



Air Pollution and Emissions: two more reports and court ruling add to pressure on Government

Two major reports have added to the pressure on government on diesel emissions, and on 28 April 2016 *ClientEarth* was granted permission by the High Court for a further legal challenge to the government's December 2015 air quality plans.

A report for the Department for Transport in April 2016 found a "large gap" between emissions in the laboratory and on the road for all the diesel vehicles tested. And the House of Commons Environment, Food and Rural Affairs 'EFRA' Committee, in a further report in April 2016, demanded further action to address the "public health emergency" of air pollution, and new powers for many more local authorities to set up Clean Air Zones. In the same month, *ClientEarth* won permission from the High Court for a further legal challenge to the government's air quality plans, which had been put in place in response to an earlier Supreme Court ruling, arguing that they do not deliver compliance with EU emission limits as quickly as possible.

Department for Transport Vehicle Emissions Testing report

In response to the Volkswagen scandal in September 2015, the UK Department for Transport commissioned an independently supervised testing programme to compare test track and real world emissions from diesel cars on the UK market.

The resulting report '*Vehicle Emissions Testing Programme – Moving Britain Ahead*' published in April 2016, stated that –

"Our tests have not detected evidence of test cycle strategies as used by the Volkswagen Group. However, tests have found higher levels of nitrogen oxide (NOx) emissions in test track and real world driving conditions than in the laboratory for all manufacturers' vehicles, with results varying significantly between different makes and models."

The government is reported to have accepted that the fact that all vehicles tested showed these differences was "disappointing".

Professor Ricardo Martinez-Botas of Imperial College London, who was brought in to validate the independence of the testing programme undertaken, commented –

"It is clear from the results that a large gap exists between the regulated nitrogen oxide (NOx) emissions measured under controlled laboratory conditions and on-the-road

performance. This is true whether the comparison is made with test track results that followed the profile of the regulatory test cycle (NEDC), or in comparison with real driving emissions (RDE) conditions on the road."

House of Commons EFRA Committee Air Quality report

Meanwhile, the House of Commons Environment, Food and Rural Affairs 'EFRA' Committee produced a further report on '*Air Quality - Fourth Report of Session 2015-16*', (HC 479). This noted that poor air quality was resulting in the early deaths of 40-50,000 people each year, which the report described as a "public health emergency". The EFRA Committee's Report recommended that –

- the Cabinet Office should ensure that all government policies take air quality impacts into account;
- DEFRA should publish by the end of 2016 an overarching strategy for tackling all air pollutants, from all sectors from transport and industry to energy and farming, and the government must update Parliament annually;
- DEFRA's plans to concentrate on Clean Air Zones for five key cities plus London (Birmingham, Leeds, Southampton, Derby and Nottingham) were inadequate and inflexible, and dozens of areas elsewhere in England were in breach of EU limits and local authorities needed charging powers over polluting vehicles;
- funding was required for new refuelling infrastructure, and a diesel scrappage scheme should be introduced; and
- agricultural emissions should be reduced with targeted actions to improve manure and nutrient management and to cut methane emissions through improved feed for livestock.

The reports in context

These two reports on their own are unlikely to result in wholesale changes to government policy. Reports indicate, for example, that a diesel scrappage scheme has already been ruled out as too expensive. However, in the context of other developments they represent important developments in both the analysis of the inadequacy of current regulation of vehicle emissions, and the emerging political consensus about further actions needed to address air quality.

The UK government still faces infringement proceedings before the Court of Justice of the European Union for ongoing breaches of the Ambient Air Quality Directive, and unless improvements are achieved, will eventually face national fines for such breaches.

In parallel, the environmental NGO *ClientEarth* on 28 April 2016 won permission from the High Court to proceed with a further legal challenge to the adequacy of the government's December 2015 air quality plans, which had themselves been put in place in response to a Supreme Court ruling in April 2015. Essentially the NGO is arguing that the government's plans are too restricted and too slow, allow breaches of EU law to continue for too long and do not deliver compliance with EU emissions standards as quickly as possible. The case will probably be heard in the summer, and the government's case will not be assisted by the EFRA Committee's endorsement of many of the points that *ClientEarth* has been making.

Significant developments are still taking place at the level of type-specific legislation and regulation for individual emissions sources, and, despite a rearguard action to delay strict implementation of EU emission limits, there is a commitment to address Real Driving Emissions in the next round of Euro engine standards. Most forms of transport and most uses of diesel engines are affected directly or indirectly by the combination of events that has led to these reports.

Air quality and air emissions have now also moved from being an abstruse technical issue of interest only to a few experts and officials in central or local government to being the subject of debate between party leaders and London Mayoral candidates.

Implications for key sectors

Automotive

For the automotive sector, it is now on the record that all manufacturers will have to achieve significant improvements in emissions in order to deliver on the standards required for Real Driving Emissions when these eventually become law, some 25 years after the introduction of the Euro 1 standards. The full implications of the specific and different investigations currently under way into emissions issues at the Volkswagen Group, Renault, Peugeot-Citroen, Mitsubishi and Daimler have yet to be worked through, but will ensure that the issue remains in the public eye.

