

Transport and Environment Committee

10.00am, Thursday 27 February 2020

Edinburgh Low Emission Zone – regulations and guidance consultation response and programme update

Executive/routine

Wards

Council Commitments [18](#)

1. Recommendations

- 1.1 It is recommended that Committee:-
- 1.1.1 agrees the attached response to Transport Scotland's consultation on Regulations and Guidance;
 - 1.1.2 notes the programme from Transport Scotland is for the national Low Emission Zones (LEZ) regulations and guidance to be in effect late in 2020 and related programme for LEZ development and implementation, as set out in this report;
 - 1.1.3 agrees that to ensure Edinburgh maintains progress to implement LEZ controls, a proposal is developed to the Traffic Commissioner for Scotland to introduce and enforce LEZs through a Traffic Regulation Condition (TRC) for bus services operating in Edinburgh;
 - 1.1.4 notes that Edinburgh's LEZ development remains focussed on delivering a comprehensive and ambitious scheme using the national regulations, when available; and
 - 1.1.5 notes that Committee will receive further reports in May 2020 on TRC proposals, and in September 2020 with revised LEZ scheme.

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Edinburgh Low Emission Zone – regulations and guidance consultation response and programme update

2. Executive Summary

- 2.1 Edinburgh is continuing to make progress towards developing a Low Emission Zone (LEZ) scheme for implementation. The Transport (Scotland) Act 2019 received Royal Assent on 15 November 2019 and provides a high-level legal framework to create nationally consistent LEZs.
- 2.2 Transport Scotland is consulting on regulations and guidance for Scotland's LEZs. This consultation seeks views on a range of aspects including enforcement, penalties, national exemptions, and the process to bring LEZs into effect. These aspects will set key parameters for how LEZs will operate and how Local Authorities will need to apply them in declaring and enforcing LEZs.
- 2.3 The regulations and guidance are critical inputs to Edinburgh's LEZ development, and we are working closely with Transport Scotland. However, the Council needs certainty about the LEZ regulations before finalising proposals and commencing the legal process to put the full LEZ scheme in place (using the new regulatory framework).
- 2.4 In the interim, to ensure an LEZ is in place by 2020, it is proposed that the Council develops a proposal to the Traffic Commissioner for Scotland to introduce and enforce LEZs through a Traffic Regulation Condition (TRC) for bus services operating in Edinburgh.

3. Background

- 3.1 The LEZ project reported to Transport and Environment Committee (the Committee) in [October 2019](#) with the findings of consultation on Edinburgh's proposed LEZ scheme. This report also provided a draft Integrated Impact Assessment (IIA), a summary report on LEZ impacts on commercial fleets operating in Edinburgh, and an update on transport modelling work.

- 3.2 Work is continuing on the following workstreams, but development has been impacted by the delayed emergence of regulation and guidance detail:
- 3.2.1 Impact assessment work - further analysis of fleets and cost implications and, continued IIA assessment work as details of national programme develop and as Edinburgh's proposals are refined.
 - 3.2.2 Traffic and air quality modelling – continued modelling and testing of boundaries alongside appraisal work to develop supporting measures.
 - 3.2.3 Communications and public engagement – ongoing engagement and support to keep the public and stakeholders up to date, ensuring communications around further consultation and revised proposals is clear and effective.
 - 3.2.4 Stakeholder engagement – targeted at specific sectors identified through impact assessment work (including bus, coach, small and medium sized enterprises, people with disabilities).
 - 3.2.5 Development of the enforcement system and assessment of financial impacts – including options appraisal, design, back office function and interface with other systems, procurement approach, and financial implications for the Council.

4. Main report

- 4.1 This section provides information in relation to the Council's response to the consultation on regulations and guidance. It also provides an update on the program for implementing LEZs using a Traffic Regulation Condition (TRC) and the LEZ regulatory regime.

Response to the consultation on regulations and guidance

- 4.2 The consultation is structured under issues to be covered by regulation and issues to be covered by guidance. Regulation issues include present and future emission standards, national exemptions, penalty rates, enforcement regime, and managing the performance of schemes. Guidance related issues include setting scheme objectives, the process to bring a LEZ scheme into effect, and devices used to enforce LEZs.
- 4.3 Regulations and guidance will set the key parameters for how LEZs will operate and how the Local Authorities will need to declare and enforce LEZs. Many of the issues covered by regulation and guidance have been discussed through the [Low Emission Zone Consistency Group](#) (with officers from the four cities delivering LEZs and chaired by Transport Scotland) as we develop our LEZ scheme. Officers expect to have further discussions on these proposals with Transport Scotland to ensure they are effective for Local Authorities.

