

Clean air zones—a breath of fresh air?

15/01/2016

Environment analysis: How do the plans to introduce clean air zones in many UK cities fit in with existing air quality legislation? William Wilson, barrister in the environmental law unit at Burges Salmon, considers this latest development in the push for better air quality.

Original news

Clean air zones to be introduced to UK cities, LNB News 17/12/2015 173

Plans to improve air quality in UK cities, while minimising the impact on business, have been set out by the Department for Environment, Food & Rural Affairs (Defra). Under the plans, clean air zones will be introduced in Birmingham, Leeds, Nottingham, Derby and Southampton by 2020. The zones will not affect private car owners or newer vehicles which meet latest emission standards, but the most polluting vehicles, such as old buses, taxis, coaches and lorries, will be discouraged from entering the zones through charges.

What is the background to this?

The background to the UK overview document was what Lord Carnwath described in a Supreme Court judgment in *R (on the application of ClientEarth) v Secretary of State for the Environment, Food and Rural Affairs* [2015] UKSC 28, [2015] 4 All ER 724 as:

‘the admitted and continuing failure by the United Kingdom since 2010 to secure compliance in certain zones with the limits for nitrogen dioxide levels set by European law, under Directive 2008/50/EC [the Ambient Air Quality Directive].’

This failure has been challenged in infringement proceedings being brought before the Court of Justice of the European Union by the European Commission, and in a related national legal challenge brought by the environmental non-governmental organisation ClientEarth. The ClientEarth challenge resulted in a landmark ruling by the Supreme Court in April 2015, which not only confirmed that the UK remained in breach of the Ambient Air Quality Directive, but made an unprecedented mandatory order requiring the Secretary of State to prepare new air quality plans to deliver to the Commission by 31 December 2015.

Debates on air quality issues and continued non-compliance with EU directives have also been sharpened by reporting of the Volkswagen vehicle emissions scandal.

What does the Ambient Air Quality Directive require?

The Ambient Air Quality Directive consolidates the majority of earlier European air quality legislation apart from the Fourth Daughter Directive (Directive 2004/107/EC relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air). The Ambient Air Quality Directive sets required quality objectives for ambient air, demands the regular assessment of air quality in Member States and requires the regular publication of air quality information. It sets specific thresholds for specific pollutants—sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter

(PM10 and PM2.5), lead, benzene and carbon monoxide. These thresholds, with limited exemptions and exceptions were required to be met in Member State zones and agglomerates, by specific dates for key pollutants. The Ambient Air Quality Directive also sets monitoring and sampling standards and reporting requirements.

As at December 2015, the Commission was bringing infringement actions against 16 Member States for excessive fine dust levels, and against six Member States, including the UK, for breaches of air quality standards for nitrogen dioxide (NO₂).

How is the UK proposing to meet those requirements?

The UK is proposing by means of these revised air quality plans to address specific residual pollution which continues to result in breaches of the Ambient Air Quality Directive from the combustion of fossil fuels in power generation, industrial processes, domestic heating and road vehicles.

These plans reflect the government's assessment that transport is responsible for 80% of NO_x emissions, and there is a particular emphasis on 'targeted' clean air zones to be established in five cities, Birmingham, Leeds, Southampton, Nottingham and Derby, with measures to place restrictions on access for older diesel buses, coaches, taxis and lorries, and further measures to encourage newer vehicles with higher emissions standards. For London, the plans rely heavily on the London Mayor's plans for an ultra low emissions zone.

ClientEarth has already indicated that in its view these plans are not comprehensive enough to deliver compliance by the UK with EU air quality legislation as quickly as possible, and have announced that they intend to bring a further legal challenge to the revised plans.

What is the existing legislation and what does it require?

Air quality legislation is complex and covers many different aspects at different levels. This note does not attempt to summarise all of it.

At the international level, there are non-binding World Health Organisation guidelines and some international instruments such as UN Economic Commission for Europe Conventions.

At the EU level, there is the Ambient Air Quality Directive, the Fourth Daughter Directive, a National Emissions Ceiling Directive 2001/81/EC, Euro 1-6 Standards for Vehicle Emissions, and a proposed new Clean Air Policy Package produced in December 2013, including proposals for a Medium Combustion Plants Directive and a proposed revised National Emissions Ceiling Directive.

At the UK National level, Part IV of the Environmental Act 1995 establishes local authority duties and air quality management areas and plans, and there is a national air quality strategy.

Significant powers for air quality standards regulations and enforcement are devolved to Wales, Scotland, Northern Ireland and the London Mayor. Local authorities also have some powers of their own, and some are experimenting with low emission zones.

What are the key areas in this policy paper?

As noted, this policy paper takes a selective approach to addressing priority actions in a limited number of zones and agglomerations and targeting remaining air pollution 'hotspots', particularly through measures to address transport pollution and in a limited framework of clean air zones.

The test for this paper, which will be subject to further legal challenge in 2016, is whether this is seen as an adequate and comprehensive response to meeting the UK's legal obligations to put itself back into compliance with the Ambient Air Quality Directive as quickly as possible, and whether the policy places too much reliance upon actions by local authorities.

Does this cover different issues from what the Commission has agreed set out in their press release entitled 'National emissions of air pollutants: Council agrees its position on new limits?' If so, what are the differing issues?

This is a different issue. The Clean Air Policy Package announced by the Commission in December 2013 included a proposed revised National Emissions Ceiling Directive, which would re-enact national limits for sulphur dioxide, nitrogen oxides, volatile organic compounds and ammonia, and if concluded, enact a new cap for fine particulate matter. On 16 December 2015, the Council of Ministers agreed a general approach towards negotiating agreement on this directive with the European Parliament.

William Wilson has 24 years' experience of specialist environment law, and was for nine years in the Solicitor's Department of the Department of the Environment/DETR/DEFRA. He was the legal manager for Part IV of the Environment Act 1995 which set up the system of local authority air quality management areas, worked on the London Mayor's air quality powers for the Greater London Authority Act 1999 and has drafted implementing legislation for the Air Quality Framework Directive and its Daughter Directives. He is currently advising Burges Salmon's clients on the impact of these issues on their operations.

Interviewed by Lucy Karsten.

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