

## RURAL ECONOMY AND CONNECTIVITY COMMITTEE

### TRANSPORT (SCOTLAND) BILL

#### SUBMISSION FROM FRIENDS OF THE EARTH SCOTLAND

##### Summary of points

- We welcome the proposal to create a new legal basis for **Low Emission Zones**. However, the draft provisions are highly problematic: they will delay the timely implementation of LEZs in all major Scottish cities by 2020, fail to define key features of LEZs, and do not always strike the right balance of power between which LEZ features should be determined by Ministers and which should be determined by local authorities.
- On **buses**, the changes to partnership and franchising provisions are welcome, but we would also like to see the Bill do more to allow local authorities to run bus services along any route i.e. including on a commercially competitive basis with private operators.
- On **parking**, we would like to see an amendment which would enable local authorities to introduce Workplace Parking Levies and levies on other private car parks, in recognition of the fact that many local councils have expressed a willingness to have the powers to do so.

##### About Friends of the Earth Scotland

Friends of the Earth Scotland exists to campaign, with partners here and across the globe, for a just transition to a sustainable society. We work in Scotland for socially just solutions to environmental problems and to create a green economy; we campaign to end the degradation of our environment and to create a society which cherishes and protects the natural world on which we depend; we think globally and act locally, enabling people to take individual and collective action. We are part of Friends of the Earth International - the world's largest grassroots environmental network, uniting 75 national member groups, over 2 million members and 5,000 local activist groups around the world. We are an independent Scottish charity with a network of thousands of supporters, and 10 active local groups across Scotland. Friends of the Earth Scotland's vision is of a world where everyone can enjoy a healthy environment without exceeding their fair share of the planet's resources, now and in the future.

##### Introduction

Scotland's transport sector is the leading contributor to both carbon emissions and air pollution. It is clear that more ambition is needed from the Scottish Government to deliver on the Paris Agreement, which commits nations to holding global warming to 'well below 2°C', and 'pursuing efforts to limit the temperature increase to 1.5°C'. While the Climate Change (Emissions Reduction) (Scotland) Bill has the potential to set a higher level of ambition, any change in targets must be supported by the

Transport Bill delivering a range of policies which will bring about modal shift from the car to public transport, and walking and cycling.

Many parts of Scotland, particularly urban areas, continue to have levels of air pollution which are well above statutory thresholds, years after binding deadlines and in spite of the Cleaner Air for Scotland strategy, which as yet has failed to deliver any tangible improvements in air quality. Air pollution has an adverse impact on everyone's health, and contributes to the early deaths of 2500 people in Scotland each year. Children, the elderly, and people with pre-existing health conditions, are disproportionately impacted by air pollution, meaning that cleaner air is a matter of social equality for Scotland. Air pollution costs the Scottish economy £1.6bn every year in Scotland.

That is why this Transport Bill needs to set up mechanisms which will drive down CO<sub>2</sub> emissions from the transport sector and improve air quality.

We limit our comments here to LEZs, Buses, and Parking Levies.

### Low Emission Zones

While the attempts to codify and set up a clear legal basis for the implementation of LEZs are welcome, we have a number of concerns over the drafting of the provisions which fall under three themes: Firstly, the current drafting sets up **unnecessary and unjustified delays** in LEZ enforcement. Secondly, there are several **“watering down” provisions in the Bill which** could create ineffectual LEZs, or no LEZs at all in the areas where they are so urgently needed. Finally, we do not consider that the **balance of power** between aspects of LEZs reserved to Ministers and aspects delegated to local authorities has been struck correctly.

There already is an existing legal base which could be used for local authorities to implement a LEZ: Part 2 of the Road Traffic Regulation Act 1984 makes it possible for local traffic authorities to make a Traffic Regulation Order which can provide “any provision prohibiting, restricting or regulating the use of a road” for certain purposes including air quality management. The TRO system is well understood by local authorities. The system is far from perfect but the new LEZ provisions must be demonstrably clearer and quicker than the existing legal basis to justify having new legislation.

We address each of our three thematic concerns in detail.

