

Net Zero, Energy and Transport Committee

13th Meeting, 2023 (Session 6)

Tuesday 25th April 2023

Consideration of Air Quality Improvement Plan

Background

1. The Net Zero, Energy and Transport Committee is scrutinising the [Scottish Government's Air Quality Improvement Plan](#). The Plan was prepared in response to an [Improvement Report published by Environmental Standards Scotland \(ESS\)](#) into nitrogen dioxide (NO₂) levels in Scotland.

2. ESS's investigation was triggered in response to a European Court of Justice (ECJ) ruling in 2021 that found breaches of air quality limit values for NO₂ had been 'systematic and persistent' across the UK between 2010 and 2017. The subsequent Improvement Report produced by ESS raised a number of issues in relation to the governance and monitoring of air quality standards in Scotland. Also included in the Report were six recommendations to the Scottish Government.

3. As part of its consideration of the Improvement Report, the Committee has also agreed to examine wider issues in relation to air quality policy as part of its scrutiny. Three key topics the Committee will consider are—

- The policies and actions set out in the Scottish Government's [Cleaner Air for Scotland 2 Strategy](#);
- The implementation and potential impact of [Low Emissions Zones \(LEZs\)](#) in Edinburgh, Glasgow, Aberdeen and Dundee; and
- Scotland's performance in relation to international best practice on air quality.

Scottish Government Improvement Plan

4. On 27 March, the Scottish Government laid its Air Quality Improvement Plan before the Scottish Parliament. Under the [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#), the Scottish Parliament has 40 days to resolve if the plan should be approved. (This does not include any recess period lasting more than 4 days, which in this case means that the Easter recess period is not counted within the 40 days.)

5. The Improvement Plan sets out what actions the Scottish Government will take to address the six recommendations highlighted by ESS in its Improvement Report. Included in the Plan are commitments to—

- Update policy guidance for Local Air Quality Management (LAQM) to include—
 - i. a more clearly defined requirement for Air Quality Action Plans (AQAP) to be published within as short a time as possible and no later than 12 months from AQMA designation.
 - ii. specified target dates for completing each AQAP measure, well defined milestones towards completion, a clearer requirement for assessing the estimated reduction in pollutant concentrations contributed by each AQAP measure and more explicit requirements for joint working with Transport Scotland and SEPA on actions which lie outside direct local authority control.
 - iii. a requirement that current AQAPs should be reviewed and, where necessary, updated within one year of the revised guidance being published, and every five years subsequently. To also regularly assess approaches to monitoring to ensure technological and analytical developments are being capitalised on.
 - iv. Explicit reference to the wide-range of enforcement powers which Scotland’s regulator of air quality, the Scottish Environment Protection Agency, can utilise to compel local authorities to take appropriate actions to comply with their duties in relation to air quality. Under the new guidance, SEPA will be expected to more readily use its enforcement powers if local authorities are not fulfilling their duties and if deadlines for taking appropriate actions are not being met.
- Progress the Scottish Government’s review of air quality data collection and reporting in Scotland to ensure air quality monitoring sites are optimally located.
- Amends the Delivery Plan accompanying Cleaner Air for Scotland 2 to provide a more detailed assessment of milestones for monitoring progress being made towards objectives outlined in the strategy.

Net Zero, Energy and Transport Committee Scrutiny of Air Quality

6. The Committee launched a targeted call for views on 11 February, to seek written evidence from stakeholders on the issue of air quality. A copy of the call for views text can be found in **Annexe A**.

7. The Committee has received 15 submissions of written evidence from—

- [Asthma + Lung UK Scotland](#)

- [Prof Jill Belch](#), Immediate Past President of European Society of Vascular Medicine, Division of Molecular and Clinical Medicine, Ninewells Hospital and Medical School
- [COSLA](#)
- [CPT Scotland](#)
- [Environmental Rights Centre for Scotland](#)
- [Dr Gary Fuller](#), UKRI Clean Air Champion and Senior Lecturer in Air Quality Measurement, Imperial College London
- [Dr Campbell Gemmell](#), Partner, Canopus Scotland and Hon Prof. Glasgow University and Visiting Prof. Strathclyde University Law School
- [Dr Heather Price](#), Senior Lecturer in Environmental Geography, Biological and Environmental Sciences, University of Stirling
- [Fife Council](#)
- [Living Streets Scotland](#)
- [The City of Edinburgh Council](#)
- [Royal College of Physicians of Edinburgh](#)
- [RTPI Scotland](#)
- [Scottish Environment Protection Agency \(SEPA\)](#)
- [Sustrans Scotland](#)

