



PINS NOTE 09/2017r1

To: All Inspectors, All Examining Inspectors.

Relevancy: Planning, NSIP, Transport and Local Plans casework.

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Last updated: 9 March 2018 – updated to include information on the 3rd ClientEarth challenge to the AQ Plan, the Judgment of which was published on 21 February 2018.

UK PLAN FOR TACKLING ROADSIDE NITROGEN DIOXIDE CONCENTRATIONS (THE 'AIR QUALITY PLAN')

Action

1. Inspectors will need to be aware that following the requirements of the Judgment and Relief Court Order resulting from the third ClientEarth challenge, handed down on 21 February 2018, the Government are required to produce a supplementary Air Quality Plan by October 2018. The Government published the 'final' Air Quality Plan (AQP) on 26 July 2017¹. The latest Judgment states this current AQP remains in force whilst the Supplement is produced. Welsh Government accepted that the AQP was inadequate in respect of Wales and had already proposed revised measures (see later section on Wales). Separate plans are already in place in respect of London (see later section) which were not challenged. Therefore Inspectors will need to have regard to it and attach appropriate weight to the objectives and proposed actions where relevant air quality issues arise in casework, in particular to:
 - **development which may negatively impact on compliance** - such as new roads, new housing and industrial development; and
 - **development intended to contribute positively to compliance** - such as alteration of existing roads; new or upgraded infrastructure for cleaner, e.g. electric cars and any associated charging infrastructure, through to infrastructure to encourage walking and cycling.

¹ UK plan for tackling roadside nitrogen dioxide concentrations – Detailed Plan [Defra/DfT, July 2017]

2. Objections may be raised to proposals that would involve activities that could potentially negatively impact local air quality in towns and cities which are currently non-compliant, or at risk of planned compliance being delayed, or an existing compliance being subsequently exceeded. The decision maker should attach appropriate weight to issues raised that suggest NO₂ emissions will be altered by the proposal, or by revisions to local plans (including waste local plans), in non-compliant zones where draft air quality improvement plans are under consultation.
3. Inspectors should consider if the views of parties should be sought on any further evidence that should be requested on the basis of forecasting or measures intended to ensure local compliance or the potential introduction of further Clean Air Zones (CAZs) – see **Annex B**.
4. Inspectors will wish to consider, in their examination of matters, the basis on which any forecasting has been made in areas which are not in compliance with the Directive limits or may be brought in to non-compliance as a result of proposed developments or plans, and what level of margin may be required to avoid any potential new non-compliance or delay in achieving compliance. In essence a cautious approach will be needed, i.e. not relying solely on the AQ Plan to deliver the Directive objectives in those areas where the plan was found to be inadequate – the 45 English local authority areas in Table 1 of the AQ Plan who were originally 'not required to conduct a feasibility study'. For these 45 areas the latest Judgment specifies that 33 of these will be required to produce a feasibility study for implementation of measures to provide compliance, the other 12 are likely to come into compliance shortly, so are not required to provide additional measures. However, you will also need to be satisfied that the proposed development or plan does not delay or reduce the chances of the location coming in to compliance.

Background

5. The final UK Detailed Plan (the AQP) published on 26 July 2017, resulting from the May 2017 Government consultation², details the policy background and sets out the approach to meeting the legal obligations to achieve the required NO₂ limit values. As part of this, the document sets out the considerations for land use and infrastructure planning at Annex I, as detailed below:
 - **England** - the NPPF sets out general policy regarding air quality at paragraphs 109, 120 & 124; the Planning Practice Guidance (PPG) for Air Quality sets out the following advice: for planning casework conditions and obligations may be used to secure mitigation (providing the relevant tests are met) as set out in [paragraph 8](#) of the PPG.

² Defra/DfT/Scottish Government/Department of Agriculture, Environment and Rural Affairs – Northern Ireland/Welsh Government joint consultation.

