

Friends of the Earth Scotland Air Quality Plan consultation response

15 June 2017



Summary

We agree with the shortcomings with the Draft AQP that have been identified by Friends of the Earth England Wales & Northern Ireland and ClientEarth, and restrict our comments here to focusing on the parts of the Draft AQP that apply to Scotland.

Dangerous and illegal levels of air pollution are harming the health and killing people early in Scotland. For the purpose of EU law, Scotland is divided into 6 zones/agglomerations. 4 of the 6 zones in Scotland: Glasgow Urban Area, Edinburgh Urban Area, North East Scotland (which includes Aberdeen), and Central Scotland (which includes Dundee and Perth) all have persistent levels of nitrogen dioxide in breach of Article 13 of the Ambient Air Quality Directive.

Since the 2015 AQP, the only new action the Scottish Government has put on the table has been a commitment to a Low Emission Zone (LEZ) by 2018, but basic details about it are lacking. In addition, in this draft AQP the Scottish Government has committed to consulting on a National Low Emission Framework (NLEF) later in 2017 when originally in Cleaner Air for Scotland strategy (CAFS) it had committed to finalising the Framework by 2016 at the latest.

We do not consider that the Scottish Government has paid due attention to the High Court ruling because it has not accelerated action in delivering Cleaner Air for Scotland, nor has it reviewed and updated that Strategy following the High Court ruling to incorporate more action on transport.

We call for

- A clear and credible plan from the Scottish Government around funding commitments of its LEZ and a clear pathway to delivering LEZs in every major city in Scotland in as short a time possible.
- Clarity over whether and to what extent the findings of the Technical Report on the usefulness of charging CAZs apply to Scotland
- Clarity over whether the Scottish Government's first Low Emission Zone, to be introduced next year, will effectively be a charging CAZ
- Clarity over what discussions the Scottish Government has had with DEFRA in coordinating plans vis a vis the Scottish Government's commitment to introducing Scotland's first LEZ by 2018 and possible charging CAZs.

Timeline of action relevant to Scotland since the 2015 Supreme Court ruling

In April 2015, the Supreme Court issued a mandatory order against the UK government to produce a new air quality plan (AQP) to show compliance with European nitrogen dioxide (NO₂) legal limits in the shortest time possible.

In November 2015, the Scottish Government published “Cleaner Air for Scotland”, a Scottish Government air quality strategy which aimed for full compliance with EU legal limits by 2020. The three main parts of that Strategy were the development of a National Modelling Framework, a National Low Emissions Framework, and a Communications Strategy. A Governance Group, on which we co-represent Scottish Environment Link, for delivering the Strategy, was set up in early 2016.

In December 2015, the UK’s AQP was published. In relation to Scotland, it stated, “The approach taken in the Cleaner Air For Scotland Strategy is consistent with and complementary to this UK plan and will support the individual Scottish zone plans”.

In September 2016, the newly elected Scottish Government committed itself as follows: “With the help of local authorities, we will identify and put in place the first low emission zone by 2018, creating a legacy on which other areas can build.”

The 2015 AQP was deemed unlawful by the High Court in October 2016. Specifically, the High Court ruled that the Secretary of State had chosen arbitrary compliance deadlines and had relied too heavily on optimistic modelling meaning that certain measures which could have sped up compliance with air quality limits were not incorporated into the Plan.

The High Court ruled that the new AQP would have to incorporate all technically feasible measures to meet the NO₂ legal limits:

- As soon as possible
- In a way that reduced people’s exposure where legal limits are broken as quickly as possible
- That ensures that meeting the limits is “likely” rather than just possible.

Air quality is devolved to Scotland, which means that the Scottish Government is responsible for meeting the air quality limits everywhere in Scotland.

This draft AQP does not demonstrate how compliance will be delivered as soon as possible, in a way that reduces exposure as quickly as possible, and ensures that meeting the limits is likely rather than possible in Scotland. In fact, the updated plans for Scotland have completely failed to respond to the demands of urgency from the High Court.

Key shortcomings of Scotland's input into the 2017 AQP

(1) NLEF: a delayed plan for a plan which may not be necessary

The Draft AQP states in relation to Scotland that a National Low Emission Framework (NLEF) will be consulted on later in 2017. There are three main problems with this commitment:

- It is a plan for a plan when what was expected by 31st July was a plan for action.
- NLEF was originally timetabled to have been finalised by 2016. CAFS committed itself as follows: "We will, by April 2016... ensure the NLEF criteria, tests, and processes are developed, agreed, and finalised" ("Legislation and Policy Action 10" on page 85 of CAFS). It is unacceptable that a delayed timetable had been presented as part of the 2017 AQP.
- NLEF itself may not be adding anything extra to the detail set out through the technical report of this consultation, and may well be redundant and a waste of time and resources. The NLEF describes itself as an appraisal process to enable local authorities to justify the business case for and implement a range of air quality improvement options related to transport and associated land use, including Low Emission Zones. It is not clear whether, in light of the findings of the Technical Report, NLEF is even required. No consideration has been made to the interaction between NLEF and the findings of the TR.

NLEF has evolved into a complex, opaque, and confused exercise which is taking far too long to develop, and which has diverted valuable resources which should be going into actually improving air quality, effectively becoming a stumbling block.

(2) Low Emission Zone: lack of detail on first, and subsequent zones

According to the Draft AQP plans for a Scottish LEZ will proceed, with the first LEZ delivered by 2018. Whilst in principle this is a welcome development, details around the location and parameters of the zone, which emissions standards will apply to which vehicles, how charges will be set, how it will be funded, when more Zones will be rolled out remain entirely lacking with modelling of different scenarios yet to have been published. Furthermore, the Scottish Government has yet to provide a clear commitment on when and how subsequent zones will be delivered. Importantly, no consideration appears to have been made to the interaction between potential charging Clean Air Zones across the rest of the UK and Low Emission Zones in Scotland: whether they effectively will be the same thing, whether they will be implemented in the same way, etc.

(3) No review of Cleaner Air for Scotland, and no new measures to reduce emissions from transport

Cleaner Air for Scotland does not demonstrate how and whether its proposed actions would deliver compliance with EU legal limits as quickly as possible.

Neither the draft nor final Cleaner Air for Scotland Strategy was revised or strengthened to incorporate any new measures to reduce transport emissions, (such as measures to improve public transport use, improve active travel uptake, or roll out more low emission zones as quickly as possible) following either the 2015 Supreme Court or 2016 High Court ruling. In terms of the three pillars of CAFS, we do not believe they amount to substantial action on transport, but are plans for plans. Whilst work on the NMF is underway, the NLEF is over a year behind schedule and the Communications Strategy has not resulted in any clear or tangible public facing outputs apart from some communications on National Clean Air Day (15 June 2017).

Crucially, CAFS is still only aiming for compliance with EU law by 2020 when the High Court ruling made it clear that reduction in exposure levels in all areas with illegal air was required as soon as possible with all technically feasible measures included. So it is difficult to see how CAFS will be compatible with any finalised and lawful AQP.

Conclusions

- The draft AQP includes, in relation to Scotland, a plan for a plan.
- The Scottish Government's input into the draft AQP has been underambitious and demonstrates a lack of due attention to the findings of the TR
- CAFS should have been revised following the High Court ruling, with updated actions to demonstrate exposure reduction of air pollution as quickly as possible.