



Law Society  
of Scotland

# Consultation Response

## Scotland's Low Emission Zones: Consultation on Regulations and Guidance

February 2020



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Environmental law Sub-committee welcomes the opportunity to consider and respond to Transport Scotland's consultation: *Scotland's Low Emission Zones: Consultation on Regulations and Guidance*<sup>1</sup>. We have the following comments to put forward for consideration.

## General remarks

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We note that much of the content of the consultation is of technical and commercial nature and therefore we have answered only some of the consultation questions.

The issues with air quality, its effects and non-compliance with EU standards are well known and acknowledged. Equally, the wider context of the announced 'Climate Emergency', Scottish Government's response to the announcement and contributions towards net-zero by addressing transport emissions are understood.

We note that in the preamble to the consultation<sup>2</sup>, it is stated that the vehicle scope and vehicle types to be included in LEZ scope will be determined by the local authority. However, the narrative at paragraph 41 onwards refers to Scottish Government setting stricter and more ambitious targets than the rest of the UK on emissions from vehicles. We note that consistency across local authority areas, particularly within the same metropolitan / travel to work area, would be welcome in order to improve effectiveness of the regime, give fair notice to individuals and businesses, assist compliance, and ensure equality and a consistent

<sup>1</sup> <https://www.transport.gov.scot/consultation/scotlands-low-emission-zones-consultation-on-regulations-and-guidance/>

<sup>2</sup> in the footnote to Table 1 on page 13

economic impact. That will be particularly significant for goods deliveries (where UK wide fleets are often deployed) and for visitors to cities with a LEZ.

## Consultation questions

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### **1a Do you agree with the proposed present-day emission standards for Scottish LEZs? If not, why not?**

We are not in a position to comment on the particular standards being proposed.

### **1b What are your views on Scotland making a transformative shift to zero or ultra-low emission city centres by 2030? Please be as specific as possible in your reasoning.**

No comment.

### **2a Which of the proposed national LEZ exemptions do you agree with? Please be as specific as possible in your reasoning.**

In so far as Scottish Government is encouraging ultra-low emission vehicle adoption, we consider that measures to that end would merit being applied across Scotland, and hence across all LEZs. In light of these comments, we consider that the concept of a set of national LEZ exemptions seems rational.

We consider that the need for exemptions for emergency services, military vehicles, historic vehicles and vehicles for disabled persons seems a balanced approach. We note that it may be appropriate for voluntary sector emergency vehicles to be exempt (noting the reference to this type of vehicle within paragraph 48).

In relation to the proposed exemption for vehicles being used for the purposes of the “blue badge scheme”, we question how the exemption will be granted and monitored given that badges are assigned to a person rather than to a vehicle.

In relation to the discretionary exemptions referred to in paragraphs 48 and 49, we note that the rationale behind these is unclear. In the event that this relates to availability or affordability, we consider it important that the economic impact on commercial or third sector operators has been fully considered, as well as the availability of public sector funding for procurement of replacement vehicles or the affordability of outsourced services. While the allocation of the risk of the cost of this change of law will depend on the

drafting of individual contracts, we suggest that consideration be given as to whether the public sector is in a position to cover additional service fees from providers entitled to pass on costs so incurred, or otherwise to meet re-procurement and / or step in costs should a supplier not withstand the cost of compliance. We also suggest consideration be given as to whether the maximum discretionary exemption period might be extended to cover the period to the natural expiry or next contractual break date for any public service contract procured within a fixed period of perhaps two to five years of a new or enhanced LEZ commencement date.

Determination of Euro engine class status and / or age of vehicle (where applicable for an exemption) from DVLA's database linked to registration plate recognition camera technology seems an acceptable, proven and objective basis for compliance testing. How, however, will the proposed local discretionary exemption for "out of hours shift workers" (paragraphs 48 and 49) be granted and monitored?

While the temporary diversion exemption (paragraph 50) seems sensible and is welcome, reported experience of bus lane enforcement – particularly around the quality of diversionary signage – does raise practical questions of the practicality and fairness of a 'non divergence from diversion' requirement.

