

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2663

Title: Temporary Congestion Charge reimbursement arrangement for charities and local authorities

Executive Summary:

On 15 June 2020, the Mayor confirmed a package of temporary changes to the Congestion Charging Scheme to support London's safe and sustainable recovery from the Covid-19 pandemic (MD2648). As part of this decision, the Mayor directed Transport for London (TfL) to engage with local authorities and charities with a view to establishing rules for a new temporary Congestion Charge reimbursement (100 per cent) arrangement for workers and volunteers who are providing services on behalf of a local authority or charity in direct response to the Covid-19 pandemic. Claims under the reimbursement scheme will be able to be backdated to 22 June 2020.

Following engagement with local authorities and charities, TfL has developed the criteria for the new reimbursement arrangement to be implemented by an exceptional variation order and is now requesting the Mayor's confirmation of the order.

Decision:

The Mayor:

Confirms the Greater London (Central Zone) Congestion Charging (Exceptional Variation) (No. 2) Order 2020 (Appendix 1; "the Exceptional Variation Order No. 2") having considered:

- a) 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; and
- b) that the Exceptional Variation Order No. 2 introduces a temporary change to the Congestion Charging Scheme and that TfL is to keep the reimbursement arrangement under review.

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:

14/7/20

PART 1 – NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1. On 15 June 2020, the Mayor confirmed temporary changes to the Congestion Charge to support London's safe and sustainable recovery from the Covid-19 pandemic (MD2648). The temporary package of measures is designed to prevent streets in central London becoming unusably congested and to support the transformation of London's streets as part of the Streetspace for London plan.
- 1.2. At the same time as confirming the temporary changes, the Mayor directed TfL to exercise its functions in Schedule 23 of the Greater London Authority (GLA) Act 1999 for the purpose of further engaging with local authorities and charities with a view to establishing rules for a new temporary Congestion Charge reimbursement arrangement for workers, including volunteers, who are providing services on behalf of a local authority or charity in direct response to the pandemic.
- 1.3. TfL and the GLA have engaged with local authorities and charities to inform the development of rules for the proposed new arrangement. This Mayoral Decision relates to the details of the arrangement.

2. Objectives and expected outcomes

- 2.1. This section summarises the proposals and their implications.

New reimbursement arrangement for specific local authority and charity workers

- 2.2. It is proposed that workers including volunteers of charities and local authorities whose journeys are made for a purpose which is directly related to the Covid-19 pandemic or which is in support of vulnerable people will be refunded 100 per cent of the Congestion Charge in accordance with the criteria set out in the Exceptional Variation Order No. 2 ("the Exceptional Variation Order No. 2" at Appendix 1). This is in recognition of the impact the temporary changes to the Congestion Charge are having on specific activities that local authorities, charities and the voluntary sector are undertaking in responding to the impacts of the pandemic and supporting those who are most vulnerable.
- 2.3. The arrangement is proposed to be temporary and to be in place for the same duration as the temporary changes to the Congestion Charge, as made by the Greater London (Central Zone) Congestion Charging (Exceptional Variation) Order 2020 ("the No. 1 Order") and confirmed by the Mayor on 15 June 2020 in MD2648. Due to the uncertainty about the future course of the pandemic, it is not yet possible to establish an end date for the arrangement but it will be kept under review in line with the other temporary changes.
- 2.4. The temporary Congestion Charge reimbursement is proposed to be for local authority employees, domiciliary care workers contracted or funded¹ by a local authority, charity staff and charity volunteers who are undertaking journeys to directly support vital Covid-19 response work within the Congestion Charging Zone. This includes delivering food, medicine, cleaning or hygiene supplies (including personal protective equipment) to vulnerable individuals.
- 2.5. The proposed reimbursement arrangement would also cover journeys to support the provision of nursing or care services for people who are vulnerable in general or at particular risk of Covid-19. This could include domiciliary care workers, supported living workers, volunteers/ workers at rough sleeping accommodation or those supporting the transportation of domestic abuse victims to a place of safety.

