



**TRANSPORT  
SCOTLAND**  
CÒMHDHAIL ALBA

# Scotland's Low Emission Zones

**Consultation on Regulations  
and Guidance**

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## 1. Ministerial Foreword

The Government's vision is for Scotland to have the cleanest air in Europe, to help create more attractive places for living, working, and enjoying recreation. We must deliver bold and ambitious actions, such as Low Emission Zones (LEZs), to eliminate air pollution hotspots caused by road transport. We must also ensure that such actions contribute tangibly to addressing the climate emergency.



The Scottish Government is supporting local authorities to introduce LEZs into our four biggest cities by 2020. Through the Transport (Scotland) Act 2019 we have created world-leading legislation that provides the framework to create nationally consistent LEZs. We must now establish the ruleset around substantive issues such as emission standards, exemptions, the enforcement regime and the setting of penalty charges.

Our Draft National Transport Strategy advocates a vision for a transport system that creates great places, with key priorities including taking climate action and improving our health and wellbeing. LEZs will help deliver on these priorities but there is little doubt that they substantially change our approach to road transport in Scotland. They will restrict the most polluting vehicles and will alter how we access our cities and the services they provide. To do so in an equitable manner, it is crucial that we design LEZ secondary legislation in a collaborative way with the public, private and third sector.

We would strongly encourage everyone with an interest in Low Emission Zones to respond to this consultation and provide views on our proposals for Low Emission Zone Regulations and Guidance.

A handwritten signature in black ink, appearing to read 'Michael Matheson', written in a cursive style.

**Michael Matheson MSP**

**Cabinet Secretary for Transport, Infrastructure and Connectivity**

## 2. About this consultation

2. This consultation on Scotland's Low Emission Zones: Consultation on Regulations and Guidance gives us an opportunity to seek your opinions on issues that underpin the operation and delivery of Low Emission Zones (LEZs), including the substantive issues of emission standards, exemptions and penalty charges. A LEZ is defined as a designated area from which a vehicle is prohibited unless it meets the emission standard or is exempt.
3. There has been significant scrutiny of LEZs and air quality in recent years, and this has resulted in the inclusion of LEZs into the Transport (Scotland) Act 2019 in order to provide the legislative framework to design, establish, and operate nationally consistent LEZs. This consultation provides an opportunity for stakeholders and the general public to offer their views on the key aspects of LEZ Regulations that derive from the Transport (Scotland) Act 2019.
4. This consultation is not about the design or implementation of any individual town or city-specific LEZ.

## 3. Responding to this consultation

5. We are inviting responses to this consultation by 24 February 2020.
6. Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at [<https://consult.gov.scot/transport-scotland/low-emission-zones>]. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 24 February 2020.
7. If you are unable to respond using our consultation hub, please complete the Respondent Information Form and return to:

Email: [lezconsultation@transport.gov.scot](mailto:lezconsultation@transport.gov.scot)

Post: Air Quality  
Roads Directorate  
Transport Scotland  
Buchanan House  
4th Floor  
58 Port Dundas Road  
GLASGOW  
G4 0HF

## 4. Handling your response

8. If you respond using the consultation hub, you will be directed to the 'About You' page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your

response to published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

9. All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.
10. If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.
11. To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

## **5. Next steps in the process**

12. Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.
13. Following the closing date, all responses will be analysed and considered along with any other available evidence to help us prepare the LEZ Regulations and Guidance. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

## **6. Comments and complaints**

14. If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at [lezconsultation@transport.gov.scot](mailto:lezconsultation@transport.gov.scot).

## **7. Scottish Government consultation process**

15. Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.
16. You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, or by email or post.
17. Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:
  - indicate the need for policy development or review
  - inform the development of a particular policy
  - help decisions to be made between alternative policy proposals
  - be used to finalise legislation before it is implemented

18. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

## 8. Setting the scene

### Introduction

19. Scotland is facing legal (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.
20. Pollution hotspots associated with nitrogen dioxide and particulate matter remain in a number of Scottish towns and cities<sup>1</sup>. The Scottish Air Quality website (<http://www.scottishairquality.scot/>) provides a summary of the Scottish Air Quality objectives and standards - as set out in the Air Quality (Scotland) Regulations 2000 - along with the locations of Air Quality Management Areas<sup>2</sup> and the action plans proposed by local authorities to review, assess and mitigate air pollution in their areas.
21. The Programme for Government (PfG) 2018 committed to the introduction of LEZs into Scotland's four biggest cities between 2018 and 2020 and into Air Quality Management Areas by 2023 where National Low Emission Framework appraisals support this approach. The PfG 2017 commitment to put Scotland's first LEZ in place by 2018 was met with Glasgow City Council introducing a LEZ (for buses at least) on the 31 December 2018.
22. The Scottish Environment Protection Agency (SEPA) are providing air quality modelling outputs to Scotland's four biggest cities to support their understanding of air pollution issues in each city via the National Modelling Framework (which is creating local and regional air quality models).
23. The PfG 2018 also committed to undertaking an independent review of the Cleaner Air for Scotland: The Road to a Healthier Future (CAFS) strategy. Following a wide-ranging stakeholder exercise, the independent CAFS Review report (led by Prof. Campbell Gemmill) was published in August 2019<sup>3</sup>.
24. The PfG 2019 committed to consulting on LEZ emission standards, including the extent to which future stricter emissions standards can contribute towards encouraging the transition towards lower and zero-carbon forms of transport.
25. The National Transport Strategy (NTS2) consultation document<sup>4</sup> sets out the Scottish Government's transport vision for the next 20 years. The aspiration of NTS2 toward air pollution is that 'the people of Scotland will be able to travel in towns and cities without concerns about air quality affecting their health.' An NTS2 outcome is to 'promote greener, cleaner choices' where the intent on air quality is to 'reduce the transport sector's emissions to support our national objectives on air quality and climate change'. This goal will be achieved via a suite of enablers that include 'Reducing emissions generated by the transport

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<sup>1</sup> As outlined in the Air Quality in Scotland website at <http://www.scottishairquality.scot/>.

<sup>2</sup> Assessment of air quality is focused on locations where members of the public are regularly present and where there is exposure to the pollutant in question over the timescale for which the air quality objective is defined.

<sup>3</sup> Report can be found at: <https://www.gov.scot/publications/cleaner-air-scotland-strategy-independent-review/>

<sup>4</sup> <https://consult.gov.scot/transport-scotland/national-transport-strategy/>

system to improve air quality’ and ‘Support management of demand to encourage more sustainable transport choices’.

26. Transport will play a key role in addressing both the global climate emergency and helping to deliver Scotland’s net-zero emission target by 2045. The Scottish Governments Climate Change Plan was published in February 2018<sup>5</sup> and the Climate Change (Emissions Reductions Targets) (Scotland) Act received royal assent on the 31 October 2019<sup>6</sup>. The Acts raise the ambition of Scotland’s targets for reducing greenhouse gas emissions and seek to enhance Scotland’s efforts in tackling climate change. Moreover, the Acts acknowledge positive secondary effects around air quality, population and human health, and material assets as a result of further decarbonisation of energy generation and transport<sup>7</sup>.
27. Air pollution has a complicated relationship with human health, involving other factors such as pre-existing medical conditions, obesity, alcohol, smoking, poor diet and lack of exercise. However, it is undeniable that improving air pollution will help to improve human health. Air pollution particularly affects the very young and elderly and those with existing respiratory and cardiovascular conditions. The UK Government’s Committee on the Medical Effects of Air Pollutants (COMEAP) has estimated that for Scotland, on average across the whole population, air pollution reduces life expectancy by 3-4 months.
28. Air pollution is also a health inequalities and social justice issue, given that vulnerable groups are disproportionately affected. There is a positive relationship between air quality and social deprivation, with the most socially deprived communities more likely receive a disproportionate share of poor air quality.

