

Clean Air (Health of Current and Future Generations) Act

Disclaimer: This proposed legislation has been drafted by Clean Air in London and Kate Harrison of Harrison Grant Solicitors with no one else consulted or involved

An Act to provide for clean air; to give effect to the right to clean air everywhere, indoors and outdoors; and to contribute towards the achievement of zero emissions in accordance with the commitment to a net zero emission target for carbon dioxide as set out in the Climate Change Act (as amended) and to reducing other greenhouse gases; to recognise the United National Human Rights Council Resolution (A/HRC/45/L.48/Rev.1) on realising the rights of the child through a healthy environment; to the right to clean air for children and others protected by Articles 2 and 8 of the European Convention on Human Rights; and to ensure clean air, indoors and outdoors in accordance with international law and World Health Organisation guidelines for air quality.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and the authority of the same, as follows: -

Part 1 – Clean air**1. Duties**

- (1) The Secretary of State for Business, Energy and Industrial Strategy or their successor (the “Secretary of State”), has a duty to ensure the right to clean air throughout England and Wales in accordance with –
 - (a) Articles 2 and 8 of the European Convention on Human Rights,
 - (b) the rights of the child to a healthy living environment, and
 - (c) the target of zero emissions for carbon dioxide by 2050 and the reduction of other greenhouse gases.
- (2) In ensuring the right to clean air and a healthy environment and to protect the life of the child the Secretary of State shall follow all the World Health Organisation (WHO) guidelines for indoor and ambient air quality.
- (3) The Secretary of State, Metro Mayors and local authorities shall cooperate to ensure the duty under subsection (1) is discharged.

Part 2 – Understanding air pollution**2. Duty to monitor, collect and distribute information about air pollution**

- (1) The Secretary of State and local authorities shall monitor and collect, in a manner that is fully consistent with WHO guidelines, including guidelines on measurement standards and time periods, comprehensive information on the levels of all ambient air pollutants where people live work or visit subject to WHO guidelines including but not limited to:
 - (a) nitrogen dioxide (NO₂)
 - (b) ozone (O₃)
 - (c) ultra fine particulate matter (as PM_{0.1})
 - (d) fine particulate matter (as PM_{2.5})
 - (e) particulate matter (as PM₁₀)
 - (f) polycyclic aromatic hydrocarbons expressed as a concentration of benzo(a)pyrene (PAH)
 - (g) sulphur dioxide (SO₂)

- (2) Members of the public shall be given regular and frequent access to the information collected under subsection (1) in an easily accessible and comprehensible form.
- (3) At any time when any of the pollutants listed in subsection (1) exceeds or is likely to exceed a WHO short-term guideline for ambient air quality the Secretary of State, Metro Mayors and local authorities shall issue easily accessible and proactive warnings to the public and the media containing information about the levels and forecast levels of pollution and action which can be taken to avoid harm to life and health and to reduce that pollution at source.
- (4) The Secretary of State, Metro Mayors and local authorities shall build public understanding of air pollution with information about the impact of air pollution, advice on how persons can protect themselves against its harmful impacts and the measures that the Government, Metro Mayors, local authorities and other persons can take to reduce pollution at its source.
- (5) The advice and information in subsection (4) shall include information about all sources of emissions to the air whether these sources create primary or secondary air pollutants and shall follow the precautionary principle.
- (6) Within six months of the publication of new WHO guidelines for ambient or indoor air quality or the specifying in legislation or regulations an earlier date to achieve net zero emissions the Secretary of State shall review and publish targets, emission limits and timescales for compliance in accordance with this Act.

Part 3 – Controlling air emissions from buildings

3. Combustion appliances

- (1) The Secretary of State may designate any appliance that emits or can emit pollutants to the air as a combustion appliance (“Combustion appliance”).
- (2) In this Act, “Combustion appliance” shall include boilers, solid fuel boilers, wood burning stoves, fireplaces, stationary generators, combined cooling, heat and power plants, combined heat and power plants, commercial cooking, domestic and commercial gas use and non-road mobile machinery.
- (3) Metro Mayors may designate further appliances that emit or can emit pollutants to the air in their area as Combustion appliances.