8. At its meeting on 18 April, the Committee commenced oral evidence taking by holding a roundtable discussion with stakeholders to ascertain their views on air quality in Scotland and what measures could assist with tackling air pollution. Afterwards, the Committee held an evidence session with a panel of local authority representatives to discuss good practice in relation to air quality management at a local level and what progress has been made in Scotland's cities regarding the introduction of LEZs.

9. On 25 April, the Committee will hold an evidence session with ESS to hear its views on the Improvement Plan prepared by the Scottish Government and to find out if the organisation thinks the Plan is capable of delivering on the recommendations set out in ESS's Improvement Report. The Committee will then take concluding evidence from the Cabinet Secretary for Net Zero and Just Transition to explore the work which has underpinned the development of the Improvement Plan and how it is taking forward wider initiatives relating to air quality.

10. The Committee will hear from—

- Mark Roberts, Chief Executive, Environmental Standards Scotland; and

- Jamie McGrandles, Head of Investigations, Standards and Compliance, Environmental Standards Scotland.

And then from—

- Màiri McAllan, Cabinet Secretary for Net Zero and Just Transition, Scottish Government;
- Andrew Taylor, Air Quality Policy Manager, Scottish Government; and
- Vincent McNally, Environment and Air Quality Manager, Transport Scotland.

11. The Committee has received a written submission from ESS which is available in **Annexe B**.

Next steps

12. Following the conclusion of evidence taking, the Committee will agree a short report to the Scottish Parliament. A motion seeking the Scottish Parliament's approval of the Improvement Plan will be lodged and taken in the Chamber before the 40-day period concludes on 21 May.

13. If the Parliament approves the Improvement Plan, the Scottish Government must publish it. If the Parliament resolves that the plan should not be approved, Scottish Ministers must update their plan to incorporate the views of the Parliament and lay a revised copy within a period of 3 months.

Clerks

Net Zero, Energy and Transport Committee

Annexe A

Notification to stakeholders of a targeted call for views on air quality being undertaken by the Net Zero, Energy and Transport Committee

We are contacting you because the Scottish Parliament's [Net Zero, Energy and Transport Committee](#) is conducting a targeted call for views on air quality issues. We would be very grateful if you were able to respond.

Environmental Standards Scotland Improvement Report

On [29 September 2022](#), Environmental Standards Scotland (ESS) issued an [improvement report](#) to the Scottish Government following its investigation into compliance with air quality limit values.

The report was instigated following a European Court of Justice (ECJ) ruling that the UK was breaching its air quality limits for Nitrogen Dioxide (NO₂). The report recommends actions to address issues highlighted on air quality standards, including introducing clear and robust local authority air quality action plans underpinned by measurable objectives to be achieved within specific deadlines.

It proposed the Scottish Government should be required to—

- “identify or introduce an appropriate monitoring body;
- critically analyse the protocols surrounding the siting of monitoring stations and data provision; and
- revise its most recent air quality strategy to include specific and measurable timescales for reaching compliance.”

Under [the UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#), the Scottish Government must produce an Improvement Plan outlining the steps it has taken to address key issues highlighted by ESS. This must be within a period of six months, or nine months if Scottish Ministers consider it necessary to consult with stakeholders on the plan. The Scottish Parliament then has 40 days to consider the Improvement Plan.

Consideration of Air Quality Issues

The Net Zero, Energy and Transport Committee has agreed to seek written views on wider air quality issues in advance of the Scottish Government Improvement Plan being laid. The Committee would welcome your views on—

The Scottish Government's, [Cleaner Air for Scotland 2](#) (CAFS2):

- Priority areas for action;
 - Effectiveness of the strategy's aims and actions; and
 - Funding, resources and governance structures for achieving the strategy's aims and actions.

