for Climate Change, 15 June 2023, response to question 2

<sup>43</sup> LJC Committee, [The Welsh Government’s Legislative Consent Memoranda on the Environment Bill](#), September 2021, recommendation 1

<sup>44</sup> [Letter from the Minister for Climate Change](#), 28 September 2021

<sup>45</sup> Letter from the Minister for Climate Change, 15 June 2023, response to question 1

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## Balance between what is on the face of the Bill and what is left to subordinate legislation

**42.** The Minister highlights in the EM that the Bill proposes (in Chapter 1 of Part 1) the creation of an “air quality target-setting framework”.<sup>46</sup>

**43.** We asked the Minister why she did not choose to put targets on the face of the Bill with the ability to amend them by regulations. The Minister replied:

*“I don't think we know what those targets should look like right now. I think there's a real risk, if we did put targets on—. There are three separate things, actually. So, whether the actual targets themselves would mean anything. I think we'd probably have to set them at a point where they probably didn't, in order to be inside the data issues that we've got. What is the point of that? You're basically setting a target that says, 'It's all right as it is for a bit.' I'm not very keen on that as a way forward.”<sup>47</sup>*

**44.** The Minister also noted that the Bill “gives us a power and puts us under a duty to collect various data points”<sup>48</sup> and that “regulations would follow on from the data”.<sup>49</sup>

**45.** She further explained the approach as follows:

*“...it's about trying to calibrate futureproofing, near-futureproofing, with data collection, so that we have these stretching targets, because what we all want is for us to get pollutants out of the air as fast as is possible and practicable.”<sup>50</sup>*

**46.** The Minister also indicated that putting targets on the face of the Bill would not be meaningful and would not drive the improvements needed.<sup>51</sup> An official accompanying the Minister added:

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<sup>46</sup> EM, paragraph 3.36

<sup>47</sup> LJC Committee, 15 May 2023, RoP [79]

<sup>48</sup> LJC Committee, 15 May 2023, RoP [22]

<sup>49</sup> LJC Committee, 15 May 2023, RoP [61]

<sup>50</sup> LJC Committee, 15 May 2023, RoP [26]

<sup>51</sup> LJC Committee, 15 May 2023, RoP [80 to 82]

*“We could have to bring quite serious action to get down to certain levels in certain areas, depending on the pollutants ... So, we'd be in a situation where we weren't sure if we could do it, and the guidelines themselves say that it needs to take account of local circumstances as well, for which you need the evidence to be able to do that. But, more broadly (...) it's not about just the health guidelines; there are environmental standards and socioeconomic guidance, and you need to combine all of that together to get the full suite of evidence to inform what those targets should be. Otherwise, we could end up having unachievable and unrealistic targets, really.”<sup>52</sup>*

**47.** During questioning on the scrutiny procedures attached to the making of some of the regulations, the Minister told us:

*“Broadly speaking, we've used the negative procedure where there's already a regulation power that has a negative procedure attached to it, because we're restating some of the Environment Act things, for example, and there are already negative procedures in place, so we've restated them. But, honestly, I am very happy to consider anything that the committee thinks should be changed in either direction, actually. I don't think we need positive procedures for everything. Some things are pretty administrative in nature and, frankly, you'll have seen yourself in Plenary the number of times I have read out a statement on a regulation that's got a positive procedure attached to it and not a single Member has wanted to comment, or even understood a word I just said, and it's gone through on the nod.”<sup>53</sup>*

**48.** The Minister added:

*“...the point I'm making is (...) if we streamlined it so that the ones where nobody is really very interested in them and they're so technical that you've got very little chance of understanding*

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<sup>52</sup> LJC Committee, 15 May 2023, RoP [85]

<sup>53</sup> LJC Committee, 15 May 2023, RoP [114]

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*what they are— . Frankly, I can think of some of the chemical ones— well, I don't think I understood what I read out loud, never mind anything else, and I'm happy to say that in a public broadcast. These things are very technical in nature. You rely heavily on very specialist advisers to tell you about transporting chemicals in various— . I've no idea, and that should be a negative procedure, in my view. I don't think there's any point in that being a positive procedure.*

*Whereas when we're talking about things that members of the committee will have a very determined interest in, and will be very well informed about because they're being heavily lobbied (...), that's a wholly different thing, isn't it, where you can have a proper set of scrutiny provisions in place and a positive procedure is necessary. I am very happy to discuss with the committee whether we've got the balance right or not in this Bill.”<sup>54</sup>*

## **The use of a draft Bill**

**49.** In the EM, the Minister states:

*“Given the extensive consultation on the Clean Air Plan for Wales, the White Paper consultation, the level of responses received and subsequent engagement it was not considered necessary to consult on a draft Bill.”<sup>55</sup>*

**50.** We asked the Minister to elaborate on why a draft Bill had not been pursued; she told us:

*“So, this is always the difficulty, isn't it, whether you want to wait for a draft Bill to be ready— there's a timescale issue there— or whether you think it's already clear enough. And I think, small 'p' politically, we've waited a long time for this Bill. So, I think if we'd waited until we could get a draft Bill out to consultation before we came anywhere near actually introducing it we'd have been*

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<sup>54</sup> LJC Committee, 15 May 2023, RoP [116 to 117]

<sup>55</sup> EM, paragraph 4.41

*waiting even longer. And I think we were ready, really. The draft Bill doesn't hold any major surprises. Where there is a surprise, which is on the soundscapes issue, that's been consulted on separately anyway. (...) So, I just think, in the interests of getting the Bill into the Senedd— and it's pretty transparent what it is—we just didn't think it was worth waiting is the real truth.”<sup>56</sup>*

## **Our view**

### **Need for the Bill and accessibility**

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**51.** One of our key concerns in considering this Bill has been the extent to which it was necessary, particularly given the existing legislative framework on air quality. We note that when the Minister told us what changes could not be made without the Bill, her response focused on matters related to the smoke control sanctions regime, penalties for anti-idling and powers for road charging schemes (although for such schemes she said she currently had no intention of using them).

**52.** While we recognise and welcome the Welsh Government's commitment and intention to address poor air quality in Wales, we are not clear why Chapter 1 of Part 1 of the Bill is necessary at this time.

**53.** Key factors influencing this view are our uncertainty about the timetable for making regulations to set long term targets under section 1, and also that regulations under section 2 in relation to PM<sub>2.5</sub> may not be introduced until the Seventh Senedd.

**54.** We acknowledge that the delay in bringing forward regulations is because they need to be informed by the relevant data, which the Minister told us is currently not available. However, as we note in chapter 4 of our report, the duty to collect data is for the purpose of monitoring targets rather than setting them. In addition, data collection either to inform a future piece of primary legislation or to set future targets could potentially be undertaken outside of any legislative requirement.