### **2b Are there any other LEZ exemptions you would propose? If so, what should these exemptions be and why?**

No comment.

### **3a Do you agree with the proposed base level and subsequent tiers of penalty charges for each vehicle type as outlined in Table 5? Please explain your answer.**

No comment.

### **3b Which surcharge 'curve' in Figure 1 represents the best approach to designing a surcharge?**

No comment.

### **3c How should the surcharge approach be applied in order to discourage non-compliant vehicles from driving within a LEZ?**

No comment.

### **3d How many days should lapse before a registered keeper of a vehicle returns to the base tier of the penalty charge?**

No comment.

### **4 Do you agree with the general principles of the LEZ enforcement regime? If not, why not?**

Experience of bus lane enforcement has demonstrated the nature of the challenges of adequate notice and signage.

Adopting a charging mechanism similar to comparable regimes, with corresponding discount and surcharge features, seems proportionate and practicable. Such an approach will also be consistent and likely easier to understand than an entirely new regime. It is important that individuals and businesses are able to guide their conduct within a clear and an easily understandable regime. As with earlier comments, a single national regime would be preferable.

It is crucial that there is public awareness of the requirements for compliance with the regime and therefore both promotion of the regulations and suitable signage is vital. It is important that there is a suitable dispute resolution mechanism to resolve issues around breaches.

We note that the consultation does not specify the standard of proof required to meet the proposed grounds of enforcement review and appeals (paragraphs 75 and 76) – we presume that this will be on the balance of probabilities. We would welcome clarity as to who will hear appeals and what form of procedure will apply.

### **5 What are your views on the proposed list of ‘other persons’ that local authorities must consult with on their LEZ plans?**

No comment.

### **6 If a LEZ scheme review was undertaken, what elements would you expect the review to investigate and how would the review ensure transparency and accountability?**

No comment.

## **7 What secondary objectives should be created for LEZ schemes? Please be as specific as possible in your reasoning**

No comment.

## **8 Do you agree with the steps outlined in Figure 2 for enabling a LEZ scheme to come into effect? If not, why not?**

We have no substantive comments to make other than noting that we welcome the proposal for public consultation of the scheme design.

## **9 How can local authorities maximise the technological opportunities available from the deployment of approved devices?**

No comment.

## **10 What positive or negative impacts do you think the LEZ proposals outlined within this consultation may have on:**

- a) particular groups of people, with particular reference to ‘protected characteristics’ listed above**
- b) the very young and old**
- c) people facing socioeconomic disadvantages**

We consider that there is the potential for the regime to impact on socioeconomic disadvantages. While the penalties initially proposed are in line with parking enforcement and other similar regimes, the proposals do not address in detail how the regime or other complementary or compensatory measures will protect the interests of out of hours shift workers, particularly those in low paid or essential services, who may face adverse consequences of the regime where alternatives to non-compliance and/or means to comply are out of reach to them, perhaps for financial reasons. Similar concerns may apply to students or residents of outlying rural or semi-rural areas when travelling to or through LEZ areas.

**11 Do you think the LEZ proposals outlined within this consultation are likely to increase, reduce or maintain the costs and burdens placed on business sectors? Please be as specific as possible in your reasoning.**

No comment.

**12 What impacts do you think the LEZ proposals outlined within this consultation may have on the personal data and privacy of individuals?**

We note that ANPR or similar technology does raise personal data and privacy issues, however, the deployment of such technology is not unique to this regime. As in other contexts, it is important to ensure that protections are put in place in line with the Data Protection Act 2018 so that individuals' rights of data protection and privacy are not infringed.

**13 Do you think the LEZ proposals outlined within this consultation are like to have an impact on the environment? If so, which ones and how? Please be as specific as possible in your reasoning.**

No comment.

**14 Do you have any other comments that you would like to add on the Scottish Government's LEZ proposals outlined within this consultation?**

No comment.

**For further information, please contact:**

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