- 4.4 Appendix A provides a draft response to Transport Scotland's consultation Scottish Low Emission Zones: Consultation on Regulations and Guidance.
- 4.5 The draft response is broadly supportive of the proposals set out in the consultation paper. There are a few issues that the draft response makes substantive comment on that the Committee should be aware of (detailed below). The Council is seeking further input and engagement on these issues to ensure the regulatory regime enables Local Authorities to develop, implement, communicate, and enforce LEZs effectively.
- 4.5.1 The proposed process to bring an LEZ into effect does not provide sufficient detail available for Local Authorities to fully understand the implications, timeframes, relationships to other requirements, and expectations for this process (see question 8 of the draft consultation response).
- 4.5.2 Related to the above, further detail is required to clarify the scope, extent, and at what stage of LEZ development consultation with 'other persons' is expected. The detail on consultation needs to link to the process for bringing an LEZ into effect and implications for examination processes (see questions 4 and 8 of the draft consultation response).
- 4.5.3 Further consideration is required on whether the proposed penalty rates is a significant deterrent for the various vehicle types. In addition, the subsequent tiers proposed is unnecessarily complicated and will be difficult to understand by motorists and enforce (and will require significant development and change to existing back office systems). A simple, single tiered charge level, at a charge of £100 or more, would be a more easily understood approach and simpler to implement due to the synergies with existing systems and processes that are already in place for decriminalised parking enforcement and Bus Lane Camera Enforcement (see questions 3a-d of the draft consultation response).
- 4.6 The draft consultation response also highlights aspects that are in early stages of development and indicates that the Council welcomes further discussion and engagement on. These include
- 4.6.1 Introducing zero or ultra-low emission city centres which relates to the Council's [programme of work](#) to achieve the net zero carbon target for 2030 (see question 1b of the draft consultation response).
- 4.6.2 Enforcement regime (principles, operation, and technological opportunities for approved devices) – which should mirror the existing approach used for Bus Lane Camera Enforcement, which is tried and tested and is working well across Scotland (see question 4, and 9 of the draft consultation response).
- 4.6.3 Objectives for LEZ schemes – ensuring that the objectives we are working on remain consistently reflected in the development of guidance (see question 1b and 7 of the draft consultation response).

Programme for LEZ development and implementation through Traffic Regulation Conditions and LEZ regulatory regime

- 4.7 Edinburgh is seeking to implement a comprehensive and ambitious LEZ using the aforementioned new regulatory regime, as soon as it is available. We expect this to be before the end of 2020.
- 4.8 To progress LEZs with an immediate effect, it is proposed that Edinburgh introduces a first phase applying to buses only in 2020. This would be progressed by developing a proposal to the Traffic Commissioner for Scotland to introduce and enforce LEZs through a Traffic Regulation Condition (TRC) for bus services operating in Edinburgh. This is a similar approach that has been taken by Glasgow to bring its Phase 1 LEZ into effect in December 2018. The TRC option is also being considered by Aberdeen and Dundee.
- 4.9 The Traffic Commissioner for Scotland has powers to regulate the operation of bus services through 'traffic regulation conditions'. Under section 7 of the Transport Act 1985, the Council can submit an application to ask the Traffic Commissioner for Scotland to impose a Traffic Regulation Condition (TRC) controlling emissions from buses.
- 4.10 This approach allows Edinburgh to take immediate steps to ensure bus operators are making improvements to their fleets. Buses are a large source of nitrogen dioxide (NO₂) and dominate the roadside issues at many locations, particularly within the city centre. [Air quality modelling](#) has shown that tackling bus emissions, particularly in the central air quality management area, should be a high priority.
- 4.11 Use of a TRC is only the first step and making necessary improvements to Edinburgh air quality issues will still require a full LEZ scheme that applies to vehicle types beyond buses. The detail of Edinburgh's full LEZ scheme continues to develop in line with ongoing technical work and the regulatory timeline (see 4.12 below). A revised LEZ scheme will be reported to Committee in September 2020 (dependent on national regulation timeline and committee dates).
- 4.12 The timeframe for the new regulatory regime has implications for the timing Edinburgh's proposed LEZ scheme. Following due process, including confirmation of design of scheme, statutory consultation, possible examination, and Scottish Minister's approval, it is likely that the earliest the scheme can take effect is late in 2021 at which point grace periods will commence.

4.13 The program for the development and implementation of LEZs through both mechanisms is summarised in the table below.

Timeframe	Traffic Regulation Condition (TRC)	Full LEZ scheme (Transport (Scotland) Act 2019 and regulations)
Jan – Feb 2020	<ul style="list-style-type: none"> • Early engagement with Traffic Commissioner, Edinburgh bus operators and Confederation of Passenger Transport (CPT). • Agreement from T&E Committee to proceed with TRC LEZ 	<ul style="list-style-type: none"> • Response to Transport Scotland (TS) consultation on regulations and guidance
Feb – May 2020	<ul style="list-style-type: none"> • Develop indicative TRC proposals • T&E review of draft TRC proposals (May). • TRC Submission to Traffic Commissioner 	<ul style="list-style-type: none"> • Development of policy supporting regulations and guidance (TS led with 4 cities engagement)
July 2020		<ul style="list-style-type: none"> • Regulations and guidance legal drafting commences (TS target date prior to summer recess). • National policy position expected to be provided
Autumn 2020	<ul style="list-style-type: none"> • Decision from Traffic Commissioner anticipated 	<ul style="list-style-type: none"> • Revised LEZ scheme for T&E approval. • Seeking agreement for officers to develop draft order for formal consultation.
Nov 2020		<ul style="list-style-type: none"> • Regulatory regime confirmed by Transport Scotland (Target date)
December 2020	<ul style="list-style-type: none"> • TRC in effect 	<ul style="list-style-type: none"> • Consultation on draft LEZ Order commences. • Dependent on regulatory regime being in effect
Spring 2021		<ul style="list-style-type: none"> • Council reviews consultation feedback and determines if 'examination' required. • Examination process and timeframes dependent on regulatory regime
Autumn 2021		<ul style="list-style-type: none"> • Finalise detail of scheme • T&E agreement to final scheme to be submitted to Scottish Ministers for approval (Ministers also have powers for 'examination').

