



## TRANSPORT FOR LONDON

<b>TO:</b>	<b>ANDY BYFORD, COMMISSIONER</b>
<b>FROM:</b>	<b>ALEX WILLIAMS, DIRECTOR OF CITY PLANNING</b>
<b>SUBJECT:</b>	<b>EXCEPTIONAL VARIATION ORDER TO INTRODUCE A NHS PATIENT REIMBURSEMENT ARRANGEMENT FOR THE ULEZ &amp; ULEZ EXPANSION</b>
<b>DATE:</b>	<b>01 MARCH 2021</b>

## 1 PURPOSE AND ACTION REQUIRED

- 1.1 The purpose of this paper is to ask the **Commissioner** to make the Greater London Low Emission Zone Charging (Exceptional Variation) Order 2021 (EVO) attached at **Appendix A**, by signing the Order on page 1 where indicated, for submission to the Mayor to decide whether or not to confirm it, with or without modification.

### Recommendations

#### A. The Commissioner is asked to:

1. **APPROVE** the making of the Greater London Low Emission Zone Charging (Exceptional Variation) Order 2021 attached at **Appendix A** for submission to the Mayor

**Approved by Andy Byford,  
Commissioner**

Signature:

Date: 02 March 2021

## **2 INTRODUCTION AND BACKGROUND**

- 2.1 The purpose of the proposed EVO is to change the Scheme Order governing the Ultra Low Emission Zone (ULEZ)<sup>1</sup> to formalise the introduction of a NHS patient reimbursement arrangement for the ULEZ, including when it expands to inner London from 25 October 2021 (ULEX).
- 2.2 Ahead of the launch of the ULEZ in central London in April 2019, TfL introduced an NHS patient reimbursement arrangement (the “arrangement”). The arrangement was introduced following concerns from the NHS that the cost of the ULEZ daily charge could prevent some patients who were medically unable, or advised by clinicians not, to travel by public transport and were reliant upon a vehicle that did not meet the ULEZ emission standards from seeking medical treatment. Eligibility for the arrangement matched the existing Congestion Charge NHS patient reimbursement arrangement. It is limited to NHS funded patients who are clinically assessed as too ill, weak or disabled to travel to an appointment on public transport. In June 2020, as part of the temporary changes to the Congestion Charge, the eligibility criteria was expanded to also include those at moderate or high risk of COVID-19.
- 2.3 The changes to the Scheme Order governing the ULEZ to bring it into operation in April 2019 had already been confirmed by the Mayor when the NHS patient reimbursement arrangement proposal was confirmed and, as such, it has been operated informally to date on the basis it would be formalised at the next opportunity.
- 2.4 At present, eligible patients being treated at seven hospital sites in the central London ULEZ are being reimbursed for their journeys to hospital. These seven hospital sites represent all of the major hospital sites in the ULEZ. When the ULEZ expands in October 2021, eligible patients travelling within the expanded zone to reach a hospital, even if this hospital is located outside of the expanded ULEZ

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<sup>1</sup> The London Emission Zones Charging Scheme, set out in the Schedule to the Greater London Low Emission Zone Charging Order 2006 (as amended), governs both the LEZ and ULEZ in a single combined road user charging scheme. (“The ULEZ-LEZ Scheme Order”)

area, will also be eligible for reimbursement. Eligible patients can also be reimbursed for travel to COVID-19 vaccination centres.

***The NHS patient reimbursement arrangement***

- 2.5 To be eligible for reimbursement the patient must be being treated, or be having treatment funded, by the NHS. They must have a compromised immune system, or require regular therapy or assessment, or recurrent surgical intervention and they must be clinically assessed as too ill, weak or disabled to travel to an appointment on public transport. In addition, as part of the temporary changes to the Congestion Charge introduced in June 2020, patients who are clinically assessed as being at high or moderate risk from COVID-19 are also eligible. The reimbursement applies to the person who paid the ULEZ charge for the vehicle that transported the patient to the hospital.
- 2.6 The NHS trust that is treating the patient is responsible for both assessing the eligibility of the patient and administering their reimbursement claim. As such, a patient's ability to claim reimbursement is contingent on the NHS trust that is treating them administering their claim.

