

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2690

Title: Confirmation of variation order to postpone the introduction of LEZ 2020 and make other minor changes to LEZ & ULEZ

Executive Summary:

On 9 April 2020¹ TfL announced a minimum four month delay to the introduction of stricter emissions standards ("LEZ 2020") for heavy vehicles through the Low Emission Zone ("LEZ") until 1 March 2021 at the earliest². This was to ease pressure on the freight industry during the COVID-19 pandemic. The new standards were due to come in on 26 October 2020. The decision to delay the introduction by four months was subject to a review in September 2020 to determine whether a further extension was required. The review has been completed and has concluded that the proposed four month delay to 1 March 2021 is still appropriate in the current circumstances.

In order to continue with the current LEZ standards and charges until the 1 March 2021, the scheme order governing the LEZ and ULEZ requires amending so that the LEZ 2020 standards and charges come into effect on 1 March 2021 rather than 26 October 2020. TfL has made an "exceptional variation order" ("EVO") to do this. The EVO also makes a number of other minor changes to the ULEZ and LEZ (detailed below). TfL requests the Mayor confirms the EVO without any modifications.

Decision:

The Mayor:

Confirms the Greater London Low Emission Zone Charging (Exceptional Variation and Transitional Provisions) Order 2020 (Appendix 1: "the Exceptional Variation Order"), without modification, having considered the content of, and advice given in, this Form in particular, regarding the various matters for decision, including whether further information is required before making a decision and whether further consultation, or the holding of any inquiry, public or otherwise, is necessary or appropriate before making a decision.

Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:



Date:

23/9/20

¹ Formally confirmed by the Commissioner on 24 April 2020

² The first charging day after the end of February is 1 March and, as such, for the remainder of this Mayoral Decision document 1 March is referred to as the date the new stricter emissions standards come in

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

The Low Emission Zone (LEZ) Scheme

- 1.1. The Low Emission Zone (LEZ) operates to encourage the most polluting diesel vehicles driving in London to become cleaner and came into operation in its original form in 2008. In the four years which followed it was changed three times to include more vehicle types/sizes and stricter standards. There have been no changes to the scheme since 2012. The LEZ covers most of Greater London and is in operation 24 hours a day, every day of the year. The Scheme now affects vehicles over 1.205 tonnes and sets minimum emission standards for their use, with charges payable for vehicles not meeting these standards. Current compliance levels are high at around 98 per cent for vans and minibuses and 95 per cent for HGVs, buses and coaches.
- 1.2. TfL suspended the Congestion Charge, ULEZ and LEZ between 23 March and 18 May 2020 to enable London's critical workers, particularly those in the NHS, and freight and other vehicles servicing London's supply chain requirements to travel round London as easily as possible in response to the COVID-19 pandemic. The pandemic placed intense demands on the road freight sector making it difficult for them to focus on meeting the new LEZ 2020 standards given their other pandemic related priorities. It also caused a short-term delay to the manufacture of new vehicles and retrofit emissions abatement equipment and the fitting of retrofit equipment to vehicles. This made it harder for vehicle owners to upgrade their vehicles to LEZ 2020 standards by the original 26 October 2020 deadline. Freight stakeholders, including the Freight Transport Association (now Logistics UK) and Volvo, wrote to TfL to request a delay to the implementation of both the LEZ 2020 changes and the HGV Safety Permit Scheme³ to allow the industry to focus on supporting the supply chain during the pandemic. To further help ease pressure on the freight industry and stakeholders, and to provide certainty to them, the Mayor asked TfL to consider delaying the introduction of the stricter emissions standards for heavy vehicles under LEZ 2020 and to delay the HGV Safety Permit Scheme.
- 1.3. TfL recommended the introduction of the stricter standards under both schemes be delayed by, as a minimum, four months until 1 March 2021 at the earliest and on 9 April 2020, TfL made an announcement confirming the matter. At the same time TfL confirmed that enforcement of the HGV Safety Permit Scheme would be similarly postponed. This delay was subject to a review in September 2020 to decide whether the circumstances relating to both schemes required a further extension beyond that date (the start date would not be brought forward). TfL's announcement was made without a formal public and stakeholder consultation because the highly unusual and urgent circumstances of the COVID-19 pandemic meant it was not considered practical to hold one. Had there been a consultation on the postponement the freight industry would not have had the required certainty it sought within the necessary timescales. The decision has been widely publicised to enable the freight industry to plan and act in accordance with it. TfL has adjusted the preparation of

