

Vehicle Certification Agency
No 1, The Eastgate Office Centre
Eastgate Road
Bristol
BS5 6XX
United Kingdom

By email only to: foi@vca.gov.uk

Dear Sir/Madam

Request for access to information concerning the type approval and emissions of Nissan Qashqai, engine 1197

1. I am writing, on behalf of ClientEarth, to request information from the Vehicle Certification Agency (hereinafter, the “**VCA**”) under the Environmental Information Regulations 2004, and alternatively, the Freedom of Information Act 2000. To assist you with this request, I am outlining my query as specifically as possible.

Background

2. As far as we are aware, the VCA granted European Community type-approval to the Nissan Qashqai, engine 1197 (hereinafter, the “**Vehicle**”).
3. Based on the results of various publicly available independent on-road emission tests, it appears that, during normal driving conditions, the Vehicle may emit levels of nitrogen oxides (NO_x) significantly above the legal limits set under Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) (hereinafter, the “**Euro Standards Regulation**”).
4. As you are aware, when applying for type approval, car manufacturers have an obligation to demonstrate that their vehicles meet the emission limits set out in Annex I of the Euro Standards Regulation. Moreover, car manufacturers shall equip vehicles so that the components likely to affect emissions are designed, constructed and assembled so as to enable the vehicle, throughout its normal life and under normal conditions of use, to comply with the Euro Standards Regulation.



Brussels
60 Rue du Trône (3ème étage)
Box 11, Ixelles, 1050 Bruxelles
Belgique

Beijing
1950 Sunflower Tower
No. 37 Maizidianjie
Chaoyang District
Beijing 100026
China

Berlin
Albrechtstraße 22
10117 Berlin
Germany

London
Fieldworks
274 Richmond Road
Martello St. Entrance
E8 3QW
United Kingdom

Warsaw
ul. Mokotowska 33/35
00-560 Warszawa
Polska

Madrid
García de Paredes
76 duplicado
1º Dcha
28010 Madrid
Spain

5. Article 5 of the Euro Standards Regulation prohibits the use of defeat devices that reduce the effectiveness of the emission control systems. According to the Euro Standards Regulation:

“defeat device’ means any element of design which senses temperature, vehicle speed, engine speed (RPM), transmission gear, manifold vacuum or any other parameter for the purpose of activating, modulating, delaying or deactivating the operation of any part of the emission control system, that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use;” (see Article 3(10)).

6. There are only limited exceptions allowing the use of defeat devices that should be interpreted narrowly.
7. Commission Regulation 2017/1151¹ sets out additional provisions linked to the prohibition of the use of defeat devices. In particular, car manufacturers are obliged to declare the use of auxiliary emission strategies (hereinafter, “**AES**”). An AES is an emission strategy that becomes active and replaces or modifies a base emission strategy (hereinafter, “**BES**”) for a specific purpose and in response to a specific set of ambient or operating conditions and only remains operational as long as those conditions exist.
8. In order to enable the approval authority to make a decision during type approval based on the risk assessment and health and environmental effects of the AES, car manufacturers are required to provide an extended documentation package containing information on the operation of all AES and BES, as described in Appendix 3a of Annex I to Commission Regulation 2017/1151.

Information requested

9. ClientEarth is writing to ask that the VCA please provide the following information:
 - a) A copy of the EC type approval certificate of the Vehicle.
 - b) If any, a copy of EC type approval certificates for systems, components and separate technical units relating to the emission control system of the Vehicle.
 - c) Information about any changes or additions that the car manufacturer has made to the Vehicle on or relating to emissions or fuel consumption after the issuance of the relevant EC type approval certificate and a copy of any extensions, revisions and/or amendments of the relevant EC type approval certificate.
 - d) Confirmation of whether the car manufacturer submitted an extended documentation package with respect to the Vehicle and, if so, a copy of that documentation package.

¹ Commission Regulation 2017/1151 of 1 June 2017 supplementing Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, amending Directive 2007/46/EC of the European Parliament and of the Council, Commission Regulation (EC) No 692/2008 and Commission Regulation (EU) No 1230/2012 and repealing Commission Regulation (EC) No 692/2008.

- e) Regardless of whether an extended documentation package has been submitted, any information held by the VCA on the following aspects in relation to the Vehicle:
 - i. use of any defeat device and/or AES;
 - ii. description of the operation of the emission control system and of all emission control strategies and devices employed, whether software or hardware, and any condition(s) under which the strategies and devices will not operate as they do during testing for type approval;
 - iii. justification for use of any defeat device and/or AES, including explanations of why any of the exception clauses from the defeat device prohibition in Article 5(2) of Regulation (EC) No 715/2007 apply, where applicable;
 - iv. evaluation of how the AES(s) will control real-driving emissions, including a detailed analysis of the expected increase of total regulated pollutants and CO₂ emissions by using the AES, compared to the BES;
 - v. any risk assessment and/or assessment of health and environmental effects carried out by the VCA concerning the operation of any defeat device and/or AES.
- f) Information about CO₂ emissions of the Vehicle during the Real Driving Emission tests.

10. As the information requested relates to emissions from the Vehicle into the environment, my client considers that the information is, in its entirety, "environmental information" as defined in Regulation 2(1) of the Environmental Information Regulations 2004. To the extent that the VCA believes any of the requested information does not constitute "environmental information" under that definition, my client asks that it please explain why and provide access to the requested information pursuant to its duties under the Freedom of Information Act 2000 in the alternative.

11. If this request for environmental information is denied in whole or in part, please justify all redactions or refusals by reference to the specific exceptions listed in Article 4 of Directive 2003/4/EC and Part 3 of the Environmental Information Regulations 2004, being aware that, according to these provisions:

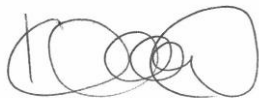
- a) the grounds for refusal to disclose information shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by disclosure. In every particular case, the public interest served by disclosure shall be weighed against the interest served by the refusal.
- b) public authorities cannot rely upon the exceptions in Regulation 12(5)(d) to (g) of the Environmental Information Regulations 2004, which includes commercial confidentiality, to justify non-disclosure where the request relates to information on emissions into the environment.

12. I also draw your attention to Article 4(4) of Directive 2003/4/EC and Regulation 12(11) of the Environmental Information Regulations 2004 which specify your obligation to make the requested information available in part where it is possible to separate out any information falling within the scope of any exception from the rest of the information requested.

ClientEarth

13. Regardless of the application of any exceptions, please confirm or deny whether you hold the information requested and provide an index of it.
14. I look forward to your response as soon as possible and, in any case, within 20 working days. In the meantime, please confirm by reply that you have received this request.
15. In order to minimise delays, costs and environmental impacts, please provide the requested information electronically. However, please be aware that our server will not accept email attachments in excess of 20MB. If the size of documents shared are over this limit, please contact me to arrange an alternative method of file sharing.
16. If you require any further clarification about this request, please do not hesitate to get in contact via the details below.

Yours faithfully,



Katie Nield

UK Clean Air Lawyer, ClientEarth

+44 (0)303 050 5975

kniel@clientearth.org

www.clientearth.org