



Justice Impact Assessment

1. Bill Title

1.1. Working title of Bill - Environment (Air Quality and Soundscapes) (Wales) Bill

2. Policy lead contact details

2.1. Name / Job Title

[Redacted]

2.2. Department / office / business area

Environmental Protection Division

2.3. Telephone number

[Redacted]

2.4. Email address

[Redacted]

2.5. a) Date of submission of this form

Date of Submission: 13 December 2022

2.6. b) When is a response required?

Response Requested by: 31 January 2023

3. Additional contact details

3.1. Legal Contact

[Redacted]

3.2. Telephone number

[Redacted]

3.3. Email address

[Redacted]

4. General information

4.1. Please provide a) contact details of your lead official for the appraisal of costs or savings and;
b) the Justice Policy lead if known.

[Redacted]

4.2. Have you notified the judicial office of your proposals by completing Desk Instruction 7? (please seek advice from your legal advisors)

Yes

No (please explain why)

4.3. In brief, what is your proposal? (no more than half a page) (*This information is provided to help MoJ officials to understand the intent of the proposed change in order to be able to comment as fully as possible on its potential impacts*).

In relation to anti-idling the proposal is to create a power for Welsh Ministers to set a monetary penalty range (£40-£80) in relation to vehicle idling offences and to confer on Local Authorities discretion to apply a fixed penalty notice (FPN) within this range. This would represent a strengthening of the existing provisions under which FPNs are set at a fixed value of £20, which rises to £40 if the penalty is unpaid by the due date.

In relation to smoke control the proposal is to:

- introduce civil monetary penalties in relation to the emission of smoke in a Smoke Control Area (SCA). Removal of the defences to prosecution, including the use of an exempt appliance or an authorised fuel. This will mirror equivalent sanctions that have already been introduced in relation to England under the Environment Act 2021; and
- introduce a requirement for Local Authorities to have due regard to any guidance published by the Welsh Ministers in relation to SCAs.

4.4. Please indicate when you will be undertaking a post-implementation review of this legislation and the enforcement actions arising from it?

No decision has yet been made. Further consideration of any potential need for a post-implementation review of this legislation will take place in due course in the context of Programme for Government commitments and other Ministerial priorities.

4.5. Is this legislative proposal similar in any way to legislation being brought forward in England? If so, please name that legislation and identify below any ways in which the legislation brought forward in Wales will differ.

If the legislation has no substantive difference from that in England, there may be no need to complete all parts of the JSII form.

Anti-idling

The legislation applicable to Wales will largely continue to mirror the legislation applicable to England, with the exception of the proposed change to the applicable monetary penalties.

Smoke Control

The legislative proposals will reflect those already made in relation to England under the Environment Act 2021.

4.6. Please specify the name of any other related legislation. How do you expect the relevant provisions of this (new) legislation to be enacted?

Secondary legislation will be used to specify the details of the new anti-idling monetary penalty range.

4.7. Please indicate the anticipated date when a) the legislative changes are expected to come into force and b) the date when the first anticipated impact on the justice system will arise.

The legislative changes are expected to come into force from 2024 onwards.

4.8. If altering or introducing an offence, sanction or penalty, which of the following groups will the proposal affect and in what circumstances? (Tick all that apply)

- Individuals
- Private Institutions (e.g. Businesses)
- Public Institutions (e.g. Government Departments)

Provide further information about those who may be affected by the legislation.

The proposed anti-idling provisions will affect vehicle drivers. The proposed smoke control provisions will affect any individual, business or organisation that emits dark smoke from a chimney within a Smoke Control Area (SCA).

4.9. Does your legislation only have impact in Wales or are you working jointly with other administrations? Tick all that apply and provide brief details as appropriate, including whether your proposal will create different laws in Wales compared to England, Scotland and / or Northern Ireland.

Please note that, with the exception of the devolved tribunals, the MoJ administers the justice system in England and Wales only. Please talk directly to the MoJ devolution unit if you anticipate your proposal could have an impact on courts or prisons in Scotland or Northern Ireland.

- Wales only
- England
- Scotland
- Northern Ireland
- Other (Please Specify)

The legislation will only apply in Wales.

4.10. If your legislation could directly impact visitors to Wales or other people not normally resident in Wales, or if your legislation is significantly different from elsewhere in England, Scotland or Northern Ireland;-

a) what arrangements have you made to ensure ongoing awareness raising of the different legislative approach on this issue in Wales?

- b) what will be the implications on the enforcement agencies of taking forward action against individuals not usually resident in Wales?

In relation to anti-idling, people not normally resident in Wales could be affected by the proposed provisions. However, the idling offence will remain the same across England and Wales. The only difference will be in relation to the amount of penalty that may be charged. The new penalties will be accompanied by guidance issued to LAs, which will highlight the importance of educating and informing, using FPNs as a last resort.