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<sup>56</sup> LJC Committee, 15 May 2023, RoP [28]

- 55.** In our view, the Bill as drafted will not begin to make real improvements in air quality until the Welsh Government has set targets by regulations (using the powers the Bill provides) at some point in the future.
- 56.** The question that arises therefore is why the need exists to legislate now and take broad regulation-making powers before the relevant data is available to enable challenging but achievable targets to be set.
- 57.** We do not therefore share the Minister's view that delayed introduction of the Bill “would result in delayed implementation”. In our view, Chapter 1 of Part 1 of the Bill – provisions at the heart of the legislation – would therefore appear to be a marker for taking action in the future.
- 58.** A further reason for our lack of clarity about why Chapter 1 of Part 1 of the Bill is needed now is because of the existing legislative arrangements. We note that powers in section 87 of the 1995 Act could potentially be used to set the targets proposed in the Bill and that these powers are themselves being amended to make consultation requirements for regulations made under section 87 of that Act more reflective of best practice.<sup>57</sup> Part of the Minister’s justification for taking the regulation-making powers in Chapter 1 of Part 1 of the Bill is because the existing powers in the 1995 Act are too broad to achieve what the Minister wanted to achieve in terms of being held to account. We do not find this justification convincing given the current drafting of the Bill, not least because the powers being taken are exceptionally broad themselves.
- 59.** We also note that section 4(2) of the Bill states that nothing in Chapter 1 (of Part 1) affects the Welsh Ministers power under section 87 of the 1995 Act to make regulations for the assessment or management of air quality. As the Minister has indicated this means that potentially future regulations relating to air quality could be made using powers in both section 87 and sections 1 and/or 2 of the Bill. It would also appear to us that a future government could decide not to use the powers in the Bill to set long term air quality targets or PM<sub>2.5</sub> targets but instead use powers under the existing framework in the 1995 Act, which would mean such targets being subject to the requirements of that Act rather than the new regime under the Bill. This is particularly important because the

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<sup>57</sup> EM, paragraph 3.114

Welsh Ministers would not be under a specific duty to meet future targets set under the 1995 Act, whereas they would be under the Bill (by virtue of section 4).

**60.** This brings us to the issue of the Bill's accessibility. Our role, in part, is to assess the quality of the Bill as a proposal for new piece of law, which includes its accessibility and coherence, particularly in terms of how easily it is likely to be understood by citizens.

**61.** We do acknowledge the Minister's comments that consolidation can be a lengthy process and "that 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".

**62.** However, we have established that on air quality in particular the implementation of key provisions in the Bill may not occur until the Seventh Senedd, which would mean they would be dependent on the priorities of a different government.

**63.** We also note the Minister's comments that the Bill is not intended to be "all encompassing", that it "has a particular focus" and that it is "intended to fit into other legislation". The approach adopted represents the Welsh Government's choice; it could have made a different choice, particularly given its stated view that available resources did not influence its approach.

**64.** We also note the suggestion that "many of the aims of the Bill could be achieved via amendments to existing legislation", which could suggest that the approach adopted was influenced more by ease of drafting rather than concerns of accessibility of law for citizens.

**65.** We are therefore concerned that the Bill is not consistent with the Welsh Government's own objectives for delivering accessible and bilingual law. Of particular concern were the Minister's comments that she did not feel it "necessary or optimal in any way to transfer the entire framework" into the Bill and the Welsh Government has "been trying to limit the Bill that this committee is now scrutinising."

**66.** We do not agree that restating a large portion of the legislation while making what the government regards as minor amendments could lead to

confusion. We also do not agree that consolidation could result “in a partial retelling of the story about air quality”. In our view that consequence is more likely to be true of not undertaking any consolidation at all.

**67.** We do not believe that it would have been onerous to consolidate Part IV of the 1995 Act into the Bill, particularly given that it amounts to only 11 sections that apply in Wales and the Bill is already seeking to amend existing provisions in that Part of the 1995 Act by virtue of sections 9 to 15 and section 21 in Chapter 2 of Part 1 of the Bill.

**68.** Such a consolidation exercise would have provided an opportunity to update and improve existing air quality provisions and co-ordinate them with Chapter 1 of Part 1 of the Bill. In particular it would have avoided having regulation-making powers to set air quality targets in two different Acts, and enabled a more consistent regime for reporting, reviewing and monitoring targets. We do not believe that such an approach would be confusing or detrimental to the accessibility of law.

**69.** A Bill containing more consolidated provisions would also have provided an opportunity for the Senedd and stakeholders to scrutinise all aspects of legislation aimed at delivering the Welsh Government’s air quality policy objectives and accordingly enabled the Welsh Government to be held to account for its entire approach in this policy area.

**70.** We do not therefore share the Minister's view that the Bill as drafted is comprehensive.

**71.** We note that in the Agriculture Bill overview sections were used to improve the Bill’s accessibility where existing legislation is being amended. We are surprised that they have not been used in this Bill for that purpose. We also believe, in the absence of consolidation, that there would be merit in providing an overview section to explain the relationship between Chapter 1 of Part 1 of the Bill and provisions relating to air quality targets in Part IV of the 1995 Act.

**Conclusion 2.** We are unclear why Chapter 1 of Part 1 of the Bill is needed at this time given that regulations to be made under sections 1 and 2 may not be introduced until either late in the Sixth Senedd or early in the Seventh Senedd because of an absence of relevant data to inform the setting of targets.

**Conclusion 3.** The Bill could have been delayed and introduced later in the Sixth Senedd without impacting on the setting by regulations of air quality targets under the Bill.

**Conclusion 4.** The Minister has missed an opportunity to introduce an accessible Bill covering air quality, consistent with the Welsh Government's own objectives for improving the accessibility of Welsh law.

**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.

**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.

**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.

**72.** While we remain of the view that consolidated provisions should have appeared in the Bill on its introduction, through recommendation 3 we are attempting to address a less than ideal situation and improve the accessibility of Welsh law. Providing the proposed text of the amendments to relevant Committees by 31 August 2023 may enable more time for their review and consideration ahead of Stage 2 proceedings (should the general principles of the Bill be agreed to).

**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<sub>2.5</sub> in ambient air. If our understanding is incorrect, the Minister should explain why this is the case.

**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.

**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.

**73.** In seeking to ascertain the Minister’s intention regarding the setting of targets for air quality as a consequence of the Bill, the Minister appeared to suggest that existing targets derived from EU legislation and set out in The Air Quality Standards (Wales) Regulations 2010<sup>58</sup> are not realistically achievable. We draw the Minister’s comments to the attention of the Senedd, given the Minister’s decision not to consolidate legislation on air quality (including existing legislative provision on setting targets) and the purpose for which targets are being set (including to address the impact of poor air quality on health, the economy and nature).

### **The use of delegated powers**

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**74.** Sections 1 and 2 of the Bill provide regulation-making powers which are framework in nature, meaning that a lot of the policy detail will appear in subordinate legislation rather than on the face of the Bill. We have continually expressed concern at the use of such powers and to the taking of powers for the purpose of “futureproofing”.<sup>59</sup>

**75.** We are therefore concerned at the lack of policy detail on the face of the Bill in relation to sections 1 and 2. We comment specifically on these sections and the regulation-making powers they contain in chapter 4 of the report.

**76.** We also have concerns about the Welsh Ministers taking powers they do not intend to use “just in case” they are needed at some point in the future. This

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<sup>58</sup> S.I. 2010 / 1433 (W. 126)

<sup>59</sup> See for example, LJC Committee, [Report on the Welsh Tax Acts etc. \(Power to Modify\) Bill](#), April 2022; LJC Committee, [Annual Report 2021/22](#), October 2022, paragraph 18; LJC Committee, [Report on the Agriculture \(Wales\) Bill](#), January 2023

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applies to the power to be taken in section 19 of the Bill in relation to trunk road charging schemes and we comment on this specifically in chapter 4.

**77.** In the course of our evidence session the Minister made some remarks about the procedures attached to the making of subordinate legislation, which we have reproduced at paragraphs 47 to 48.

