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30 December 2014

Dear Secretary of State

### **Consultation on proposals to improve local air quality management (LAQM) in England**

**Defra is proposing modified Option 3 from its 2013 consultation on LAQM (now Option 1), that was rejected by over 18,000 people and organisations, and to scrap ‘Further assessments’ under ‘Business as usual’. It is unclear whether Defra also intends (catastrophically) to scrap the duty on local authorities to review the need for continued assessment and reporting on objectives that have been met e.g. PM<sub>10</sub>**

**Defra’s plans would result inevitably in the scrapping of thousands of local monitoring sites that have taken a decade to put in place and probably all of them within a few months or years**

**Buried in the fine print, Defra admits that 38 of the UK’s 43 air quality zones will not be compliant with EU limit values for nitrogen dioxide (NO<sub>2</sub>) by 2015 with three zones (Birmingham, Leeds and London) unlikely to be able to comply with these limits until after 2030. Meanwhile scientists are highlighting new and much larger mortality risks for NO<sub>2</sub>**

**‘Clean Air in London’ rejects Defra’s proposed Option 1 and condemns the Consultation as the latest example in a string of systemic failures from a Government Department that is doing more to worsen air pollution than reduce it**

I am writing on behalf of Clean Air in London (CAL) to respond to the Department for Environment, Food and Rural Affairs’ (Defra’s) ‘Consultation on proposals to improve local air quality management in England (regulatory and guidance changes)’ (Consultation). Defra says its latest impact assessment reflects the feedback received during the consultation process in 2013 and subsequent stakeholder workshop held on 10 September 2014. In light of the feedback, specific aspects of Defra’s preferred option [which was Option 3 (page 6 of the 2013 Consultation document) and is now called Option 1] have been modified. Defra’s new ‘Option Zero’ is ‘Business as usual’.

Details of the current Consultation and Impact Assessment can be seen at:

<https://consult.defra.gov.uk/communications/laqm-review-next-steps/>

[https://consult.defra.gov.uk/communications/laqm-review-next-steps/supporting\\_documents/LAQM%20Impact%20Assessment\\_final.pdf](https://consult.defra.gov.uk/communications/laqm-review-next-steps/supporting_documents/LAQM%20Impact%20Assessment_final.pdf)

On page one of the Impact Assessment in a section titled ‘What are the policy objectives and the intended effects?’ Defra states:

*“**The objective and intended effect** is to transform local air quality management or LAQM so that **local authorities focus more on actions** to improve air quality and to achieve better public health and environmental outcomes **rather than on the monitoring** and reporting process.” [CAL emphasis]*

## Summary

Following quickly on a succession of high profile failures (see below), Defra is now proposing to ‘refocus’ Local Air Quality Management’ away from monitoring towards reducing air pollution. This is despite more than 18,000 people and organisations telling Defra in 2013 that such changes would mean we would all know less about the air we breathe and so less will be done to improve it.

Defra argues: there are no plans to change how local authorities (LAs) monitor nitrogen dioxide (NO<sub>2</sub>) and dangerous airborne particles (PM<sub>10</sub>); the amount of monitoring LAs undertake has always been a matter for them; and the current consultation is not recommending any outcome that would see a reduction in the monitoring of NO<sub>2</sub> or PM<sub>10</sub>. However, there is a glaring inconsistency at the heart of Defra’s proposals i.e. it aims to reduce the ‘focus’ on monitoring without reducing monitoring. It is also disingenuous, misleading or worse for Defra to say it will not be responsible for future reductions in monitoring by LAs that arise from it scrapping reporting requirements, Regulations and/or statutory guidance. Section 88 of the Environment Act (1995) currently (rightly) imposes a duty on local authorities to follow ANY guidance issued by the Secretary of State and that guidance is currently (rightly) full of requirements for each LA to use monitoring to identify any parts of its area within which those standards are not being achieved and submit reports.

Detailed responses to Defra’s 2013 consultation made clear that Defra’s proposals would result inevitably in the scrapping of thousands of local monitoring sites that have taken a decade to put in place (see Appendix Two). In reality, virtually all local monitoring (about 10,500 monitors) is likely to be lost within a few months or years if Defra proceeds with its plans. Alarming, local authorities are being told to make use of Defra’s tiny national monitoring network (i.e. 137 monitors, few of which measure two or more of NO<sub>2</sub>, PM<sub>2.5</sub> and PM<sub>10</sub>) and computer modelling that have been manipulated and used often by Defra to hide smog warnings and breaches of air pollution laws. Defra’s string of systemic failures includes:

<http://www.clientearth.org/news/press-releases/eu-court-rules-uk-government-must-act-to-clean-up-deadly-air-pollution-2699>

<http://www.parliament.uk/documents/commons-committees/environmental-audit/HC-212-for-web.pdf>

<http://www.parliament.uk/documents/commons-committees/environmental-audit/letter-to-PM-on-SDGs-15-Dec-2014.pdf>

<http://www.parliament.uk/documents/commons-committees/environmental-audit/Letter-to-Juncker-15-Dec-2014.pdf>

<http://press.labour.org.uk/post/105269051659/maria-eagle-writes-to-liz-truss-urging-her-to>

## Detailed response

Following an initial consultation on the future of Local Air Quality Management (LAQM) in England in August 2013 that caused a furore, Defra launched the second of three proposed consultations, as everyone went on holiday for Christmas 2014, recommending its originally preferred option but dropping two proposed administrative changes. The two administrative arrangements being kept are:

- the duty on local authorities to make/amend Air Quality Management Areas (AQMA) (that have been declared by hundreds of LAs); and
- the statutory requirement on LAs to review air quality in their areas as per the Environment Act 1995 and to 'work towards' EU limit values.