- **London** – the Mayor of London has proposed additional measures in London including an Ultra Low Emission Zone. The timing and extent of these should be checked via the London.gov.uk and tfl.gov.uk websites (see Annex B).
- **Five Cities** – Birmingham, Derby, Leeds, Nottingham and Southampton are covered by proposed Charging Clean Air Zones and the current position on each of these should be verified for any relevant casework (see Annex B)
- **Local Plans** - consideration will need to be given to the points specified in [paragraph 2](#) of the PPG, taking account of Air Quality Management Areas; cumulative impact from smaller sites and point source pollution.
- **National Infrastructure** - the overview document also makes reference to the [National Policy Statement \(NPS\) for National Networks](#), which sets out how decisions on road and rail infrastructure must take account of air quality limits **and any specific geographic proposals in the AQP**. Where a project is likely to lead to a breach of the limits, the appropriate mitigation methods should be used to ensure they are not breached.
- **Wales** - see sections 13.10, 13.11 and 13.12 of Planning Policy Wales. It should be borne in mind that as mentioned above the WG are required to produce a Supplemental AQ Plan, detailing measures to ensure compliance by July 2018.

Final Air Quality Plan

6. The [final AQP](#) was published on 26 July 2017³, ahead of the 31 July deadline, specified in the HC judgment of 27 April 2017 - see **Annex A**. This UK AQP aims to focus on the most immediate air quality challenge, i.e. to reduce NO₂ concentrations around roads where the current levels are above legal limits within the shortest possible timescale. The Government announced that the AQP is one part of the wider programme to deliver clean air⁴.
7. Local areas where breaches of the legal limits are still occurring are required to produce **their own action plans** within eight months and final plans by the end of 2018⁵. It should be noted that the devolved

³ UK plan for tackling roadside nitrogen dioxide concentrations – Overview; Detailed Plan, Technical Report and [Zone Plans](#); the summary of consultation responses was also published [Defra/DfT, July 2017].

⁴ Further measures will include – i) the Clean Growth Plan, which BEIS will bring forward in Autumn 2017; ii) a further strategy on zero emission transport for all road vehicles to be published by March 2018; and iii) a wider Clean Air Strategy in 2018, setting out how international commitments on five damaging air pollutants will be met by 2020 and 2030.

⁵ [Environment Act 1995 \(Feasibility Study for Nitrogen Dioxide Compliance\) Air Quality Direction 2017](#), which came into force on 28 July 2017 require the specified English Local Authorities to carry out activities listed in Schedule 2 with regard to duties under Part IV of the 1995 Act by the specified deadlines. The local area Action Plans are separate to the area [Zone Plans](#) for the 37 (of 43) agglomeration Zones in England where there are air quality issues with NO₂, which set out what the Government is doing in regional areas to improve air quality and reduce NO₂ concentrations.

administrations in London are pressing ahead with their own implementation to achieve compliance – see **Annex B**. Non-London Local authorities affected will have access to a range of options to tackle poor air quality in their plans, e.g. changing road layouts to reduce congestion, encouraging uptake of ultra-low emissions vehicles and use of innovative retrofitting technologies and new fuels and encouraging use of public transport. If these measures are not enough, local authorities will have the option for restrictions on polluting vehicles through either restricting these vehicles to using affected roads only at certain times or the introduction of charging zones. The Government has stated that all other measures should be exhausted before imposing charging zones. The plans will be assessed by Government to check for effectiveness, fairness and that they represent good value. The Government will support local authorities to develop the plans by measures set out in the AQP including:

- A £255 million implementation fund for all immediate work required to deliver plans within eight months to address poor air quality in the shortest time possible;
- A Clean Air Fund for councils to bid for money to introduce new measures such as changing road layouts to cut congestion and reduce idling vehicles, new park and ride services, introducing concessionary travel schemes and improving bus fleets. More details will be announced later this year.
- A £40 million Clean Bus Technology Fund grant scheme - part of a £290 million National Productivity Investment Fund announced in the Autumn Statement - to limit emissions from up to 2350 older buses. Government remains committed to putting the public finances back on a sustainable footing: so all money spent on air quality measures will be funded through changes to the tax treatment for new diesel vehicles or through reprioritisation within existing departmental budgets. Further details will be announced later this year.