1. *Current drafting sets an excessively slow pathway towards functioning LEZs. Proposed timescales mean LEZs will not be enforceable until 2024-2026 **at the earliest**, while local authorities are prevented from going faster if they wish. This comprehensively fails to tackle the urgency of our air pollution health crisis.*

The draft provisions on Grace Periods (section 10) ensure that a LEZ is not enforceable for 1-4 years for non-residents, and for an additional 1-2 years for residents. Grace periods are compulsory, thereby preventing local authorities from going more quickly.

This sets up a timeline whereby LEZs will not be operational until 2024 – 2026. **This is nearly a decade after the Scottish Government and local authorities formally committed to introducing them, and fourteen to sixteen years after the binding European clean air deadline.**

The Scottish Government formally promised that LEZs would be in place by 2018 in Glasgow, 2020 in Dundee, Aberdeen, and Edinburgh, and 2023 in other areas where necessary, in 2017.<sup>1</sup> Cleaner Air for Scotland promises that Scotland will achieve compliance with EU legal limits on air quality by 2020.<sup>2</sup> The grace period provisions condemn these promises to certain failure. In doing so, the Scottish Government opens itself up to legal challenge for continued breaches of the European Ambient Air Quality Directive, which requires that the exceedance period of the 2010 air quality deadline be kept as short as possible.<sup>3</sup>

Other cities have successfully introduced LEZs much more quickly. Oslo's City Council announced in 2015 that it would be entirely car free by 2019. London's T-charge was announced in May 2016 and introduced in October 2017.<sup>4</sup>

To ensure more timely introduction of LEZs, the Bill should specify a maximum length of time for grace periods, rather than the proposed minimum length grace period.

*2. There are several "watering down" features of the provisions, including a weak suggested emissions standard, lack of proper definition of Low Emission Zones, and potential for broad LEZ objectives which could result in LEZs being ineffectual and/or measured against the wrong performance indicators.*

(a) Weak suggested emission standard

The Policy Memorandum suggests a possible emission standard of Euro VI/6 for diesel vehicles and Euro 4 for petrol vehicles. This is justified on the basis that it is "consistent with the general leading emission standards for low emission zones established in Europe".<sup>5</sup> However, Euro 6 was the new standard in 2015 and the average length of time people keep a vehicle is six to eight years, taking us to roughly 2021/2023. Therefore, by the time LEZs kick in in 2026 (thanks to the grace provisions), the standard will be eleven years old and will do very little, if anything at all, to improve emissions standards beyond what would naturally happen without this legislation.

The combination of the proposed emission standard combined with the lengthy grace periods will also create a very weak result set against the Scottish Government's stated commitments on phasing out fossil fuelled vehicles. The

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<sup>1</sup> A Nation With Ambition: The Government's Programme for Scotland 2017-18

<sup>2</sup> Cleaner Air for Scotland - The Road to a Healthier Future

<sup>3</sup> See ClientEarth Briefing, "The UK Supreme Court ruling in the ClientEarth case: Consequences and next steps" (September 2015)

<sup>4</sup> Evening Standard, 'Sadiq Khan plans new 'T charge' for polluting cars that spew toxic fumes' (13 May 2016), The Guardian, 'London's £10 T-charge comes into effect in fight against toxic car fumes' (23 October 2017)

<sup>5</sup> Transport Scotland (Policy Memorandum), paragraph 39

Scottish Government has promised that there will be no need for petrol and diesel vans and cars, across the whole of Scotland, by 2032, a mere six years after just some parts of some towns and cities would be Euro 6 (diesel)/Euro 4 (petrol) compliant.<sup>6</sup> We would hope to see a much better joining up of policy and ambition between LEZs and the electrification of transport altogether.

(b) Lack of definition of a LEZ

A Low Emission Zone is a designated area where access by certain polluting vehicles is restricted or deterred with the aim of improving the air quality. Therefore, a Low Emission Zone should mean that the vehicles circulating in heavily polluted areas are cleaner than they would be without intervention.

The Bill fails to spell out what a LEZ is. A clearly defined LEZ would prevent against the risk, outlined above, that a LEZ is introduced which sets the bar so low as to simply replicate the status quo and be totally ineffectual.