As you know, LAs are required under section 82 of the Environment Act 1995 to review the air quality and likely future air quality in their area. As part of this review, the LA must assess whether the air quality standards and objectives are being achieved or are likely to be achieved. **The LA must identify any parts of its area within which those standards are not being achieved.** [CAL emphasis.]

If air quality standards are not being achieved in any parts of its area, then the LA must designate the relevant part as an AQMA (section 83 of the Act). Section 84(1) of the Act requires that the LA must undertake a further assessment of air quality ("Further Assessments") in relation to the designated area to supplement information it already has.

Under Defra's recommended option, LAs would no longer need to publish: 'Updating and screening assessments' (three yearly); 'Progress reports' (other two years); 'Detailed assessments'; or 'Action plan progress reports' on local air quality. Buried in the fine print, Defra admits that 38 of the UK's 43 air quality zones will not be compliant with EU limit values for NO<sub>2</sub> by 2015 with three zones (Birmingham, Leeds and London) unlikely to be able to comply with these limits until after 2030. These legally binding limits have been in legislation since 1999 to be complied with by January 2010.

**Defra says the intended effect of the changes is to focus LAs more on actions to improve air quality and to achieve better public health and environmental outcomes rather than on the monitoring or reporting process** (second paragraph of the Impact Assessment). [CAL emphasis]

Under Defra's proposals, LAs would still have a statutory requirement to review air quality in their areas as per the Environment Act 1995, and, where a pollutant objective is (or is projected to be) in exceedance, declare an AQMA around the location in question and prepare an Air Quality Action Plan (AQAP) setting out how they intend to mitigate the problem. They would need to provide an annual 'status' progress report on developments. Defra says these progress reports would effectively

amalgamate core information and data requirements from those reports which are to be removed. AQAPs would remain as separate documents in their own right.

Crucially however, LAs would no longer have reporting requirements on local hotspots outside of the national assessment. Defra admits that past studies of LAQM have concluded that LAs have been very effective at diagnosing air quality hotspots e.g. Brixton Road, Oxford Street and Upper Thames Street in London and Rupert Street in Bristol (European Green Capital 2015). Knowledge of such hotspots is valuable for addressing inequalities and together with other LA sites provides a wealth of information for LAs and local people. LAs have developed this expertise over a decade by building up a network of: 600 sites automatically monitoring oxides of nitrogen (NO<sub>x</sub>); 150 sites automatically monitoring dangerous airborne particles (PM<sub>10</sub>); and 9,800 static sites using diffusion tubes to monitor NO<sub>2</sub>.

**Defra says there is (and has been) no regulatory requirement on LAs to conduct local monitoring. However this is disingenuous and misleading or worse.** Section 88(1) of the Environment Act 1995 **requires** that local authorities **must have regard** to LAQM Guidance it publishes under Part IV of the Environment Act 1995 when carrying out their local air quality management duties. Defra admits in the latest Impact Assessment that:

- Section 88 of the Environment Act (1995) imposes a duty on local authorities to follow ANY guidance issued by the Secretary of State (page 10); and
- LAs ‘are encouraged to do [local monitoring] in [its] policy guidance’ (page 15).

Countless examples of the current ‘guidance’ issued by Defra that require LAs to monitor air pollution are included in the section of Defra’s specialist website on LAQM support including ‘Frequently asked questions’:

<http://laqm.defra.gov.uk/laqm-faqs/>

<http://laqm.defra.gov.uk/laqm-faqs/faq64.html>

In the latest consultation, Defra also admits that local air quality hotspots outside the national assessment that might otherwise have been taken into account by LAs might get overlooked and lead to some [unquantified] health impacts. Defra identifies a ‘Best case’ (called ‘Central case’) and ‘Low’ and ‘High’ scenarios. The Low and Central cases assumes no reduction in monitoring by LAs. In its High scenario it assumes an average 76% reduction in NO<sub>2</sub> diffusion tube costs and a 43% reduction in automatic monitoring for each of the first three years and up to 81% and 92% respectively by the tenth year (2024). This is the same approach Defra took for the 2013 consultation that provoked over 18,000 campaign emails and 232 substantive responses confirming the huge public interest in this area.

Defra says: there are no plans to change how LAs monitor NO<sub>2</sub> and PM<sub>10</sub>; the amount of monitoring LAs undertake has always been a matter for them; and the current consultation is not recommending any outcome that would see a reduction in the monitoring of NO<sub>2</sub> or PM<sub>10</sub>. However, this is typical ‘Sir Humphrey Appleby’ language that hides the reality. The certain effect of Defra’s proposed

changes would be the scrapping of monitoring by LAs as thousands of people, including local authorities and scientists, protested in response to the 2013 consultation. Only Defra's 137 automatic monitoring stations across the UK would remain for NO<sub>x</sub>/NO<sub>2</sub>, PM<sub>2.5</sub> and PM<sub>10</sub> (with not many monitoring two or more pollutants) (together with a few other specialist monitors for other forms of air pollution) together with its computer modelling which is undertaken up to nine months after a calendar year end. Defra says LAs would be 'encouraged to make use of national monitoring [and modelling]'

Defra's 'Business as usual' option scraps the duty on LAs to undertake 'Further assessments' of local air quality. With Defra claiming that EU limit values for PM<sub>10</sub> are met throughout the UK (after deducting sea salt and other 'natural sources of air pollution'), they may write to LAs currently declaring an AQMA for PM<sub>10</sub> and advise them to scrap such AQMAs. The situation would be catastrophic if Defra also scraps the duty on local authorities to review the need for continued assessment and reporting on objectives that have been met e.g. PM<sub>10</sub>. With no 'Further assessments' (or local monitoring) and reliance on Defra's limited and carefully sited national monitoring network and 'unusual' approach to deducting sea salt, it is highly likely that LAs would never again be aware of actual breaches in PM<sub>10</sub> limit values.

