

Appendix 8.1: Review of Legislative Background

APPENDIX 8.1 – LEGISLATION AND POLICY

Legislative Background

[European Legislation](#)

The following text is taken from the [legislation.gov.uk](https://www.legislation.gov.uk) website and sets out how EU Legislation will be retained in the United Kingdom after the Brexit transition:

“The UK is no longer a member of the European Union. EU legislation as it applied to the UK on 31 December 2020 is now a part of UK domestic legislation, under the control of the UK’s Parliaments and Assemblies, and is published on [legislation.gov.uk](https://www.legislation.gov.uk).

[...]

EU legislation which applied directly or indirectly to the UK before 11.00 p.m. on 31 December 2020 has been retained in UK law as a form of domestic legislation known as ‘retained EU legislation’. This is set out in sections 2 and 3 of the European Union (Withdrawal) Act 2018 (c. 16).”

European air quality legislation is consolidated under Directive 2008/50/EC, which came into force on 11th June 2008. This Directive came into force in England in June 2010 and consolidates previous legislation which was designed to deal with specific pollutants in a consistent manner and provides the then new air quality standards for fine particulates. The consolidated Directives include:

- Directive 1999/30/EC – the First Air Quality "Daughter" Directive – sets ambient air limit values for NO₂ and oxides of nitrogen, sulphur dioxide, lead and PM₁₀;
- Directive 2000/69/EC – the Second Air Quality "Daughter" Directive – sets ambient air limit values for benzene and carbon monoxide; and,
- Directive 2002/3/EC – the Third Air Quality "Daughter" Directive – seeks to establish long-term objectives, target values, an alert threshold and an information threshold for concentrations of ozone in ambient air.

The fourth daughter Directive was not included within the consolidation and is described as:

- Directive 2004/107/EC – sets health-based limits on polycyclic aromatic hydrocarbons, cadmium, arsenic, nickel and mercury, for which there is a requirement to reduce exposure to as low as reasonably achievable.

The updated Directive, The Air Quality Standards (Amendment) Regulations 2016, came into force on 31st December 2016.

[National Legislation, Policy and Strategy](#)

UK Air Quality Regulations

The Air Quality Standards Regulations, (Amendments 2016) sought to simplify the air quality regulation and provide a new transposition of the Air Quality Framework Directive, First, Second and Third Daughter Directives but also transpose the Fourth Daughter Directive within the UK. The Air Quality Limit Values are transposed into the updated Regulations as Air Quality Standards, with attainment dates in line with the European Directives. Statutory Instrument SI 2010 No. 1001, Part 7 Regulation 31 extends powers, under Section 85(5) of the Environment Act (1995), for the Secretary of State to give directions to Local Authorities (LAs) for the implementation of these Directives.

Environment Act 1995

Part IV of the Environment Act 1995 requires Local Authorities to regularly and systematically review and assess air quality within their boundaries against a series of objectives and appraise developments and transport plans

against these assessments. As a result, the Air Quality Strategy was adopted in 1997, with national health-based standards set out for the, then, nine key air pollutants. Where an air quality standard is unlikely to be met, the local authority must designate an Air Quality Management Area, (AQMA) and draw up an Air Quality Action Plan (AQAP) setting out the measures it intends to introduce in pursuit of the air quality standard within its AQMA.

Environment Act 2021

Part IV of the Environment Act 2021 amends both the Environment Act 1995 and the Clean Air Act 1993. It builds on the foundations provided by Part IV of the Environment Act 1995 and strengthens the local air quality management framework. The act allows the Secretary of State to make provisions for, about or connect with the recall of relevant products that do not meet relevant environmental standards.

The government has resisted calls for the adoption of the recently updated World Health Organisation (WHO) air quality guidelines, specifically targeting particulate matter pollution. The act does introduce a duty on the government to bring forward at least two air quality targets by October 2022 for consultation that will be set in secondary legislation, which, after a delay, have been published. The first will aim to reduce the annual average level of PM_{2.5} in ambient air. The second will be a long-term target (set a minimum of 15 years in the future), which the government says, “will encourage long-term investment and provide certainty for businesses and other stakeholders.”

Habitats Directive

The Habitats Directive (European Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, 1992), requires member states to introduce a range of measures for the protection of habitats and species. The Habitats Regulations (The Conservation of Habitats and Species Regulations 2017 Statutory Instrument 1012, 2017), transpose the Directive into law in England and Wales. They require the Secretary of State to provide the European Commission with a list of sites which are important for the habitats or species listed in the Directive. The Commission then designates worthy sites as Special Areas of Conservation (SACs). The Habitats Regulations also require the compilation and maintenance of a register of European sites, to include SACs and Special Protection Areas (SPAs), with the latter classified under the “Birds Directive” (Directive 2009/147/EC of the European Parliament and of the Council, 2009). These sites form a network termed “Natura 2000”.

