

Comparison of the legal requirements that apply to the National Air Pollution Control Programme (NAPCP) vs the Environmental Improvement Plan (EIP)

Summary

What is the purpose of this analysis?

The government is proposing to revoke important elements of air quality law under the Retained EU Law (Revocation and Reform) Act 2023¹ (the “REUL Act”), specifically regulations 9 and 10 of the National Emission Ceilings Regulations 2018² (the “NEC Regulations”) and Commission Implementing Decision (EU) 2018/1522³ (the “Commission Implementing Decision”).

The NEC Regulations are a key legal framework for delivering emission reductions for five air pollutants that are known to harm people’s health, damage the natural and built environment, and affect food production. They also contribute towards meeting the UK’s international legal commitments on air pollution.

As it stands, regulations 9 and 10 of the NEC Regulations and the Commission Implementing Decision will be revoked at the end of 2023.⁴ These laws require the government to prepare, implement, and publicly consult on a National Air Pollution Control Programme (or “NAPCP”) in order to meet the overriding legally binding emission reduction commitments for the five targeted pollutants. One of the government’s chief justifications for revoking these laws⁵ has been that the NAPCP is duplicative, with a large majority of the information in the NAPCP being

¹ Retained EU Law (Revocation and Reform) Act 2023, c. 28. Available here: <https://www.legislation.gov.uk/ukpga/2023/28>

² National Emission Ceilings Regulations 2018, SI 2018/129. Available here: <https://www.legislation.gov.uk/ukxi/2018/129/contents/made>

³ Commission Implementing Decision (EU) 2018/1522 of 11 October 2018 laying down a common format for national air pollution control programmes under Directive (EU) 2016/2284 of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants. Available here: <https://www.legislation.gov.uk/eudn/2018/1522/contents>

⁴ Retained EU Law (Revocation and Reform) Act 2023, s.1(1)

⁵ For example see the government’s justification at row 119 in its Schedule of retained EU law available here: [https://www.gov.uk/government/publications/schedule-of-retained-eu-law#:~:text=Retained%20EU%20law%20\(%20REUL%20\)%20was,immediately%20before%20the%20UK%27s%20departure](https://www.gov.uk/government/publications/schedule-of-retained-eu-law#:~:text=Retained%20EU%20law%20(%20REUL%20)%20was,immediately%20before%20the%20UK%27s%20departure); see Lord Callanan’s comments during the House of Lords Report Stage at columns 320-321 available here: [https://hansard.parliament.uk/lords/2023-05-17/debates/038A8C28-35C1-4719-B948-FCA22EBCDF97/RetainedEULaw\(RevocationAndReform\)Bill#contribution-A28453C5-519E-4737-BD1F-53F52157C74C](https://hansard.parliament.uk/lords/2023-05-17/debates/038A8C28-35C1-4719-B948-FCA22EBCDF97/RetainedEULaw(RevocationAndReform)Bill#contribution-A28453C5-519E-4737-BD1F-53F52157C74C); and see the Secretary of State’s comments in her letter to the Office for Environmental Protection dated 25 July 2023 available here: <https://www.theoep.org.uk/report/oep-correspondence-secretary-state-reul-bill-gained-royal-assent>

reflected in other documents, and in particular the Environmental Improvement Plan for England (“EIP”)⁶ which is the delivery mechanism under the Environment Act 2021.⁷

ClientEarth, an environmental law charity with extensive experience working on the UK’s air pollution legal framework, has conducted the following analysis comparing the legal requirements that the government is planning to revoke to those that apply to the EIP. The purpose of this analysis is to scrutinize the government’s claim that the NAPCP is unnecessary and duplicative.

What does the analysis show?

Our analysis demonstrates that the legal requirements that apply to the NAPCP provide a much more robust framework for delivering the legally binding emission reduction commitments (“ERCs”) set out in the NEC Regulations and a much higher level of transparency and accountability compared to the EIP. While there is some content overlap between the two plans at present, the legal rules on what must be in the EIP are extremely vague and do not relate to the majority of pollutants covered by the NEC Regulations. By contrast, under the NEC Regulations the NAPCP is designed to function as a roadmap towards achieving compliance with the overarching targets. To this end, detailed content requirements are prescribed — including the policies considered and selected for adoption, an assessment of the predicted effectiveness of those policies, and a timetable for implementation — and the public must be consulted. While the government could choose to include such information in the EIP going forward, this would be at its complete discretion and without any obligation to seek the public’s views on its plans. Furthermore, the NEC Regulations require the government to review the NAPCP when it is off track to meet an emission reduction commitment, which is an important mechanism designed to ensure that the government strengthens and improves its plan when necessary to ensure that air pollution is reduced to legal levels by the relevant deadlines. The EIP contains no comparable mechanism; it simply must be reviewed every 5 years (and in any case, as explained above, there is no requirement for it to set out the actions the government plans to take to achieve the NEC Regulations’ emission reduction commitments).