**78.** Facilitating policy changes through regulations that may be deemed technical can have potentially significant implications for citizens, public bodies and businesses. It is the responsibility of the Minister to ensure that those changes are explained clearly through an accompanying Explanatory Memorandum and also in circumstances when they are subject to debate and approval in the Senedd under the affirmative procedure. We believe it is important that Members are able to have the opportunity to comment on significant policy (including technical matters) contained in regulations that are subject to the affirmative procedure, particularly in circumstances where such matters may have been more appropriately included on the face of the Bill. We disagree with the Minister's remarks. We consider the Minister's remarks to be careless, as they do not show the level of respect to the Senedd and its Members, or to the role of scrutiny, that we would expect.

### **The use of a draft Bill**

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**79.** We note the Minister's comments regarding the need for a draft Bill and that consultation has been undertaken on a range of policy documents. We do however wish to highlight that consulting on policy proposals and principles is different from consulting a draft Bill. The latter offers an opportunity for pre-legislative scrutiny of how a government is intending to translate that policy intention into law and therefore to seek an early view from stakeholders on the government's approach.

**80.** We believe that it would have been possible to consult on a draft of the current Bill or a more coherent and accessible Bill, without impacting on the ability of the Minister to deliver her policy objectives, not least because of the planned likely timing of the subsequent regulations we consider above and in chapter 4.



## Implications of the REUL Act 2023

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**81.** We carried out detailed scrutiny of the Retained EU Law (Revocation and Reform) Bill (the REUL Bill, now the REUL Act 2023).<sup>60</sup> We reiterate our position that the REUL Act 2023 has significant implications for the Senedd.

**82.** Schedule 1 to the REUL Act 2023 lists retained EU law that will be revoked on 31 December 2023, including law on air quality.

**83.** Wales Environment Link have previously told us that retained EU law:

*“...includes some of the most important and powerful legislation we have to protect the environment and nature, such as the Habitats Regulations, air quality and water regulations and regulations on environmental assessment.”<sup>61</sup>*

**84.** We are aware that, during the final stages of the REUL Bill’s passage through the UK Parliament, amendments to secure non-regression of environmental standards were not agreed.

**85.** The Interim Environmental Protection Assessor for Wales (IEPAW) supported the inclusion of non-regression in its report on the REUL Bill, published prior to the insertion of Schedule 1 to the Bill.<sup>62</sup> In a letter responding to the IEPAW’s report the Minister said:

*“We agree that we do not wish to see the impact of the Bill result in a regression in environmental standards in Wales. It has been a long-standing commitment of Welsh Government to ensure environmental standards are maintained, enhanced and improved following the UK’s exit from the EU.*

*It is therefore not Welsh Government’s intention to allow REUL in devolved areas, including environmental law, to come to an*

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<sup>60</sup> The Bill received Royal Assent on 29 June 2023.

<sup>61</sup> [Letter to LJC Committee from Wales Environment Link](#), 18 November 2022

<sup>62</sup> IEPAW, [The Retained EU Law \(Revocation and Reform\) Bill, February 2023](#), paragraph 39

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*end or diminish existing or future standards unless there are very good reasons for this to take place.”<sup>63</sup>*

**86.** We note the view of Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd, in evidence to the Economy, Trade and Rural Affairs Committee on 21 June 2023, that a possible reduction in environmental standards was not a current issue for her.<sup>64</sup> This view was shared following the insertion of Schedule 1 to the REUL Bill.

**87.** On 7 July 2023, Mick Antoniw MS, the Counsel General and Minister for the Constitution informed us that in reviewing the retained EU law in Schedule 1, “the Welsh Government’s assessment is that there are no apparent problems for areas within devolved competence arising from the revocation of the instruments listed in the Schedule.” The Welsh Ministers are granted powers under section 1(4) of the REUL Act 2023 to exclude REUL from the Schedule, thereby saving it. These powers must be exercised by 31 October 2023. However, the Counsel General said that the Welsh Government did “not currently see the need for the exercise of such powers and have no current plans to use them”.<sup>65</sup>

**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.

**88.** We note that the REUL Act 2023 grants broad Ministerial powers to make significant changes to retained EU law outside of Schedule 1, including as it relates to the matters dealt with in this Bill.

**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.

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<sup>63</sup> [Letter from the Minister to the IEPAW](#), 12 May 2023

<sup>64</sup> [Economy, Trade and Rural Affairs Committee](#), 21 June 2023, RoP [300]

<sup>65</sup> [Letter from the Counsel General and Minister for the Constitution](#), 7 July 2023

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**89.** We note that the definition of primary legislation in the Bill includes “retained direct EU legislation” (RDEUL).<sup>66</sup> Section 9 of the REUL Act removes the special status of RDEUL so that it is no longer treated as equivalent to primary legislation and is instead amendable by ordinary powers to amend secondary legislation. In our view the inclusion of RDEUL in this Bill’s definition of primary legislation could cause confusion for this reason.

**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*.

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<sup>66</sup> Environment (Air Quality and Soundscapes) (Wales) Bill, as introduced, section 26(7)(d)

## 4. Specific observations on powers to make subordinate legislation

**90.** The Bill comprises 28 sections and 2 Schedules. It is split into 3 Parts:

- Part 1 - Air Quality
- Part 2 - Soundscapes
- Part 3 - General

**91.** There are 19 provisions in the Bill containing powers for the Welsh Ministers to make regulations and orders and to issue guidance and directions.<sup>67</sup> Of these 19 powers:

- ten powers will be subject to the affirmative resolution procedure,
- three powers are subject to the negative resolution procedure,
- one power will be subject to either the affirmative or negative procedure depending on whether the power is used to amend primary legislation, and
- five powers are subject to no procedure.

**92.** Our consideration below focuses on specific sections and regulation-making powers within those sections that we wish to highlight and, accordingly, draw to the attention of the Senedd.

### Part 1 - Air quality

#### Chapter 1 - National Targets

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**93.** Chapter 1 sets out the legislative framework for setting, reviewing and reporting on national air quality targets to be set under the Bill. The framework will sit alongside existing legislation in this area, such as Part IV of the 1995 Act.

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<sup>67</sup> These powers are summarised in tables 5.1 and 5.2 of the EM (pages 60 to 69)

## Background to sections 1 to 7

**94.** Section 1 (Air quality targets: general) gives the Welsh Ministers powers to make regulations that set long-term targets in respect of any matter relating to air quality in Wales. A target set under these regulations must specify a standard to be achieved, which must be capable of being objectively measured and a date for achieving it.

**95.** Section 2 (Air quality targets: particulate matter) imposes a duty on the Welsh Ministers to set at least one target, in regulations, in respect of the annual mean level of PM<sub>2.5</sub><sup>68</sup> in ambient air in Wales. Regulations may set long-term targets (but they do not have to be long-term) and may define “ambient air.”

**96.** Regulations under sections 1 and 2 are subject to the draft affirmative procedure because for each section “the principal substance ... (i.e. the target level) is contained in the regulations.”<sup>69</sup>

**97.** Section 3 (Target setting process) sets out the process the Welsh Ministers must follow before setting, amending or revoking a long-term air quality target under section 1, and before setting or amending a PM<sub>2.5</sub> target under section 2.

**98.** Section 4 (Effect of targets) places a duty on the Welsh Ministers to ensure that targets under sections 1 and 2 are met. It also states that nothing in Chapter 1 affects the Welsh Ministers power under section 87 of the 1995 Act to make regulations for the assessment or management of air quality.