4. Setting emission limits

- (1) The Secretary of State shall pass regulations specifying an ultra-low emission limit for all combustion appliances within any premises by category of appliance. The Secretary of State may also define zero emission limits or standards for appliances.
- (2) An ultra-low emission limit must meet at least the applicable Ecodesign standard for an appliance.
- (3) The Secretary of State shall pass regulations specifying an ultra-low emission limit for all non-road mobile machinery by category of appliance. The Secretary of State may also define zero emission limits or standards for such machinery.
- (4) The Secretary of State shall pass regulations specifying an ultra-high energy efficiency standard for any premises.

- (5) The Secretary of State shall pass regulations specifying the use of renewable energy in premises.
- (6) The Secretary of State shall in accordance with the environmental principles and, having taken into account the advice of the Committee on Climate Change and the Environment Agency and standards set in international environmental protection legislation, review and update the emission limits under subsections (1), (3), (4) and (5) and every three years.
- (7) The emission limits under subsections (1), (3), (4), (5) and (6) must be consistent with the Secretary of State's trajectory for zero emissions by 2050 and WHO guidelines for ambient and indoor air quality.
- (8) The Regulations under subsection (1) must impose the same emission limits across all types of combustion appliance irrespective of the fuel or technology used.
- (9) If regulations made or amended under subsections (1), (3), (4), (5) and or (6) –
 - (a) fail to establish a specific emission limit for each pollutant;
 - (b) exclude any location where there is human exposure to air pollution; or
 - (c) establish a target or timescale for compliance,than that fully consistent with the trajectory for zero emissions by 2050 and WHO guidelines for ambient and indoor air quality, the Secretary of State must publish a statement setting out the reasons for that decision and policies to compensate for the omission.
- (10) Metro Mayors may impose lower ultra-low emission limits than those specified in regulations introduced under subsections (1), (3), (4), (5) and (6) for combustion appliances in any premises within their authority or set them if they do not exist.
- (11) Metro Mayors and combined authorities may designate "Air Quality Partners" relevant to their air quality plans and strategies and provide guidance on how the duty to cooperate should function with respect to lower tier authorities in their area.

5. Energy improvements to domestic and non-domestic premises including hospitals and schools

- (1) The Secretary of State shall pass regulations setting standards for energy improvements to domestic and non-domestic premises that reduce energy use or lower the amount of carbon dioxide they produce.
- (2) The regulations must specify 'primary' and 'secondary' measures for improvements in the energy efficiency of buildings.
- (3) Primary measures must include:
 - (a) insulation measures – solid wall insulation, (internal or external), cavity wall insulation, under-floor insulation (solid floor, suspended floor), loft insulation, flat roof insulation, pitched roof insulation, room in roof insulation and insulating a park home; and
 - (b) ultra-low carbon heat – air source heat pump, ground source heat pump, solar thermal (liquid filled flat plate or evacuated tube collector).
- (4) Secondary measures must include:
 - (a) windows and doors – draught proofing, double or triple glazing (where replacing single glazing), secondary glazing (in addition to single glazing)

- and energy efficient replacement doors (replacing single glazed or solid doors installed before 2002); and
 - (b) heating controls and insulation – hot water tank thermostat, hot water tank insulation and heating controls (such as, appliance thermostats, smart heating controls, zone controls, intelligent delayed start thermostat, thermostatic radiator valves).
- (5) The Secretary of State shall pass regulations for the eligibility and use of grants towards the cost of installing energy efficient improvements to domestic premises (“Green Homes Grants”).

6. Indoor air quality

- (1) The Secretary of State shall pass regulations setting standards for indoor air quality in places where people live in shared buildings, work or study.
- (2) The regulations must require owners of buildings which-
- (a) are used as places of work and to which health and safety provisions apply;
 - or
 - (b) are regularly accessed by members of the public, including children,
- to assess and report concentrations of indoor air pollutants measured in accordance with the WHO guidelines for indoor air pollutants.
- (3) The regulations must require developers to assess and report concentrations of indoor air pollutants in newly refurbished or constructed residential developments during the first 12 months of occupation in accordance with WHO guidelines for indoor air pollutants.
- (4) The Secretary of State shall, in accordance with the environmental principles and, having taken into account the WHO guidelines for indoor air quality, review and update the requirements under subsections (2) and (3) every three years.
- (5) A Metro Mayor may set higher standards for indoor air quality within their area than those specified in regulations introduced under subsections (1), (2), (3) and (4) or define new ones if they do not exist.