⁶ Available here: <https://www.gov.uk/government/publications/environmental-improvement-plan>

⁷ Environment Act 2021, c. 30. Available here: <https://www.legislation.gov.uk/ukpga/2021/30/contents/enacted>

Comparative Analysis

The following table sets out the legal requirements under the NEC Regulations that are set to be revoked under the REUL Act in comparison to the legal requirements that apply to the EIP under the Environment Act 2021.

	NAPCP	EIP	Comments
What is the geographical scope of the document?	United Kingdom (reg. 6(2), 6(3) NEC Regulations)	England (see s.8(6) Environment Act 2021 (“Environment Act”))	<p>The ERCs under the NEC Regulations apply to emissions occurring within the UK and therefore the NAPCP, by extension, must cover the whole of the UK.</p> <p>By contrast the EIP is only required to cover England.⁸</p>
What is the purpose of the document?	<p>The NAPCP must be prepared and implemented ‘in order to limit anthropogenic emissions in accordance with the national emission reduction commitments’ (reg. 9(1) NEC Regulations).</p> <p>The ERCs are contained within Schedule 3 of the NEC Regulations. There are two suites of commitments that apply to the five targeted pollutants (SO₂, NO_x, NMVOCs, NH₃, and PM_{2.5}), with one set applying from 2020-2029 and a stricter set applying from 2030 onwards.</p>	<p>The EIP is ‘a plan for significantly improving the natural environment in the period to which the plan relates’ (s.8(2) Environment Act 2021).</p> <p>‘Natural environment’ covers plants, wild animals and other living organisms, their habitats, land (except buildings or other structures), air and water, and the natural systems, cycles and processes through which they</p>	<p>The explicit legal purpose of the NAPCP is to meet the specific and legally binding emission reduction commitments that are set under the NEC Regulations. By contrast the EIP is only required to be aimed at the vague goal of significantly improving the environment.</p> <p>While the current EIP does make reference to the legally binding air pollution targets that apply to the government (including the ERCs under the NEC Regulations) there is</p>

⁸ Our analysis focuses on England, given the remit of the EIP. However, representations made by the Office for Environmental Protection and Environmental Standards Scotland have highlighted the lack of regulatory duplication in Scotland and Northern Ireland. For example see <https://www.theoep.org.uk/report/oep-correspondence-secretary-state-reul-bill-gained-royal-assent> and <https://www.environmentalstandards.scot/wp-content/uploads/2023/06/Correspondence-Mark-Roberts-to-Clare-Adamson-MSP-CEEAC-Committee-REUL-Bill-20230605.pdf>.

		interact (s.44 Environment Act).	no obligation for it to do so ⁹ , nor is there any legal obligation for the EIP to set out actions the government intends to take to achieve legal compliance with the ERCs or any other overarching legal targets (including the targets set under the Environment Act itself). This is reflected in the vague commitments set out in the latest EIP – as explained further below.
When must the plan be reviewed?	<p>The Secretary of State (“SoS”) must review the NAPCP:</p> <ul style="list-style-type: none"> • ‘at least once every four years from 1 April 2019 (reg. 9(4) NEC Regulations); and in any event • ‘within 18 months of the publication of: <ul style="list-style-type: none"> ○ ‘an emissions inventory which shows that an emission reduction commitment has been missed;¹⁰ or ○ ‘a projection of emissions showing that emissions are at risk of exceeding an emission reduction commitment (reg. 9(5) NEC Regulations).¹¹ <p>In addition to the circumstances above where review of the NAPCP is mandatory, the SoS can also review the NAPCP from time to time and revise</p>	Must be reviewed at least every 5 years (s.10(3) - 10(5) Environment Act).	<p>The requirement for the NAPCP to be reviewed if the UK has breached an ERC or is projected to breach one is an important governance mechanism designed to ensure that the government strengthens and improves its plan to meet future legal targets when it is off-track.</p> <p>It is a much more robust legal requirement than the obligation to simply review the EIP every five years.</p> <p>If the NEC Regulations provisions are revoked there would be no obligation on the government to review its EIP in the event that it is projected to be off-track to meet its ERCs, or has actually missed any</p>

⁹ Save for the requirements that apply in relation to interim targets, as explained below.

