

## AQS 37 Friends of the Earth Cymru

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Senedd Cymru | Welsh Parliament

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

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

Ymateb gan Cyfeillion y Ddaear Cymru | Evidence from Friends of the Earth Cymru

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1. What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

### **Introduction:**

Friends of the Earth Cymru is pleased to have the opportunity to respond to this consultation on this important matter.

Friends of the Earth Cymru has campaigned on the issue of air pollution as a major public health crisis for many years (<https://foe.cymru/clean-air>) and we are proud members of Healthy Air Cymru (<https://healthyair.cymru/>) and endorse their submission to the committee.

We are particularly concerned about the disproportionate health effect of air pollution on vulnerable groups, as per our recent data research ([https://foe.cymru/sites/default/files/Air%20pollution%20research%20Wales\\_bilingual%20%281%29.pdf](https://foe.cymru/sites/default/files/Air%20pollution%20research%20Wales_bilingual%20%281%29.pdf)) - and see it as a key environmental and social justice issue. And also on the impact of air pollution on the environment, particularly on climate change (eg as set out here <https://www.ccacoalition.org/en/content/short-lived-climate-pollutants-slcps>) and local environment and ecosystem damage.

As part of Healthy Air Cymru we have campaigned for a 'Clean Air Act' since 2017, specifying that it should include:

- Enshrining WHO air quality guidelines in law
- Mandating the Welsh Government to produce a statutory air quality strategy every 5 years
- Provide a statutory duty on local authorities to appropriately monitor and assess air pollution, and take action against it
- Introduce a 'right to breathe' whereby local authorities are obliged to inform vulnerable groups when certain levels breach recommended guidance

We are pleased that over the years there has developed strong cross-party support for legislating in this area and that we now have a Bill presented by the Welsh Government for scrutiny and discussion. We fully support this Bill, and look forward to working with the committee in order to ensure that strong and effective legislation is passed which is in line with the gravity and urgency of the problem.

### **Key points:**

- There is much to welcome in this Bill and we fully support the principles and intentions of this legislation.
- There are key issues to be addressed, in particular:
  - a) There needs to be an additional requirement to set new target(s) for NO<sub>2</sub> as World Health Organisation (WHO) Air Quality Guidelines (AQG's) for this pollutant have

been considerably lowered not long ago - from 40ug/m<sup>3</sup>, which is still the legal limit in Wales, down to 10ug/m<sup>3</sup> for an annual average.

- b) It must be set out in the Bill as a requirement that targets must be set to be consistent with WHO AQGs - as the Explanatory Memorandum/EM states at 3.13 is an existing commitment of the Welsh Government.

2. What are your views on the Bill's provisions (set out according to sections below), in particular are they workable and will they deliver the stated policy intention?

2.i) National air quality targets (sections 1 to 7)

These are in our view the most important sections in the proposed legislation and crucial that we ensure that they are as strong as effective as possible.

We believe there are some key changes needed in these sections in order to achieve that aim.

The evidence on the terrible health effects of air pollution continues to grow, and has recently been reviewed by Imperial College London (<https://www.london.gov.uk/sites/default/files/2023-04/Imperial%20College%20London%20Projects%20-%20impacts%20of%20air%20pollution%20across%20the%20life%20course%20%E2%80%93%20evidence%20highlight%20note.pdf>) – the need for urgent action could not be clearer.

Further, air pollution is a health inequalities issue – failure to address it adequately betrays the most vulnerable in our society who often have done least to contribute to the problem. Friends of the Earth's recent data analysis ([https://foe.cymru/sites/default/files/Air%20pollution%20research%20Wales\\_bilingual%20%281%29.pdf](https://foe.cymru/sites/default/files/Air%20pollution%20research%20Wales_bilingual%20%281%29.pdf)) clearly shows that air pollution disproportionately impacts lower income and more deprived areas and affects neighbourhoods with higher ethnic minority populations.

Changes to the Bill needed:

- i. Requirement for new target(s) on Nitrogen Dioxide (NO<sub>2</sub>), to be required to be consistent with WHO AQGs.**

We welcome the requirement for a new PM<sub>2.5</sub> target, which is much needed as for too long UK requirements on this most health damaging air pollutant have been far too low, and well below WHO AQGs.