**99.** Section 5 (Reporting on targets) sets out the reporting duties placed on the Welsh Ministers in relation to targets set under sections 1 and 2. It also states that regulations made under sections 1 and 2 must specify a reporting date for targets.

**100.** Section 6 (Review of targets) places a duty on the Welsh Ministers to review targets under sections 1 and 2, seeking advice from independent experts and having regard to scientific knowledge about air pollution.

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<sup>68</sup> Section 2(3) of the Bill states that PM<sub>2.5</sub> means particulate matter with an aerodynamic diameter not exceeding 2.5 micrometres.

<sup>69</sup> EM, Chapter 5, page 65

**101.** Section 7 (Monitoring progress towards meeting targets) requires the Welsh Ministers to make arrangements for obtaining such data about air quality in Wales as they consider appropriate to monitor progress towards meeting targets under sections 1 and 2, and they must then publish that data.

### **Evidence on sections 1 to 7**

**102.** We explored the issue of air quality targets with the Minister, both in general and specifically in terms of the sections as drafted.

#### *General*

**103.** The Minister told us that:

*“What I desperately don't want to do is to put targets in place that are just not achievable (...) what we want is to have stretching but achievable targets that can be moved downwards, or indeed upwards, if you're looking at pure air, commensurate with the data, that allows the Government to be able to hold its own feet to the fire.”<sup>70</sup>*

**104.** She also said “I would say that you want a rigorous scrutiny process for the regulations to make sure that those targets remain stretching but implementable.”<sup>71</sup>

**105.** The Minister did not think the power to make regulations setting air quality targets was too broad. In so doing, she cited the need for “some futureproofing” and the lack of enough data, saying:

*“...I don't want to set a target only to discover, when we get the data in, that, actually, it's meaningless.*

*So, it's about trying to calibrate futureproofing, near-futureproofing, with data collection, so that we have these stretching targets, because what we all want is for us to get pollutants out of the air as fast as is possible and practicable.”<sup>72</sup>*

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<sup>70</sup> LJC Committee, 15 May 2023, RoP [23]

<sup>71</sup> LJC Committee, 15 May 2023, RoP [23]

<sup>72</sup> LJC Committee, 15 May 2023, RoP [25 to 26]

**106.** Chapter 3 has already considered the Minister’s approach to the use of regulation-making powers in sections 1 and 2 of the Bill in the context of the balance between what is on the face of the Bill and what is left to subordinate legislation. That evidence is also relevant here.

**107.** We asked the Minister specifically about fixing World Health Organization (WHO) guidelines on the face of the Bill. The Minister said she would prefer to see them in regulations,<sup>73</sup> adding:

*“...we might want to go further in some respects than the WHO guidelines, because, here in Wales, once we’ve got the data, we may be able to go further. So, I wouldn’t want to be slavishly adhered to, what is, after all, a world-wide kind of standard. I have to say, at this point, I wouldn’t want to be seen to be not adhering to it, but I kind of feel we might be able to do better.”<sup>74</sup>*

**108.** When we pressed the Minister about putting WHO guidelines onto the face of the Bill and then having the ability to amend them subsequently by regulations, the Minister said:

*“...we couldn’t achieve them. So, you would be doing exactly as I said at the beginning: you’d be putting unachievable targets onto the face of a Bill...”<sup>75</sup>*

**109.** The Minister also told us in her letter of 15 June 2023:

*“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.”<sup>76</sup>*

**110.** We explored the issue of consulting on the regulations with the Minister. The Minister explained her position,<sup>77</sup> noting that:

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<sup>73</sup> LJC Committee, 15 May 2023, RoP [29 to 30]

<sup>74</sup> LJC Committee, 15 May 2023, RoP [32]

<sup>75</sup> LJC Committee, 15 May 2023, RoP [89]

<sup>76</sup> Letter from the Minister for Climate Change, 15 June 2023, response to question 3

<sup>77</sup> LJC Committee, 15 May 2023, RoP [61 to 67]

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*“...we've got to consult about the plan, we've got to consult about the data, we've got to publish it all. What would you do with a Government who had consulted absolutely everything, and everybody had come back, and said, 'Absolutely, you should regulate', and then they don't?”<sup>78</sup>*

**111.** Subsequently, the Minister told us:

*“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.”<sup>79</sup>*

**112.** The Minister also said she would be:

*“...quite happy to discuss with the committee (...) whether you want some kind of superaffirmative procedure and, if you did, what would that look like, because, as you know, there are several options in that.”<sup>80</sup>*

**113.** In terms of when the target-setting would take place, the Minister told us:

*“We say within three years, and that's based on how long we think it will take us to get a robust set of data. I'd be really reluctant to shorten that, because I don't want to cut corners on the data collection. Three years from where we sit now is quite difficult politically, because I'd quite like to do it before the end of the Senedd term, but at the same time I'd quite like to get it right”.<sup>81</sup>*

**114.** We also considered specific issues in relation to Chapter 1 of the Bill.

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<sup>78</sup> LJC Committee, 15 May 2023, RoP [65]

<sup>79</sup> Letter from the Minister for Climate Change, 25 May 2023, response to question 11

<sup>80</sup> LJC Committee, 15 May 2023, RoP [67]

<sup>81</sup> LJC Committee, 15 May 2023, RoP [69]



### *Section 1 – Air quality targets: general*

**115.** We asked the Minister to explain why the Welsh Ministers need such a broad regulation-making power to set long-term targets in respect of any matter relating to air quality in Wales.

**116.** The Minister responded:

*“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.”<sup>82</sup>*

**117.** In order to understand how the regulation-making power in section 1 could be used, we asked if there were any matters in the Clean Air Plan for Wales that would not be covered by the regulation-making power and what matters, if any, outside of the Plan could be addressed by the regulation-making power. We also asked if there were any industries, bodies or premises that could not be subject to regulations made under section 1 and if such regulations could be used to control matters related to air quality such as, for example, public nuisance or odours. In response, the Minister said:

*“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*

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<sup>82</sup> Letter from the Minister for Climate Change, 15 June, response to question 7

*quality targets is to reduce the harm caused by exposure to poor air quality to human health, nature and the environment.*

*(...)*

*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 (...) 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.”<sup>83</sup>*

**118.** The power to bring targets forward under section 1 is discretionary. When we asked why the Minister was not under a duty to bring targets forward, the Minister said she would “be prepared to look at that (...) but it’s the timescale that you’d then need to look at”<sup>84</sup>.

**119.** In our letter of 25 May 2023, we asked when regulations under section 1 will first be laid and why is there no end period by which the first set of regulations

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<sup>83</sup> Letter from the Minister for Climate Change, 25 May 2023, response to question 10

<sup>84</sup> LJC Committee, 15 May 2023, RoP [94 to 97]

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must be laid (as there is for regulations under section 2). The Minister's response did not address this question directly.

