

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2202

Title: Penalty charges issued by Transport for London for the Congestion Charge scheme and for contraventions committed on the Transport for London Road Network

Executive Summary:

The Mayor is asked to confirm, with modifications, the Greater London (Central Zone) Congestion Charging (Variation) Order 2017 '(the Variation Order)'. The Mayor is also asked to approve an increase to the level of penalty charge which applies for contraventions of the rules which apply on the Transport for London Road Network ('TLRN'). The proposed new penalty charge level is £160 with a 50% discount if the penalty charge is paid within 14 days and a 50% increase if the penalty charge is not paid after 28 days. The proposals were the subject of a public consultation which ran for 10 weeks from 4 September 2017 to 10 November 2017.

The Mayor is required to notify the Secretary of State pursuant to paragraph 4 of Schedule 9 of the Traffic Management Act 2004 of any new penalty charge levels which will apply on the TLRN.

Decision:

Having considered this decision form and the documents attached in the appendices 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;

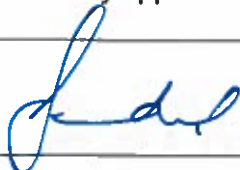
the Mayor:

- confirms the Variation Order as made by Transport for London ('TfL') (with modifications to facilitate an implementation date of 2 January 2018) by signing and dating this Decision Form and the Instrument of Confirmation (attached at Appendix A);
- approves TfL increasing the penalty charge level which applies to parking regulation contraventions, bus lane contraventions and moving traffic contraventions on the TLRN from £130 to £160; with a 50% discount if the penalty charge is paid within 14 days and a 50% increase if the penalty charge is not paid after 28 days; and
- determines that if the Secretary of State does not object to the level of penalty charge applicable to contraventions committed on the TLRN, TfL shall publish the new level by a notice appearing in the London Gazette and The Evening Standard newspaper and providing information on TfL's website.

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

12/12/12

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

Decision required – supporting report

1. Introduction and background

Congestion Charge scheme

- 1.1. The Congestion Charge Zone ('CCZ') is an area of central London where it is necessary to pay the daily Congestion Charge of £11.50 in order to drive a vehicle from 07:00 – 18:00, Monday to Friday.
- 1.2. When TfL detects that a congestion charge has not been purchased by midnight the following charging day in respect of a vehicle within the zone which is not exempt nor has the benefit of a valid 100% discount, a penalty charge notice ('PCN') will be issued to the registered keeper of that vehicle. The current level noted on a PCN is £130. A 50% discount applies if the PCN is paid within 14 days reducing the cost to £65. If the PCN is not paid or challenged within 28 days, the cost increases to £195.
- 1.3. The Congestion Charge scheme has had a number of modifications since it was introduced in February 2003. These include changes to its area, discounts and exemptions, charge and penalty charge level, payment methods and operations. Since the introduction of the Congestion Charge scheme, TfL has varied the PCN value on three occasions. In 2004 the full level of the PCN was increased to £100 from £80. In 2007 it was increased to £120, and in 2013 it was increased to £130.

Transport for London Road Network

- 1.4. The TLRN is a network of strategic roads in London which carry 30% of London's traffic, but which make up only five per cent of the city's roads. On average, each of the TLRN routes carries 50,000 vehicles per day. This is two and a half times the volume of traffic carried on key A roads managed by London's Local Authorities.
- 1.5. TfL's priority in managing the TLRN is to keep traffic moving and to fulfil the network management duty in the Traffic Management Act 2004. To this end, restrictions on the TLRN are designed to discourage stopping, parking or driving in a manner which is dangerous or disruptive to other road users.
- 1.6. If TfL detects a vehicle committing a contravention on the TLRN, then a PCN will be issued to the registered keeper of the vehicle. PCNs are issued in respect of parking offences, driving in a bus lane and failing to comply with traffic signs.
- 1.7. Under the provisions of Schedule 9 to the Traffic Management Act 2004, Transport for London (TfL) is responsible, subject to the approval of the Mayor, for setting the level of penalty charges on the Transport for London Road Network (TLRN), following consultation with the London local authorities.
- 1.8. The Mayor is required to notify the Secretary of State when he has agreed to the level of penalty charge set by TfL and the Secretary of State may object to the level within 28 days of being notified on the grounds that the level is excessive. The level cannot be introduced until the objections are withdrawn or regulations are made by the Secretary of State setting the level at a lower rate than the proposed level.
- 1.9. The current level for a PCN issued for a contravention on the TLRN is the same as for failing to pay the Congestion Charge (see 1.2). The last time that the TLRN PCN level was increased was in April 2013. At this time the PCN was increased from £120 to £130.

