

## **7 Public Inquiry**

### **7.1 Introduction**

7.1.1 This chapter examines the issue of whether the Mayor should hold some form of inquiry as part of the process of determining whether or not to confirm the Scheme Order. None of the respondents to the consultation asked for a public inquiry.

7.1.2 Under the Greater London Authority Act 1999, as amended, it is the Mayor (acting on behalf of the Greater London Authority) who decides whether or not to confirm any road user charging order made by TfL or a London borough. As part of the confirmation process, the Mayor may hold an inquiry. The format of any inquiry is also a matter for the Mayor. An inquiry could take a number of formats, including a Public Inquiry.

7.1.3 In essence, the Mayor has to determine the benefits and disbenefits of holding a public inquiry - in particular whether he has sufficient information to reach a decision on confirming the Order - and whether, and to what extent, some form of inquiry would assist his decision. Alternatively, the Mayor could ask TfL or others for further information or advice, should he consider this necessary.

7.1.4 To prepare for a possible decision by the Mayor to convene an inquiry, TfL has identified potential venues in central London that could be suitable. However, much would depend on the scope and format of the inquiry.

7.1.5 TfL urges that the Mayor takes legal advice on his overall consideration of the confirmation of the Order – including the exercise of his discretion on the matter and scope of any public inquiry.

### **7.2 The Mayor's Decision**

7.2.1 The following issues appear to TfL to be pertinent to the Mayor's decision to the holding of a public inquiry:

- the importance of the proposed scheme in terms of air quality and public health;
- the quality of the public consultation processes on the Order;
- the scale of impacts on those directly affected;
- the likelihood of an inquiry providing new information for the Mayor to consider;
- the value an inquiry could give to the testing and weighing of evidence;
- the reassurance that would be given to the public and businesses

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- by the holding of an inquiry;
- exceptional factors making it unfair to deny an objector any or any sufficient oral hearing;
- the financial and programme implications of holding an inquiry;
- the scope to adjust the proposed scheme without holding an inquiry; and
- whether the Mayor is able properly to consider the representations made and take a decision on the Order without holding an inquiry.

7.2.2 Each of these issues is considered in turn below.

### **7.3 The importance of the proposed scheme in terms of air quality and public health**

7.3.1 To assess the air quality impacts of the scheme, the expected reductions in emissions and air quality concentrations have been modelled for 2008, 2010, 2012 and 2015. The modelling was done by independent consultants (ERG). This information has been published in tabular and map format to show emission levels, areas exceeding objectives and populations exposed to exceedences. TfL also commissioned a non-statutory Environmental Impact Assessment from Scott Wilson, following the Strategic Environmental Assessment (SEA) published as part of the Strategy Revisions consultation.

7.3.2 Monetised health impacts were calculated using both Defra/ IGCB methodology and the EU CAFE methodology. Both sets of results have been published. TfL also commissioned a Health Impact Assessment from AEA Environment and Energy.

7.3.3 For both air quality and health impacts modelling, data was updated between the Strategy Revisions consultation and the Scheme Order consultation, to reflect the additional work done on behalf of TfL to inform the data. These studies were an Operator Survey, a review of likely volumes of vehicles affected by the scheme and a review of the costs of different operator compliance options. Air quality modelling data was updated with the LAEI 2003 data for the Scheme Order consultation, and the modelling of the health impacts was also updated in line with this.

7.3.4 Since the Scheme Order consultation documents were published Defra has introduced a change to the IGCB methodology, which results in a reduction in the formation rate of secondary particulates per unit of NO<sub>x</sub> emission. This slightly reduces the overall benefits of the LEZ. However, this change has been offset by a number of other minor changes to the calculation method, the most important of which is a re-analysis of the data for outside London, using DfT data that has more accurately assessed the split of outside London kilometres by area

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type. This leads to a small increase in outside London PM benefits. The revised estimate of health benefits resulting from the LEZ are £170m - £240m for the Defra/IGCB method and £250m - £670m for the EU CAFE method.

7.3.5 It is not clear what further information in terms of air quality and public health might be presented at any such inquiry. None of the responses to the consultation suggested alternative sources of information, although some did comment on changes to the modelling data between the two consultations. However, with time, as awareness of the LEZ increases and more accurate information on likely operator behaviour becomes available, it is likely that further revisions to the modelling would be necessary, meaning that the data would be likely to change again.

## **7.4 The quality of the public consultation processes on the Order**

7.4.1 Details of the extent of the consultation on the Order are set out in Chapter 4 to this report. The proposal has been subject to extensive consultation, both formal and informal, in respect of the Revisions to the Mayor's Transport and Air Quality Strategies as well as on the Order itself.

7.4.2 In TfL's view, the consultation has given full opportunity for all interested parties to make informed representations on the proposed scheme, which TfL has then considered. TfL considers it improbable that anyone would wish to take part in a public inquiry has not already responded, or at least has had ample opportunity to respond, to the previous consultations. Nor does TfL consider that any substantive issues would be raised at an inquiry that have not already been raised and considered.

