

Air Quality and the Bill



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- How Air Quality fits into the Bill;
- Specific air quality provisions in the Bill;
- Recent air quality news and litigation.

How does air quality fit into the Bill?

- It is one of the five 'priority areas' in clause 2;
- Meaning that regulations setting a long term target (> 15yrs) in at least 'one matter within' air quality must be made (Gov't intention is it will be a 'PERT');
- A separate specific requirement under clause 3 to set a target (of less than 10 micro grams per m³) in relation to fine particulate matter (PM_{2.5}) (to be achieved by 2030) (NB tougher parameters inserted by HL);
- Duty of S of S to ensure targets are met (clause 6);
- Requirements to set interim targets (clause 12(2)(a)).

Any specific provisions on air quality?

- Yes – Part 4 - clauses 73 to 79 and Schedules 11 and 12;
- The specific provisions fall into four broad categories:
 - Amendments to the local air quality management framework;
 - Smoke control and enforcement;
 - Protection of pollinators from pesticides;
 - Environment recall of motor vehicles etc

Amendments to Local Air Quality Management Framework

- Schedule 11 sets out amendments to Part 4 of the Environment Act 1995
- Increased requirements on Secretary of State to review national air quality strategy and to report on progress annually;
- Requirements for increased cooperation at local level, broadened range of organisations with shared responsibility for tackling air pollution.

Smoke Control and Enforcement

- Clause 74 and Sch 12 making amendments to Clean Air Act 1993;
- Provision for imposing financial penalties for the emission of smoke in smoke control areas in England;
- Creating offences relating to the sale and acquisition of types of solid fuel in England;
- Provision for applying smoke control orders to vessels;
- Provision for authorised fuels and exempted fireplaces to be listed in Wales.

Protectors of Pollinators from Pesticides

- Clause 75 which is stated to come into force on 1 February 2023
- Ban on competent authorities from authorising pesticides for use unless satisfied no significant short term effect and no long term negative effect on the health of honeybees or wild pollinator populations;
- Requirement for publication of a pollinator risk assessment report to be published by an expert body;
- Expert body must not have vested interests and must be independently appointed;
- Public consultation and other consultation requirements on competent authority's decision making.

Environment Recall of Motor Vehicles Etc

- Clauses 76 to 78
- Provision for S of S to make regulations about the recall of relevant products that do not meet relevant standards;
- Relevant products include mechanically propelled vehicles, its parts and engine.

Recent developments in Air Quality

- Coroner's report – Ella Kissi-Debrah
- CJEU decision – European Commission v. UK (4 March 2021)
- Recent domestic litigation relevant to air quality

Coroner's Report – Ella Kissi-Debrah

- Ella suffered severe asthma and in February 2013 died with the cause of death recorded as respiratory failure;
- In 2015 a leading expert on asthma and air pollution identified that the type and severity of Ella's asthma were directly linked to exposure to air pollution (PM2.5 and NO2)
- Analysis of medical records and air pollution monitors near her home (25m from the South-Circular)
- Monitors showed consistent exceedances of EU limits for 3 years prior to death
- Following 10 day inquest, on 16 Dec 2020, coroner concluded that a failure to reduce air pollution contributed to her death, as did failure to provide her mother with information about effects of air pollution
- Coroner's report called for reduction in PM2.5 targets

CJEU Decision on 4 March 2021

- Commission v. UK – C - 664/18 (Action under Article 258 TFEU – 23 Oct 2018)
- Breach of Article 13(1) and Annex XI of the EU Directive by ‘systematically and persistently exceeding’ the annual limit for Nitrogen Dioxide, as well as the hourly limit value for NO₂ in Greater London;
- Breach of Article 23(1) by failing to adopt as from 11 June 2010 appropriate measures to ensure compliance, and particular to ensure that the period of exceedance of limit values is kept as short as possible;
- Fact other countries in breach – irrelevant
- No passing of the buck back to the EU re: VW cheat devices

Some recent litigation relevant to Air Quality (1)

R (United Trade Action Group Ltd) v. TfL and Mayor of London [2021] EWCA Civ 1197

- Challenge by taxi drivers to ‘London Streetspace Plan’
- Included grounds relating to:
 - breach of legitimate expectation
 - human rights, A1P1
 - irrationality
- Public interest / proportionality balance considered by the Judge and Streetspace Plan decision quashed;
- Overturned by Court of Appeal.

Some recent litigation relevant to Air Quality (2)

Gladman Developments Ltd v. SSCLG [2020] PTSR 128:

- Challenge to dismissal of appeals for two residential developments in AQMAs;
- Inspector found limit values would be exceeded;
- Relevance of ClientEarth litigation and Gov't's policy and plans;
- Beware 'token' mitigation – are contributions shown to translate into actual measures likely to reduce the use of private petrol and diesel vehicles?
- Requirement of consistency with local air quality action plan.
- Status of air quality statutory regime – not a 'parallel permitting regime' that can be relied on to deal with specific planning impacts.

Some recent litigation relevant to Air Quality (3)

R (oao Mathew Richards) v. The Environment Agency [2021] EWHC 2501

- Five year old boy with respiratory problems exposed to hydrogen sulphide emissions from a landfill site;
- Inevitable precursor to serious illness reducing life expectancy;
- Court held EA's positive operational duties were triggered under ECHR Art 2 and Art 8;
- Whilst no current breach, Court declared that to comply with its legal obligations EA was required to implement recommendations given by Public Health England in order to reduce off-site odours and daily hydrogen sulphide concentrations to specified levels.

Thank you for listening

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