Procedure for increasing the penalty charge levels

- 1.10. Paragraph 38 of Schedule 23 to the Greater London Authority Act 1999 provides the Mayor with the power to make a charging scheme and includes the power to vary it. A variation to the Congestion

Charge Scheme Order, in this case to increase the PCN level for non payment of the charge, is made through an order varying the Scheme Order known as a variation order.

- 1.11. A variation order was made by TfL on 16 August 2017 (the Variation Order; see Appendix D) with one proposed change to the Congestion Charging Scheme:
 - the level of penalty charge for non-payment of the congestion charge is increased from £130 to £160 with a 50% discount payable if payment is received within 14 days and a 50% increase if the penalty charge is not paid within 28 days.
- 1.12. The Variation Order was subject to public and stakeholder consultation between 4 September 2017 and 10 November 2017.
- 1.13. If the Mayor decides to confirm the Variation Order (with modifications), the changes would come into effect on 2 January 2018.
- 1.14. The consultation also encompassed the proposal to increase the penalty charge level which applies to parking, bus lane and moving traffic contraventions committed on the TLRN. In accordance with the duty in paragraph 2 of Schedule 9 to the Traffic Management Act 2004 and after having considered the consultation responses, impact assessment and all material considerations, TfL has set the level of penalty charge which applies to TLRN contraventions. The level is the same as is set out in the Variation Order (£160 with a 50% discount payable if payment is received within 14 days and a 50% increase if the penalty charge is not paid within 28 days).
- 1.15. The change in respect of the TLRN penalty charge level cannot come into force until the Mayor approves it, notifies the Secretary of State of the new level and the one month period in which the Secretary of State may object to the level on the ground of excessiveness has expired. If the Secretary of State does not object to the new level, the earliest it could apply is from late January 2018. TfL will be required to publish the new level in such manner as the Mayor determines.

2. Objectives and expected outcomes

- 2.1. Proposal 18 of the draft revised Mayor's Transport Strategy (MTS) sets out that the Mayor, through TfL, will keep existing and planned road user charging schemes, including the Congestion Charge scheme, under review to ensure they prove effective in furthering or delivering the policies and proposals of the MTS

Contravention volumes

- 2.2. Over the last six years there have been an increasing number of roads users contravening the rules of the TLRN and not paying the Congestion Charge. It has, therefore, been necessary for TfL to issue an increasing number of PCNs.
- 2.3. TfL is concerned that the existing level of penalty charge (£130) has become an ineffective deterrent to poor or inconsiderate driving as the number of motorists who have been issued with more than one PCN is also rising. In 2011 almost 60% of Congestion Charge PCNs and 34% of TLRN PCNs were issued to repeat offenders. By 2016 this number increased to 64% for the Congestion Charge and 38% for TLRN PCNs.
- 2.4. Contraventions on the TLRN have a negative impact on traffic congestion and traffic flow. This is because vehicles parked on the TLRN, driving in bus lanes or entering yellow box junctions disrupt the flow of traffic, slow down other road users and lead to congested roads. It has been estimated that the cost of congestion on the TLRN alone is annually worth almost £2.2 billion¹. Vehicles entering the CCZ during controlled hours without paying the congestion charge also add to the volume of traffic on the roads, causing more congestion and slower journey times. If action is not taken to address this issue then the impact on London's roads and the local economy will continue to grow.

¹ Total vehicle delay for London 2014-15 <http://content.tfl.gov.uk/total-vehicle-delay-for-london-2014-15.pdf>

Suggested modifications to the Variation Order

- 2.5. It is proposed that the increased penalty charge level which applies to non-payment of the congestion charge is implemented on 2 January 2018. This is the first charging day of the year and is usually the day on which any increases to the congestion charge itself are implemented. It is considered to be a straight forward administrative solution and simple message to communicate to the public if the change to the penalty charge level is introduced on this date.
- 2.6. If a precise implementation date is considered desirable, it is necessary to specify it in the Variation Order. The modifications to the Variation Order which are required to give effect to an implementation date of 2 January 2018 are detailed in the Instrument of Confirmation (Appendix A). The modification is minor in nature and does not impact on the substance of the proposal that was the subject of consultation. It is a matter for the Mayor to decide if a further consultation is warranted, however, it is unlikely to raise any new issues and is not considered necessary.
- 2.7. The implementation date for the increase to the TLRN penalty charge level will invariably be later than 2 January 2018 because the procedure for giving effect to the decision is governed by different legislation (the Traffic Management Act 2004 rather than the Greater London Authority Act 1999). Assuming the Mayor approves the increased level of charge set by TfL, the Secretary of State will be notified and the earliest the new levels could be introduced is one month following the day on which notice is given to the Secretary of State. If the Secretary of State objects to the new levels, the implementation date will be delayed until such time as the objections are withdrawn.