7.4.3 Some of the representations made during the consultation indicated dissatisfaction over the consultation process. These may be grouped into the following categories:

- views expressed as part of the Strategy Revisions consultation had not been taken into account;
- not enough information had been provided to accompany the Scheme Order consultation;
- further research and modelling work was required; and
- further information for operators was required.

7.4.4 Following the Strategy Revisions consultation, a number of important changes were made to the LEZ proposals, including the deferment of the Euro IV standard to 2012 (from 2010), and the inclusion of heavier LGVs and minibuses within the scope of the Scheme from 2010. The Mayor made these changes following analysis of the results of the Strategy Revisions consultation.

7.4.5 A range of information was provided to accompany the Scheme Order consultation in November 2006, including an Environmental Report, a Health Impacts Assessment, an Economic and Business Impact Assessment, and an Equality Impact Assessment. These were produced by independent consultants and published, with Non-Technical Summaries, on the internet. They were also distributed to certain key stakeholders. TfL produced a Sustainable Development Impact Assessment at the same time. A public information leaflet and questionnaire described the scheme and a more detailed description, including information on costs and benefits, was available in a Supplementary Information document. TfL also met with many stakeholders and provided further information as requested both at meetings and in correspondence. Detailed maps were sent to London boroughs and contiguous authorities and these organisations were offered individual meetings with TfL. Chapter 4 describes the stakeholder engagement in detail.

7.4.6 Some stakeholders were of the opinion that further research and modelling was needed, particularly in regard to impacts on smaller operators and the impact of including minibuses. TfL considers that the Economic and Business Impact Assessment, the Equalities Impact Assessment and the 2006 Operator Survey have already done this. There would be ongoing monitoring of the effects of any Scheme.

7.4.7 TfL confirms that when carrying out the consultation on the Scheme Order, it followed the guidelines in the TfL consultation toolkit.

7.4.8 Therefore, TfL takes issue with the concerns over the quality of the public consultation process, and does not believe that they constitute grounds for an inquiry.

## **7.5 The scale of impacts on those directly affected**

7.5.1 The Impact Assessments commissioned by TfL sought to quantify the potential impacts of the scheme on certain sectors of society and the economy. They identified potential adverse impacts on the community and voluntary sector and those that provide transport or other services for, some small businesses, and also some operators of specialist vehicles (such as showmen). TfL sought to engage these sectors through the consultation process, and the results are analysed in this report. TfL considers that an inquiry is unlikely to provide new information although it might elicit more individual responses, which are unlikely in themselves to alter the overall assessment of impacts.

## **7.6 The likelihood of an inquiry providing new information for the Mayor to consider**

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7.6.1 TfL considers that there would be relatively little new information available for an inquiry to consider. Should the Mayor confirm the Scheme Order, TfL would continue to engage with affected stakeholders to provide advice on the LEZ requirements and compliance options. This process, supported by further surveys and studies that would continue up to and beyond the introduction of the proposed Scheme, would continue to provide information on the impacts of the proposed LEZ, regardless of whether a public inquiry was held. Should any particular adverse impacts become apparent, TfL would consider suitable mitigation actions.

7.6.2 TfL considers it questionable whether the information coming forward as a result of an inquiry, including any cross-examination of witnesses, would enable the consequences of the proposed scheme to be more accurately assessed to any significant extent.

## **7.7 The value an inquiry could give to the testing and weighing of evidence**

7.7.1 An inquiry would provide a forum for the independent testing and weighing of TfL's technical and other conclusions and any evidence put forward by organisations and individuals who have expressed concerns about the proposal. It might also mean that other proposals were brought forward for examination, although any alternatives would be constrained by the framework of the Mayor's Revised Transport and Air Quality Strategies (which were adopted after a wide-ranging public consultation).

7.7.2 If an inquiry was held, experts could be engaged to provide assessments of the analyses provided by TfL and its consultants, and of any analyses provided by others.

7.7.3 How far any independent testing and assessment of TfL's data and analyses might result in different conclusions is debatable. It is, however, possible that the recommendation of an inquiry might be to pursue further studies, to delay or abandon the proposals, or to make modifications to the proposed Order.

7.7.4 Depending on the parameters of an inquiry, those appointed to hold the inquiry would be able to recommend what they considered was appropriate in the light of the available evidence. Any such recommendation would be subject to policy consideration by the Mayor. The Mayor, by the nature of his position, is responsible for transport planning in London and accountable to the London electorate. He cannot by law delegate the decision on the proposed LEZ to an Inspector.

7.7.5 Inquiries have a role in appropriate circumstances, although TfL does

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not consider that holding an inquiry should be considered as a panacea. The question of whether to confirm the Order does not have a single, exclusively “right”, answer which an inquiry could be expected to deliver. TfL considers that the decision in hand involves discretion and judgement rather than the resolution of primary fact.

7.7.6 Nevertheless the Mayor may consider it useful to have a report and recommendation, independent to that of TfL, derived through some form of inquiry.

