

**Summary Report – Case ID – IESS.21.013**

**An investigation into the Scottish Government's plans and approach to ensuring future compliance with legal limits on nitrogen dioxide levels.**

**Case Summary**

<p><b>What was the issue?</b></p>	<p>In March 2021 the European Court of Justice judged that, across the UK, exceedances of statutory air quality limit values in respect of nitrogen dioxide (NO<sub>2</sub>) had remained 'systematic and persistent' between 2010 and 2017. As a result, ESS carried out 'pre-investigation' enquiries which found a complex regulatory landscape and raised concerns over whether air quality limit values would be met going into the future.</p>
<p><b>What did ESS do?</b></p>	<p>In light of the outcome of our pre-investigation work, ESS took the decision to launch an investigation into the Scottish Government's plans and approach to ensuring future compliance with legal limits on NO<sub>2</sub> levels.</p> <p>During ESS' investigation, in depth research was carried out on the present state of air quality in Scotland, including the systems in place to regulate this. Information was also sought from a number of public authorities.</p>
<p><b>What was ESS' conclusion?</b></p>	<p>ESS' investigation found evidence of a continued failure in some areas of Scotland to meet statutory limit values for NO<sub>2</sub>. ESS also identified weaknesses in the current operational and governance arrangements to improve local air quality and ensure future compliance with NO<sub>2</sub> limit values. The report of ESS' investigation includes six key recommendations for improvement.</p>
<p><b>What happens next?</b></p>	<p>In response to ESS' findings, the Scottish Government must now prepare an improvement plan setting out how it intends to implement the recommendations made and present this to the Scottish Parliament for approval.</p>

## **Background**

Air pollution (including the pollutant NO<sub>2</sub>) is widely recognised to cause significant health effects and is estimated to account for over 2000 premature deaths per year in Scotland. Governments across Europe (including Scotland) have acknowledged these impacts and have passed legislation to achieve 'limit values' as required by the Cleaner Air For Europe Directive 2008/50/EC. Meeting air quality limit values in respect of NO<sub>2</sub> is a legal requirement and governments must have in place adequate action plans to achieve the limit values within the 'shortest time possible'.

## **Nature of the issue investigated by ESS**

Although ESS' 'pre-investigation' enquiries confirmed the ECJ's judgment that non-compliance had for a number of years been systemic and persistent, the reasons for this pointed towards the systems in place, as opposed to any obvious non-compliance on the part of a public authority.

In view of this, and taking into account the serious, longstanding and intractable nature of the failure to meet limit values, ESS took the decision to launch an investigation into the arrangements put in place by the Scottish Government to execute compliance with statutory air quality limit values in respect of NO<sub>2</sub>.

## **ESS' investigation approach**

Following a comprehensive review of available data, ESS developed an investigation plan outlining the lines of enquiry identified as relevant to the scope of the investigation. The lines of enquiry surrounded the following themes:

- Oversight – what systems are in place to monitor air quality?
- Safety netting/plan Bs – are there areas where the limit values are not forecasted to reduce/do not reduce below limit values, as required by the Clean Air Directive, and are public authorities' powers in this regard sufficient?
- Clarity – are the plans in place sufficiently evidenced and clear?
- Timeframes – are the plans in place sufficient to achieve compliance within '**the soonest time possible**', as required by the Clean Air Directive?

- Consequences – what are the consequences of not reaching compliance?
- Joined up working – is there sufficient linkage across Government and with relevant authorities?

During the investigation, information notices were prepared and issued to the Scottish Government, the Scottish Environment Protection Agency, and all local authorities with active Air Quality Management Areas (AQMAs) in place seeking information which ESS considered relevant to the investigation, and the lines of enquiry drawn from the above themes.

### **ESS' findings**

ESS' investigation identified weaknesses in the current operational and governance arrangements to improve local air quality and ensure future compliance with NO<sub>2</sub> limit values. Key findings from the investigation include:

- AQMAs exist to focus efforts on improving air quality and are meant to be temporary and revoked once compliance is achieved. In some areas, they have been in place for years;
- A number of local authority Air Quality Action Plans (AQAPs) have not been reviewed for significant periods of time or have been published years after the declaration of the AQMAs to which they relate;
- Concern that the local air quality management framework is not robust enough to provide a comprehensive picture of local air quality, particularly in and around our cities;
- Despite long term non-compliance with NO<sub>2</sub> limit values, existing powers to direct local authorities to take action have not been used; and
- The system of governance and oversight of air quality in Scotland is overly complex and opaque.

### **ESS' recommendations**

Whilst acknowledging that improving air quality more widely is a complex issue, in order to remedy the weaknesses identified, ESS has for the first time issued an

improvement report to the Scottish Government containing the following recommendations:

- The introduction of 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.
- The introduction of 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.
- The introduction of 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.
- The introduction or identification of 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 the recently introduced Low Emission Zones). In ESS' view 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.
- 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.
- That the Scottish Government revises its most recent clean air strategy to include specific and measurable timescales (consistent with the overarching duty to achieve compliance within the shortest time possible) for when compliance with NO<sub>2</sub> limit values should be achieved.

The action ESS has taken will ensure that a more detailed picture exists of the state of air quality across Scotland and that local authorities are implementing the

appropriate measures in as short a time as possible. ESS' recommendations will also strengthen the oversight systems in place so that quicker action can be taken where poor air quality is found to exist.

ESS will monitor and publicly report upon the implementation of these recommendations.

The full report can be accessed [here](#).

**September 2022**