7. Air Pollution Control Areas

- (1) A Metro Mayor or a local authority shall designate an Air Pollution Control Area (“APCA”) where –
- (a) the air pollution in the area under their respective jurisdiction exceeds WHO guidelines for one or more indoor or outdoor air pollutants, or
 - (b) the area under their respective jurisdiction is not on track to achieve zero greenhouse gas emissions by 2050, or such earlier date as the Metro Mayor or local authority has previously determined.
- (2) A Metro Mayor or a local authority may designate an APCA across the whole or any part or parts of the area under their respective jurisdiction in order to address air pollution or greenhouse gas emissions for one or more pollutants in that area.
- (3) When designating an APCA the Metro Mayor or the local authority shall determine which emission limit provided for under s.4(1) or s.4(4) above, will apply to which category of premises in the APCA. The Metro Mayor or local authority may also determine that a zero emission limit or standard shall apply for such appliances or premises.

- (4) A Metro Mayor may designate a Non-Road Mobile Machine Control Area (“NRMMCA”) in any part or the whole of their combined authority area where ultra-low emission limits shall apply for the use of such equipment. The Metro Mayor may revoke such designation at any time.
- (5) When determining which emission limit to apply under subsection (3) or (4), the Metro Mayor or the local authority must take into account the level of exceedance of, and the measures required to ensure at a minimum full compliance with, WHO air quality guidelines and the ability to meet zero greenhouse gas emissions by 2050 at the latest.
- (6) Where a Metro Mayor has designated an APCA, the local authority of a borough that falls in whole or in part within that APCA is permitted to impose more stringent emission limits in those parts of their area that fall within the APCA.
- (7) The APCA, shall specify the date on which the relevant emission limit will come into force for each category of premises.
- (8) It shall be an offence to burn a solid fuel in any appliance other than an approved appliance within an APCA.
- (9) The dates specified under subsection (7) shall be –
 - (a) no less than two months and no more than four months for new combustion appliances, and
 - (b) no less than six months and no more than five years for existing combustion appliances.
- (10) Metro Mayors and local authorities must, following consultation, review any APCA every two years to decide whether to maintain or lower the emission limit or to require zero emissions.

Part 4 – Controlling other emissions to the air

8. Emergency measures to prevent and minimise air pollution episodes

- (1) The Secretary of State shall make regulations to enable the restriction of certain activities contributing to air pollution episodes so that the Secretary of State, Metro Mayors or local authorities may restrict those activities when ambient air quality in any area exceeds or is expected to exceed the WHO’s short-term guideline for any air pollutant.
- (2) The activities which may be restricted shall include:
 - (a) manure spreading on farms;
 - (b) the use of nitrogen fertilizers;
 - (c) the use of roads by petrol or diesel vehicles;
 - (d) the use of non-road mobile machinery; and
 - (e) the burning of wood or other combustible material.

9. Supporting the Green Industrial Revolution

- (1) The Secretary of State for Transport or their successor shall end the sale of new diesel and petrol cars and vans in the United Kingdom by 2030.

- (2) The Secretary of State for Transport or their successor shall end the sale of hybrid cars and vans in the United Kingdom by 2035 that can drive a significant distance with no carbon coming out of the tailpipe.
- (3) The Secretary of State for Transport or their successor shall consult on the phase out of new diesel Heavy Goods Vehicles in the United Kingdom.

Part 5 – Enforcement

10. Definitions

In this part –

“interim targets” shall have the same meaning and effect as “targets”;

“relevant combustion appliance” means—

- (a) a new combustion appliance installed within a relevant premises that does not meet the emission limits set for those relevant premises after the deadline set under s.7(9)(a) has passed, or
- (b) an existing combustion appliance that remains within a relevant premises that does not meet the emission limits set for those relevant premises after the deadline set under s.7(9)(b) has passed;

“relevant premises” means any premises within an Air Pollution Control Area to which an emission limit for combustion appliances applies;

“person liable” means a person who installs or permits the ongoing installation of a relevant combustion appliance.