## **7.8 The reassurance that would be given to the public and businesses by the holding of an inquiry**

7.8.1 Holding some form of inquiry might meet the concerns expressed in some representations from key stakeholders. However, TfL considers that the Mayor, properly advised and informed, is capable of reaching his own, fair decision and that the outcome of his consideration of representations should not be regarded as predetermined.

7.8.2 The Mayor is also capable of assessing the cogency and the validity, or otherwise, of the arguments against the proposed scheme, both as set out in the representations and as summarised in this report, and of evaluating the strength or weakness of TfL’s response. Apart from advice provided by TfL in this report, the Mayor has the opportunity to seek the advice of GLA officers and his own advisors.

7.8.3 The Mayor has indicated his willingness to adjust the proposed Scheme in the light of responses received during consultation. It should be noted that the Mayor made some important changes to the LEZ proposal following the Strategy Revisions consultation.

## **7.9 Whether there is any exceptional feature of the proposal which would make it unfair or unreasonable to deny an objector any, or any sufficient, oral hearing**

7.9.1 Public authorities must comply with the Human Rights Act 1998 and certain provisions of the European Convention on Human Rights. Under paragraph 2 of schedule 23 of the GLA Act, any functions conferred on the Authority are exercisable by the Mayor. The Mayor will be acting as a public authority when considering whether or not to confirm the Order and whether or not to hold an inquiry. Conceivably, therefore, the Mayor’s decision might need to comply with Article 6 of the Convention. However this right only arises where the decision of a public authority determines ‘civil rights and obligations’.

7.9.2 TfL does not consider that compliance with Article 6 requires an inquiry to be held, and notes that no stakeholder has explicitly requested that an inquiry be held.

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7.9.3 The Mayor's decision would be capable of judicial review by the High Court in the normal way. Accordingly, in TfL's opinion, whether or not to hold a public inquiry then focuses solely on the Mayor's discretion under the Greater London Authority Act 1999.

7.9.4 Although this would be the first LEZ established in the UK, and the first use of Schedule 23 for purposes other than Congestion Charging, in TfL's view there are no exceptional features associated with the proposed Low Emission Zone, outside the issues that were considered in respect of the consultation(s), which should give rise to a different conclusion.

## **7.10 The financial and programme implications of holding an inquiry**

7.10.1 Cost and delay are inherent in any inquiry. However, if other factors indicate that an inquiry should be held, these factors alone should not be considered adequate reasons to avoid an inquiry.

7.10.2 The inquiry process itself could last several months. Preparation for the inquiry, the production of an Inquiry Report and its consideration by the Mayor could add, perhaps considerably, to the whole process – which would be likely to substantially defer the date for final decision-making. There would also be considerable direct financial costs in holding an inquiry. However, in the context of the overall expenditure proposed, it is considered that great weight should not be attached to these costs.

7.10.3 It should also be noted that under the GLA Act all parties to an inquiry must bear their own costs.

7.10.4 The holding of a public inquiry would postpone the start date for the LEZ, which would mean some of the air quality and health benefits of the scheme would be lost.

7.10.5 If the proposed Scheme proceeds without an inquiry, contracts involving substantial sums of money would be entered into following confirmation of the Order. Some or all of this expenditure would be wasted if, following implementation, the proposed scheme had to be adjusted or abandoned because it proved to be flawed for reasons that might have emerged at an inquiry. However this seems to TfL to be unlikely given the detailed planning and impact assessments that have been carried out.

7.10.6 If a public inquiry were held and its result was a recommendation that the proposed scheme should proceed, with which the Mayor agreed, the costs of implementing the proposed scheme would be affected (depending on when the Mayor decided to introduce the Scheme).

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7.10.7 TfL considers that programme and financial implications should not be treated as a major consideration in deciding whether to hold an inquiry, although they would be relevant to the type of inquiry held.

### **7.11 The scope to adjust the proposed scheme without holding an inquiry**

7.11.1 There is scope to adjust the operation of the proposed Scheme if it does not perform satisfactorily. With the Mayor's approval, the proposed scheme could be modified, suspended or revoked – either before confirmation of the Order, before implementation of the Scheme, or after a period of operation of the LEZ.

7.11.2 Some aspects of the Order could be modified relatively simply. More fundamental adjustments to the LEZ – such as a major change in the boundary or the vehicles in scope – could take some months to process, as public consultation would be involved. The Mayor should be aware that it may take a year or more of operation to gather detailed information on issues such as the business, environmental, health and social impacts of the LEZ. However, there is nothing in the LEZ that cannot (at a cost) be adjusted and, ultimately, the whole Scheme is reversible.

7.11.3 In TfL's view this is perhaps the strongest argument against an inquiry: the proposals can be adjusted if their operation proves unsatisfactory.

### **7.12 Whether the Mayor is able properly to consider the representations made and take a decision on the Order without holding an inquiry**

7.12.1 The Mayor needs to consider and balance the arguments, taking account of his own legal advice. Ultimately, he needs to assess whether he is able properly to weigh the conflicting issues and properly take into account representations made for, and more particularly against, confirming the Order without holding an inquiry.

