**POLICY NOTE**

**THE LOW EMISSION ZONES (SCOTLAND) REGULATIONS 2021**

**SSI 2021/26**

The above instrument was made in exercise of the powers conferred by sections 11(e),12(6) and (7), 13, 21(1) and 28 of the Transport (Scotland) Act 2019 ("the Act"). The instrument is subject to negative procedure.

**Purpose of the instrument.**
The purpose of this instrument is to set out provisions for:

- prior consultation in relation to making, amending or revoking an Low Emission Zone ("LEZ") by a local authority,
- the examination of LEZ proposals,
- the approval of devices to be used for or in connection with the operation of a LEZ,
- the keeping of accounts by local authorities regarding LEZs.

**Background**
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. Improving air quality is at the centre of the Scottish Government's action on transport and place-making, to ensure the real and tangible health benefits associated with cleaner air are maximised.

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

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

**Policy Objectives**
The policy objective of this instrument is to set out provisions to enable the implementation of Scottish LEZs, as explained in paragraphs 6 to below.

***Consultation***
Section 11 of the Act already provides a list of statutory consultees, as follows:

- the Scottish Environment Protection Agency,
- Scottish Natural Heritage,
- Historic Environment Scotland,

- such persons as the local authority proposing the LEZ 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 who are likely to be affected by the proposal.

- such other persons as the local authority considers appropriate.

Regulation 2 expands upon the 'other persons' list by including the following:

- Local authorities neighbouring the local authority responsible for the scheme,
- Regional Transport Partnerships in the area that the scheme will operate,
- NHS Health Boards in the area that the scheme will operate.

In addition, regulation 2 makes provision as regards the information to be provided to the consultees for the purposes of the consultation.

***Publication of proposals***
Regulation 3 and schedules 1 to 3 deal with publication of proposals in relation to a LEZ. The main points are outlined in paragraphs 10 to 13 below.

After completing the consultation on proposals, but before submitting the proposal to the Scottish Ministers for approval, the local authority must publicise a notice for the making, amendment or revocation of a LEZ.

The local authority is required to give notice to all the consultees (as outlined in regulation 2 and in Section 11 of the Act).

In addition, the local authority must publish notice of the proposal for a LEZ in a local newspaper and on their websites. They must also take such other steps to communicate the proposal to make a scheme to persons who are likely to be affected by the LEZ, such as the display of notices in any road which is included within the LEZ.

In terms of regulation 3 and schedule 3 the local authority must make the following documents available for inspection at their offices during normal office hours:

- The documentation which was made available to the statutory consultees during consultation on the proposals,
- A copy of the statement setting out the details of the consultation which has been undertaken, and how the local authority has taken account of any representations received in the course of that consultation,
- A copy of the report on the objections received.

***Objections***
Regulation 4 provides that any person may object in writing to the making, amendment or revocation of a proposed LEZ. Objections must state the grounds for objection, and must be made within a specified period as set by the local authority (which must be a period of at least 28 days from when a notice is published for the making, amendment and revocation of a LEZ).

At the end of the objection period the local authority must prepare and publish a report detailing the number and general nature of the objections received, and the local authority's

response to the objections. This report must be sent by the local authority to the Scottish Ministers when the local authority submits its proposals for the LEZ under section 10 of the Act.

***Notice of making a low emission zone scheme***
In terms of regulation 5 when a local authority makes, amends or revokes a LEZ the local authority must notify Police Scotland, the consultees, and each person who made objections, of the local authority's reasons for the making, amending or revocation of the LEZ. The local authority is required to publish notice of the making, amendment or revocation of the LEZ in a local newspaper, and publish the LEZ on the local authority's website.

In terms of schedule 3 where a scheme is being made, amended or revoked after an examination under regulation 6 has been held, the local authority must also make a copy of the report following the examination available for inspection at their offices during normal office hours.

Schedule 3 provides that the local authority must also make a copy of the scheme as approved by the Scottish Ministers with a statement of the date in which it comes into effect available for inspection at their offices during normal office hours.

***Examinations***
Section 12 of the Act enables local authorities or the Scottish Ministers to appoint a reporter to conduct an examination into a LEZ scheme proposal. Part 3 of the instrument outlines the detail necessary for an examination to be conducted in a consistent manner.

