

# The importance of retaining the National Emission Ceilings Regulations 2018

## REUL Act briefing

The UK government has included regulations 9 and 10 of the National Emission Ceilings Regulations 2018 (the “NEC Regulations”) and a related Commission Implementing Decision in Schedule 1 of the Retained EU Law (Revocation and Reform) Act 2023 (the “REUL Act”). The inclusion of these laws in Schedule 1 (aka the “kill list” of EU-derived law to be revoked) means that these laws are set to be lost at the end of 2023. These regulations are vital for reducing air pollution in the UK and, despite the government’s assurances, are not duplicated by any other domestic law.

However, the UK government can choose to remove these regulations from Schedule 1 via a statutory instrument made by 31<sup>st</sup> October of this year. This is straightforward to do and the government has recently confirmed it will use these powers to save other EU-derived laws that it put on the kill list but which it now considers are needed.<sup>1</sup>

Therefore, ClientEarth, along with 47 health and environmental experts, practitioners, and NGOs, is asking the UK government to also save the relevant NEC Regulations, and prevent the regression of environmental protections for the sake of the health of people and nature.

## A critical instrument for protecting people’s health

The **NEC Regulations** are a critical instrument for improving air quality and protecting the health of people and nature in the UK. They aim to achieve this by requiring the reduction of harmful emissions from across all economic sectors and helping to address the problem of transboundary air pollution as part of international agreements. The NEC Regulations are retained EU law, having transposed the legally binding **emission reduction commitments (“ERCs”)** agreed by the UK government under the EU National Emission Ceilings Directive<sup>2</sup> and the legal framework to deliver them. They also codify the

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<sup>1</sup> Statement by Nusrat Ghani, Minister of state for Industry and Economic Security, made on 04.09.23

<sup>2</sup> Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants

UK’s broader international obligations under the Gothenburg Protocol to the UNECE Convention on Long-range Transboundary Air Pollution.

The **ERCs cover five major air pollutants that can damage human health, crops, nature and the built environment**: fine particulate matter (“PM<sub>2.5</sub>”), ammonia, nitrogen oxides (“NOx”), sulphur dioxide and non-methane volatile organic compounds. There are two tiers of legally binding targets for each pollutant, with one set of targets applying from 2020 to 2029, and a stricter suite of targets applying from 2030 onwards. The UK government is required to set out how such targets will be achieved across the different economic sectors through a **National Air Pollution Control Programme (“NAPCP”)**.

**Clean air is essential for delivering a healthy environment that can support prosperous and resilient communities across the UK.** While air pollution affects all of us, **some are more vulnerable** than others, including children, older people and those with chronic health conditions. **Some members of our communities are also disproportionately affected** by higher levels of pollution, including people from low-income households or ethnic minorities, as well as outdoor workers.

Furthermore, **these pollutants are also known to damage the natural and built environments, and food production.** For example, ammonia and NOx are contributing to excessive levels of reactive nitrogen in our air, soil, and water, which has a detrimental impact on biodiversity and ecosystems. This is **one of the greatest threats to the UK’s wildlife and habitats** and is also making it much more challenging to reach the UK’s domestic and international law biodiversity targets. Air pollution **can also reduce crop yields**, including wheat, potato, oilseed rape, and through leaf damage to vegetable crops.

## **REUL Act threat to delivery of emission reduction commitments, transparency, and public participation**

In May 2023, the UK government produced a list of Retained EU Law (“REUL”) that will be automatically revoked at the end of this year through the REUL Act unless action is taken by ministers to retain them by 31<sup>st</sup> October of this year. This list is shorter than the number of laws that the government was originally planning to revoke at the end of this year under the Act. However, ClientEarth, amongst many others, still has concerns about the overall approach, including that this smaller list of REUL to be revoked contains regulations of significant public interest, including the laws listed below:

<b>REUL to be revoked</b>	<b>What it currently does</b>
<u>Regulation 9</u> of the NEC Regulations	Includes various requirements relating to the NAPCP, such as: an obligation for the UK government to prepare and implement it; the obligation to review it under certain circumstances (e.g. if emissions actually exceed or are projected to exceed the emission reduction commitments); and minimum content requirements.
<u>Regulation 10</u> of the NEC Regulations	Requires public consultation before preparing or revising the NAPCP.
<u>Commission Implementing Decision, (EU) 2018/1522 of 11 October 2018</u>	Sets out a common format for NAPCPs ensuring the provision of a minimum level of information, improving transparency and the credibility of the programme.