3. Equality comments

- 3.1. Under section 149 of the Equality Act 2010, as public authorities, the Mayor and TfL are subject to a public sector equality duty and must have 'due regard' to the need to (i) eliminate unlawful discrimination, harassment and victimisation; (ii) advance equality of opportunity between persons who share a relevant protected characteristic and those who do not; and (iii) foster good relations between people who share a relevant protected characteristic and those who do not. Protected characteristics under section 149 are age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation and marriage or civil partnership status. In line with best practice, TfL also considers the needs of groups who also have the potential to be socially excluded, namely, people on low incomes, refugees and asylum seekers, the homeless and jobseekers.
- 3.2. The duty applies to the Mayor's decisions to confirm the Variation Order and to approve the level of penalty charge pursuant to Schedule 9 of the Traffic Management Act 2004.
- 3.3. An equalities impact assessment was undertaken and found that there is no evidence that an increase in the PCN level for non-payment of the Congestion Charge and TLRN contraventions would disproportionately affect any of the equality target groups. The full Integrated Impact Assessment is attached at Appendix D.

4. Other considerations

Key issues and risks

- 4.1. TfL adopted sound project management techniques in developing the proposals and planning for their implementation and is content that any risks have been appropriately mitigated.
- 4.2. Should the penalty charge levels remain unchanged, the risk is that the deterrent effect will be further undermined and there will be a consequential detrimental impact on the flow of traffic and congestion on the TLRN and in the congestion charge zone.

Links to strategies

- 4.3. A charging scheme (or a variation to a charging scheme) can only be made if it directly or indirectly facilitates policies or proposals in the MTS and is in conformity with the MTS (under paragraphs 3 and 5 of Schedule 23).

- 4.4. The Mayor's Transport Strategy (MTS) provides that the Mayor will keep the Congestion Charging scheme under review and make variations to ensure the scheme remains effective in reducing traffic and congestion in central London and reflects best practice and other developments in relation to its operation and discounts and exemptions. A draft revision of the MTS has been prepared and has been subject to public consultation. Proposal 18 of the draft revised MTS sets out that 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 objectives of improving traffic flow and reducing congestion in London are key themes that underpin the current MTS and also the draft MTS that was consulted on in 2017.

Impact assessment and consultations

- 4.6. TfL's impact assessment has identified, where possible, quantifiable data and the analysis of impacts is based on current available information. The identification of the impacts has, however, more broadly relied on qualitative data and the exercise of professional judgement to determine the relative significance and severity or scale of the impacts.
- 4.7. TfL's Impact Assessment is attached as Appendix D. The key findings were:
- Economic - If no changes were made it is expected that Congestion Charge and TLRN contraventions will continue to increase, along with further increases to the repeat offender rates. Such an increase would subsequently have a detrimental impact on traffic volumes, traffic speed and congestion.
- 4.8. An increased PCN value would deter road users from committing traffic contraventions on the TLRN and encourage those entering the CCZ to pay the charge or to not drive into the zone. As such this is anticipated to have a positive impact on some of the causes of congestion and will be a factor in TfL's overall strategy to reduce congestion on London's roads. This change is not considered to have an impact on the economy or businesses that comply with the rules of the TLRN or those that already comply with the Congestion Charge scheme.
- Public sector equality duty - An equalities impact assessment was undertaken and found that there is no evidence that an increase in the PCN value for the Congestion Charge or TLRN contraventions would disproportionately affect any of the equality target groups.
 - Health - In assessing the health impact of the proposed changes, it was concluded that they were unlikely to have a significant effect on health (neither positive nor negative). For this reason it was determined that there was no need to carry out a full Health Impact Assessment upon them.
 - Climate change - In assessing the climate change impact of the proposed changes, it was concluded that they were unlikely to have a significant effect on climate change (neither positive nor negative).