7.12.2 Even if the Mayor felt unable to assess all the information before him, there are other ways in which the Mayor is able to obtain information, ranging from a simple request to TfL or others for further analysis, to perhaps further public consultation on specific matters.

7.12.3 TfL's view is that the Mayor is able – on consideration of this report – to address properly all the relevant issues, including a number of strongly-felt objections to the confirmation of the Order, without holding an inquiry. As previously indicated, however, this is a matter which the Mayor should consider in the light of his own legal advice.

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## **8 Conclusions and Recommendations**

### **8.1 Introduction**

8.1.1 The Mayor is required to make a decision on whether to confirm the Scheme Order which would implement a LEZ in London. A number of options are open to him:

- to confirm the Scheme Order, with or without modifications;
- to request further information from TfL or others in order to inform a decision on the proposal;
- to request TfL to conduct further consultation on the Scheme Order, or specific aspects of it;
- to call an Inquiry (which may be a public inquiry) into the Scheme Order or specific aspects of it (TfL's advice on this matter is set out in Chapter 7); or
- to reject the Scheme Order and instruct TfL to suspend or cease work on the proposal.

8.1.2 TfL considers that this Report to the Mayor provides all the information and analysis needed in order for the Mayor to make an informed decision as to whether to confirm the Scheme Order or not. The Mayor has been provided with copies of all stakeholder representations, as well as all full written representations and objections from members of the public, businesses and other organisations received by TfL as part of the public and stakeholder consultation on the Scheme Order. In addition, the Mayor has been provided with the Consultation Analysis Report and Attitudinal Survey Report. This would allow him to take into account the range of views expressed during the course of the consultation.

8.1.3 In other sections of this report, TfL has set out its views on the representations received on individual themes. Overall, TfL considers that the proposed LEZ would deliver important benefits to London in terms of improving air quality and health, as well as helping London move closer towards achieving national and EU air quality objectives.

8.1.4 However, it is acknowledged that the proposed LEZ could adversely affect some businesses and other organisations, including some voluntary and community groups, as highlighted by a number of representations that suggest potential negative impacts that could result from the proposal.

8.1.5 TfL received a number of detailed representations from London boroughs and local authorities contiguous to London regarding the boundary of the proposed LEZ. Following analysis of these representations, and consultation with stakeholders, TfL proposes some minor modifications to the text of the draft Scheme Order, as well as some minor modifications to the boundary of the proposed LEZ.

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These are set out at Annex H, Table of Modifications to the Scheme Order.

8.1.6 The remainder of this chapter summarises the main issues raised during consultation on the Scheme Order, and sets out TfL's recommendations, including minor modifications to the text of the draft Scheme Order in response to the representations received to the consultation.

## **8.2 The need to tackle road transport emissions**

8.2.1 According to the attitudinal survey carried out by Ipsos MORI on behalf of TfL during the consultation period, more than two in five London residents (42%) think that air quality in London is poor or very poor and half believe that air pollution affects them or their family. The responses to the consultation strongly supported the need for the Mayor to take action to tackle poor air quality.

8.2.2 The Mayor has a statutory requirement to take action to achieve domestic air quality objectives. Air quality in London breaches the European PM<sub>10</sub> limit values and the national objectives for PM<sub>10</sub> and NO<sub>2</sub>. On current trends and without further action, it is predicted that London will continue to exceed these objectives and exceed the European 2010 annual mean objectives for NO<sub>2</sub> as well as annual and daily mean objectives for PM<sub>10</sub>. Each year that the UK exceeds an EU limit value there is the risk of infraction proceedings and the UK potentially paying daily fines based on a percentage of GDP.

8.2.3 Road transport related emissions are a significant contributor to air pollution in London. Road transport was responsible for some 66 per cent of emissions of PM<sub>10</sub> in London in 2005. PM<sub>10</sub> affects the respiratory and cardiovascular system, and is known to contribute to premature deaths. It can also carry carcinogenic compounds into the lungs that can cause cancer. It may worsen existing lung disease and increase the sensitivity to allergens of people with hay fever and asthma. Road transport was also predicted to be responsible for 38 per cent of the emissions of oxides of nitrogen (NO<sub>x</sub>) in London in 2005. NO<sub>x</sub> includes nitrogen dioxide (NO<sub>2</sub>) and nitric oxide (NO) which forms NO<sub>2</sub> in the atmosphere. NO<sub>2</sub> has been associated with impaired lung function, as well as increases in allergies and a general adverse effect on quality of life. However, PM<sub>10</sub> reductions generate more significant pollutant health improvements than reductions in NO<sub>2</sub>.

8.2.4 It is estimated that by 2012 the proposed LEZ would deliver reductions of around 16 per cent in the area of London where the air quality exceeds the 2010 annual PM<sub>10</sub> objective and around a 15 per cent reduction in the area where the air quality exceeds the 2010 daily PM<sub>10</sub> objective. By 2012, the proposed LEZ would also deliver a reduction of around 16 per cent of the area of London where the air quality exceeds the annual mean NO<sub>2</sub> objective.