## 9. Purpose of this consultation

29. Part 2 of the Transport (Scotland) Act 2019 contains provisions that will enable the creation, and civil enforcement, of LEZs by local authorities and allows Scottish Ministers to set nationally consistent standards on matters including, but not limited to, emission standards, penalties, and exemptions. The Transport (Scotland) Act 2019<sup>8</sup> can be found at the following link:

<http://www.legislation.gov.uk/asp/2019/17/enacted>

30. The purpose of this consultation is to set out the proposed arrangements and options related to the **nationally consistent LEZ standards which will be outlined in Regulations in tandem with Guidance**. The Regulations are vital in delivering successful, fair and equitable LEZs.

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<sup>5</sup> <https://www.gov.scot/publications/scottish-governments-climate-change-plan-third-report-proposals-policies-2018/>

<sup>6</sup> <http://www.legislation.gov.uk/asp/2019/15/enacted> with the development of the Act available at <https://www.parliament.scot/parliamentarybusiness/Bills/108483.aspx>

<sup>7</sup> <https://www.gov.scot/policies/climate-change/climate-change-bill/>

<sup>8</sup> The development of the Transport (Scotland) Act 2019 can be found here: <https://www.parliament.scot/parliamentarybusiness/Bills/108683.aspx>

31. Over 2018 and 2019, the Scottish Government has engaged with numerous stakeholders<sup>9</sup> on the development of the LEZ policy, with the Building Scotland's Low Emission Zone consultation being published in 2017. Feedback obtained from that consultation is available at the following link: <https://www.transport.gov.scot/news/responses-to-low-emission-zone-lez-consultation-now-analysed/>. **This consultation represents another important opportunity for stakeholders to influence LEZ policy but with a specific focus on the development of LEZ Regulations and Guidance.**
32. In May 2019, the Scottish Government held three workshops to seek views on preliminary thoughts and options around the subject of LEZ Regulations and Guidance. The Low Emission Zones workshops were held in Glasgow, Aberdeen and Dundee, welcoming input from stakeholders from the private, public and third sector in tandem with members of the public. The three workshops utilised the same agenda, materials and format. The report detailing the outcomes of the May workshops is available at the following link: <https://www.lowemissionzones.scot/uploads/docs/LEZ-in-scotland-regulations-and-guidance-workshops.pdf>. The findings from these workshops have helped inform the proposals in this consultation. As such, this consultation document makes reference to the 'May workshops'.
33. Section 10 seeks your views on a selection of issues such as national emission standards, exemptions and penalty charges.
34. Section 11 seeks your views on how the development of LEZ Guidance, which a local authority must have regard to when exercising functions conferred on it by virtue of the Transport (Scotland) Act 2019.
35. Section 12 seeks opinions on how the Scottish Government should pay due regard to impacts across equalities, business and regulation, privacy and environment in relation to LEZ Regulations.
36. We hope that as many members of the public as possible will respond to this consultation. We appreciate that some of the consultation questions are technical in nature but their application to LEZs could have direct impacts on numerous businesses and individuals. As such, we would encourage everyone to respond to any or all of those areas where you feel you have a contribution to make.

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<sup>9</sup> Including but not limited to Convention of Scottish Local Authorities, local authorities, Regional Transport Partnerships, Society of Chief Officers for Transportation in Scotland, Traffic Commissioner for Scotland, business organisations including Chamber of Commerce and Federation of Small Businesses, planning groups, non-governmental organisations, freight transportation organisations (such as the Freight Transport Association and Road Haulage Association) and bus sector organisations (including the Confederation for Passenger Transport).

## 10. Regulations

### Present day LEZ emission standards

37. The Transport (Scotland) Act 2019 section 6(4)(a) provides the powers for the Scottish Ministers to specify LEZ emission standards for vehicles in Regulations.
38. A person may not drive a vehicle on a road within a LEZ unless the vehicle meets the specified emission standard. Vehicles within the scope of a LEZ, that is, vehicles to which the LEZ applies<sup>10</sup>, which fail to comply with the LEZ emission standard will be subject to LEZ enforcement measures once the LEZ grace period has ended.
39. The Scottish Government proposals for LEZ emission standards to be adopted **in the present day** are outlined in Table 1. These emission standards will be applicable to any LEZs that are introduced following the Regulations setting the emission standards coming into force. The Scottish Government intend to bring those Regulations into force in 2020. In summary, the Scottish Government proposal is that Scottish LEZ emission standards will be Euro VI/6 for diesel vehicles and Euro 4 for petrol vehicles<sup>11</sup>, with a caveated allocation of a Euro 3 status for motorcycles. These emission standards were initially proposed in the 'Building Scotland's Low Emission Zones' consultation in 2017, with the feedback being as follows: *The majority of respondents, 62.3% (114), agreed with the proposed minimum mandatory Euro emission criteria for Scottish LEZs ...with 36.7% not agreeing*
40. Whilst an emission standard is set for motorcycles, mopeds, motorised tricycles and quadricycles in Table 1, the LEZ Guidance (in preparation) is likely to recommend that these vehicles are scoped out of LEZ schemes unless the National Modelling Framework can provide a robust justification for their inclusion in a LEZ scheme.

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<sup>10</sup> The 'scope' means that local authorities have the discretion to determine to which type of vehicle, by reference to construction only, the LEZ scheme will apply, subject to Scottish Ministers approval of the scheme.

<sup>11</sup> As noted in paragraph 68, the determination of the Euro status will be based on the data available from the DVLA database, and the associated methodologies applied to either confirm the Euro status based on the manufacturers data or inference of the Euro status of a vehicle based on the date of first registration (this approach mirrors the UK Government's approach to enforcing Clean Air Zones when applying the Euro-standard principle)

Vehicle Classification	Vehicle certification Category & Description	DVLA Tax Classes	Emission Standard
Car	Category M: Motor vehicles with at least four wheels designed and constructed for the carriage of passengers. <ul style="list-style-type: none"> <li>Category M1: Vehicles designed and constructed for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat</li> </ul>	Private/Light Goods (PLG)	Euro 6 (diesel)
Taxi and Private Hire		Petrol Car Diesel Car Alternative Fuel Car	Euro 4 (petrol)
Minibus	Category M: Motor vehicles with at least four wheels designed and constructed for the carriage of passengers. <ul style="list-style-type: none"> <li>Category M2: Vehicles designed and constructed for the carriage of passengers, comprising more than eight seats in addition to the driver's seat, and having a maximum mass not exceeding 5 tonnes.</li> </ul>	Bus	Euro 6 (diesel) Euro 4 (petrol)
Bus and Coach	Category M: Motor vehicles with at least four wheels designed and constructed for the carriage of passengers. <ul style="list-style-type: none"> <li>Category M3: Vehicles designed and constructed for the carriage of passengers, comprising more than eight seats in addition to the driver's seat, and having a maximum mass exceeding 5 tonnes.</li> </ul>	Bus	Euro VI (diesel) (with certified retrofitted diesel engines meeting Euro VI)  Euro IV (petrol)

