

POLICY NOTE

THE LOW EMISSION ZONES (EMISSION STANDARDS, EXEMPTIONS AND ENFORCEMENT) (SCOTLAND) REGULATIONS 2021

SSI 2021/XXX

The above instrument was made in exercise of the powers conferred by sections 6(4), 7(4)(b), 8(1) and 128(1)(b) of the Transport (Scotland) Act 2019. The instrument is subject to affirmative procedure.

Purpose of the instrument.

The purpose of this instrument is to specify:

- **emission standards for compliance with low emission zones (LEZ),**
- **exemptions from compliance with LEZs,**
- **penalty charge and surcharge rates,**
- **the circumstances in which persons other than the registered keeper of a vehicle will be responsible for a penalty charge for non-compliance with a LEZ,**
- **provisions in relation to enforcement of LEZs.**

Background

Scotland is facing environmental, health and social justice challenges around air pollution, where non-compliance with domestic and European air quality legislation is due predominantly to road-based emissions. Improving air quality is at the centre of the Scottish Government's action on transport and place-making, to ensure the real and tangible health benefits associated with cleaner air are maximised

Health impacts from air pollution are a key primary driver for low emission zone implementation. Transport-related air pollution caused by, for example, fine particulate matter and gases such as nitrogen oxides impact on human health. Pollution hotspots associated with nitrogen dioxide and particulate matter remain in a number of Scottish towns and cities.

The Scottish Government's Programme for Government (PfG) 2018 committed to the introduction of LEZs into Scotland's four biggest cities between 2018 and 2020. As a result of the Covid-19 pandemic PfG 2020 provided a new indicative timeline for LEZs to be introduced into Glasgow, Edinburgh, Aberdeen and Dundee between February 2022 and May 2022.

Policy Objectives

The overall objective of the proposed legislation is to set nationally consistent emissions standards, exemptions, and penalty charge rates (including surcharges and discounts) for LEZs. The regulations also cover circumstances where a penalty charge is payable by someone other than the registered keeper of a vehicle driving within a LEZ and set out provisions in relation to the enforcement of a LEZ.

Emission Standards

In relation to emissions standards the policy objective is to set the nationally consistent and mandatory emission standards that will be applicable to all Scottish LEZs across vehicle classifications (e.g. buses, taxis, vans, HGVs, cars). This will mean that all Scottish LEZs operate to a consistent national level.

The emission standards set out in regulation 2 and schedules 1 to 3 are:

For compression ignition (diesel) engines:

- Euro VI for heavy-duty vehicles (e.g. HGVs and buses/coaches).
- Euro 6 for light passenger and light goods vehicles.
- Euro 6 for other special category vehicles, including:
 - an ambulance (which is not excepted under the Regulations),
 - a hearse,
 - a motor caravan.

For positive ignition (petrol) engines:

- Euro IV for heavy-duty vehicles.
- Euro 4 for light passenger and light goods vehicles.
- Euro 3 for motorcycles and mopeds.

Exemptions

In relation to exemptions the policy objective is to set out nationally consistent LEZ exemptions for specific vehicle types and uses. The exemptions are set out in regulation 3. A vehicle which is exempt would be allowed to drive within a LEZ even if it did not meet the required LEZ emission standards. Following the public consultation in late 2019, a narrow set of national LEZ exemptions for specific vehicle types has been established in Regulations, as outlined below.

- Emergency Vehicles (Police; Ambulance; Scottish Fire and Rescue; Coastguard; National Crime Agency).
- Naval, Military or Air Force Vehicles.
- Historic Vehicles (vehicles more than 30 years old).
- Vehicles used for the purposes of disabled persons ('disabled' or 'disabled passenger vehicles' tax class; Blue Badge Scheme).
- Showman's goods vehicles and showman's vehicles.

Setting of Penalty Charges

A person is subject to a penalty charge if they are in contravention of Section 6(1) of the Transport (Scotland) Act 2019. The penalty charges are set out in regulation 4 and schedule 4. For penalty charge rates the policy objective is to set out the penalty charges for each vehicle category, including surcharges and discounts. The penalty charges have been set to increase where repeat contraventions are detected, or to reduce if the penalty if the penalty charge notice (PCN) is paid early.

The penalty rates, discounts and surcharges set are nationally consistent and local authorities will not be able to set different penalty rates, discounts or surcharges for their individual LEZs.

Issuing Penalty Charge Notices to someone other than the registered keeper of the vehicle

In relation to issuing PCNs to someone other than the registered keeper the policy objective is to set out the circumstances in which a person other than the registered keeper of the vehicle would be in contravention of a LEZ.