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- 8.2.5 TfL is aware that increased use of certain types of pollution abatement equipment may increase the percentage of total NO<sub>x</sub> emissions emitted as NO<sub>2</sub>. This means that while the overall trends in London are for a gradual reduction in NO<sub>x</sub>, the proportion of NO<sub>x</sub> emitted as NO<sub>2</sub> is increasing. However, in terms of the key health-based objectives of the LEZ, reductions in PM<sub>10</sub> would outweigh the impact of an increase in the ratio of NO<sub>x</sub> emitted as NO<sub>2</sub>. It should be noted that total NO<sub>2</sub> and NO<sub>x</sub> emissions are expected to continue to decline as operators adopt newer Euro standard vehicles. The LEZ is also expected to contribute to reduced levels of NO<sub>x</sub>, through encouraging upgrade to newer vehicles as an option for operators responding to the LEZ. TfL will continue to monitor this issue.
- 8.2.6 It is also recognised that the LEZ is likely to deliver proportionately more health benefits to vulnerable sections of London's population. These include those living close to areas of high pollution, those in a poor state of health, the young and older people.
- 8.2.7 The impact of the LEZ on carbon dioxide (CO<sub>2</sub>) emissions is expected to be negligible.

### **8.3 Business case**

- 8.3.1 A number of stakeholders expressed concern over the LEZ business case. In particular, there were concerns that the costs to TfL and to operators were not justified by the benefits, which would bring forward air quality improvements by between three and four years compared to the natural vehicle replacement cycle. Some stakeholders also expressed concern that the revenue of the scheme would be significantly outweighed by the costs.
- 8.3.2 TfL has reviewed alternative ways at both the national and local levels for addressing road transport related emissions, and believes that, in the absence of suitable national initiatives, the proposed LEZ represents the most effective option for achieving reductions of the most harmful road transport generated emissions in London between 2008 and 2015.
- 8.3.3 The capital costs of setting up the LEZ are expected to be around £50m (NPV). This involves policy development and consultation costs, as well as implementation costs. The total operating costs from implementation until 2015/16 are expected to be around £80m (NPV). Whilst revenue costs through the charge and penalty charge payments are expected to be between £30m and £50m (NPV) over the same period, it should be stressed that the LEZ is not intended to be a revenue generating scheme. The objective of the LEZ is to improve air quality by encouraging operators to make their vehicles compliant with the proposed emission standards. Improvements in air quality improvements would be maximised by high levels of operator

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compliance and consequentially low levels of revenue from daily charges and penalty charges.

- 8.3.4 TfL estimates that compliance costs for operators over the lifetime of the scheme are in the region of £200m to £300m (based on market prices). These costs assume that operators take the minimum, least-cost approach to achieving compliance with the LEZ. Over the same period, the most recent modelling estimates the monetised health benefits of the scheme are projected to be between £250m and £670m using the EU CAFE methodology and between £170m and £240m using the more conservative Defra/ IGCB methodology. Furthermore, thousands of people across the whole of London would benefit from general improvements in air quality.
- 8.3.5 The current government Inter-Departmental Group on Costs and Benefits (IGCB) is assessing retrofit options for the transport fleet as part of the Defra Air Quality Strategy Review. Their approach for estimating the costs of this technology is based on the resource costs per unit which the producers incur when producing the equipment, rather than the market price. Applying such a resource cost approach would reduce the estimated cost to operators of the LEZ and in calculating the costs and benefits, significantly improve the BCR for the LEZ. TfL is working with Defra to develop a consistent resource cost analysis to support central government appraisal of the LEZ.
- 8.3.6 Over the same period, the monetised health benefits of the scheme are projected to be between £250m and £670m using the EU CAFE methodology and between £170m and £240m using the more conservative Defra/ IGCB methodology. The benefit cost ratio (BCR) would be in the range of 0.4 - 0.7 (Defra) and 0.6 - 2.0 (EU CAFE). Furthermore, thousands of people across the whole of London would benefit from general improvements in air quality.

## **8.4 Impacts on the London economy**

- 8.4.1 There was concern from some stakeholders that businesses in London, particularly some small businesses, would be adversely affected by the LEZ. The Economic and Business Impact Assessment commissioned by TfL to inform the Scheme Order consultation concluded that the net cost to the economy of London resulting from the LEZ would be low. The Assessment concluded that there could be a net impact on jobs of between 140 and 420 Full Time Equivalents over the period up to 2015/16 and possibly lower. These would be job losses not just in London but across the UK, and would represent a tiny fraction of the UK economy.
- 8.4.2 The analysis suggests that the LEZ is likely to have some redistribution impacts, with jobs lost in some firms compensated for by job gains in others, for example the vehicle maintenance and retrofitting sectors. It may also contribute slightly to some redistribution of companies within

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individual sectors. This impact would be very small in relation to other factors influencing business in a dynamic London economy.