Vehicle Classification	Vehicle certification Category & Description	DVLA Tax Classes	Emission Standard
Van	<p>Category N: Motor vehicles with at least four wheels designed and constructed for the carriage of goods.</p> <ul style="list-style-type: none"> <li>• Category N1: Vehicles designed and constructed for the carriage of goods and having a maximum mass not exceeding 3,5 tonnes.</li> <li>• Category N2: Vehicles designed and constructed for the carriage of goods and having a maximum mass exceeding 3,5 tonnes but not exceeding 12 tonnes.</li> </ul>	<p>Light Goods Vehicle Euro 4 Light Goods Vehicle Euro 5 Light Goods Vehicle Private/Heavy Goods Vehicle Special Types</p>	<p>Euro 6 (diesel) Euro 4 (petrol)</p>
Lorry/Heavy Goods Vehicle (HGV)	<p>Category N: Motor vehicles with at least four wheels designed and constructed for the carriage of goods.</p> <ul style="list-style-type: none"> <li>• Category N3: Vehicles designed and constructed for the carriage of goods and having a maximum mass exceeding 12 tonnes.</li> </ul>	<p>Heavy Goods Vehicles Haulage Vehicles</p>	<p>Euro VI (diesel) (with certified retrofitted diesel engines meeting Euro VI)</p>
Specialist Vehicles	n/a	<p>Special Types Special Vehicles Recovery Vehicle Special Concessionary Emergency Vehicles</p>	<p>Euro 6 (diesel) Euro 4 (petrol) Euro VI (diesel) (with certified retrofitted diesel engines meeting Euro VI)</p>

Vehicle Classification	Vehicle certification Category & Description	DVLA Tax Classes	Emission Standard
Motorcycles, mopeds, motorised tricycles and quadricycles*	Category L	Motorcycle	Euro 3

**Table 1** – Emission standards for all vehicle types in relation to LEZs based on the vehicle classification in the Vehicle Certification Agency Definition of Vehicle categories at <https://www.vehicle-certification-agency.gov.uk/vehicletype/definition-of-vehicle-categories.asp> and Directive 2007/46/EC at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02007L0046-20180331&from=EN>. Note that the vehicle scope and vehicle types to be included in the LEZ scope will be determined by the local authority. \*See point above in relation to scoping out such vehicles based on the National Modelling Framework data findings.

## Future LEZ emission standards

41. In April 2019, the First Minister declared a climate emergency, which reinforces the Scottish Government's Climate Change Plan 2018-2032<sup>12</sup> commitment to: *"...phasing out the need to buy petrol and diesel engine cars and vans by 2032, a full eight years ahead of the UK Government. This will be driven by a significant increase in the uptake of ultra-low emission electric and hydrogen vehicles."* The new LEZ legislation in the Transport (Scotland) Act 2019 also incorporated the emerging climate agenda by setting two mandatory objectives; the Act states that 'The objectives specified under section 14(4) must include:
  - an objective of contributing towards meeting the air quality objectives prescribed under section 87(1) of the Environment Act 1995 (regulations about air quality); and
  - an objective of contributing towards meeting the emission reduction targets set out in Part 1 of the Climate Change (Scotland) Act 2009.
42. The Programme for Government 2019 confirmed that the Scottish Government would consult on 'Scotland's ambition to make the transformative shift to zero or ultra-low emission city centres by 2030', noting the Climate Emergency Response Group (CERG) Scotland Report 2019 recommendation<sup>13</sup>.
43. LEZs could be a component of this ambition alongside other measures through the application of future, stricter LEZ emissions standards to contribute towards encouraging the transition towards lower and zero-carbon forms of transport.
44. The Scottish Government is aware that any move towards stricter emission standards in the future may have an impact on bus operators and other organisations that need to invest in new vehicles in the short term, in order to meet the proposed present-day emission standards. The process to consult on the ambition to move towards zero or ultra-low emission city centres by 2030 will consider ways in which the legacy of such investment could be accommodated in any future emissions framework.

### Question 1a

Do you agree with the proposed present-day emission standards for Scottish LEZs?

If not, why not?

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<sup>12</sup> <https://www.gov.scot/publications/scottish-governments-climate-change-plan-third-report-proposals-policies-2018-9781788516488/>

<sup>13</sup> Noting that the Climate Emergency Response Group (CERG) Scotland Report 2019 recommended that the Scottish Government should 'Signal that every one of Scotland's city centres will be vehicle emission free by 2030', as outlined at <https://www.wwf.org.uk/sites/default/files/2019-08/Climate%20Emergency%20Statement.pdf>

## Question 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.

### National exemptions

45. If a vehicle was included within the scope of a LEZ and was deemed to be non-compliant with the LEZ emission standards, and did **NOT** fall under an exemption category, then a penalty charge notice for driving within a LEZ would be issued. As such, Scottish Ministers can set out national exemptions in Regulations.
46. The Scottish Government's proposal is that there will be **national** LEZ exemptions for specific vehicle types/categories as outlined in Table 2. The vehicle type and category preferences outlined by stakeholders at the May workshops have been used to inform these proposals.
47. In addition to national exemptions, time-limited exemptions can also be issued by local authorities. These will not be stated in Regulation, but will be discussed in LEZ Guidance to provide advice on which vehicle types or uses could be considered for a time-limited exemption.

Vehicle type or classification	Workshop %	Description
Emergency Vehicles	80%	<ul style="list-style-type: none"><li>• For police purposes, including for the purposes of the National Crime Agency.</li><li>• For ambulance purposes or for the purpose of providing a response to an emergency at the request of the Scottish Ambulance Service Board.</li><li>• For or in connection with the exercise of any function of the Scottish Fire and Rescue Service or Her Majesty's Coastguard.</li></ul>
Military Vehicles	65%	<ul style="list-style-type: none"><li>• Vehicles belonging to any of Her Majesty's forces; or used for the purposes of any of those forces.</li></ul>

Vehicle type or classification	Workshop %	Description
Historic Vehicles	50%	<ul style="list-style-type: none"> <li>Vehicles which are 30 years old<sup>14</sup> or more from the start of the calendar year in which enforcement is taking place.</li> </ul>
Vehicles for Disabled Persons	45%	<ul style="list-style-type: none"> <li>Vehicles registered with a 'disabled' or 'disabled passenger vehicles' tax class</li> <li>Vehicles being used for the purposes of the "blue badge scheme"<sup>**</sup></li> </ul>
Showman Vehicles <sup>**</sup>	25%	<ul style="list-style-type: none"> <li>Highly specialised vehicles used for the purposes of travelling showmen, where the vehicle is used during the performance, used for the purpose of providing the performance or used for carrying performance equipment, or used for carrying domestic animals.</li> </ul>

**Table 2** – Scottish Government proposal for national LEZ exemptions in Regulation. The percentages show how the May workshop delegates viewed each exemption in terms of their preference to create the exemption. \*Note: blue badges are assigned to a person, not a vehicle, so a blue badge holder could travel in any vehicle and the rules of the blue badge would need to be applied to that vehicle on that day of travel. \*\*Note: whilst the May workshop finding was more in favour of not granting an exemption for showman vehicles, an exemption for showman vehicles in Regulations has been proposed by the Cabinet Secretary for Transport, Infrastructure and Connectivity during the Stage 3 debate of the Transport (Scotland) Bill, following the provision of an amendment on this issue at Stage 2.

48. The following vehicle types or classifications (not exhaustive) are **NOT** being proposed for a national exemption. The percentages show how the May workshop delegates viewed each exemption in terms of their preference to create the exemption<sup>15</sup>.