Timeframe	Traffic Regulation Condition (TRC)	Full LEZ scheme (Transport (Scotland) Act 2019 and regulations)
Late 2021		<ul style="list-style-type: none"> • Scheme approved by Scottish Ministers (dependant on regulatory regime) • LEZ Scheme in effect - grace periods commence.

5. Next Steps

- 5.1 Following the Committee's consideration of the proposed response (Appendix 1), it will be submitted to Transport Scotland. Officers have agreed an extension to the submission deadline (Monday 24 February) with Transport Scotland to enable committee consideration and review of our response.
- 5.2 Subject to Committee's agreement to the summary programme for LEZ development and implementation, we will continue to progress technical workstreams to develop a revised LEZ scheme. Proposals for the TRC will be reported to Transport and Environment Committee in May 2020.

6. Financial impact

- 6.1 The Scottish Government has made funding available to support the development of LEZs required by the four cities. The Council received £195,000 grant funding from Transport Scotland for 2019/20 which is being used to support the workstreams set out in the background section. Officers are discussing funding requirements for the next few years with Transport Scotland.
- 6.2 In November 2019, the Council received £2.4 million of funding from Transport Scotland as part of the Public Transport (PTP) funding for 2019-20. This funding is supporting works that will support bus priority across the city including additional bus lane enforcement cameras, a real time information system for all bus services serving Edinburgh, new bus shelters across the city, Straiton Park and Ride signage, development of A90/Telford Road bus priority system and installation and upgrade bus signal priority at junctions across Edinburgh. Through LEZ regional engagement, Edinburgh has worked with the neighbouring authorities and SESTran which have all received grants from this funding.
- 6.3 The Scottish Government has provided funding for bus engine retrofitting, through the Bus Emission Abatement Retrofit (BEAR) scheme. This is a scheme where bus companies can obtain funding to upgrade engines to Euro VI standards. Funding has been made available for three years including £1.6 million in 2017/8, £7.89 million in 2018/19, and £8.857 million is available for 2019/20. Uptake in 2017/18 enabled 42 retrofitted buses and 2018/19 funding enabled 124 retrofitted buses.

- 6.4 Transport Scotland advise that the BEAR scheme offers the maximum funding ‘per-bus’ that state aid rules permit. However, operators do not consider the funding arrangements to be adequate and Transport Scotland currently has a request with the European Commission seeking an increase in the State Aid threshold. Even with a positive response from the European Commission it is unlikely there would be time to have a revised scheme in place and funding committed this financial year. BEAR phase 3 for 2019/20 is currently open for submissions under the existing funding arrangements with £8.857 million available. There is no funding identified for a 2020/21 phase of the BEAR Programme, although considerable investment will be required from the bus sector.
- 6.5 In October 2019 Transport Scotland launched the LEZ Support Fund which makes available £1.09 million in 2019/20 to help commercial vehicles comply with expected Low Emission Zone standards by retrofitting. This funding is to support the cost of upgrading engines or exhausts on taxis, vans and HGVs with support for black cabs being the initial focus. Depending on uptake, funding is anticipated to increase every year until 2021/22, with figures confirmed through the normal spending review process. A fund to provide support for households and private individuals affected by the introduction of Low Emission Zones is also being developed and will be announced in the near future.
- 6.6 The main costs to the Council in developing the LEZ scheme will relate to the implementation of the enforcement regime including infrastructure for cameras signage, and back-office administration set-up. A workstream is underway within the LEZ programme to assess the cost of delivering the infrastructure required to establish and manage Edinburgh’s LEZ as well as any revenue that may be received from the scheme. This assessment will be presented to Committee as part of the revised proposals.

7. Stakeholder/Community Impact

- 7.1 The detail of the TRC will need to be developed through engagement with bus operators in Edinburgh and the Traffic Commissioner for Scotland. Initial engagement on the TRC option has commenced with operators in Edinburgh, the Confederation for Public Transport, and the Traffic Commissioner for Scotland. Engagement with these groups will continue as detail of the requested TRC is developed. The TRC proposal will be based on evidence from SEPA’s Edinburgh air quality model and fleet information provided by operators.
- 7.2 A communications and engagement plan is in development and will be implemented as the LEZ proposals are refined (and will interface with the national plan). Some stakeholder events (focussed on businesses) will also be held in the coming months to keep awareness of LEZs high and help the sector prepare for LEZs.

- 7.3 A programme of engagement with Local Authorities in the South East Scotland region are underway, chaired by SEStran. This has enabled discussions on the wider implication of Edinburgh's LEZ proposals.
- 7.4 The Transport (Scotland) Act 2019 introduced a requirement for LEZ schemes to include an objective relating to how LEZ implementation will contribute towards meeting the emission reduction targets set out in Part 1 of the Climate Change (Scotland) Act 2009. The implications of this are noted in section 'Response to the consultation on regulations and guidance' and discussed in detail under question 1b of the draft response.