**120.** We also asked the Minister why there is no definition of air quality on the face of the Bill. In noting that air quality is not defined in the 1995 Act or the *Environment Act 2021* (the 2021 Act), the Minister said that "The expression is intended to have its ordinary meaning and so a definition is not required."<sup>85</sup> When we asked what the Minister understands that ordinary meaning to be, she said:

*"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."*<sup>86</sup>

### **Section 2 – Air quality targets: particulate matter**

**121.** Section 2(1) of the Bill requires a target to be set in respect of the annual mean level of PM<sub>2.5</sub> in ambient air in Wales. By virtue of section 3(8), regulations setting a target under section 2(1) must be laid in draft before the Senedd and within three years of receiving Royal Assent. We asked if the Minister would be disappointed if we had to wait until the seventh Senedd to have those targets in place. In response the Minister said:

*"I would (...) it's been explained to me a lot why the three years is necessary. It takes us a while to get the data stations in place, it takes the data a while to come in, it takes a while for them to be analysed. The three years is part of the discussion we've had. I'd like to do it this Senedd term, right? So, the three years makes that kind of possible, but I also don't want to do it in circumstances where we're basically just making it up, because we don't have any of the right data."*<sup>87</sup>

**122.** Section 2(4) of the Bill states that regulations setting a PM<sub>2.5</sub> air quality target may make provision defining "ambient air". We asked the Minister why

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<sup>85</sup> Letter from the Minister for Climate Change, 25 May 2023, response to question 8

<sup>86</sup> Letter from the Minister for Climate Change, 25 May 2023, response to question 9

<sup>87</sup> LJC Committee, 15 May 2023, RoP [109]

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this term is to be defined in regulations rather than appearing on the face of the Bill. The Minister responded:

*“...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.”<sup>88</sup>*

### **Section 7 – Monitoring progress towards meeting targets**

**123.** In her evidence the Minister made a number of references to the duty to collect data. For example, she told us:

*“...we’re trying to get the best of all possible worlds in this Bill to put a duty on us to do the data collection, and to do it within a time frame that might get us into this Senedd term, but frankly doesn’t cut so many corners that we end up with a set of regulations that aren’t what we’d like them to be.”<sup>89</sup>*

**124.** As we have noted earlier, collecting data is considered important in the context of setting air quality targets under the Bill.

**125.** During her appearance before the CCEI Committee, the Minister said that “we don’t have great data for Wales”.<sup>90</sup> When we asked why this was the case, the Minister explained that data has not been collected “at the Wales scale in the way that we want, and we also collect it in slightly acute places rather than general ones.”<sup>91</sup> An official accompanying the Minister explained that “The network is primarily operated at a UK level through the Department for Environment Food and Rural Affairs and the Environment Agency, and then you’ve also got the local authorities, which do their own monitoring for specific

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<sup>88</sup> Letter from the Minister for Climate Change, 15 June 2023, response to question 12

<sup>89</sup> LJC Committee, 15 May 2023, RoP [69]. Also for example, LJC Committee, 15 May 2023, RoP [22 and 61]

<sup>90</sup> [Climate Change, Environment and Infrastructure Committee](#), 29 March 2023, RoP [38]

<sup>91</sup> LJC Committee, 15 May 2023, RoP [73]

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purposes as well.”<sup>92</sup> The Minister also provided information about some of the existing arrangements for air quality monitoring in Wales.<sup>93</sup>

**126.** In the EM (in a section on promoting awareness under section 8 of the Bill), the Minister states that the Welsh Government will be developing a delivery plan with stakeholders which could cover improving air quality data.<sup>94</sup> We asked the Minister what delivery plans were being referred to and their statutory basis. In response the Minister said:

*“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.”<sup>95</sup>*

## **Our view**

**127.** We have already commented in chapter 3 of this report about the framework nature of the powers in sections 1 and 2.

**128.** We acknowledge that placing targets on the face of the Bill in the absence of data to inform their preparation is likely to be counterproductive.

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<sup>92</sup> LJC Committee, 15 May 2023, RoP [76]

<sup>93</sup> Letter from the Minister for Climate Change, 15 June 2023, response to question 13

<sup>94</sup> Explanatory Memorandum, paragraph 3.82

<sup>95</sup> Letter from the Minister for Climate Change, 15 June 2023, response to question 13

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**129.** However, as a matter of principle and if data is available, it would be perfectly reasonable to place targets on the face of the Bill and to permit them to be amended following review by means of regulations subject to the affirmative procedure. Targets do not need to be placed in regulations to enable them to be amended and kept up-to-date.

**130.** In addition, we note that placing targets on the face of the Bill would have the advantage of having the accompanying policy underpinning the targets on the face of the Bill as well.

**131.** In our questioning on the regulation-making power under section 1, we sought to understand how the power could be used - a key issue for this Committee. This is because, as drafted, the power is drawn exceptionally broadly given that regulations could be made “on any matter relating to air quality in Wales” and there are seemingly no limitations on what those matters could be.

**132.** We did not find the Minister’s response to our questioning on this issue to be particularly satisfactory. She explained that targets will not be applied to specific industries, bodies or premises, noting that actions will be taken outside of the regulations. However, the Minister did not specify what those actions would be and how they will be taken forward. The Minister also noted that the power under section 1 was not developed to control matters related to public nuisance and odour, but did not state categorically that they could not be used for that purpose by setting appropriate targets.

**133.** We believe that the regulation-making power in section 1 is far too broad. Section 1 lacks policy detail and the specific way in which the Minister intends to use the powers are unclear and imprecise. As a result, too much discretion is left to the Welsh Ministers. We believe section 1 would therefore benefit from including detail about the policy and principles underpinning the setting of targets by regulations under section 1 and the actions the Minister intends to follow in order to achieve the targets that will be set.

**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.

**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.

**134.** We note the reasons put forward by the Minister for not including a definition of air quality on the face of the Bill and her response to our question about the ordinary meaning of air quality.

**135.** We believe that the Minister should be under a duty to make regulations under section 1 and that a draft of the regulations must be laid before the Senedd within 3 years of the Act receiving Royal Assent, as is the case for regulations to be made under section 2. If a 3-year period is needed in order to obtain data to set targets under section 2, we see no reason why it should not apply to regulations to be made under section 1.

**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.

**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.

**136.** As with section 1 of the Bill, we believe it is important that the Minister explains the actions she intends to follow in order to achieve targets that will be set under section 2.

**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.

**137.** The Minister told us that definition of ambient air is to be left to regulations (rather than placed on the face of the Bill) to enable the Welsh Ministers to have

sufficient flexibility to set an appropriate target or targets. However, this response did not address the question we asked, not least because it is unclear why that same flexibility could not apply if the definition was on the face of the Bill.

**138.** We note that the Minister told us it is “necessary to define what is meant by “ambient air”” given that section 2 is creating a very specific type of target.

**139.** We also note that regulation 2 of The Air Quality Standards (Wales) Regulations 2010 defines ambient air and has not been amended since 2010.

**Recommendation 17.** The Minister should state whether or not the definition of ambient air is likely to change over time.

**Recommendation 18.** The Minister should table an amendment to section 2 of the Bill to include a definition of ambient air.

**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.

**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.

**140.** We note that regulations under sections 1 and 2 are subject to the affirmative procedure. However, given the lack of detail on the face of the Bill and the importance of the targets for delivering improvements in air quality, we believe they should be subject a super-affirmative procedure.

**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.

**141.** Section 12 of the Bill updates section 87(7) of the 1995 Act. Section 87(7) prescribes whom must be consulted when the Welsh Ministers make regulations for the purposes of Part IV of that Act. The Minister states in the EM that:



*“Section 87(7) has remained largely unchanged since the Environment Act 1995 received Royal Assent, almost 28 years ago. It is no longer reflective of best practice in relation to consultation. For example, it does not require the public to be consulted about regulations made under Part IV.”<sup>96</sup>*

**142.** If the Minister does not accept our recommendation to apply a super-affirmative procedure to the making of regulations under sections 1 and 2, we believe a duty to consult on regulations under these sections should be placed on the face of the Bill. It would be inconsistent for a duty to consult to apply to regulations setting targets under section 87 of the 1995 Act but not for regulations setting targets under sections 1 and 2 of the Bill. This also highlights, quite starkly, why we believe the decision not to consolidate Part IV of the 1995 Act is misplaced.

