
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 26

The Low Emission Zones (Scotland) Regulations 2021

PART 1

Preliminary

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Low Emission Zones (Scotland) Regulations 2021 and come into force on 31 May 2021.

(2) In these Regulations—

“the Act” means the Transport (Scotland) Act 2019,

“initiating party” means whichever of the parties referred to in section 12(2) of the Act that appoints a reporter in terms of section 12(2),

“local authority” includes local authorities jointly operating a scheme,

“opt-in notice” has the meaning given in regulation 11(2)(a),

“party” means—

(a) the local authority proposing to make the scheme,

(b) the Scottish Ministers, and

(c) any person who submitted an opt-in notice under regulation 11,

“scheme” means a low emission zone scheme,

“writing” and “written” include electronic communications within the meaning of section 15 (general interpretation) of the Electronic Communications Act 2000(1).

PART 2

Consultation, publication and representations relating to low emission zone proposals

Consultation

2.—(1) The persons specified for the purpose of section 11(e) of the Act are—

(a) a local authority whose area is contiguous to that of the local authority proposing to make the scheme,

(b) a Regional Transport Partnership, established by order under section 1 of the Transport (Scotland) Act 2005(2), in whose region the scheme is operating or will operate,

(1) 2000 c.7. Section 15 was relevantly amended by paragraph 158 of schedule 17 of the Communications Act 2003 (c.21).

(2) 2005 asp 12.

- (c) a Health Board, constituted by order under section 2 of the National Health Service (Scotland) Act 1978(3), in whose area the scheme is operating or will operate.
- (2) When consulting under section 11 of the Act the local authority proposing to make a scheme must provide the consultees with the information specified in paragraph (4).
- (3) Any person consulted under section 11 of the Act may make such written representations to the local authority as they consider appropriate on the proposal to make a scheme.
- (4) The local authority must provide each consultee with—
 - (a) a copy of the proposal to make a scheme which includes the content required under section 14 of the Act,
 - (b) a copy of a statement by the local authority setting out the reasons why the proposed scheme should be made,
 - (c) notice of—
 - (i) the time period for representations to be made under paragraph (3),
 - (ii) where representations are to be sent,
 - (d) any other information on the proposal which the local authority considers necessary or appropriate.
- (5) The local authority must publish the statement referred to in section 10(2) of the Act when sending that statement to the Scottish Ministers.

Publication of proposals

- 3.** After completing the consultation referred to in regulation 2, but before submitting the proposal to make the scheme to the Scottish Ministers for approval under section 10 of the Act, the local authority must—
- (a) publish at least once in a local newspaper circulating in an area in which there is situated a road to which the proposed scheme relates, a notice of proposals containing the information specified in Part 1 of schedule 1,
 - (b) publish a copy of the information referred to in regulation 2(4) and a copy of the statement referred to in section 10(2) of the Act on the local authority’s website,
 - (c) send a copy of the statement referred to in section 10(2) of the Act to the persons consulted under section 11 of the Act,
 - (d) take such other steps as it considers appropriate for ensuring that adequate publicity about the proposal to make the scheme is given to persons likely to be affected by it and, without limit to that generality, such other steps may include the display of notices containing the information set out in paragraphs 1 to 5, and displayed in accordance with paragraphs 6 and 7, of schedule 2 in any road to which the proposed scheme relates,
 - (e) comply with the requirements of paragraph 1(a) to (c) of schedule 3.

Objections

- 4.—**(1) Before the end of the objection period specified in accordance with paragraph (3) any person may object in writing to the making of the proposed scheme.
- (2) Any objections under paragraph (1) must—

(3) 1978 c.29; section 2 was relevantly amended by paragraph 1 of schedule 7 of the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 28(a)(i) and (ii), (b) and (c) of the National Health Service and Community Care Act 1990 (c.19), paragraph 1(2)(a) and (b) of schedule 1 of the National Health Service Reform (Scotland) Act 2004 (asp 7), and paragraph 2(2) of schedule 2 of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13).

- (a) contain a statement of the grounds of the objection, and
 - (b) be intimated to the local authority as set out in the notice published under regulation 3(a) and paragraph 5 of Part 1 of schedule 1.
- (3) A local authority must specify a period of at least 28 days, beginning with the date on which the notice is published under regulation 3(a), for objections to be made under paragraph (1).
- (4) At the end of the objection period specified in accordance with paragraph (3) the local authority must prepare and publish a report detailing—
- (a) the number of objections received,
 - (b) a summary of the general nature of the objections received,
 - (c) the local authority’s response to the objections received.
- (5) A report prepared under paragraph (4) must be sent to the Scottish Ministers when submitting the proposal to make the scheme for approval under section 10 of the Act.

