



TRANSPORT SCOTLAND

**The Low Emission Zone (Emission Standards,
Exemptions and Enforcement) (Scotland) Regulations
2021, and
The Low Emission Zone (Scotland) Regulations 2021**

Data Protection Impact Assessment

January 2021

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Project Name	The Low Emission Zone (Emission Standards, Exemptions and Enforcement) (Scotland) Regulations 2021 The Low Emission Zone (Scotland) Regulations 2021
Project Lead	Policy Lead: Katrina Farquharson

After consulting the Data Protection Impact Assessment (DPIA) checklist, I can confirm that there is a requirement for a full DPIA to be completed for our proposed new project/process. I am content that the information being processed for this project contains mitigations to risks identified as high, or is low risk personal data.

If the circumstances or scope around the project change, I understand I will be required to consult the checklist again and complete a DPIA if required.

Project Lead Signed	Katrina Farquharson	Date	7 January 2021
Data Protection Officer Signed	Lorna Clark	Date	7 January 2021

You must CONSIDER whether to do a DPIA if you plan to carry out any other:

- Evaluation or scoring
- Automated decision-making with significant effects
- Systematic processing of sensitive data or data of a highly personal nature
- Processing on a large scale
- Processing of data concerning vulnerable data subjects
- Innovative technological or organisational solutions
- Processing involving preventing data subjects from exercising a right or using a service or contract
- We consider carrying out a DPIA in any major project involving the use of personal data
- If we decide not to carry out a DPIA, we document our reasons.
- We carry out a new DPIA if there is a change to the nature, scope, context or purposes of our processing.

You MUST CARRY OUT a DPIA if you plan to do any of the following:

- If there is a change to the nature, scope, context or purposes of our processing
- Use systematic and extensive profiling or automated decision-making to make significant decisions about people
- Process special category data or criminal offence data on a large scale
- Systematically monitor a publicly accessible place on a large scale
- Use new technologies
- Use profiling, automated decision-making or special category data to help make decisions on someone's access to a service, opportunity or benefit
- Carry out profiling on a large scale
- Process biometric or genetic data
- Combine, compare or match data from multiple sources
- Process personal data without providing a privacy notice directly to the individual
- Process personal data in a way which involves tracking individuals' online or offline location or behaviour
- Process children's personal data for profiling or automated decision-making or for marketing purposes, or offer online services directly to them
- Process personal data which could result in a risk of physical harm in the event of a security breach

Project aim

The proposed policy forms the basis for creating Low Emission Zone (LEZ) regulations under the Transport (Scotland) Act 2019. The policy intention is to enable civil enforcement of LEZs, to set nationally consistent standards on emissions, penalties and exemptions to ultimately help to mitigate air pollution that is predominantly caused by road transport at a number of hotspots in Scotland's towns and cities.

The LEZ regulations enable Scottish Ministers to set nationally consistent emission standards, exemptions and penalty charges based on vehicle classification, and to make provision for or in connection with the enforcement of low emission zone schemes. Regulations on enforcement may make provision for or about:

- (a) penalty charge notices (including the form, content and method of issue);
- (b) the timing and manner of payment of a penalty charge;
- (c) reviews and appeals (including grounds of review or appeal) in connection with the issuing of penalty charge notices;
- (d) the way a penalty charge notice may be enforced;
- (e) steps that may be taken following the cancellation of a penalty charge notice (including the issuing of another penalty charge notice in respect of the same contravention); and
- (f) enabling local authorities to enter arrangements with any person in connection with the exercise of a function conferred on a local authority by the regulations or under Section 7 of the Transport (Scotland) Act 2019.

LEZ regulations will also set out the specification requirements regarding the equipment and systems ('Approved Devices') that can be used in connection with the operation and enforcement of a low emission zone scheme.

Images of vehicles driving within the LEZs will be captured by an approved device (e.g. ANPR/CCTV cameras), with the main information captured on the image being the vehicle's registration plate, and the date and time the image was captured. Approved devices are not intended to capture vehicle occupants or pedestrians though it is acknowledged that there is a risk that these could be captured unintentionally; this risk is discussed further in Step 5.

The vehicle's registration number will be sent to the DVLA. From engagement with the DVLA, it is understood that they would prefer a '2-stage' data request process by the Local Authorities for the enforcement of LEZs. The first request would be for the relevant vehicle particulars, including the emission standard or compliance status. This information would be used to determine whether a contravention has occurred. Only if a contravention has occurred, would the second data request be initiated. The second data request would request the information required to issue a PCN to the registered keeper of the vehicle (the name and address of the registered keeper of the vehicle).

This 2-stage process is preferred by the DVLA as it means unnecessary data is not requested if it is not required. Furthermore, if the vehicle is known to be LEZ compliant, the VRN will not be retained for any longer than necessary to verify this.

The enforcement of LEZs will be operated locally by each local authority, and data sharing agreements will be required between local authorities and the DVLA in order to obtain vehicle and registered keeper information to determine if a contravention has occurred, and to issue a PCN. As discussed in Step 2, Transport Scotland are currently in discussions with the DVLA regarding data sharing agreements which would allow this data sharing to take place. The requirements of such data sharing agreements are expected to be similar to existing agreements

already in place between the DVLA and local authorities for other types of civil traffic enforcement.

Under Section 7 of the Act, where a penalty is to be paid, the registered keeper of the vehicle will be responsible. Their information therefore will be obtained. There will also be circumstances where a person other than the registered keeper of a vehicle was driving the vehicle within a LEZ whereby the registered keeper of a vehicle should not be responsible for a PCN. Therefore, these circumstances, which are based on the circumstances outlined within Section 6 of The Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011, will be outlined in regulation so PCNs can correctly be re-issued to the appropriate person and there is no ambiguity which could result in difficulties reaching decisions through representations/appeals.