## Further detailed comments

CAL has the following further comments on the Consultation in general and Option 1 in particular. Using Defra's format:

- 1. Focusing reporting on those pollutants that remain a current issue (such as NO<sub>2</sub> and PM<sub>10</sub>) by removing four obsolete pollutants (benzene; 1, 3 butadiene; carbon monoxide; and lead)**
  - i. Defra admits that these four pollutants are not a burden on local authorities and identifies no cost savings from removing them from England regulations. Only one AQMA has ever been declared for them and that was revoked in 2010. This proposal would only make sense therefore if Defra were proposing worthwhile other changes to the Regulations, which it is not. **CAL therefore rejects this proposal.**
- 2. Adding guidance on a PM<sub>2.5</sub> role for local authorities (in pursuance of the Public Health Outcomes Framework air quality indicator to reduce fine particulate pollution) to reflect the public health impact of this pollutant**
  - i. Defra says that most anthropogenic sources of PM<sub>2.5</sub> derive from road transport (including tyre and break wear) and industrial processes and that up to half of PM<sub>2.5</sub> is transboundary.
  - ii. Defra proposes two options (a) and (b). (a) would be to add a general role into LAQM guidance for LAs to have regard to PM<sub>2.5</sub> when carrying out their air quality activities. (b) would be to add a role on PM<sub>2.5</sub> to LAQM Regulations, for example the Stage 2 limit value of 20 micrograms per cubic metre annual mean to be achieved by 2020. Defra dismisses (b) in its own consultation. **Laughably, Defra says "[Under] this modification LAs would not be tasked with reviewing and assessing PM<sub>2.5</sub> at the local level, but implement or strengthen existing measures that can target PM<sub>2.5</sub>".**

- iii. the Consultation states: “There is a degree of uncertainty regarding the extent to which LAs will add additional actions which have not already been prioritised by Directors of Public Health”. CAL is aware of only one local authority (City of London Corporation) that has prioritised PM<sub>2.5</sub> in its Health and Wellbeing Strategy. Defra does however, helpfully list measures that LAs can take to reduce mobile and non-mobile sources of PM<sub>2.5</sub>.
- iv. feebly, Defra states “Not only is it uncertain whether incorporating PM<sub>2.5</sub> would lead to any additional action by LAs, it is also uncertain what actions they would decide to take”. **It seems Defra has done no work on this issue since the previous consultation.**
- v. **CAL’s only comment is that PM<sub>2.5</sub> must be put at the heart of LAQM regulations, alongside NO<sub>2</sub> and PM<sub>10</sub> i.e. the opposite of Defra’s stated intention to reject even its limited inclusion in the Regulations or guidance.**

### 3. Clarifying roles and responsibilities

- i. Defra says “We want to strengthen guidance on the air quality roles and responsibilities in two-tier authorities so as to improve partnership between County and District” and “In line with the Localism agenda, we believe that the best way to encourage local authorities to work more closely together to deliver effective local area-based strategies to improve air quality will be achieved under improvements to the statutory guidance”.
- ii. Defra offers no detail or clarification of these roles and responsibilities and it **seems has done no work on this issue since the previous consultation. CAL therefore rejects these empty proposals.**

### 4. Streamlining current reporting burdens on LAs – removing four reports and amalgamating them into a single, annual ‘status’ report. Reports to be removed include: (i) ‘Updating and screening assessments’; (ii) ‘Detailed assessments’; (iii) ‘Progress reports’; and (iv) ‘Action plan progress reports’. Defra says AQAPs will remain as separate documents in their own right and ‘Annual ‘status’ progress reports’ would incorporate everything else

- i. Fortunately Defra has acknowledged the overwhelming response from the 2013 consultation stating “There was also strong stakeholder support to retain current, official processes for declaration/revocation of AQMAs”. Fortunately, Defra no longer plans to scrap AQMA processes.
- ii. In Defra’s analysis of the cost savings from scrapping ‘Updating and screening assessments’ (three yearly); ‘Progress reports’ (other two years); or ‘Detailed assessments’ of local air quality it says “[Annual ‘status’ progress reports] will effectively amalgamate core information and data requirements from the [four] reports which are to be removed”.
- iii. On reporting, Defra assumes that the total costs across England of LA reports will fall from £2.719m to £1.085m i.e. 60% with the same analysis and content being ‘amalgamated’ into the Annual ‘status’ progress reports (i.e. after 100% ‘cost savings’ from scrapping three existing reports). Despite saying the aim of the proposals is action to improve air quality, Defra assumes just £175,000 in total across England will be spent by LAs on ‘Action plans’ each year on an annual average of 40 action plans. **These assumptions are laughable.**
- iv. On monitoring, Defra states “For the high sensitivity we have included monitoring cost savings, assuming the demand for monitoring will decline, as there are fewer compliance requirements than [Business as usual]. We assume the costs fall slightly over the first three

years, averaging £500k per year for diffusion tube monitoring, and averaging £5m per year for automatic monitoring. Following that, we project a decline in spending on monitoring at a rate of 15% per year. While it is not a statutory requirement for local authorities to undertake their own monitoring/modelling, many have, over the years, gathered bespoke data (e.g. with diffusion tubes and non-EU compliant monitors) to assess localised hotspots more accurately than might be possible via national monitoring. Local Authorities are encouraged to do this in policy guidance.” **Defra’s presentation of this information is disingenuous and misleading or worse. For example, Defra suggests cost reductions of £500k per year for monitoring when it means cost reductions from £2.055m to £500k (i.e. £1.555m) which are not ‘slight’.**