- Emergency voluntary sector organisation – 50%

<sup>14</sup> The Federation International Vehicules Anciens (FIVA) draw attention to Directive 2014/45/EU on 'periodic roadworthiness tests for motor vehicles and their trailers', which they use to draft a FIVA definition of a historic vehicle: 'a mechanically propelled road vehicle: which is at least 30 years old; which is preserved and maintained in a historically correct condition; which is not used as a means of daily transport; and which is therefore a part of our technical and cultural heritage'. The minimal difference between 30 and 40 year old vehicles in terms of their UK fleet make-up is worth noting, where vehicles which are at least 30 years old represent only 2.13% of the UK vehicle fleet whilst vehicles at least 40 years old represent 1.92% of the UK fleet, based on 2017 data from the Vehicle Licencing Statistics at <https://www.gov.uk/government/collections/vehicles-statistics>

<sup>15</sup> A number of proposals for an exemption were also raised by MSPs on the Rural Economy and Connectivity Committee during the Stage 2 scrutiny of the Transport (Scotland) Bill.

- Utility emergency repair vehicles – 50%
  - Community transport vehicles – 30%
  - Specialist vehicles – 30%
  - Accident and breakdown recovery vehicles – 25%
  - Postal vehicles<sup>16</sup> – 15%
  - Refuse collection vehicles – 15%
  - Health service vehicles – 10%
  - Out of hours shift workers – 10%
  - Hearses – 10%
  - Wedding vehicles - 5%
  - Low frequency travel vehicles – 5%
  - Diplomatic vehicles – no data as this topic was not offered as an option at the May workshops, but was raised at Stage 2 of the Transport (Scotland) Bill Parliamentary process.
49. It should be noted that, with respect to the bullet point list above, time-limited exemptions of up to 1 year may be offered by each individual local authority operating a LEZ, and these vehicles may be considered within that power.
50. The Transport (Scotland) Act 2019 also offers a time-limited exemption to be applied where a diversion as a result of a temporary road closure might cause a non-compliant vehicle to be unavoidably diverted into a LEZ. In this scenario, a non-compliant vehicle entering into a LEZ would automatically be exempt, but only where the vehicle strictly followed the signed diversion routes. If the vehicle did not follow the signed diversion route, they would incur a penalty if detected by a LEZ approved device.

### Question 2(a)

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

### Question 2(b)

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

### Penalty Charges

51. Scottish LEZs will be a road access restriction scheme<sup>17</sup>. This means that vehicles that do not meet LEZ Euro emission standards (and do not meet any LEZ exemptions but are within the scope of the LEZ) are not allowed to drive within a LEZ, and are subject to a penalty if they are detected by an approved device.

<sup>16</sup> The Scottish Government are currently examining the Postal Services Act 2011 in relation to the role of Royal Mail as a universal service provider.

<sup>17</sup> Scottish LEZs are NOT road charging schemes, where non-compliant vehicles could pay a moderate daily charge to enter (this approach has been adopted for Clean Air Zones in England and for London's Ultra Low Emission Zone).

52. Penalty rates, discounts and surcharges should be nationally consistent and will be set by Scottish Ministers within Regulations. Local Authorities will not be able to set different penalty rates, discounts or surcharges for their individual LEZs.
53. The proposed 'base level' penalty charge is £60 for cars, taxis, mini-buses and light commercial vehicles. This is based on existing penalty charge rates for bus lane and parking enforcement in Scotland.
54. A 'surcharge' is a graduation of penalties designed to target repeat offenders, such that the penalty charge can be escalated within set rules to a level which hopefully disincentives a registered keeper of a non-compliant vehicle from driving within the LEZ on a repeat basis.
55. A number of different penalty charge rates and surcharge options were reviewed by stakeholders in the May workshops, with options being ranked according to preference. The options ranged from a flat penalty charge for all vehicle types, to a penalty for different vehicle types and the application of a surcharge option for various vehicles.
56. As noted in Table 3, the **least preferred** option was for a penalty charge starting at a level that was substantially higher than other road traffic contraventions which attract a civil penalty (e.g. bus lane infringement) with different charges for different vehicle types but with no surcharge option.

#### Penalty Charges different for differing vehicle types with no surcharge option

- Car/van/taxi: £160, reduced to £80 if paid within 14 days of receipt of the penalty charge notices (PCN)
- HGV: £1000, reduced to £500 if paid within 14 days of receipt of the PCN
- Bus/coach: £1000, reduced to £500 if paid within 14 days of receipt of the PCN
- Penalty charge does not increase with increasing number of contraventions

**Table 3** – 'Least preferred option' for LEZ penalty charges in Scotland as identified at the May workshop; identified as option 6 in the workshops.

57. Table 4 outlines the **most preferred** option as identified by stakeholders at the May workshops. This would see a starting penalty charge akin to other road traffic contraventions – such as bus lane enforcement charge notices and parking penalty charge notices - but with an option for surcharges to be applied.

#### Penalty Charges different for differing vehicle types with surcharge option

Car/vans:

- First contravention: £60, reduced to £30 if paid within 14 days of receipt of the PCN
- Second contravention: £90 reduced to £45 if paid within 14 days of receipt of the PCN
- After 2nd contravention, incremental graduation eventually up to the maximum.

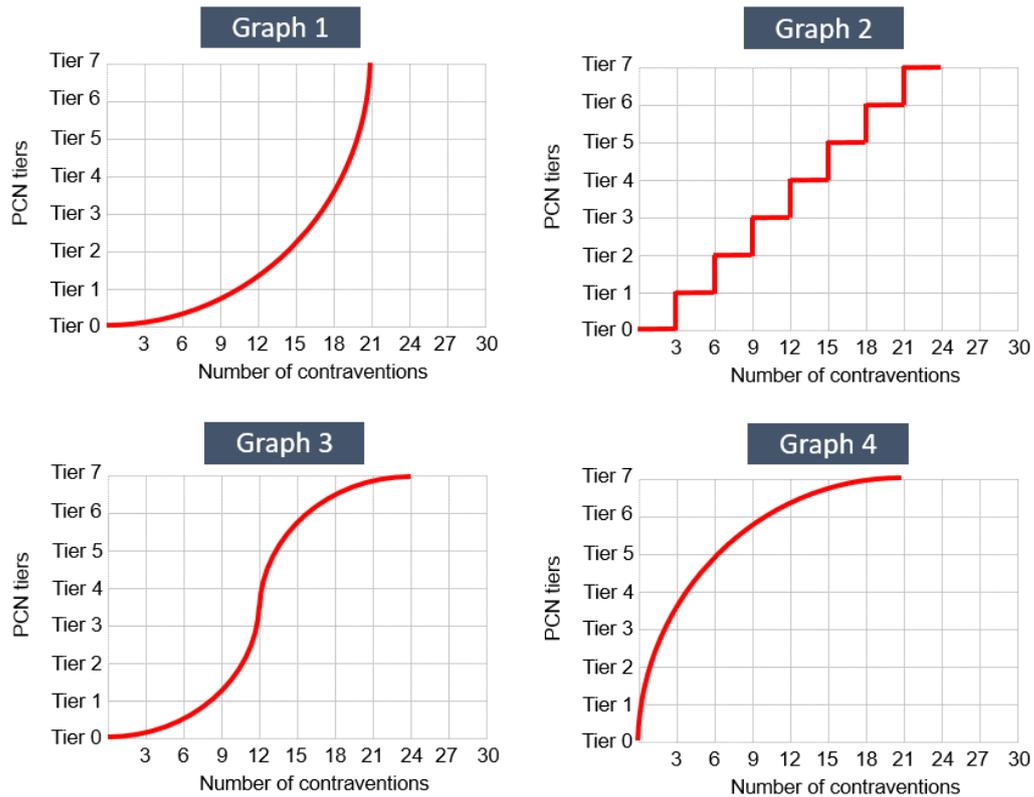
- Maximum: Could go up to £5000. However, the maximum could be set at a level below this e.g. £500 reduced to £250 if paid within 14 days of receipt of the PCN

HGV/bus/coach:

- First contravention: £500, reduced to £250 if paid within 14 days of receipt of the PCN
- Second contravention: £750, reduced to £375 if paid within 14 days of receipt of the PCN
- After 2nd contravention, incremental graduation eventually up to the maximum.
- Maximum: Could go up to £5000. However, the maximum could be set at a level below this e.g. £1000, reduced to £500 if paid within 14 days of receipt of the PCN

**Table 4** – ‘Most preferred option’ for LEZ penalty charges in Scotland based on the examples provided by Transport Scotland at the May workshops; identified as option 10 in the workshops. Note that the application of a surcharge methodology is based on an increase per contravention rather than, say, 3 contravention in a set period of time (as noted below). In the example shown above, the penalty rate for larger vehicles (HGVs/buses) would be around 12 times higher than lighter vehicles (cars, vans). The ‘starting point’ fine of £60 is based on historical penalty charge notices for parking contraventions, but this is not to say that the ‘starting point’ could not alter in the future for LEZ penalties.