Whitelists (e.g. for national/local time-limited exemptions) may also be held both nationally and locally. The information to be held on a whitelist would be provided to Transport Scotland or local authorities with agreement from specific parties (e.g. Police, Scottish Fire and Rescue Service) Depending on the system established for data sharing, the data may need to be shared on a daily basis. This is again a similar to other existing civil traffic enforcement systems operated by local authorities.

Nature of the processing

As set out under Step 1, images of vehicles driving within an LEZ will be captured by an approved device (e.g. ANPR/CCTV cameras), with the main information captured on the image being the vehicle's registration plate, and the date and time the image was captured. Approved devices are not intended to capture vehicle occupants or pedestrians though it is acknowledged that there is a risk that these could be captured unintentionally; this risk is discussed further in Step 5.

The data collected will be used in order to determine whether a contravention has occurred (i.e. whether a vehicle is compliant with the emission standards), and to issue a PCN.

Due to the method of detection, the Penalty Charge Notice (PCN) for LEZ contraventions cannot be placed on the vehicle at the time that the contravention occurred. Therefore, in order to issue and enforce a PCN, the name and address of the registered keeper of the vehicle, or other appropriate person where that person is not the registered keeper of the vehicle, will need to be obtained.

The source of the data will be records obtained from the Secretary of State (DVLA) to determine the vehicles emissions standard. Section 23 of the Transport (Scotland) Act 2019 outlines the powers in relation to information sharing.

The information that may be required in full or in part regarding a vehicle that drives within a LEZ is as follows:

- **Vehicle Registration Number (VRN)** – Required in order to identify both vehicle and registered keeper details. These details are required to determine if a vehicle is in scope of a LEZ, compliant with the Euro emission standards (Euro 6/VI for Diesel and Euro 4/IV for petrol), if a vehicle is subject to a grace period, and to issue a penalty charge notice if a vehicle is deemed to be non-compliant.
- **Make, model and colour of vehicle** - Required to support the vehicle identification process, along with the VRN. For example, without information on the make, model and colour of the vehicle, it would be difficult to ascertain if the VRN within the DVLA database, and the VRN on the ANPR capture are related to the same vehicle.

- **Fuel type** – Required to determine if the vehicle’s fuel type is petrol or diesel (or ‘other’), to ascertain which Euro emission standard would apply (Euro 4 for petrol or Euro 6/VI for diesel) to the vehicle.
- **Tax class** – Required in order to determine vehicle classification (to ascertain if the vehicle is within scope of the LEZ), and also if the vehicle falls under an exemption category (e.g. emergency vehicles, vehicles used by disabled persons).
- **Euro emission standard (actual)** – Required to determine vehicle LEZ compliance (Euro 4 for petrol or Euro 6/VI for diesel).
- **Date of first registration** – Required to indicate compliance status with the emissions standards where the actual euro emission standards for the vehicle is not available. This will only be used when the actual euro emission standard is not available. It is our understanding that there are a significant number of vehicles within the DVLA database which do not have a euro emission standard assigned,
- **Age of vehicle** – Required to assess whether vehicle would be exempt under a potential historic vehicle exemption (e.g. vehicles 30 years and older).
- **VCA vehicle category** – Required in order to determine the vehicle classification (e.g. Passenger car, van, bus etc.). This will be used to determine whether a vehicle is within scope of a LEZ. In addition, this will determine if the vehicle classification is subject to a grace period.
- **Name and address of registered keeper** - Required to allow for issuing of Penalty Charge Notice (PCN) to the registered keeper of a vehicle that is found to be non-compliant and in contravention of a Scottish LEZ. Also required in order to determine if the registered keeper is a resident of the LEZ and therefore subject to a resident’s grace period. If the vehicle is subject to a resident’s grace period, then a PCN would not be issued.

The Regulations themselves will not lead to the creation of centralised databases accessible by multiple organisations, nor the supply or creation of particular technology solutions or platforms. Storage and deletion of data will be managed by the Local Authorities in their capacity as data controllers and in accordance with their GDPR/Data Protection Act responsibilities. The retention periods for all data processed across LEZ schemes will be defined by the Local Authorities in their data sharing agreements with the DVLA and will be in accordance with legitimate business needs and other legal or regulatory requirements (such as those relating to financial transactions or legal claims for example).

There are a number of different provisions within the Transport (Scotland) Act 2019 (including LEZ provisions) which require powers to be further devolved from the UK Government in order to be workable. The Act makes no provision to confer any power on the Secretary of State to disclose information to Scottish local authorities, their enforcement agents, or the Scottish Ministers. The intention is that conferral of this power on the Secretary of State will be taken forward through a statutory instrument by way of a Scotland Act Order, specifically a Section 104 order. This order will enable the enforcement of LEZs as it will provide legal permission for the Scottish Government, or local authorities, to request data (e.g. vehicle and registered keeper details) from the DVLA.

The Section 104 order will be a UK statutory instrument which will be laid in the UK Parliament. Transport Scotland are currently engaging with the Scotland Office to agree a proposed timetable for the S.104 order (for the whole Act).

Sharing of data

Beyond the data being shared with the registered keeper of the vehicle, if the PCN remains unpaid, it can be passed by the Local Authority to a debt recovery agent for further action. This will be determined by the Local Authority and any sharing of data should be managed in accordance with their GDPR/Data Protection Act process.

Transport Scotland has engaged with Police Scotland on the potential use of the LEZ ANPR cameras for crime enforcement purposes through the National ANPR Service (NAS). This dialogue is still at an early stage and as such no agreements have been reached on how Police Scotland might utilise and access the LEZ ANPR data. This will be determined by the Local Authorities in consultation with the other parties such as Police Scotland, and agreed as part of the data sharing agreement with the DVLA.