**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 consult in line with section 87(7) of the 1995 Act as amended by section 12 of the Bill.

**143.** The Minister has made it clear that data is integral to the successful delivery of the policy objectives linked to the Bill.

**144.** The Minister's evidence indicates that data is needed to set targets. However, the Bill does not reflect this position. Section 7 requires arrangements to be made to obtain data for the purpose of monitoring targets rather than setting them.

**145.** In addition there is no duty to publish details of the arrangements for obtaining data, which we believe to be particularly important given the Minister's admission that “we don't have great data for Wales”.

**146.** We therefore believe that the Bill should be strengthened, as a means of improving transparency and enabling the Welsh Government and future governments to be held to account for how data is collected given its importance to delivering the policy objectives linked to the Bill.

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<sup>96</sup> EM, paragraph 3.114

**Recommendation 23.** The Minister should table an amendment to the Bill to require the collection of data for the purpose of setting targets.

**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.

## **Chapter 2 - Other provision**

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**147.** Chapter 2 makes provision around promoting awareness about air pollution (section 8), the national air quality strategy (sections 9 to 11), local authority air quality management (sections 13 to 14), smoke control (sections 16 to 18) and vehicle emissions (sections 19 to 21). Schedule 1 to the Bill makes amendments to the 1993 Act in consequence of the provision made by that Part. Schedule 2 to the Bill makes provision for and in connection with the trunk road charging scheme provisions.

### **Section 8 - Promoting awareness about air pollution**

**148.** Section 8 places a duty on the Welsh Ministers to take steps to promote awareness in Wales about the risks to human health and the natural environment caused by air pollution, and ways to reduce or limit air pollution.

**149.** As we have already highlighted in paragraph 126 above, the Minister told us:

*“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.”<sup>97</sup>*

### **Our view**

**150.** As drafted, section 8 states that the Welsh Ministers must take steps to promote awareness about air pollution in Wales. However, we believe that section 8 should place a greater emphasis on promoting awareness about the benefits of clean air. We believe this is more likely to drive behaviour change,

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<sup>97</sup> Letter from the Minister for Climate Change, 15 June 2023, response to question 13

frame the policy approach in a more positive and engaging way, and mean that the legislation is more likely to lead to positive outcomes.

**151.** We also regard the current duty in section 8 to be passive because there is no detail in the Bill as to how, when and what actions are to be taken to promote awareness. As a result there is nothing to measure or assess the Welsh Government in the future to ensure that they are held accountable to this duty.

**152.** We note from the Minister that the Welsh Minister's duty to promote awareness is to be discharged by means of a delivery plan. We also note that there is no statutory requirement to produce a delivery plan.

**153.** We believe that section 8 of the Bill could be strengthened by requiring the Welsh Ministers to prepare an appropriate delivery plan to promote awareness and for the Welsh Ministers to report on a periodic basis to demonstrate their progress in promoting awareness.

**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.

**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.

**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.

### **Sections 9 to 11 - National air quality strategy**

**154.** Section 9 (Power to change review period for strategy) inserts a new subsection (8) into section 80 (National air quality strategy) of the 1995 Act. This gives the Welsh Ministers a new regulation-making power to amend the review period for the national air quality strategy. Any such regulations will be subject to

the affirmative resolution procedure because they enable the Welsh Ministers to amend primary legislation, namely the 1995 Act.<sup>98</sup>

**155.** Section 10 (Consultation on review of strategy) provides that when reviewing the national air quality strategy the Welsh Ministers must consult with Natural Resources Wales, every local authority in Wales, Public Health Wales, every Local Health Board in Wales, and the public.

**156.** Section 11 (Duty to have a regard to strategy) inserts a new section 81B (Functions of relevant Welsh public authorities etc.) into the 1995 Act. Section 81B(1) requires Welsh local authorities and relevant Welsh public authorities to have regard to the national air quality strategy when exercising any function of a public nature that could affect the quality of air in Wales. Under subsections (2) and (3) of Section 81B, a person is a “relevant Welsh public authority” if they have been designated as such by regulations made by the Welsh Ministers. Before making regulations under section 81B(3), the Welsh Ministers must consult the person who is proposed to be designated as a “relevant Welsh public authority” and other such persons as the Welsh Ministers consider appropriate. Regulations are subject to the draft affirmative procedure because “if exercised” they “would place relevant Welsh Public Authorities that are designated under a significant legal duty.”<sup>99</sup>

**157.** Section 11(3) amends section 88 of the 1995 Act to give the Welsh Ministers the power to issue guidance to relevant Welsh public authorities which in turn they must have regard to.

**158.** We looked at the issue of accessibility and consolidation specifically in the context of the Bill’s provisions about the national air strategy. Sections 9 and 10 of the Bill amend section 80 of the 1995 Act as described above. Although section 80 has been amended by the 2021 Act to remove references to Great Britain, section 80(1) still states:

*“The Secretary of State shall as soon as possible prepare and publish a statement (in this Part referred to as “the strategy”)*

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<sup>98</sup> EM, Chapter 5, page 66

<sup>99</sup> EM, Chapter 5, page 67

*containing policies with respect to the assessment or management of the quality of air.”*

**159.** The functions of the Secretary of State were transferred to the Welsh Ministers via The National Assembly for Wales (Transfer of Functions) Order 1999<sup>100</sup>. There are no footnotes or references on the face of the legislation to reference the transfer of functions. Also, the EM does not state how the Welsh Ministers have the power under section 80 to prepare and publish a national air strategy. There is no explanation as to how it is the responsibility of the Welsh Ministers rather than the responsibility of the Secretary of State (which in the absence of such an explanation would require detailed legal analysis by a lay person).

**160.** We asked the Minister why the Bill does not amend section 80(1) of the 1995 Act to make it absolutely clear that the Welsh Ministers are under a duty to prepare and publish a national air strategy. In response the Minister said:

*“...as I understand it, in the 1995 Act, there's a duty to prepare a strategy. That's predating devolution. So, that clearly wasn't the Welsh Ministers, because there was no such entity. That's what it is. It's to prepare 'the strategy', 'a strategy'. So, there's no point in amending it to 'the Welsh Ministers'. It's done. It was done, there was a duty for someone to do it. Whoever was under that duty— the Secretary of State for Wales, presumably, or somebody— did it. Done. End of. So, there's no point in amending it backwards to say it should be the Welsh Ministers who didn't exist at the time (...)*

*And then there have been recent amendments made in England under the Environment Act 2021, and they are all based on the assumption of a single strategy as well. So, it's quite a complicated set of things here.”<sup>101</sup>*

**161.** An official accompanying the Minister said:

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<sup>100</sup> S.I. 1999 / 672

<sup>101</sup> LJC Committee, 15 May 2023, RoP [42 to 43]

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*“...the drafting refers to the strategy in section 80 and throughout Part 4 of the Environment Act. What we're seeking to achieve here is to create a power for the Welsh Ministers to amend that period of review, to do that relatively discrete change, and then also to make the amendments you talked about. To put it on the face of the legislation— wherever it refers to the 'Secretary of State', to change that to the 'Welsh Ministers'— would've been a very complicated set of amendments throughout the Environment Act, because there are a lot of functions of the Secretary of State in that Act that have now, through an admittedly complicated but a very well-trodden route, transferred to the Welsh Ministers. As the Minister said, it wasn't something we felt was necessary, as the Welsh Ministers do have those functions, albeit not on the face of that particular piece of legislation. But also it would've gone beyond what we were seeking to achieve with our amendments.”<sup>102</sup>*

## **Our view**

**162.** We have highlighted the missed opportunity of not consolidating provisions in Part IV of the 1995 Act into this Bill and have made a recommendation asking the Minister to consider tabling amendments to address that position.