8. Background reading/external references

- 8.1 [Transport and Environment Committee, May 2018, Developing Low Emission Zones in Edinburgh](#)
- 8.2 [Transport and Environment Committee, August 2018, Edinburgh: connecting our city, transforming our places' – public engagement on City Mobility Plan, Low Emission Zone\(s\) and City Centre Transformation](#)
- 8.3 ['Air Quality Evidence Report - Edinburgh' November 2018, \(SEPA\)](#)
- 8.4 [Transport and Environment Committee, December 2018, Annual Air Quality Update](#)
- 8.5 [Transport and Environment Committee, February 2019 'Edinburgh: Connecting our city, Transforming our places' Findings of Public Engagement and Next Steps](#)
- 8.6 [Transport and Environment Committee, May 2019, Tackling Air Pollution – Low Emission Zones](#)
- 8.7 [Transport Scotland, December 2019, Scottish Low Emission Zones: Consultation on Regulations and Guidance](#)
- 8.8 [Corporate Policy and Strategy Meeting, May 2019, Sustainability Approach](#)

9. Appendices

- 9.1 Appendix 1 – City of Edinburgh Council – Response to Scottish Low Emission Zones: Consultation on Regulations and Guidance (draft)

Appendix 1

City of Edinburgh Council – Response to Scottish Low Emission Zones: Consultation on Regulations and Guidance

Draft for consideration by Transport and Environment Committee

February 2020

Introductory comments

The City of Edinburgh Council (the Council) welcomes the opportunity to provide feedback on the consultation - Scottish Low Emission Zones: Consultation on Regulations and Guidance.

The Council has been working closely with Transport Scotland through the Four Cities Consistency Group (and associated subgroups) on many of the issues covered by this consultation. Concurrently, Edinburgh (along with Aberdeen, Dundee, and Glasgow) has been developing LEZ proposals to be implemented using the regulatory regime this consultation will inform. It is important that future regulations and guidance aligns with and supports key decisions that have been undertaken in the concurrent development of Low Emission Zones.

The Council broadly agrees and supports the proposals set out in the consultation paper. However, there are some proposals that are not fully supported, and officers are seeking further input and engagement on. This is to ensure the regulatory regime enables Local Authorities to develop, implement, communicate, and enforce LEZs effectively. The issues are summarised below.

- The Council is unable to confidently agree to the proposed process to bring an LEZ into effect. The consultation paper and discussions with Transport Scotland have not provided sufficient detail available for Local Authorities to fully understand the implications, timeframes, relationships to other requirements, and expectations for this process. Response to question 8 provides further detail.
- Related to the above, further detail is required to clarify the scope, extent, and at what stage of LEZ development consultation with 'other persons' is expected. The detail on consultation needs to link to the process for bringing an LEZ into effect and implications for examination processes. Response to questions 4 and 8 provide further detail).
- Further consideration is required on whether the proposed penalty rates is a significant deterrent for the various vehicle types. In addition, the subsequent tiers proposed is unnecessarily complicated and will be difficult to understand by motorists and enforce (and will require significant development and change to existing back office systems). A simple, single tiered charge level, at a charge of £100 or more, would be a more easily understood approach and simpler to implement due to the synergies with existing systems and processes that are already in place for decriminalised parking enforcement and Bus Lane Camera Enforcement. Response to questions 3a-d provides further discussion on these points.

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The Council notes that there are some aspects that are at early stages of development and Council officers welcome further discussion and engagement on:

- Introducing zero or ultra-low emission city centres.
- Enforcement regime (principles, operation, and technological opportunities for approved devices) – which should mirror the existing approach used for Bus Lane Camera Enforcement, which is tried and tested and is working well across Scotland.
- Objectives for LEZ schemes – ensuring that the objectives the Council is using are reflected consistently through the development of guidance.

Finally, the Council notes a draft timeframe for the key policy positions on the content of the regulation is proposed for June 2020. This timeframe is critical to the ability of the Council to be able to deliver a LEZ within a timeframe that delivers on our ambitious commitments. The Council asks that further discussion on any timeframe changes is held as part of the existing LEZ governance groups and as part of ongoing discussion on the key issues raised in this response.

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Response to consultation questions

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

Yes, the Council agrees with the proposed emission standards of Euro 4 petrol/ Euro 6/VI diesel. The emissions standards have been indicated since the November 2017 'Building Scotland's Low Emission Zones' consultation. The standards are what the Council has been working to as part of our LEZ development and standards align with what is being set throughout the UK's Clean Air Zones. A departure from these standards would have significant implications for the development of LEZs in Edinburgh.

Ongoing work to review and assess the performance of the proposed Euro standards will be important to ensure the expected air quality improvements are realised. For example, a strong understanding of the performance of new Euro 6 classes (6c, d and d-temp) as well as retrofitted vehicles will be required to ensure accurate evaluation of LEZ schemes (which rely on modelled assumptions about performance and fleet make up). Similarly, review of technology and certification of retrofitted vehicles will be important to ensure LEZs deliver the greatest air quality improvements and is a robust system.