8.4.3 TfL accepts that in some circumstances, some businesses, particularly some small businesses could be forced to exit the London market as a result of LEZ costs eroding their operating margins. However, in the long run, it is expected that these exiting businesses would be replaced by other businesses with compliant fleets.

## **8.5 Boundary issues**

8.5.1 On balance, there was overall support in the consultation for trunk roads and motorways (excluding the M25) to be included in the proposed LEZ, in order to maximise the air quality benefits.

8.5.2 TfL recommends that motorways and trunk roads (excluding the M25) are included in the LEZ as far as practically possible. TfL is not recommending that the M25 be included in the LEZ as it is an appropriate diversionary route for vehicles to avoid driving within the LEZ. Motorways included are: the M1 south of London Gateway Services, the M4 east of Junction 3 and the M4 spur to Heathrow. It is not possible to include the A3113 as it forms the diversion route for traffic approaching along the A4. Under paragraph 9(7) of Schedule 23 to the GLA Act, consent from the Secretary of State for Transport is required if a trunk road or motorway is to be included in the LEZ and TfL is negotiating as to this consent. His approval is required on issues including where the boundary of the LEZ is drawn, signage and enforcement on trunk roads and motorways. TfL has agreed to fund the cost of signing of the proposed LEZ, including reimbursement of the Secretary of State's costs in installing and maintaining signs. Agreement from the Secretary of State on the inclusion of trunk roads and motorways within the LEZ would be required before the Mayor could confirm the Scheme Order, which includes these roads. The negotiations are well advanced, and TfL anticipates that agreement can be reached before the date proposed for the Mayor to make his decision on the Order. Subject to the successful conclusion of these negotiations, TfL recommends that the Scheme Order be amended to include these roads. As this matter was considered in the consultation process, TfL does not propose that further consultation is required.

8.5.3 BAA has confirmed that they are willing to give their consent to the LEZ applying to their private landside roads around the Heathrow area. TfL therefore recommends that further detailed discussions should take place to ensure agreement on operational issues.

8.5.4 A number of London boroughs and local authorities contiguous to London made comments on the details of the proposed LEZ boundary. TfL agrees with many of these comments, and consequently has recommended some minor changes (for practical local authority reasons) be made to the proposed LEZ boundary.

## **8.6 Streetscape**

- 8.6.1 A number of stakeholders, including local authorities, expressed concern about the impact of signage on the local streetscape, and provided details about their particular concerns at specific sites within their borough. Similarly there was concern about the impact that ANPR cameras and associated infrastructure could have on the local environment.
- 8.6.2 Prior to the consultation, TfL commissioned a non-statutory Environmental Report which concluded that the vast majority of proposed camera locations would have little or no impact on local streetscape and environment. In regard to the signage, the report concluded that “these signs would have a negligible impact on townscape and visual amenity”, due to their location on busy roads which already have considerable street furniture.
- 8.6.3 TfL will continue to work with local authorities both within and outside London on an individual basis about the positioning and extent of the camera network to support LEZ monitoring and enforcement.

## **8.7 Discounts and exemptions**

- 8.7.1 In the Scheme Order as consulted on, TfL had proposed exemptions for a small number of vehicles: agricultural vehicles, military vehicles, historic vehicles not used for hire and reward, and vehicles that are primarily non-road going vehicles but are allowed on the highway (eg. agricultural and construction vehicles).
- 8.7.2 A number of stakeholders argued in their consultation responses for further discounts or exemptions for certain categories of vehicle or sectors. These included: community and voluntary sector vehicles, non-TfL bus and coach services, all historic vehicles, specialist borough vehicles and showman’s vehicles. TfL examined the case for discounts or exemptions for each of these and other sectors in turn:

### *Community and voluntary sector*

- 8.7.3 It is estimated that around 5,000 vehicles, mainly minibuses, are operated in London by the community sector, which covers community transport for vulnerable groups as well as transport for volunteer organisations such as sports clubs, youth groups and faith groups. A number of volunteer groups are moving towards leasing rather than owning their vehicles as a result of a number of pressures, including rising overhead costs and driving licensing law. There is therefore an increase in the proportion of vehicles which would be compliant with the proposed LEZ.
- 8.7.4 Whilst recognising the important service and functions provided by this sector, TfL does not consider that there is justification for a discount or

exemption for community and voluntary vehicles which are not compliant with the emission standards. Some community transport vehicles are old and polluting on an individual basis, and it would not be appropriate to encourage these vehicles to continue operating in London. However, TfL would seek to work with operators in this sector to help them identify the most cost-effective compliance methods and advise them on solutions. TfL would also keep under review the impacts of the proposed LEZ on this sector.