11. Penalty notice

- (1) This section applies where a local authority is satisfied, on the balance of probabilities, that a relevant combustion appliance has been installed or permitted to remain installed in a relevant premises.
- (2) The local authority may give to the person liable a notice under this section (a “penalty notice”).
- (3) A notice of intent must—
 - (a) inform the person that the local authority is satisfied as specified in sub-section (1),
 - (b) specify the occasion referred to in sub-section (1),
 - (c) inform the person that the local authority proposes to impose a financial penalty under this part (including the proposed amount of the penalty), and
 - (d) give details regarding the person’s right to object to the imposition of a financial penalty.
- (4) The penalty notice must require the financial penalty to be paid within a period of 28 days beginning with the day after that on which the notice was given.

12. Enforcement notice

- (1) The local authority may serve a notice on any person as an alternate to giving a penalty notice (an “enforcement notice”).

- (2) An enforcement notice shall-
 - (a) state the authority of the said opinion;
 - (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
 - (c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will rise, as the case may be; and
 - (d) specify the period within which those steps must be taken.
- (3) The Metro Mayor for that area may, if they think fit in relation to the carrying on by any person of a prescribed activity, give the enforcing authority directions as to whether the authority should exercise its powers under this section and as to the steps which are to be required to be taken under this section.
- (4) The enforcing authority may, as respects any enforcement notice it has issued to any person, by notice in writing served on that person, withdraw that notice.

13. Amount of penalty

- (1) The minimum amount of a financial penalty that may be imposed under this part is level 2 on the standard scale for domestic premises (£500) or level 4 for non-domestic premises (£2,500).
- (2) The maximum amount of a financial penalty that may be imposed under this part is level 3 on the standard scale (£1,000) for domestic premises or level 5 for non-domestic premises (unlimited).
- (3) The Secretary of State may by regulations amend sub-section (1) or (2) so as to substitute a different amount for the amount specified there.
- (4) Regulations under sub-section (3) may not be made unless a draft of the regulations has been laid before, and approved by resolution of, each House of Parliament.

14. Right to object to proposed financial penalty

- (1) A person to whom a penalty notice is given may, within the period of 28 days beginning with the day after that on which the notice was given—
 - (a) object in writing to the local authority on a ground specified in sub-section (2), and
 - (b) provide evidence that supports the objection.
- (2) The grounds of objection referred to in sub-section (1) are—
 - (a) that the combustion appliance was not a relevant combustion appliance on the occasion specified in the notice of intent;
 - (b) that the combustion appliance was not in a relevant premises on the occasion specified in the notice of intent;
 - (c) that the person to whom the notice of intent was given was not a person liable in relation to the relevant combustion appliance specified in the notice of intent;
 - (d) that there are other compelling reasons why the financial penalty should not be imposed.
- (3) Where a person objects on the ground specified in sub-section (2)(c), the objection must include the name and address of the person who was the person liable on the occasion specified in the notice of intent (if known).
- (4) The Secretary of State may by regulations amend this section so as to amend the grounds of objection listed in sub-section (2).
- (5) Before making regulations under sub-section (4) the Secretary of State must consult anyone that the Secretary of State considers may have an interest in the proposed regulations.

- (6) Regulations under sub-section (4) may not be made unless a draft of the regulations has been laid before, and approved by resolution of, each House of Parliament.

15. Withdrawal or amendment of penalty notices

- (1) A local authority may at any time—
 - (a) withdraw a penalty notice, or
 - (b) reduce the amount of the financial penalty specified in a penalty notice.
- (2) The power in sub-section (1) is to be exercised by giving notice to the person to whom the penalty notice was given.
- (3) Where an objection to a penalty notice has been made under section 8, a local authority must either decide to give notice to withdraw the penalty notice under paragraph (1) or give notice that they have decided not to withdraw the penalty notice within 28 days of receiving the objection.