³ The Direct Vision Standard (DVS) is the technical standard that has been developed and refined to rate HGVs from zero star (lowest) to five star (highest) based on the amount of visibility a driver has directly through the windows of an HGV cab weighted towards the areas of greatest risk to people walking or cycling. The HGV Safety Permit Scheme is the way in which it is proposed to introduce safety standards for HGVs over 12 tonnes GVW entering or operating in Greater London with conditions imposed on those with poor direct vision. This requires HGVs over 12 tonnes to fit additional safety measures if the direct vision standard of the vehicle has been rated zero. The HGV Safety Permit Scheme was due to be enforced from the 26 October 2020. That date was chosen as it was the same date for the introduction of the stricter LEZ 2020 standards as there was a considerable overlap in the types of heavy vehicles affected.

its back-office IT systems and operational readiness to accommodate a postponement to 1 March 2021.

- 1.4. In early September 2020, TfL reviewed the proposed 1 March 2021 start date for introducing and enforcing the stricter LEZ standards to determine whether this date was still appropriate in light of current circumstances. This review process commenced in August and was based on an assessment of the impact of the pandemic on new vehicle and retrofit supply, on the economic recovery of affected vehicle owners and on the likely significant environmental and safety impacts of a further delay. The review included, and was informed by, engagement with representative bodies for heavy vehicle operators and with vehicle manufacturers. The original Integrated Impact Assessment for the LEZ 2020 scheme (as well as the HGV Safety Permit Scheme Scheme) has also been updated in light of the review (see sections 3.4 to 4.1).
- 1.5. The review found that there was a short-term disruption to new vehicle and retrofit supply caused by the pandemic but that manufacturing had now resumed and was generally able to meet the expected demand. The pandemic has had a negative economic impact on non-TfL bus and coach operators and many HGV operators. In general, freight operators have been quicker to recover than non-TfL bus/coach operators, who have seen a very significant decline in demand for their services. This is particularly true of non-scheduled ('tourist') bus/coach operators who are dependent on tourism, events and school trips for their business. In terms of compliance with the new LEZ standard, compliance levels are also higher for HGVs (at 81.9 per cent as of May 2020) than non-TfL buses/coaches (at 60.9 per cent as of May 2020).
- 1.6. The review concluded that the proposed four month delay was still appropriate, therefore the 1 March 2021 start date should remain the date for the introduction and enforcement of the stricter LEZ 2020 standards. However, this should be accompanied by targeted promotion of the heavy vehicle scrappage scheme to non-TfL buses and coaches. In addition, a minimum three month grace period should be offered to any vehicle owner that has ordered but is awaiting fitting of emissions abatement equipment to achieve LEZ compliance. A further delay to both schemes would risk undermining their important environmental and safety benefits especially with traffic levels rising in London and would be operationally complicated to deliver. Whilst a further short delay could support the recovery of heavy vehicle operators, the benefit will be marginal in light of the extensive impact of the pandemic on many operators, which is likely to last for much longer than a short delay to the schemes. (A separate announcement confirming the commencement of enforcement under the HGV Safety Permit Scheme as being 1 March 2021 will be made at the same time.)
- 1.7. It is necessary to make changes to the scheme order governing the LEZ and ULEZ⁴ so that the current LEZ standards and charges continue until 1 March 2021, and for the LEZ 2020 changes to come into effect from that point. As a result, TfL has made an exceptional variation order ("EVO") on 22 September 2020 to make the necessary changes⁵. The opportunity has been taken to also incorporate in the EVO a number of minor changes to the ULEZ and LEZ detailed at paragraphs 2.6 to 2.11 below. This is now presented to the Mayor to decide whether to confirm the order with or without modifications.