The smoke control proposals are unlikely to impact on visitors to and those not normally resident in Wales. As with the anti-idling proposals, guidance will be issued to LAs which will highlight the importance of educating and informing, using monetary penalties as a last resort.

- 4.11. What are the options under consideration and how does this change the existing situation?

Anti-Idling

The mechanics of active enforcement whereby authorised officers can ask motorists to stop idling and then either report them for the summary offence of refusal (reg.12(2) The Road Traffic (Vehicle Emissions) (Fixed Penalty) (Wales) Regulations 2003) or issue fixed penalty notices in relation to offences on the public highway (reg.13) (if the requests are ignored) are not changed in any way. We are proposing to create a power for Welsh Ministers to set a monetary penalty range in relation to vehicle idling offences and to confer on Local Authorities (LAs) discretion to apply a fixed penalty within that range. This will change the existing situation under which a penalty of no more or less than £20 may be imposed.

The change in legislation is considered appropriate to minimise the risk to the health of vulnerable receptors, especially in and around school and health care settings or care homes. The change is also important for further empowering Local Authorities to tackle instances of sustained, concentrated and unnecessary vehicle idling occurring in 'idling hotspots' (such as town/city centre transport hubs etc.). Road transport is a major source of greenhouse gas emissions, including harmful air pollutants such as nitrogen oxides and particulate matter.

Smoke Control

As previously described, we are proposing to mirror the position in England by introducing civil sanctions in relation to the emission of smoke within a Smoke Control Area and a requirement for LAs to have regard to any guidance issued by the Welsh Ministers. The Clean Air Act 1993 provides defences to prosecution, including the use of an exempt appliance or an authorised fuel, which make enforcement of smoke control extremely difficult. Local Authorities do not have the power to enter a private dwelling where smoke has been emitted from the chimney and as such getting sufficient evidence is very difficult, thereby providing a barrier to enforcement. We propose to remove these statutory defences, which will mirror the current provision in England. Local Authorities will be expected to encourage behaviour change, initially through engagement and encouraging compliance, before the application of civil monetary penalties as a last resort.

4.12. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

Anti-Idling

Local Authorities will enforce the legislation. The person to whom a Fixed Penalty Notice has been issued may request an appeal before the Magistrates Court. Also, a person issued with a Fixed Penalty Notice can apply to an appropriate authority for a reduction or a waiver and obtain either one subject to meeting certain specified conditions.

A court order can be issued to recover unpaid Fixed Penalty Notices as these are covered by the Enforcement of Road Traffic Debts Order 1993.

Smoke Control

Local Authorities will enforce the legislation. Once a financial penalty has been issued by the Local Authority, a person may appeal against the notice to the First-tier Tribunal. Any financial penalty that is not paid is recoverable as a civil debt by the Local Authority that imposed the penalty.

Criminal Offences and Civil Penalties and Sanctions

4.13. Which of the following are you creating / amending? (Tick all that apply)

- Civil Sanctions
- Fixed Penalties
- Civil Orders
- Criminal Sanctions
- Criminal Offences
- Other (Please Specify)

In relation to anti-idling, the Welsh Government is proposing to amend existing FPN amounts.

In relation to Smoke Control, the Welsh Government is proposing to introduce civil monetary penalties to replace the current criminal sanctions in relation to instances where smoke is emitted from a chimney within a Smoke Control Area (SCA).

4.14. If you are creating a criminal offence, is it:

- Summary Only (heard before a bench of lay magistrates / judge only)
- Triable Either Way
- Indictable Only (heard before a judge and jury)

In cases where the maximum penalty is to be an unlimited fine, and a triable either way offence is warranted, please explain why a summary only offence is not considered appropriate. This is especially relevant if few, if any, cases are anticipated.

NA. No new criminal offences are being created.

4.15. Who will be responsible for the enforcement of your legislative proposal and how will they take this role forward? Will there be an increased / reduced need for enforcement action?

In relation to both the anti-idling and smoke control proposals, Local Authorities will be responsible for enforcement, which is a continuation of their current role. Guidance issued to LAs by the Welsh Ministers will encourage educating and informing of the public, with the issue of penalties a last resort. This means only limited application of sanctions is foreseen.

4.16. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

We are unaware of any cases of criminal penalties for the emission of smoke in a SCA having been applied by Local Authorities in Wales. We are also unaware of any cases of (new) civil monetary penalties having so far been applied in England in relation to the emission of smoke in an SCA (these penalties have been in place since May). Data on the issue of FPNs for idling offences is not available but the purpose of FPN provisions is to avoid the need for recourse to the criminal courts. With these things in mind, and in light of the factors below, we anticipate the number of cases of penalties being issued being low and the number of cases ending up in the courts/tribunals being insignificant.