- v. Defra states “Under the preferred option, LAs will be further encouraged to make use of national monitoring. Changes in monitoring costs are only factored into the sensitivity range due to the level of uncertainty regarding how much monitoring would fall by. Monitoring costs are optional and not a requirement of the regulations hence they are only included in the high range”. **For the reasons given earlier, CAL considers Defra’s statement disingenuous and misleading or worse.**
  - vi. **In conclusion, CAL rejects the proposals because they would result inevitably in the scrapping of thousands of local monitoring sites that have taken a decade to put in place and probably all of them within a few months or years. Further, the proposals are totally unrealistic in assuming that LAs could provide the same level of ‘content’ in one annual report after a 100% cut in their related costs for three other reports.**
5. **Revising policy and technical guidance to clarify roles and responsibilities, especially in two tier authorities, and provide more information on effective measures**
- i. Defra states simply “Under this proposal the current guidance will be updated in line with the Smarter Guidance Review in order to reflect the advised changes outlined above”. See also section 3 above titled ‘Clarifying roles and responsibilities’. No further detail is provided.
  - ii. **CAL rejects Defra’s proposal to revise guidance as it has proposed.**

## 6. Other matters

- i. In addition to the above, CAL objects to Defra seemingly rejecting submissions from the Mayor of London and others in London for a fresh approach to LAQM in London. **Please clarify urgently Defra’s stance on those submissions.**
- ii. As you may know, Environmental Protection UK (EPUK) and the Institute of Air Quality Management (IAQM) launched a consultation among their members on a guidance document titled Land-Use Planning and Development Control: Planning for Air Quality. Their consultation closes on 16 February 2015. See also Appendix Four.

<http://iaqm.co.uk/consultation-open-on-new-epuk-iaqm-guidance-document-on-land-use-planning-and-development-control/>

A footnote to page 23 of the draft guidance states:

*The precise role of the development control process in delivering compliance with the EU limit values is uncertain, and clarification has been sought from Defra. In the event that unambiguous clarification from Government is provided, which confirms that any increase in concentration should not be permitted where an EU limit value is not met, then even a “slight adverse” impact may need to be regarded as significant if levels exceed the EU limit value.*

**Please therefore answer their questions urgently:**

- a. Can exceedences of the EU limit values only be determined by Defra?
- b. As a matter of law and policy, are local authorities required to have regard to exceedences of the limit values in their determination of planning applications?
- c. If the answer to Q2 is YES, how are local authorities to assess potential exceedences of the limit values in future years, given that the available methods cannot meet the requirements of the Directive?

In responding to EPUK/IAQM, please take full account of the guidance from the European Commission to CAL on these matters in a letter dated 19 February 2014. The Commission’s interpretation was confirmed further in the judgement of the Court of Justice of the European Union.

[http://cleanair.london/wp-content/uploads/CAL-269-Letter-of-clarification-from-the-Commission-190214\\_Redacted.pdf](http://cleanair.london/wp-content/uploads/CAL-269-Letter-of-clarification-from-the-Commission-190214_Redacted.pdf)

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-11/cp140153en.pdf>

- iii. Defra is highly critical in its Impact Assessment of the lack of detail on costs in responses to the 2013 consultation stating “We consulted further on the assumptions, as articulated in the 2013 consultation stage Impact Assessment, however as no evidence on the costs or benefits was received we have come to the conclusion that there is no basis on which to change these unless further evidence is received in the future”. **Yet Defra provides no cost or benefit assessment for a number of important matters in its current consultation including local health impacts or costs to LAs to adapt to new guidance.**

**Close**

CAL objects to Option 1 in Defra’s Consultation and urges Defra to remove already proposed changes to the LAQM system from the De-regulation Bill. Please do not scrap the duty on local authorities to review the need for continued assessment and reporting on objectives that have been met e.g. PM<sub>10</sub>.

The Government should go back to the drawing board to develop powerful aims and an approach which builds on the strengths of the current LAQM system not undermines it. In particular, please accept and take full account of all the recommendations from the Environmental Audit Committee’s

three excellent inquiries and the excellent analysis and report from the National Audit Office dated December 2009.

Yours sincerely

Simon Birkett  
Founder and Director  
Clean Air in London

## Notes

### 1. Air Quality Management Areas

<http://uk-air.defra.gov.uk/aqma/>

<http://uk-air.defra.gov.uk/aqma/summary>

LAQM technical reports and guidance

<http://laqm.defra.gov.uk/>

<http://laqm.defra.gov.uk/action-planning/aqap-supporting-guidance.html>

### 2. Defra Air Quality monitoring and modelling

<http://uk-air.defra.gov.uk/networks/>

<http://uk-air.defra.gov.uk/data/modelling-data>

[http://uk-air.defra.gov.uk/assets/documents/public\\_datasets.pdf](http://uk-air.defra.gov.uk/assets/documents/public_datasets.pdf)

<http://laqm.defra.gov.uk/diffusion-tubes/datacentre.php>

### 3. London LAQM

Greater London Authority response to the Defra consultation on Local Air Quality Management

<https://www.london.gov.uk/sites/default/files/GLA%20response%20to%20LAQM%20consultation%20-%20September%202013%20FINAL.pdf>

Murad Qureshi AM – MQT 17 September 2014

[http://questions.london.gov.uk/QuestionSearch/searchclient/questions/question\\_277459](http://questions.london.gov.uk/QuestionSearch/searchclient/questions/question_277459)