⁴ 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 combined road user charging scheme. ("The ULEZ-LEZ Scheme Order")

⁵ The Greater London Low Emission Zone Charging (Exceptional Variation and Transitional Provisions) Order 2020.

Current traffic position

- 1.8. Covid-19 social distancing policies and lockdown measures have had significant impacts on traffic in London. HGV traffic has declined to a lesser extent than general traffic and is recovering fairly quickly. In April, HGV traffic levels were down 45 per cent across London (compared to February 2020) but as of early September they were down 16 per cent. During the pandemic, non-TfL bus and coach traffic levels across London have fallen significantly and at a much greater rate than general traffic. These traffic levels have very slowly started to increase again and, as of early September, were 50 per cent lower than February 2020 levels (pre-pandemic). This compares to a reduction of 12 per cent for all traffic and a reduction in vehicle kilometres on the busiest roads of around 7 per cent compared to last year.

2. Objectives and expected outcomes

Current LEZ Scheme

- 2.1. The current LEZ standard for lorries, buses and coaches across the whole of Greater London is Euro IV and the daily charge for these “heavy vehicles” (Class M3, Class N2 and Class N3) not meeting that standard is £200. The current LEZ standard for lighter vehicles of Class N1(ii & iii) and M2, including large vans and minibuses, is Euro III and the daily charge for non-compliant lighter vehicles is £100. For Class M3, N2 and N3 vehicles, failure to pay the charge for a non-compliant heavy vehicle may result in a £1,000 penalty charge notice (PCN) being raised, reduced to £500 if paid within 14 days. For Class N1 (ii & iii) and M2 vehicles, failure to pay the charge for a non-compliant vehicle may result in a £500 PCN being raised, reduced to £250 if paid within 14 days.

LEZ 2020 changes

- 2.2. In 2018, the Mayor confirmed the “LEZ 2020” changes to come into force on 26 October 2020 for heavy vehicles (lorries, buses and coaches):
- the emissions standard for lorries, buses and coaches will increase to Euro VI;
 - the daily charge for a non-compliant heavy vehicle to enter the LEZ will be £100 (or £300 for heavy vehicles that are below Euro IV);
 - failure to pay the charge for a non-compliant heavy vehicle may result in a £1,000 PCN being raised, reduced to £500 if paid within 14 days (or £2,000 for non-Euro IV heavy vehicles, reduced to £1,000 if paid within 14 days); and
 - in addition, Auto Pay becomes a facility that operators can use to pay the LEZ daily charge (as they currently do under the Congestion Charge and ULEZ).
- 2.3. The current standard, daily charge and PCN value for non-compliant minibuses and large vans remains unchanged

Postponement of LEZ 2020 to March 2021

- 2.4. The main change contained in the EVO is the four month postponement of the introduction of the tighter LEZ 2020 standards and charges from 26 October 2020 to 1 March 2021. If the EVO is confirmed by the Mayor without modification, the current LEZ standards and charges will continue in operation until midnight on 28 February 2021 and the LEZ 2020 changes will take effect from the beginning of 1 March 2021.

- 2.5. The primary objective of the LEZ 2020 stricter emissions standards is to improve London's air quality. London is currently in breach of EU limit values for nitrogen dioxide (NO₂). The tightening of LEZ standards for heavy vehicles is a key measure included in the Government's Air Quality Plan (2017) for tackling roadside emissions of NO₂. Along with other measures set out in the Plan (including the expansion of the ULEZ to Inner London and measures to tackle emissions from taxis) London is forecast to become compliant with limit values for NO₂ by or before 2025. This forecast pre-dated the impact of the COVID-19 pandemic on London's traffic levels and pollution caused by vehicle emissions.
- 2.6. Therefore, the postponement of the introduction of LEZ 2020 changes until 1 March 2021 involves a potential delay of four months in realising the air quality benefits that LEZ 2020 was designed to bring about. However, TfL's review of the original LEZ 2020 Integrated Impact Assessment (referred to in paragraph 3.3 below) determined that there would be no high-level environmental impact from postponing LEZ 2020 to 1 March 2021. This is because, in the context of observed significant reductions in nitrogen dioxide (NO₂) concentrations due to traffic reductions during the COVID-19 pandemic, any disbenefits of delaying the scheme will be offset by the improvement in NO₂ levels. The postponement of the LEZ 2020 benefits by four months is unlikely to have a material impact on NO₂ concentrations or the timescales within which it is forecast that London will be compliant with legal NO₂ limit values under the Air Quality Plan.