Also announced on 26 July 2017:

- Van drivers are set to be given the right to use heavier vehicles if they are electric or gas-powered, in measures that will help improve air quality in towns and cities across the country.
 - Manufacturers found to be using devices on their vehicles to cheat emissions tests could face criminal and civil charges, with fines of up to £50,000 for every device installed, under proposed new laws.
8. Actions which the Government is already taking are set out in Annexes A to H of the AQP; a summary of the additional actions are described in Table 2 on pages 19-22 of the detailed AQP. Table 3 on page 31 lists the local authorities with persistent exceedances required to undertake action to reduce NO₂ emissions to within statutory limits within the shortest possible time.

9. Paragraph 6 of the AQP refers to the ban on the sale of all new conventional petrol and diesel cars in the UK by 2040 and the ambition for the UK to be a world leader in electric vehicle technology. Volvo has already announced that all new models will be electric from 2019 and other manufacturers have also announced plans to move away from conventional fuels.
10. PINS Note 07/2016 is hereby cancelled as this note contains relevant information from the previous note and substantially updates the advice in light of the publication of the 'final' AQP.
11. **Annex A** sets out the background information to UK non-compliance with the Ambient Air Quality Directive 2008/50/EC and ClientEarth challenges; **Annex B** focusses on the Clean Air Zones Consultation and London Mayor Initiatives; and **Annex C** summarises the Diesel cars emissions scandal, Real Driving Emissions; COPERT based forecasting and conformity factors.

Contacts for further information

12. Please contact XXXX if you have any general queries on this Note.
13. Contact the relevant Group Manager for advice on individual cases potentially affected by the publication of the Air Quality Plan.

Background Information – UK non-compliance with the Ambient Air Quality Directive 2008/50/EC and ClientEarth challenges

1. This Annex contains background information on the issues surrounding the UK's on-going non-compliance with the Ambient Air Quality Directive⁶, with respect to emissions of Nitrogen Dioxide (NO₂)⁷ and the various challenges by ClientEarth, which brought about the current situation with regard to the AQP.

First ClientEarth Challenge

2. The Supreme Court Judgment⁸ from 29 April 2015, relating to the successful challenge, ordered Defra to develop revised AQPs by the end of 2015. The judgment stated that the UK breached Ambient AQ Directive, which sets limits (in Annex XI⁹) for NO₂, not by failing to apply for a derogation but by failing to put in place sufficient plans to secure compliance. Parts of the UK would not be compliant until 2030 (the Directive requires compliance by June 2010, which can be extended by 5 years under Article 22).
3. The Supreme Court judgment disagreed with the lower Courts that enforcement could be left to the EC. The Court of Justice of the EU ruled in November 2014¹⁰ that the UK had breached the Directive and has started infraction proceedings.
4. The UK is divided into 43 zones (for AQ monitoring and reporting purposes). In 2013, 38 of the 43 zones were assessed as exceeding the maximum annual limit of NO₂ emissions.
5. To comply with the Supreme Court ruling, Defra issued a consultation¹¹ seeking views on draft plans to improve AQ in relation to NO₂, to be submitted to the EC by the end of 2015 deadline. The then [final plans](#) (the AQP) were published by Defra on 17 December 2015, and detailed how they proposed to meet the legal obligations in the shortest possible timescale.

⁶ [Directive 2008/50/EC](#) on ambient air quality and cleaner air for Europe.

⁷ NO₂ is one of several oxides of nitrogen (NO_x) of which the main human source is combustion engines. The most common NO_x's are Nitric oxide (NO) and Nitrogen dioxide (NO₂). In the atmosphere NO_x's are a main precursor for tropospheric ozone; are harmful to human health and may react with water to make nitric acid (HNO₃), which may then end up in soil as nitrate (NO₃⁻).

⁸ [R \(ClientEarth\) v SoS EFRA, \[2015\] UKSC 28](#), (on appeal from [2012] EWCA Civ 897).

⁹ Limit values: for one hour period - 200µg/m³ not to be exceeded by >18 times in a year; for calendar year – 40µg/m³ by 1 January 2010.