- Progress towards delivery of Scotland's low emission zones in Glasgow, Edinburgh, Dundee and Aberdeen, including—
 - The scale, ambition and proposed implementation of Scotland's LEZs;
 - Implementation of the bus low emission zone in Glasgow; and
 - Monitoring and enforcement of LEZs.
- Scotland's compliance with international standards on air quality—
 - Scotland's performance in meeting international guidelines regarding limit values for air pollutants.
 - Scotland's performance compared to other European countries.
 - International examples of best practice and how this could be applied in Scotland.

Annexe B

Correspondence from Mark Roberts, Chief Executive of Environmental Standards Scotland to the Convener of the Net Zero, Energy and Transport Committee

19 April 2023

Dear Convener

NET ZERO, ENERGY AND TRANSPORT COMMITTEE, 25 APRIL 2023

Environmental Standards Scotland (ESS) received a copy of the Scottish Government's improvement plan which sets out how it intends to implement the six recommendations set out in ESS' air quality [improvement report](#). ESS is pleased that the Scottish Government welcomes the report, has accepted all of the recommendations and is committed to delivering them.

ESS' investigation followed a European Court of Justice ruling in March 2021 that, across the UK, exceedances of statutory air quality limit values in respect of nitrogen dioxide had remained 'systemic and persistent' between 2010 and 2017. ESS' investigation continued work which had already been undertaken by the European Commission prior to the UK's withdrawal from the European Union.

ESS' recommendations were intended to improve the efficiency and effectiveness of how air quality improvement is achieved. While improvements in air quality have been achieved, potential effects on public health remain. If the Scottish Government decides to follow the European Union's plans to reduce pollutant limit values further, it is important that the system of air quality management is as efficient and effective as possible.

Having considered the content of the Scottish Government's improvement plan, I have set out below ESS' view on the Scottish Government's response to the recommendations made within ESS' improvement report.

Recommendation 1 - Introduce the requirement for local authorities to complete and publish AQAPs within a specified target date following the declaration of an AQMA, which must be within as short a time as possible.

ESS welcomes the inclusion within the improvement plan of a more clearly defined requirement for Air Quality Action Plans (AQAPs) to be published within as short a time as possible, and no later than twelve months from Air Quality Management Area (AQMA) designation. On reviewing the recently updated Local Air Quality Management (LAQM) policy guidance¹ (published in March 2023) it is apparent that a strengthening in this connection has been incorporated into Section 6.1 of the guidance where it states '*once a local authority has declared an AQMA, under Section 84 of the [Environment Act 1995] it must then prepare and implement an air*

¹ [Part IV of the Environment Act 1995: Local Air Quality Management: Policy Guidance \(www.gov.scot\)](http://www.gov.scot)

quality action plan within the shortest possible time and no later than 12 months post declaration’.

Recommendation 2 - Introduce the requirement for local authorities to achieve AQMA and AQAP objectives within a specified target date, which must be within as short a time as possible.

ESS’ improvement report set out the current position that local authorities are not legally obliged to meet the air quality objectives within AQMAs. The key point behind this recommendation was that local authorities must set a specified target date for when compliance **must be achieved**.

The improvement plan proposes a strengthening of the LAQM policy guidance to include:

- specified target dates for completing each action plan measure;
- well defined milestones towards completion;
- a clearer requirement for assessing the estimated reduction in pollutant concentrations contributed by each AQAP measure; and
- AQAP measures should be delivered within as short a time as possible, and that the action plan itself should have a timescale for completion and for revocation of the AQMA. The timescale for revocation should be ‘within as short a time as possible’ which should be taken to mean the date by which the longest term AQAP measure is expected to be completed.

ESS considers that the above actions constitute a significant strengthening of the current system and notes that they have been incorporated within sections 3.18, 5.6 and section 6 of the revised LAQM policy guidance.

Furthermore, the inclusion of the explicit requirement for joint working between local authorities and Transport Scotland and SEPA proposed in the plan are also welcomed by ESS and we see that these have been incorporated into the revised LAQM policy guidance (section 6.15) where the local authority is expected to take the lead role.