Other changes

Amendment of existing "sunset provisions" for community minibuses after ULEZ expansion

- 2.7. The original ULEZ proposals approved by the Mayor on 8 June 2018 included a two year 100 per cent discount ("sunset period") for minibuses run by not-for-profit (NFP) organisations following expansion of the Zone to Inner London, between October 2021 and October 2023. The intention was to provide assistance to school and community mini-buses⁶ not compliant with ULEZ standards after expansion. As indicators of an organisation's charitable or not-for-profit status the scheme order required the organisation concerned to have been granted one of two types of permit issued under the Transport Act 1985 – a section 19 permit (used by educational and other bodies) and section 22 (used by local community bus services), which allows them to operate without a public service vehicle operator licence⁷.
- 2.8. However, it has transpired that these permits are only available to organisations that charge their passengers to recoup all or some of their costs; if no charges are made the permits cannot be issued. This means many schools and community NFP organisations originally intended to benefit from the two year sunset period cannot do so. It is estimated that there are up to 1,500 non-compliant NFP owned minibuses that will be operating in the ULEZ after expansion not all of whom would be able to obtain a section 19 or 22 permit.
- 2.9. Therefore, it is recommended that the minibus sunset provisions in the scheme order are changed to make the two year sunset period available to NFP organisations that do not charge their passengers. The EVO, therefore, amends the current eligibility criteria so that it does not rely on having a section 19 or 22 permit. TfL must simply be satisfied that the vehicle is being used for the purposes of community transport, which is now defined as the carriage of passengers on a non-commercial basis for purposes concerned with education, religion, social welfare and other

⁶ Vehicle Class M2 minibuses seating between 8 and 16 passengers, owned leased or hired before 8 June 2018 that are not compliant with ULEZ standards.

⁷ Section 19 permits are issued to organisations running services for their own members or the people who the organisations exist to help. Section 22 permits are issued to organisations who operate on a not-for-profit basis and provide a community bus service. Unlike section 19 permit vehicles, community bus services are 'local bus services' (i.e. they can use bus stops) and can carry the general public.

activities of community benefit, irrespective of whether passengers actually pay. Eligible organisations are charities (other than private schools), non-private schools, further education colleges in receipt of government student funding, local authorities and other not-for-profit bodies.

- 2.10. The proposed change is not expected to affect the original air quality benefits of the ULEZ expansion scheme forecast in 2018 due to the small number of vehicles that will be eligible for the sunset period.

Making Christmas Day a non-charging day

- 2.11. A further change is to make Christmas Day a permanent non-charging “free day” under ULEZ on the basis that there is little or no public transport alternative that day.

Changes to align with temporary CC Scheme changes

- 2.12. The EVO also makes a minor consequential change to the LEZ and ULEZ scheme order for consistency with the recently approved temporary changes to the CC Scheme so as to provide customers with a common experience and to reflect the fact all three schemes use common back-office systems. In line with the CC, LEZ and ULEZ charges can now be paid (other than by cheque) up to three charging days after the day of travel⁸. The previous provision was for charges to be paid up to the next working day after the charging day. In addition, as a result of the temporary suspension of the CC residents’ discount for new applicants from 1 August 2020, those new applicants will also be unable to benefit from the ULEZ residents’ sunset period. These changes will be kept under review by TfL. In the event the review concludes the temporary changes should be removed a further variation order to the ULEZ-LEZ scheme order will be required to ensure the scheme arrangements continue to mirror that of the CC.
- 2.13. The above changes are not expected to have any material impact on projected air quality benefits.

3 Equality comments

- 3.1. 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 and those who do not when exercising their functions. This is known as the Public Sector Equality Duty (“PSED”). 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.