Reporting

Section 29 of the Transport (Scotland) Act 2019 requires each local authority which is operating a low emission zone scheme to prepare and publish a report on the scheme, to send a copy of it to the Scottish Ministers, and to lay a copy of the report in the Scottish Parliament. These actions must be completed as soon as reasonably practicable after the end of the financial year (i.e. 31 March). The report must provide specific commentary on the scheme as described in subsection (2) of Section 29.

Scope of the processing

In order to issue and enforce a PCN, the name and address of the registered keeper of the vehicle will need to be obtained.

The enforcement of LEZs will be operated locally by each local authority, and data sharing agreements will be required between local authorities and the DVLA. Transport Scotland are currently in discussions with the DVLA regarding data sharing agreements which would allow this data sharing to take place. The requirements of such data sharing agreements are expected to be similar to existing agreements already in place between the DVLA and local authorities for other types of civil traffic enforcement.

Whitelists (e.g. for national/local time-limited exemptions) may also be held both nationally and locally. The information to be held on a whitelist would be provided to Transport Scotland or local authorities with agreement from specific parties (e.g. Police, Scottish Fire and Rescue Service) Depending on the system established for data sharing, the data may need to be shared on a daily basis. This is again a similar to other existing civil traffic enforcement systems operated by local authorities.

At this stage it is not known how much data will be collected and used, nor how long it will be kept, how many individuals are affected or what geographical area it would cover. This is to be determined by the Local Authorities. The local authorities have the power to set the scope of their LEZ, including the categories of vehicles which are to be included, and the geographical area of the LEZ. This will ultimately affect the amount of data being collected and processed. LEZs in Scotland are being proposed in city center locations.

Once LEZs are in place vehicles will be driving within them on a daily basis. Data from the majority of vehicles which are captured on an approved device within a LEZ will need to be shared with the DVLA, unless the vehicle details are already available on a whitelist (e.g. for national/local time-limited exemptions). Depending on the system established for data sharing, the data is likely to be shared on a daily basis. Scottish authorities will require to obtain this information from the DVLA on an ongoing basis once LEZs are in place.

To provide some context to the above average annual daily flow, the Scottish Transport Statistics 2019 publication states that 'Glasgow had the largest number of vehicles licensed as at the end of 2017 (232,300)...with Edinburgh at 199,100 - based on the postcode of the registered keeper.

The collection of personal data will not affect decisions made about individuals, groups or categories of persons, or result in the denial of a right or rights.

As there is an exemption for blue badge holders and vehicles with a disabled tax classification, this will lead to the processing of special category data as this is considered health data. The purpose of the exemption for BBH/ disabled vehicle classes is to ensure that they are able to drive within an LEZ without receiving a penalty charge notice. The processing of BBH data is necessary in order for a local authority to determine whether a vehicle is exempt under the exemption category of a blue badge holder or disabled tax classification. There is no other way to identify if a BBH/ disabled tax class vehicle is driving within a LEZ so we can grant an exemption. Without collecting this information, we would not be able to grant an exemption and this group would be subject to a PCN if their vehicle did not meet the emission standards.

Those with disabilities can struggle to use public transport. Scope found that 40% of disabled people face issues when using railway stations, and 1 in 4 avoid public transport due to negative attitudes from other passengers (Scope, 2018). 53% of working-age adults with a disability are in employment (House of Commons Library, 2019). If they struggle with public transport, the LEZ restrictions may affect their ability to get to work should an exemption not be granted. Disabled people, on average, face £583 a month in extra costs (Scope, 2019), and 47% of disabled working-age adults are unemployed (House of Commons Library, 2019). This therefore reduces their ability to afford to upgrade their vehicle should their existing vehicle not comply with the emission standards.

A screening assessment for an Integrated Impact Assessment (IIA) is being undertaken for the regulations. The IIA screening assessment incorporates an Equality Impact Assessment and considers whether the proposed regulations and supporting policies are likely to disproportionately or differently affect people with protected characteristics as identified in the Equality Act 2010.

The processing of data will be managed by the Local Authorities in accordance with their GDPR/Data Protection Act process.

Context of the processing

Images of all vehicles driving within the LEZs will be captured by an approved device (e.g. ANPR/CCTV cameras), with the main information captured on the image being the vehicle's registration plate, and the date and time the image was captured. Therefore the data subject will have limited control over their data being collected, as it is likely that they will be captured if they are driving within a LEZ.

Capturing the image of all vehicles entering an LEZ is considered necessary to achieving the purpose of the LEZ Regulations. There is not considered to be an alternative means that would deliver the same outcome that the Regulations are hoping to achieve, which is to ultimately help mitigate air pollution that is predominantly caused by road transport at a number of hotspots in Scotland's towns and cities. Drivers could be 'asked' not to drive non-compliant into the LEZs, however this would be unlikely to achieve the desired outcome and air quality improvements as there would be neither any incentive for complying nor consequence for driving a non-compliant vehicle.

In addition, the use of cameras is the only known way to provide evidence of a vehicle's presence within a road user charging zone without the need of on-board technology (e.g. a GPS tracker to provide location data). Furthermore, even with on-board technology, photographic evidence would still be required for any PCN to be legitimately issued and for subsequent enforcement.

Whilst for a new purpose and on a different scale to other civil traffic enforcement such as bus lane enforcement, given images of all vehicles driving within an LEZ will be captured as opposed to just those in a bus lane, similar collection and processing of vehicle and keeper information via ANPR/ CCTV cameras is already undertaken by local authorities.