Stephen Knight AM – MQT on 14 March 2014

[http://questions.london.gov.uk/QuestionSearch/searchclient/questions/question\\_274912](http://questions.london.gov.uk/QuestionSearch/searchclient/questions/question_274912)

Stephen Knight AM – MQT on 11 September 2013

[http://questions.london.gov.uk/QuestionSearch/searchclient/questions/question\\_48476](http://questions.london.gov.uk/QuestionSearch/searchclient/questions/question_48476)

Stephen Knight AM – MQT on 11 September 2013 (2)

[http://questions.london.gov.uk/QuestionSearch/searchclient/questions/question\\_48036](http://questions.london.gov.uk/QuestionSearch/searchclient/questions/question_48036)

#### 4. **EPUK/IAQM Draft Planning guidance** (page 23)

On 19 December 2014, Environmental Protection UK (EPUK) and the Institute of Air Quality Management (IAQM) launched a consultation among their members on a guidance document titled Land-Use Planning and Development Control: Planning for Air Quality. Their consultation closes on 16 February 2015.

<http://iaqm.co.uk/consultation-open-on-new-epuk-iaqm-guidance-document-on-land-use-planning-and-development-control/>

A footnote to page 23 of the draft guidance states:

*The precise role of the development control process in delivering compliance with the EU limit values is uncertain, and clarification has been sought from Defra. In the event that unambiguous clarification from Government is provided, which confirms that any increase in concentration should not be permitted where an EU limit value is not met, then even a “slight adverse” impact may need to be regarded as significant if levels exceed the EU limit value.*

Separately, Clean Air in London (CAL) obtained guidance from the European Commission on these matters in a letter dated 19 February 2014. The Commission’s interpretation was confirmed further in the judgement of the Court of Justice of the European Union.

[http://cleanair.london/wp-content/uploads/CAL-269-Letter-of-clarification-from-the-Commission-190214\\_Redacted.pdf](http://cleanair.london/wp-content/uploads/CAL-269-Letter-of-clarification-from-the-Commission-190214_Redacted.pdf)

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-11/cp140153en.pdf>

#### 5. **National Audit Office report dated December 2009**

[http://www.nao.org.uk/wp-content/uploads/2010/01/Air\\_Quality.pdf](http://www.nao.org.uk/wp-content/uploads/2010/01/Air_Quality.pdf)

## APPENDIX ONE

### Consultation 2014/2015 on Local Air Quality Management

#### Background

As you know, the Consultation is the second in a series of three consultations covering the review of the Local Air Quality Management (LAQM) system. This review was undertaken in part to address proposals under the Government's Red Tape Challenge to reduce burdens to businesses and local authorities and in part to ensure that the LAQM system is targeted at helping local authorities to take action on the ground to address local and national air quality issues.

The Consultation seeks views on regulatory changes proposed as part of the LAQM Review as well as the Government's Red Tape Challenge and following Defra's initial consultation on LAQM in July 2013. A summary report of those views and Government Response was published in December 2013. This document also provides further information on proposed changes to guidance that will be taken forward as a result of the views received from the consultation and a further stakeholder workshop held in September 2014. The actual changes to guidance will be consulted on after the regulatory changes are implemented.

We understand it is not the intention of the Consultation to solicit a repeat of the responses to Defra's 2013 consultation on LAQM but rather obtain confirmation and final views on the draft Statutory Instrument and Impact Assessment which form the basis of this regulatory consultation. We understand it is Defra's intention to lay the Statutory Instrument in early 2015, with a 'coming into force' date later to allow time for revised guidance in line with the proposals.

Selective statements in Defra's Impact Assessment include:

- i. "There will be some additional costs to Defra from having to carry out air quality modelling and reporting to compensate for that not carried out by local authorities, £0.55m PV" (page 1, IA).
- ii. "There will be some one-off and ongoing costs to local authorities from having to assimilate new guidance. **Local air quality hotspots** outside the national assessment that might otherwise have been taken into account by [local authorities] **might get overlooked and lead to some local health impacts. These are considered negligible and therefore have not been monetised**" (page 2, Impact Assessment). [CAL emphasis.]
- iii. "Defra conducted a public consultation on the review of LAQM in July 2013 which received over 18,000 campaign email and 232 substantive responses confirming the huge public interest in the area" AND "specific aspects of [Defra's] preferred option [3] have been modified" Page 4, IA.
- iv. This has meant that the UK has reported significant exceedances of the limit value for NO<sub>2</sub> especially and three zones are unlikely to be able to comply with these limits until 2030. Revised projections based on updates to the modelling, including a more pessimistic

assessment of the performance of vehicle Euro standards based on real world operations, has shown that 38 of the 43 air quality zones will not be compliant by 2015.

At present we face significant challenges and infraction risk, especially on nitrogen dioxide, and we continue to experience health impacts from particulate matter pollution. This is despite significant reductions achieved from national measures to reduce transport emissions and emissions from other sources.

The challenge in meeting EU air quality limits is reflected at local level with local authorities having declared a large number of local air quality management areas where national objectives, especially for NO<sub>2</sub>, have not been met almost entirely as a result of road transport pollution. Past reviews of local air quality management have concluded that local authorities are very effective at diagnosing air quality hot spots but have been less effective at implementing measures to improve air quality. Given the scale of challenge we face in meeting EU pollution limits, it is more important that resources are focused on taking actions to improve air quality and reduce the public health impacts of poor air quality (pages 4 and 5).