**163.** Sections 9 to 11 of the Bill are a clear example of why we believe consolidation is necessary. It is not possible to discern from reading these provisions what the Minister is seeking to fully achieve, particularly as section 80 of the 1995 Act still makes reference to the Secretary of State.

**164.** In our view, the Minister should have taken the opportunity to provide certainty and clarity to stakeholders and end-users by using the Bill to set out that the Welsh Ministers have the power to create a national air quality strategy; consolidation could have flowed from re-stating that key principle. While this approach may not have been absolutely necessary in drafting terms to achieve the desired change, it would nevertheless have been of benefit to stakeholders and end-users of the legislation, mitigating the need to trawl through different

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<sup>102</sup> LJC Committee, 15 May 2023, RoP [44]

pieces of primary and subordinate legislation to fully understand section 80 of the 1995 Act.

**165.** We are therefore unconvinced by the arguments advanced for taking the approach in the Bill and believe that the accessibility of the legislation should have been the driver, rather than ease of drafting. We believe that it should be possible for any concerns about the fact that a national air strategy already exists to be overcome by an appropriate consolidation of section 80 of the 1995 Act.

**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.

### **Section 16 - Regulation of smoke and fuel in smoke control areas**

**166.** Section 16(2) inserts new sections 19E- 19H into Part 3 of the 1993 Act. Section 18 of the 1993 Act enables a local authority to make a smoke control order declaring the whole or any part of its area a smoke control area. Under section 19 of the 1993 Act, the Welsh Ministers can, in certain circumstances, direct a local authority in Wales to exercise its powers to create a smoke control area.

**167.** New section 19E of the 1993 Act applies Schedule 1A to the 1993 Act to Wales so that the unauthorised emission of smoke in a smoke control area attracts a civil penalty. Part 1 of Schedule 1 to the Bill makes further amendments to Schedule 1A to the 1993 Act for that purpose. The criminal offences in section 20 of the 1993 Act are repealed in relation to Wales by paragraph 10 of Schedule 1 to the Bill.

**168.** Section 19H(1) gives the Welsh Ministers the power by regulations to suspend or relax Schedule 1A of the 1993 Act (penalty for emission of smoke) or section 19F(1) (offences relating to the acquisition and sale of fuel). The EM states that:

*“It is appropriate for this power to be included in Regulations as the Welsh Ministers need to retain discretion over whether or*

*not to make such provision. Only doing so where it appears to them to be necessary or expedient to do so.*<sup>103</sup>

**169.** The power to make regulations is subject to the negative procedure. The Minister states that this is because the procedure is “governed by section 63 of the Clean Air Act.”<sup>104</sup>

**170.** The Minister also states in the EM:

*“We have not mandated the application of smoke control orders, our existing powers to instruct local authorities to create a smoke control area remain unaffected. Instead, we will develop statutory guidance to support local authorities in implementing their new powers and they will be able to consider the role of smoke control areas when managing their local air quality.”*<sup>105</sup>

**171.** We asked the Minister why she has chosen this approach. She said:

*“We already have a power to direct a local authority to create a smoke control area, if necessary, so we already have an existing power under the Clean Air Act 1993, as I understand it. If we mandated them, then all kinds of other issues then follow. If you mandate a smoke control area, then anyone living in that area might have individual costs that are quite substantial placed on them to retrofit home appliances and all the rest of it. We'd have to put a specific consultation out about the individual effect of that. We talked about human rights earlier on; we would certainly be straying into that area. We're in a cost-of-living crisis (...) We want to encourage and work with our local authorities to do the monitoring necessary and do the work locally necessary to educate people about the effect of what they're doing, rather than mandate something and then force people to do it. We always take that approach. There are four smoke control areas already in Wales, as I'm sure you know. We're changing the way*

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<sup>103</sup> EM, Chapter 5, page 68

<sup>104</sup> EM, Chapter 5, page 68

<sup>105</sup> EM, paragraph 4.22



*that we enable a local authority to enforce those, because they've been largely unenforced.*<sup>106</sup>

## **Our view**

**172.** We note the Minister's comments in respect of section 16 of the Bill.

**173.** We are content with the negative procedure in respect of the regulation-making power in section 16(2). However, we note that the justification for the use of the power is that it is governed by the procedure in section 63 of the 1993 Act. When justifying the use of a particular procedure the Welsh Government should address the nature of the power being taken, rather than relying on the existing procedure for an equivalent or similar power in an existing Act.

## **Sections 19 to 21 - Vehicle Emissions**

**174.** Section 167 of the *Transport Act 2000* (the 2000 Act) sets out the circumstances in which the Welsh Ministers may make an Order under section 168 of the 2000 Act for a trunk road charging scheme.

**175.** Section 19 (Trunk road charging schemes) extends the Welsh Ministers' powers to make an Order for a trunk road charging scheme in Wales, to enable the making of schemes for the purpose of reducing or limiting air pollution in the vicinity of that road. The Welsh Minister's existing power to make a trunk road charging scheme is currently restricted by section 167(2) of the 2000 Act to circumstances where the road on which it is proposed to institute the charging scheme is carried by a bridge, or passes through a tunnel (of at least 600m in length), or where the creation of a combined charging scheme is requested by certain other traffic authorities.

**176.** The Order making power is subject to no procedure. In the EM the Minister states that this procedure is "governed by existing provisions in the Transport Act 2000 (section 169)."<sup>107</sup>

**177.** Section 20 (Further provision relating to trunk road charging schemes) introduces Schedule 2 to the Bill, which makes provision for and in connection

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<sup>106</sup> LJC Committee, 15 May 2023, RoP [14.5]

<sup>107</sup> EM, Chapter 5, page 68

with the application of the net proceeds of trunk road charging schemes made for the purposes of reducing or limiting air pollution.