Recommendation 3 - Introduce the requirement for local authorities to review and, where necessary, update AQAPs. The targets for any such review and update must be consistent with the principle of as short a time as possible.

ESS found that the time periods associated with the preparation, review, and update of AQAPs needed to be tightened to ensure a consistent approach is adopted and that air quality limit values remain a priority for local authorities. Accordingly, ESS welcomes the inclusion within the plan, and in sections 4.8 and 6.8 of the revised LAQM policy guidance, that current AQAPs (whether published or in draft) must be reviewed and, where necessary, updated within 12 months of the revised policy guidance being published.

The improvement plan considers that a five year review cycle is appropriate as it aligns with the time period for the lifespans of the Government’s Cleaner Air for Scotland strategies. In ESS’ view, the proposed five year cycle is too long and risks compromising the principle that compliance should be achieved in as short a time as possible.

Recommendation 4 - Identify or introduce a monitoring body with the remit to look at the system of air quality monitoring and compliance holistically (including the monitoring of the implementation and effectiveness of LEZs). It is critical that this body should be able to move quickly where air quality does not meet legal requirements, consistent with the principle of achieving compliance within the shortest time possible, and thus it should have the requisite power to direct action when deemed necessary.

The improvement plan considers that this recommendation can be satisfied through SEPA using the existing powers available to it under section 85 of the Environment Act 1995, should a local authority not be undertaking its statutory duties in relation to air quality. In particular that the LAQM policy guidance will be strengthened to include an assumption that these powers should be used routinely once the series of warning levels issued to local authorities when specified deadlines are missed have been exhausted rather than on a case by case basis.

There are a number of key actions which local authorities must take as part of their LAQM responsibilities (such as monitoring, declaration, planning, execution and reporting), all of which interact with each other. The purpose of this recommendation was to identify or introduce a body which has the remit to consider **all** aspects of the discharge of these responsibilities, with the ability to comment, report or direct action in all of these areas where necessary. The recommendation, if implemented appropriately, will ensure that close and ongoing scrutiny is given to the range of work undertaken to improve air quality (and therefore public health) by local authorities, so that it is conducted as efficiently and effectively as possible. Accordingly, ESS considers that the role of the monitoring body should go beyond mere administrative compliance.

The revised LAQM policy guidance (section 2.8) sets out the sequencing of when SEPA will utilise its enforcement powers. However, this relates only to the submission of Annual Progress Reports (APRs) and the completion of AQAPs. This appears to follow the previous system as described at page 27 of ESS' improvement report and neither the improvement plan or the revised policy guidance touch upon the other duties which ESS considers the monitoring body should have, which is the ability to comment, report or direct action in all of areas of local authorities' LAQM responsibilities.

In light of this, ESS is unconvinced that the changes proposed in the improvement plan and in the revised LAQM policy guidance are sufficiently clear about what will be monitored and whether the existing Section 85 power is capable of fully implementing the recommendation as intended.

Recommendation 5 - That the Scottish Government ensures that its ongoing review of data provision scrutinises the protocols for the siting of monitoring sites, with a view to establishing whether they provide a sufficiently comprehensive picture of the state of air quality, particularly in and around our major cities. Specific focus should be placed on areas where vulnerable groups are present, such as schools and hospitals.

This recommendation relates to the question of whether the current monitoring system is robust enough to provide a sufficiently comprehensive picture of the state of air quality in our major cities, especially around areas where vulnerable groups are

present. During our investigation, ESS was aware of the Scottish Government's ongoing review of data provision in this connection and thus considered it appropriate for the review to take forward this recommendation. ESS is not clear from the improvement plan whether the Scottish Government has concluded this review, or if it has, what its conclusions are.

Recommendation 6 - That the Scottish Government revises CAFS2 to include specific and measurable timescales (consistent with the overarching duty to achieve compliance within the shortest time possible) for when compliance with NO2 limit values should be achieved.

ESS welcomes the Government's acceptance of this recommendation. It notes the establishment of general timescales for actions within CAFS2. ESS will monitor the Scottish Government's progress against these timescales.

Yours sincerely

Mark Roberts

Chief Executive