Article 8 of the European Convention on Human Rights (ECHR) provides for the following:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

The potential risk to the right to respect for private and family life, as provided for by Article 8 of the ECHR, that the enforcement of LEZs by local authorities could pose to any car driver in any city in Scotland where an LEZ becomes operational, arises through the need for Local Authorities to record all drivers on all journeys entering and leaving an LEZ in order to effectively implement and enforce an LEZ as described above. The implementation and enforcement of LEZs for the purpose protecting public health and the environment is considered to be within the public interest, as is evidenced through the stakeholder views in the following section.

The potential risk to the right to respect for private and family life as provided for by Article 8, ECHR, is further assessed in Step 5, with measures to reduce those potential risks set out in Step 6.

There will be an extensive communications campaign to ensure that those affected by LEZs are aware of when enforcement commences.

Stakeholder views

The first question of the Scottish Government’s consultation on the Building Scotland’s Low Emission Zone asked *“Do you support the principle of LEZs to help improve Scottish air quality? Please be as specific as possible in your reasoning”*.

The consultation analysis report (<https://www.transport.gov.scot/media/41828/analysis-report-february-2018-consultation-on-building-scotland-s-low-emission-zones.pdf>) stated *“There was a high level of consensus among respondents with 95.5% (913) supporting the principle of LEZs to help improve air quality in Scotland. Some 97.8% (90) of organisations responding to the consultation were supportive with just 2 organisations against the principle. Some 95.3% (823) of individuals were in overall support of the principle.”*

The creation of LEZs in the UK is not a new concept, with the first having been established in London on 4th February 2008. Furthermore, use of ANPR technology to implement the congestion charge zone in London predates this, having been introduced in February 2003.

There is therefore an established precedent set in the UK with regards to the collection and processing of data in this way, and as such, it would be reasonable to assume that people would support ANPR being used to enforce the LEZs. This is supported by responses to the Scottish Government’s consultation on the Building Scotland’s Low Emission Zone which asked *“What are your views on Automatic Number Plate Recognition enforcement of LEZs?”*. The views provided showed a high level of consensus with 91.6% (850) in favour of using ANPR to enforce LEZs, with a further 2.8% (26) in approval only in the case of LEZs or with certain conditions. Those opposed to ANPR represented 3% (28) of all responses given.

Vulnerable individuals include disabled persons whose vehicles are exempt from the proposed regulations. Additionally, further exempt vehicles include emergency vehicles; naval, military or air force vehicles; historic vehicles and showman vehicles.

An Integrated Impact Assessment (IIA) is being undertaken for the regulations. The IIA incorporates an Equality Impact Assessment and considers whether the proposed regulations

and supporting policies are likely to disproportionately or differently affect people with protected characteristics as identified in the Equality Act 2010.

The proposal does not necessitate an associated code of conduct.

Issues of potential public concern are discussed in Step 4.

Purposes of the processing

The purpose of collecting the data for enforcing LEZs is considered in the public interest for the protection of public health and the environment. The proposal for creating low emission zone regulations will enable civil enforcement to help mitigate air pollution caused predominantly by road transport across Scottish towns and cities, where levels of nitrogen dioxide and particulate matter are high.

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.

The National Transport Strategy (NTS2) consultation document 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 system to improve air quality' and 'Support management of demand to encourage more sustainable transport choices'.

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 Government's Climate Change Plan was published in February 2018 and the Climate Change (Emissions Reductions Targets) (Scotland) Act received royal assent on the 31 October 2019. 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.

Ultimately, the proposed regulations will regulate behaviour by limiting the access of the most polluting vehicles into LEZ areas (which are likely to be small city centre or city-wide areas). LEZs will be enforced by capturing vehicles driving within a LEZ with ANPR/CCTV cameras, which could be considered as surveillance.

The introduction of LEZs will encourage use of cleaner vehicles, those which emit no emissions at all, and modal switch to public and sustainable transport and is therefore considered to be in the public interest.

As set out under “Step 2: Describe the context of the processing”, the processing is considered necessary to achieving the purpose of the LEZ Regulations. There is not considered to be an alternative means that would deliver the same outcome that the Regulations are hoping to achieve. Drivers could be ‘asked’ not to drive non-compliant into the LEZs, however this would be unlikely to achieve the desired outcome and air quality improvements as there would be neither any incentive for complying nor consequence for driving a non-compliant vehicle.

In addition, the use of cameras is the only known way to provide evidence of a vehicle’s presence within a road user charging zone without the need of on-board technology (e.g. a GPS tracker to provide location data). Furthermore, even with on-board technology, photographic evidence would still be required for any PCN to be legitimately issued and for subsequent enforcement.

Consultation with relevant stakeholders

Transport Scotland hosted a half-day workshop in 2017 to seek the views, tips and advice of the Intelligent Transport Services (ITS) community on topics such as, but not limited to, enforcement, ANPR, penalty regimes and back-office operations of LEZs.

In addition, Transport Scotland has had (and continues to have) extensive engagement with the local authorities introducing LEZs through the LEZ Consistency Group, and LEZ Enforcement Working Group

Public consultation was undertaken between 13 December 2019 and 24 February 2020 on Scotland’s Low Emission Zones: Regulations and Guidance (<https://www.transport.gov.scot/media/46548/scotland-s-low-emission-zones-consultation-on-regulations-and-guidance.pdf>). The purpose of this consultation was to seek views on the proposed arrangements and options related to the nationally consistent LEZ standards which will be set out in regulations in tandem with guidance.

In addition, the Scottish Government’s consultation “Building Scotland’s Low Emission Zones” was published in 2017. Feedback obtained from this consultation is available online (<https://www.transport.gov.scot/news/responses-to-low-emission-zone-lez-consultation-now-analysed/>) (accessed October 2020). The consultation asked key questions relating to the design of LEZs in Scotland. In total, 967 responses were received. There was a high level of consensus among respondents with 95.5% supporting the principle of LEZs to help improve air quality in Scotland. 62.3% of respondents agreed with the proposed minimum mandatory Euro emission criteria for Scottish LEZs. The proposed minimum criteria as set out in the consultation document is Euro 6 for diesel cars, Euro 4 for petrol cars and Euro VI for buses (including older retrofitted engines which would be improved to operate as Euro VI).