¹ either in whole or in part

- 2.6. The proposed eligibility requirements make clear that, by submitting a claim, charities, volunteers and local authorities confirm that they have made every effort to find alternative means of delivering these goods or services, for example by walking or cargo bike, in order to avoid adding to congestion and air pollution in the Congestion Charge Zone (CCZ). This is consistent with the Mayor's approach to encouraging local volunteering in response to the significant challenges posed by the pandemic. It is proposed that as far as practicable claims under the re-imbursement scheme will be able to be backdated to 22 June 2020 which is when the other changes mentioned at paragraph 2.3 above came into force.

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. 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.
- 3.2. The Public Sector Equality Duty applies to the Mayor's decision to confirm the Exceptional Variation Order No. 2.
- 3.3. An equality impact assessment has been undertaken; this is provided at Appendix 2. A summary of the impacts identified on those with protected characteristics and those on low incomes and from deprived communities is set out below:
- As with the general population, those people with protected characteristics who need to drive in the CCZ as part of their work or volunteering commitments in response to the Covid-19 pandemic, will benefit from the proposed reimbursement arrangement. Vulnerable people with protected characteristics, who rely on pandemic response services provided by workers or volunteers, whose ability to continue to carry out those activities may have been impaired due to the temporary changes to the Congestion Charge, will benefit from the proposed reimbursement arrangement. The overall impact on those with protected characteristics is positive.
 - As with the general population, those people on low incomes and from deprived communities who need to drive in the CCZ as part of their work or as a volunteer responding to the Covid-19 pandemic, will benefit from the proposed reimbursement arrangement. Vulnerable people on low incomes and from deprived areas, who rely on pandemic response services provided by workers or volunteers, whose ability to continue to carry out those activities may have been impaired due to the temporary changes to the Congestion Charge, will benefit from the proposed reimbursement arrangement. The overall impact on those on low incomes and from deprived communities is positive.

4. Other considerations

Key risks and issues

- 4.1. The proposal contained within this Mayoral Decision was put forward as a measure to mitigate the introduction of the temporary changes to the Congestion Charge, having considered the issues raised by stakeholders and the public as well as the impacts identified in an integrated impact assessment (IIA) which was appended to MD2648. The complexities of the scheme have been considered and TfL and partners have worked together to develop a feasible, workable scheme.

- 4.2. The likelihood that this decision by the Mayor to confirm the Exceptional Variation Order No. 2 and its provisions for a temporary charity and local authority reimbursement scheme will be challenged in court by way of judicial review is considered to be low. However as it forms part of a wider package of temporary changes to the Congestion Charge made by the No. 1 Order. The prospect of the Mayor's decision in respect of the Number 1 Order and the changes it makes being challenged is considered to remain high. A successful challenge to the introduction of the other temporary changes would impact on this decision to the extent that the temporary reimbursement arrangement considered by this Form would no longer be required.

Links to Mayoral Strategies and priorities

Mayor's transport duty and Transport Strategy

- 4.3. The Mayor has a "[g]eneral 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 GLA Act). 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.
- 4.4. The proposals are 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 (set out below) in the current unusual circumstances of the Covid-19 pandemic. The MTS was published in March 2018 and contains the following proposal in relation to the Congestion Charge:

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.

- 4.5. The proposal derives from policy 5:

The Mayor, through TfL and the boroughs, and working with stakeholders, will prioritise space-efficient modes of transport to tackle congestion and improve the efficiency of streets for the movement of people and goods, with the aim of reducing overall traffic levels by 10-15 per cent by 2041.

Covid-19 Transition and Recovery Boards

- 4.6. The temporary changes to the Congestion Charging Scheme to support London's safe and sustainable recovery from the Covid-19 pandemic align with a key aim of the London's Covid-19 Transition and Recovery Boards, both co-chaired by the Mayor. This key aim is to support a resilient civil society which can continue to support Londoners and help mitigate the disproportionate impacts of the pandemic.

Consultations and impact assessment

- 4.7. As detailed in the Legal section below, given the exceptional circumstances created by the Covid-19 pandemic and the urgency and temporary nature of the Congestion Charge changes, which these proposals are intended to mitigate, it was considered not appropriate nor practicable to undertake a full and formal consultation. However, in accordance with the direction issued to TfL by the Mayor pursuant to MD2648, TfL has engaged with the charities sector and those local authorities who will benefit from the reimbursement arrangement and their views have influenced the criteria for reimbursement.

