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Edward Mountain MSP
Convener
Net Zero, Energy and Transport Committee
Scottish Parliament
Edinburgh
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19 April 2023

Dear Convener

NET ZERO, ENERGY AND TRANSPORT COMMITTEE, 25 APRIL 2023

Environmental Standards Scotland (ESS) received a copy of the Scottish Government's improvement plan which sets out how it intends to implement the six recommendations set out in ESS' air quality [improvement report](#). ESS is pleased that the Scottish Government welcomes the report, has accepted all of the recommendations and is committed to delivering them.

ESS' investigation followed a European Court of Justice ruling in March 2021 that, across the UK, exceedances of statutory air quality limit values in respect of nitrogen dioxide had remained 'systemic and persistent' between 2010 and 2017. ESS' investigation continued work which had already been undertaken by the European Commission prior to the UK's withdrawal from the European Union.

ESS' recommendations were intended to improve the efficiency and effectiveness of how air quality improvement is achieved. While improvements in air quality have been achieved, potential effects on public health remain. If the Scottish Government decides to follow the European Union's plans to reduce pollutant limit values further, it is important that the system of air quality management is as efficient and effective as possible.

Having considered the content of the Scottish Government's improvement plan, I have set out below ESS' view on the Scottish Government's response to the recommendations made within ESS' improvement report.

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Recommendation 1 - Introduce the requirement for local authorities to complete and publish AQAPs within a specified target date following the declaration of an AQMA, which must be within as short a time as possible.

ESS welcomes the inclusion within the improvement plan of a more clearly defined requirement for Air Quality Action Plans (AQAPs) to be published within as short a time as possible, and no later than twelve months from Air Quality Management Area (AQMA) designation. On reviewing the recently updated Local Air Quality Management (LAQM) policy guidance¹ (published in March 2023) it is apparent that a strengthening in this connection has been incorporated into Section 6.1 of the guidance where it states '*once a local authority has declared an AQMA, under Section 84 of the [Environment Act 1995] it must then prepare and implement an air quality action plan within the shortest possible time and no later than 12 months post declaration*'.

Recommendation 2 - Introduce the requirement for local authorities to achieve AQMA and AQAP objectives within a specified target date, which must be within as short a time as possible.

ESS' improvement report set out the current position that local authorities are not legally obliged to meet the air quality objectives within AQMAs. The key point behind this recommendation was that local authorities must set a specified target date for when compliance **must be achieved**.

The improvement plan proposes a strengthening of the LAQM policy guidance to include:

- specified target dates for completing each action plan measure;
- well defined milestones towards completion;
- a clearer requirement for assessing the estimated reduction in pollutant concentrations contributed by each AQAP measure; and
- AQAP measures should be delivered within as short a time as possible, and that the action plan itself should have a timescale for completion and for revocation of the AQMA. The timescale for revocation should be 'within as short a time as possible' which should be taken to mean the date by which the longest term AQAP measure is expected to be completed.

ESS considers that the above actions constitute a significant strengthening of the current system and notes that they have been incorporated within sections 3.18, 5.6 and section 6 of the revised LAQM policy guidance.

Furthermore, the inclusion of the explicit requirement for joint working between local authorities and Transport Scotland and SEPA proposed in the plan are also welcomed by ESS and we see that these have been incorporated into the revised LAQM policy guidance (section 6.15) where the local authority is expected to take the lead role.

¹ [Part IV of the Environment Act 1995: Local Air Quality Management: Policy Guidance \(www.gov.scot\)](http://www.gov.scot)

Recommendation 3 - Introduce the requirement for local authorities to review and, where necessary, update AQAPs. The targets for any such review and update must be consistent with the principle of as short a time as possible.

ESS found that the time periods associated with the preparation, review, and update of AQAPs needed to be tightened to ensure a consistent approach is adopted and that air quality limit values remain a priority for local authorities. Accordingly, ESS welcomes the inclusion within the plan, and in sections 4.8 and 6.8 of the revised LAQM policy guidance, that current AQAPs (whether published or in draft) must be reviewed and, where necessary, updated within 12 months of the revised policy guidance being published.

The improvement plan considers that a five year review cycle is appropriate as it aligns with the time period for the lifespans of the Government's Cleaner Air for Scotland strategies. In ESS' view, the proposed five year cycle is too long and risks compromising the principle that compliance should be achieved in as short a time as possible.

Recommendation 4 - Identify or introduce a monitoring body with the remit to look at the system of air quality monitoring and compliance holistically (including the monitoring of the implementation and effectiveness of LEZs). It is critical that this body should be able to move quickly where air quality does not meet legal requirements, consistent with the principle of achieving compliance within the shortest time possible, and thus it should have the requisite power to direct action when deemed necessary.

The improvement plan considers that this recommendation can be satisfied through SEPA using the existing powers available to it under section 85 of the Environment Act 1995, should a local authority not be undertaking its statutory duties in relation to air quality. In particular that the LAQM policy guidance will be strengthened to include an assumption that these powers should be used routinely once the series of warning levels issued to local authorities when specified deadlines are missed have been exhausted rather than on a case by case basis.

There are a number of key actions which local authorities must take as part of their LAQM responsibilities (such as monitoring, declaration, planning, execution and reporting), all of which interact with each other. The purpose of this recommendation was to identify or introduce a body which has the remit to consider **all** aspects of the discharge of these responsibilities, with the ability to comment, report or direct action in all of these areas where necessary. The recommendation, if implemented appropriately, will ensure that close and ongoing scrutiny is given to the range of work undertaken to improve air quality (and therefore public health) by local authorities, so that it is conducted as efficiently and effectively as possible. Accordingly, ESS considers that the role of the monitoring body should go beyond mere administrative compliance.

The revised LAQM policy guidance (section 2.8) sets out the sequencing of when SEPA will utilise its enforcement powers. However, this relates only to the submission of Annual Progress Reports (APRs) and the completion of AQAPs. This appears to follow the previous system as described at page 27 of ESS' improvement report and neither the improvement plan or the revised policy guidance touch upon the other duties which ESS considers the

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monitoring body should have, which is the ability to comment, report or direct action in all of areas of local authorities' LAQM responsibilities.

In light of this, ESS is unconvinced that the changes proposed in the improvement plan and in the revised LAQM policy guidance are sufficiently clear about what will be monitored and whether the existing Section 85 power is capable of fully implementing the recommendation as intended.

Recommendation 5 - That the Scottish Government ensures that its ongoing review of data provision scrutinises the protocols for the siting of monitoring sites, with a view to establishing whether they provide a sufficiently comprehensive picture of the state of air quality, particularly in and around our major cities. Specific focus should be placed on areas where vulnerable groups are present, such as schools and hospitals.

This recommendation relates to the question of whether the current monitoring system is robust enough to provide a sufficiently comprehensive picture of the state of air quality in our major cities, especially around areas where vulnerable groups are present. During our investigation, ESS was aware of the Scottish Government's ongoing review of data provision in this connection and thus considered it appropriate for the review to take forward this recommendation. ESS is not clear from the improvement plan whether the Scottish Government has concluded this review, or if it has, what its conclusions are.

Recommendation 6 - That the Scottish Government revises CAFS2 to include specific and measurable timescales (consistent with the overarching duty to achieve compliance within the shortest time possible) for when compliance with NO2 limit values should be achieved.

ESS welcomes the Government's acceptance of this recommendation. It notes the establishment of general timescales for actions within CAFS2. ESS will monitor the Scottish Government's progress against these timescales.

Yours sincerely

Mark Roberts
Chief Executive