¹⁰ Emissions inventories must be published annually by the government under regulation 3(1)(a).

¹¹ Emissions projections must be published by the government every two years under regulation 3(1)(b).

	as considered appropriate (reg. 9(4) NEC Regulations).			(as is currently the case in both circumstances). ¹²
<p>What are the specific legal content requirements?</p> <p><i>Note: We have set the content requirements applying to the NAPCP side by side any broadly comparable content requirements that apply to the EIP (or noting where there are no comparable provisions).</i></p>	<p>The first NAPCP must include the following information (reg. 9(2) NEC Regulations, which requires this information from paragraph 1 of Annex III Part 1 of NEC Directive to be included):</p>	<p>a) ‘the national air quality and pollution policy framework in which context the programme has been developed, including: (i) the policy priorities and their relationship to priorities set in other relevant policy areas, including climate change and, when appropriate, agriculture, industry and transport; (ii) the responsibilities attributed to national, regional and local authorities; (iii) the progress made by current policies and measures in reducing emissions and improving air quality, and the degree of compliance with national and Union obligations; (iv) the projected further evolution assuming no change to already adopted policies and measures;’</p>	<p>No comparable content requirements</p>	<p>The NAPCP has much more detailed statutory content requirements compared to the EIP. Crucially, the NAPCP must include a breakdown of progress made by government action to date in reducing emissions in line with the overriding targets, business as usual emissions projections, a list of the further policy options considered together with analysis of their predicted effectiveness in reducing emissions, and the measures actually selected for adoption, including a timetable for when the government intends to implement them. In this way, the government is required to “show its working” and provide public transparency regarding efforts to meet the ERCs.</p> <p>By contrast, the content requirements of the EIP are very vague and largely left to the discretion of government. The plan must merely set out intended action to improve the natural environment</p>

¹² See the UK Informative Inventory Report (1990 to 2021) (March 2023), p43-44, available here: https://uk-air.defra.gov.uk/assets/documents/reports/cat09/2303151609_UK_IIR_2023_Submission.pdf

		<p>b) ‘the policy options considered to comply with the emission reduction commitments for the period between 2020 and 2029 and for 2030 onwards and the intermediate emission levels determined for 2025 and to contribute to further improve the air quality, and their analysis, including the method of analysis; where available, the individual or combined impacts of the policies and measures on emission reductions, air quality and the environment and the associated uncertainties;’</p>	<p>No comparable content requirements</p>	<p>and must contain certain interim targets. There is no requirement for the EIP to include proposed measures that, taken together, are aimed at achieving the targets under the Environment Act or the related interim targets, let alone any wider legal targets, such as those under the NEC Regulations.</p> <p>By extension, there is no requirement for the government to include in the EIP any information on the predicted effectiveness of any measures proposed (e.g. modelled emission trajectories) or to set out a timetable for the implementation of its intended measures. This lack of transparency on the likely impact of the EIP prevents any meaningful public scrutiny of whether the plan is sufficient to deliver on the government’s legal promises.</p> <p>Furthermore, the obligation on the government when reviewing the EIP to consider whether the natural environment has improved and to consider progress made towards meeting the Environment Act targets is incredibly vague and leaves huge discretion to the government on the extent to which it reports on such progress (and noting that this relates</p>
		<p>c) ‘the measures and policies selected for adoption, including a timetable for their adoption, implementation and review and the competent authorities responsible;’</p>	<p>‘An environmental improvement plan must set out the steps Her Majesty’s Government intends to take to improve the natural environment in the period to which the plan relates’ (s.8(4) Environment Act). It can also set out steps the government plans to take to improve people’s enjoyment of the natural environment (s.8(5) Environment Act).</p>	<p>Furthermore, the obligation on the government when reviewing the EIP to consider whether the natural environment has improved and to consider progress made towards meeting the Environment Act targets is incredibly vague and leaves huge discretion to the government on the extent to which it reports on such progress (and noting that this relates</p>

