



27 June 2018

The Rt Hon Michael Gove MP  
Secretary of State for Environment, Food and Rural Affairs  
Department for Environment, Food and Rural Affairs  
Seacole Block, 2 Marsham Street  
London SW1P 4DF

Dear Michael,

### **The UK's implementation of the EU air quality Directive**

Further to the European Commission's announcement on 17 May, that it was referring the United Kingdom to the Court of Justice of the EU (CJEU) for failing to respect agreed air quality limits, the EU Energy and Environment Sub-Committee took evidence at its meeting on 13 June on the UK's implementation of the EU air quality Directive. As your officials indicated that you would be unable to attend one of our meetings before the summer recess, we are writing to outline some of the concerns that arose during that session and to seek your response.

It is extremely concerning that, eight years on from when Member States were legally obliged to meet the limits set out in the Directive, the UK is still so far from complying with the nitrogen dioxide (NO<sub>2</sub>) limit. The statement issued by the Commission on 17 May says that in 16 air quality zones across the UK (including London, Birmingham, Leeds and Glasgow), annual concentrations reported were as high as 102 µh/m<sup>3</sup> against a limit value of 40 µh/m<sup>3</sup>.<sup>1</sup> Why are the UK's NO<sub>2</sub> levels so high, and why are they higher than in many other European countries?

We note from a recent European Commission Communication<sup>2</sup> that a tour of Member States is being planned, to support the implementation of air quality standards through a series of Clean Air Dialogues. Are there any plans for one to be held in the UK?

As you are aware, the United Kingdom's referral to the CJEU is for both the significant and persistent exceedances of the nitrogen dioxide limit and the failure to take appropriate measures to keep exceedance periods as short as possible. The Commission's statement

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<sup>1</sup> 'Air quality: Commission takes action to protect citizens from air pollution', *European Commission* (17 May 2018): [http://europa.eu/rapid/press-release\\_IP-18-3450\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3450_en.htm) [accessed 19 June 2018]

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A Europe that Protects: Clean air for all, [COM\(2018\) 330](#)

refers to the Air Quality Ministerial Summit on 30 January 2018, where the UK had a final opportunity to reassure the Commission that it was taking action but (in the Commission's view) failed to "present credible, effective and timely measures to reduce pollution, within the agreed limits and as soon as possible, as required under EU law".<sup>3</sup> Katherine Nield from ClientEarth, who gave evidence to the Committee at our meeting on 13 June, also set out the various court rulings in the UK which have concluded that your department as yet to produce a legally compliant air quality plan. Given the significant health impacts of poor air quality (the Royal College of Physicians estimates it contributes to 40,000 early deaths a year in the UK<sup>4</sup>), and that the Directive has been in force for eight years, why has the Government not produced an adequate plan? Given that both legal action in the UK and infraction proceedings at an EU level have been going on for some years, it would appear that this is not a matter that the UK Government has treated with the necessary seriousness until recently. Indeed, the impression of our local authority witnesses was that attempting to meet the requirements of the Directive only became of focus for the UK Government in 2014/15, around the time that infraction proceedings began.<sup>5</sup> How would you assess the Government's effort to comply with the Directive, since it was adopted in 2008?

As part of her evidence, Katherine Nield explained the legal process that will take place following the referral to the CJEU. She told us that it will be a two-stage process: a ruling on whether the UK is in breach of the requirements of the Directive and then, if the issue is still not resolved, a second referral with the potential of a fine. Given that each stage of this process can take several years, it is highly likely that the UK will have left the EU by the time of any ruling. Have you been given any indication of how long proceedings are likely to take? What is the UK Government's position on complying with the ruling in this case if it comes after the UK has left the EU? The Committee also heard that the Government wrote to local authorities in 2014, stating that local authorities could be required to pay some or all of any fine imposed. Katherine Nield stated that "Passing responsibility down in this way is quite worrying and seems inappropriate in this context...the Secretary of State mandated local authorities to take action only very recently. The fault for the delay in action until then very much falls in the lap of national government."<sup>6</sup> Based on the evidence we have heard, this seems to be a fair assessment. Could you clarify the Government's current intention in relation to how any fine would be passed to local authorities?

