

The Air Quality and Soundscapes (Wales) Act 2024: How might the Act affect local authorities in Wales?

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On 20 March 2023 the Environment (Air Quality and Soundscapes) (Wales) Bill was introduced to the Senedd with the stated aim of giving the Welsh Government greater ability to tackle air and noise pollution.

The Bill was passed by the Senedd on 28 November 2023 and given Royal Assent on 14 February 2024.

Key measures in the Act substantially alter the way the Local Air Quality Management (LAQM) regime operates in Wales. Whilst these are not yet in force, Welsh local authorities would do well to prepare to meet its requirements.

Introduction

In her statement introducing the Bill, the Minister for Climate Change, Julie James, said;

“The Bill needs to be seen in a broad context, and not in isolation. It is a crucial part of a package of measures set out in our Clean Air Plan to reduce airborne pollution and improve the air environment in Wales.”

The Bill is wide ranging and makes changes in the following areas:

- A framework for setting National Air Quality Targets (NAQT) for Wales;
- A new duty on Welsh Ministers to actively promote of awareness of the risks caused by air pollution and methods of mitigation;
- A new duty on both Welsh Ministers and local authorities in Wales to promote active travel as a way of reducing air pollution;
- New powers to change the way the National Air Quality Strategy for Wales is produced as it is no longer a UK wide document;
- Significant amendments to LAQM as it applies to local authorities in Wales;
- Substantial alignment of the Smoke Control regime in Wales with the English version of the regime;
- Widening the basis on which a Trunk Road Charging Scheme can be put in place to include, not only, bridges and tunnels of a certain length, but also, stretches of road where there are air pollution issues; and
- Providing a power to increase the penalty for stationary idling.

Some of these measures have been discussed at length in the press. For example, the extension of the necessary criteria for trunk road charging, has received (unsurprisingly given the current interest in road traffic law in Wales) significant coverage. On the other hand, some of the measures which might have more immediate and direct impacts on people living, working and running businesses in Wales have been somewhat overlooked.

Toothless Bill?

The day before the stage 3 proceedings Janet Finch-Saunders MS, Shadow Climate Change Minister for the Welsh Conservatives said;

“Labour have been pushing through a toothless bill which does nothing to hold them to account on improving clean air in Wales.”

However, she and many others seem to be concentrating on the headline, target setting, measures in the Act and in doing so underestimating the practical impacts it will have, particularly on local authorities and planning decisions.

Below we analyse the provisions of Chapter 2 of the Act that relate to Promoting Active Travel and Local Air Quality Management and draw conclusions which we suggest shows this Bill is far from toothless.

The Active Travel Duty

When it is commenced Section 11 of the Act will insert a new Section 10A, 10B and 10C into the Active Travel (Wales) Act 2013 (2013 Act).

The amendments relate to both Welsh Government and Welsh local authorities and have the potential to be quite far reaching.

The new duties created by Section 10A and Section 10B requires the Welsh ministers and local authorities in Wales, respectively, to take steps to promote active travel as a way of reducing or limiting air pollution. This applies nationally in the case of the Welsh ministers and to the area of a local authority.

There are other parts of the provisions relating to local authorities that require reports specifying the steps taken to be included with integrated network maps when they are revised and resubmitted every three years (see Section 4 2013 Act) and a regulation making power enabling the Welsh ministers to effectively apply these provisions to “Devolved Welsh Authorities” (see 157A(1)(a) of the Government of Wales Act 2006).

Whilst this may seem like a rather toothless duty; after all the promotion of something is not the same as forcing behavioural change, the requirement in the Act that local authorities report on how they are addressing this duty when providing the Welsh ministers with integrated network maps under the 2013 Act is likely to mean that their minds are focussed on this duty when the maps are prepared.