It is recommended that the vehicle classifications, certification category and descriptions for enforcement purposes are aligned with the assessment methodology (National Modelling Framework)

Future emission standards - 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

The Council has comments that fit around two set of issues. One around managing emissions through the LEZ regime and wider issues in response to climate change.

Emissions managed through the LEZ regime

The Transport Act has set two mandatory objectives for LEZ schemes; one, to contribute to meeting the emission reduction targets set out in the Climate Change (Scotland) Act 2009 and the other, to contribute towards meeting the national Air Quality Objectives.

The guidance supporting LEZs needs to cover how the two objectives interact given LEZ primary focus to date, has been on NO₂ and meeting the Air Quality Objectives. The Act sets objectives without hierarchy and guidance is needed to clarify how local authorities should balance decision making where there may be conflicts. For example, emissions from retrofitted engines can result in higher fuel usage and therefore probable higher carbon emissions, which contrasts with reductions in NO₂.

Guidance should also indicate how these aspects should be considered over time.

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The Council supports consideration of how stricter emission standards may impact on bus operators and organisations currently investing in new vehicles to meet existing emission standards. The consultation paper only identifies organisation (and not individuals) in its discussion of how potential legacy provisions should apply. The Council is of the view that in developing legacy provisions it includes all vehicle owners/user groups.

Any legacy framework needs to balance the real issues for vehicles that have long operational lifespans against the critical need to respond to climate change.

Wider emissions

In response to the Council's 'Climate Emergency' Motion, the Council has established a [programme of work](#) to achieve a net zero carbon target for the city by 2030. This and the associated actions broadly align with the intention identified in the consultation paper.

Further proposals for zero emission or ultra-low emission city centres needs to specify the specific type of emissions. It is anticipated that these proposals are not just about road traffic exhaust emissions. Other emission sources should also be considered, such as non-exhaust transport emissions (eg particulate matter from tyre and brake wear), as well as space heating and energy production from business and domestic uses within city centres. These sources can typically make up a significant proportion of the general background pollution concentrations, especially NO₂.

The role of the National Planning Framework, building regulations and national energy policy will also need to be a feature of any future framework. Funding streams and supporting guidance and regulation for Local Authorities will also be required to deliver on the 'transformative shift' necessary.

Exemptions - 2a. Which of the proposed national LEZ exemptions do you agree with?

Please be as specific as possible in your reasoning

An alternative to exemptions could be a scrappage scheme or funding to support people most impacted (that the exemption is attempting to mitigate). The application and management of exemptions is expected to be very complicated and difficult to communicate, enforce and manage, and opens a significant opportunity for misuse and to undermine the air quality benefits to be delivered from LEZs.

Where exemptions are provided, they should be time-limited and/or restricted to specific vehicle types. There are some further considerations that should be taken in to account in determining how exemptions provisions are applied and managed.

It is critical to ensure core emergency responses services are provided, but it is important to note that much of these fleets are compliant already (particularly the light fleet). In addition, the Scottish public sector is working towards the Programme for Government commitments to phase out petrol and diesel vehicles, and for no new diesel or petrol (light fleets) by 2025. These services should be recognised as exemplary in supporting action to address poor air quality and consideration given to an exemptions regime that is more

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tailored. The Council considers that where exemptions are issued for organisations' vehicles the specific type or use should be defined.

The issues related to how blue badge holders are exempt through a LEZ regime are well understood. If an exemption is provided for blue badge holders, then they should be time-limited. The complexity of administering a potential system is of concern both for the back-office requirements, and potentially the burden it will place on blue badge holders. Further work to quantify the number of people, vehicles (and compliance), possibly impacted should be better understood as part of developing any exemptions regime for blue badge holders. The Council is also concerned about the huge scope for misuse relating to blue badge exemptions, and the effectiveness of smartphone app that is currently under development to manage blue badge exemptions.

The Council also believes that historic and showmen vehicles are more likely to be used for genuine purposes on one-off or infrequent occasions and would be better managed through a time-limited dispensation scheme than a blanket national exemption. There are also concerns about the clause 'used for carrying domestic animals', which could be misused.

The Council is also unclear as to how retrospectively applied exemptions would be managed alongside proposals for the escalation of charges. If a driver has received several charges, but has one of the earlier penalties cancelled, how would this impact on future charges, which would already have escalated before it was known the first charge would be cancelled.

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

Consideration may need to be given to ensuring there is sufficient scope within the national exemptions to take into account any legacy framework that is implemented as part of future emission standards.

The Council is considering how it might apply time-limited exemptions, led from our impact assessment work. The Council expects provision from Scottish Government to offset any significant impacts and any application of local exemptions to be used sparingly.

Further detail is required on how time limited exemptions would apply and be managed. This would include at what stage of scheme development they need to be set, whether Ministers need to sign off, whether they need to be set at a single point in time or can be dealt with on a case by case basis, whether the Local Authority needs to set policy or processes for how time limited exemptions would be applied for, and managed.

The Council also requires clarity that the regulations will allow for local, time-limited dispensations/exemptions (and for the Council to charge admin fees for these) that allow specific vehicles (ie those carrying specialist equipment) to enter the city centre on a temporary basis.

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Penalty rates - 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.