During our evidence session, we heard from three local authorities (Oxford, Leeds and Newcastle) about the steps they were taking to reduce NO<sub>2</sub> and produce legally compliant air quality plans. We also heard from Katherine Nield about positive work being done in London. We heard concerns, however, that the Government's approach of leaving decision making to local authorities could result in some areas failing to take effective action. Ms Nield told us "Despite having some of the worst air quality in the country, Derby has indicated that it is not going to back the implementation of a clean air zone. It looks like it will implement a scrappage scheme instead, which falls contrary to the Government's evidence on the potential effectiveness of these kinds of measures."<sup>7</sup> Her view was that, given the evidence that these "are the most effective way of bringing down nitrogen dioxide

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<sup>3</sup> 'Air quality: Commission takes action to protect citizens from air pollution'

<sup>4</sup> Royal College of Physicians and RCPCH, *Every breath we take; the lifelong impact of air pollution* (February 2016) p xii: [file:///C:/Users/McMillana/Downloads/Air\\_pollution\\_main%20report\\_WEB\\_1\\_0\\_0.pdf](file:///C:/Users/McMillana/Downloads/Air_pollution_main%20report_WEB_1_0_0.pdf) [accessed 19 June 2018]

<sup>5</sup> [Q 12](#)

<sup>6</sup> [Q 4](#)

<sup>7</sup> [Q 5](#)

levels in the shortest possible time”,<sup>8</sup> the Government should have mandated the roll out of charging clean air zones to the areas that need them. What was the rationale for leaving this to local authority discretion?

We understand that the local authority plans are due in various stages over the next six months. Could you explain what will happen once they are submitted: how will it be determined that they are robust enough to be compliant with the Directive and what are the timescales for them being accepted/ rejected?

While recognising there was a significant role for local authorities to play, the witnesses provided a number of examples of where they felt national leadership and coordination was necessary. Mai Jarvis from Oxford City Council highlighted that they had set up a Low Emission Zone in 2014, but there was no guidance on what the criteria should be, meaning that different cities could set different emission restrictions (making things very complicated for drivers going from one city to another).<sup>9</sup> Polly Cook explained that there is no equivalent of the Clean Bus Fund for coaches and HGVs, and so there is currently no retrofit solution for those vehicles which would allow them to drive in a Clean Air Zone.<sup>10</sup> She also raised concern about systems that the Government need to have in place to allow local authorities to deliver Clean Air Zones:

“We have been talking about Clean Air Zones with Government for the past couple of years but we’re still at the stage where the national payment portal was conceived only just before Christmas, so that is not developed. We are looking to go live in the next 15 or 16 months. The DVLA database is meant to be being updated. ... A national database for taxi and private hire is in the first level of a Clean Air Zone, yet there is no way nationally to identify which vehicles are taxi and private hire without creating that database. The signage has not been released. We are being asked to meet a deadline of 15 September, when we will have to have costed up everything, but a lot of the input data that we need is still not available. We are continuing to work on that basis, but lots of practical things need to start happening more quickly.”<sup>11</sup>

Please provide an update on the action being taken at a national level to ensure that the guidance and infrastructure is in place to allow local authorities to implement the Clean Air Zones and other measures necessary to meet the requirements of the Directive in a timely manner. Are you confident that adequate funding is available for local authorities to implement these measures?

Witnesses also raised concerns that they did not always have the legal powers they needed to take action. Oxford cited the example of creating a Zero Emission Zone, which would help them meet the requirements of the Directive but which they are currently unable to do with the powers they have.<sup>12</sup> What steps have you taken to ensure that local authorities will have the legal powers they need to implement air quality plans that meet the requirements of the Directive?

Finally, we would observe that both the legislative requirement to reduce NO<sub>2</sub> emissions and the legal mechanism to enforce that requirement come from the EU. What assurance can you give that leaving the EU will not result in an even weaker focus on air quality? In our

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<sup>8</sup> [Q 5](#)

<sup>9</sup> [Q 12](#)

<sup>10</sup> [Q 14](#)

<sup>11</sup> [Q 14](#)

<sup>12</sup> [Q 12](#)

*Brexit: environment and climate change* report, from February 2017, we concluded that Brexit would require the UK to establish “an effective and independent domestic enforcement mechanism” to replace the role of EU institutions<sup>13</sup> but we note that environmental groups have been disappointed with the proposals set out in your Environmental Principles and Governance Bill (a concern that was repeated at our meeting on 13 June).<sup>14</sup> We note that an amendment to the EU (Withdrawal) Bill that sought to give the proposed new environmental watchdog the power to initiate legal action against the Government was agreed. Can you confirm that, if air pollution limits are exceeded in future, the new body could initiate legal proceedings against the UK Government and whether a financial penalty could result?

We look forward to your response.

Lord Teverson  
Chair of the European Union Energy and Environment Sub-Committee

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<sup>13</sup> European Union Committee, *Brexit: environment and climate change* (12<sup>th</sup> report, Session 2016-17, HL Paper 109)

<sup>14</sup> [Q 9](http://www.climatechangenews.com/2018/05/14/fears-post-brexit-climate-laws-uk-green-watchdog-plans-revealed/); Fears for post-Brexit climate laws as UK green watchdog plans revealed, *Climate Home News* (14 May 2018): <http://www.climatechangenews.com/2018/05/14/fears-post-brexit-climate-laws-uk-green-watchdog-plans-revealed/> [accessed 19 June 2018]