It is already the case that the Glasgow LEZ will barely achieve anything: the Zone will require 20% of buses to be a Euro 6 standard by the end of this year, when back in 2017, already around 15% were. As few as 40 buses will be upgraded as part of that scheme.

(c) Lack of obligation to introduce LEZs

The Bill does not require local authorities with illegal levels of air pollution to actually introduce a LEZ. There should be an express 'opt-out' obligation on local authorities to introduce LEZs in areas where they have designated Air Quality Management Areas. There could be some flexibility built into the obligation. For example, there could be a provision which would allow local authorities to apply to Scottish Ministers for a derogation not to introduce a LEZ where they can clearly demonstrate a modelled pathway to achieve air quality standards as soon as possible through other policy interventions.

(d) Lack of deadline for the introduction of LEZs

There should also be a mandate for local authorities to introduce LEZs by a specified deadline, or Scotland runs the risk of continuing to breach European legal limits and Scottish statutory standards on air quality indefinitely. Again, this is especially the case in light of the grace period provisions.

(e) Too broad an approach to LEZ objectives

Section 9(1)(c) of the Bill, as proposed, says that a LEZ scheme must specify its objectives, one of which must be 'contributing towards meeting the air quality objectives prescribed under section 87(1) of the Environment Act 1995'. We consider that the LEZ objective should be to the improvement of air quality in order to achieve both Scottish regulatory standards *and European legal limits* (currently

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<sup>6</sup> A Nation With Ambition: The Government's Programme for Scotland 2017-18

omitted), and nothing else. This should be made explicit in an opening section of the Bill.

Leaving the objectives of a LEZ scheme unlimited could result in LEZs being designed to achieve other outcomes unrelated to improving air quality (e.g. to raise revenue, or, as an extreme hypothetical, to boost car manufacturer sales).

(f) List of statutory consultees is not representative of people impacted by poor air quality

Under section 6(d), consultation is to take place with industries and not individuals impacted by air pollution. Any legislative guidance on consultations should include, amongst the list of stakeholders, individuals directly affected adversely by poor air quality, including people living with asthma, GPs and health practitioners, and health experts. We also consider that if drivers are mandatory consultees, cyclists, pedestrians, and public transport users must also be included in this list.

(g) Potential for monies raised via penalties to be poorly reinvested

We welcome the principle of the Bill to provide that penalties are punitive rather than a charging based approach to LEZs. While we welcome the principle of the Bill requiring monies raised via penalties being used facilitate the scheme's objectives, the inclusion of "indirectly" in section 21(a) is a watering down of this clause and should be removed. However, we would be supportive of proposals in the Bill to reinvest any fines into grants to assist people with the cost of reducing emissions.

(h) Exclusion of the potential for motorways to be included in LEZs

As currently written, the Bill would prevent the possibility for 'special roads', which covers motorways, to ever be included in LEZs (section 9(3)(b)). This is particularly problematic in the context of Glasgow, where the M8 runs through the centre of the city and contributes to the city's air pollution problem. Whilst we appreciate there may be complexities involved in regulating the traffic on a motorway due to special roads being governed by Transport Scotland and not local authorities, to block even the potential consideration of every section of 'special roads' within LEZs for the future is overly narrow and prescriptive.

(i) Potential for abuse of time-limited exemptions

While we are broadly understanding of the principle of time-limited exemptions to LEZs set out by section 12, this is undermined by section 12(3) of the Bill which effectively allows potential for unending renewals of time-limited exemptions.

### 3. *Balance of power between Ministers/local authorities/SEPA*

Whilst we agree that there needs to be a national framework for LEZs, we are concerned that the provisions do not always strike the right balance between which LEZ aspects should be worked out by Ministers, which should be left to Local Authorities' discretion, and which should be overseen by SEPA.

(a) Powers which we consider should be devolved to local authorities

(i) Emissions standards:

With regards to the emissions standard, section 1(4) reserves the setting of the emissions standards to Scottish Ministers. This creates a “lowest common denominator” approach and prevents local authorities from going further if they choose. A one-size-fits-all emissions standard also ignores and undermines SEPA modelling work which is being done to provide the evidence base to local authorities about how air quality could be brought to within safe levels as quickly as possible.