⁸ This is done by amending the definition of ‘Working Day’ in the scheme order so that it no longer excludes the earliest 3 days falling after 26th December which are not bank holidays (these were previously, but are no longer, non-charging days for CC).

- 3.2. The PSED applies to the Mayor's decision about whether to confirm the EVO. It also applied to TfL's decision on 24 April to postpone the implementation of the LEZ 2020 changes until the 1 March 2021 at the earliest.
- 3.3. For that decision TfL undertook a review of the Integrated Impact Assessment (IIA) that was done ahead of the Mayor's original decision in June 2018 to confirm the LEZ 2020 standards from 26 October 2020 and ULEZ expansion from 25 October 2021. The purpose of the review was to identify whether any of the likely significant impacts identified then were likely to change as a result of the postponement of LEZ 2020 to 1 March 2021 at the earliest, including impacts on equalities⁹. The review's high-level findings – set out in paragraphs 3.4, 3.5 and 4.1 below – are relevant to the decisions the Mayor is asked to take by this form.
- 3.4. The review concluded in the 'people' category, that previously identified positive impacts on health from improved air quality and active transport (with associated potential positive impacts on human health) remain unchanged. This is because, although the delay to LEZ 2020 enforcement is likely to mean that some of the air quality benefits are not realised as early as they would have been, this should be offset by the reductions in traffic as a consequence of travel restrictions in place over spring 2020 and ongoing pandemic related changes to travel patterns. Other identified impacts such as positive health impacts on people in some of London's most deprived areas were considered to potentially be lower due to a delay in realising air quality benefits but, given the reduction in traffic, the effect was considered negligible.
- 3.5. Therefore, TfL concluded that any potential adverse impacts of the postponement of enforcement of the LEZ 2020 changes on protected groups as originally identified in June 2018 are likely to be short-term and outweighed by the benefits to those groups that are likely to arise from securing the integrity of London's supply chains, which itself will help to alleviate the pandemic's impact on those groups. Officers advise that the same matters are relevant to the Mayor's own consideration of the Public Sector Equality Duty.

4. Other considerations

Other impacts of postponement

- 4.1. The review of the IIA referred to in paragraph 3.3 above considered the effect on some of the short-term economic impacts and was seen to be slightly beneficial, as two of the previously identified impacts (regarding supporting the growth and creation of SMEs and the financial impact of compliance on businesses) were thought to be improved. This was because the delayed enforcement gives operators more time to comply with the standards. This needed to be balanced against the much greater and uncertain impacts of the COVID-19 pandemic and associated impacts on travel and the economy. In the long-term, some vehicle operators that continue to be economically impacted by the pandemic may find it more difficult to upgrade to compliant vehicles even with the four month delay and some scrappage scheme support.

Consultation and engagement

- 4.2. Proposed permanent changes to road user charging schemes (including the LEZ) are normally subject to stakeholder and public consultation although there is no express statutory requirement for the Mayor or TfL to undertake any consultation at all.

⁹ Given the urgency and limited availability of resources it was not practical for TfL to undertake a wholly new IIA of the likely significant impacts of postponement of LEZ 2020 from 26 October 2020 to 1 March 2021.

Amendments to road user charging schemes are made in accordance with Mayoral Guidance issued by the (former) Mayor in February 2007 under paragraph 34 of Schedule 23 to the GLA Act and which remains in place today¹⁰. TfL is required to have regard to the Guidance when exercising its road user charging functions.