<u>Appointment of reporter</u>
Under regulation 6 the party establishing the examination must give written notice of this intention to the following:

- Scottish Ministers, if the initiating party is the local authority proposing to make the scheme,
- the local authority, if the initiating party is the Scottish Ministers,
- any person consulted under section 11 of the Act,
- each person who objected to the proposal under regulation 4 of this instrument.

The reporter must be a member of the staff of the Scottish Ministers, or selected from a panel provided by the Scottish Ministers. In practice, the reporter is likely to be from the Scottish Government's Planning and Environmental Appeals Division (DPEA).

<u>Responses to notice of intention to cause an examination to be held</u>
Under regulation 8 the persons who have been given notice of the examination may respond in writing to the initiating party's examination notice, Any response include: (1) details which they believe should be taken into account by the reporter in examining the proposal, (2) their views on the procedure for the examination, that is by way of written representations only, a hearing or inquiry, (3) details of any documentation, materials or evidence upon which the person intends to rely, including listing those already provided by the initiating party, and (4) where a hearing or inquiry is sought a list of persons who will provide a written statement (in the case of hearings), or a list of witnesses (for inquiries).

Scope of the examination

Regulation 9 makes provision in relation to the scope of an examination. The scope is to be set by the local authority proposing the LEZ, or by Scottish Ministers, depending on which of them initiated the examination. Further matters can be included in the scope of the examination on agreement between the local authority and the Scottish Ministers.

If there is a difference of opinion between the local authority and the Scottish Ministers as to the scope of the examination, the Scottish Ministers will determine the scope.

Matters which are out of scope of the examination must be disregarded by the reporter.

Procedures and timetable for examination

Section 12(3) of the Act outlines the procedures for conducting an examination. These are as follows:

- by way of **written representations only**,
- hold a **hearing**,
- hold an **inquiry.**

Regulation 10 provides that the procedure and timetable for an examination is to be determined by the reporter. The reporter must give notice of the scope, procedure and timetable of the examination to the following:

- Scottish Ministers,
- the local authority,
- any person consulted under section 11 of the Act,
- each person who objected to the proposal to make the scheme under regulation 4 of this instrument.

Opt-in procedure

Regulation 11 allows the reporter to invite the persons mentioned in paragraph 27 above to 'opt-in' to participate in the examination, giving at least 14 days for a reply. If those persons do not respond to this invitation indicating that they wish to participate they lose the opportunity to take any further part in the examination.

Further submissions and information

In terms of regulation 12 the reporter may seek further written submissions within the scope of the examination. If so, they would need to publish a 'procedure notice' outlining the matters on which additional representations or information is requested and by which date. This information would be sought within 14 days of the request for further information.

Determination without further procedure

Regulation 13 allows the reporter, if they are content that they have the necessary information (and thus do not need to hold either a hearing or inquiry), to carry out the examination and prepare a report on it without further procedure.

Pre-examination meetings

Regulation 14 makes provision for pre-examination meetings to look at the manner in which the examination is to be conducted in order to ensure that the examination is conducted as quickly and efficiently as possible.

Conclusion on further procedure
Where the reporter does not carry out the examination via a 'written-only' format, regulation 15 provides that the reporter must determine whether to carry out the examination by either a hearing or inquiry, and then inform the relevant parties in writing of that determination.

Inspections
Regulation 16 allows the reporter to carry out inspections of the zone to which a proposal for an LEZ relates.

Hearings procedures
Regulation 17 and schedule 4 make provision for the procedure at hearings. The reporter will determine the procedure to adopt for a hearing.

Hearing sessions may be required where:

- the reporter needs to enhance his/her understanding by asking questions, seeking explanations of evidence or opinions,
- where there is some dispute but where cross examination of professional or other witnesses is not necessary,
- where the evidence to be examined is largely a matter of opinion rather than settled fact, so the issue could benefit from being explored through discussion led by the Reporter to enable the Reporter to reach an opinion.

Inquiry procedures
Regulation 17 and schedule 5 make provision for the procedure at inquiries. The reporter must determine the procedure to adopt for an inquiry. This procedure must be stated clearly at or before the commencement of the inquiry, including the order in which matters will be considered at the inquiry, and the order in which persons will be heard.
Expenses

Regulation 18 allows the reporter to make orders as to the expenses incurred by the parties to the examination.