58. A **discount** could be applied to the base level penalty charge notice. If a penalty was paid within a set period of time (e.g. 14 days), then the penalty could be reduced by 50%.
59. The **surcharge** would work by increasing the penalty charge where contraventions are detected on a ‘repeat basis’. The design methodology for the surcharge is open for debate, and we would welcome views on this issue via Questions 3a to 3d.
60. The application of a “tiered” surcharge approach is proposed. Figure 1 outlines various options for progression through the surcharge tiers, from a relatively linear moderate approach in Graph 1 to an aggressive approach in Graph 4.



**Figure 1** - Various surcharge options. Graph 1 indicates a gradual increase in penalty tiers. Graph 2 indicates a stepped incremental increase in penalty tiers over a uniform number of contraventions. Graph 3 indicates a gradual increase in penalty tiers over a smaller number of penalty contraventions compared to graph 3, with an acceleration through the tiers thereafter. Graph 4 indicates a rapid acceleration through the tiers from the outset. Graph 1 is the least aggressive surcharge methodology whilst Graph 4 is the most aggressive surcharge methodology.

61. The Scottish Government proposal for national penalty rates and the application of a surcharge method for Scottish Low Emission Zones are outlined in Table 5, based on the principles noted above. A 'tiered' set of surcharges are applied based on the approach advocated by Graph 2. Note that the penalty rate per tier is calculated by doubling the penalty rate of the preceding tier, however may be subject to change following feedback from this consultation.
62. The Scottish Government proposal is that 3 contraventions committed in the same LEZ within a 28 day period would see the offender moving up one tier in the penalty "tier" system. If the offender committed another 3 contraventions in the same LEZ, the same rule-set as noted above would apply, and the offender would move up to the next penalty tier.

63. It is important to highlight that the 28 day period would start on the date of issue of the first penalty charge notice (PCN), and not the date of the first contravention. This means that the first PCN would be received by the offender before any repeat contraventions are subject to the surcharge, therefore giving the offender the opportunity to change their behaviour.
64. The offender could also move down - as well as up - between the 'tiers' of surcharge. In this instance, should no contraventions be committed within a 28 day period, the offender would move back down to the base level tier.

Surcharge tier	Car or taxi	Minibus	Light Commercial Vehicle	Bus/Coach	Heavy Goods Vehicle	Motorbikes/ mopeds	Specialist vehicles
Base level	£60	£60	£60	£500	£500	£60	£60
Tier 1	£120	£120	£120	£1000	£1000	£120	£120
Tier 2	£240	£240	£240	£2000	£2000	£240	£240
Tier 3	£480	£480	£480	£4000	£4000	£480	£480
Tier 4	£960	£960	£960	£5000	£5000	£960	£960
Tier 5	£1920	£1920	£1920	£5000	£5000	£1920	£1920
Tier 6	£3840	£3840	£3840	£5000	£5000	£3840	£3840
Tier 7	£5000	£5000	£5000	£5000	£5000	£5000	£5000

**Table 5** – Examples of tiered penalty rates (using a surcharge) for various vehicle types. The figures show the value of each penalty charge notice within each ‘tier’. The number of contraventions in a pre-set timeframe that would determine movement to the next tier is not shown in this table.

### Question 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.

### Question 3b

Which surcharge 'curve' in Figure 1 represents the best approach to designing a surcharge?

### Question 3c

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

### Question 3d

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

## Enforcement Regime

65. Details of the LEZ enforcement regime will be outlined within Regulations, with the general principles of the LEZ enforcement regime covering:
  - i. the manner in which a penalty charge notice may be enforced
  - ii. the issuing of PCNs or the issuing of a further PCN following cancellation of the original PCN + the records that must be produced by or in connection with approved devices
  - iii. the timing and manner of payment of a penalty charge
  - iv. reviews and appeals process
  - v. the enabling of local authorities to enter into arrangements with any person in connection with the exercising of the LEZ enforcement regime
66. There are already some well-established civil enforcement regimes in Scotland (e.g. bus lane enforcement<sup>18</sup> and decriminalised parking enforcement<sup>19</sup>). The proposed LEZ enforcement regime will seek to learn from these existing enforcement principles. Enforcement of LEZs relies heavily on technical procedures and therefore collaboration with local authorities and technology providers will undoubtedly be required in order to design the enforcement regime Regulations.

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<sup>18</sup> <http://www.legislation.gov.uk/ssi/2011/442/made>

<sup>19</sup> <https://www.transport.gov.scot/media/41870/guide-to-dpe-outside-london-lac-1-95.pdf>

## **i. Manner in which a penalty charge notice may be enforced**

67. Non-compliant vehicles which drive within a LEZ will be detected via an approved device. As outlined within our previous consultation in 2017<sup>20</sup>, the Scottish Government intends to utilise Automatic Number Plate Recognition (ANPR) cameras as the primary basis for monitoring and enforcing LEZs. It is worth noting that the ANPR camera will only detect a 'moving-vehicle' contravention; a stationary "parked" vehicle will not be detected by an approved device.

## **ii. Issuing of a penalty charge notice (or the issuing of a further PCN following cancellation of the original PCN)**

68. Details of the registered keeper, and relevant vehicle particulars will be requested from the Secretary of State (in the guise of the DVLA) or from another source specified in Regulations<sup>21</sup>. These details will be used to determine whether a vehicle is compliant or non-compliant with LEZ emission standards (as noted above in Question 1).
69. When a local authority has reason to believe that a vehicle is non-compliant (and is not subject to a grace period, or is not exempt), it may serve a PCN on the registered keeper (or the person appearing to be liable) to pay a penalty.
70. A PCN must be issued to the registered keeper within 28 days of the detection date.
71. A PCN would include the following relevant information based on the data records produced by an approved device:
- the registration mark of the vehicle (assigned under section 23 of the Vehicle Excise and Registration Act 1994)
  - the make and model of the vehicle
  - the time and date on which the vehicle is alleged to have driven within the zone to which the scheme relates
  - the name and address of the registered keeper of the vehicle alleged by a local authority (or its enforcement agent) to have driven in the zone to which the scheme relates,
72. A PCN could also include any of the following information:
- the colour of the vehicle
  - the reason(s) why the authority believe that a penalty is payable
  - the penalty amount (including any discounts)
  - the date when the PCN is required to be paid by
  - information on appealing a PCN, including the statutory grounds for appeal
  - the manner in which the PCN may be paid

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<sup>20</sup> [https://consult.gov.scot/transport-scotland/building-scotlands-low-emission-zones/supporting\\_documents/Low%20Emission%20Zones%20Consultation%202.pdf](https://consult.gov.scot/transport-scotland/building-scotlands-low-emission-zones/supporting_documents/Low%20Emission%20Zones%20Consultation%202.pdf)

<sup>21</sup> Note that bus lane enforcement in Scotland sets a limit of 14 days from the date of detection but there is no time limit explicitly stated in the Act in relation to the time limit for requesting data from the Secretary of State for LEZ contraventions

- that the recipient may, by notice in writing to the authority, request it to provide the recipient, free of charge, with a copy of the record of contravention produced by the approved device

### **iii. Timing and manner of payment of a PCN**

73. The PCN should be paid within 28 days of receipt of the PCN. If the charge is paid within 14 days of issue of the PCN, the charge would be reduced by 50 per cent (at the discretion of the relevant local authority).
74. A PCN will be able to be paid in a number of different ways, e.g online, via phone or post.