#### *Non-TfL bus and coach services*

8.7.5 Some stakeholders argued in their consultation responses that certain bus and coach services which do not receive a TfL subsidy should receive a discount or exemption from the proposed LEZ. This would include cross-border bus services, some school bus services and rail replacement services. Independent of the LEZ, TfL understands that there have been pressures to modernise fleets, including from the Disability Discrimination Act requirements and 'green' procurement requirements. TfL does not consider that it would be appropriate to encourage operators to continue using non-compliant vehicles, especially since retrofit options exist for these vehicles. Furthermore, these services are procured on a commercial basis, and it would be inappropriate to interfere in the market by providing financial assistance to particular operators.

#### *Historic vehicles used for hire and reward*

8.7.6 Some stakeholders argued that since all historic vehicles have the same technical issues which prevent retrofit of pollution abatement equipment, the proposed exemption from the LEZ should apply to them all, not just those not used for hire and reward. TfL accepts this point, and recommends that the exemption from the proposed LEZ should apply to all vehicles constructed before 1973.

8.7.7 The 1973 cut-off date is based on the definition of historic vehicle used by the Government for tax purposes and which is used by the DVLA for vehicle classification purposes. Some stakeholders argued for a 25 year rolling age limit to be introduced, as some vehicles defined as historic were constructed after 1973.

8.7.8 TfL does not recommend any change to the date for eligibility for the historic vehicles exemption. If the qualification date was set later than 1973 then there could be significant reductions in the health and air quality benefits as many more vehicles would not need to meet the specified emissions standards to drive within the LEZ. Setting the date later would also provide an incentive for operators to run older, more polluting vehicles longer to obtain the LEZ exemption. If a rolling qualification date were set then there would be an inconsistency where

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a vehicle that was required to be compliant in one year, would potentially not need to be compliant the following year.

#### *Specialist borough vehicles*

8.7.9 Some London boroughs argued that some of their specialist vehicles should be exempt from the proposed LEZ. They argued that these vehicles provide a valuable public service, have long life-cycles, would be difficult to retrofit and have low mileages. On the basis of their public services and low overall contribution to air pollution, it was argued, these vehicles should be exempted from the proposed LEZ. Specific vehicles mentioned included snowploughs, gritters and mobile libraries. TfL considers that suitable compliance options are available for these vehicles. Furthermore, local authorities have statutory responsibilities to improve air quality, and TfL believes that they should be taking a lead on this matter. Finally, TfL is aware that some London boroughs have already taken steps to make their fleets compliant with the proposed LEZ, and thus considers that providing special treatment for those that had not would not be fair on boroughs which have taken action to make their fleets cleaner.

#### *Showman's goods vehicles*

8.7.10 Following representations from stakeholders, TfL is persuaded that some goods vehicles used by travelling showmen are of specialist bespoke construction. Because of their construction, modification options such as retrofit of pollution abatement equipment are unlikely to be available for these vehicles. TfL therefore recommends a 100 per cent discount from the LEZ for the very small number of vehicles generally referred to as Showman's Goods Vehicles that are permanently fitted with a special type of body or superstructure forming part of the equipment of the show. The discount applies only to rigid vehicles which have been modified and does not apply to trailers or semi-trailers where the tractive unit can be decoupled from the trailer and where the tractive unit is a normal, unmodified unit. This discount would not apply to showman's vehicles that have not been modified in this manner, and which are the same as other vehicles included within the LEZ, and which are not operated by showmen.

### **8.8 Heavier diesel-engine motor caravans, ambulances and hearses**

8.8.1 TfL recommends an amendment to Annex 2 to the Scheme Order to make explicit that heavier diesel engine motorcaravans, ambulances and hearses which have similar emission characteristics to other HGVs and LGVs already included in the Scheme Order are included within the proposed LEZ. This amendment would ensure that all HGV and LGV derived vehicles that emit particulate matter above the prescribed levels in the Scheme Order would be subject to the proposed Scheme.

### **8.9 Foreign enforcement**

- 8.9.1 Concerns were raised during the consultation process about the problem of enforcing penalty charges against operators of non UK-registered vehicles. Some respondents felt that, as well as avoiding fines, such operators would gain a competitive advantage over UK-based operators by avoiding the need to comply with the LEZ. A few respondents also raised concerns about UK operators registering their vehicles abroad in order to avoid charges.
- 8.9.2 TfL has arrangements in place with an experienced Europe-wide debt recovery agency for the service of Penalty Charge Notices and to try to recover penalties incurred by non-UK registered vehicles, where access to the relevant vehicle keeper data is available. However, TfL currently has no legal powers available to it to enforce unpaid penalties incurred by operators based outside the UK if penalties remain unpaid.
- 8.9.3 TfL, together with London Councils, has been lobbying the Government and EU institutions to improve enforcement of non-criminal traffic offences by non-UK residents. TfL is encouraging cross-government action to create a plan to fill the apparent gap between the civil and criminal jurisdictions into which civil traffic enforcement falls. In the longer term, TfL would support action at EU level to develop law which would complement legislation already in place for criminal offences. Ideally, this would allow civil penalties issued in one Member State to be enforced in another.
- 8.9.4 In the shorter term, TfL and London Councils are willing to develop bilateral agreements on data sharing and enforcement with partners in other EU Member States. However, such bilateral agreements would require changes to domestic legislation to allow effective data exchange, and in this respect, TfL and London Councils also continue to lobby for appropriate legislative amendments.