Instead, Scottish Ministers should set a minimum emissions standard, with flexibility built in to allow for local authorities to set higher standards. Local authorities should be expected to choose an emissions standard (and other design features of LEZs, including the area) on the basis of modelling results, and on the specified objective to achieve compliance with Scottish and European air quality standards as soon as possible. Such an expectation should be built into the Bill.

Allowing different emissions standards in different places is the approach taken by Germany, which has 80 LEZs in place, with one framework to guide enforcement, but flexibility within the standards.<sup>7</sup>

(b) Powers which we consider should be reserved to Scottish Ministers:

(i) Hours of operation

Section 13 of the Bill, which makes provision on hours of operation for an LEZ, does not make it explicit that this decision is devolved to local authorities. However, this can be inferred from section 18(2), which makes reference to “a local authority’s ability to specify... rules in a low emission zone scheme as to when a zone operates.” Taking a worst-case scenario hypothesis, this could result in a LEZ which applies overnight, for example. There should be a mandate for all LEZs to apply 24hours/day.

(ii) Determination of the approved device

Section 16 relates to which devices should be used in connection with LEZs. We agree that Ministers should specify which approved device will be used in connection with LEZs, and would only add that examples from elsewhere have shown Automatic Number Plate Recognition technology (ANPR) to be most effective in enforcing LEZs effectively. We would advocate for their use in Scotland.

(iii) Signage

One of the most important aspects of LEZs which needs to be harmonised at the national level is signage. For driver experience and to improve compliance, signs need to be consistent. However, this might not need to be specified in primary

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<sup>7</sup> <http://urbanaccessregulations.eu/countries-mainmenu-147/germany-mainmenu-61>

legislation - secondary guidance detailing signage design specifications should suffice. This guidance should be set out as soon as possible.

(iv) The determination of “national importance” in the context of temporary suspension of LEZs

With regards to S 18, which allows for the temporary suspension of LEZs for events which are of national importance, we consider that any temporary suspension of LEZ, for ‘events of national importance’ should be determined via an application to Ministers, who are the appropriate body to determine what is of national importance.

(v) Vehicle exemptions

We agree that Ministers should be able to specify which vehicles are exempt from LEZs, and consider this should be limited to emergency service vehicles, and vehicles used by people with disabilities.

(c) Powers which we consider should be given to SEPA

(i) Review procedures

Sections 24-25 covers review procedures for performance of a scheme. To avoid LEZs becoming politicised, the review powers for performances of a scheme should sit with SEPA. This is similar to the LAQM approach under the Environment Act section 85.

(d) Powers which we consider should be removed altogether

(i) Reserve powers for Ministers to regulate process

We do not consider it necessary for Ministers to reserve themselves the right to regulate process (section 8), and think this adds an unnecessary layer of Government involvement and delay to the process.

## **Conclusion on LEZ provisions**

The long grace periods, combined with the fact that the emission standard is reserved to Ministers and may be very weak, make the likelihood of seeing effective, enforceable LEZs on Scotland’s most polluted streets any time soon highly unlikely. This is exacerbated by other watering down features including (but not limited to) a lack of definition for LEZs. The emissions standard should be delegated to local authorities with a specification that they follow modelling results, but there should be an opt-out obligation to introduce LEZs by a specified deadline. Grace periods should be limited under the legislation, not extended out. These changes would ensure flexible, evidence based LEZs which actually make a difference to air quality on the ground as soon as possible.

## **Buses**

We would strongly welcome any ambitious action to improve Scotland's buses, as they are central to many of the issues Friends of the Earth campaigns on - carbon emissions, modal shift, electric vehicles, improving air quality, and contributing to a fairer transport system.

While the Bill makes some welcome changes to bus partnerships and strengthens current arrangements relating to setting up franchises, in recognition that the existing set-up presented challenges in encouraging private bus operators to upgrade their fleet, we would like to see the Bill go further in allowing local authorities to run bus services along any route, i.e. including on a commercially competitive basis with private operators.

