

Cynulliad Cenedlaethol Cymru  
Y Pwyllgor Newid Hinsawdd,  
Amgylchedd a Materion Gwledig  
Ansawdd Aer  
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Ymateb gan Cymdeithas Cyfraith  
Amgylcheddol y DU

National Assembly for Wales  
Climate Change, Environment and  
Rural Affairs Committee  
Air Quality  
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Evidence from UK Environmental Law  
Association

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The UK Environmental Law Association aims to make better law for the environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.

UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared by Professor Karen Morrow on behalf of UKELA's Wales Working Party (UKELA WWP).

## Overview

- Regulatory Gaps/Issues to be addressed after leaving the EU:

EU law provides the backbone of much of our environmental law more generally and the law on air pollution within that. EU air pollution law does however have its own problems, so that developments in standards which might respond to emerging issues has been slow. Care will be required to ensure that there is no retrogression in current coverage, which is a live issue given the content of the 2019–20 version of the Environment Bill considered in Westminster – clause 3 of which would allow environmental targets to be revoked or lowered.

How should these be addressed and what will be the main challenges?

- Air pollution issues need to be addressed in an agile manner that responds to the best health and environmental science available (WHO recommendations are a good starting point but should not be accepted as optimal without further interrogation).
- There are however risks to Welsh efforts to address air quality that are inherent in the nature of the pollution that causes it which does not respect administrative and geographical boundaries: thus possible divergences in applicable standards between England and Wales and between Wales and our EU neighbours, will have impacts on the efficacy of Welsh initiatives. Computer modelling may make these predictable to some degree, though addressing possible 'neighbour disputes' would be problematic.

Are the Welsh Government's proposals for a Clean Air Act appropriate?

- Yes – and timely and the approach suggested is a good fit with the radical, sustainability-based overhaul in the framework of Welsh governance that is a feature of the Welsh devolution settlement and which has grown in momentum in recent years.

How could they be improved?

- There are very real resource issues that need to be addressed in respect of air pollution, central to which is the fact that a substantial role is required of local authorities. While efficiency gains in a more joined up approach will notionally enable better use to be made of scarce resources, the transition to a new air pollution control regime that is fit for purpose both in its own right and in regard to climate change will necessarily involve resource commitments and it is not apparent how these will be met. While air pollution is a multi-level concern and has a strong local dimension, given resource and capacity issues it would be worth considering a more directive approach on cooperation between local authorities as a practical means of building and sharing capacity.

- A local air quality app, that harnesses monitoring data, would be a cost-effective way of raising public awareness of air pollution issues and would also serve of enabling people to make informed behavioural choices.
- A statutory obligation on Local Authorities (ideally founded on Wales-wide agreed base lines) to inspect their areas for air pollution problems – akin to the obligation to inspect for statutory nuisances under the Environmental Protection Act – coupled with an obligation to regularly report a user-friendly, non-technical summary of findings prominently on Council websites ought to be considered to promote both transparency and public confidence in the Welsh air quality regime. To this end there also needs to be a more prominent oversight role for the Welsh Government in this regard coupled with a mechanism for the public to report concerns and that demonstrate how these are dealt with.
- In terms of vulnerability to air pollution as a motive to action, while it is true that some groups (notably children and the elderly and those with existing health problems) are particularly vulnerable to air pollution, it needs to be kept in mind that this type of vulnerability applies to everyone at a basic level and that a focus on improving air quality in all areas, rather than focusing too narrowly on selected locations, e.g. those hosting schools, care facilities or hospitals, is required – not least because those who are most vulnerable are exposed to air pollution everywhere in their daily lives and not only when they are present in particular locations.

What can be learned from legislative approaches elsewhere?

- There are lessons to be learned from the proposed Westminster legislation. First there should be a presumption of progressive improvement in applicable targets; Second, an overly compartmentalised approach – the Westminster Bill referred to above firmly foregrounded PM2.5 – does not, given the complexity and synergistic nature of air pollution, represent sound science or a viable way to proceed.

What are your views on the regulatory proposals in relation to the Local Air Quality Management regime?

What are the main challenges in relation to the proposed approach?

- See above on resource and capacity issues.

What are your views on the regulatory proposals relating to domestic combustion (including fireworks/bonfires), road vehicle idling and Clean Air Zones/Low Emission Zones?

- The proposals on domestic combustion with regard to wood burners etc. seem, on the whole, to be carefully considered, focusing on commercial supply rather than end-use, with commensurate rationalisation in monitoring and enforcement activity. Where wood burning is concerned the issue of self-supplied fuel is less straightforward and it is less clear how infractions would be tackled in a systematic fashion.
- Road vehicle idling zones and clean air/low emissions zones have tended to be regarded as viable in large cities – founded on the erroneous perception that air quality issues are an urban issue (and then in large conurbations) and there will considerable work to be done in shifting this view among local authorities and the public to re-frame these approaches as suitable for a wide range of locations. There is also a need for clear messaging that these mechanisms are actually a species of the polluter pays approach and rather than an encroachment on the popularly (and again erroneously presented) ‘rights’ of private car users and that they seek to ensure that the true costs of car use are met by those who benefit from it, rather than being imposed on others and the environment. Public education can help in this type of context, where there is a need to alter perceptions of previously acceptable activities in light of the harm that they do to others.

What are the main challenges in introducing a legislative framework for air quality as set out in the consultation document?

- The sheer ambition of the proposed framework is to be applauded, as it undoubtedly seeks to shift regulation to air pollution from an approach that is so outdated that it can no longer be regarded as fit for purpose, on to a footing that is informed by current and emerging science on the complex and cross cutting impacts of air pollution on human health and the environment and which is committed to a strong public dimension that takes air pollution out of the realm of the exclusively technical and fully into the public domain. That said, its ambition also raises significant challenges, particularly in terms of jurisdictional 'neighbour' issues; regulatory capacity; the provision of adequate resources; and in public education and the communication of accurate and comprehensible messages on air pollution to the Welsh people.