### **iv. Reviews and appeals**

75. There may be reasons to seek a review of a PCN from the local authority, and thereafter to appeal a PCN if the review concludes that the PCN was correctly issued. For LEZs, the proposed grounds for a review might include:
  - The alleged contravention did not occur. This might include the vehicle not being within the LEZ at the time of the contravention, the vehicle being exempt or the vehicle still being subject to a grace period
  - The conduct constituting the contravention is the subject of criminal proceedings, or a fixed penalty notice has already been given in respect of that conduct
  - The recipient of the PCN was not the registered keeper on the detection date
  - The charge exceeded the amount applicable in the circumstances of the case, given the potential application of a surcharge depending on the number of contraventions within a defined period of time
  - The recipient of the PCN was the registered keeper of the vehicle on the detection date, however
    - The vehicle was subject to a hire agreement at the time of the contravention, and the person hiring the vehicle, or an individual authorised to sign on that person's behalf, has signed a statement of liability acknowledging that person's liability in respect of any charge incurred during the currency of that hiring agreement,
    - the relevant vehicle is kept by a vehicle trader; and at the time of the contravention, a person other than the vehicle trader was the registered keeper of the relevant vehicle
    - the registered keeper has sold or transferred the relevant vehicle before the time of the contravention, or
    - on the date of the contravention, the vehicle was in control by another person without the recipient's consent
76. Where a local authority accepts that at least one of the grounds for review noted above has been met, the local authority must cancel the PCN, and serve a notice on the recipient stating that the PCN has been cancelled.
77. Where it has not been satisfied that any of these grounds have been established, a notice of rejection must be served.

78. If the review is rejected by the relevant local authority, the recipient may appeal, on the same grounds as those for a review, with the appeal process either dismissing or allowing the appeal.

#### **vi. Local authority arrangements to exercise the enforcement regime**

79. A responsible body, or the responsible bodies enforcement agent, will perform and manage the enforcement regime, using relevant information (as noted above) as necessary to deliver the enforcement of the LEZ to which the information relates. An enforcement agent who is a person with whom the local authority has entered into arrangements in connection with enforcement.

### **Question 4**

Do you agree with the general principles of the LEZ enforcement regime?

If not, why not?

#### **Prior consultation**

80. Section 11 of the Transport (Scotland) Act 2019 outlines the organisations which a local authority must consult when making, amending or revoking a scheme. These organisations are:
- the Scottish Environment Protection Agency;
  - Scottish Natural Heritage;
  - Historic Environment Scotland;
  - such persons as the authority considers represent the interests of—
    - the road haulage industry,
    - the bus and coach industry,
    - the taxi and private hire car industry
    - local businesses, and drivers, likely to be affected by the proposal,
  - such persons (if any) as are specified by the Scottish Ministers in regulations; and
  - such other persons as the authority considers appropriate.
81. Scottish Ministers have the power, by way of Regulations, to make provision to specify other persons whom local authorities must consult before a local authority asks the Scottish Ministers to approve the making, amendment or revocation of a LEZ.
82. During the May workshops, over 50 different “persons” (stakeholder groups) were identified by stakeholders as those who should be consulted by local authorities when proposing, amending or revoking a LEZ (over and above those already listed on the face of the Act). Some stakeholder groups were more popular than others, and these have helped to steer the proposals outlined below.

83. The Scottish Government proposal for additional ‘other persons’ whom local authorities must consult is outlined below:

- Emergency services
- Residents within a zone
- Local authorities (neighbours to the local authority delivering the scheme)
- Regional Transport Partnerships
- NHS (including Health Boards)
- Residents living within a LEZ
- Community council’s where all or part of whose area is within the LEZ scheme area
- Active travel groups (covering cyclist and pedestrians, such as Sustrans)
- Commissioner for Children and Young People in Scotland
- Active Nation Commissioner for Scotland
- Disabled groups (such as Mobility and Access Commission for Scotland)
- Motorcycle groups

84. The Scottish Government does **NOT** intend to include the ‘other persons’ listed below as those whom a local authority must consult. However, the Scottish Government is keen to seek views through this consultation exercise on the merits for including some of those listed below in Regulations<sup>22</sup>:

- Scottish Government<sup>23</sup>
- Chambers of commerce<sup>24</sup>
- Federation of Small Businesses<sup>25</sup>
- Community Transport operators
- Community Planning Partnerships
- Housing developers
- Car rental companies
- Car park companies
- Trade Bodies representing the transport sector
- Trade Unions
- Rail industry
- Educational institutions (Universities, Colleges etc)
- Construction industry
- Tourism organisations
- Delivery companies (including the Royal Mail)

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<sup>22</sup> The May workshop feedback comments on the breadth of “additional” statutory consultees is available in Annex B Task 4(3) of the workshop report. It is worth noting that the May workshop attendees generally agreed with the list of stakeholders listed on the face of the Act. A number of ‘other persons’ were also raised by MSPs on the Rural Economy and Connectivity Committee during the Stage 2 scrutiny of the Transport (Scotland) Bill.

<sup>23</sup> Scottish Ministers, acting on behalf of the Scottish Government, are required to approve proposals. Therefore, it would not be appropriate to include this group as a statutory consultee.

<sup>24</sup> it is arguable that this stakeholder is already covered broadly under the guise of ‘local businesses’, which is already outlined on the face of the Act. This point will be made clear in the LEZ Guidance.

<sup>25</sup> Again, it is arguable that this stakeholder is already covered broadly under the guise of ‘local businesses’, which is already outlined on the face of the Act. This point will be made clear in the LEZ Guidance.

- Coach companies
- Waste management companies
- Care Home providers
- Housing Associations
- Young Persons representatives
- Elderly Persons representatives
- Historic vehicle organisations<sup>26</sup>
- Users of public transport
- Individuals with health conditions which may be affected by air quality
- Bus users

85. It is worth noting that those ‘other persons’ not stated in Regulations could be included in the LEZ Guidance as ‘advisable other persons’ for local authorities to engage with during the preparation of their LEZ scheme(s).

## Question 5

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

### **Performance of a scheme: Direction to carry out a review and actions following a review**

86. Section 30 of the Act states that a local authority can carry out a review of the operation and effectiveness of their low emission zone scheme, following an instruction from either Scottish Ministers or elected members of the local authority.
87. A “review” is different to the publication of an “annual report”, where an annual report would cover as a minimum: (1) the costs of proposing, making and operating the scheme; (2) the gross and net revenue gathered by the authority from the operation of the scheme, and (3) details of how the revenue has been used to facilitate the achievement of the scheme’s objectives.
88. A review should assess whether the objectives of the scheme are being achieved. On completion, the local authority must prepare and publish a report with a copy provided to Scottish Ministers.
89. Should a review be undertaken, the conclusions reached could help inform decision making around the need for a possible amendment to, or revocation of, a low emission zone scheme.
90. If a review concludes that a LEZ is not performing as expected in relation to the scheme objectives, Scottish Ministers may give direction to a local authority to undertake steps to address the LEZ under-performance.