Giving local authorities an opportunity to run services where there is an 'unmet transport need' is certainly welcome. But, in all likelihood, if an unmet need can be satisfactorily proved, it will be due to the private bus operators viewing that particular route as loss-making. Given councils are so cash-strapped, it seems unlikely many will have the resource to sufficiently plug a gap in the bus network. Furthermore, it seems fundamentally unfair the taxpayer will be subsidising the network while private operators can cherry pick the busiest/most profitable routes.

Empowering local authorities to compete with private operators will allow councils to bring in revenue on the busier routes to subsidise the routes currently unprovided for. Profits can also be reinvested to upgrade the fleet to electric vehicles as quickly as possible.

### **Open Data**

We would like to see greater provision for transparency of data relating to bus services. Greater availability of data will facilitate greater transparency of the bus service. As with other public services, bus companies should be held accountable based on all the evidence available.

We agree with the Scottish Government that universality and consistency of data is necessary, and that this is unlikely to be achieved with voluntary arrangements on private bus companies, Policy Memorandum, 85. Clearly, a more robust arrangement is needed to ensure bus companies provide data relating to their service provision, such as passenger numbers, revenue, and route information.

This transparency will assist local authorities in their provision of bus services on routes of 'unmet need' or, ideally, everywhere.

### **Premises Parking Levies and/or Workplace Parking Levies**

We believe that, in order to deliver the National Outcomes the Bill intends to support, particularly living longer, healthier lives, in well-designed, sustainable places, and reducing the local and global environmental impact of our consumption and production, the Bill should introduce the power for local authorities to introduce parking levies. These levies would be most effective for large workplaces (Workplace Parking Levies) and for car parks at other premises like shopping centres.



The 1999 Transport (Scotland) Bill initially included a provision to set up a framework to allow local authorities to introduce a WPL. This provision was removed from the Transport (Scotland) Act 2001 due to opposition.

### **Advantages of WPLs/PPLs:**

Workplace and Premises Parking Levies are proven to discourage unnecessary private car usage and thereby reduce congestion and pollution, whilst improving journey times for public transport.

Nottingham's WPL has been a huge success. In the first three years after its introduction, the WPL raised £25.3 million, all of which was reinvested into improvements in the city's transport infrastructure, including a large fleet of electric buses, and the expansion of the tram network. The levy has significantly contributed to a 33% fall in carbon emissions, and a modal shift which has seen public transport use rise to over 40%.<sup>8</sup>

### **Basis for introducing an amendment:**

The previous Transport Minister, Humza Yousaf, committed to considering legislation to allow local authorities to introduce workplace parking levies (WPLs) if they indicated they wanted such legislation.<sup>9</sup> Local authorities **have** expressed such a willingness for such legislation, showing that the time is ripe for the inclusion of the provision:

- **Edinburgh:** In its evidence to the ECCLR Committee on air quality, the City of Edinburgh Council named WPLs as a policy to "assist with addressing the air quality issue" but pointed out that legislative changes were needed.<sup>10</sup> It also published a WPL Scoping Paper at its Transport & Environment Committee meeting of 9 August 2018 which detailed the many benefits of having a WPL for the city and which stated "There is an opportunity available now within this proposed Transport Bill, which is unlikely to be present itself again in the future."<sup>11</sup>

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<sup>8</sup> WWF Scotland, "International Case Studies for Scotland's Climate Plan," (2016), Workplace Parking Levy, Nottingham, UK

<sup>9</sup> Before the REC Committee on 27 February 2017, he said:

"We have said that we will explore workplace parking levies... There are some good examples of where the workplace parking levy is potentially working— in Nottingham (...) but it is at the very early stages. We have said that we will explore the option further with local authorities. We have not said that we will absolutely commit to a workplace parking levy in specific places because it is clear that it would happen as a result of conversations with local authorities and other partners. We will have those conversations and, if enabling legislation is needed, we can then have that conversation."