The Council does not agree with the tiered approach or the penalty rates, as set out in the following headings.

General comments

The Council also proposes that the name of the charge is specific to LEZs, rather than the presently referred to Penalty Charge Notice (PCN). It would be more effective in communications to have the penalty name be explicitly linked to LEZs and vehicles not meeting emission standards.

To support a strong deterrent mechanism, the Council advocates that continued operation of non-compliant licenced or registered vehicles (eg buses, taxis, and private hire) should be a reportable offence to the licencing agency or regulator.

Tiered approach

The Council believes that the tiered approach being proposed is unnecessarily complicated and will be difficult to understand by motorists. The tiered approach is completely different from that used in other decriminalised enforcement regimes (parking and bus lanes), so will require bespoke IT systems, which will have to be specifically tailored/developed to meet the tiered bands.

The Council is also concerned as to how the motoring public would understand such a tiered system and how it might be applied in cases where a driver has received multiple charges in a short period and wishes to challenge one, some or all of these charges. Would the Council be unable to move vehicles between tiers if there were any challenges awaiting resolution? The timescales for appeals would make the proposed approach highly unworkable.

The Council notes that the proposed penalty rates for LEZs is set to start at the same rate as parking tickets and bus lane enforcement charge notices, which will offer very little deterrent value for the LEZ. The Council has raised its concern at these rates being far too low and that it is now cheaper to receive and pay a £30 parking ticket than it is to park in our city centre for a full day. The penalty rates have not been revised for several years and at the very least consideration should be given to revising these rates, to account for inflation.

The Council would propose a single tiered system, or two-tiered system at most, with a much higher charge for the first tier (£100 minimum). For example, a two-tiered system that uses a 'three strikes' policy is implemented from which the penalty rate doubles. It is noted that consideration of what constitutes a strike needs clarification to address the issues related to appeals as noted above in question 2a in relation to exemptions.

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Penalty rates

Further work is required to understand the likely impact and behaviour change for people in relation to LEZs and take into consideration the relative 'deterrent rate' across similar types of enforcement activity.

It appears that the tiered escalation system is an effort to deliver higher penalty rates to provide a stronger deterrent. The Council considers this outcome could be achieved by increasing the base rates.

The current proposed rates are similar to charging rates in some Clean Air Zones which are non-deterrent systems and can be considered payable. Penalty rates should reflect emissions impact and use of vehicles for example, a delivery van operating in the city all day should be different to a private car which contributes less emissions based on use. Similarly, under the National Modelling Framework, the emissions factors for taxis are set at a similar rate to light goods vehicles and the penalty rates should take this into account.

Penalty rates - 3b. Which surcharge 'curve' in Figure 1 represents the best approach to designing a surcharge?

In line with the comments made to 3a – The Council does not support a multiple tiered surcharge/escalation approach. An alternative would be two tiers with the second-tier doubling the first-tier rate. This would most closely align to graph 2 but only to double the rate following three offences (from tier 0 to 1).

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

Nothing in addition to 3a and b. The principles of the penalty scheme need to be easier to understand and communicate for drivers and easier to manage for Local Authorities.

Penalty rates - 3d. How many days should lapse before a registered keeper of a vehicle returns to the base tier of the penalty charge?

The Council doesn't support the proposal for registered keeps to return to lower tiers of the penalty rates. The Council doesn't see the rationale for providing an opportunity to return to lower tiers if the system is designed to more heavily penalise those that continually operate non-compliant vehicles.

Enforcement regime – 4. Do you agree with the general principles of the LEZ enforcement regime? If not, why not?

The Council broadly agrees with the principles of enforcement as set out in the consultation and it broadly mirrors the existing approaches the Council manages for bus lane and parking enforcement. This agreement is caveated with the following points.

The costs of developing and managing an enforcement system is a concern for the Council. The Council does not expect to have any positive revenue from the LEZs and are therefore looking at the most cost-effective delivery model for Edinburgh. The Council believes this would be achieved by mirroring, as closely as possible, the charging and escalation approach

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that is already in use across decriminalised parking enforcement and bus lane enforcement, which can then be managed using existing back office systems and processes, including collecting penalties (eg debt collection services) for those that do not pay.

As per the Council's response to question 3a, the Council also proposes that the name of the charge is specific to LEZs, rather than the presently referred to Penalty Charge Notice (PCN), which is already used for decriminalised parking enforcement.

A few specific comments are indicated below:

- Point 68, the vehicle type must be requested to determine the penalty level if there are to be various rates for different classes of vehicle.
- Point 70, there should be an allowance for additional time (as there is for bus lane charges if there is a delay in the DVLA providing information to authorities). A blanket 28 days period may not take account of any technical issues and allow motorists to avoid payment.
- Point 71, new vehicle models are constantly being introduced to the market and may be difficult to identify and require frequent updates to back-office systems, while makes are steadier and should be sufficient information to identify the vehicle in question.
- Point 72, the colour of the vehicle may not be required as the vrm and make should be sufficient to identify it.
- Point 73, should be from date of notice **issued** as motorists may be able to dispute receipt dates or argue they have never received the penalty at all. This should follow the same approach and process as bus lane charge notices.
<http://www.legislation.gov.uk/ssi/2011/442/contents/made>
- Point 74, the Council is likely to offer various payment ways for motorists, but there must be scope to ensure these do not incur additional burdens, ie making it mandatory to accept cash payments may require an office with a public counter to manage such transactions which are likely to be low in volume.
- Point 75, the Council would like clarity to ensure that this process allows representations from hire firms and for the Council to re-issue the charge to the hirer. It is suggested that the appeals process follows the already established one for parking tickets and bus lanes through the Parking and Bus Lane Tribunal for Scotland.