Notice of making of a low emission zone scheme

5. When a local authority makes a scheme under section 9 of the Act the local authority must—
- (a) as soon as reasonably practicable—
 - (i) give notice in writing of the making of the scheme to the chief constable of the Police Service of Scotland,
 - (ii) give notice in writing to each person consulted under section 11 of the Act, and to each person who made objections under regulation 4, of the local authority’s reasons for making the scheme,
 - (iii) comply with the requirements of paragraph 1(d) (if applicable) and (e) of schedule 3,
 - (b) within 14 days of the making of the scheme—
 - (i) publish at least once in a local newspaper circulating in an area in which there is situated a road to which the scheme relates, a notice of the making of the scheme containing the information specified in Part 2 of schedule 1,
 - (ii) publish the scheme on the local authority’s website.

PART 3

Examinations

Examination of proposals

- 6.—(1) Where an initiating party intends to appoint a reporter to carry out an examination under section 12(2) of the Act in relation to a proposal to make a scheme, that party must give notice in writing of its intention to—
- (a) the Scottish Ministers, if the initiating party is the local authority proposing to make the scheme,
 - (b) the local authority, if the initiating party is the Scottish Ministers,
 - (c) any person consulted under section 11 of the Act,
 - (d) each person who objected to the proposal to make the scheme under regulation 4.
- (2) The notice referred to in paragraph (1) must be accompanied by—

- (a) a statement setting out full details of the matters the initiating party considers require to be taken into account by the reporter in examining the proposal to make the scheme,
- (b) a statement as to which of the procedures specified in section 12(3) of the Act⁽⁴⁾ the initiating party considers is appropriate in the circumstances,
- (c) all documents, materials and evidence upon which the initiating party intends to rely in the examination,
- (d) copies of the statement referred to in section 10(2) of the Act, and the report referred to in regulation 4(4), if these are available,
- (e) where the statement referred to in sub-paragraph (b) indicates that—
 - (i) a hearing under section 12(3)(b) of the Act is sought, a list of any persons whom the initiating party wishes to provide a written statement for the purposes of the hearing, or
 - (ii) an inquiry under section 12(3)(c) of the Act is sought, a list of any persons whom the initiating party wishes to give evidence at the inquiry, any matters which those persons are particularly to address,

and any relevant qualifications those persons have to do so.

(3) All matters which the initiating party intends to raise in the examination must be set out in the statement referred to in paragraph (2)(a), or in the documents which accompany that statement.

(4) If the statement and report referred to in paragraph (2)(d) have already been sent to the Scottish Ministers, paragraph (2)(d) does not require them to be re-sent to the Scottish Ministers.

Appointment of reporter

7.—(1) A reporter appointed under section 12(2) of the Act must be—

- (a) a member of the staff of the Scottish Ministers, or
- (b) selected from a panel provided by the Scottish Ministers.

(2) When appointing a reporter to carry out the examination under section 12(2) of the Act the initiating party must send to the reporter—

- (a) copies of notices sent in accordance with regulation 6(1),
- (b) a copy of the proposal to make the scheme which includes the content specified in section 14 of the Act,
- (c) copies of everything referred to in regulation 6(2).

Responses to notice of intention to cause an examination to be held

8.—(1) The persons referred to in regulation 6(1) may respond in writing to the initiating party's notice within the scope of the examination as set in accordance with regulation 9.

(2) Responses must include—

- (a) representations setting out full details of the matters which the respondent considers require to be taken into account by the reporter in examining the proposal,
- (b) a statement as to which of the procedures specified in section 12(3) of the Act the respondent considers is appropriate in the circumstances,
- (c) where the respondent intends to rely on documents, materials and evidence in addition to the items referred to in regulation 6(2)(c) and (d), copies of the documents, materials and evidence,

(4) 2019 asp 17.

- (d) where the respondent intends to rely only on the documents, materials, evidence, and the statement and report already provided by the initiating party under regulation 6(2)(c) and (d), a list of those items upon which the person intends to rely,
- (e) where the statement referred to in sub-paragraph (b) indicates that—
 - (i) a hearing under section 12(3)(b) of the Act is sought, a list of any persons whom the respondent wishes to provide a written statement for the purposes of the hearing, or
 - (ii) an inquiry under section 12(3)(c) of the Act is sought, a list of any persons whom the respondent wishes to give evidence at the inquiry, any matters which those persons are particularly to address,

and any relevant qualifications those persons have to do so.