Consultation

- 4.9. On 4 September 2017 TfL launched a consultation on the proposal to increase the PCN value. This consultation ended on 10 November 2017.
- 4.10. As part of the consultation process TfL delivered a marketing campaign to raise awareness and encourage customers to have their say. A press release was issued and adverts were featured in a variety of London media and trade press titles.
- 4.11. TfL emailed over 517,000 customers and 1,419 stakeholders or stakeholder organisations to advise them of the consultation. Stakeholder groups included the London boroughs, transport and environment representative groups, motoring organisations and organisations representing the voluntary and community sectors.

- 4.12. TfL also met with London Councils and the Department for Transport to brief them on the consultation.
- 4.13. TfL received 7,411² responses to the consultation in total.
- 4.14. Respondents who visited our online consultation 'portal' were asked to complete a questionnaire which sought views on:
- Alternative options that might be available and which could address the increase in the number of contraventions of the TLRN or CCZ;
 - Any hardships that our proposals might cause to any particular road user or group of users; and
 - Any other comments about our proposals
- 4.15. Respondents were also asked for their postcode and additionally how they had heard about TfL's proposals and what they thought about the quality of the consultation.
- 4.16. In analysing the responses TfL identified 150 separate issues which respondents had raised in their written comments. These issues were grouped by common themes into the following categories:
- 'In-principle views' – comments opposing or supporting the proposed increase in principle, or providing some additional context for these views
 - 'Alternative suggestions to increase compliance' – suggestions for alternative methods which respondents felt TfL should consider instead of increasing the cost of PCNs
 - 'Hardships caused by the proposals' – Comments relating to the potential hardships that might be caused to road users should the cost of TLRN and CCZ PCNs be increased
 - 'General comments' – A range of comments which did not relate specifically to the proposals, for example about the use made of the road network by various users, or about road infrastructure projects or policies
- 4.17. Respondents to the consultation raised over 150 separate issues, many of which were repeated from question to question. In many cases, respondents raised identical issues in each of the three open questions in the questionnaire.
- 4.18. The following is a summary of the key issues raised under each theme along with an indication of how frequently this point was raised. Responses have not been sifted to remove issues that were repeated from one question to another, so the counts below should be treated with caution and may not necessarily represent individual respondents.
- Theme A: In principle views – Public and stakeholder respondents made:
 - 657 comments of support;
 - 620 comments supporting the proposal if it was only applied to certain groups / vehicles;
 - 7,847 comments of opposition; and
 - 989 comments opposing applying the proposed increase to certain groups / vehicles.
 - Theme B: Alternative suggestions to increase compliance – Public and stakeholder respondents made:
 - 2,478 comments that TfL should operate a scaled system of penalty charges based on various criteria;
 - 1,452 comments that TfL should improve the existing enforcement approach to tackling contraventions on the TLRN and in the CCZ; and

² This excludes four duplicate responses we received.

- 1,998 comments that TfL should either increase enforcement, implement more severe penalties or decrease the amount of enforcement it carries out.
- Theme C: Hardships caused by the proposals – Public and stakeholder respondents made:
 - 4,432 comments that an increased PCN would cause hardship to specific driver types; and
 - 1,819 comments that an increased PCN could have effects on wider economy / society.
- Theme D: General comments – Public and stakeholder respondents made:
 - 3,087 comments not relating to the consultation; and
 - 386 comments relating to the consultation process.

4.19. A full report of the consultation is included at Appendix B.

5. Publicity

- 5.1. Schedule 9 of the Traffic Management Act 2004 requires the Mayor to determine how TfL is to publish the level of penalty charge that it sets. In 2011 when the penalty charge level for TLRN contraventions was last increased, TfL was required to advertise a notice of the increase three weeks prior to the new level being introduced.
- 5.2. TfL's publicity obligations in respect of changes to the Congestion Charging Scheme are set out in the Mayor's Guidance issued pursuant to Schedule 23 of the Greater London Authority Act 1999. The Guidance requires TfL to publish notice of confirmation of a variation order on TfL's website and in the London Gazette and newspaper(s) circulating in Greater London.
- 5.3. Assuming the Mayor approves TfL's setting of an increased penalty charge and the Secretary of State does not object to the increased level, it is proposed that the Mayor should require TfL to publish the new level of charge by way of a notice in the London Gazette and Evening Standard and by including information on the TfL website. The publicity requirements will, therefore, be the equivalent of those which apply when there is a change to the congestion charging scheme and which will be followed to give effect to the increase to the Congestion Charge penalty charge level.

