

9 November 2015

Response to consultation on Air Quality Plans to Meet EU Limit Values for Nitrogen Dioxide (NO₂) in Scotland



Friends of the Earth Scotland

Air pollution is causing a public health crisis in Scotland. It is responsible for thousands of early deaths each year and reduces the quality of life for many more, especially children, older people and people made vulnerable by chronic health conditions. It also has a damaging effect on ecosystems and wildlife. Taking action on air pollution can deliver health and wellbeing benefits, generate economic savings, and help Scotland achieve compliance with its Climate Change targets.

In 2014 Public Health England found that long-term exposure to particulate matter pollution (PM_{2.5}) causes the equivalent of 2,000 early deaths in Scotland each year. The Committee on the Medical Effects of Air Pollutants is now quantifying the health impacts from NO₂ and our early estimates are that when NO₂ is taken into account, air pollution (NO₂ and PM_{2.5} combined) could be responsible for around 3,500 early deaths in Scotland each year.¹

Q1 Do you have any comments on the updated UK plan?

We support the comments which have been fed in by the Healthy Air Campaign on the Defra plan and have the following comments on the Scottish Government's input into that plan via Cleaner Air for Scotland (CAFS).

(1) Cleaner Air for Scotland was not properly consulted on in the context of the Supreme Court judgment and the EU Ambient Air Quality Directive

We are concerned that the public has not been given the proper opportunity to comment on Scotland's National Air Quality Plan (formerly known as the "Low Emission Strategy" and published as "Cleaner Air for Scotland") in the context of this consultation. This is in breach of the Supreme Court Mandatory Order of 29th April, which was made on the basis that there would be fresh consultation of the plans.

This consultation states that the Low Emission Strategy/CAFS is the Scottish Air Quality Plan showing compliance with EU law and the Supreme Court ruling. However:

- CAFS could not be scrutinised or downloaded as part of this consultation;
- The public's opportunity to comment on what is now CAFS was *before* the legal ruling and this was when it was not purporting to be in compliance with

¹ Friends of the Earth Scotland Press Release, 19 September 2015, 'Scottish Air Pollution death toll almost double previous

Article 23 of the EU Ambient Air Quality Directive. From April 15th – November 4th, Scotland’s Air Quality Plan has been undergoing revisions and it was published on November 4th. Therefore there have been a total of three working days in which the public has been afforded an opportunity to comment on the plans in light of their compliance with the EU Ambient Air Quality Directive and Supreme Court ruling;

- As far as we are aware it is not proposed that there will be any future revisions to CAFS at this stage based on the feedback from this consultation.

There was therefore insufficient opportunity for public scrutiny of whether Scotland’s Plan complies with Article 23 and in particular Annex XV(A) of the EU Ambient Air Quality Directive. Annex XV requires that plans show a clear timetable for actions, along with estimates of how much each measure will reduce air pollution.

We are also concerned in this vein that the consultation questions themselves do not explicitly ask for comments on Scotland’s National Air Quality Plan and reiterate that air quality is devolved to Scotland meaning that the Scottish Government must show how it will comply with European law and the Supreme Court ruling.

(2) Annex XV(A)(8) of the EU Ambient Air Quality Directive is not delivered through CAFS

CAFS does not tell us how much each of its actions is expected to reduce pollution levels, dates of when each measure will be introduced, and when the resulting reductions in air pollution will be seen. This is in violation of EU law and the Supreme Court judgment, as follows:

- The Supreme Court issued “a mandatory order requiring new plans complying with article 23(1) to be prepared within a defined timetable.” (*R (on the application of ClientEarth) v UK* [2015] UKSC 28, paragraph 31)
- Article 23 of the EU Ambient Air Quality Directive provides,

In the event of exceedances of those limit values for which the attainment deadline is already expired, the air quality plans shall set out appropriate measures, so that the exceedance period can be kept as short as possible. The air quality plans may additionally include specific measures aiming at the protection of sensitive population groups, including children.

Those air quality plans shall incorporate at least the information listed in Section A of Annex XV...

- Many of the provisions from Annex XV are missing from CAFS, but in particular, Annex XV(A)(8)(c) is not complied with. It requires Article 23 Plans to include,

Details of those measures or projects adopted with a view to reducing pollution following the entry into force of this Directive:... (c) estimate of the improvement of air quality planned and of the expected time required to attain these objectives.

Therefore, whilst it is welcome that CAFS commits to compliance with EU law, it is unclear that it will deliver on this commitment.

(3) There is a lack of clarity over how and when, and if at all, Low Emission Zones will be implemented

Scotland's Air Quality Plan's Low Emission Zone Framework creates timetable towards Low Emission Zones which is excessively long and does not actually foresee an outcome of delivery of Low Emission Zones in Scottish cities within the timeframe set out, which goes up to 2019.² What is foreseen is a three-year "appraisal" phase followed by an "implementation" phase from 2018-19. This is highly concerning given that three local councils in Scotland (Edinburgh, Glasgow, and Aberdeen) have already undertaken feasibility studies for LEZs, and given that the Scottish Strategy has been two years in the making. We do not consider this time frame to be in compliance with the need to keep the exceedence period as short as possible as required by an Article 23 Plan, nor does it implement the Supreme Court's finding of a "need for immediate action to address this issue."

Furthermore, it is not clear whether this "implementation" refers to implementation of LEZs on the ground or implementation of plans towards LEZs.

Finally, there is a lack of clarity around how Low Emission Zones will be implemented and funded. We have previously advocated that the Low Emission Zone Framework needs to use a combination of carrot and stick to help local authorities to implement LEZs: the Government needs to provide funding for to local authorities to set up LEZs; and there should be a legally-based opt-out mechanism which requires that the major city local authorities introduce LEZs unless they can prove their action plans will achieve compliance with Scottish standards before 2020.