- v. “We consulted further on the assumptions, as articulated in the 2013 consultation stage Impact Assessment, however as no evidence of the costs or benefits was received [from those responding to the consultation] we have come to the conclusion that there is no basis on which to change these unless further evidence is received in future” (page 8, Impact Assessment).
- vi. “As was proposed in the 2013 consultation, we would not expect local authorities to conduct their own monitoring/modelling of PM<sub>2.5</sub> (which would represent a disproportionate cost for many) but instead make use of the data available via the Automatic Urban and Rural Network (AURN), which is freely available via the UK-Air website.” AND “Currently there are approx. 75 AURN stations monitoring PM<sub>2.5</sub> across the UK” (page 9, IA).
- vii. PM<sub>2.5</sub> | “With the introduction of the Public Health Outcomes Framework (PHOF) and the move of public health responsibilities onto local authorities, those authorities responsible for Public Health will have need to investigate what measures are available to reduce this pollutant so as to reduce local health burdens where this has been identified as a priority.” (Page 11, IA).
- viii. “For the high sensitivity we have included monitoring cost savings, assuming the demand for monitoring will decline, as there are fewer compliance requirements than BAU. We assume the costs fall slightly over the first 3 years, averaging £500k per year for diffusion tube monitoring, and averaging £5m per year for automatic monitoring. Following that, we project a decline in spending on monitoring at a rate of 15% per year. This equates to monitoring PV savings for LAs of £55.03m over 10 years. **While it is not a statutory requirement for local authorities to undertake their own monitoring/modelling, many have, over the years, gathered bespoke data (e.g. with diffusion tubes and non-EU compliant monitors) to assess localised hotspots more accurately than might be possible via national monitoring. Local Authorities are encouraged to do this in policy guidance.** Due largely to budget constraints we continue to see a reduction in local monitoring stations, with the

expectation that there will be greater reliance on cheaper forms of data gathering (e.g. diffusion tubes) and the national monitoring network. Under the preferred option, LAs will be further encouraged to make use of national monitoring. Changes in monitoring costs are only factored into the sensitivity range due to the level of uncertainty regarding how much monitoring would fall by. Monitoring costs are optional and not a requirement of the regulations hence they are only included in the high range (page 15, IA). **[CAL emphasis.]**

Risks: Increasing focus on meeting EU obligations might lead to air quality hotspots outside these obligations not being addressed and increasing air quality impacts as a result (page 17, IA).

- ix. “There might also be non-monetised costs associated with reduced detailed understanding of local air quality.” (Page 16, IA).
- x. There was strong stakeholder support to retain the current, official process for declaration or revocation of AQMAs. It will remain a statutory duty upon local authorities that where any objective is or is likely to be, exceeded, an assessment should be made to confirm the exceedance [by reviewing Defra monitoring and modelling]. If the findings of the assessment result in the declaration of an AQMA, the authority will then move immediately to producing an AQAP within 12-18 months. (Page 11 (Consultation document)).

## APPENDIX TWO

Consultation 2013 on Local Air Quality Management (a modified version of ‘Option 3’ in the 2013 consultation becomes ‘Option 1’ in the 2014/2015 consultation)

[https://consult.defra.gov.uk/communications/https-consult-defra-gov-uk-laqm\\_review](https://consult.defra.gov.uk/communications/https-consult-defra-gov-uk-laqm_review)

Summary of responses – selective comments about monitoring (see below with page references)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/265819/laqm-sum-resp-20131213.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265819/laqm-sum-resp-20131213.pdf)

### Page 5

It was also asked what the impact would be on locally identified ‘hotspots’ outside those identified by the national assessment.

- Implications for local monitoring: The compliance assessment for EU limit values is undertaken by Defra using the methods set out in the Directive. Respondents thought that this would undermine the value of local authority monitoring and result in a lack of evidence to drive improvements. The consultation did not discourage local monitoring or modelling, but many were concerned that if local measurements had to be of Directive quality, using Directive methods, then many local authorities, particularly those with limited resources, might stop LAQM based monitoring altogether.

### Pages 18 and 19

Concerns were raised in relation to the reporting regime proposed under Option 3 (i.e. reporting progress only in nationally assessed exceedance areas), which a number of respondents felt would downgrade local authority involvement in air quality management and divert resources elsewhere. Many felt that for local reporting to have any value (whether simplified or not) robust local monitoring data was necessary – any move away from this (as was feared would happen under Option 3) would significantly undermine the LAQM process. **Many commentators said that it was wrong to assert that by streamlining reporting requirements, the savings obtained (if indeed there would be any) would automatically translate into improved actions on the ground. Without essential air quality and pollutant source information through local monitoring (pre and post action plan), the capability to deliver effective measures would also be severely hampered. [CAL emphasis.]**

### Page 33

There was strongest support for an option between 2 and 3 which retained statutory duties for local authorities, recognised the value of local monitoring and assessment. [CAL emphasis.]