16. Appeals

- (1) A person who receives notice under section 8 above that the local authority has decided not to withdraw a penalty notice may, with the period of 28 days beginning with the day after that on which the notice was given, appeal against the notice to the First-tier Tribunal.
- (2) The grounds for an appeal under this section are that the decision to impose the financial penalty was—
 - (a) based on an error of fact,
 - (b) wrong in law, or
 - (c) unreasonable.
- (3) If a person appeals under this section, the final notice is suspended until the appeal is finally determined or withdrawn.
- (4) On an appeal under this section the First-tier Tribunal may—
 - (a) quash the final notice,
 - (b) confirm the final notice,
 - (c) vary the final notice by reducing the amount of the financial penalty, or
 - (d) remit to the local authority the decision whether to—
 - (i) withdraw or confirm the final notice, or
 - (ii) vary the final notice by reducing the amount of the financial penalty.

17. Recovery of penalties

A financial penalty is recoverable as a civil debt due to the local authority that imposed the penalty.

18. Delegation

- (1) A local authority may delegate to a person the exercise of any of the authority's functions under this part.
- (2) A delegation under this section must be made by giving notice to the person.

19. Notices

- (1) A notice under this part must be in writing.
- (2) A notice under this part may be given to a person by—

- (a) handing it to the person,
- (b) leaving it at the person's address,
- (c) sending it by post to the person at their address, or
- (d) with the person's consent, sending it to them electronically.

20. Use of monies received

Monies received by local authorities under this part shall be used for the prevention or mitigation of or adaption to air pollution or climate change paying particular attention to sensitive population groups including children in current and future generations.

21. Reporting

- (1) Local authorities must submit annual reports of the results of air pollution monitoring within their borough to the Metro Mayor, where relevant, and the Secretary of State.
- (2) Reports under subsection (1) must be made publicly available in an easily accessible format within one month of their submission.

22. Reporting of combustion appliances

Owners of non-domestic premises must report any combustion appliances installed or used on the premises and the operating emissions outputs for each appliance in accordance with recognised standards including units of measurement to the local authority and the Metro Mayor if requested to do so by them.

Part 6 – Interpretation and Commencement

23. Environmental principles

- (1) In exercising their functions and carrying out their duties under this Act, the Secretary of State, Metro Mayors and local authorities must apply the following environmental principles—
 - (a) prevention, which means that environmental regulation must anticipate, prevent and attack the causes of environmental harm;
 - (b) precaution, which means that where there are threats of serious or irreversible damage to the environment, including human health, lack of full scientific certainty must not be used as a reason for postponing cost-effective measures to prevent harm;
 - (c) polluter pays, which means that the costs of pollution or of clean-up should be borne by the person responsible for causing the pollution;
 - (d) use of the best available scientific knowledge;
 - (e) rectification at source, which means that environmental damage should, as a priority, be remedied at its source;
 - (f) integration, which means that environmental protection requirements should be integrated into the definition and implementation of all policies and activities, in particular with a view to promoting sustainable development;
 - (g) conservation of the ecosystem structure and functioning, in order to maintain ecosystem services;
 - (h) anticipation, prevention or minimisation of the causes of climate change and mitigation of its adverse effects; and
 - (i) sustainability, which means to take into account the health of present generations and the needs of future generations.
- (2) For the avoidance of doubt the “polluter pays principle” shall not prevent the Secretary of State from providing financial incentives to homeowners to upgrade their homes and contribute to cleaner air.

24. Definitions

In this Act –

“Air Quality Partner” means a person identified by a Metro Mayor or local authority that they consider are, or might be, responsible (in whole or in part) for an failure to achieve compliance with the World Health Organisation guidelines for ambient or indoor air or the trajectory to net zero by 2050 at the latest.

“Air pollutant” means any gas or particle in the air that is considered by the WHO to affect human health or the Climate Change Committee to affect climate change.

“APCA” means an Air Pollution Control Area designated under s.7.

“Biomass” means material, other than fossil fuel or peat, which is, or is derived directly or indirectly from, plant matter, animal matter, fungi or algae.

“Boiler” means a device that provides heat to a water-based central heating system in order to reach and maintain at a desired level the indoor temperature of an enclosed space and includes a device that is designed to provide heat to deliver hot drinking or sanitary water at given temperature levels, quantities and flow rates during given intervals, and is connected to an external supply of drinking or sanitary water.