- 4.3. The 2007 Mayoral Guidance contemplates several different scenarios in which a road user charging scheme might be amended and sets out the Mayor's expectations as to whether, amongst other things, TfL should consult on proposed changes, the length of any consultation period and publicity requirements. The Guidance recognises that, in certain circumstances, exceptional variations to an existing scheme may be required. It provides that these exceptional changes may be made 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.
- 4.4. The LEZ 2020 postponement and other changes mentioned above would normally fall within the category of a "major variation" under the Mayoral Guidance. As stated earlier, TfL's postponement announcement on 9 April 2020 was not preceded by a public consultation. This was because a consultation would have caused a delay which would have had a detrimental effect on, or delay benefits to, groups or individuals. The impacts of the COVID-19 pandemic up to April 2020 on the freight industry and others affected required action to be taken quickly to provide certainty. In addition, the LEZ scheme had already been suspended at the time of the announcement with the effect that the October introduction of LEZ 2020 had also been suspended. Given the urgent and exceptional circumstances TfL considered it was not practicable to conduct a public and stakeholder consultation prior to making that announcement.
- 4.5. 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.
- 4.6. The same considerations mentioned in paragraph 4.4 above apply to the issue of undertaking a public and stakeholder consultation on the changes in the EVO. Circumstances remain urgent and exceptional, notwithstanding the gradual release of lockdown and opening up of London's economy which will require increased freight traffic. The freight industry could have based their decisions on the upgrade of non-compliant vehicles on the four month delay to the LEZ 2020 standards announced by TfL on the 9 April. Officers, therefore, advise it is not considered practicable to conduct a public and stakeholder consultation on the EVO and the changes it contains (set out at paragraphs 2.2 to 2.11 above). The confirmation by the Mayor of the EVO without modification will bring the scheme order into line with the April announcement postponing the introduction of LEZ 2020 until 1 March 2021, as well as making other minor changes to the operation of the LEZ and ULEZ.

Key risks and issues

- 4.7. The key risks are that if the EVO is not confirmed then:

¹⁰ 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

- LEZ 2020 will come into effect on 26 October 2020 in contradiction of the 9 April announcement that it would be suspended until 1 March 2021. The freight and coach/bus industry and TfL have already acted on the basis of the delay to the 1 March at the earliest;
 - the community minibus sunset period will not be available to all those organisations originally intended to benefit; and
 - customers would not receive a consistent experience in terms of being able to pay after the day of charging between CC, ULEZ and LEZ.
- 4.8. GLA officers consider that given the circumstances, TfL has adopted sound project management techniques in making these proposals and that risks have been appropriately mitigated. Officers have taken the following steps to mitigate the risk:
- a) the EVO was made in accordance with the guidance issued by the Mayor;
 - b) TfL undertook a review of the original IIA on LEZ 2020 which considered whether any of the likely significant impacts identified then were likely to change as a result of the main proposal to postpone LEZ 2020 to 1 March 2021 – these are detailed at paragraphs 3.4, 3.5 and 4.1 above; and
 - c) legal advice has been provided throughout the process.
- 4.9. The rationale for not undertaking a full, formal and lengthy consultation on the postponement of LEZ 2020 to March 2021 has been explained above. There is a risk the decision by the Mayor to confirm the proposals could be challenged in court by way of judicial review although this is not considered to be significant as the air quality impacts of postponement are low and have been offset by reductions in traffic levels due to the pandemic. Equally, a failure not to confirm the postponement could also result in a challenge by groups who have acted on TfL's postponement announcement on the 9 April 2020 and so would be adversely affected by the new standards being introduced in October 2020 as originally planned.
- 4.10. No officer involved in the drafting or clearing of this Mayoral Decision has any interests to declare.

Links to Mayoral strategies and priorities

Mayor's transport duty and Transport Strategy

- 4.11. 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", which includes the Mayor's policies and proposals for discharging the general transport duty.
- 4.12. The postponement of LEZ 2020 and other proposed changes are considered to be in conformity with the Mayor's Transport Strategy (MTS) and are also considered desirable or expedient for facilitating (directly or indirectly) the achievement of its policies and proposals in the current unusual circumstances of the pandemic. The MTS was published in March 2018 and contains the following proposal in relation to the LEZ:

Proposal 20: The Mayor, through TfL, will keep existing and planned road user charging schemes, including the Congestion Charge, Low Emission Zone, Ultra Low Emission Zone and the Silvertown Tunnel schemes, under review to ensure they prove effective in furthering or delivering the policies and proposals of this strategy.