**Most respondents thought that Option 3 went too far in reducing reporting and the role of local monitoring and risked a down grading of local air quality management and action to improve air quality as a result. [CAL emphasis.]**

**There was only limited support for Option 3.** This had the advantage of providing a clearer link to EU requirements but did not obviously support local monitoring or assessment of air pollution. It was commented by several respondents that the national assessment was by its nature too coarse to provide an understanding of local hotspots and therefore was not sufficient to support local air quality management. **[CAL emphasis.]**

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**A large number of respondents were concerned that [Option 3] would have significant adverse impacts on local air quality. In particular: it was thought that the removal of a statutory duty to report on local air quality outside the national assessment would lead to a reduction or even collapse in local air quality monitoring. [CAL emphasis.]**

Option 3 proposed that whilst local authorities would retain a duty to review and assess local air quality they would only be required to report on measures to improve air quality where these related to exceedances identified through the national assessment of air quality. **This was seen as downgrading the importance of local monitoring and assessment and the importance of public health impacts arising from local hotspots. The national assessment whilst suitable for assessing air quality at national level was not seen as suitable for having a local understanding of air quality and was not helpful for deciding on and evaluating measures. [CAL emphasis.]**

**It was also commented that reducing the statutory duties for reporting would more than likely lead to a loss of local expertise and understanding of air quality. This would have a detrimental impact on the ability of local authorities to implement appropriate measures and to evaluate their effectiveness. [CAL emphasis.]**

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**The responses highlighted the importance of government assistance to fund air quality monitoring, reporting, or the implementation of actions. Local Authorities are unlikely, it has been said, to be able to fund the service themselves, leading to less information about local air quality issues. This would result in poorer air quality, and an inability to adhere to national and European targets. [CAL emphasis.]**

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Campaign letters used a standard template, with occasional variations and personal remarks. The substance of the letters remained the same though. **The focus of the campaigns and petitions revolved mainly around the risk identified as part of the Government's preferred Option 3, which many believed would diminish local monitoring, as reporting would only be required on hotspots identified through national assessment for the purposes of complying with EU air quality limit and target values. [CAL emphasis.]**

[Defra] identified three campaigns:

1. 38 degrees – approx. 17,500 emails
2. Biofuelwatch – approx. 600 emails
3. Unidentified campaign emails (but with similar wording) – approx. 150

## **APPENDIX THREE**

### **Further Assessments - Deregulation Bill**

<http://services.parliament.uk/bills/2014-15/deregulation.html>

Page 174

<http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0058/15058.pdf>

Page 114 – Explanatory Memorandum (June 2014) (selected extracts below)

<http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0033/en/15033en.pdf>

Part 4 of the Environment Act 1995 outlines a regime for the domestic control of air pollution by local authorities. Part 4 of the Act extends to England and Wales and Scotland. Local authorities are required under section 82 of the Act to review the air quality and likely future air quality in their area. As part of this review, the local authority must assess whether the air quality standards and objectives are being achieved or are likely to be achieved. The local authority must identify any parts of its area within which those standards are not being achieved.

If air quality standards are not being achieved in any parts of its area, then the local authority must designate the relevant part as an Air Quality Management Area (section 83 of the Act). Section 84(1) of the Act requires that the local authority must undertake a further assessment of air quality (“Further Assessments”) in relation to the designated area to supplement information it already has.

[Defra says] Local authorities see Further Assessments as an unnecessary burden that is an impediment to speedy implementation of local action plans, which are required under section 84(2)(b) of the Act. This view has been confirmed in recent consultation where the majority of local authority respondents in England were content for the repeal of Further Assessments to go ahead.

Part 4 of Schedule 12 repeals the requirement for local authorities to carry out a Further Assessment. This repeal will form part of the law of England and Wales only and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act. Scotland is making the repeals, to apply to Scotland, by means of their Regulatory Reform (Scotland) Bill, which was passed by the Scottish Parliament on 16 January 2014.

### **Sections from Part IV of the Environment Act 1995**

<http://www.legislation.gov.uk/ukpga/1995/25/part/IV>

#### **82 Local authority reviews.**

(1) Every local authority shall from time to time cause a review to be conducted of the quality for the time being, and the likely future quality within the relevant period, of air within the authority’s area.

(2) Where a local authority causes a review under subsection (1) above to be conducted, it shall also cause an assessment to be made of whether air quality standards and objectives are being achieved, or are likely to be achieved within the relevant period, within the authority's area.

(3) If, on an assessment under subsection (2) above, it appears that any air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the local authority's area, the local authority shall identify any parts of its area in which it appears that those standards or objectives are not likely to be achieved within the relevant period.

### **83 Designation of air quality management areas.**

(1) Where, as a result of an air quality review, it appears that any air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the area of a local authority, the local authority shall by order designate as an air quality management area (in this Part referred to as a "designated area") any part of its area in which it appears that those standards or objectives are not being achieved, or are not likely to be achieved within the relevant period.

(2) An order under this section may, as a result of a subsequent air quality review,—

(a) be varied by a subsequent order; or

(b) be revoked by such an order, if it appears on that subsequent air quality review that the air quality standards and objectives are being achieved, and are likely throughout the relevant period to be achieved, within the designated area.

### **84 Duties of local authorities in relation to designated areas.**

(1) Where an order under section 83 above comes into operation, the local authority which made the order shall, for the purpose of supplementing such information as it has in relation to the designated area in question, cause an assessment to be made of—

(a) the quality for the time being, and the likely future quality within the relevant period, of air within the designated area to which the order relates; and

(b) the respects (if any) in which it appears that air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within that designated area.

(2) A local authority which is required by subsection (1) above to cause an assessment to be made shall also be under a duty—

(a) to prepare, before the expiration of the period of twelve months beginning with the coming into operation of the order mentioned in that subsection, a report of the results of that assessment; and

INSERT "Where an order under section 83 above comes into operation, the local authority which made the order shall

(b) to prepare, in accordance with the following provisions of this Part, a written plan (in this Part referred to as an "action plan") for the exercise by the authority, in pursuit of the achievement of air quality standards and objectives in the designated area, of any powers exercisable by the authority.