There is also a concern that the 'without consent' reason could allow family members who share a vehicle to use this as a loop-hole to avoid taking responsibility for penalties. This should be closely aligned with current bus lane legislation.

From our existing enforcement activity, the Council is aware of a small number of vehicles for which the DVLA do not have any vehicle or keeper details for. Further discussion is warranted between the Local Authorities and Transport Scotland on the use of these vehicles, how the issues is treated in other jurisdictions, and potential options for recourse.

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Prior consultation - 5. What are your views on the proposed list of 'other persons' that local authorities must consult with on their LEZ plans?

It is in the Council's interests to consult as widely as possible on any LEZ proposals, so an extensive specific list of 'other persons' seems unnecessary.

There is not currently sufficient detail to inform Local Authorities on the process and consultation requirements to bring a LEZ into effect. Further detail is required to clarify the scope, extent, and at what stage of LEZ development consultation with 'other persons' is expected. The detail on consultation needs to link to the process for bringing an LEZ into effect and implications for examination processes.

Engagement with the groups listed may be more appropriate at a national level. In developing the 'other persons' list and guidance supporting consultation, discussion with these groups (particularly Commissioners) should be undertaken by Transport Scotland to determine the level of input and consultation that those on the list may wish to have. These groups may not have a specific local perspective on the city's LEZ proposals.

The Council considers that the current list proposed too prescriptive. For example; residents within a zone, residents living within an LEZ and Community Councils are essentially all representing the same group of people and could be covered by a single reference to 'affected residents and resident groups'. Similarly, it is not clear what is meant by 'motorcycle groups' and suggest they could be covered by 'road user groups'.

Performance of a scheme – 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?

It is expected that LEZ review provisions would mirror any relevant similar provisions from environmental protection, transport, or planning frameworks.

As part of implementing the LEZ the Council would expect to monitor its performance against its objectives in a way that aligns with existing LAQM and the LEZ Annual Reporting requirements. It is expected that this process would provide a forum to flag any issues that may trigger the need for review.

To support transparent and accountable review, the direction (either from the Local Authority or Scottish Ministers) for the review should be clear from the outset. This should set out detail in relation to following aspects:

- the scope of the review (including key areas of concern, relevant objectives of scheme, and any wider considerations).
- direction in relation to the baseline and future evidence base to be considered (eg assumptions made in modelling work supporting the declaration of the scheme, or frameworks/guidance used and potential future iterations).
- resource implications (including funding to support the review, technical expertise and models required).
- timeframes for undertaking and key stages for the review.

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- requirement for stakeholder engagement or consultation.
- reporting and publication of the review.

Purpose and objectives of an LEZ – 7. What secondary objectives should be created for LEZ schemes? Please be as specific as possible in your reasoning.

The Council supports the areas suggested for secondary objectives. They align with what the Council is using as part of developing and appraising our LEZ scheme, as well as the types of objectives the Council is looking to set as part of Edinburgh's LEZ scheme. Guidance needs to ensure it aligns with and is supportive of objectives that are being used by Local Authorities currently developing and appraising LEZ options in advance of guidance. The secondary objectives will be delivered by existing projects, strategies, and schemes and this needs to be accounted for in the guidance.

The consultation paper indicates that the Act sets out that the objectives should be specific, measurable, achievable, relevant, and time-related (SMART) (para 94). The SMART acronym provides a reasonable framework for potential use setting secondary objectives, but its application should be set out in the guidance. The guidance for setting objectives should cover how these objectives should be SMART and consider how difficult it can be to apply SMART approaches in relation to the public health and wellbeing topic area. Guidance should refer to previous efforts to assess outcomes for LEZs including the impending Glasgow Evaluability 2020 report and other best practice from the UK.

The consultation paper notes that the use of penalty monies is tied to delivery of objectives but that it is unlikely that there will be any positive revenue from these monies. In Edinburgh, significant work has been put into bus priority measures already, with the next steps in improving journey times and reliability likely to come from large strategic public transport projects. Any revenue generated from LEZ penalties is not likely to be sufficient to deliver any major projects to support LEZs and the Council is working to identify alternative mechanisms for delivery. The guidance needs to be clear about the relationship between penalty revenue and delivery of supporting mechanisms.

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

The Council is unable to confidently agree to the proposed process to bring an LEZ into effect. The consultation paper and discussions with Transport Scotland have not provided sufficient detail available for Local Authorities to fully understand the implications, timeframes, relationships to other requirements, and expectations for this process. This issue requires further discussion through and to be addressed as a priority. Council officers are very keen work closely with Transport Scotland in the development of the process to ensure these issues are addressed adequately.