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<sup>26</sup> The proposition in this consultation for an exemption for historic vehicles could arguable preclude such stakeholders being incorporated into Regulations as a ‘prior consultee’.

### **Question 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?

## 11. Guidance

### Introduction

92. Section 32 of the Transport (Scotland) Act 2019 states that ‘a local authority must have regard to any written guidance given by Scottish Ministers about the exercise of function conferred on it’. This section of the consultation seeks to examine several aspects of the forthcoming LEZ Guidance.

### Purpose and objectives of a LEZ

93. The Transport (Scotland) Act 2019 requires two *mandatory* objectives for LEZ Schemes, namely: (1) contributing towards meeting the air quality objectives prescribed under section 87(1) of the Environment Act 1995 and (2) contributing towards meeting the emission reduction targets set out in Part 1 of the Climate Change (Scotland) Act 2009.

94. Local authorities can set other secondary objectives for their schemes as they see fit under the auspice of Section 14(1)(d) of the Act, with the objectives being Specific, Measurable, Achievable, Relevant and Time-related (SMART).

95. The importance of secondary objectives centres around three key aspects:

- Objectives should enable the local authority to tangibly demonstrate the range of co-benefits that LEZs may help to deliver or support. A number of ‘topical area’ co-benefits were identified during the Building Scotland’s Low Emission consultation in late 2017<sup>27</sup> and the LEZ Regulations stakeholder workshops in May<sup>28</sup>. During the Stage 3 debate of the Bill, the Cabinet Secretary for Transport, Infrastructure and Connectivity highlighted that ‘LEZs have the potential to interact with a host of other transport issues, such as congestion, active travel and encouraging the uptake of ultra-low emission vehicles’.
- Use of penalty charge monies by a local authority will be tied to the delivery of a scheme’s objectives, and only once the scheme objectives have been met can Scottish Ministers seek a repayment of any grants received, should they so wish. Whilst the most successful LEZ scheme will not raise any revenue (as all vehicles will comply with the LEZ emission standard), local authorities may wish to set voluntary objectives in a way that they feel would make best use of any penalty monies received.
- Objectives will frame the content of both annual reports and possible scheme reviews (both aspects of the Act).

96. The forthcoming LEZ Guidance will outline a range of exemplar voluntary objectives for local authorities to consider across a suite of topical areas. The goal of this consultation question is to obtain views on the type and form of voluntary objectives.

97. Examples of topical areas that could help frame potential secondary objectives are outlined in Table 6:

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<sup>27</sup> <https://www.transport.gov.scot/news/responses-to-low-emission-zone-lez-consultation-now-analysed/>

<sup>28</sup> <https://www.lowemissionzones.scot/uploads/docs/LEZ-in-scotland-regulations-and-guidance-workshops.pdf>

Topical area	Guide to help develop secondary objectives
Modal shift	<p>Encouraging and promoting a permanent preference for more sustainable transport modes and infrastructure investments.</p> <p>Modal shift from individual car journeys, to public transport, zero emission vehicles and active travel.</p> <p>Increase park and ride provisions within the vicinity of a LEZ, discouraging private cars from entering city centres.</p>
Public transport provision	<p>Support the introduction of bus prioritisation measures to enable buses to operate as efficiently and reliably as possible whilst minimising their environmental impact.</p> <p>Encourage the uptake of low or zero emission public transport fleets.</p>
Planning / Place making	<p>Contribute to ongoing transformational change and development, helping to promote urban spaces as desirable places to live, visit and invest in.</p>
Public health and wellbeing	<p>Protect public health and wellbeing</p>
Congestion	<p>Support the reduction in the annual average daily traffic (AADT) on strategic and local roads.</p>

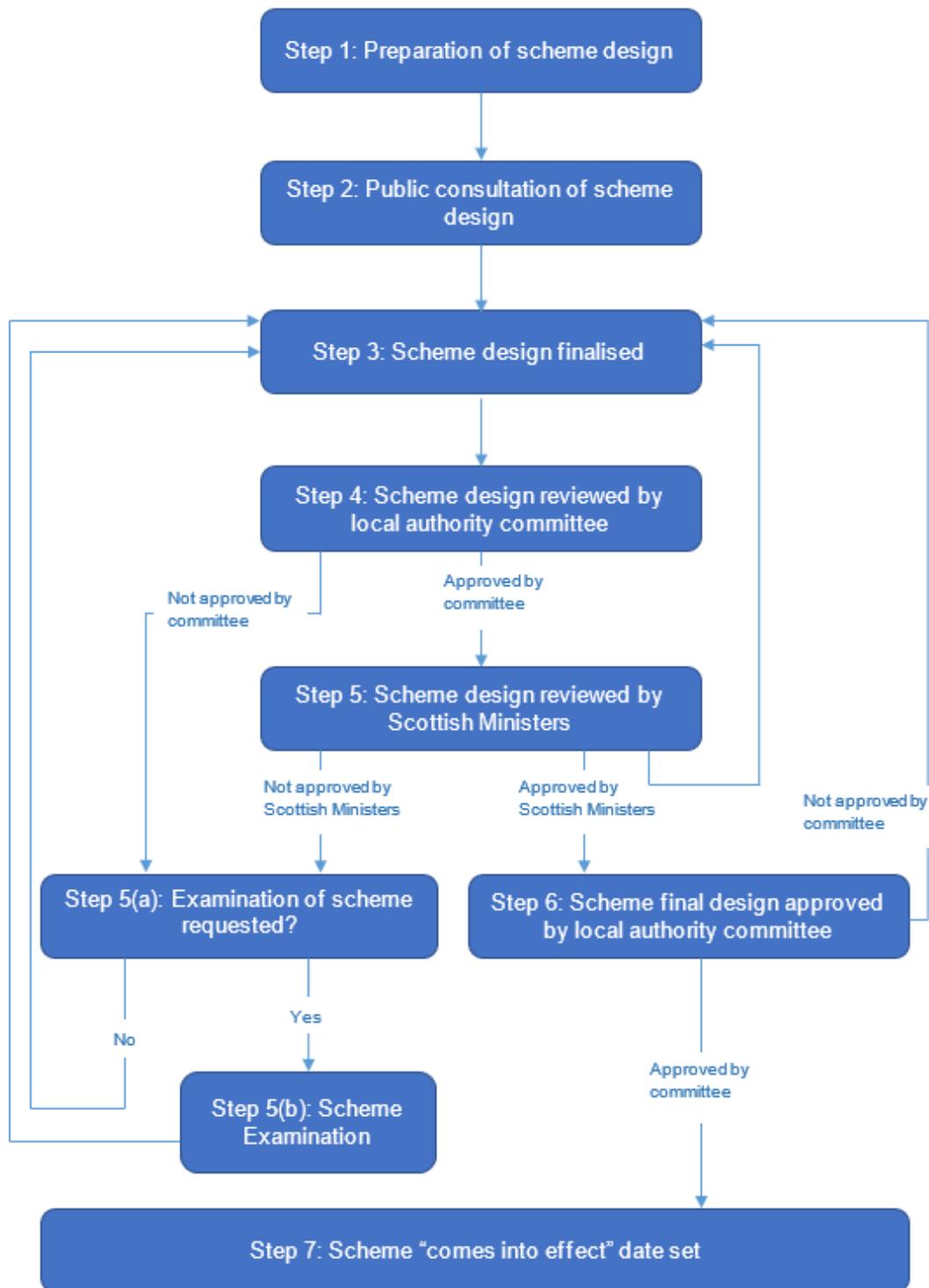
**Table 6** – Topical areas to help inform development of secondary objectives