The Habitats Regulations primarily provide measures for the protection of European Sites and European Protected Species, but also require local planning authorities to encourage the management of other features that are of major importance for wild flora and fauna.

In addition to SACs and SPAs, some internationally important UK sites are designated under the Ramsar Convention. Originally intended to protect waterfowl habitat, the Convention has broadened its scope to cover all aspects of wetland conservation. Planning policy requires that Ramsar Sites are treated in an equivalent manner to European sites.

The Habitats Directive, (as implemented by the Habitats Regulations) requires the competent authority, which in this case will be the planning authority, to firstly evaluate whether the development is likely to give rise to a significant effect on the European site. Where this is the case, it is required to carry out an Appropriate Assessment to determine whether the development will adversely affect the integrity of the site.

Statutory Nuisance

Under Part III of the Environmental Protection Act (1990), it is the duty of the local authorities to take steps as reasonably practical to investigate issues that could be a ‘statutory nuisance’. Potential causes of statutory nuisance include:

Any premises in such a state as to be prejudicial to health or a nuisance;

- Smoke emitted from premises so as to be prejudicial to health or a nuisance;
- Fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- Any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance; or

- Any accumulation or deposit which is prejudicial to health or a nuisance.

The local authority may serve an abatement notice on the person, premises owner or occupier if it is satisfied of the existence or likely existence of a statutory nuisance(s). Should the abatement notice not be complied with, penalties such as a fine or prosecution could occur. However, it is considered as a defence if the best practicable means to stop or reduce a nuisance are employed.

The most likely cause of a statutory nuisance is dust. Dust is the generic term used in the British Standard document BS 6069 (Part Two), to describe particulate matter in the size range 1–75 µm (micrometres) in diameter. This document has been withdrawn and has been replaced with the BS ISO 4225:2020 document. Dust nuisance is the result of the perception of the soiling of surfaces by excessive rates of dust deposition.

National Planning Policy

The National Planning Policy Framework (NPPF) (2024) sets out the planning policy for England, to help achieve sustainable development within the planning sector, and that the planning system has three overarching objectives, one of which (Paragraph 8c) is an environmental objective:

“To protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy”

Paragraph 110 states:

“The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.”

Paragraph 187 states:

“Planning policies and decisions should contribute to and enhance the natural and local environment by:

[...]

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans.

[...]”

Paragraph 198 states:

“Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.”

Paragraph 199 states:

“Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at

the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.”

Paragraph 201 states:

“The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.”

The NPPF also sets out the national planning policy on biodiversity and conservation. This emphasises that the planning system should seek to minimise effects on and provide net gains in biodiversity, wherever possible, as part of the Government’s commitment to halting decline and establishing coherent and resilient ecological networks.

Planning Practice Guidance

The NPPF is supported by Planning Practice Guidance (PPG) (DCLG, 2021), which sets out the principles on how planning can take account of the impacts of new developments on air quality.

Paragraph 001 Reference ID: 32-001-20191101 states:

“The 2008 Ambient Air Quality Directive sets legally binding limits for concentrations in outdoor air of major air pollutants that affect public health such as particulate matter (PM₁₀ and PM_{2.5}) and nitrogen dioxide (NO₂).

The UK also has national emission reduction commitments for overall UK emissions of 5 damaging air pollutants:

- *fine particulate matter (PM_{2.5})*
- *ammonia (NH₃)*
- *nitrogen oxides (NO_x)*
- *sulphur dioxide (SO₂)*
- *non-methane volatile organic compounds (NMVOCs)*

As well as having direct effects on public health, habitats and biodiversity, these pollutants can combine in the atmosphere to form ozone, a harmful air pollutant (and potent greenhouse gas) which can be transported great distances by weather systems. Odour and dust can also be a planning concern, for example, because of the effect on local amenity.”

Paragraph: 005 Reference ID: 32-005-20191101 states:

“Whether air quality is relevant to a planning decision will depend on the proposed development and its location. Concerns could arise if the development is likely to have an adverse effect on air quality in areas where it is already known to be poor, particularly if it could affect the implementation of air quality strategies and action plans and/or breach legal obligations (including those relating to the conservation of habitats and species). Air quality may also be a material consideration if the proposed development would be particularly sensitive to poor air quality in its vicinity.

Where air quality is a relevant consideration the local planning authority may need to establish:

- *The ‘baseline’ local air quality, including what would happen to air quality in the absence of the development;*

- *whether the proposed development could significantly change air quality during the construction and operational phases (and the consequences of this for public health and biodiversity); and*
- *whether occupiers or users of the development could experience poor living conditions or health due to poor air quality.”*