			When reviewing the EIP the SoS must consider whether the natural environment has improved during the relevant period (s.12(1) Environment Act), including considering any progress made towards meeting any targets or interim targets set under the Environment Act (s.12(2) Environment Act), and must consider whether the government should take further or different steps to improve the environment (s.12(1)(c) Environment Act).	to the Environment Act targets and not the NEC Regulations ERCs in any event).
		d) 'where relevant, an explanation of the reasons why the indicative emission levels for 2025 cannot be met without measures entailing disproportionate costs;'	No comparable content requirements	
		e) 'where relevant, an account of the use of the flexibilities set out in Article 5 and any environmental consequences arising from such use;'	No comparable content requirements	
		f) 'an assessment of how selected policies and measures ensure coherence	No comparable content requirements	

		with plans and programmes set up in other relevant policy areas.'	
When preparing, reviewing, or implementing the NAPCP the SoS must (s.9(3)):	a)	'assess to what extent national emission sources are likely to have an impact on air quality in the United Kingdom;'	No comparable content requirements
	b)	take account of the need to reduce air pollutant emissions for the purpose of meeting air quality objectives;	No comparable content requirements
	c)	'prioritise emission reduction measures for black carbon when taking measures to achieve the national reduction commitments for fine particulate matter';	No comparable content requirements
	d)	'ensure the programme is coherent with other plans or programmes established under source-based air pollution control legislation';	No comparable content requirements
	e)	'include the emission reduction measures that are obligatory in Part 2 of Annex 3 to the Directive.'	No comparable content requirements

	<p>Furthermore, the NAPCP must follow the common format specified in Commission Implementing Decision (EU) 2018/1522.</p>	<p>This is a detailed 14 page template that sets out a list of content requirements (some mandatory and some optional), which mirror those set out in the paragraphs above.</p>	<p>No standard format/template applies to the EIP.</p>	
	<p>No comparable content requirements in NAPCP since the ERCs are all set under the NEC Regulations.</p>		<p>There are some requirements for the EIP to include interim targets in relation to the main targets set under the Environment Act (s.11 Environment Act).</p>	
<p>Examples of actual content of the current NAPCP compared to the EIP</p>	<p>Taking ammonia as an example, the current NAPCP¹³ includes the projected emissions reductions that would be achieved under a business as usual scenario by 2025 and 2030, and sets out how this compares to the binding ERCs (see page 40-41).</p> <p>The NAPCP then sets out four packages of policies and measures that are predicted to reduce ammonia emissions, falling into the categories of agriculture, industry, road transport, and net-zero (see pages 44-57). A list of policies under</p>		<p>In relation to ammonia emissions, the EIP provides high level information about the action government has already taken to tackle such emissions in relation to the agricultural sector (see pages 88-90). It then sets out a limited number of further measures that the government is considering/in</p>	<p>The content of the current EIP is much more high level and vague compared to the NAPCP. The future potential measures to tackle ammonia listed in the EIP broadly mirror those outstanding measures which were set out in the Government's Clean Air Strategy 2019 and do not include the longer list of additional potential policies</p>

¹³ Available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1135622/Revised_National_Air_Pollution_Control_Programme_NAPCP.pdf

	<p>consideration for each package is set out (see pages 52-57) and quantified expected emission reductions by 2025 and 2030 are set out for each package (see pages 46-49). Information is also provided on the methodologies used for the analysis e.g. the source of the projections data, how measures have been prioritised, and what feasibility scenarios have been used in the modelling (pages 46-49). Overall predicted ammonia emissions reductions with these additional measures applied is then provided for 2025 and 2030 (see page 70-71). The NAPCP should also technically list the measures actually selected for adoption, including a timetable for their implementation, but the current NAPCP as drafted by the government is deficient in this regard.</p>	<p>some cases planning to consult on (see pages 88-90).</p>	<p>that were included in the latest NAPCP.</p> <p>Furthermore, the EIP includes no quantitative modelling information on the projected emissions reductions under a business as usual scenario, and under a 'with additional measures' scenario to allow stakeholders to understand how effective the government predicts its strategy to be.</p>
<p>Any public consultation requirements?</p>	<p>Before preparing or significantly revising the NAPCP, the SoS must consult the public (reg. 10(1) NEC Regulations) and must take account of the results of the consultation in preparing the NAPCP (reg. 10(2)(c)).</p>	<p>No public consultation requirements apply to the preparation or review of the EIP.</p>	<p>Public consultation is required in relation to any preparation/significant revision of the NAPCP. In contrast the Environment Act leaves space for the public to be effectively excluded from informing the development of the EIP (as was the case in the production of the recently revised EIP published in January 2023 – which was not consulted on).</p>

Nothing in this document constitutes legal advice. The contents of this document are for general information purposes only. Specialist legal advice should be taken in relation to specific circumstances. ClientEarth endeavours to ensure that the information it provides is correct, but no warranty, express or implied, is given as to its accuracy.