The views provided showed that the most popular suggestion was for LEZs to operate 24 hours, 7 days a week. The views provided also showed a high level of consensus with 91.6% in favour of using automatic number plate recognition (ANPR) to enforce LEZs. Those who disagreed had privacy concerns with the use of ANPR. 82.7% of respondents considered that emergency vehicles should be exempt. Most respondents, 86.3% agreed that LEZ exemptions should be consistent across all Scottish local authorities.

The Scottish Government also held three workshops in May 2019 to seek views on preliminary thoughts and options around LEZ Regulations and Guidance. These workshops were held in Glasgow, Aberdeen and Dundee, with input from stakeholders from the private, public and third sector as well as members of the public. The report detailing the outcomes of the May workshops is available online (<https://www.lowemissionzones.scot/uploads/docs/LEZ-in-scotland-regulations-and-guidance-workshops.pdf>) (accessed October 2020). The events were open to all, although targeted invites were sent out to stakeholders who had previously engaged with Transport Scotland on the LEZ policy; as such, a mix of stakeholders from the private, public and

third sector attended along with members of the public. The workshops were held in three locations: Glasgow on the 8 May, Aberdeen on the 9 May and Dundee on the 10 May. Each workshop utilised the same agenda, materials and format across the same topics. The workshops consisted of 7 group tasks across 11 topics; and each task utilised one of three methods; diamond exercise, rotating brainstorm and a questionnaire, to collect information/feedback.

One of the tasks asked for a 'definition of a LEZ', where groups were asked to rank several different LEZ definitions, in order to identify a preferred description. The definition ranked the highest was from the RAC website: 'Low Emission Zones are schemes that cover specific areas (typically in cities) to tackle pollution and that discourage certain types of vehicles from entering a specified zone'.

Another task asked groups of stakeholders to rank several different penalty charge options, ranging from a flat penalty charge for all vehicle types, to a charge for different vehicle types, and a surcharge option. Stakeholders were also given the option to create their own penalty charge options and include these within their ranking approach.

Approximately 84% of the workshop groups agreed that a LEZ should be suspended in an emergency scenario. 63% also agreed that a LEZ should also be suspended in the event of a temporary road diversion, however this was often caveated with comments that this should be a last resort, with every effort made not to divert traffic into a LEZ in the first place.

The consultation on 'Scotland's Low Emission Zones: Regulations and Guidance' gave us an opportunity to seek opinions on issues of a technical nature that underpin the operation and delivery of Low Emission Zones (LEZs), including the substantive issue of emission standards, exemptions and penalty charges. In total, 305 responses were received for the consultation. The consultation analysis report is available online (<http://www.transport.gov.scot/publication/scotland-low-emission-zone-consultation-2019-2020/>) (accessed October 2020).

With regards to DPIA, Question 12 of the Consultation on Scotland's Low Emission Zones: Regulations and Guidance asked "What impacts do you think the LEZ proposals outlined in this consultation may have on the personal data and privacy of individuals?". A summary of responses to Question 12 as reported in Section 3.17 of the consultation analysis report is as follows:

- 78 (26%) identified potential privacy issues, this was the most common response for individual respondents.
- 52 (17%) identified that impacts on privacy would be unlikely, this was the most common response for organisations.
- 34 (11%) identified that no impact on privacy was expected.
- 27 (9%) respondents stated they had no comment in answer to Question 12.

Question 19 of the Scottish Government's consultation on the Building Scotland's Low Emission Zone asked "What impacts do you think LEZs may have on the privacy of individuals?"

Responses to this question are provided in section 4.2.22 of the consultation analysis report available online (<https://www.transport.gov.scot/media/41828/analysis-report-february-2018-consultation-on-building-scotland-s-low-emission-zones.pdf>) (accessed October 2020).

With regards to organisations, Section 4.2.22.1 of the consultation analysis states "*The general consensus amongst organisations was that there should not be any concerns over privacy as a result of LEZ implementation. One organisation (NGO) noted that there had originally been concerns over the London scheme when it was implemented but it has now been in place 15 years and is working well. Organisations felt as long as appropriate safeguards were put in*

place there should not be a privacy issue. Possible safeguards included deletion of ANPR and image data after fines were paid, personal details being kept confidential and if enforcement was subcontracted then ensuring monitoring of the contractor to prevent abuse of information

With regards to individuals, Section 4.2.22.2 of the consultation analysis states “Individual respondents were more likely to be concerned about privacy issues than organisations with 29/85 referencing this in their comments. Individuals used terms such as spying, big brother, state monitoring, a breach of the rights to private life, government intrusion, big brother, and Orwellian to highlight their concerns. The views can be summarised by:

“While I accept that APNR is the best option to manage LEZs, it represents an invasion of privacy in my opinion. It will identify owners and, in the case of private cars, record an individual’s location at a particular time. There will be people who won’t like the principle of the authorities knowing where they are or have been.” (Individual)

Despite the concerns raised, more individuals (41/85) believed there was unlikely to be any privacy issues and these would only be a concern for those who were seeking to conceal their activities:

“None. Libertarians may object, but with no substantial grounds for doing so.” (Individual)”

Compliance and proportionality measures

The lawful basis for processing in the case of the LEZ Regulations is Article 6(1)(e) of the GDPR – “*The Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller*”.