However NO<sub>2</sub> is also a serious health hazard and the current NO<sub>2</sub> legal annual Limit Value is still not being met across the whole of Wales – the South Wales Air Quality Zone is still failing in Defra's latest assessment for air in 2021 (<https://uk-air.defra.gov.uk/library/annualreport/index>), against a requirement of 2010 or 2015 at the latest.

However the level for the annual mean in current requirements for NO<sub>2</sub> is 40ug/m<sup>3</sup>, which was also the WHO AQG until the AQGs were revised in September 2021, when a new AQG of 10ug/m<sup>3</sup> was set (<https://www.who.int/publications/i/item/9789240034228> Table 0.1). NB the UK Environment Act process was started prior to the new WHO AQGs coming out.

New NO<sub>2</sub> target(s), required to be consistent with the new WHO AQGs, are needed.

While Section 1 would allow this, it doesn't require it and is thus not adequate. A new section could perhaps be inserted between the current Sections 2 and 3.

**ii. Other pollutants eg Ozone (O<sub>3</sub>) – consideration should also be given for new target(s), required to be consistent with the new WHO AQGs**

The WHO AQGs 8 hr mean for O<sub>3</sub> is 100ug/m<sup>3</sup>, whereas the current legal limit in Wales is 120ug/m<sup>3</sup> – and the WHO has a peak season level of 60ug/m<sup>3</sup>.

**iii. Target setting process - requirement for all targets to be consistent with WHO AQGs**

We also welcome Section 3 on target setting - however we consider that the Bill must specifically reference a requirement for all target(s) to be consistent with WHO AQGs, as is an existing commitment:

“Our Programme for Government for 2021 to 2026 reiterated our commitment to introduce a Clean Air Act for Wales, consistent with World Health Organization (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.” (Explanatory Memorandum/EM 3.13.)

**iv. Introduction of target(s):**

Section 3(8) refers to a period of 3 years to lay a draft SI on setting a (PM<sub>2.5</sub>) target – but this seems an undue amount of time, resulting in considerable delay in action.

**v. Reporting on targets:**

Section 5(5) refers to the report needing to set out how the standard will be achieved 'as soon as reasonably practicable' – this should instead be framed as needing to be achieved for instance in the shortest time possible.

**vi. Review of targets:**

While it is welcome that Section 6 sets out 5 yearly reviews of targets, perhaps a refinement setting out eg “but earlier if scientific information indicates” would make it more robust.

Improvements in monitoring are also welcome and needed but adequate funding is needed so that Local Authority monitoring can be of a quality that it can be suitable for legal compliance assessment.

2.ii) Promoting awareness about air pollution (section 8)

Any advancements in promoting awareness on this issue are to be welcomed, but even more could be set out.

- a) The Prevention of Future Deaths report on the tragic early death of Ella Kissi-Debrah (<https://www.judiciary.uk/wp-content/uploads/2021/04/Ella-Kissi-Debrah-2021-0113-1.pdf>), at 5 (2) and (3) sets out deficiencies in awareness and communications around air pollution. This includes specific reference to the medical profession: “The adverse effects of air pollution on health are not being sufficiently communicated to patients and their carers by medical and nursing professionals” – and perhaps this point could be specifically referred to in the Bill.
- b) Air pollution alerts are crucial for when the air is particularly bad so that particularly vulnerable people can avoid exposure – it must be ensured that all key pollutants are covered by alerts (whereas Defra do not currently include alerts on PMs)

We believe that promoting awareness about air pollution should also include promoting behaviour change solutions to reduce pollution such as a modal shift to active travel and public transport. This would also help progress targets in the Wales transport strategy Llwybr Newydd and our progress to net zero.

#### 2.iii) National air quality strategy (sections 9 to 11)

It is noted (as at 3.89 of the EM) that the Welsh Government proposed 5 yearly reviews ahead of such a requirement from the 2021 UK Environment Act - and this along with the proposals for flexibility on timing to suit Senedd timings, on consultation, and for a duty on relevant Welsh public authorities are welcome.