## Question 7

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

### When a LEZ comes into effect

98. Section 14(1)(b) of the Act refers to ‘the date on which the scheme comes into effect’. Essentially, this means ‘the starting point of a LEZ, where a LEZ grace period will commence, with enforcement beginning once the grace period ends’.
99. In order for a scheme to ‘come into effect’, it is envisaged that a number of high level procedural steps will be followed as outlined in Figure 2:



**Figure 2** – Steps for a LEZ to come into effect

### Question 8

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

## Approved devices and technological opportunities

100. Sections 7(1), 7(2) and 21 of the Act state that type 'approved devices' will be used in connection with the operation of LEZ schemes. Such 'approved devices' will produce a record to establish whether a person was driving a vehicle within a LEZ and to determine whether a vehicle meets the specified emissions standard. This is the minimum requirement in the use of approved devices.
101. The deployment of approved devices in LEZs will create a wealth of technological opportunities but any aspirations must accommodate privacy concerns. The LEZ Guidance will address both of these aspects. Two separate documents will be published by the Scottish Government to offer guidance on what constitutes an approved device (e.g. Automatic Number Plate Recognition Cameras) in tandem with a Certification of Approved Devices (CoAD) document, following similar advice published by the UK Government for Clean Air Zone approved devices<sup>29</sup>.
102. Deployment and use of approved devices within LEZs offers an opportunity to achieve 'added value'. Just delivering the minimum, to enforce LEZs by detecting non-compliant vehicles, would arguably be a missed opportunity.
103. The government proposal is that local authorities should seek to engage, collaborate and partner with the Intelligent Transport Systems community in a way that **maximises the technological potential** of approved devices and their associated back-office system, to both support delivery of the mandatory and secondary objectives of LEZs (particularly associated with air quality and climate change) **AND** offer a tangible contribution to the local authority's placemaking aspirations/ agenda<sup>30</sup>.

### Question 9

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

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<sup>29</sup> See <https://www.vehicle-certification-agency.gov.uk/other/civil-traffic-enforcement.asp> and <https://webarchive.nationalarchives.gov.uk/20120608000138/http://www.dft.gov.uk/publications/tma-part-6-certification-of-approved-devices> for examples of Certification of Approved Devices

<sup>30</sup> Noting that there could be potential alignment with ongoing 'Transformation Projects' that the likes of Glasgow and City of Edinburgh Council are progressing now.

## 12. Assessing Impact

### Introduction

104. We are committed to assessing the impact of our new LEZ Regulations proposals on a wide range of stakeholder groups across Scotland and local communities. This consultation will contribute into the process of assessing the equalities, business and regulatory, and environmental impact of our LEZ Regulations and Guidance proposals.
105. The impact assessments cover the following:
- Equality Impact Assessment (EQIA) including the Fairer Scotland Duty
  - Child Rights and Well Being
  - Business and Regulatory Impact Assessment (BRIA)
  - Data Protection Impact Assessment (DPIA)
  - Environmental impact
106. We will take a robust evidence based approach to the development of our impact assessments and will work in close consultation with key stakeholders and representatives of particular groups that are likely to be impacted.

### Equality impact assessment and Fairer Scotland duty

107. In creating a consistent approach to LEZs in Scotland, the public sector equality duty requires the Scottish Government to pay due regard to the need to the following:
- Eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010
  - Advance equality opportunity between people who share a protected characteristic and those who do not and
  - Foster good relations between people who share a relevant protected characteristic
108. These three requirements apply across the 'protected characteristics' of:
- age
  - disability
  - gender reassignment
  - marriage and civil partnership
  - pregnancy and maternity
  - race
  - religion and belief
  - sex and sexual orientation
109. The Scottish Government must also include consideration of the:
- very young and elderly (Child Rights and Well Being), given the impacts of air pollution to exacerbate existing health conditions in the very young and elderly.
  - socioeconomic disadvantage (Fairer Scotland Duty), given that some of the LEZ Regulations - such as penalty rates and exemptions - may have

direct linkages with socio-economic inequality issues such as low income, low wealth, and area deprivation.

110. The Scottish Government will consider the responses from the consultation process in determining any actions needed to meet its statutory obligations. Your comments will be considered in a full Equality Impact Assessment to determine whether any further work in this area is needed.

### **Question 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

### **Business and Regulation**

111. A Business and Regulatory Impact Assessment should analyse whether a policy (or in this case Regulations) is likely to increase or reduce the costs and burdens placed on businesses, the public sector and voluntary and community organisations.
112. Your comments to this consultation will help inform a full BRIA of our LEZ Regulations and Guidance proposals.

### **Question 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.

### **Data Protection Impact Assessment**

113. Under the General Data Protection Regulation, the Scottish Government must complete a DPIA for all projects involving personal data and privacy. With the Transport (Scotland) Act 2019 requiring the use of approved devices to enforce LEZs, the management of personal data and privacy must be at the heart of LEZ delivery.
114. A full Privacy Impact Assessment will be conducted to ascertain whether our proposals may have an impact on the privacy of individuals.

### **Question 12**

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

### **Environment**

115. The Environmental Assessment (Scotland) Act 2005 ensures those public proposals that are likely to have a significant impact on the environment are assessed and measures to prevent or reduce adverse effects are sought, where possible, prior to implementation. The introduction of LEZs is likely to have significant environmental effects, so this consultation will help to identify and further explore the potential environmental effects that might arise from our LEZ Regulations and Guidance proposal.

### **Question 13**

Do you think the LEZ proposals outlined in 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.

### **Question 14**

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

### 13. Consultation Questions

Number	Consultation Question
1a	Do you agree with the proposed <u>present-day</u> emission standards for Scottish LEZs? If not, why not?
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.
2a	Which of the proposed national LEZ exemptions do you agree with? Please be as specific as possible in your reasoning.
2b	Are there any other LEZ exemptions you would propose? If so, what should these exemptions be and why?
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.
3b	Which surcharge 'curve' in Figure 1 represents the best approach to designing a surcharge?
3c	How should the surcharge approach be applied in order to discourage non-compliant vehicles from driving within a LEZ?
3d	How many days should lapse before a registered keeper of a vehicle returns to the base tier of the penalty charge?
4	Do you agree with the general principles of the LEZ enforcement regime? If not, why not?
5	What are your views on the proposed list of 'other persons' that local authorities must consult with on their LEZ plans?
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?
7	What secondary objectives should be created for LEZ schemes? Please be as specific as possible in your reasoning

Number	Consultation Question
8	Do you agree with the steps outlined in Figure 2 for enabling a LEZ scheme to come into effect? If not, why not?
9	How can local authorities maximise the technological opportunities available from the deployment of approved devices?
10	<p>What positive or negative impacts do you think the LEZ proposals outlined within this consultation may have on:</p> <p>(a) particular groups of people, with particular reference to 'protected characteristics' listed above</p> <p>(b) the very young and old</p> <p>(c) people facing socioeconomic disadvantages</p>
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.
12	What impacts do you think the LEZ proposals outlined within this consultation may have on the personal data and privacy of individuals?
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.
14	Do you have any other comments that you would like to add on the Scottish Government's LEZ proposals outlined within this consultation?

# Low Emission Zone Regulations and Guidance

## RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name  
 Publish response only (without name)  
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No



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