***Impact assessment***

- 2.7 We have reviewed the original ULEZ Integrated Impact Assessment (IIA)<sup>2</sup> and the IIA for the expanded ULEZ<sup>3</sup> and determined that there would be no likely significant environmental impact from introducing the arrangement and, as such, no likely negative impact on the health benefits of the ULEZ and its expansion.
- 2.8 The overall environmental benefits of the ULEZ are expected to remain unchanged because the scale of the NHS patient reimbursement scheme is very small. The estimate of c14,000 claims a year, or 38 claims a day, would have no material impact on the localised air quality benefits of the ULEZ. This is because the reduction in air pollution as a result of the ULEZ, and the Mayor's other air quality measures, will significantly outweigh any minor increase in air pollution caused by

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<sup>2</sup> [https://consultations.tfl.gov.uk/environment/ultra-low-emission-zone/user\\_uploads/ulez-ia-report\\_final.pdf](https://consultations.tfl.gov.uk/environment/ultra-low-emission-zone/user_uploads/ulez-ia-report_final.pdf)

<sup>3</sup> [https://consultations.tfl.gov.uk/environment/air-quality-consultation-phase-3b/user\\_uploads/integrated-impact-assessment.pdf](https://consultations.tfl.gov.uk/environment/air-quality-consultation-phase-3b/user_uploads/integrated-impact-assessment.pdf)

a small number of additional non-compliant vehicles travelling to hospitals or COVID-19 vaccine centres spread across the day and week.

- 2.9 The review concluded that there would be no change to the equality impacts of the schemes. However, the reimbursement arrangement is expected to have a positive impact on NHS patients many of whom will have age and disability protected characteristics (other equalities impacts are considered in section 4 below).

***Requirement for variation order***

- 2.10 It is necessary to make changes to the Scheme Order governing the ULEZ so that the arrangement can be offered permanently on a formal basis both within the ULEZ and its expanded area. This is the purpose of the EVO.

**3 EXCEPTIONAL VARIATION ORDER (EVO)**

- 3.1 This EVO will formalise NHS patient reimbursement arrangement within the Scheme Order.
- 3.2 Proposed permanent changes to road user charging schemes (including the ULEZ) are normally subject to stakeholder and public consultation, although there is no express statutory requirement under Schedule 23 of the GLA Act 1999 for the Mayor or TfL to consult. Changes are made in accordance with Mayoral Guidance<sup>4</sup> issued by the (former) Mayor in February 2007 to which TfL is required to have regard. “Major variations” normally require public and stakeholder consultation normally lasting between 10 and 12 weeks<sup>5</sup>. However, the Guidance recognises that in certain circumstances, exceptional changes may be made

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<sup>4</sup> Guidance from the Mayor of London to Transport for London on Charging Schemes pursuant to Schedule 23 of the Greater London Authority Act 1999, 16 February 2007

<sup>5</sup> Significant additional work beyond just the consultation period itself must be factored in, including usually around six weeks of preparatory work (including the preparation of consultation materials and questionnaire, impact analysis and engagement events with stakeholders) prior to the consultation starting and around six weeks of analysis of responses and the preparation of a report and decision document following the consultation closing. Therefore, assuming a 10 to 12 week consultation, a minimum 20 to 24 weeks process, but usually longer, is required.

without consultation when they are necessary for operational reasons, including where any consultation would cause a delay which would have a detrimental effect on, or delay benefits to, groups or individuals.

