

Clean Air Bill

Explanatory notes

*Content and omissions are the responsibility of Clean Air in London (CAL) alone.
CAL records its sincere thanks to Kate Harrison of Harrison Grant Solicitors*

Introduction

1. These explanatory notes relate to the Clean Air Bill. They have been prepared to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. Where a clause or part of a clause does not seem to require any explanation or comment, none is given.

Background

3. The City of London Corporation created the first Clean Air Act in 1954, which was followed by the first national Clean Air Act on 5 July 1956. These pieces of legislation made the UK a world leader in environmental action for more than 15 years.
4. Much has changed since the 1950s. Scientists are warning now that everyone is affected by short and long-term exposure to air pollution to some extent with these exposures causing a wide range of health impacts. Climate change is also a humanity-threatening prospect.
5. While the EU Air Quality Directive (2008/50/EC) was transposed into UK law through the Air Quality Standards Regulations 2010 and required the UK to meet certain limits, these targets have yet to be met in various respects.
6. The air quality plans drawn up by the Government to achieve EU targets have been struck down three times by the Courts (in 2015, 2016 and 2018).
7. In addition, scientific understanding about the impact of air pollution has moved on.
8. There is a need to update legislation both to revise emission levels according to the latest available science and to plan for our withdrawal from the EU.

Summary

9. The Clean Air Bill's main purposes are to:
 - establish the right to breathe clean air;
 - introduce new obligations for the Secretary of State to achieve and maintain clean air in England and Wales;
 - enhance the powers and duties of various public authorities, including the Environment Agency, the Committee on Climate Change, local authorities (including port authorities), the Civil Aviation Authority, Highways England, Historic England and Natural England;

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- involve Public Health England in setting and reviewing pollutants and their limits; and
- establish a new, independent body, the Citizens' Commission for Clean Air, with powers to take legal action to hold Government to account.

Commentary

Section 1: Overview

10. Section 1(1) of the Bill establishes the right of individuals to breathe clean air. The right to breathe clean air is to be understood as part of the right to life, guaranteed under Article 2 of the European Convention on Human Rights, which triggers the duty of the State to protect life. Under section 6 of the Human Rights Act 1998 it is unlawful for a public authority to act in a way which is incompatible with a Convention right. As applied to the right to breathe clean air it would mean no public authority could act incompatibly with the right to breathe clean air, and that would include omitting to act.
11. Section 1(2) separately imposes an obligation on the Secretary of State to ensure that the air in England and Wales is clean, such that it does not contain any banned pollutants or any pollutants at concentrations above levels set by the World Health Organisation or the Environment Agency, whichever limit is lower, and above the limits set by the Committee on Climate Change.
12. The Secretary of State has one year from the date the Bill comes into force in which to fulfil this requirement.
13. Section 1(3) defines "pollutants" by reference to the limit values and emission limits set out in Schedules 1-4 of the Bill.

Section 2: Reviewing and revising the pollutants and limits in Schedules 1 to 4

14. Section 2(1) and (3) establishes new duties for the Environment Agency, requiring it to conduct a review of the pollutants and limits in Schedules 1 to 3 and advising the Secretary of State of any new pollutants that should be added to these schedules or any limits that should be lowered.
15. Section 2(2) and 2(4) also sets out the requirements for the review and particular considerations the Environment Agency must take into account when advising the Secretary of State.
16. Section 2(8) and (10) establishes new duties for the Committee on Climate Change, requiring it to conduct a review of the pollutants and limits in Schedule 4 and advising the Secretary of State whether any of these limits should be lowered.
17. Section 2(9) sets out the requirements for the review by the Committee on Climate Change.

Section 3: Secretary of State's duty: assessing air pollutants

18. Section 3(1) imposes new duties on the Secretary of State to assess air pollution and to provide detailed information about air pollution to the public.

19. Section 3(2) explains the assessment of pollutants in Schedules 1-4 that is referred to in Section 3(1).
20. Section 3(3) details the specific requirements of section 3(1) and includes collecting data on ambient air pollution. This is in order to help combat air pollution and nuisance and to monitor long-term trends and improvements resulting from national and international measures.

Section 4: Secretary of State's duty: additional provision

21. Section 4(1) requires the Secretary of State, when exercising their duties under section 1 (ensuring clean air in England and Wales), to comply with the United Nations Convention on Long-Range Transboundary Air Pollution and its protocols. Compliance with this Convention is provided for separately because it is about controlling our emissions which have an effect in another jurisdiction.

Section 5: Environment Agency

22. Section 5 imposes a new duty on the Environment Agency to exercise its powers in such a way as to bring about clean air.
23. The Environment Agency, together with other authorities (local authorities, the Committee on Climate Change etc), is intended to be the regulator on behalf of the State.
24. Section 5(2) also highlights the existing powers the Environment Agency has (set out at Schedule 6 of the Bill), some of which are underused, for tackling air pollution.

Section 7: Local Authorities

25. Under section 7, local authorities have a new duty to maintain clean air in their area and to limit emissions from their area.
26. Central funds must be allocated for this purpose.
27. Section 7(3) highlights the existing powers (including those set out at Schedule 6) that local authorities have in this regard.

Section 12: The establishment of the Citizens' Commission for Clean Air

28. Section 12 establishes a new body, the Citizens' Commission for Clean Air (CCCA), funded and accountable to the Secretary of State. In contrast to the regulators on behalf of the State, the CCCA is the independent enforcer of the State and its regulators with powers of assessment, investigation, enforcement and independent legal action (sections 13 and 14). It is modelled on the Human Rights Commission.
29. The constitution of the CCCA (set out at Schedule 7 of the Bill) includes the requirement for members of the CCCA to have expertise in the effect of air pollution on health and mortality and/or the environment. The Secretary of State must appoint the Commissioners of the CCCA.

Section 15: Duty to maintain clean air: reporting

30. Under section 15 the CCCA is required to report annually to the Secretary of State and send a copy of the report to Parliament and the European Environment Agency (EEA).
31. Reporting to the EEA is necessary to control and reduce the damage to human health and the environment caused by transboundary air pollution, for example regional ozone and other transboundary pollutants such as fine particles caused by farming emissions.

Section 18: Extent, commencement and short title

32. Since environmental provisions, including enforcement, are devolved matters, this Bill is limited to England and Wales only (section 18(1)).