(3) All matters which the respondent intends to raise in the examination must be set out in the representations referred to in paragraph (2)(a), or in the documents which accompany those representations.

Scope of examinations

9.—(1) The scope of the examination is to include only—

- (a) the matters identified in the statement referred to in regulation 6(2)(a),
- (b) any further matter which both the local authority proposing to make the scheme and the Scottish Ministers agree should be within the scope of the examination.

(2) In the event of a difference of opinion between the local authority and the Scottish Ministers as to the scope of the examination, the Scottish Ministers must determine the scope.

(3) Matters outwith the scope of the examination that are raised in any response referred to in regulation 8 must be disregarded by the reporter.

Procedure and timetable for examinations

10.—(1) On appointment the reporter must in writing invite the local authority proposing to make the scheme and the Scottish Ministers to identify and agree any further matters as referred to in regulation 9(1)(b) for the purpose of setting the scope of the examination.

(2) The invitation referred to in paragraph (1) must confirm the period within which responses are to be sent to the reporter for the purpose of that paragraph.

(3) The reporter must establish the procedure and timetable for the examination and give written notice to the persons specified in regulation 6(1) of—

- (a) the scope of the examination as set in accordance with regulation 9,
- (b) the fact that responses must—
 - (i) be within the scope of the examination,
 - (ii) contain the content required under regulation 8,
 - (iii) be sent to the reporter and to all other persons specified in regulation 6(1) within the period specified in the notice,
- (c) how responses may be sent,
- (d) the fact that persons given notice under this paragraph may send comments on any matters raised in the responses to the reporter and to all other persons given notice under this paragraph,
- (e) the period within which any such comments are to be sent.

Opt-in procedure

11.—(1) The reporter may invite, by notice in writing given in accordance with this regulation, persons specified in regulation 6(1) to confirm if they wish to participate in any further procedure.

(2) The notice given under paragraph (1) is to—

- (a) state that if the person wishes to participate in any further procedure conducted in relation to the examination they must send a notice (“an opt-in notice”) to the reporter to that effect,
- (b) include information as to how the opt-in notice may be given and specify the date (being not less than 14 days after the date on which the notice under paragraph (1) is given) on or before which the opt-in notice must be given to the reporter, and
- (c) inform the person that if they do not give an opt-in notice to the reporter before that date they may lose the opportunity to participate in any further procedure.

Further submissions and information

12.—(1) Before holding an examination the reporter may determine that further written submissions should be made, or further information should be provided, within the scope of the examination.

(2) Where paragraph (1) applies, the reporter may request such further submissions or information and is to do so by giving written notice to that effect to the parties (“a procedure notice”).

(3) A procedure notice is to—

- (a) set out the matters on which additional representations or information is requested,
- (b) specify the date by which such further representations or information are to be sent to the reporter,
- (c) confirm the means by which any party to whom the procedure notice was given may be contacted.

(4) A party who receives a procedure notice must, by the date specified in that notice in accordance with paragraph (3)(b)—

- (a) provide the additional representations or information requested to the reporter,
- (b) provide a copy of that response to the parties.

(5) Within 14 days of receipt of a copy of response under paragraph (4)(b) any party—

- (a) may send comments in writing to the reporter in reply to that response, and
- (b) must, when doing so, send a copy of such comments to the other parties.

Determination without further procedure

13. Where the reporter has received the information specified in regulations 6(2), 8(2), and (as the case may be) 10(3)(d) and 12(3) and (4), and considers that no further representations are, or information is, required to enable the examination to be carried out, the reporter may carry out the examination and prepare a report on it without further procedure in accordance with section 12(3) (a) of the Act.

Pre-examination meetings

14.—(1) The reporter may hold a meeting (“a pre-examination meeting”) to consider the manner in which the examination is to be conducted with a view to securing the efficient and expeditious conduct of the examination.

(2) The reporter must give to the parties such written notice of the holding of a pre-examination meeting and of the date, time and manner in which it is to be held, including its location if appropriate, (and any subsequent variation thereof) as may appear to the reporter to be reasonable in the circumstances.

(3) The reporter is to determine the matters to be discussed and the procedure to be followed at the pre-examination meeting.