Factors:

- No new offences are being created.
- The defences currently available under the Clean Air Act 1993, including the use of an exempt appliance or an authorised fuel, will be removed. This will allow the four affected local authorities to better tackle instances of smoke in smoke control areas. This will mirror equivalent provisions that have already been introduced in relation to England.
- The focus will be on informing and encouraging behaviour change, with the issue of penalties being a last resort. This focus will be reflected in guidance issued to Local Authorities (LAs) by the Welsh Ministers.
- In relation to anti-idling, it will remain the case that the Local Authority officer can, if able, ask the driver to stop idling their vehicle and refusal is a summary only offence. The likelihood of an FPN being issued in these circumstances is therefore low. Guidance to be issued will encourage Local Authorities to utilise this 'warning' whenever possible.
- It will remain the case that the service of a Fixed Penalty Notice (FPN) is only possible where the driver has first been asked to stop idling their vehicle and they have refused.
- It will remain the case that the cost of seeking to challenge the relevant monetary penalties in the courts would rapidly become disproportionate to the size of the penalty itself.

4.17. Do you expect proceedings to be heard in the Magistrates' Court, the Crown Court, or a Civil Court? What will the proportions be?

All anti-idling cases that are defended will be heard by the Magistrates' Court. All appeals in relation to the emission of smoke control in a SCA will be heard by the First Tier Tribunal. All claims for the recovery of unpaid civil monetary penalties will be through the civil debt recovery processes.

- 4.18. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine or custody, please indicate and explain the circumstances which would result in a custodial sentence upon conviction and the proportion of custodial penalties which will be at the maximum level.

Anti-idling

We are proposing that a Local Authority may serve a penalty notice in which the amount of the penalty is not less than £40 and not more than £80. This will need to be set out in Regulations – which will be subject to public consultation on the amounts to be set.

Smoke Control

The civil monetary penalties would be in line with amendments introduced by Schedule 12 of the Environment Act 2021 (Schedule 1A of the Clean Air Act 1993) for England: Minimum £175, maximum £300.

- 4.19. Please itemise details of any proxy or current offences and / or penalties on which the proposed penalties are based. If mirroring / comparing existing legislation, ensure that reference is made to the most recent versions of the legislation (via Westlaw, the online legal research service) as this is not always available online. Please refer to page 8 of the JSII guidance on how to obtain data relating to the number of cases brought forward under the legislation you have identified.

Legislation / Section	Offence	Number of cases
Existing Welsh legislation in which the penalties reside that are to be amended: Road Traffic (Vehicle Emissions) (Fixed Penalty) (Wales) Regulations 2003 Reg.13	Commission of a stationary idling offence	It is anticipated that only a limited number of penalties will be issued and an insignificant number of cases are likely to end up in the courts.
Existing English legislation on which our proposals for Wales are to be based: Schedule 1A Clean Air Act 1993 (inserted by Schedule 12 Environment Act 2021).	Dark smoke emitted from a chimney within a Smoke Control Area	

- 4.20. Provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>.

Not applicable.

- 4.21. What will be the short, medium and lifelong implications for an individual found guilty of this offence, and how is this proportionate to the offence created?

Not applicable.

- 4.22. Does this legislation impose any duty on the public sector? If so, please provide your assessment of the likelihood of individuals or businesses taking action against the public sector for non-compliance with this legislation.

The only duty to be placed on the public sector is in relation to smoke control and is a duty to have regard to any guidance issued by the Welsh Ministers.

5. HM Courts & Tribunals Service and the Welsh Tribunals Service

Estimating the change to caseload of the Courts and Tribunals Service (including devolved tribunals)

- 5.1. Do you expect there to be a change in Court or Tribunals process or an increase / decrease in applications / cases to HM Courts and Tribunals Service and / or the Welsh Tribunals through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

We are unaware of any cases of criminal penalties for the emission of smoke in a SCA having been applied by Local Authorities in Wales. We are also unaware of any cases of (new) civil monetary penalties having so far been applied in England in relation to the emission of smoke in an SCA (these penalties have been in place since May). Data on the issue of FPNs for idling offences is not available but the purpose of FPN provisions is to avoid the need for recourse to the criminal courts. With these things in mind, and in light of the factors below, we anticipate the number of cases ending up in the courts/tribunals service to be insignificant.

Factors:

- No new offences are being created.
- The defences currently available under the Clean Air Act 1993, including the use of an exempt appliance or an authorised fuel, will be removed. This will allow the four affected local authorities to better tackle instances of smoke in smoke control areas. This will mirror equivalent provisions that have already been introduced in relation to England.
- The focus will be on informing and encouraging behaviour change, with the issue of penalties being a last resort. This focus will be reflected in guidance issued to Local Authorities (LAs) by the Welsh Ministers.
- In relation to anti-idling, it will remain the case that the Local Authority officer can, if able, ask the driver to stop idling their vehicle and refusal is a summary only offence. As stated above, the likelihood of an FPN being issued in these circumstances is therefore low. Guidance to be issued will encourage Local Authorities to utilise this 'warning' whenever possible.
- It will remain the case that the cost of seeking to challenge the relevant monetary penalties in the courts would rapidly become disproportionate to the size of the penalty itself.