In addition, as the Blue Badge Holder/ disabled vehicle tax exemption will result in the processing of special category data, we consider that the lawful basis under Article 9 would be ‘*reasons of substantial public interest*’, meeting the public interest condition ‘statutory and government purposes’, as it is necessary for a local authority to process this data as part of the effective operation and enforcement of LEZs. Part 2 of the Transport (Scotland) Act 2019 is all about the creation and operation of LEZs by local authorities, so the creation and operation of LEZs is a function of local authorities. This would include applying the exemptions set out by the Scottish Ministers through secondary legislation. We note the terms of paragraph 5 of Part 2 of schedule 1 of the DPA which means that a local authority can only rely on this condition if an appropriate policy document is in place, and this requirement will be outlined within guidance to local authorities

We do not consider that Article 22 applies specifically to the LEZ regulations. Although there will be elements of automated processing (e.g. use of ANPR cameras), the process for enforcing LEZs is not expected to be fully automated, and it is likely that there will be manual elements of the process. There is no requirement within the regulations which stipulates that the enforcement system, or devices approved for the operation/ enforcement of a LEZ must be fully automated. Rather the regulations provide the rules for the enforcement system, and it is up to the local authorities to apply this on an operational level. This DPIA covers the legislative content only and does not stipulate exactly how the enforcement of LEZs will be undertaken in practice. It is our view that Article 22 will need to be addressed in more detail at an operational level, once the development of the enforcement system is underway with the local authorities

The processing of information by the proposed policy is to enable the civil enforcement of LEZs, as established in primary legislation by the Transport (Scotland) Act 2019, to set nationally consistent standards on emissions, and to issue penalties and exemptions which should help to mitigate air pollution caused predominantly by road transport across Scottish towns and cities, where levels of nitrogen dioxide and particulate matter are high.

The purpose of collecting the data for enforcing LEZs is considered in the public interest for the protection of public health and the environment.

To issue these penalties, there is a need to obtain the information of the registered keeper as they will be responsible. In limited circumstances whereby persons other than the registered keeper of a vehicle is to be responsible for a penalty, it is expected that the registered keeper will make representations against the issue of the PCN and as part of these representations give the authority the details of where to contact the person liable to pay the PCN. It is not possible to enforce the scheme using anonymised or pseudonymised data, because the PCN needs to be issued to the Registered Keeper (the person liable to pay the PCN).

With regards to data minimisation, the proposed 2-stage request approach with the DVLA described in Step 1 should reduce the potential for requesting unnecessary data that is not required.

In relation to the information to be given to individuals, the regulations state that the PCN must outline: (1) a section recording the contravention which has been committed, and (2) a section informing the recipient of the steps to be taken to pay the penalty charge due. Unlike parking enforcement, there is only one contravention for LEZ – see paragraph 22.

The PCN should contain enough information in order to ensure the collection of all the information required for a PCN to be enforced, including the need to satisfy the adjudicator where a case goes to adjudication (see section on representations and appeals).

The PCN should clearly identify the vehicle which is in contravention of the LEZ, as well as identify the registered keeper of the vehicle who is responsible for the PCN, the reason why the PCN is being served including details of the contravention which has occurred, and information on payment, reviews and appeals ...”

The information on reviews and appeals is to be included in the issuing of the PCN thereby identifying the means by which any automated decision-making within the enforcement process can be challenged.

No unintended consequences with regards to the provisions are anticipated. The public’s personal information will have appropriate safeguards and only information will be shared with applicable parties as and when required for the enforcement of a LEZ. Whilst no safeguards are specifically included within the proposed Regulations, these will be subject to subsequent agreement with DVLA via a Section 104 Order.

With regards to Article 8 of the ECHR, as evidenced through the stakeholder feedback in Step 2, there is a high level of consensus among respondents supporting the principle of LEZs to help improve air quality in Scotland. 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.

The creation of LEZs, and the need to create a suite of powers that enable civil enforcement of LEZs, including setting nationally consistent standards on emissions, penalties and exemptions, to mitigate air pollution that is predominantly caused by road transport at a number of hotspots in Scotland’s towns and cities is therefore considered to be in the public interest.

The detection of the movement of vehicles driving within an LEZ is not considered to interfere with a person’s right to respect for their private and family life, home and correspondence under ECHR Article 8. As discussed throughout this assessment, data sharing agreements will be in place to enable the sharing of data between the DVLA and Local Authorities, the 2-stage process for requesting data from the DVLA should reduce the potential for requesting unnecessary data that is not required and the possible risks around privacy are considered low. This is further assessed in Step 5 and measures to reduce potential impacts outlined in Step 6.

Consultation feedback from a Local Government Organisation to the Consultation on Building Scotland’s Low Emission Zones’ question of “*What impacts do you think LEZs may have on the privacy of individuals*”, stated:

“There are no obvious privacy issues that arise as a consequence of the proposals other than those which currently exist for ANPR schemes. These are adequately covered by the Data Protection Act, and associated legislation.”

Nine organisations (6 public bodies, 2 NGOs and 1 professional/trade organisation) noted that some may have concerns over privacy as a result of the ANPR system. All organisations agreed that this should not present a barrier to implementation and the technology is already in use with no issues:

“There may be concerns over privacy regarding ANPR enforcement. This can be dealt with fairly easily by restricting the amount of time that personal details are held and deleting the data automatically after this period or after the fine has been paid. There are many cities in the world that have used this technology successfully without breaching the privacy of individuals.”
(NGO, Organisation)