Conclusion on further procedure

15. Where the reporter does not carry out the examination in accordance with regulation 13 the reporter must (following any pre-examination meeting conducted in accordance with regulation 14)

- (a) determine whether to carry out the examination by means of a hearing in accordance with section 12(3)(b) of the Act or by means of an inquiry in accordance with section 12(3)(c) of the Act,
- (b) inform the parties in writing of that determination.

Inspections

16.—(1) The reporter may at any time make—

- (a) an unaccompanied inspection of the zone to which the proposal to make, amend or revoke a scheme relates, or
- (b) an inspection of the zone along with any party notified under paragraph (3).

(2) Where the reporter intends to make an unaccompanied inspection, the reporter must inform the parties of such intention.

(3) Where the reporter intends to make an accompanied inspection, the reporter must give notice of the date and time of the proposed inspection to the parties.

(4) The reporter is not required to defer an inspection if any of the parties referred to in paragraph (3) to whom notice was given is not present at the time of the inspection.

Hearings and inquiries procedure

17.—(1) Schedule 4 specifies the procedure for the conduct of a hearing into an examination under section 12 of the Act.

(2) Schedule 5 specifies the procedure for the conduct of an inquiry into an examination under section 12 of the Act.

Expenses

18.—(1) The reporter may make orders as to the expenses incurred by the parties to the examination.

(2) Orders under paragraph (1) in favour of the Scottish Ministers may include expenses in relation to the administration of the examination, in particular such reasonable sum as the reporter determines in respect of the Scottish Ministers' general staff expenses and overheads.

Report

19. The reporter must—

- (a) provide the parties with a copy of the report prepared under section 12(2) of the Act,
- (b) arrange for publication of the report on the Scottish Ministers' website.

PART 4

Approved devices

Approved devices

- 20.** A device is approved for use in connection with the operation of a scheme if—
- (a) it meets the requirements specified in schedule 6, and
 - (b) it is of a type which has been certified by the Scottish Ministers as one which meets those requirements.

PART 5

General

Accounts

- 21.—**(1) A local authority operating a scheme must for the duration of the scheme—
- (a) keep proper accounts, as required by proper accounting practices, for that scheme showing the costs of (as the case may be) proposing, making and operating the scheme and how the gross and net revenue of the scheme is calculated,
 - (b) prepare, in respect of each financial year, a statement of account based on the accounts referred to in paragraph (1)(a) and, if applicable, paragraph (2) in such form as is required by proper accounting practices,
 - (c) publish the statement of account, in such manner as is required by proper accounting practices, in the annual accounts of the authority for the financial year,
 - (d) include a copy of the statement of account in the annual report required in terms of section 29 of the Act⁽⁵⁾.
- (2) Where a scheme is operated by two or more local authorities jointly those local authorities must, in addition to the requirement specified in paragraph (1)(a), keep proper accounts as required by proper accounting practices—
- (a) showing each authority’s costs of (as the case may be) proposing, making and operating the scheme, and
 - (b) how the gross and net revenue of the authority’s share of the scheme is calculated in accordance with the apportionment of any monies received from penalty charges as provided for in section 14(2) of the Act.
- (3) In this regulation—
- “costs” includes all of the costs incurred for, or in connection with, planning, procuring, implementing, maintaining, repairing, improving, administering, managing, enforcing and promoting the scheme,
- “net revenue” means the amount (if any) by which the gross amount received under a low emission zone scheme for a financial year exceeds the costs of (as the case may be) proposing, making and operating the scheme for the financial year,
- “proper accounting practices” means those accounting practices which fall within one or more of—

(5) 2019 asp 17.

- (a) those which the local authority operating the scheme is required to observe by virtue of any enactment,
- (b) those which have been specified in guidance issued for the purposes of that enactment by the Scottish Ministers,
- (c) those which, whether by reference to any generally recognised, published code or otherwise, are regarded as proper accounting practices to be observed in the keeping, preparation and publication of accounts of a local authority,

but in the event of a conflict in any respect between the practices within sub-paragraph (a) and those within sub-paragraphs (b) or (c), only those within sub-paragraph (a) are to be regarded as proper accounting practices in that respect, and in the event of a conflict in any respect between those within sub-paragraph (b) and sub-paragraph (c), only those within sub-paragraph (b) are, in that respect, to be so regarded.

Amending and revoking low emission zone schemes

22. The requirements of regulations 2 to 19 and schedules 1 to 5 apply to proposals to amend or revoke a scheme as they do to proposals to make a scheme.

St Andrew's House,
Edinburgh
18th January 2021

MICHAEL MATHESON
A member of the Scottish Government