

Defra consultation on the implementation of Clean Air Zones in England

ClientEarth response

This consultation response is made on behalf of ClientEarth, and is made in addition to the online response in order to provide the following additional legal context.

We recognise that this consultation was launched prior to the judgment in *R (ClientEarth (No. 2)) v Secretary of State for the Environment, Food and Rural Affairs* (“ClientEarth 2”). Further to the order of Garnham J dated 21 November 2016, Defra will now have to modify the 2015 Air Quality Plan (the “AQP”). In the meantime, the AQP will remain in force and implementation of measures included in it, such as the Clean Air Zone Framework (the “CAZ Framework”), should proceed without delay. However, the final CAZ Framework will also need to fully and accurately reflect the findings of the Court. To the extent that it does not, we reserve our position to raise further concerns with respect to the final CAZ framework and any related documents.

Responsibility for achieving compliance with limit values and preparing air quality plans rests ultimately with the Secretary of State. It is therefore essential that the CAZ Framework sets out clear principles and criteria for local authorities to follow when implementing and operating a CAZ. The draft CAZ Framework does not do this. Those principles and criteria must be consistent with the obligations laid down by the relevant legislation and the judgment in ClientEarth 2.

The final CAZ Framework will therefore need to be updated in light of the judgment. In particular, the CAZ Framework needs to reflect the Court’s interpretation of Article 23 of the Ambient Air Quality Directive, as transposed by Regulation 26 of the Air Quality Standards Regulations 2010.

In particular, the CAZ framework needs to be consistent with the obligation to:

- a) Ensure compliance with limit values by the earliest possible date, which entails that the efficacy of the measure (e.g. a CAZ) is the determining consideration, with only a very limited scope for consideration of cost [see §50].
- b) Reduce human exposure to nitrogen dioxide as quickly as possible [§52]; and
- c) Ensure that compliance with limit values is not just possible, but likely [see §53].

The CAZ Framework also presents an opportunity to explain to local authorities and other stakeholders the process following the judgment, and alert them to the likelihood that the modified AQP will require far more mandatory charging CAZs.

Question 1: Are the right measures set out in Section 2?

No. The voluntary nature of all the measures listed in Section 2, means that they are unlikely to have any impact on improving air quality. The emphasis on “non-charging” CAZs does not reflect the extent and severity of the UK’s air quality problem or the urgency with which it needs to be addressed. A non-charging CAZ does not appear to be significantly different from an Air Quality Management Area (“AQMA”). It has been well documented that AQMAs have largely failed to improve air quality.

Section 2 lists many measures which local authorities could take, which may be effective, but without significant additional incentives and other support from national government, local authorities will not introduce them.

Local authorities should therefore be mandated to introduce charging CAZs as soon as possible. The minimum requirements in section 2.2 are too vague to act as any meaningful benchmark of progress. Appropriate metrics should be developed and included in the Framework including:

- Minimum provision of electric vehicle charging points;
- Benchmarks for cycling and walking infrastructure provision and take-up;
- Progress in meeting traffic reduction targets; and
- Minimum criteria for fleet procurement.

Question 2: Are there additional measures which should be highlighted under each theme?

Yes. We welcome the focus on using CAZs to raise awareness. Signage will support this. However, there should also be a requirement for enhanced air quality monitoring and public information in CAZs. Ensuring that a minimum number of monitoring stations are in place within a CAZ, and that data from those stations is made publically available both online and on electronic displays, will greatly enhance public understanding and allow local authorities to more accurately assess the effectiveness of CAZs. A national awareness raising campaign should also be introduced, using social media, television and billboards, explaining why CAZs are being introduced and highlighting the multiple health and environmental benefits which they will bring.

Question 3: In addition to the framework, are there other positive measures that (a) local or (b) central government could introduce to encourage and support clean air in our cities?