**178.** Schedule 2, paragraph 6 includes a regulation-making power related to trunk road charging schemes and is subject to the affirmative procedure because it amends primary legislation.<sup>108</sup>

**179.** Section 21 amends section 87(2) of the 1995 Act to enable regulations to be made setting a monetary range of penalties for the offence of stationary idling. The Welsh Ministers already have the power under section 87(2) to make regulations that stipulate a penalty of a prescribed amount. The regulations are subject to the affirmative procedure because “regulations made under section 87 are subject to the affirmative procedure.”<sup>109</sup>

**180.** The Minister states in the EM that there are currently no plans to introduce trunk road charging schemes on Welsh roads.<sup>110</sup> When questioned on this point by the CCEI Committee, the Minister said:

*“I know it does seem counterintuitive that we're taking powers to do something we're not planning to do. But it's because we want to futureproof this Bill; we don't want to have to come back with more primary legislation in circumstances where, actually, we haven't been successful in reducing airborne pollutants as a result of vehicle emissions by the other measures that we're taking forward.”<sup>111</sup>*

**181.** We asked the Minister why she did not leave it for a future government to bring forward their own legislation, taking account of all recent scientific developments and improved data, and which would allow further scrutiny of any of those charges any future government wants to implement. The Minister indicated that a combination of measures including technology and encouraging changes in behaviour might mean a scheme is not necessary, before adding:

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<sup>108</sup> EM, Chapter 5, page 72

<sup>109</sup> EM, Chapter 5, page 69

<sup>110</sup> EM, paragraph 3.177

<sup>111</sup> CCEI Committee, 29 March 2023, RoP [150]

*“But, if that's not successful, then we may need to do it, and I don't think leaving it to a future Bill is the right thing to do at all. It might come to the fact that we need to do it sooner rather than later.*

*So, I'm a big believer in social change taking time and education, not legislation, but I don't think leaving it a hostage to fortune because we haven't been able to do it is the right path either. I know it's an unusual thing for a Minister to say, 'I want this power, and I have no intention of using it,' but I have no intention of using it right now, I suppose.”<sup>112</sup>*

**182.** We noted that any trunk road charging scheme will have a number of different objectives in addition to those related to air quality and so we questioned whether the Minister was taking all the powers the Welsh Government needed to introduce a serious road charging scheme. The Minister responded by saying:

*“...road charging schemes for other purposes— and a whole series of other purposes, actually— are something that we may well consider in the future, but this is a kind of 'right now' issue, really, and if a government brings forward a more general road charging scheme, for the purposes of raising the money to build it, for example, then I would expect that Bill to take it into account.”<sup>113</sup>*

**183.** The Minister also told us that the Welsh Government was coming from a narrower position,<sup>114</sup> before adding:

*“We don't have right this second any intention of introducing one, but we know of two places in Wales where there could well be an intention to make one in the next three to five years. (...).*

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<sup>112</sup> LJC Committee, 15 May 2023, RoP [123 to 124]

<sup>113</sup> LJC Committee, 15 May 2023, RoP [132 and 135]

<sup>114</sup> LJC Committee, 15 May 2023, RoP [137]

*... it would be irresponsible not to take the powers to do it if that is the only way that we can get the air quality to improve. That's the truth of it.*<sup>115</sup>

**184.** We also noted that there is currently no requirement in the Bill for the Welsh Ministers to consult on introducing road charges and raised this as an issue with the Minister. The Minister told us:

*“What we didn't want to do is have another list of consultation issues in this Bill that would be rapidly outdated. I don't know if the committee's aware, but we're always having to add people in to consultations because they didn't exist at the time, and all the rest of it. So, we have an overarching duty as a Welsh Government to consult on things that affect members of the Welsh public, and also, if we put a road charging scheme in place, the scheme itself would be consulted on, so I don't see that the Bill needs to do that, myself.”*<sup>116</sup>

## **Our view**

**185.** We note the Minister's comments suggesting that she currently has no intention of using the powers she is taking in respect of making trunk road charging schemes. As a matter of principle, we do not believe it is appropriate for the Welsh Ministers to take powers “just in case” they may be needed in the future, particularly when the policy may be more appropriate for primary legislation. Using a Bill at a later date would also have enabled the development of a more comprehensive, all-encompassing and accessible policy on trunk road charging schemes.

**186.** Notwithstanding our concerns that it is inappropriate for the Minister to take powers she is not intending to use, we note that there are currently no provisions in the Bill requiring the Minister to consult on introducing trunk road charging schemes. We also note the Minister's views as set out in paragraph 184 above. However, we contrast these with her comments in the EM (see paragraph

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<sup>115</sup> LJC Committee, 15 May 2023, RoP [125 and 128]

<sup>116</sup> LJC Committee, 15 May 2023, RoP [139]

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141 above) and section 12 of the Bill, which amends the 1995 Act to make consultation provisions in that Bill more reflective of best practice.

**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.

**187.** We are content with the procedures attached to the making of subordinate legislation in sections 19 and 21, and Schedule 2.

**188.** However, in respect of sections 19 and 21, we re-iterate the view we expressed above, that when justifying the use of a particular procedure, the Welsh Government should address the nature of the power being taken, rather than relying on the procedure adopted for an equivalent or similar power in an existing Act.

**189.** The entries in Chapter 5 of the EM for the regulation-making powers in section 21 and paragraph 6 of Schedule 2 lacked accuracy. As a general point, in our view greater care should have been taken in preparing these entries, drawing if necessary on the Explanatory Notes to the Bill.

## **Part 2 – Soundscapes**

**190.** Section 22(1) of the Bill places a duty on the Welsh Ministers to prepare and publish a national strategy containing their policies in relation to the assessment and management of soundscapes in Wales.

**191.** We asked why there is no definition of soundscapes on the face of the Bill. The Minister responded:

*“...this isn't a stand-alone Bill; it has to be read in conjunction with other things. 'Soundscape' is formally defined in 'Planning Policy Wales', and there's been a recent consultation draft of technical advice note 11, which I'm sure the committee has spotted. So, that has a consultation draft that is the British and international standard definition, so 'the acoustic or sound environment as perceived or experienced or understood by a person or people in the context they are'. That's the definition,*

*because it's the definition in other parts of Welsh Government documentation".<sup>117</sup>*

**192.** She also said:

*"If you put too precise a definition on the face of the Bill, only to find that it's changed in the next four years, because this is definitely a moveable feast here, then we would have a real problem. Whereas, if it's contained in the TANs, and in 'Planning Policy Wales', you have a very good way of updating it on a very regular basis, as the TANs are, as you know, subject to periodic review and consultation; in fact, we've just done one. So, the TANs are under constant review. Amongst the many things I do all day is partaking in a large number of meetings with local authorities about the review of various TANs. And I just think it's a much better way of making sure that the definition is fit for purpose on an ongoing basis than tying it down on the face of the Bill, as it is a pretty emerging area."<sup>118</sup>*

**193.** Section 24 of the Bill (Power to change cycles for making strategic noise maps and reviewing noise action plans) provides discretionary powers for the Welsh Ministers to, by regulations, change the intervals at which strategic noise maps must be made and adopted under regulation 7(2) of the Environmental Noise (Wales) Regulations 2006 and to change the period within which reviews of noise action plans under regulation 17(3)(b) of the 2006 Regulations must take place.

## **Our view**

**194.** We note the Minister's view regarding the definition of soundscapes.

**195.** However, in a Bill that makes specific provision for soundscapes, we would expect to see a definition of that term on its face as a means of facilitating its understanding. It will make the legislation more accessible and provide certainty.

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<sup>117</sup> LJC Committee, 15 May 2023, RoP [150]

<sup>118</sup> LJC Committee, 15 May 2023, RoP [154]

We believe that a statutory definition in the Bill would be more appropriate than including one in guidance.

**196.** Moreover, we note from the Minister's evidence that the definition proposed in technical advice note 11 is a British and international standard definition. In addition, it may not be clear to all citizens that the definition appears in planning guidance or technical advice notes. It remains unclear to us how frequently it may become necessary to amend the definition. Should it require amending, that could be achieved by regulations subject to the affirmative procedure.

**Recommendation 30.** The Minister should table an amendment to include a definition of soundscapes on the face of the Bill.

**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.

**197.** We also note the powers in section 24 of the Bill to enable amendment of two regulations in the Environmental Noise (Wales) Regulations 2006 but are unclear why they are being taken.

**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.