Report
In terms of regulation 19 the reporter must provide parties with a copy of their report into the examination, and publish the report on the Scottish Ministers' website.

***Approved devices***
The policy objective in relation to regulation 20 is to specify the requirements for approved devices to be used for the purpose of enforcing a LEZ. The types of approved devices that may typically be used for the operation of a LEZ include Automatic Number Plate Recognition (ANPR) cameras, mobile ANPR cameras and CCTV. However, the regulations are prepared in a way that allows for generic approval of a system, or approval for a particular installation. Regulation 20 and schedule 6 set out the process for approval of devices. An approved device cannot not be used in connection with the operation of a LEZ unless it has been certified by the Scottish Ministers as meeting the requirements outlined in schedule 6.

***Accounts***
Regulation 21 makes provision requiring a local authority operating a LEZ to keep accounts regarding the LEZ. The provisions in regulation 21 include requiring local authorities to:

- keep proper accounts,
- prepare a statement of account every financial year based on the accounts,
- publish the statement of account, in the annual accounts of the local authority for the financial year,
- include a copy of the statement of account in the annual report to be sent to the Scottish Ministers and the Scottish Parliament in terms of section 29 of the Act.

**Consultation**

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

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

| Year | Title/ description | Consultation paper link | Analysis report link |
|---|---|---|---|
| 2017 | Building Scotland's Low Emission Zones consultation. | https://consult.gov.scot/transport-scotland/building-scotlands-low-emission-zones/ | https://www.transport.gov.scot/news/responses-to-low-emission-zone-lez-consultation-now-analysed/ |
| 2019 | Low Emission Zones in Scotland Regulations and Guidance Workshops | n/a | https://www.lowemissionzones.scot/uploads/docs/LEZ-in-scotland-regulations-and-guidance-workshops.pdf |
| 2019/20 | Scotland's Low Emission Zones: Consultation on Regulations and Guidance | https://www.transport.gov.scot/media/46548/scotland-s-low-emission-zones-consultation-on-regulations-and-guidance.pdf. | tscot-lez-consultation-2019-2020-analysis-master-report-v30-final.pdf (transport.gov.scot) |

The Building Scotland's Low Emission Zones consultation paper in 2017 set out the proposed arrangements and options to deliver a consistent national approach to well-designed and managed LEZs in Scotland. It sought views from stakeholders and the general public on the Scottish Government proposals across key aspects of establishing low emission zones in Scotland. In total, 967 responses were received for the consultation.

The key finding from the Building Scotland's Low Emission Zones consultation paper, in relation to this SSI was as follows:

- Enforcement and vehicle detection: the views provided showed a high level of consensus with 91.6% in favour of using ANPR cameras to enforce low emission

zones. Those who disagreed had privacy concerns regarding the use of ANPR cameras. Those in support of ANPR viewed this to be vital for effective enforcement and considered it to be consistent with enforcement of other road offences such as bus lane contravention. Of those who were conditionally supportive, concerns were raised regarding the costs, adequate monitoring and development of an appropriate database.

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

- 57% of respondents agreed with the general principles of the proposed enforcement regime including the use of approved devices. Those who disagreed with the proposals did so mostly on the basis that they didn't agree with the policy of having LEZs at all.
- The consultation document presented a flow chart outlining the steps required for enabling a LEZ scheme to be introduced and respondents were asked for their views. 51% of respondents agreed with the steps outlined and provided no further comment.
- The 2019 consultation offered a list of 'other persons' to be included in the instrument as consultees. 48% of respondents did not agree with the list for a mix of reasons – they wanted to add some but not all other persons' to the list, or they wanted to add new groups not previously listed in the consultation list. However the instrument, alongside Section 11 of the Transport (Scotland) Act 2019 offers a balance on appropriate consultees. Additional consultees which have been raised by respondents and stakeholders will be addressed within LEZ guidance when outlining the potential 'other persons' which a local authority may find appropriate to consult with.

No further views were offered regarding the other aspects of this SSI, however more targeted engagement on topics including examinations and notice of making a LEZ has been undertaken with local authority officials.

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

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

45. Copies of the above assessments are attached.

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

**Financial Effects**
A Business and Regulatory Impact Assessment (BRIA) has been prepared in relation to this instrument and a copy is attached.

Scottish Government
Transport Scotland

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