Yes. This consultation places too much emphasis on the role of local authorities, with little or no additional resources or support from Central Government. Action at the local level needs to be complemented by action by central government, which holds most of the policy levers capable of delivering the necessary step-change. Central Government should therefore introduce the following complementary measures in the modified AQP:

- a. A “clean car” label that identifies if cars actually meet emissions standards when driving on the road. This will not only help guide consumer choice, encourage early implementation of the Euro 6c standard, but could also improve the effectiveness of CAZs.
- b. Reform of fiscal policies such as Vehicle Excise Duty and Company Car Tax to disincentivise new purchases of diesel cars which do not meet the Euro 6 emission standard under real driving conditions, and further incentivise the uptake of ultra low emission vehicles.
- c. Central government support for electrification and retrofit of buses, targeted at CAZs.
- d. A targeted scrappage scheme, focused on drivers of cars and vans who are on low incomes and/or have no alternative to driving their vehicle in a CAZ.
- e. The UK to push at the EU level for stricter “Real Driving Emissions” requirements for the Euro 6 standards, i.e. a “conformity factor” of 1 i.e. full compliance by 2020 at the latest.

- f. Additional funding for local authorities to cover the implementation costs of CAZs.
- g. Development of standardised signage and other equipment to reduce costs for local authorities and ensure coherence, consistency and public understanding.

Question 4: Are the operational standards and requirements set out in Section 3 and Annex A of the Framework acceptable?

No. The Framework does not contain sufficient detail to ensure a consistent, effective and lawful approach to CAZs by local authorities. The Framework should provide clear and consistent direction on the following features of CAZs, in line with the judgment in ClientEarth 2:

- a) The size and location of CAZs. To provide clarity and certainty, the CAZ framework should lay down minimum criteria for the location and size of CAZs. This should be consistent with the judgment in ClientEarth 2 i.e. the size of the CAZ must be adequate to ensure compliance is achieved as soon as possible, based on realistic assumptions of future air quality improvements, and be designed so as to minimise human exposure to pollution. Given the limitations of Defra's modelling, CAZs should take into account local monitoring, so CAZs should include roads which local assessment shows will be in breach even if the national model does not. These criteria should be based on evidence from the introduction of CAZs around Europe, which has shown that small CAZs simply displace air quality problems as vehicle operators will simply drive around the CAZ. A certain "critical mass" is necessary to encourage vehicle upgrade rather than simply exacerbating pollution on the perimeter of the CAZ. The boundaries of the CAZ should also be drawn in such a way as to minimise human exposure, for example by including schools, hospitals and large areas of high density housing within the CAZ boundary, which would otherwise be particularly vulnerable to the displacement effect.
- b) The level of charge. See further at Question 9.
- c) Enforcement of CAZs. As enforcement of CAZs will be the responsibility of local authorities, the CAZ Framework needs to lay down strict criteria for the minimum number and optimal location of cameras, including the need for mobile cameras. This

can draw on evidence from the London low emission zone. The CAZ Framework should also lay down criteria for the proper enforcement of idling bans within CAZs.

- d) Inspections. To ensure its effectiveness, the CAZ Framework should outline measures aimed at ensuring vehicles meet the required emissions standards under normal driving conditions. It should therefore require enhanced vehicle inspection within CAZs, including random roadside testing and remote sensing to highlight high emitting vehicles and potentially restrict them.
- e) Inclusion of passenger cars through CAZs through Class D CAZs. Diesel cars are a major source of NOx in most non-compliant zones and agglomerations. To achieve compliance in the shortest time possible will therefore require specific measures to address pollution from passenger cars. The CAZ framework therefore needs to lay down minimum criteria for Class D CAZs (the suggested criteria are inexplicably included in a footnote rather than in the main table in Annex A). The Framework also needs to enable local authorities to distinguish between diesel cars which meet the Euro 6 emission standard under real driving conditions, and the majority which currently do not. A consumer labelling scheme could be developed for this purpose and included as an Annex to the Framework.
- f) An additional Class E CAZ should be developed, to allow or require local authorities to go further than Class D where necessary to address particularly high pollution and to accelerate the take up of electric vehicles and drive modal shift to more sustainable forms of transport. For example, a Class E CAZ could provide for access restrictions to be placed on all passenger cars, or all passenger cars other than zero emission/ultra low emission vehicles.
- g) The CAZ Framework only includes operational standards for road vehicles. Appropriate standards should be developed for other significant sources of pollution, such as non-road mobile machinery, domestic and commercial boilers and CHP units, and integrated in the modified AQP to empower local authorities to tackle all sources of pollution.
- h) The Euro 6 standard for light duty vehicles, which includes taxis and private hire vehicles, is inadequate. Emphasis should therefore be placed on moving to zero or ultra low emission taxis and private hire vehicles. The Euro VI standard is more

effective but performance is highly variable. It needs to be bolstered by effective inspections to ensure that emissions abatement technology is working effectively and properly maintained (e.g. ad blue is being refilled).