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 risks:

- the Exceptional Variation Order No 2 was made in accordance with the guidance issued by the Mayor;
- TfL undertook an equality impact assessment which considered the impacts of the proposals and in particular their impact on certain groups;
- legal advice has been provided throughout the process; and
- TfL and the GLA have engaged with the local authorities in the CCZ and the charities sector to develop the reimbursement scheme and rules.

Conflicts of interest

4.9. No one involved in the drafting or clearance of this decision has any conflicts of interest to declare.

5. Financial comments

5.1. There are no direct financial consequences for the GLA arising from this decision. However, the GLA's Team London is providing administrative assistance with the reimbursement arrangements for charities given their expert knowledge of and established relationships with the charities and volunteering sector.

5.2. TfL is foregoing revenue from the Congestion Charging Scheme, in order to reimburse those who meet the criteria. To date, it has not been possible to estimate the number of claims expected to be processed due to the lack of data on eligible journeys not being available. However, as with all the other temporary changes, the reimbursement arrangement will be kept under review. There will also be some operational costs associated with the processing of the reimbursement.

6. Legal comments

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

The Exceptional Variation Order No. 2

6.2. 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.

6.3. 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. On 8 July 2020 TfL made the Central London Congestion Charging Scheme (Exceptional Variation) (No. 2) Order 2020 to the Central London Congestion Charging Scheme Order 2004 ("the Scheme Order") which, if confirmed, will establish a new temporary charities and local authority reimbursement arrangement.

Consultation

- 6.4. TfL usually consults on changes to the Congestion Charge Scheme, however, paragraph 4(3) of Schedule 23 to the GLA Act does not create a duty on either the Mayor or TfL to do so.² 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. These include when the changes 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. TfL has relied on this Guidance to proceed with the proposed new reimbursement arrangement in the absence of a full, formal and lengthy consultation. However, TfL has closely engaged with a range of charities who may be eligible for reimbursement for certain journey purposes if the journey starts or ends in the zone, and those local authorities most likely to benefit from the proposed temporary reimbursement arrangement because they are within the Congestion Charging Zone. Their views have influenced the criteria for reimbursement set out in the variation order.
- 6.5. Part 6 of the Guidance requires that certain publicity requirements must be met, and these will be complied with should the Mayor decide to confirm the Exceptional Variation Order No. 2.
- 6.6. The terms on which the Mayor is being asked to confirm the Exceptional Variation Order No. 2 provide that the reimbursement arrangement will be introduced on a temporary basis only and will be subject to review. Should TfL consider at a future date that the reimbursement arrangement should be made permanent, a public and stakeholder consultation will be undertaken, and a separate decision will be required. TfL must keep the reimbursement arrangement under review having regard to the transport challenges created by the pandemic. As a matter of good administrative practice and bearing in mind the circumstances which have created the need for the reimbursement arrangement, it is expected that TfL's review will take account of important milestones in the response to the pandemic or significant changes in circumstances.

Power to hold a public inquiry

- 6.7. 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 is a matter for the Mayor to decide. It is not recommended that a public inquiry should be held as it is only likely to delay the introduction of the reimbursement arrangement and it is not likely to reveal any new information which could inform the development of the reimbursement criteria.

² This can be contrasted with s 170 Transport Act 2000 for charging schemes outside of London.

7. Planned delivery approach and next steps

- 7.1. The proposed reimbursement scheme will be administered with support from the GLA (Team London) for claims from charities.

Activity	Timeline
Delivery start date (to be confirmed by announcement)	22 June 2020
Announcement	14 July 2020
Delivery end date	TBC / under review

Appendices and supporting papers:

Appendix 1: Greater London (Central Zone) Congestion Charging (Exceptional Variation) (No. 2) Order 2020

Appendix 2: Equalities impact assessment

Appendix 3: Instrument of confirmation

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? NO

Until what date: (a date is required if deferring)

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:

Catherine Seaborn 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:

Heidi Alexander has 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 13 July 2020.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

D. Gove

Date

14 July 2020

CHIEF OF STAFF:

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

Signature

D. Bellamy

Date

13 July 2020