

EXPLANATORY MEMORANDUM TO
THE CLEAN AIR ZONES CENTRAL SERVICES (FEES) (ENGLAND)
REGULATIONS 2020

2020 No. 1444

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument enables the Secretary of State to charge local authorities in England for using the Clean Air Zones Central Services (“CAZ Central Services”). The Government is creating the Services to support the practical implementation of Clean Air Zones (“CAZs”). A CAZ is an area where targeted action is taken to improve air quality. The CAZ Central Services are national infrastructure services that include a digital service (including the ability to make payments online) and technical and customer contact support.
- 2.2 The instrument is only applicable to local authorities that are subject to a direction from the Secretary of State under the Environment Act 1995 to address roadside nitrogen dioxide (NO₂) pollution which requires them to make a charging scheme to achieve compliance.
- 2.3 Local authority charging schemes are made using powers in Part 3 of the Transport Act 2000. These will be utilised to create charging arrangements in relation to the fees and penalties payable by vehicle owners, who may be required to pay a charge to drive into or within a zone, to the local authorities, if they are driving a vehicle that does not meet the particular emissions standard for their vehicle type in that zone. This instrument is being laid solely in relation to the charges to be paid by local authorities, where they are implementing a charging scheme, allowing them to use the CAZ Central Services; it does not relate to charges payable by vehicle owners to local authorities.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure and is not likely to be scheduled for debate there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Secretary of State may, with the consent of the Treasury, impose fees under section 56(1) of the Finance Act where a "Government department, in pursuance of any EU obligation or any international agreement or arrangement, provides any services or facilities [etc.]" . The reference to "EU obligations" will be repealed, with savings, at the end of the implementation period at 23:00 on 31 December 2020. EU law obligations are thus the foundation for the powers to make this legislation.

6.2 The UK is currently taking steps to ensure it achieves compliance with the legal limit values for NO₂ concentrations under Directive 2008/50/EC on ambient air quality and cleaner air for Europe ("the Directive"). The obligations of the Directive were transposed into UK law in "the Air Quality Standards Regulations 2010" (S.I. 2010 1001) ("the Regulations"). In accordance with regulation 26(1) a national plan has been prepared to deliver the requirements in the Regulations. In July 2017, the UK Plan for Tackling Roadside Nitrogen Dioxide Concentrations¹ was published setting out how compliance would be achieved in the shortest possible time. In 2018, the accompanying supplement to the UK plan for tackling roadside nitrogen dioxide concentrations² was also published. This document is a supplement to the 2017 Plan and so it should be read in addition to and alongside the 2017 Plan. We refer to both documents collectively as "the Plan".

6.3 In accordance with the Plan, in certain areas, local authorities responsible for the local road network have been directed by the Secretary of State, using powers in section 85(5) of the Environment Act 1995, to implement a local plan for NO₂ compliance, which can include a CAZ as a means of achieving compliance in the shortest possible time. Where the CAZ involves a charging scheme, the emissions standard for each vehicle type for each zone varies depending on the level of action needed to address NO₂ pollution. Each CAZ must be developed in accordance with the CAZ Framework (February 2020)³ and is intended to remain in force until compliance with legal levels for NO₂ is achieved.

6.4 This instrument provides that where local authorities use the CAZ Central Services they will be liable to pay a fee. The fee is £2 per charge processed by the Services in relation to the charging scheme.

¹ <https://www.gov.uk/government/publications/air-quality-plan-for-nitrogen-dioxide-no2-in-uk-2017>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/915958/air-quality-no2-plan-supplement.pdf

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863730/clean-air-zone-framework-feb2020.pdf

7. Policy background

What is being done and why?