Question 5: Do you agree that the requirements in Clean Air Zones for taxis and for private hire vehicles should be equivalent?

Yes.

Question 6: Do you agree the standards should be updated periodically?

Yes. The standards need to be reviewed to take into account evidence on the effectiveness of the new Euro 6c standard under real world driving conditions. In future, the CAZs need to move beyond Euro standards to require zero emissions.

Question 7: If yes, do you agree that the minimum vehicle standards set out in the Framework should remain in place until at least 2025?

No. The standards should be regularly reviewed to ensure their effectiveness under real driving conditions and revised as soon as practicable once sufficient evidence is available.

Question 8: Do you agree with the approach to Blue Badge holders?

No.

Question 9: Is the approach set out suitable to ensure charges are set at an appropriate level?

No. The framework does not currently lay down any minimum level of charge for entering CAZs. Although it is stated that the final framework will set upper and lower bands within which local authorities can set the level of charge based on local circumstances, this could allow local authorities to set the charge to low so that vehicle operators will simply choose to pay the charge and enter the CAZ. The framework needs to include clear minimum criteria on the applicable charge to ensure it is sufficiently high to drive vehicle upgrade/replacement/rerouting in order to improve air quality. To ensure consistency across the country, any variation should be minimal, for example with only two bands, one for

London, the south east and other more affluent areas, and a second lower band for other less affluent areas. The level of the charge should be set at a level which ensures compliance in the shortest time possible – other considerations such as local economic conditions are only of secondary importance.

Question 10: Do you have any comments on the secondary legislation as drafted?

Yes. The timeframes laid down are too long. For example, the 12 months allowed for submission of a draft charging scheme by local authorities (see Regulation 12) is too long in view of the obligation to achieve compliance with air quality limits as soon as possible. In particular, the five local authorities listed in the draft Regulations have already had nearly a year since the adoption of the AQP to develop CAZ schemes, and have been in discussions with Defra for much longer. This timeframe should be reconsidered in light of the judgment in ClientEarth 2 and the requirement to achieve compliance in the shortest time possible. Similarly, to ensure maximum certainty for local authorities, business and stakeholders, the Regulations should lay down a maximum timeframe for the Secretary of State to issue a notice approving the scheme or requiring a revision to the draft scheme under Regulation 7. This should be the minimum required to ensure consistency with the Secretary of State's obligation to achieve compliance with limit values as soon as possible.

**Question 11: Do you agree with the approach undertaken in the impact assessment?
If no, please provide supporting evidence.**

No. The impact assessment does not assess the full range of costs and benefits of various CAZ scenarios. In particular it does not model the costs and benefits of class D CAZs or more ambitious measures such as a "Class E" CAZ. The impact assessment needs to be updated in light of the judgment in ClientEarth 2.

Question 12: Do you agree with the conclusions of the impact assessment?

No. The conclusions of the impact assessment are invalid as they are not based on the best available evidence and do not consider the full range of potential CAZ scenarios, particularly the impacts of Class D CAZs.

Question 13: Are you aware of the any additional data that could inform the impact assessment?

The impact assessment needs to be based on the latest COPERT emissions factors and other evidence of real world emissions from diesel vehicles, including the DfT diesel emissions investigation, and PEMS testing conducted by Emissions Analytics.

ClientEarth

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Alan Andrews
In-house solicitor
020 7749 5976
aandrews@clientearth.org
www.clientearth.org

ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

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Brussels

Rue du Trône 60
5ème étage
1050 Bruxelles
Belgique

London

274 Richmond Road
London
E8 3QW
UK

Warsaw

ul. Żurawia 45
00-680 Warszawa
Polska