We welcome indications at the launch event of CAFS that we may see Low Emission Zones on the ground in Scottish cities by 2018 and we seek clarification of this.

(4) There are not enough measures in the Strategy to get the most polluting traffic off our roads

While there are welcome nods to prioritising walking, cycling, and public transport in the new strategy, Strategy crucially omits to acknowledge the need to reduce traffic volumes in order to tackle air pollution and there is no central plan to reduce traffic levels in urban areas.

We welcome the inclusion of a commitment to deliver the Cycling Action Plan for Scotland but this is not enough for the Strategy to achieve a meaningful shift from private car to public transport and active travel – there needs to be an inclusion of measures to deter car use as well. Many of the measures included are restatements

² Page 76, 'Cleaner Air for Scotland'

of existing policies rather than new actions. On specific new actions, there is far from enough on deterring car usage.

This is all the more important in light of the Volkswagen scandal. The Strategy needs to focus on reducing the volume of traffic on our roads rather than relying on technological advances and emissions reductions technologies to achieve compliance with the air quality limits.

The Low Emission Strategy itself recognises: “A mismatch between regulation and real-world emissions from diesel vehicles seems to be one of the key reasons why the expected reductions in concentrations at the roadside have not materialised. This is further compounded by a growth in the proportion of diesel vehicles in the UK.”

This, coupled with Transport Scotland’s estimate that road traffic miles driven will increase in the coming years, makes it clear that reducing the demand for motorised road travel is the main way to achieve Air Quality legal limits.

Therefore, whilst we welcome commitment to delivering the CAPS, the Strategy needs to provide for measures which deter car use, such as 20mph zones, parking controls and charges, and congestion charging.

(5) There is a need for more information on how the measures proposed in CAFS will be funded; the lack of detail on this could force local Councils to bear the brunt of delivering European Air Quality limits

Responsibility for meeting the EU Ambient Air Quality Directive lies with the Scottish Government. We feel the combination of a lack of measures included in the plans around getting traffic off of our roads, the slow pace of progress envisaged for Low Emission Zones, and lack of clarity around how measures will be funded leaves Councils forced with delivering compliance with the European limits.

(6) The section on Planning needs to require that Scottish Planning Policy (SPP) be reformed so as to include a far more specific requirement to reject new developments that increase air pollution, particularly to air quality management areas but to all areas

SPP currently states that planning decisions must “consider the implications of development for air quality”. This is too weak as it is unlikely to lead to proposals being refused on air quality grounds.

But the proposed action to “Ensure that future updates and revisions to Scottish Planning Policy and the National Planning Framework will take account of CAFS,” similarly does not provide any reassurance of how SPP will be strengthened to ensure that future development does not damage air quality, especially in air quality management areas of areas at risk of becoming AQMAs.

Q2 Do you have any comments on the updated Scottish zonal plans

Comments on the Glasgow Zonal Plan:

It is very welcome to see that the extremely misleading arguments about the M8 from the 2011 Zonal Plan have been removed from this Plan.

The 2011 Plan stated that the Newhouse – Baillieston Road scheme would improve air quality; a statement which was not supported by the Environmental Impact Assessment for that scheme. We are encouraged to see that there is no longer any reference to this scheme as an appropriate measure to tackle air pollution.

However, overall the plans show a lack of ambition on tackling excessive traffic levels through committing to extra funding for walking and cycling, improvements to public transport, and cleaner emissions standards.

Furthermore, there is a lack of detail around the content of each plan, including how much it is intended to reduce pollution by, and the status of its implementation. In the list of measures proposed to be submitted to the Commission, nowhere is the impact of the measures on air quality quantified or projected, so it is not clear by how much, if at all, the proposed measures will reduce air pollution. This is in breach of the requirements of Annex XV(A)(8) of the EU Ambient Air Quality Directive.

Of the measures listed, many of them have not been implemented in a meaningful way yet. For example:

Measure 3 on Low Emission Zones has not resulted in Low Emission Zones being introduced in the city, despite such zones being under consideration since 2008; and Measure 4 on cleaner taxis has been ongoing since 2009 but has not yet resulted in any restrictions around vehicle emissions standards for taxis.

Finally, Glasgow's Local Transport Strategy is out of date, and it along with other relevant Transport Strategies fail to aim for compliance with Scottish and European statutory air quality limits whatsoever, let alone within a specified timeframe.

The most recent Local Transport Strategy for Glasgow covers the period from 2007-2009 but has not been updated.³ It has a policy objective to "Improve air quality throughout the city with particular emphasis on Air Quality Management Areas," but not to achieve the Scottish Air Quality standards and EU air quality limits.

There is a Transport Strategy which is geographically limited to the City Centre.⁴ It does not include an objective to meet the Scottish air quality standards or EU limit values and includes Low Emission Zones as a long term goal for 6-10 years away.

The Strathclyde Partnership for Transport Regional Transport Strategy Delivery Plan 2014-2017 is a plan for the Strathclyde Region, covering Glasgow and the

³ Glasgow Local Transport Strategy 2007- 2009, <https://www.glasgow.gov.uk/index.aspx?articleid=3921>

⁴ Glasgow City Centre Transport Strategy 2014-2024, <https://www.glasgow.gov.uk/CHttpHandler.ashx?id=27887&p=0>

surrounding area. There is no mention of Low Emission Zones in this document. There is a stated outcome of reducing emissions, but not to within Scottish Standards or European legal limits.⁵

As a result there is an overall lack of join up between Transport Strategies covering Glasgow and the need to reduce traffic levels and improve emissions standards such that legal limits are complied with.

⁵ <http://www.spt.co.uk/corporate/about/strategy/regional-transport-strategy/>