5.2. Please confirm if the courts / tribunals would be under any duty to inform any regulatory authorities of any convictions made under this offence.

- No
 Yes (please provide details)

Appeal Rights

5.3. Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service or Welsh Tribunals)?

There will be a new right of appeal to the First Tier Tribunal in relation to the imposition of a civil monetary penalty for the emission of smoke in a smoke control area.

5.4. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Welsh Tribunals Unit / Ministry of Justice?

No.

Alternative Dispute Resolution

5.5. To what extent could the use of alternative dispute resolution (ADR) procedures (including mediation) be appropriate? How will success in ADR be measured?

Not applicable.

Prosecution and Enforcement

5.6. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please identify who will prosecute.

Not applicable.

5.7. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

Yes. Local Authorities through existing mechanisms.

HMCTS Procedural Rules, Sentencing and Penalty Guidelines

5.8. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

Not applicable.

5.9. Will the proposals require sentencing and / or penalty guidelines to be amended?

Not applicable.

6. Legal Aid and Court Fees

6.1. What evidence is there that individuals affected by your proposal will be able to secure and afford:

- a) legal representation and legal advice in order to secure a fair hearing of their case
- b) associated court fees

What legal costs for a typical case could each party bear and what provisions exist for a party found innocent to recover all or any of their legal costs?

Anti-Idling

The idling offence will initially be dealt with by way of a Fixed Penalty Notice. If this is disputed, then the case will be dealt with in the Magistrates Court in a similar way to most minor road traffic offences. The level of penalty makes it very unlikely that legal aid would be available or required.

Smoke Control

The level of penalty makes it very unlikely that legal aid would be available or required.

6.2. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- Criminal
- Civil (including Family)
- Asylum
- Legal aid not available (please provide supporting evidence)

Legal Aid is unlikely to be commonly available or necessary in relation to the proposed penalties.

6.3. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

See answer to Q6.2.

7. Prisons and Offender Management Services

Impact on HM Prison Services

7.1. Will the proposals result in a change in the number of offenders being committed to custody (including on remand) or probation (including community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and the source for your information.

Not applicable.

7.2. Does the proposal create, remove or change an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison / probation service? If so, please provide details, including the expected impact on probationary services.

No.



8. Main Justice System Impacts Identified

8.1. Volumes and Costs or Savings (please lengthen if necessary):-

NB in all cases, assume an average annual figure or make clear if a different timespan is being considered. Where there may be significance variance from average in the first years of implementation, please add additional information in the notes below.

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Criminal Offences and Sanctions	0-10	NA	NA	NA	

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Civil Penalties	0-10	Fixed penalty	Minimal	NA	<p>We are unaware of any cases of criminal penalties for the emission of smoke in a SCA having been applied by Local Authorities in Wales. We are also unaware of any cases of (new) civil monetary penalties having so far been applied in England in relation to the emission of smoke in an SCA (these penalties have been in place since May). With this in mind in addition to the factors described previously, we anticipate a minimal number of penalties being issued in relation to smoke control. Data on the issue of FPNs for idling offences is not available, but again for the reasons described previously we anticipate a limited number of FPNs being issued.</p>

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
HM Courts & Tribunals Services	0-10	Appeal	Minimal	NA	The proposals relating to smoke control will be accompanied by provision for appeal to the FTT. We are unaware of any cases of (new) civil monetary penalties having so far been applied in England in relation to the emission of smoke in an SCA (these penalties have been in place since May and are similarly accompanied by provision for recourse to the FTT). With this and the rationale set out elsewhere in this document in mind, we anticipate appeals to arise only in exceptional cases, making an insignificant impact on the Courts and Tribunals Service.
Welsh Tribunals	NA	NA	NA		
Legal Aid	0	Legal aid	0		As explained elsewhere in this document, we don't anticipate legal aid being engaged in relation to the proposed provisions.
Notes:-					

8.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):

Offence	Maximum Penalty	No. of prosecutions brought per annum (numeric estimate and min-max range)	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs or savings p.a. (£) ¹ (please provide numeric estimate and min-max range)
NA	NA	NA	NA	NA	NA
Notes:					

Please be aware that any costs or savings identified as a result of any changes to the justice system /additional work must be factored in to the financial assessment of your legislation.

¹ The MoJ publish statistics on "Prison cost per place and cost per prisoner:" - see <https://www.gov.uk/government/statistics/announcements/prison-cost-per-place-and-cost-per-prisoner-2017-to-2018>