Before the ECCLR Committee on 5 December, he said:

"Workplace parking levies have been used in the United Kingdom—in Nottingham (...) and we mentioned them in the draft climate change plan. Once again, I am heartened by the number of local authorities that have approached me (...) and asked when the Government will introduce legislation on the issue. They are keen to explore that option, learn from Nottingham and bring such levies to their local authority. I am pleased that there is a real desire to lead on the issue in Scotland."

<sup>10</sup> ECCLR Inquiry into air quality in Scotland, written submission from The City of Edinburgh Council

<sup>11</sup> "Introducing a Workplace Parking Levy in Edinburgh would achieve many benefits including contribution toward the following outcomes: reducing private car travel to work; improving air quality in the city; reducing the impact of congestion; enhancing conditions for walking, cycling and public transport use; encouraging modal shift; and investing revenue in transport improvements" Item Number 7.7, WPL Scoping, City of Edinburgh Council Transport and Environment Committee meeting of 9 Aug 2018.

- **Glasgow:** In a report of the Local Taxes Working Group of 2016, the group considered that “Congestion charges and in particular the Low Emission Zones and Work Place Parking Levy could be viable opportunities for the Council to generate income and promote a number environmental aims.”<sup>12</sup>
- **Dundee City Council:** In the Council’s response to Transport Scotland’s 2017 LEZ Consultation, which was one of the consultations feeding into the development of this Bill, the Council stated that local/central government should consider parking policy in tandem with LEZs, including workplace parking levies. It noted that legislative changes were needed in this regard.<sup>13</sup>
- **Aberdeen:** An Aberdeen City Council Full Committee meeting report names the consideration of a Workplace Parking Levy as a priority for the Council.<sup>14</sup>

To fail to introduce provision for Parking Levies, when their need has been so well understood both by the previous Transport Minister and by local authorities, would be a greatly missed opportunity.

### **Going beyond WPLs, to wider Premises Parking Levies**

While England has seen only a WPL, we urge Scotland to go further than the rest of the UK. In addition to introducing provision for WPLs, we would encourage the committee to recommend the introduction of a more innovative policy, whereby local authorities have the power to charge parking levies on *all* types of premises over a defined number of parking spaces – it would be up to the local authority to decide which categories of premises to levy.

It is hard to see why only parking at workplaces would be levied when out-of-town shopping centres, supermarkets, and private leisure centres, which foster extensive car use, escape.

This wider levy would also enable local authorities to help protect town centres - a major government objective - since a premises parking levy on out-of-town stores would over a period of time help encourage such businesses to set up in less car-dependent locations. Disincentives for private car journeys would reduce traffic congestion, improving journey times for buses and making public transport a more attractive option.

### **Conclusion**

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<sup>12</sup> Glasgow City Council Local Taxes Working Group Report by Acting Executive Director of Financial Services, 15 November 2016, <https://www.glasgow.gov.uk/councillorsandcommittees/viewSelectedDocument.asp?c=P62AFQDNDN2UZL0GDx>

<sup>13</sup> <https://www.dundee.gov.uk/reports/reports/353-2017.pdf>

<sup>14</sup> Report of Aberdeen City Council, Full Council Meeting, 17 August 2016 <https://committees.aberdeencity.gov.uk/documents/s59798/Additional%20Powers.pdf>

To conclude, Friends of the Earth Scotland welcomes the opportunities presented by this Bill, which could radically improve the environment and health of people in Scotland for generations to come. Sadly, significant changes are needed if the Bill is to achieve this potential.

To introduce meaningful LEZs the Bill needs to introduce shorter timeframes, clear definitions, and strike a better balance between centralised and delegated powers. But LEZs are only one part of improving air quality. If we want to reduce the number of emissions in our town and city centres, people must have access to better public transport.

The Bill currently proposes changes which offer great risk and little incentive for local authorities to improve bus provision. We hope to see changes made to allow local authorities to operate buses on a commercially competitive, and economically viable, basis – for the good of bus users and council budgets.

To tie up this vision, of a Scotland with cleaner air and greater public transport options, the Bill should also look towards incentivising the reduction in car reliance, and generating revenue from cars more generally – including options like Workplace Parking Levies and premises parking levies.