



LEZ Fact Sheet No 3: Setting up a Low Emission Zone

Background

The banding structure set out in LEZ Fact Sheet 1 proposed that Euro standards would be the best method of categorising emission levels within a vehicle class. They could provide the basis for judging the emission status of a vehicle and developing a scheme that would permit access to types of vehicle within a class, based on (or a proxy for) their Euro standard.

Proposed LEZ vehicle banding structure

Vehicle Type Low Emission Zone Vehicle Banding	Vehicle Class		
	Cars	Vans	Trucks/Buses
Stage 1	EU stage 1	EU stage 1	EU stage 1
Stage 2	EU stage 2	EU stage 2	EU stage 2
Stage 3	EU stage 3	EU stage 3	EU stage 3
Stage 4	EU stage 4	EU stage 4	EU Stage 4

Given the banding structure above, the setting up of a LEZ will require regulations that can be applied not only to classes of vehicle (car, bus, truck etc) but also types of vehicle within that class (for example Euro 1 or Euro 3). Such regulations need to provide the basis for enforcement and the legal powers to levy fines for infringement. Traffic Regulations Orders (TRO) provide a suitable procedure for achieving this.

Using a TRO to set up a LEZ

The basis of any major reclassification of road use is the Traffic Regulation Order (TRO). A TRO is used to change the use and / or waiting conditions on the highway. They are regularly made by Local Authorities wishing to change parking regulations or create bus lanes, for example. An infringement of the highway regulations can result in penalties being applied by local authority parking attendants and police officers.

The best method for setting up a low emission zone is likely to be a Traffic Regulation Order (TRO) under sections 1 to 4 of the Road Traffic Regulations Act (RTRA) 1984 (or sections 6 and 7 for roads in Greater London). The scope for using a TRO was widened by the Environment Act 1995 (Section 36 of Schedule 22) which states they can be used “with respect to the assessment or management of the quality of air”. It appears likely that a TRO set up for air pollution reasons could be used to differentiate between vehicles by emission standards as well as the more usual criteria of weight, width etc.

It is considered that a low emission zone could lawfully be set up under the relevant sections of the RTRA, both for the purpose and the scope required by such a scheme. These factors are outlined below, together with the key issues of exemption and potential for legal challenge.

Purpose of scheme

The powers to make a TRO appear wide enough to do so for air quality reasons where it appears to a local authority that it is expedient “for preserving or improving the amenities of the areas through which the road runs”, or “for any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995”.

Therefore, it is likely that a TRO that is intended to reduce air pollution within a specified area could be introduced under the Road Traffic Regulations Act 1984.

The specified area does not need to be a designated Air Quality Management Area in advance of the TRO. However, in justifying any decision to implement a low emission zone, authorities will generally wish to demonstrate that the zone is expected to address a proven air quality problem. Authorities should generally, therefore, have completed a full review and assessment of local air quality under section 82 of the Environment Act 1995 and further assessment of the AQMA. This may help avoid subsequent challenges.

Form of scheme

It is possible to make a TRO that applies to specified classes of vehicles (e.g. bus, truck, car etc). The powers also enable a TRO to be applied, whilst exempting from the restriction vehicles displaying a certificate or other means of identification, whether generally or in particular circumstances or at particular times. This means there is a basis for permitting access to cleaner vehicles from each class (car, truck etc.) with appropriate identification.

Signing

Unless the effects of a TRO are properly signed, all the relevant legal precedents suggest that the courts are likely to hold that the order is invalid and that no offence under it can be committed.

Therefore, a low emission zone will require careful signing to indicate whether drivers can enter the zone. Signs that are not already prescribed for use will need to be authorised by DETR who can advise on traffic signing to support TROs.

Type of TRO

An air pollution TRO can be set up as permanent or experimental TRO, but not in a temporary form. The procedure for making a TRO for air quality purposes is the same for making any other permanent or experimental TRO. Consultation (with police, public transport operators etc.) and public enquiry requirements are contained within the regulations.

Exemptions for disabled drivers

TROs that prohibit or restrict the waiting of vehicles must provide provision for exempting a vehicle displaying a disabled badge. This is provided for by the Local Authorities' Traffic Orders (Exemptions for Disabled Persons) (England and Wales) Regulations 1996.

Legal challenges to a TRO

The first type of challenge would question the validity of the order on the ground that it is not within the relevant powers, or that the relevant requirements have not been met. This challenge is known as a ‘Schedule 9 application’. The scope for setting aside a TRO is very slim and rests on the highway authority not complying with certain conditions in making the order. The procedure for making a air pollution TRO is the same for making any other TRO, which are set up by highway authorities on a frequent basis. Therefore the experience needed to comply with the conditions is widely available.

A second type of claim might arise based on some private law right, such as a negligence or public nuisance. It is likely that this claim could only be made if a 'schedule 9 application' was firstly successful in setting aside the TRO. The claims then needed to sustain a private law claim would be difficult to prove.

Conclusions

Following consideration of the factors above it is thought that the Traffic Regulation Order process gives Local Authorities the greatest scope for setting up a Low Emission Zone. A TRO is the process used to set up bus lanes, double-yellow lines and controlled parking zones. They are used to set rules about the use of a road or the waiting of vehicles in a road. Local Authority parking attendants, police special constables and police officers can enforce these rules. Consultation is required with relevant organisations (police, public transport etc) as for a TRO set up for other purposes.

It should be noted that traffic management works often back up changes made to highway regulations. An example is painting of the road surface where bus lanes are implemented. Therefore setting up a LEZ will need input on the physical design as well as regulatory aspects.

Finally, the information provided in this fact sheet is for guidance only, and as with all legal instruments the use of a TRO is open to interpretation in law. It would be advisable that Local Authorities wishing to satisfy themselves that a TRO will provide sufficient powers to set up a LEZ should consult their legal and/or traffic management departments. More detailed information on the points outlined within this fact sheet, with references to the sections of the relevant Acts, can be found on the NSCA web site.

A subsequent fact sheet will examine the scenarios for operating a LEZ that is set up with a TRO, given the available powers of Local Authorities to enforce highway regulations.

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