¹⁰ [CJEU \(R \(Client Earth\)\) v SoS EFRA Case C-404/13](#).

¹¹ [Defra Consultation on draft plans to improve air quality](#): Tackling nitrogen dioxide in our towns and cities.

Second ClientEarth Challenge

6. In May 2016, Client Earth launched a challenge to Defra's AQP, seeking the plans be 'struck down' and new plans ordered as they believed the current plans were inadequate and would not bring down levels of air pollution in the shortest possible time. The hearing took place on 18-19 October 2016 and the judgment¹² was issued on 2 November 2016. This declared the AQP as inadequate both in extent and timescale to address the non-compliance.
7. The ruling identified that Clean Air Zones were likely to form part of an appropriate response but that their number would increase from six to potentially 30 cities and that measures would need to be introduced more quickly to ensure that compliance was achieved as early as possible and potentially before 2020.
8. The parties returned to court on 9 November 2016 to identify a timescale for a new AQP to be established. The Court Order dated 21 November 2016¹³ ordered the following:
 - i) that the current AQP remains in place and should continue to be implemented until a modified AQP is adopted;
 - ii) That Defra publish a draft modified AQP¹⁴ by no later than 24 April 2017; and
 - iii) That Defra publish a final modified AQP by no later than 31 July 2017.
9. On 24 April 2017 Defra applied to the High Court for an urgent legal stay to have the deadlines extended until after the General Election. The hearing in the High Court took place on 27 April 2017¹⁵. The Judge rejected most of Defra's arguments saying the pre-election period is not a point of law but a convention and that Cabinet Office guidelines allowed for consultations to be published during the Pre-election period in exceptional circumstances. The Judge did agree that the quality of the consultation could be affected by the Pre-election period for the local elections. As a result, ordered the following:
 - iv) That Defra publish a draft modified AQP by no later than 9 May 2017; and
 - v) That Defra still publish a final modified AQP by no later than 31 July 2017, in line with the original Court Order.

¹² [ClientEarth v SoS EFRA \(No2\), \[2016\] EWHC 2740 \(Admin\).](#)

¹³ Court Order dated 21 November 2016 [Claim No. CO/1508/2016].

¹⁴ Complying with the requirements of Article 23(1) of Directive 2008/50/EC and r26(2) of SI 2010/1001.

¹⁵ [Judgment dated 27 April 2017 \[Claim No. CO/1508/2016\].](#)

10. The revised AQP was published for consultation¹⁶ on 5 May, ahead of the revised deadline. The consultation comprises the [draft UK Air Quality Plan for tackling NO₂](#), and the associated [Technical Report](#), which includes details of the modelling techniques and assumptions used in the AQP.
11. The range of measures to improve air quality set out in the revised AQP appear to remain largely the same as those set out in the previous AQP. However the revised AQP and the accompanying Technical Report suggests that a larger number of towns and cities than was set out in the AQP published in December 2015 may need to implement Clean Air Zones (CAZs), as the model has been updated with the most recent evidence on real world vehicle emissions following the diesel emissions scandal. The final AQP, published on 26 July 2017, confirmed that those local authorities identified will be required to develop and implement comprehensive CAZ plans.
12. On 31 May ClientEarth challenged the consultation draft AQP on the grounds that it was inadequate and unlawful and that a further consultation should go ahead. This latest challenge was dismissed by the judge on 5 July, who stated that any failings in the draft AQP did not make it unlawful as it was a draft and may be subject to change. However, the judge did suggest that the final version of the AQP could be subject to challenge if it did not address some of the concerns raised.