The Welsh Government are also given power to provide guidance to local authorities and any public authorities designated under regulations. This, if utilised boldly, could significantly strengthen the real world effect of these duties. Whether the Welsh Government will grasp this opportunity (it is perhaps of note that a government amendment led to these provisions) remains to be seen.

The key to the effectiveness of this active travel duty is going to be how the word “promote” is interpreted. Statutory guidance that firms this up sufficiently would mean that this duty to take steps has to be accounted for in a wide range of decisions; local planning policy and decisions or decisions in relation to schools and education could be affected for example.

Steps taken in furtherance of this duty could start being attached to Section 106 Agreements for appropriate developments in Wales (e.g. maintain a separated cycle lane, covered footway or provide bike lockers for each resident) or be included in consideration of what areas can and should be developed for housing (a development within active travel distance of transport links make be preferred for example). The potential reach of this duty is very wide indeed.

Local Air Quality Management

These sections, all brought about by amendment to the Environment Act 1995 (1995 Act), once they are commenced, have the potential for the most immediate and significant impact on air quality in Wales and also mark a significant departure from the current scheme.

The first element of the changes requires Welsh local authorities to review the current and future air quality in their area on an annual basis. This was previously a duty subject to the very vague instruction that reviews should be “from time to time”.

The significance of this change cannot be underestimated when it is considered in conjunction with the duty to create local air quality management areas. The review is what triggers an assessment of whether air quality standards and objectives will be achieved and, where they are not, this in turn triggers the creation of an air quality management area under Section 83 of the 1995 Act.

It is anticipated that the requirement to carry out this exercise every year, rather than “from time to time”, will work to create significant and rapid improvement in local air quality management in Wales as it will force the identification of problem areas on a far more regular and

comprehensive basis than is currently the case.

Further to this the requirements of action plans in relation to air quality management areas are significantly altered. Whereas the regime as it currently applies requires the action plan prepared to merely pursue the achievement of air quality standards and objectives (which leaves legal scope to never actually achieve those standards) the amended regime requires plans that are designed to “secur[e] that air quality standards and objectives are achieved”.

Not only this but the plans have to set a target date for that to be achieved and once it is, how it will be maintained.

This significant change of focus from pursuit to achievement is likely to have an incredibly significant effect on the efficacy of the LAQM system in Wales. That is, assuming sufficient funding is available to Welsh local authorities.

This may be where the final aspect of the amendments to the LAQM regime comes into play which is that each action plan and revision of an action plan is required to be approved by the Welsh ministers. Although the Act is silent on what the approval process consists of there is likely to be sufficient political will in the Welsh Government to ensure the approval process includes an assessment of effectiveness and value for money. This supervisory role will not only ensure that plans are realistic but that they are affordable or where they are not will encourage dialogue between local authorities and the Welsh Government in relation to other funding options.

The final aspect of this suite of measures relates to a failure to fulfil the promise of an action plan. Whilst the current system relies on basic public law principles to enforce the effectiveness of action plans amendments to Section 85 of the 1995 Act will, once commenced, provide a power of direction that can be invoked if a local authority has failed to carry out a measure specified in an action plan or when an air quality standard or objective is not achieved by the specified date.

Conclusion

Whilst it could be argued that the flagship target setting provisions of the Act are not as immediately effective as some might have hoped, to characterise the Act as toothless is to misunderstand it's potential to effect significant positive change in relation to air quality in Wales.

The duty to take steps to promote active travel when making decisions will mean Welsh ministers and local authorities will have to give due consideration to how plans they are asked to approve are in pursuance of the duty.

Further, the Welsh ministers have the ability, through the guidance they must publish, to make this duty have a positive effect on relevant decision making in Wales.

Alongside this, significant changes to the Local Air Quality Management regime in Wales which will require air quality to be investigated and considered on a far more regular basis than currently and when issues are found will require a vastly more effective response to be taken than would be required by the current scheme, will have a significant, rapid and we suspect noticeable effect on communities in Wales, especially those in areas affected by poor air quality.

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