Risk Assessment

Risk No.	Describe source of risk and nature of potential impact on individuals. Include associated compliance and corporate risks as necessary.	Likelihood of harm	Severity of harm	Overall risk
1	<p>Image capture – Right to respect for private and family life:</p> <p>As described in Step 2, in order to effectively implement and enforce the LEZs, Local Authorities will need to capture the image of all vehicles entering an LEZ in order undertake the 2-stage process to determine whether the vehicles comply with the LEZ requirements, or whether a PCN should be issued in the event of non-compliance. The scale of image capture is therefore greater by necessity than for bus lane contravention enforcement or speeding infractions as instead the details of all vehicles will be captured in the first instance.</p> <p>The potential impact is therefore that all vehicles entering an LEZ will have their image captured, whereas with bus lane enforcement or speeding, it would only be captured if the driver was in contravention of those restrictions.</p>	Possible	Moderate	Medium
2	<p>Image capture – Privacy:</p> <p>Potentially capture images of vehicle occupants or members of the public (Pedestrians/other road users). Consultation feedback raised concerns over identification of owners and recording of an individual's location at a particular time.</p> <p>The risk of harm as a result of this is considered low as data sharing agreements will be in place between Local Authorities and the DVLA and the dissemination of any information will be limited to only those who are to receive the PCN.</p>	Likely	Moderate	High
3	<p>Proportionate Processing and Data Minimisation:</p> <p>Excessive data collection resulting from use of existing ANPR camera infrastructure beyond its original remit, or new ANPR camera infrastructure.</p>	Possible	Severe	High
4	<p>Proportionate Processing (corporate risk):</p> <p>Public/political/legal challenge that camera numbers are disproportionate.</p>	Possible	Moderate	Medium

5	<p>Proportionate Processing (corporate risk):</p> <p>Public concerns about police access (specifically) to greater number of surveillance cameras; leading to legal challenge.</p>	Possible	Moderate	Medium
6	<p>Proportionate Processing:</p> <p>Possibility that the LEZ schemes are subsequently scrapped or suspended meaning cameras continue to capture data even though the original purpose no longer applies.</p>	Possible	Severe	High
7	<p>Data accuracy:</p> <p>Possibility that the accuracy of the approved devices is not sufficiently robust, meaning that the vehicle registration is incorrectly read and PCNs are incorrectly issued to the wrong recipients.</p>	Possible	Moderate	Medium
8	<p>Fair processing:</p> <p>Possibility that new cameras are installed and are used for monitoring purposes before the scheme goes live and without appropriate transparency.</p>	Possible	Moderate	Medium

Measures to reduce risk

Risk No.	Options to reduce or eliminate risk	Effect on risk	Residual risk	Measure approved
<p>1. Image capture – Right to respect for private and family life:</p> <p>To effectively implement and enforce the LEZs, Local Authorities will need to capture the image of all vehicles entering an LEZ in order undertake the 2-stage process to determine whether the vehicles comply with the LEZ requirements, or whether a PCN should be issued in the event of non-compliance.</p>	<p>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.</p> <p>The enforcement of LEZ through the use of cameras is the only known way to provide evidence of a vehicle's presence within a road user charging zone without the need of on-board technology (e.g. a GPS tracker to provide location data). Furthermore, even with on-board technology, photographic evidence would still be required for any PCN to be legitimately issued and for subsequent enforcement. It is therefore not considered possible to effectively implement an LEZ by any means other than capturing images of all vehicles entering one.</p> <p>The implementation and enforcement of LEZs for the purpose protecting public health and the environment is considered to be within the public interest.</p> <p>Therefore, the means by which to reduce the potential risk around image capture relate to reducing the amount of processing undertaken and proportionate retention of collected data.</p> <p>Local Authorities are to put clear data-sharing agreements into place which outline the extent and remit of data collection, purpose and data processing.</p> <p>The proposed 2-stage data request process outlined in Step 1 would avoid excessive data collection. The first request would be for the relevant vehicle particulars including the emission standard or</p>	Reduced	Low	<p>Yes</p> <p>No</p>

	<p>compliance status. If it is known to be LEZ compliant, the VRN will not be retained for any longer than necessary to verify this. If it is not LEZ compliant or its compliance status is unknown, then it will be sent for further verification and possible enforcement. Thereafter it will only be retained for a period necessary for enforcement purposes, including the time period within which appeals can be lodged and for any further time period as required to resolve appeals.</p> <p>The retention periods for all data processed across LEZ schemes will be defined by the Local Authorities in their data sharing agreements with the DVLA and will be in accordance with legitimate business needs and other legal or regulatory requirements (such as those relating to financial transactions or legal claims for example).</p>			
<p>2: Image capture – Privacy</p> <p>Potentially capture images of vehicle occupants or members of the public (Pedestrians/other road users). Consultation feedback raised concerns over identification of owners and recording of an individual’s location at a particular time.</p>	<p>Data sharing agreements will be in place between Local Authorities and the DVLA and the dissemination of any information will be limited to only those who are to receive the PCN.</p> <p>Where images have captured vehicle occupants or members of the public (Pedestrians/other road users), Local Authorities will need to ensure they are fully compliant with GDPR, especially if images are requested as evidence of the contravention.</p> <p>This will be covered within detailed guidance issued to Local Authorities on ANPR and enforcement. Local Authorities will need to ensure persons are not identifiable from the images.</p>	Reduced	Low	<p>Yes</p> <p>No</p>
<p>3: Proportionate Processing and Data Minimisation</p>	<p>Local Authorities to put clear data-sharing agreements into place which outline the extent and remit</p>	Reduced	Low	<p>Yes</p> <p>No</p>

