

**Case ID – IESS.21.013**

**An investigation into the Scottish Government's plans and approach to ensuring future compliance with legal limits on nitrogen dioxide levels.**

## **Frequently Asked Questions**

### **Why did ESS investigate this matter?**

The ECJ's judgment brought into sharp focus the serious, longstanding and intractable nature of the unsuccessful attempts to meet air quality limit values. Despite the efforts made to improve air quality, doubts remained over whether air quality limit values would be met going into the future, and therefore questions arose over the compliance with, and the effectiveness of, environmental law in this area.

### **What is an improvement report?**

An improvement report is a report which ESS can issue recommending measures that the Scottish Ministers, or any other public authority, should take in order to comply with environmental law, or improve the effectiveness of environmental law or of how it is implemented or applied. The report is issued to the Scottish Ministers and laid before the Scottish Parliament.

### **Why has ESS decided to issue an improvement report rather than a compliance notice?**

The weaknesses identified by ESS concerned the systems in place under the law, as opposed to any public authority failing to comply with the law. Accordingly, the most appropriate mechanism to remedy the issues identified is an improvement report.

### **What happens next?**

The Scottish Ministers have up to a maximum of nine months to prepare and submit an improvement plan to the Scottish Parliament setting out how they intend to implement ESS's recommendations, including the timescale for this. Accordingly, it is for the Scottish Parliament to approve the actions and timescales put forth by the Scottish Ministers.

### **Does ESS have any further role in this specific issue?**

ESS will monitor the implementation of the recommendations and will evaluate whether further action is necessary in this area.

**Did ESS seek information from other bodies during its investigation?**

Yes – ESS issued information notices to the Scottish Government, the Scottish Environment Protection Agency and all local authorities with active air quality management plans in place.

**How long did the investigation take?**

ESS' investigation was launched in late 2021 and concluded on 23 September 2022.

**Will you publish a report of your findings?**

Yes – ESS intends to work openly and transparently. The full improvement report was published on our website at the same time we laid the report before the Scottish Parliament.

September 2022