However we are concerned that the way this proposal is drafted in the Bill itself may cause confusion, as it seeks to amend the UK Environment Act 1995. We would seek clarification during the Bill scrutiny process or redrafting of this section (and consequential amendments to sections 10 & 11). However we are satisfied with the intention of the Welsh Government.

The proposed requirement under 81B (1) in Section 11 (1) to just ‘have regard to’ the policies in the strategy is unnecessarily weak – we would like to see the requirement strengthened so that exercising functions that could affect air quality were compatible with the policies and reflected them. The aim must be that the meeting of targets is not jeopardised – and indeed new breaches of limits should not be allowed, nor existing ones worsened. Also it is not clear whether the above duty would include decision making eg on planning applications, but it should unless covered elsewhere.

#### 2.iv) Air quality regulations (section 12)

We welcome enhanced requirements to consult.

#### 2.v) Local air quality management (sections 13 to 15)

LAQM is a weak requirement ie much weaker than that for meeting legal Limit Values, as effectively acknowledged in the EM - thus the aims and ambitions of the Bill are welcome.

Section 14 (1), under proposed 83B (3) on action plans and timescales for achievement should be for as short a timescale as possible.

As above, adequate funding must be available for enhanced local authority monitoring, including so that it can be used for legal compliance assessment.

We are not clear how this local reporting cycle aligns with the proposed Welsh Government reporting cycle and would welcome clarification during the scrutiny process.

#### 2.vi) Smoke control (sections 16 to 18)

This is certainly an area which needs enhanced requirements and action and we welcome its inclusion in this Bill.

We understand that not all of the actions necessary in this area require primary legislation – that some powers already sit with Welsh Government and that others relate to behaviour change. However we would seek clarity during the scrutiny process on how the government intends to make the changes which do not appear on the face of the Bill.

The Welsh Government should set out that it will prepare options for moving away from domestic solid fuel burning. This will take some time and require consultation on possible options such as whether a ban would apply to eg urban areas / anywhere on the gas grid / for anywhere over WHO AQGs for PM2.5s.

It should be made clear under 16(2) at 19G (1) and 19H(2) that exemptions cannot be at the risk of air quality targets being jeopardised.

We are unclear whether the Welsh Government intends to expand smoke control areas.

#### 2.vii) Vehicle emissions (sections 19 to 21)

Vehicle emissions is one of the biggest contributors to air pollution and we welcome including these sections in the Bill.

While this section covers some important points, the big picture on requirements and action needed must be kept at the forefront and updated as needed. This includes on the level of demand management needed and overall targets for cutting car and vehicle miles driven (essential for both air pollution and climate targets) – and to this end the Welsh Government

needs to set out its timeline for expediting “fair and equitable road user charging” as referred to in the EM under this section.

It also includes the need to not add to the problem unnecessarily of air pollution and climate emissions with new road building, in line with the recent report of the independent road review panel.

We understand that only trunk road charging is included rather than clean air zones and urban areas due to the Welsh Government’s competencies, but in order to achieve the desired reduction in air pollution there needs to be coordination to ensure that cars or other vehicles aren’t simply diverted from one road system to another route, causing knock on effects.

We welcome the anti-idling measures, but would welcome clarification on enforcement of this offence.

2.viii) National soundscapes strategy (sections 22 and 23)

2.ix) Strategic noise map and noise action plans (sections 24)

2.x) General provisions (sections 25 to 28);

3. What are the potential barriers to the implementation of the Bill’s provisions and how does the Bill take account of them?

As mentioned previously, there could be greater clarity as to national and local responsibilities and the relationship between them.

4. How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)?

We agree that the setting of air quality targets is suitable for subordinate legislation, but with tighter conditions as set out in earlier questions.

5. Are any unintended consequences likely to arise from the Bill?

6. What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

7. Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

We understand the reason for changing the name of the Bill from the expected 'Clean Air Bill', in particular in relation to the inclusion of soundscapes. However as public engagement, understanding and action is particularly important for this legislation to be effective we would welcome a simpler name being used publicly.

This would also avoid confusion with the existing Environment (Wales) Act 2016 which relates to very different issues.