Ministers claim that these changes will not affect their ability to deliver on the ERCs and are needed to reduce duplication, with the elements of the NAPCP that will be lost now “reflected in individual national strategies and more accessible documents, including the Environmental Improvement Plan for England”<sup>3</sup> (“EIP”). However, **revoking these pieces of REUL would significantly weaken legal air quality protections in the UK.** This is clearly shown by analysis by ClientEarth comparing the NAPCP requirements under the NEC Regulations and the EIP). **Similar concerns have been raised repeatedly by the Office for Environmental Protection** this summer in correspondence with the Secretary of State for the Environment, Food and Rural Affairs:<sup>4</sup>

*“In short, we do not consider that there are any statutory provisions that duplicate the requirements of regulations 9 and 10 of the NECR [the NEC Regulations]. We remain of the view that removal of these regulations without alternative statutory requirements constitutes a weakening of the legal framework supporting delivery of improved air quality. By way of example, removal of the course corrective measures of the NECR [the NEC Regulations] could have a real-time impact on the ability of government to stay on course to achieving targets for five of the most harmful air pollutants.”<sup>5</sup>*

## Key issues caused by revoking these elements of the NEC Regulations

**The NAPCP is the main tool for requiring government to show its working on how it is going to reduce pollution in line with the overriding ERCs**, thereby improving the quality of the air we breathe and reducing the impact on people’s health, on nature and on crops. It requires the government to set out a road-map for how such emission reductions will be achieved across different sectors and pollutants and evidence its likely impact.

Whilst the government has a legal duty to draw up the EIP under the Environment Act 2021, **the content requirements for the EIP are extremely vague**, don’t relate to the majority of pollutants covered by the NEC Regulations, and do not require government to include policies and measures to show how its NEC commitments will actually be met. **In addition, the level of detail required in the NAPCP is important in providing transparency and accountability** of how the government plans to meet these overriding emission ceilings. For example, key requirements of the NAPCP, as set out by Regulation 9 and the Commission Implementing Decision, is for it to show what policy options were considered to comply with the ERCs, details about the analysis that was carried out and, where possible, the individual or combined impacts of these policies on emissions reductions, the associated uncertainties and an implementation plan for the adopted policies. The NAPCP also serves valuable ancillary functions such as enhancing predictability for stakeholders and providing a pathway to support a shift in investments towards cleaner technologies and practices.

Removing the obligation to draw up and implement an NAPCP would strip away any clear legal duty on government to show how it will reduce emissions in line with its legally binding emissions targets. **This would seriously undermine confidence that the government will do what is needed to comply with its legal promises to reduce harmful pollution, and prevent meaningful public scrutiny of the adequacy of its plans.**

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<sup>3</sup> Lord Callanan, Minister for Energy Efficiency and Green Finance, House of Lords REUL Bill Report Stage debate, 17.05.23

<sup>4</sup> Correspondence on the REUL Act and impact on the NEC Regulations between the OEP and Secretary of State

<sup>5</sup> Dame Glenys Stacey’s, Chair of the OEP, reply to the Secretary of State, 30<sup>th</sup> August 2023

Furthermore, there was no public consultation and only very limited stakeholder engagement for the EIP, which was published in January this year. **By contrast, public participation and stakeholder engagement in developing the NAPCP is another important aspect ensured by Regulation 10 and the Commission Implementing Decision** (and facilitated by the content and transparency requirements).

The NAPCP is even more important considering **that the UK government is currently making insufficient progress towards meeting its legally binding ERCs under the regulations**. The government missed an emission reduction commitment for PM<sub>2.5</sub> in 2021. Furthermore, official projections published in March this year predicted that an ERC for PM<sub>2.5</sub> would be missed in 2025, and that ERCs for four out of the five targeted pollutants would be missed in 2030 without further action.<sup>6</sup>

**These recent assessments and projections have triggered an obligation on the government to review the NAPCP again by 13 August 2024** – under Regulation 9 the Secretary of State must review the NAPCP within 18 months of an assessment that shows that an ERC has been or will be missed. Otherwise, the NAPCP only needs to be reviewed every four years. By seeking to revoke Regulation 9, **the government seems to be favouring scrapping the obligations relating to the NAPCP rather than sufficiently improving the document to ensure that the overriding ERCs are met**.

It is also worth bearing in mind that the UK government's analysis for setting the new clean air target under the Environment Act 2021 suggested that the scenario it is aiming for (an annual mean concentration for PM<sub>2.5</sub> of 10 µg/m<sup>3</sup> by 2040) does not assume compliance with all of the legally binding ERCs under the NEC Regulations. This further highlights the need for a credible and robust NAPCP to demonstrate how compliance with the ERCs will be achieved.

## There is still time to save these vital clean air laws

We are urging you to ask the UK government to exercise its powers under the REUL Act to remove Regulations 9 and 10 of the NEC Regulations and the Commission Implementing Decision from Schedule 1 of the Act, so that they are not regrettably lost at the end of this year.

These vital pieces of law, which have been on our statute books for a number of years, provide a framework for robust plan making to ensure that ERCs can be met and a requirement to ensure that the public has a say in government policy.

We would welcome an opportunity to speak to you about this matter. Please contact:

- Andrea Lee, Campaigns and Policy Manager, Clean Air, [alee@clientearth.org](mailto:alee@clientearth.org)
- Cat MacLean, Public Affairs and Policy Officer, [cmaclean@clientearth.org](mailto:cmaclean@clientearth.org)

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<sup>6</sup> [https://uk-air.defra.gov.uk/assets/documents/reports/cat09/2303151609\\_UK\\_IIR\\_2023\\_Submission.pdf](https://uk-air.defra.gov.uk/assets/documents/reports/cat09/2303151609_UK_IIR_2023_Submission.pdf)