## **8.10 Emissions Standards**

- 8.10.1 The use of specific PM standards in the Scheme Order was intended to provide a technology neutral approach which stated the same standard for both original equipment and retrofitted vehicles. However TfL acknowledges that this could be confusing for some operators, for whom the only information required to determine compliance is the overall vehicle Euro standard, and this is the only information readily available to them.
- 8.10.2 In the light of representations received, TfL recommends an amendment to the Scheme Order so that the base emission standards for the LEZ are the Euro standards for all four regulated pollutants, rather than for PM only. However, TfL recognises that PM is particularly harmful to human health. For this reason the LEZ standards would allow vehicles that were not originally constructed to the relevant full Euro standard (Euro III or Euro IV) but which have been adapted or

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retrofitted to that standard for PM, as proven by certification evidence (such as an RPC), to drive within the proposed LEZ without charge.

8.10.3 Further some original equipment Euro I and II vehicles have received RPCs from VOSA, since their manufacturers were able to present evidence that they met the required PM emission levels in force at the time for that certificate. These vehicles meet the Euro III for PM LEZ standard. Therefore, the LEZ standards would allow vehicles which have been originally manufactured to a lower Euro standard (i.e. Euro I or Euro II) but which meet the higher Euro III standard for PM from 2008, as proven by certification evidence such as an RPC, to drive within the proposed LEZ without charge. However such vehicles do not meet the required standard for 2012 which is Euro IV.

8.10.4 Information available from manufacturers and EC type approval authorities has indicated that there are no LGVs of Euro 2 standard which can meet the specified 2010 standard of Euro 3 for PM without modification, nor are there any Euro III vehicles that can meet the 2012 Euro IV for PM standard unmodified. Therefore TfL is recommending the inclusion of new clauses to the Scheme Order stating that such vehicles would not meet the required LEZ standards without approved modification. These clauses do not change the vehicles affected by the scheme and are intended to provide clarification for vehicle owners by aligning the scheme standards with the compliance options practically available to them.

8.10.5 Some new models of vehicles constructed to a higher Euro standard will have been sold before that standard became mandatory for vehicles off the production line. These are referred to as “early adopters”. A small number of new models of Euro IV vehicles, for example, were manufactured and registered before the October 2006 requirement. In order to be able to identify these vehicles TfL would develop a database of these early adopters. Early adopters of Euro IV and V vehicles may be identified as they are eligible for an RPC issued by VOSA, and additional information has been provided by the Society of Motor Manufacturers and Traders. Operators would also be able to provide evidence directly to TfL that the vehicle did meet the LEZ emissions standards, by providing vehicle type approval information.

## **8.11 Scheme Order amendments:**

8.11.1 In summary, following consultation, TfL recommends the following amendments to the Scheme Order:

- Minor drafting amendments to achieve consistency;
- The standards for the LEZ should be based on full Euro standards, rather than Euro standards for PM only, though the standards would still allow vehicles which have a Reduced Pollution Certificate (RPC) or other evidence that they meet the required standard for PM to drive within the proposed LEZ without charge;

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- A number of minor changes should be made to the boundary of the proposed LEZ, mostly as proposed by local authorities for practical local transport reasons;
- Subject to the successful conclusion of discussions with the Highways Agency and DfT, certain sections of motorways and trunk roads administered by the Highways Agency excluding the M25 should be included within the LEZ;
- All vehicles constructed before 1973 should receive an exemption from the LEZ, regardless of whether they are classified by the DVLA as being for 'hire and reward';
- An amendment be made to Annex 2 to the Scheme Order to make explicit that heavier diesel engine motor caravans, ambulances and hearses which have similar emission characteristics to other HGVs and heavier LGVs already included in the Scheme Order are included within the proposed LEZ; and
- Certain showman's goods vehicles for which replacement or retrofitting of pollution abatement equipment is impractical should receive a 100% discount from the LEZ.

#### **8.12 TfL recommends that the Mayor should:**

- consider the whole of this report and other relevant information available to him, including advice from GLA officers;
- consider the responses to the public and stakeholder consultation, together with the considerations of TfL, particularly with relation to Chapter 6 of this report;
- consider whether any modifications, including those recommended by TfL, would be appropriate to the Scheme Order if he were minded to confirm it. The text of the Scheme Order containing TfL's recommended modifications is at Annex G to this report. TfL does not consider that further consultation is needed in respect of the proposed modifications;
- consider whether further consultation, further information or the holding of some form of inquiry is necessary or appropriate prior to his decision whether or not to conform the Scheme Order; and

if the Mayor considers that no further consultation is necessary or appropriate and that the holding of a public inquiry is not necessary or appropriate, to confirm the Scheme Order subject to modifications recommended by TfL and any further modifications which he regards as appropriate.