- 7.1 Section 56 of the Finance Act 1973 allows, in connection with meeting an EU obligation, for the introduction of charges for services, provided by Government departments, such as the CAZ Central Services. This is the power under which these Regulations are being made and the power must be exercised with the consent of HM Treasury. This instrument links with the policy objectives of the Act to enable UK Government to charge local authorities who use our CAZ Central Services.
- 7.2 Schedule 2 to the Air Quality Standards Regulations 2010 sets out NO₂ limit values including an annual average over a calendar year of 40 µg/m³. The UK is currently taking steps in a number of areas across England to ensure these limit values are met. These areas are identified within the Plan.
- 7.3 The Plan, which has been prepared to meet these limit values, is a national plan where delivery of the policy takes place principally at the local level, driven by the particular local circumstances which have given rise to excessive concentration levels of NO₂ at local hotspots. The Plan requires relevant local authorities to develop a local plan to tackle persistent exceedances and they must consider a CAZ as a means of delivering compliance with legal levels of air quality within the shortest possible time.
- 7.4 The CAZ Framework⁴ (February 2020) provides a framework for local authorities to assist them in implementing CAZs. This framework describes two types of CAZ: charging and non-charging CAZs. This instrument relates solely to charging CAZs which are created by local authorities using charging schemes prepared under Part 3 of the Transport Act 2000. A charging scheme can be introduced when no other measure is identified as being as effective to achieve compliance. However, when considering between equally effective alternatives to deliver compliance, if a local authority can identify alternative measures other than a CAZ, that are at least as effective at reducing NO₂, those measures are preferred as long as the local authority can demonstrate that this will deliver compliance as quickly as a CAZ.
- 7.5 UK Government has so far issued directions between 2018 and 2020 under section 85(5) of the Environment Act 1995 to require local authorities that manage roads with NO₂ levels that exceed the limits set out above, to carry out feasibility studies and implement approved measures to deliver compliance in the shortest possible time. Approved measures can include implementation of a CAZ. We expect that there could be up to ten CAZs implemented in England over the coming years, where local studies demonstrate that this approach is likely to be the quickest way to achieve compliance with legal levels for air quality. However, the exact number of CAZs that will be implemented is uncertain, as local circumstances are subject to change.
- 7.6 To provide consistency for CAZ customer users (motorists) and to deliver value for money, the Government is offering local authorities that are implementing a CAZ use of the CAZ Central Services, which will have the following core service:
- (a) providing a website which allows a person to check whether they need to pay a charge in relation to a charging scheme and, if so, to also pay the charge;

⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863730/clean-air-zone-framework-feb2020.pdf

- (b) providing customer support to a person who may be subject to charges under a charging scheme;
 - (c) providing support to a relevant charging authority or relevant charging authorities in relation to the introduction of a charging scheme.
- 7.7 Local authorities are not required to use the CAZ Central Services and can choose to use an alternative service provider if it does not negatively impact upon the time in which it takes to achieve compliance with legal levels for air quality (value for money must also be considered). Local authorities, choosing to use the service, will be charged a transaction charge of £2 for each charge that is processed through the Services (when a motorist uses the CAZ Central Services to successfully pay a CAZ charge imposed by a charging scheme made by the local authority, for driving in a zone). Local authorities will raise revenues from charging vehicles that drive into their CAZ that do not meet the particular standard for their zone and vehicle type. It is from these revenues that local authorities will pay to use the CAZ Central Services. These charges will help offset the cost to central government providing the service.
- 7.8 The ability for charging authorities to introduce a CAZ is set out in the Transport Act 2000. Part 3 of the Act empowers local authorities (as “charging authorities”) to make a local charging scheme in respect of the use or keeping of motor vehicles on roads. Schedule 12 of the Transport Act 2000 requires any excess revenue that may arise from local authority revenue above the costs of operation to be reinvested to facilitate the achievement of local transport. Local authorities should not set the level of charge as a revenue raising measure.
- 7.9 The Secretary of State for Transport will also enter into separate contractual agreements with the local authorities using the CAZ Central Services. These agreements will set out the detail of how the CAZ Central Services will operate and the expectations and requirements of the parties.
- 7.10 This instrument will cease to have any practical effect on 1 April 2027, when it is envisaged that all local authorities subject to an Environment Act 1995 direction will be compliant with required limit values for NO₂. Local authorities are only charged if they choose to use the service.
- 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.
- 9. Consolidation**
- 9.1 Consolidation is not relevant as this is not an instrument that is amending any other instruments.
- 10. Consultation outcome**
- 10.1 There is no statutory requirement to consult on this statutory instrument. The Plan was consulted on from the 5 May 2017 to 15 June 2017; the Supplement to the Plan was consulted on from 29 May 2018 to 26 June 2018. The CAZ framework was consulted from 13 October 2016 to 9 December 2016. As required, the Treasury has consented to the making of the instrument.

11. Guidance

- 11.1 General guidance providing information to support the overall implementation of CAZs has been supplied to local authorities. This guidance however provides a detailed overview of the operation of the overall service and is not essential in order to understand how this instrument will operate. It has not therefore been attached.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The impact on the public sector is that the instrument requires local authorities who choose to use the CAZ Central Services to pay fees.
- 12.2 The impact on the public sector is funded under the New Burdens Doctrine (i.e. the principle that all new financial burdens placed on local authorities by a department must be properly assessed and fully funded by the relevant department). Fees to be paid by local authorities to use the CAZ Central Services can be funded using revenues collected through the CAZs.
- 12.3 An Impact Assessment has not been prepared for this instrument because no impact, or no significant impact, on business is foreseen.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 We intend to monitor the effectiveness of this policy to charge local authorities as the CAZ Central Services are rolled out and utilised.

15. Contact

- 15.1 Kristy Revell at the Department for Transport (Telephone: 020 8225 6896 or email: Kristy.Revell@defra.gov.uk / Kristy.Revell@dft.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Suzanne Trueman, Deputy Director for the Joint Air Quality Unit, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rachel Maclean MP, Parliamentary Under Secretary of State, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.