

# TRANSPORT (SCOTLAND) ACT 2019

---

## EXPLANATORY NOTES

### THE ACT

#### Part 2 – Low Emission Zones

#### Overview

##### *Chapter 1 – Effect of a low emission zone scheme*

25. Section 6 of the Act restricts the driving of vehicles within low emission zones. Where a low emission zone scheme is in place, its terms must be complied with; subject to the terms of the scheme (which will make provision about matters such as the types of vehicles covered by the scheme, and its hours of operation), only vehicles which are at least at the level of the specified emission standard, or which are covered by an exemption, may be driven on roads within the zone. Where anyone drives on a road within a zone in contravention of subsection (1), a penalty charge will become payable.
26. The specified emission standard will be set by the Scottish Ministers by regulations under section 6(4)(a), following consultation with appropriate persons. It is likely that this will be set by reference to what are known as the “Euro standards” (for example, Euro 6 for diesel). Section 128 is also relevant here as it allows different provision to be made for different purposes. Accordingly, a different standard could be set for diesel vehicles compared to petrol ones.
27. Exemptions will be set by the Scottish Ministers by regulations under section 6(4)(b), in particular, by reference to their construction or use. This would allow Ministers to provide, for example, that emergency service vehicles are to be exempt. The local authority which operates the low emission zone scheme will also be able to grant exemptions of a time-limited nature under section 17 if the scheme makes provision to this effect. This would allow for exemptions to be granted in cases where it is not appropriate for the vehicle to benefit from a blanket exemption but there are particular circumstances in which it ought to be exempt for a limited period.
28. The Scottish Ministers will also be able to specify by regulations the amount of the penalty charge (section 6(4)(c)), following consultation with person whom the Scottish Ministers consider appropriate. Again, this power is subject to section 128 which provides that different provision may be made for different purposes, so this power could be exercised so as to specify different levels of penalty charge depending on, for example, the class of vehicle or the emission standard of the non-compliant vehicle, or whether there are repeated contraventions. In addition, the power includes the ability to make provision for discounts for early payment, or surcharges for non-payment.
29. Section 6(3) deals with the possibility of a non-compliant vehicle passing a number of different enforcement cameras on one journey through a low emission zone. This provides that these infractions are to be dealt with together. Provided that the contraventions occur on the same day, in the same zone, using the same vehicle, and provided that the person who is liable to pay the penalty in respect of the vehicle is also the same in respect of the infractions, only one penalty will be payable.

*These notes relate to the Transport (Scotland) Act 2019  
(asp 17) which received Royal Assent on 15 November 2019*

30. In most instances, the person who is liable to pay the penalty will be the vehicle's registered keeper (see section 7(4)). However, Ministers may by regulations provide for it to be payable by someone else in specified circumstances: for example, by stipulating that a penalty incurred in respect of a hire car (including a "car club" car) is to be paid by the person who hired the car. If such provision is made, the final limb of the single penalty rule in section 6(3) would ensure that a subsequent hire car driver does not benefit from a penalty paid by someone else who hired the same car earlier in the day. The Scottish Ministers are required to consult with such persons as they consider appropriate prior to making regulations under section 7(4)(b).
31. The restriction in section 6 relates to driving on a road within a zone. Accordingly, a vehicle which is parked would not be issued with a penalty. In addition, section 7 requires a record to be produced from an approved device (such as automatic number-plate recognition cameras) and a record of the vehicle's emission standard issued by the Secretary of State (in the guise of the DVLA), or by another source specified in regulations made by the Scottish Ministers. Accordingly, a penalty could not be issued to a parked car by an attendant on the basis of a deduction that a parked car within the zone which breaches the emission standard must have been driven within the zone prior to parking. Rather, penalties will need to be sent out by post on the basis of camera records in a similar fashion to speeding tickets.
32. In addition, as the rule is about driving on a road within a zone, movement of vehicles which occurs within a zone but not on a road (for example, moving from one space within a car park to another one) would not incur a penalty. Section 6 should be read in conjunction with, in particular, sections 14(1) and (3) which relate to the requirement for a zone to specify the roads forming part of it. There is a prohibition on the inclusion of what are known as "special roads" (usually motorways).
33. Section 7(2) makes provision for a record obtained from the Secretary of State, or from another source specified in regulations made by the Scottish Ministers, to be conclusive as to whether a vehicle met the emission standard on the date and time captured by an approved device.
34. This provision ensures, firstly, that the Scottish Ministers have the power to make regulations prescribing the holder of a database or databases other than those held by the Secretary of State as the source of the record certifying the vehicle's emission standard. This power can be used in the event that the records held by the Secretary of State cannot confirm the emission standard of particular vehicles caught by the low emission zone scheme, for example foreign vehicles. Also, the provision ensures that retrofitted vehicles which are covered by the low emission zone scheme, but which have been adapted to meet the emission standard by the date and time they have been captured by the approved device, are not erroneously issued with a penalty charge.
35. Penalty charges are to be paid, in accordance with section 7(4), to the local authority which issued the penalty charge notice. What the local authority then does with those proceeds is subject to sections 14(2) and 27. Essentially, joint schemes must provide for the proceeds to be shared between the local authorities concerned. Proceeds must also be ring-fenced for specified purposes.
36. Section 8 allows the Scottish Ministers to make further provision, by way of regulations following consultation with appropriate persons, about the enforcement of low emission zone schemes to ensure that they operate effectively. In particular, this power can be used to set out the rules which will apply to penalty charge notices (such as the form they take, the time allowed for payment, what happens when a person requests an internal review of a ticket or appeals it to an external adjudicator, etc.).
37. This section also allows offences to be created in relation to enforcement. The maximum penalty that any such offences may provide for is level 5 on the standard scale (currently £5,000). In addition, a number of existing offences may be relevant to the enforcement of low emission zone schemes. For example, under sections 42 and 43 of the Vehicle

*These notes relate to the Transport (Scotland) Act 2019  
(asp 17) which received Royal Assent on 15 November 2019*

Excise and Registration Act 1994, it is an offence to fail to affix a registration plate, to obscure it, or to render it not easily distinguishable. Under section 44 of that Act, it is an offence to forge a registration document or mark, or to fraudulently alter, use, lend or allow the use of it. Vandalism of enforcement cameras would also already constitute an offence.