Third ClientEarth Challenge

13. In November 2017 ClientEarth challenged the 'final' AQ Plan published in July 2017 on the grounds that: The latest plan backtracks on previous commitments to order 5 cities to introduce clean air zones by 2020; The plan does not require any action in 45 local authorities in England, despite them having illegal levels of air pollution and the plan does not require any action by Wales to bring down air pollution as quickly as possible.
14. The Welsh Government conceded the case at the hearing in January 2018 and admitted that their failure to have their own AQ Plan was unlawful and have agreed to produce their own Supplemental AQ Plan – a draft Plan by 30 April 2018 and a final Plan by 31 July 2018.
15. London is treated separately and has produced its own measures to help ensure compliance. ClientEarth effectively won one of the two remaining grounds of challenge. The Judge concluded¹⁷ that the AQ Plan is unlawful in that:
- i) in its application to the 45 local authority areas, it does not contain measures sufficient to ensure substantive compliance

¹⁶ [Improving air quality: national plan for tackling nitrogen dioxide in our towns and cities](#) [Defra, 5 May 2017] – consultation closes 15 June, with results expected on 31 July.

¹⁷ [ClientEarth v. SoS EFRA \(No3\)](#), [2018] EWHC 315 (Admin).

with the 2008 Directive and the English Regulations (see paragraph 80);

ii) the 2017 Plan does not include the information required by Annex XV to the Directive and Schedule 8 to the English Regulations, in respect of those same local authority areas (paragraph 86); and

iii) it contains no compliant AQP for Wales (paragraph 103).

16. The Judge invited the parties Counsel discuss the details of the relief Order, which was confirmed as:

i) a declaration that the 2017 Plan is unlawful in those respects;

ii) a mandatory order requiring the urgent production of a Supplement to the 2017 Plan containing measures sufficient to rectify the deficiencies identified above by no later than 5 October 2018; and

iii) to direct that the 2017 Plan remains in force whilst the Supplement is produced in order to avoid any delay in its implementation.

17. In addition the Judge ruled that due to the 'exceptional' nature of the case ClientEarth was granted the 'continuing liberty to apply' meaning that it can bring the government back before the court, without having to commence fresh judicial review proceedings, if there is evidence of the government 'falling short' in its compliance with the Order.

18. In respect of the five 'Core Cities' specific additional measures are due to be introduced from later in 2018 and Defra gave undertakings to the court that they would be brought in to force. Again, any change in this position is likely to form part of a potential further challenge.

19. On 22 February Defra confirmed¹⁸ that they would not appeal the decision.

¹⁸ [HoC Hansard Vol 636, Col 11WS](#) (22 Feb 2018).

Clean Air Zones Consultation and London Mayor Initiatives

Clean Air Zones Consultation

1. As part of the implementation of the AQP, a framework for Clean Air Zones (CAZs) was promised in 2016. The Government published a consultation¹⁹ on a draft [CAZ framework](#), [secondary legislation](#), [impact assessment](#) and Guidance to Local Authorities on its implementation on [13 October 2016](#).
2. The CAZ Framework set out the principles for the operation of CAZs in England and outlines the approach that should be taken by LAs to implement and operate a CAZ, which was to be introduced in five cities by 2020 together with measures already announced for London. Section 2 of the draft framework sets out how CAZs are expected to deliver in three areas²⁰:
 - supporting local growth and ambition (decoupling growth and pollution);
 - accelerating the transition to a low emission economy;
 - immediate action to improve air quality and health.
3. CAZs will either be charging or non-charging zones as detailed below:
 - Non-charging CAZ – defined areas used for action to improve air quality. The action can take many forms including those set out in section 2 of the framework, but does not include charge based access restriction.
 - Charging CAZ – areas where (in addition to the measures in section 2 of the framework), vehicle owners are required to pay a charge to enter a CAZ if their vehicle does not meet the required standard²¹.
4. The Government views CAZs as making it easier for the uptake of Ultra Low Emission Vehicles (ULEVs)²² and the framework includes incentives for the use of ULEVs at section 2.4.1-2.4.2²³. In support of this DfT launched a consultation²⁴ on measures for inclusion in the Modern Transport Bill, outlined in the [Queen's speech](#) in May 2016.

¹⁹ [Consultation on the implementation of Clean Air Zones in England](#) (Defra, October 2016).

²⁰ Minimum requirements for a CAZ are set out in paragraph 25 of the framework.

²¹ Classes of vehicles and emission standards are set out in Annex A of the framework.

