DIRECTION

ENVIRONMENT ACT 1995

Environment Act 1995 (Birmingham City Council) Air Quality Direction 2017

The Secretary of State, in exercise of the power conferred by section 85(5) of the Environment Act 1995(**a**), gives the following direction.

In accordance with section 85(6) a copy of this direction will be published in the London Gazette.

The Secretary of State makes this direction having determined that it is necessary in order to meet obligations placed upon the UK under the EU Ambient Air Quality Directive(**b**).

Citation, commencement and application

1.—(1) This direction may be cited as the Environment Act 1995 (Birmingham City Council) Air Quality Direction 2017 and comes into force on 20th December 2017.

(2) This direction applies to Birmingham City Council.

Interpretation

2. In this direction—

"the 2000 Act" means the Transport Act 2000(**c**);

"AQP" means the UK plan for tackling roadside nitrogen dioxide concentrations 2017, drawn up by the Secretary of State in accordance with regulation 26(1) of the Air Quality Standards Regulations 2010(**d**);

"the authority" means Birmingham City Council;

"feasibility study" means a study, conducted by the authority in accordance with HM Treasury's Green Book approach, to identify the option that will deliver compliance with legal limits for nitrogen dioxide in a given area in the shortest possible time as part of the AQP;

"full business case" means a document that sets out detailed proposals for a scheme which has been identified through a feasibility study as the authority's preferred measure to deliver compliance with the legal limit value for nitrogen dioxide in the shortest possible time;

"local transport policies" has the meaning given by section 108(5) of the 2000 Act(**e**).

(**a**) 1995 c25.
(**b**) 2008/50/EC OJ No. L 152, 11.06.08, p.1.
(**c**) 2000 c.38.
(**d**) S.I. 2010/1001. A copy of the plan is available at: https://www.gov.uk/government/publications/air-quality-plan-for-nitrogen-dioxide-no2-in-uk-2017.
(**e**) Section 108(5) was inserted by section 7(1) and (2) of the Local Transport Act 2008 (c.26).

Duty to prepare and submit a full business case

3.—(1) The authority must as part of its feasibility study, prepare a full business case for the area for which it is responsible.

(2) The full business case must be submitted to the Secretary of State as soon as possible and by 15th September 2018 at the latest.

Inquiry in respect of a full business case

4.—(1) The authority must only exercise its power to hold a local inquiry, whether under section 170(2)(a) of the 2000 Act or otherwise, in relation to any scheme it identifies as part of its feasibility study and in preparing its full business case in accordance with this Article.

(2) The authority may only hold a local inquiry if it is necessary to do so, notwithstanding any other opportunities which the authority has or could have provided for representations to be made in relation to the scheme.

(3) Before an inquiry is held in accordance with paragraph (2), the authority must consult the Secretary of State and—

(a) submit a proposed timetable for the completion of the inquiry, and

(b) inform the Secretary of State whether the inquiry will be in addition to or instead of any other opportunity to make representations about the scheme identified in the full business case.

(4) Where the authority consults the Secretary of State under paragraph (3), the Secretary of State must give written consent to the timetable before the inquiry begins.

(5) In this direction, a reference to holding a local inquiry includes a reference to causing a local inquiry to be held.

Submission of the full business case to the Secretary of State

5. When submitting its full business case, the authority must provide the Secretary of State with the following information—

(a) the date on which it is proposed that the scheme identified in the full business case will come into effect;

(b) confirmation that all public consultation necessary in respect of the scheme identified in the full business case, has been completed (including where applicable consultation in accordance with section 170(1A), (1C) or (5)(a) of the 2000 Act(**a**));

(c) a summary of any responses received in response to any consultation and of the changes (if any) made to the scheme identified in the full business case following that consultation;

(d) where the full business case proposes a scheme in connection with which the authority intends to exercise powers under the 2000 Act, confirmation that the scheme facilitates the achievement of the local transport policies (where applicable) which apply in the authority's area;

(e) confirmation that the full business case has been prepared in accordance with HM Treasury's Green Book approach;

(f) confirmation—

(i) that no local inquiry has been held or is due to be held, or

(ii) that a local inquiry has taken place in accordance with the timetable agreed by the Secretary of State under Article 4 of this Direction.

(a) Section 170(1A) and (1C) were substituted, for subsection (1) as originally enacted, by section 111(2) of the Local Transport Act 2008. Section 170(1A) was amended by paragraph 110(2) of Schedule 6 to the Local Democracy, Economic Development and Construction Act 2009. Section 170(5) was amended by paragraph 6(2) of Schedule 5 to the Local Transport Act 2008.

Guidance

6. The authority, in taking steps under this direction, must have regard to relevant guidance issued by the Secretary of State.

Thérèse Coffey MP
Parliamentary Under Secretary of State
Department for Environment, Food & Rural Affairs

19th December 2017

EXPLANATORY NOTE

(This note is not part of the direction)

This direction directs Birmingham City Council to prepare and submit to the Secretary of State a full business case by 15th September 2018 in connection with its duties in respect of air quality under Part 4 of the Environment Act 1995 and as part of the UK plan for tackling roadside nitrogen dioxide concentrations 2017. The authority is already conducting a feasibility study under the previous UK plan. The full business case must set out detailed proposals for a scheme which is the authority's preferred measure to deliver compliance in its area with the legal limit value for nitrogen dioxide in the shortest possible time. Under section 85(7) of the Environment Act it is the duty of a local authority to comply with a direction given to it. A copy of this direction is available for inspection at Nobel House, 17 Smith Square, London SW1P 3JR.