- 3.3 The introduction of an NHS patient reimbursement arrangement would normally fall within the category of a “major variation” under the Mayoral Guidance. TfL has not carried out a stakeholder or public consultation on the decision to introduce the reimbursement arrangement. This is because a consultation would cause a delay which would have a detrimental effect on, or delay benefits to, the individuals benefiting from the arrangement. The reimbursement arrangement is already being offered in the ULEZ on an informal basis and TfL is now seeking to formalise this. It addresses a specific public health concern and no objections have been received to date to the offering of the reimbursement arrangement or the eligibility criteria.
- 3.4 In order for the reimbursement arrangement to be in place at additional hospitals across London when the ULEZ expands in October 2021 it is necessary to begin engagement as soon as possible with the large number of NHS trusts that operate hospitals in London<sup>6</sup>. This is so that we can explain how the reimbursement arrangement works, get their agreement to reimburse patients and set them up with TfL reimbursement accounts. If we were to consult on the reimbursement arrangement, in view of the time it takes to prepare for consultation, and extra time that would need to be added to take account of the Mayoral election on the 6 May 2021, there would be insufficient time to have the arrangement in place for when the ULEZ expands. This could adversely impact patients who need to travel in the expanded Zone to access hospital appointments or COVID1-9 vaccination centres<sup>7</sup>.

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<sup>6</sup> There are 31 NHS trusts that run the 83 hospital sites in London

<sup>7</sup> A public and stakeholder consultation for a major variation would normally last around 10 – 12 weeks. Significant additional work beyond the consultation period itself must be factored in, including usually around six weeks of preparatory work (including the preparation of consultation materials and questionnaire, impact analysis and engagement events with stakeholders) prior to the consultation period starting and around six weeks of analysis of responses and the preparation of a report and decision document following the consultation closing. Therefore, assuming a 10 to 12 week consultation, a minimum 20 to 24 weeks process, but usually longer, is required.

- 3.5 In addition, it is recommended that the ULEZ reimbursement arrangement replicates the Congestion Charge NHS patient reimbursement both in terms of how it is administered and who is eligible. This is because the Congestion Charge reimbursement arrangement, and informal central London ULEZ arrangement that matches it, has already proven to be an effective mitigation to the impact of a road user charging scheme on patient hospital access. If the ULEZ reimbursement arrangement differed to the Congestion Charge arrangement this would be confusing for patients affected by both schemes and the NHS trusts administering the arrangements.
- 3.6 Officers, therefore, advise it is not beneficial or considered practicable to conduct a public and stakeholder consultation on the EVO and the change it contains.

#### **4 EQUALITY AND OTHER CONSIDERATIONS**

- 4.1 Under s 149 of the Equality Act 2010 ('the Equality Act'), as public authorities, the Mayor and TfL must have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic<sup>8</sup> and those who do not when exercising their functions. This is known as the Public Sector Equality Duty (PSED).
- 4.2 The PSED applies to the Mayor's decision about whether or not to confirm the EVO, and whether modifications are appropriate.
- 4.3 We have reviewed the original ULEZ IIA and the IIA for the expanded ULEZ that were both done ahead of the Mayor's decision to confirm these schemes. The purpose of the review was to identify whether any of the likely significant impacts

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<sup>8</sup> Protected characteristics under the Equality Act are age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage or civil partnership status (the duty in respect of this last characteristic is to eliminate unlawful discrimination only). In line with best practice, the impact on groups who also have the potential to be socially excluded, in this case, people on low incomes or from deprived communities, has also been considered notwithstanding that these specific attributes are not protected under the Equality Act but may be common to people with protected characteristics.

identified then, including impacts on equalities, were likely to change as a result of the introducing the NHS patient reimbursement arrangement.