<p>Excessive data collection resulting from use of existing ANPR camera infrastructure beyond its original remit, or new ANPR camera infrastructure.</p>	<p>of data collection, purpose and data processing.</p> <p>The proposed 2-stage data request process outlined in Step 1 would avoid excessive data collection. The first request would be for the relevant vehicle particulars including the emission standard or compliance status. If it is known to be LEZ compliant, the VRN will not be retained for any longer than necessary to verify this. If it is not LEZ compliant or its compliance status is unknown, then it will be sent for further verification and possible enforcement. Thereafter it will only be retained for a period necessary for enforcement purposes, including the time period within which appeals can be lodged and for any further time period as required to resolve appeals. The retention periods for all data processed across LEZ schemes will be defined by the Local Authorities in their data sharing agreements with the DVLA and will be in accordance with legitimate business needs and other legal or regulatory requirements (such as those relating to financial transactions or legal claims for example).</p> <p>Local Authorities to consider careful selection/siting of approved devices in locations which maximise opportunity to achieve scheme benefits and avoid intrusion into the boundaries of private properties or other buildings. The focus of the camera must always be directed at the road.</p> <p>Extent of compliance and effectiveness of the schemes to be regularly reviewed by the Local Authorities to determine continuing need for, and size of, approved device network. Local Authorities to carry out analysis to minimize the</p>			
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	<p>need for any new or unnecessary ANPR camera infrastructure.</p> <p>Detailed guidance will be issued to Local Authorities on ANPR and enforcement infrastructure and application.</p>			
<p>4: Proportionate Processing (corporate risk)</p> <p>Public/political/legal challenge that camera numbers are disproportionate.</p>	<p>To be addressed through Local Authorities conducting (and publishing) a DPIA.</p> <p>Analysis of camera numbers required by Local Authorities to demonstrate that the camera numbers are needed to enforce the scheme (and deliver air quality benefits).</p> <p>Regular review of camera numbers by Local Authorities to ensure minimum possible used for purpose.</p> <p>Transparency about rationale for camera deployment and use and benefits realisation.</p> <p>Detailed guidance will be issued to Local Authorities on ANPR and enforcement infrastructure and application.</p>	Reduced	Low	<p>Yes</p> <p>No</p>
<p>5: Proportionate Processing (corporate risk)</p> <p>Public concerns about police access (specifically) to greater number of surveillance cameras; leading to legal challenge.</p>	<p>Local Authorities to put clear data-sharing agreements into place which outline the extent and remit of data collection, purpose and data processing.</p> <p>Any other use of the data (e.g. Police Scotland law enforcement) would need to be detailed within these, or separate, data sharing agreements between Local Authorities and the DVLA and appropriate measures outlined in relation to that purpose.</p> <p>Further guidance on the issue of sharing data with other bodies or third parties, e.g. Police Scotland, will be made available to Local Authorities.</p> <p>Detailed guidance will be issued to Local Authorities on ANPR and enforcement: Specifically, before</p>	Reduced	Low	<p>Yes</p> <p>No</p>

	<p>authorities share personal data with any third party, authorities should seek advice from the Information Commissioner's Office (ICO), and their own Data Protection Officer and ensure appropriate steps are taken to comply with data protection legislation. Such steps should include, but are not limited to, putting appropriate data sharing agreements in place that set out how the data will be processed and how the parties will ensure that they comply with data protection requirements, and an updated Data Protection Impact Assessment.</p>			
<p>6: Proportionate Processing Possibility that the LEZ schemes are subsequently scrapped or suspended meaning cameras continue to capture data even though the original purpose no longer applies.</p>	<p>Local Authorities to put clear data-sharing agreements into place which outline the extent and remit of data collection, purpose and data processing. Therefore, the data can only be captured if a LEZ is operational. This would cease if a LEZ ceased to exist.</p> <p>In the situation where a LEZ was suspended, the LA would need to ensure measures were in place so that any data captured would not be retained or that the appropriate cameras and enforcement system was switched off for the suspension period so that no PCNs are issued and no data is retained unnecessarily.</p> <p>The above situation will need to be detailed within the Local Authorities DPIA regarding their enforcement system.</p> <p>If the Local Authority was to repurpose the cameras (e.g. for law enforcement), another DPIA would need to be completed before they were used for any new purpose. Before authorities share personal data with any third party, authorities should seek advice from the Information Commissioner's Office (ICO), and their own Data Protection Officer and ensure appropriate steps are taken to</p>	Reduced	Low	<p>Yes</p> <p>No</p>

	comply with data protection legislation.			
<p>7: Data accuracy</p> <p>Possibility that the accuracy of the approved devices is not sufficiently robust, meaning that the vehicle registration is incorrectly read and PCNs are incorrectly issued to the wrong recipients.</p>	<p>Specification for approved devices is outlined in the LEZ Regulations to ensure there is consistency in the accuracy of devices as a record from an approved device may be relied on for evidence during the appeals process.</p> <p>Detailed guidance will be issued to Local Authorities on ANPR and enforcement.</p> <p>Furthermore, guidance will also be issued on manual validation checks as part of the enforcement process to ensure data accuracy.</p>	Reduced	Low	<p>Yes</p> <p>No</p>
<p>8: Fair processing</p> <p>Possibility that new cameras are installed and are used for monitoring purposes before the scheme goes live and without appropriate transparency.</p>	<p>Make fair processing information prominently available on LEZ pages on the Transport Scotland and Local Authorities websites.</p> <p>Transport Scotland and Local Authorities to publish DPIAs.</p> <p>Local Authorities to ensure appropriate signage is installed and visible in the preceding month(s) before the LEZs goes live.</p> <p>Transport Scotland and Local Authorities to ensure clear, transparent and extensive communications campaign is delivered leading up to LEZs enforcement going live.</p>	Reduced	Low	<p>Yes</p> <p>No</p>

DPO Comment

Comment:

I am content that a comprehensive risk assessment on the proposed regulations has been carried out and that there are no residual high risks to the rights and freedoms of individuals following the appropriate safeguards that have been identified. A full consultation has taken place with the ICO and their advice was taken into account when completing the risk assessment.

Name: Lorna Clark

Date: 7 January 2021

DPIA Approved by IAO

Name: David Swanson

Date: 7 January 2021

Version	Date Reviewed	Reviewed By