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The steps, set out broadly, are consistent with how the Council is expecting to put a LEZ in place based on our understanding from working with Traffic Regulation Orders (TRO). The Council is raising some critical issues that have been raised from our review of the flow chart:

- The consultation on the scheme how this relates to the examination process including detail for how it is triggered, potential scope, and role of external reporters, alongside consultation and examinations fit into the wider process for bringing a LEZ into effect.
- Related to examination processes, there is limited guidance on what constitutes an 'objection' which has significant implications for the consultation process and the Local Authority's response. The Regulations and Guidance should provide detail how various responses to consultation should be treated.
- Issues exist in relation to the scope, timeframe, and role of reporters, should an 'examination' be undertaken. The regulations and guidance need to be clear about the stages and criteria to trigger an examination at both local authority level and Scottish Ministers.
- Further discussion is required about expectations for Committee sign off and how that requirement is established in line with Local Authority processes and governance arrangements.
- There may also be cases where an LEZ cannot be implemented, which are not referenced on the flowchart.

Approved devices and technological opportunities - 9. How can local authorities maximise the technological opportunities available from the deployment of approved devices?

The Council is currently undertaking work to better understand the detailed requirements for enforcement of LEZs. This includes looking at opportunities to use cameras for alternative uses, including supporting intelligent transport systems and improvements for network management. The Council is also looking to the use of systems to do traffic and cycle counts to fill gaps in data, quantify modal shift, and opportunities to better to manage traffic across the network.

These aspects should be included to help make the most of opportunities from LEZ approved devices. The guidance and approval of devices should be flexible to support local authorities to be able to make decisions confidently to progress LEZ enforcement but also ensure they are able to adapt systems to make the most of emerging and changing uses.

Dual use cameras, which could be used for both LEZs and Bus Lane Camera Enforcement would also generate significant efficiencies for the Council. It is therefore vital that the regulations around approved devices directly match those applied to Bus Lane Camera Enforcement. This applies to the back office systems supporting Bus Lane Camera Enforcement and decriminalised parking enforcement.

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It is also important to note that ANPR cameras will not identify the person driving the vehicle (point 100). It is vital that LEZ enforcement is based around keeper liability, rather than driver liability, like the approach taken for decriminalised parking enforcement and Bus Lane Enforcement.

It should also be noted that the approved device will not be capable of determining if a vehicle meets the specified emissions standard. These checks are generally undertaken in a back-office system rather than by the approved device hardware. The approach for LEZs should directly mirror that used for Bus Lane Camera Enforcement.

Assessing impact - 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’

(b) the very young and old

(c) people facing socioeconomic disadvantages

There is a need for impact assessments be taken on the impacts of national decisions (including LEZ Legislation, Regulation, and Guidance) as these cannot be assessed as part of local scheme decisions.

The Council has undertaken a draft [integrated impact assessment](#) which covers these impacts in relation to our proposals. Existing work undertaken by the Council and the other local authorities should be incorporated into the national assessments to ensure a comprehensive understanding of the impacts and potential mitigation measures is developed.

Assessing impact - 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.

The Council has undertaken a draft [integrated impact assessment](#) which covers impacts on businesses in relation to our proposals.

Additional assessment is required on national implications from LEZ Legislation, Regulation, and Guidance. The national assessment should consider the cumulative impacts and benefits of LEZ proposals and to assess the decisions that have been taken at a national level (including the decision to progress LEZs and issues that have been set for consistency).

Existing work undertaken by the Council and the other local authorities should be incorporated into the national assessments to ensure a comprehensive understanding of the impacts and potential mitigation measures is developed.

It is anticipated that there will be an impact on local authorities through ongoing maintenance costs of cameras and back-office systems and administration of exemptions and appeals against penalty charges.

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Impact assessments on businesses should include consideration of relevant criteria and frameworks provided in STAG assessments and the HMRC Green Book guidance, which is the Council's approach to develop its LEZ scheme. Alternatively, clarity should be provided through improvements to the guidance set out in the National Low Emission Framework of the extent to which these assessments must be undertaken. This is particularly pertinent considering the Programme for Government commitment and the need for local authorities to be working towards achieving the statutory Air Quality Objectives.

The Council does not find there is sufficient guidance from the National Low Emissions Framework to inform robust decisions on key LEZ aspects. As a result, the Council is looking to use of relevant frameworks provided in the STAG assessment and HMRC Green Book guidance.

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

A data protection impact assessment should be undertaken in line with requirements. The Council has not undertaken this at this stage but will undertake at an appropriate stage.

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

The Council's approach to assessing environmental impact has been via the [Strategic Environmental Assessment](#) framework. As part of this Edinburgh's LEZ impacts have been screened out of the framework with the proviso that the wider impacts and interventions will be assessed as part of the City Mobility Plan which has been reported [here](#).

SEPA have also [reported](#) through the National Modelling Framework on the potential emissions reduction in Edinburgh.

As with the other forms of impact assessments, there is a need for the impacts to be considered at a national level. Existing work undertaken by the Council and the other local authorities should be incorporated into the national assessments to ensure a comprehensive understanding of the impacts and potential mitigation measures is developed. Consideration should also be given to how the national modelling framework and developing expectations in relation to the climate change objective should be taken into account as part of national assessments.

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

None in addition to what is set out in the introductory comments of this response.

Appendix 1

Respondent information

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