- 4.13. In May 2018, the Mayor published a new London Environment Strategy (LES), following a public consultation. The LES complements the MTS and sets out his aspiration to achieve a zero carbon Capital and a zero emission transport system, including the move to more sustainable transport including ultra low and zero emission vehicles. The Strategy recognises the relationship between vehicles, congestion and air pollution and the need to set out a number of objectives and policies, in line with the Mayor's duties. The Mayor must have regard to provisions of the 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 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

5. Financial comments

- 5.1. There are no direct financial implications for the GLA arising from this proposal.
- 5.2. It should be noted, however, the current forecasts show that delaying implementation of LEZ 2020 will have a net adverse revenue impact on TfL of circa £10m. This deficit in TfL's revenue is currently being discussed with Government as part of their wider funding package to alleviate the impact that the COVID-19 pandemic has had on their income streams.
- 5.3. The DVS, LEZ 2020 and the ULEZ expansion are being delivered through an integrated programme, which also includes delivering the temporary changes to the Congestion Charge in June 2020. As such, there are implementation cost increases that are only attributable to DVS and LEZ 2020. These costs are estimated to be in the region of £1.5m to £2m and will be funded directly by TfL.

6. Legal comments

- 6.1. This section considers legal issues which are not addressed elsewhere in the form.

The Exceptional Variation Order

- 6.2. TfL is the charging authority for the LEZ and ULEZ road user charging schemes (as well as the Congestion Charge) and has the power to suspend, in whole or in part, the operation of a road user charging scheme under section 7 of the Transport for London Act 2003. This was the power that was used by TfL to suspend the CC, ULEZ and CC between 23 March and 18 May this year, and to confirm on 24 April 2020 that the introduction of the LEZ 2020 standards and charges was to be temporarily postponed until 1 March 2021 at the earliest (subject to the September review). However, TfL's powers under this provision do not extend to making a permanent change to the ULEZ-LEZ Scheme Order to alter the commencement date to 1 March 2021 from 26 October 2020, as currently written in the scheme order. A variation order – the Exceptional Variation Order described below – is required to do this and to make the other changes mentioned at paragraphs 2.2 to 2.11 above.

- 6.3. The power to make changes to a road user charging scheme is exercisable in the same manner and subject to the same limitations and conditions as apply when a scheme is first established (paragraph 38 of Schedule 23 to the GLA Act 1999). Paragraph 4(3) of Schedule 23 provides that the Mayor acting on behalf of the Greater London Authority may do the following:
- consult, or require TfL to consult, other persons;
 - require TfL to publish its proposals for the scheme and to consider objections to the proposals;
 - hold an inquiry, or cause an inquiry to be held, for the purposes of any order containing a charging scheme;
 - appoint the person or persons by whom any such inquiry is to be held;
 - make modifications to any such order, whether in consequence of any objections or otherwise, before such order takes effect;
 - require TfL to publish notice of the order and of its effect; and
 - require TfL to place and maintain, or cause to be placed and maintained, such traffic signs in connection with that order as the Mayor may require.
- 6.4. A variation order is the legal instrument through which proposed changes to an existing road user charging scheme are made. By virtue of paragraphs 4(1) and 38 of Schedule 23, a charging scheme and changes to it must be included in an order. The order will only have legal effect if it is confirmed by the Mayor with or without modifications.
- 6.5. On 22 September 2020, TfL made the Greater London Low Emission Zone Charging (Exceptional Variation and Transitional Provisions) Order 2020 (Appendix 1) to amend the Greater London Low Emission Zone Charging Order 2006 and its London Emission Zones Charging Order with the changes set out in paragraphs 2.2 to 2.11 above.
- 6.6. The proposals that the EVO seeks to implement must be in conformity with the policies and proposals of the Mayor's Transport Strategy and be considered desirable or expedient for facilitating (directly or indirectly) their achievement. The Mayor is advised that this is the case.