- (3) An action plan shall include a statement of the time or times by or within which the local authority in question proposes to implement each of the proposed measures comprised in the plan.
- (4) A local authority may from time to time revise an action plan.
- (5) This subsection applies in any case where the local authority preparing an action plan or a revision of an action plan is the council of a district in England which is comprised in an area for which there is a county council; and if, in a case where this subsection applies, the county council disagrees with the authority about the contents of the proposed action plan or revision of the action plan—
- (a) either of them may refer the matter to the Secretary of State;
- (b) on any such reference the Secretary of State may confirm the authority's proposed action plan or revision of the action plan, with or without modifications (whether or not proposed by the county council) or reject it and, if he rejects it, he may also exercise any powers of his under section 85 below; and
- (c) the authority shall not finally determine the content of the action plan, or the revision of the action plan, except in accordance with his decision on the reference or in pursuance of directions under section 85 below.

## APPENDIX FOUR

### **Footnote in draft guidance on Development Control: Planning for Air Quality published for consultation by Environmental Protection UK and the Institute of Air Quality Management on 19 December 2014 (page 23)**

The precise role of the development control process in delivering compliance with the EU limit values is uncertain, and clarification has been sought from Defra. In the event that unambiguous clarification from Government is provided, which confirms that any increase in concentration should not be permitted where an EU limit value is not met, then even a “slight adverse” impact may need to be regarded as significant if levels exceed the EU limit value.

### **Substance of earlier letter to Defra re ‘Role of local authorities and the development control process in achieving compliance with the EU limit values’**

In 2010, Environmental Protection UK (EPUK) published a revised version of its guidance *Development Control: Planning for Air Quality*. The document is aimed at local authorities, developers and consultants, and provides detailed guidance on the role of development control in improving air quality, and how air quality assessments to support planning applications should be carried out. The document has been widely used, and has often been cited at appeal.

The document is now in need of revision and EPUK, together with the Institute of Air Quality Management (IAQM), have formed a joint Working Group to undertake this task. The Working Group comprises of local authority officers, consultants, and representatives from other organisations such as the Environment Agency and PHE. It is a collective view that the land-use planning and development control processes can play a very important role in driving improvements to local air quality conditions.

A number of meetings have been held, and it is the hope that a draft revision to the guidance will be available in the summer. One issue that has repeatedly been raised is the precise role of local authorities with regard to the EU limit values and precisely how these Regulations should be considered with the development control regime.

The NPPF (para 124) notes that “*planning policies should sustain compliance with and contribute towards EU limit values...*” The Planning Practice Guidance (PPG) notes that (in terms of whether air quality could be relevant to a planning decision) “*concerns could arise where the development is likely to adversely impact upon the implementation of air quality strategies and action plans and/or in particular lead to a breach of EU legislation*”. The PPG also contains a flowchart which describes how air quality considerations fit into the development management process. This asks whether “*the proposed development will lead to an unacceptable risk from air pollution or prevent sustained compliance with EU limit values or national objectives for pollutants...*”

It is clear from both the NPPF and PPG that local authorities should have regard to the EU limit values in determining planning applications, but the precise obligations on local authorities, and how they might achieve such obligations, is not clear.

Under the LAQM regime, local authorities have a duty to work towards achievement of the air quality objectives. The work they carry out as part of their reviews and assessments follows guidance issued by Defra (LAQM.TG(09)). This includes a definition of where the objectives apply, which is not the same as where the limit values apply. (One example is that objectives apply at road junctions, whereas limit values do not apply within 25 m of a junction). Furthermore, the monitoring and modelling techniques used for LAQM do not usually meet the requirements of the Directive (2008/50/EC). It therefore seems appropriate to assume that only Defra can determine compliance, or non-compliance, with the EU limit values. There is also some considerable disparity between exceedences of the objectives identified by local authorities and exceedences of the limit values identified by Defra (largely by way of the interactive maps published by Defra), and the two cannot be considered as interchangeable.

To support a planning application, an air quality assessment is often carried out; this may form part of a formal Environmental Impact Assessment depending on the scale and nature of the development. The assessment will necessarily need to predict the air quality impacts of the proposed development in a future year (which may be anything from 2015 to 2030 onwards). For the reasons set out above, this assessment (normally carried out by consultants) cannot be shown to comply with the Data Quality Objectives in the Directive, and accordingly cannot strictly predict exceedences of the limit values.

An approach that has been adopted by the Highways Agency in the DMRB guidance is to take account of the interactive maps published by Defra, which identify road links where exceedences of the limit values occur (in 2012). The incremental change due to the scheme is then added to the concentration identified by Defra, and used to indicate whether an exceedence of the limit value is likely to be caused or sustained. Maps for future year predictions are not currently available, however, and so this approach cannot currently be used in air quality assessments to identify the likelihood of exceedences of the limit values in future years. This approach is applied in addition to a conventional assessment carried out against the objectives and using a locally calibrated model.

[EPUK/IAQM] would be grateful for any advice you can provide with regard to the following questions?

- a. Can exceedences of the EU limit values only be determined by Defra?
- b. As a matter of law and policy, are local authorities required to have regard to exceedences of the limit values in their determination of planning applications?
- c. If the answer to Q2 is YES, how are local authorities to assess potential exceedences of the limit values in future years, given that the available methods cannot meet the requirements of the Directive?

## Note

Separately, CAL obtained guidance from the European Commission on these matters in a letter dated 19 February 2014 that is not reflected in the above section. The Commission's interpretation was confirmed further in the judgement of the Court of Justice of the European Union. See links below.

[http://cleanair.london/wp-content/uploads/CAL-269-Letter-of-clarification-from-the-Commission-190214\\_Redacted.pdf](http://cleanair.london/wp-content/uploads/CAL-269-Letter-of-clarification-from-the-Commission-190214_Redacted.pdf)

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-11/cp140153en.pdf>