- 4.4 The review concluded that, due to the likely very small scale of the reimbursement arrangement, there were no expected material changes to the impact of the schemes on air pollution, and on the air pollution-related health impacts of the schemes as a result of introducing the arrangement. Despite no significant changes to the original assessments, the arrangement is still expected to have a positive impact on NHS patients many of whom will have age and disability protected characteristics.
- 4.5 The IIAs for the ULEZ and expanded ULEZ noted potential adverse impacts on pregnant women and mothers needing to access pre and/or post-natal care appointments, but also identified the disproportionately positive impacts on them from the improved air quality. Pregnant women are eligible for reimbursement as they are deemed by the NHS as at 'moderate' risk from COVID-19. Women accessing post-natal care may be eligible if they meet the other elements of the eligibility criteria. The central London ULEZ IIA stated that it may be more difficult for disabled people to find alternative modes of accessible travel in central London but did not consider there was a disproportionate impact of the scheme on disabled drivers overall. The current informal reimbursement arrangement in the central London ULEZ will be a mitigation for some disabled people (who meet the eligibility criteria) accessing hospitals or COVID-19 vaccination centres. In addition, disabled people do have the option to avoid the daily charge by upgrading to a compliant vehicle. There is financial support for them to do this through the ULEZ car and motorcycle scrappage scheme, which has been available since October 2019 for low-income and disabled Londoners. Both the central London ULEZ IIA and expanded ULEZ IIA identified a disproportionate impact on those who own vehicles with a 'disabled' tax class or wheelchair accessible vehicles, or those who rely on wheelchair accessible PHVs. The impact of the ULEZ on these two particular groups is already mitigated to a certain extent by grace periods for those with a 'disabled' tax class vehicle and TfL licensed wheelchair accessible PHVs until October 2025. However, the NHS patient reimbursement arrangement will provide an additional mitigation for these groups beyond October 2025 when the grace periods end.
- 4.6 The Mayor has a "general transport duty" to "develop and implement policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London." (section 141

of the Greater London Authority Act 1999). Transport facilities and services include “those required to meet the needs of persons living or working in, or visiting, Greater London”. The Mayor must publish a “transport strategy” (“MTS”), which includes the Mayor’s policies and proposals for discharging the general transport duty. The Mayor published the current MTS in 2018. The introduction of the reimbursement arrangement is considered to be consistent and in conformity with the general the aims, policies and proposals set out in the MTS.

- 4.7 The Mayor must have regard to provisions of the London Environment Strategy (LES) as relevant to the discharge of his functions, including whether or not to confirm the EVO, with or without modification. Relevant policies include Policy 4.2.4 which states that the Mayor will work with the government, the London boroughs and other partners to accelerate the achievement of legal limits in Greater London and improve air quality. The introduction of the reimbursement arrangement is not considered to undermine this policy or any others in the LES.

## **5 FINANCIAL IMPLICATIONS**

- 5.1 Introducing the proposed NHS patient reimbursement arrangement will have a net adverse revenue impact upon TfL. In 2019, the revenue impact of informally applying the NHS patient reimbursement arrangement in the ULEZ was £5,963 and in 2020 it was £14,738. When the ULEZ expands, based on an estimated 14,000 claims a year, the revenue impact on TfL is estimated to be circa £175,000 a year. This will decline each year as vehicle compliance with ULEZ emission standards increases.
- 5.2 There are no expected TfL implementation costs from introducing the reimbursement arrangement as the arrangement already exists for both the Congestion Charge and, on an informal basis, the central London ULEZ. There will be a small level of additional operational resources required to manage the reimbursement arrangement on a larger scale but this can be covered by existing funding.
- 5.3 There are no direct financial consequences for the Greater London Authority arising from this decision.



## **6 NEXT STEPS**

- 6.1 If the Commissioner approves the making of the EVO it will immediately be submitted to the Mayor for confirmation in accordance with the procedure established by the Mayoral Guidance. The Mayor will then decide whether to confirm it with or without modifications. The Exceptional Variation Order will come into force on the day after it is confirmed.