Consultation

- 6.7. As stated above, the proposed changes were not subject to a full, formal and public consultation. While it is recognised that TfL usually consults on changes to the LEZ Scheme, paragraph 4(3) of Schedule 23 to the GLA Act does not create a duty on either the Mayor or TfL to do so. Further, TfL is required to exercise its road user charging functions having regard to the Mayoral Guidance issued under paragraph 34 of Schedule 23 to the GLA Act. That Guidance expressly contemplates in Part 6 that exceptional variations may need to be made to a road user charging scheme in circumstances which do not permit consultation to be undertaken. This is the case even when what is proposed would otherwise amount to a major variation of a scheme. TfL has relied on this Guidance to proceed with the changes made by EVO in the absence of a full, formal and lengthy consultation for the reasons set out in paragraphs 4.4 and 4.6 above. Part 6 of the Guidance sets out certain publicity requirements and these will be complied with should the Mayor decide to confirm the EVO.

Power to hold a public inquiry

- 6.8. Paragraph 4(3) of Schedule 23 provides that the Mayor may 'hold an inquiry, or cause an inquiry to be held, for the purposes of any order containing a charging scheme'. Whether an inquiry should be held to consider the implementation of the changes as set out in the Exceptional Variation Order is a matter for the Mayor to decide.
- 6.9. For the same reasons as set out above in relation to holding a full, formal and lengthy public consultation, it is not recommended that a public inquiry should be held.

Considerations under the Human Rights Act 1998

- 6.10. Under Section 6 of the Human Rights Act 1998 ('HRA'), it is unlawful for a public authority to act in a way which is incompatible with the European Convention on Human Rights. As a public authority, the Mayor is required to consider possible interferences with people's Convention rights before deciding whether to confirm the EVO.
- 6.11. The Convention rights which might be engaged here are the right to privacy and family life (Article 8) and the right to the peaceful enjoyment and protection against deprivation of possessions (Article 1 of the First Protocol) ("A1P1"), and the protection against discrimination on specified grounds (Article 14). Article 14 may also be engaged if the measure is within the scope or ambit of Article 8 or A1P1, even if there is no interference with those rights. These are qualified human rights, that is, they are subject to limitations which permit the rights to be restricted for certain specified purposes. In assessing whether any established interference with a convention right falls lawfully within a permitted category of restriction, the public body must demonstrate interference is provided for by law, pursues a specified legitimate objective and is proportionate means of pursuing that objective (that is, is necessary in a democratic society), having regard in particular to the public benefit to be derived from the action.
- 6.12. The Mayor is advised to proceed on the basis that the decision is within the ambit or scope of Article 8 and A1P1 and that Article 14 is potentially engaged (because the proposed changes fall within the ambit or scope of a Convention right) but, the interference and any differential impact under Article 14 can be shown by the Mayor to be justified. The Mayor's decision is in accordance with the law, pursues objectives including public safety, protection of economic well-being, the protection of health, the protection of the rights and freedom of others (including the right to life) and the general interest and is a necessary and proportionate response in emergency circumstances.

7. Planned delivery approach and next steps

- 7.1. If the EVO is confirmed, notice of the confirmation will be published in the London Gazette and other media in accordance with the Mayoral Guidance. The EVO, and the changes it makes to the scheme order, will come into force the day after the Mayor confirms it.

Activity	Timeline
Announcement	28 September 2020
Delivery start date	28 September 2020
Delivery end date	1 March 2021

Appendices and supporting papers:

Appendix 1 – Greater London Low Emission Zone Charging (Exceptional Variation and Transitional Provisions) Order 2020 ('EVO')

Appendix 2 – Instrument of Confirmation of EVO

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after it has been approved or on the defer date.

Part 1 – Deferral

Is the publication of Part 1 of this approval to be deferred? YES – to allow a coordinated media announcement of the change, expected on 28 September 2020

Part 2 – Sensitive information

Only the facts or advice that would be exempt from disclosure under FoIA should be included in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – NO

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

Elliot Treharne has drafted this report in accordance with GLA procedures and confirms the following:

✓

Sponsoring Director:

Philip Graham has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser:

Shirley Rodrigues and Heidi Alexander have been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

Corporate Investment Board

This decision was agreed by the Corporate Investment Board on 21 September 2020.

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

D. Gane

Date

23 September 2020

CHIEF OF STAFF:

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature

D. Bellamy

Date

21 September 2020