²² Vehicles that emit <75 g of CO₂ / km (DfT - Office for LEVs)

²³ e.g. infrastructure for ULEVs – charging points/networks.

²⁴ [Consultation on proposed ultra low emission vehicles measures for inclusion in the Modern Transport Bill](#) (DfT, October 2016).

5. Further locations for CAZs and a faster implementation timescale are now expected to be announced covering up to a total of 30 cities in response to the quashing of the AQP.
6. The results of the consultation²⁵ were published on 5 May 2017, which fed into the final CAZ Framework²⁶, also published on 5 May. The amended CAZ Framework contains the following changes from the draft framework as follows:
 - The draft Framework included standards for private cars, some changes have been made to the Framework to make this clearer.
 - The sections on "Joining up Clean Air Zones and Local Air Quality Management" and "Improving collaboration and joining up approaches" have been amended to provide additional clarification.
 - Sections on "Retrofitted vehicles and accreditation" have been amended to include more information on the Clean Vehicle Retrofit Accreditation Scheme that is being developed and removed the annex on approved retrofit schemes from the draft Framework.
 - The draft Framework has been amended to clarify that local authorities will need to undertake appropriate monitoring and assessment of air quality levels to evaluate the effectiveness of measures implemented in CAZs.
 - Some minor changes have been made to the section on "Exemptions and discounts" to clarify the approach to exemptions, particularly in relation to Blue Badge holders. The approach to emergency service vehicles has been set out.
7. The Government issued Directions²⁷ which came into force on 20 December 2017 to require studies into compliance measures, in addition to Clean Air Zones in Birmingham, Derby, Leeds, Nottingham and Southampton by 15 September 2018.
8. It should be noted that under the provisions on Parts II and III of the Localism Act 2011²⁸, any costs arising from infraction proceedings may have to be borne by the LAs involved. The Act provides discretionary powers to the SoS and Welsh Ministers to require LAs to contribute to any EU sanction imposed under Article 260(2) of the EU Functioning Treaty²⁹.

²⁵ [Summary of responses to the governments consultation on the implementation of Clean Air Zones in England](#) [Defra/DfT, May 2017].

²⁶ [Clean Air Zones Framework – Principles for setting up Clean Air Zones in England](#) [Defra/DfT, May 2017].

²⁷ AQP Supporting document - [S85\(5\) Environment Act 1995 Air Quality Directions 2017](#)

²⁸ England: [Localism Act 2011 \(c.20\), Part II, s48](#). Wales: [Part III, s58](#).

²⁹ [Article 260 of the Treaty on the Functioning of the European Union \(TFEU\)](#).

London Mayor Initiatives

9. In June 2016 the incoming Mayor of London announced an acceleration of the AQ plans for London including the Ultra-low Emission Zone (ULEZ) and further restrictions on older Category A, B and C vehicles. The Mayor was an interested party to the challenge to the AQP and supported the ClientEarth claim for the quashing. TfL are expected to produce further updates on the impacts for Air Quality in London as a result of this acceleration.
10. From 8 April 2019, all motor vehicles will need to meet exhaust emission standards (ULEZ standards) or pay a daily charge, when travelling in the central London area. This Ultra Low Emission Zone (ULEZ) covers the same area as the current Congestion Charge Zone. It is hoped that the introduction of the ULEZ will reduce exhaust emissions of NO₂ and particulate matter PM10 and PM2.5, to improve central London's air quality.
11. Building on the measures specified above, the Mayor of London announced on 5 July 2016 plans³⁰ for action to cut emissions from the most polluting vehicles and as a result intends to:
 - i) launch a £10 toxicity 'T-Charge' aimed at the oldest, most polluting vehicles on London roads from 23 October 2017
 - ii) introduce a requirement for all newly licensed taxis to be zero emission capable from 1 January 2018
 - iii) Introducing the central London Ultra-Low Emission Zone one year earlier in 2019
 - iv) Extending the Ultra-Low Emission Zone ('ULEZ') beyond central London from 2020: for motorcycles, cars and vans, to the North and South Circular; and for lorries, buses and coaches London-wide
 - v) Developing a detailed proposal for a national diesel scrappage scheme for Government to implement
 - vi) Bringing forward the requirement for all double-deck buses to be ULEZ-compliant in central London from 2020 to 2019
 - vii) Implementing clean bus corridors – tackling the worst pollution hotspots by delivering cleaner buses on the dirtiest routes
12. On 21 June 2017 the Mayor of London published a draft Transport Strategy³¹ setting out policies to 'reshape' London's transport over the next 25 years. The vision is to reduce the need for car use and encourage more walking and cycling. The aim is for 80% of all trips to be made on foot, by cycle or by public transport by 2041, currently the

