

From: [Redacted]  
Environmental Quality & Resilience  
22 June 2023

## **Cabinet Secretary for Net Zero and Just Transition**

### **REUL - UK National Air Pollution Control Programme**

#### **Priority and Purpose**

1. To notify you of the UK Government's decision to revoke legislation requiring the UK wide National Air Pollution Control Programme (NAPCP) as part of the Retained EU Law and Revocation Bill (REUL), with no agreed plan to replace the provisions. Priority is urgent, we are aware that this is likely to be raised by the NZET Committee next week.

#### **Recommendation**

2. That you note ongoing discussions with UK Government at official level on agreeing a replacement for the provisions, with further advice after recess detailing Defra's proposed approach for a replacement and next steps.

#### **Context and Issues**

3. The National Emission Ceilings Regulations 2018 are a UK wide SI which transpose Directive 2016/2284/EU relating to national emission ceilings for certain atmospheric pollutants. The Regulations form part of retained law following the UK's exit from the European Union. Regulations 9 and 10 require the Secretary of State to prepare and implement a national air pollution control programme (NAPCP) in order to limit anthropogenic emissions in accordance with national emission reduction commitments.

4. Defra considers the current NAPCP reporting requirements to be unnecessarily technical, complex and resource intensive, and that the report format is difficult to follow for non-experts. Defra therefore proposes to revoke the NAPCP reporting requirements in regulations 9 and 10 of the 2018 Regulations (and an associated EU Commission Implementing Decision (EU) 2018/1522 laying down a common format for national air pollution control programmes) by including them in the schedule to the REUL Bill which means that they would cease to have effect at the end of 2023. Defra plan to develop an alternative approach as a replacement, which would be non-legislative. Work on this alternative approach is still at a very early stage, with few details having been provided by Defra and only limited discussions taking place to date.

5. Defra is including the legislation in the schedule to the REUL Bill for revocation as a policy decision which is contrary to the agreed approach that only legislation which is obsolete should be included at this stage. Defra's argument is that unless revocation takes place through the REUL Bill, it will not be possible to find another

legislative route before the next NAPCP update is required, which must be completed by September 2024 under the existing legislation.

6. Despite concerns raised at official level over this approach, Defra is proceeding with revocation, without agreement from the devolved administrations.

7. For FMQ last week the lines below were agreed with SPADs:

*We are very concerned at the UK Government's decision to revoke the UK wide National Air Pollution Control Programme provisions, through the REUL Bill, especially as they appear to have no plan in place to replace these crucial provisions. Scottish government officials continue to engage with counterparts across the UK to try to resolve this. However, we will not hesitate to act to protect Scotland's devolved interests and the health of the people of Scotland.*

### **Welsh Government**

8. The Welsh Government has indicated to Defra that they are not in agreement with this approach with Julie James, Minister for Climate Change, Welsh Government writing to Therese Coffey, Secretary of State for Environment on 13 June 23 setting out:

*The decision to revoke NAPCP provisions in the context of the REUL Bill has been made without consideration through the Air Quality Common Framework. Despite requests for open discussion and information sharing on these matters under the framework, little has been forthcoming. Revoking these provisions with no clear plans to replace it could lead to a lack of transparency in information made available to stakeholders regarding the emission reduction pathway the UK intends to take. Transparency and public scrutiny are important aspects of the Environment (Air Quality and Soundscapes) (Wales) Bill, which I introduced to the Senedd in March, and revoking this legislation is contrary to the intentions of the Bill.*

### **Options and Advice**

9. Reviewing the NAPCP reporting requirements, to improve user accessibility and to streamline the process is welcomed; however revoking regulations 9 and 10 of the Regulations now will mean there is likely to be a significant gap until the new approach is in place, and it is not clear if the new approach will match the requirements in the EU Directive. This effectively means air quality policy will no longer be aligned with the EU.

10. [Redacted]

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[Redacted]

11. [Redacted]

[Redacted]

[Redacted]

12. [Redacted]

[Redacted]

13. [Redacted]

### **Bute House Agreement Implications**

14. There are no Bute House Agreement implications.

### **Financial and Legal Considerations**

15. As air quality is devolved, it is possible in theory that separate reporting requirements could be developed, however we anticipate that this would require significant resource, in both staffing and contracting the modelling work.

16. In addition there is an international obligation on the UK to comply with emission ceilings as a signatory to the Convention on Long-Range Transboundary Air Pollution. This requires reporting at a UK level even if each of the four administrations take a separate approach.

### **Sensitivities**

17. Environmental Standards Scotland wrote to the Constitution, Europe, External Affairs and Culture Committee on 5 June, raising concerns that '*without the NAPCP, there will be loss of public accountability on current and future emissions targets and emissions projections in Scotland*'.

18. Given the wider interest we expect this will be raised at the NZET Committee session next week (Tuesday 27 June), lines to take are being prepared for the briefing pack.

### **Quality Assurance**

19. This submission has been approved by Deputy Director for Environmental Quality & Resilience.

## Conclusions and next Steps

20. [Redacted]

[Redacted]

Environmental Quality & Resilience

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Cabinet Secretaries and Ministers Copy List	For Action	For Information Portfolio interest
Cabinet Secretary for Constitution, External Affairs and Culture Cabinet Secretary for Rural Affairs, Land Reform and Islands Minister for Green Skills, Circular Economy and Biodiversity Minister for Energy and the Environment		x

Officials Copy List
DG Net Zero Director for Environment & Forestry Alice Hall Emma Harding [Redacted]  Callum McCaig Ewan Crawford Leanne Dobson Kate Higgins Comms Net Zero & Rural Affairs

**Background: National Air Pollution Control Programme**

1. This is a UK wide SI which transposes Directive 2016/2284/EU relating to national emission ceilings for certain atmospheric pollutants. The Regulations form part of retained law following the UK's exit from the European Union.
2. The Directive sets national emission ceilings for certain atmospheric pollutants (nitrogen oxides, non methane volatile organic compounds, sulphur dioxide, ammonia and fine particulate matter PM2.5). It implements at EU level obligations under the United Nations Economic Commission for Europe (UNECE) Convention on Long-Range Transboundary Air Pollution of 1979 (CLRTAP) and, in particular, its 1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone of 1999, which was revised in 2012.
3. Regulations 9 and 10 of the 2018 Regulations require the Secretary of State to prepare and implement a National Air Pollution Control Programme (NAPCP), initially in 2019 and subsequently at least once every four years. The Regulations also set out the methodology that must be followed for producing the NAPCP, and the reporting format. The most recent NAPCP was published in February 2023.
4. The Regulations also require an updated NAPCP to be produced within 18 months of it becoming evident that any emission ceiling is not going to be achieved. As the analytical work undertaken to inform the 2023 NAPCP has shown this to be the case, an update must be prepared by September 2024.