## **7 APPENDICES AND SUPPORTING PAPERS:**

- **Appendix A** – Greater London Low Emission Zone Charging (Exceptional Variation) Order 2021

**Appendix A – Greater London Low Emission Zone Charging (Exceptional Variation) Order 2021**

**GREATER LONDON AUTHORITY ACT 1999  
TRANSPORT ACT 2000**

**Greater London Low Emission Zone Charging  
(Exceptional Variation) Order 2021**

*Made*

*2021*

*Coming into force*

*In accordance with articles 1(2) and 2*

Whereas—

- (1) the Greater London Low Emission Zone Charging Order 2006 as varied from time to time (“the LEZ Scheme Order”) imposes charges for the use of specified classes of motor vehicles on designated roads within a specified area of Greater London;
- (2) it appears to Transport for London expedient, for the purposes of facilitating the achievement of policies and proposals in the Mayor of London’s Transport Strategy published pursuant to section 142 of the Greater London Authority Act 1999<sup>(a)</sup> that it should make an Order for the purposes of further varying the LEZ Scheme Order having regard to the need to ensure NHS patient access to medical services:

Now, therefore, Transport for London, in exercise of the powers conferred on it by sections 295 and 420(1) of the Greater London Authority Act 1999, by Schedule 23 to that Act, and of all other powers enabling it in that behalf, hereby makes the following Order:—

**Citation and commencement**

—(1) This Order may be cited as the Greater London Low Emission Zone Charging (Exceptional Variation) Order 2021.

(2) This Order shall come into force immediately on the day following the day on which the Mayor confirms it.

In this Order “the LEZ Scheme” means the Scheme contained in the Schedule to the LEZ Scheme Order as varied and in force immediately before the coming into force of this Order.

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<sup>(a)</sup> 1999 c.29; Schedule 23 as amended by the Transport Act 2000 (c.38), Schedule 13

**Variation of the LEZ Scheme**

—(1) The Scheme set out in the Schedule to this Order (“the Variation Scheme”), which varies the LEZ Scheme, shall have effect.

(2) The Variation Scheme shall come into force immediately on the day following the day on which the Mayor confirms this Order.

Signed by authority of Transport for London



Dated 02 March 2021

Andy Byford, Commissioner, Transport for London

## SCHEDULE TO THE ORDER

### SCHEME VARYING THE LEZ SCHEME

Article 2

#### Non-chargeable vehicles – qualifying NHS patients

1. For article 5(3) of the LEZ Scheme substitute—

- “(3) A vehicle is a non-chargeable vehicle for the purpose of use within the Inner Zone if—
- (a) it is a vehicle licensed as a hackney carriage under section 6 of the Metropolitan Public Carriage Act 1869; or
  - (b) it is a qualifying NHS patient’s vehicle.”.

—(1) Article 5(4) of the LEZ Scheme is amended as follows.

(1) In sub-paragraph (c) for “.” substitute “;”

After sub-paragraph (c) insert the following new sub-paragraphs—

- “(d) a “qualifying NHS patient’s vehicle” is a vehicle which was on any occasion used on any designated road within the Inner Zone to transport a relevant patient provided that—
  - the charge imposed by article 7(2) of this Scheme in respect of the use of the vehicle on that occasion was duly paid;
  - the vehicle was used for the purpose of transporting the relevant patient to attend an appointment relating to establishing a diagnosis or to treatment provided by or on behalf of a health authority, National Health Service Trust or other National Health Service organisation (“the relevant NHS body”);
  - the charge was reimbursed to the patient by the relevant NHS body; and
  - the relevant NHS body subsequently issued a certificate to Transport for London that conditions (ii) and (iii) were both met;
- (e) “relevant patient” means—
  - (i) a patient who—
    - (aa) has a compromised immune system or requires regular therapy, assessment or recurrent surgical intervention; and
    - (bb) is clinically assessed as too ill, weak or disabled to travel to an appointment on public transport; or
  - a patient who is clinically assessed, in accordance with the advice of National Health Service for the time being applicable, as being at high or moderate risk from COVID-19.”

After article 5(4) as varied, insert the following new paragraph—

- “(5) Where Transport for London, on receiving a certificate issued pursuant to paragraph (4)(d)(iv) is satisfied that a vehicle falls to be treated as a non-chargeable vehicle in accordance with this article, it shall refund the charge incurred to the relevant NHS body.”.