“Combined cooling, heat and power plant” means technical apparatus in which fuels are oxidised to generate cooling, heat and electricity.

“Combined heat and power plant” means technical apparatus in which fuels are oxidised to generate heat and electricity.

“Emissions” means an amount of something that is sent into the air that is considered by the WHO to affect human health or the Climate Change Committee to affect climate change.

“Existing combustion appliances” means combustion appliances installed within a premises on or before the day an APCA is designated.

“Greenhouse gas” means –

- (a) carbon dioxide,
- (b) methane,
- (c) nitrous oxide,
- (d) hydrofluorocarbons,
- (e) perfluorocarbons,
- (f) sulphur hexafluoride, and
- (g) any other greenhouse gas designated as a targeted greenhouse gas by order made by the Secretary of State.

“High pollution event” means exceeding the short-term guideline for air quality set by the WHO.

“Local authority” means—

- (a) a county or district council in England,
- (b) a London borough council,
- (c) the Common Council of the City of London,
- (d) the Council of the Isles of Scilly.

“Metro Mayor” means a mayor of a combined authority.

“New combustion appliances” means a combustion appliance not already installed in a premises the day an APCA is announced“

"Non-road mobile machinery means any mobile machine, transportable equipment or vehicle, with or without bodywork or wheels—

- (a) in which an internal combustion engine is installed; and
- (b) which is not intended for the transport of passengers or goods on roads, railways, or water;

and includes machinery installed on the chassis of a vehicle intended for the transport of passengers or goods on roads, but does not include—

- (a) agricultural and forestry tractors;
- (b) sea-going vessel
- (c) any recreational craft or personal watercraft;
- (d) aircraft;
- (e) recreational vehicles except snowmobiles, all-terrain vehicles and side by side vehicles;
- (f) vehicles and machinery exclusively used or intended to be exclusively used in competitions;
- (g) portable firefighting pumps;
- (h) reduced-scale models or reduced-scale replicas of vehicles or machinery.

“Pollutant” means those particles, gases or other substances that are emitted directly into the air or formed from secondary chemical reactions in the air, including smoke, grit, dust, fumes, aerosols, volatile organic compounds, carbon dioxide and other greenhouse gases;

“Premises” means all domestic and commercial buildings

“Public bodies” and “Public authorities” shall have the same meaning as in the Environment Information Regulations.

“Secretary of State” means the Secretary of State for Business, Energy and Industrial Strategy or their successor

"Solid fuel boilers” means any plant that burns solid fuel to provide heat and

- (a) designed in compliance with the Domestic Renewable Heat Incentive Scheme Regulations 2014 (S.I. 2014/928); and
- (b) installed to the relevant installation standard as defined in regulation 8(2) of those regulations.

“Solid fuel” means fuel that is solid at normal indoor room temperature, including solid biomass or solid fossil fuel

“Stationary generator” means fixed combustion plant which is used for the purpose of generating electricity, and does not include any generator that is mobile unless it is connected to:

- (i) an electricity transmission system or distribution system, or
- (ii) apparatus, equipment or appliances at a site performing a function that could be performed by a generator that is not mobile.

“World Health Organisation” or “WHO” is the entity within the United Nations’ system with primary responsibility for directing and leading partners in global health responses.

“WHO guidelines” means any guidelines for air quality published by the World Health Organisation before the date of this Act or updated or amended guidelines published by the WHO within six months of said publication.

“WHO short-term guideline” means any guideline set by the WHO for human exposure to a concentration of air quality or pollutants over any period shorter than 12 months, typical one hour, eight-hours or one day.

“WHO long-term guideline” means any guideline set by WHO for human exposure to a concentration of air quality or pollutants averaged over a 12 month period.

25. Extent, commencement and short title

- (1) This Act extends to [England] only.
- (2) This section and sections x x x x and x come into force on the day this Act is passed.
- (3) All other sections come into force on such day as the Secretary of State may by regulations appoint.
- (4) This Act may be cited as the Clean Air (Health of Current and Future Generations) Act 2021.