³⁰ [Clean Air Action Plan](#) [Mayor of London / London Assembly, July 2016]

³¹ [Mayor's Transport Strategy – draft for public consultation](#) [Mayor of London, June 2017]

figure stands at 64%. One of the three approaches set out is 'The Healthy Streets Approach' to prioritise health and quality of experience using ten healthy street indicators³², one of which is 'clean air'.

13. The Mayor's aims as part of the Healthy Streets (and healthy people) approach are:

- for all taxis and private hire vehicles to be zero emission capable by 2033
- for all buses to be zero emission by 2037
- for all new road vehicles driven in London to be zero emission by 2040
- for London's entire transport system to be zero emission by 2050.

³² See page 9 of the [Mayor's Transport Strategy – draft for public consultation: Executive Summary](#) [Mayor of London, June 2017].

Diesel cars emissions scandal, Real Driving Emissions; COPERT based forecasting and conformity factors

Diesel cars emissions scandal and Real Driving Emissions

1. In 2015 Volkswagen (VW) admitted the deliberate installation of software to cheat the Euro 6 emissions tests on some diesel cars. Other manufacturers have now admitted to using similar software which leads to unrealistic predictions of NO₂ emissions for AQ forecasts.
2. As a response, the UK Government announced on [8 October 2015](#) (with an [update on 10 November 2015](#)) investigations to be undertaken into other car manufacturers to examine if illegal software was being used more widely and will include all main brands sold in the UK. Other EC countries and the USA conducted similar investigations and a coordinated approach was agreed with EC partners to reduce duplication and ensure a wide range of vehicles are tested.
3. The results of the UK Governments investigations³³ revealed that the majority of manufacturers were using temperature-based strategies to pass lab tests (which is deemed legal). The EC are planning to put in place in 2017 a 'Real Driving Emissions' (RDE) procedure that would require on-road emissions tests for all passenger vehicle types. The RDE test applied from September 2017³⁴ for new car types and will apply for all registrations from September 2019.
4. Section 7.3 of the AQP confirms that the more stringent Worldwide Harmonized Light Duty Vehicle Test Procedure (WLTP) and the RDE regulations will apply to light passenger and commercial vehicles from September 2017.

COPERT based forecasting and conformity factors

5. The effect of the cheating scandal has been to decrease the expected rate of improvement in NO_x measurements at monitoring sites and delay the potential compliance of areas not in compliance with the AQ directive.
6. This has also required adjustments to AQ forecasts. For example, in the forecasts based on the computer programme to calculate emissions from road transport (COPERT) used by Defra, a conformity factor allows for the increase in actual emissions above the Euro 6 test of between 2.5 and up to 5 times the intended limit of NO_x from diesel engines.

³³ [Cm9259 - Vehicle emissions testing programme: conclusions](#) (DfT, April 2016)

³⁴ [Commission Regulation \(EU\) 2017/1154 amending Commission Regulation \(EU\) 2017/1151 and Directive 2007/46/EC as regards real-driving emissions from light passenger and commercial vehicles \(Euro 6\)](#) – the EU6d Emission Regulation [EC, June 2017]

7. In the 2015 AQP, Defra appeared to have relied on the lower of this range whereas the court held that emerging data suggested a higher range may be more appropriate to estimate the extent required by a policy to address non-compliance. It also noted that in CAZs the exclusion of older vehicles (Euro V and older) would most effectively reduce emissions whatever the rate of future compliance with the proposed Real Driving Emissions tests.