Many categories of diesel vehicle will be directly affected by the decisions taken on the extent of the network of Clean Air Zones. Is it sufficient to leave most of the work to be done by London, Birmingham, Leeds, Southampton, Derby and Nottingham? If not, and "dozens" of other towns and cities and areas are, or should be, investigating establishing their own Clean Air Zones, that has major implications for local authority powers and resources, and major impacts on transport networks, and diesel operators of buses, taxis and lorries as well as individual diesel car drivers. Fleet operators will also be considering the impacts of future regulation of diesel engines and the patchwork of Clean Air Zones on their operations.

Local government

Local government has a key role to play in the powers and duties around Air Quality Management Areas established under the Environment Act 1995. Local authorities are also central to the debate between central government, MPs and NGOs about the network of Clean Air Zones.

Farming

The emphasis of the EFRA Committee on requiring a contribution from farming to the reduction of air pollution is relatively new, and farming bodies may want to consider the Committee's preference for effective voluntary action rather than another round of statutory regulation.

Rail

Political agreement was reached on 6 April 2016 to new European regulation of emissions standards for Non Road Mobile Machinery, to replace earlier Directives, which will cover a wide variety of sources from leaf blowers to locomotives. In addition, as significant users of diesel, the rail industry is unlikely to be exempt from the generally high levels of public and political concern about diesel and particulate emissions, and some rail commentators have called upon it to take early action rather than having to be made to do so.

Electricity Capacity Market

Although the arrangements for Demand Side Response are technology neutral, potential emissions from diesel generation are already under scrutiny, with government commitments to investigate how these might be addressed through environmental regulations.

Shipping

Shipping is touched on in the EFRA Report, but only tangentially, again, its omission from other forms of regulation is ensuring that it moves steadily up the list of next targets for legislators and regulators, and would be well advised to be in a position of how to show that it is taking action to limit emissions before being required to do so.

Aviation

Some in the aerospace industry see air quality emissions as principally an issue for the engine makers and the airport operators, which it certainly is – Heathrow's further expansion is specifically limited by the effects that this could have on London's emissions after 2025, as evidenced by the Mayor of London's air quality maps showing the effects of an Ultra Low Emissions Zone - but once again, this may miss the point that effective action on this major problem is going to require multiple contributions from many different sectors. The EFRA Committee Report is a reminder of what politicians are coming to expect.

Other Burges Salmon briefings on this area

Environment, climate, air quality and investment, February 2016 - http://www.burges-salmon.com/practices/environment/publications/environment_climate_air_quality_and_investment.aspx

Volkswagen and a new landscape for product stewardship,
February 2016 - [http://www.burges-salmon.com/practices/
environment/publications/volkswagen_and_a_new
landscape_for_product_stewardship.aspx](http://www.burges-salmon.com/practices/environment/publications/volkswagen_and_a_new_landscape_for_product_stewardship.aspx)

Testing Times: Criminal culpability in the Volkswagen scandal,
January 2016 - [http://www.burges-salmon.com/practices/
disputes_and_litigation/fraud/publications/testing_times
criminal_culpability_in_the_volkswagen_emissions
scandal.aspx](http://www.burges-salmon.com/practices/disputes_and_litigation/fraud/publications/testing_times_criminal_culpability_in_the_volkswagen_emissions_scandal.aspx)

LexisPSL - Environment analysis - air quality, January 2016 -
[http://www.burges-salmon.com/practices/environment/
publications/lexispsl_environment_analysis.aspx](http://www.burges-salmon.com/practices/environment/publications/lexispsl_environment_analysis.aspx)

Air Quality – why current legislation is not working, January
2016 - [http://www.burges-salmon.com/practices/
environment/publications/air_quality_why_current
legislation_is_not_working.aspx](http://www.burges-salmon.com/practices/environment/publications/air_quality_why_current_legislation_is_not_working.aspx)

Landmark air pollution ruling by the Supreme Court, April 2015
- [http://www.burges-salmon.com/Practices/environment/
News/14079.aspx](http://www.burges-salmon.com/Practices/environment/News/14079.aspx)

Contact

For further information please contact:



William Wilson

Barrister

+44 (0)117 939 2289

william.wilson@burges-salmon.com



Michael Barlow

Partner

+44 (0)117 902 7708

michael.barlow@burges-salmon.com



Simon Tilling

Partner

+44 (0)117 902 7794

simon.tilling@burges-salmon.com

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

www.burges-salmon.com

Burges Salmon LLP is a limited liability partnership registered in England and Wales (LLP number OC307212), and is authorised and regulated by the Solicitors Regulation Authority. It is also regulated by the Law Society of Scotland. Its registered office is at One Glass Wharf, Bristol BS2 0ZX. A list of the members may be inspected at its registered office. Further information about Burges Salmon entities, including details of their regulators, is set out in the 'Who we are' section of the Burges Salmon website at www.burges-salmon.com.

© Burges Salmon LLP 2016. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged. Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burges-salmon.com.