In terms of regulation 5 a PCN would typically be sent to the registered keeper of the vehicle, who will be responsible for paying the penalty. The exceptions to this rule are:

- where the vehicle is not registered under the Vehicle and Excise Registration Act 1994 the penalty charge will be payable by the person by whom the vehicle was used or kept at the time of the contravention.
- where the registered keeper has sold or transferred the vehicle before the time of the contravention, the penalty charge will be payable by the person by whom the vehicle was used or kept at the time of the contravention.
- if the vehicle was, at the time of the contravention, subject to a hiring agreement, the penalty charge will be payable by the person hiring the vehicle.
- where the vehicle is kept by a vehicle trader who is not the registered keeper at the time of the contravention, the penalty charge will be payable by the vehicle trader.

Enforcement

In relation to enforcement, the policy objective is to outline all aspects of enforcement including:

- issue of penalty charge notices.
- timing and manner of payment of a penalty charge.
- provision for reviews and appeals.
- the manner in which a penalty charge notice may be enforced.
- issuing of a further penalty charge notice following cancellation of a penalty charge notice.
- enabling local authorities to enter into arrangements with any person in connection with the exercise of a function conferred on a local authority.
- provision has also been made for creating offences.

Penalty Charge Notices

Under regulation 6 the PCN will comprise the following basic components:

- a section identifying the vehicle which is in contravention of the LEZ.
- a section recording the evidence of the contravention by the recipient of the PCN, and the date and time of the contravention.
- a section outlining the penalty amount, the timescales for payment (where a reduced penalty is applied if paid within 28 days), the steps to pay the penalty charge, and the grounds and routes for review and appeal.

A PCN must be served before the end of the period of 28 days beginning with the detection date. The PCN is to be paid within 28 days of receipt of the PCN. If the charge is paid within 14 days of issue of the PCN, the penalty charge will be reduced by 50 per cent.

Reviews and Appeals

In terms of regulation 8 and 9 the recipient of a PCN will have the ability to make representations against the issue of the PCN within 28 days of its service. Under regulation 10 an appeal can be made against a decision of a local authority in relation to those representations.

Regulation 9 sets out that where a local authority accepts that at least one of the grounds for representations has been met, it must cancel the PCN and serve a notice on the person which made the representations stating that the PCN has been cancelled and explain the decision making process.

Also in terms of regulation 9, if the local authority upholds its decision to issue a PCN, a notice of rejection will be served setting out the reason(s) for the rejection, the fact that an appeal may be made to the First Tier Tribunal within 28 days of service of the notice of rejection, and the grounds for appeal.

Enforcement of a PCN

Regulation 7 gives local authorities the ability to issue 'charge certificates' if a PCN has not been paid or if no representations have been received within the 28 day period for making representations. The charge certificate increases the penalty charge amount by 50 per cent. If the increased charge specified in terms of the charge certificate is not paid within 14 days it may be recovered by the local authority as an enforceable debt.

Cancellation of a PCN

In circumstances where a PCN has been cancelled regulation 9 allows a local authority to serve a fresh PCN on any person other than the person on whom the original PCN was served.

Local Authority Arrangements

Regulation 11 enables local authorities to enter into an agreement(s) with other parties (enforcement agents) such that the agents have the powers conferred on the local authority in order to become responsible for operating the LEZ enforcement regime on their behalf.

Interference with the operation of a low emission zone scheme

Regulation 12 prescribes the circumstances in which a person will commit a criminal offence where the person acts with intent to avoid payment of, or with intent to avoid being identified as having failed to pay, a penalty charge. This includes a person:

- interfering with an approved device used for or in connection with a LEZ scheme.
- interfering with any traffic sign or direction used for or in connection with a LEZ scheme.
- causing or permitting the registration plate of a motor vehicle to be obscured.
- making or using any false document.
- making a false representation in response to a PCN.

A person guilty of an offence under regulation 12 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Consultation

The table below provides details of the consultations and stakeholder engagement activity in relation to LEZs.

Table 1 – Low Emission Zones Consultations and stakeholder engagement, papers and analysis reports.

Year	Title/ description	Consultation paper link	Analysis report link
2017	Building Scotland’s Low Emission Zones consultation.	https://consult.gov.scot/transport-scotland/building-scotlands-low-emission-zones/	https://www.transport.gov.scot/news/responses-to-low-emission-zone-lez-consultation-now-analysed/
2019	Low Emission Zones in Scotland Regulations and Guidance Workshops	n/a	https://www.lowemissionzones.scot/uploads/docs/LEZ-in-scotland-regulations-and-guidance-workshops.pdf
2019/20	Scotland’s Low Emission Zones: Consultation on Regulations and Guidance	https://www.transport.gov.scot/media/46548/scotland-s-low-emission-zones-consultation-on-regulations-and-guidance.pdf	https://www.transport.gov.scot/media/48017/low-emission-zone-consultation-2019-2020-analysis.pdf

28. The Building Scotland’s Low Emission Zones consultation paper in 2017 set out the proposed arrangements and options to deliver a consistent national approach to well-designed and managed LEZs in Scotland. The key findings from the consultation paper, in relation to this instrument were as follows:

- Low emission zone Euro emission standard criteria and vehicle scope: whilst the majority of respondents agreed with the proposed emission criteria, there was a lower level of consensus than on other topics. Some 62.3% of respondents agreed with the proposed mandatory Euro emission criteria for Scottish low emission zones. Of the individuals who disagreed, a key theme was that the standards used in the modelling would not reflect real world driving conditions.
- Low emission zone scheme founding principle – charging versus penalty: respondents were asked whether they supported the principle of adopting a road access restriction scheme for low emission zones across different classes of vehicle. Views were very mixed with people both in favour and against the proposal. Some 42% indicated their approval in some way of the scheme due to the positive impact it may have. A number of respondents made reference to road pricing in their response. Of those in favour of the road access restriction scheme, a number of people commented that this was because they considered a charging scheme allowed people who could afford it to buy an exemption. Respondents also noted that a road access restriction scheme would encourage behavioural change more than a charging scheme. The majority of

business and industry groups were supportive of a national road access scheme but emphasised the need for consistency.

- Enforcement and vehicle detection: the views provided showed a high level of consensus with 91.6% in favour of using ANPR cameras to enforce low emission zones. Those who disagreed had privacy concerns regarding the use of ANPR cameras. Those in support of ANPR viewed this to be vital for effective enforcement and considered it to be consistent with enforcement of other road offences such as bus lane contravention. Of those who were conditionally supportive, concerns were raised regarding the costs, adequate monitoring and development of an appropriate database.
- Exemptions: respondents were asked to provide their views on what exemptions should be permitted. The majority of respondents, 86.3% agreed that low emission zone exemptions should be consistent across all Scottish local authorities. Some 82.7% of respondents considered that emergency vehicles should be exempt. Other suggested exemptions included: community transport operators, historic vehicles, specialist vehicles and bus and coach operators travelling long distances only passing through a low emission zone for a short time.

29. The Scotland's Low Emission Zones: Consultation on Regulations and Guidance in 2019/20 sought views on issues of a technical nature that underpin the operation and delivery of Low Emission Zones (LEZs) including emission standards, exemptions, enforcement and penalty charges. In total, 306 responses were received for the consultation. The key findings from the consultation paper in relation to this instrument were as follows:

- 49% of respondents agreed with the proposed minimum mandatory Euro emission criteria for Scottish LEZs ('Euro 6 for diesel and Euro 4 for petrol' proposal), with 46% not supporting, and the remaining 6% not answering the question.
- The majority of respondents supported the proposed exemption categories, with the exception being a proposed exemption for showman vehicles. Typically, respondents felt that the vehicle types listed above would have little impact on overall emissions or were a vehicle type that was not used very often. The previous LEZ consultation in 2017 found that 83% of respondents supported the exemption of emergency vehicles.
- There was general support for (1) the setting of nationally consistent penalty rates (2) the base-level of penalty increasing from the existing civil traffic penalty rate of £60 (3) some agreement that the penalty should increase for repeat contraventions within a set time (4) a general call for the gap between the penalties for smaller and larger vehicles - e.g. cars versus buses - to be appropriately narrow and (5) the application of a simple-but-concise tier system of graduated penalties.
- Respondents were asked whether they agreed with the general principles of the enforcement regime set out in the consultation document. 56% of respondents agreed, with 30% disagreeing and the remainder not answering the question.
- The cities of Glasgow Edinburgh, Dundee and Aberdeen all broadly agreed with the enforcement proposals outlined within the 2019 consultation.

30. In addition, more targeted consultation has been undertaken with local authorities, Police Scotland, the Crown Office and Procurator Fiscal, and the Scottish Government's Criminal Justice Division, with regard to creating offences in connection with the enforcement of LEZs.

Impact Assessments

The following impact assessments have been undertaken in relation to this instrument:

- Integrated Impact Assessment (IIA) covering Equality Impact Assessment (EQIA), Child Rights and Wellbeing Impact Assessment (CRWIA), and Fairer Scotland Duty (FSD).
- Data Protection Impact Assessment (DPIA). Discussion has taken place with the Information Commissioner's Office and the comments received on the DPIA and the draft regulations have been taken into account.
- Strategic Environmental Assessment (SEA) screening has been undertaken. This established that the policy will result in 'no or minimum environmental effects' and that under section 7 of the Environmental Assessment (Scotland) Act 2005, no further assessment is required.

32. Copies of these assessments are attached.

33. An Island Communities Impact Assessment was not required for this instrument, as the instrument is not considered likely to have an effect on an island community which is significantly different from its effect on other communities.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been prepared in relation to these Regulations and a copy is attached.

Scottish Government
Transport Scotland

20 January 2021