Inquiry

- 5.4. Schedule 23 to the Greater London Authority Act 1999 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 measures contained in this Variation Order is a matter for the Mayor to decide.
- 5.5. No specific request for a public inquiry to be held was received during the consultation.
- 5.6. It is unlikely that much further evidence beyond that already supplied by TfL would emerge in an inquiry that would assist the Mayor's decision. There are no other issues which suggest that an inquiry should be held and it is not recommended that an inquiry be held.

6. Financial Comments

- 6.1. There are no direct financial consequences for the Greater London Authority arising from this report.
- 6.2. The cost of implementing the PCN increase is around £40,000, which has been budgeted for by TfL. The increase in both the TLRN and Congestion Charge penalty charge would result in c. £80m extra net income over the TfL Business Plan period 2016/17 to 2021/22. Net income may only be used for relevant transport purposes as per current PCN income.

7. Legal Comments

- 7.1. The legal procedure for setting the penalty charge level which applies to non-payment of the congestion charge and contraventions of the rules of the TLRN differ although share similar requirements including that a consultation is undertaken in advance of a decision to increase the

level being made. In addition to statutory procedural requirements, the Mayor's decision must comply with administrative law principles and be one that is rational and only takes into account relevant considerations. This section covers legal issues not addressed elsewhere in this form.

Congestion charging

- 7.2. The Road User Charging (Charges and Penalty Charges) (London) Regulations 2001/2285 provide that penalty charges which are imposed by a charging scheme shall be specified in the scheme. The current penalty charge level is set out in paragraph 12 of the Central London Congestion Charging Scheme Order.
- 7.3. Paragraph 38 of Schedule 23 to the Greater London Authority Act 1999 provides that a power to make a charging scheme includes the power to vary it. The power to vary is exercisable subject to the same limitations and conditions as apply to the making of the original scheme order. As such, the making, confirmation and modification of the Variation Order that will give effect to the proposed increase in the penalty charge level which applies to non-payment of the congestion charge is subject to paragraph 4 of Schedule 23 which contains the key requirements for making a scheme order. Those requirements are that the Mayor may:
- consult, or require an authority making a charging scheme to consult, other persons;
 - require such an authority 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 the authority by whom any such order is made to publish notice of the order and of its effect;
 - require the authority by whom any such order is made to place and maintain, or cause to be placed and maintained, such traffic signs in connection with that order as the Mayor may require.
- 7.4. Mayoral Guidance has been issued under paragraph 34 of Schedule 23 to TfL and London borough councils in relation to the discharge of their functions under Schedule 23. Paragraph 34(2) requires TfL to have regard to the guidance when exercising any functions under Schedule 23. Setting the penalty charge level is considered to be a major variation to the Scheme Order for the purposes of the Mayoral Guidance.
- 7.5. In compliance with paragraph 4 of Schedule 23 and the Mayoral Guidance, TfL undertook the consultation exercise detailed in this form including the publicity obligations which apply when TfL makes a Variation Order. TfL has exercised the required functions under Schedule 23 having had regard to the Mayoral Guidance.

Transport for London Road Network

- 7.6. TfL's powers to levy penalty charges for contraventions of the rules which apply on the TLRN are set out in the London Local Authorities Act 1996, London Local Authorities and Transport for London Act 2003 and the Traffic Management Act 2004. The procedure for the setting of the penalty charges in respect of the separate offences is governed by Schedule 9 of the Traffic Management. It provides that before setting a penalty charge level, TfL must consult the London local authorities. Having done so, TfL may then set the penalty charge level and must submit it for approval to the Mayor. The Mayor is required to notify the Secretary of State of the level that has been set and the

new level comes into force one month later unless the Secretary of State objects to the level on the grounds that it is excessive. TfL must then publish the levels of charge as the Mayor determines.

- 7.7. TfL has complied with the procedural requirements of the Traffic Management Act 2004 so far. They have been advised that the increased penalty charge level cannot be introduced until after expiry of the period in which the Secretary of State may object to the increase or if the Secretary of State objects.

8. Planned delivery approach and next steps

Activity	Timeline
Announcement	15 December 2017
Delivery Start Date	2 January 2018 (congestion charge penalty increase) and a date to be determined but likely to be late January 2018/early February 2018 (TLRN penalty charge increase)

Appendices and supporting papers:

Appendix A - The Greater London (Central Zone) Congestion Charging (Variation) Order 2017 Instrument of Confirmation 2017

Appendix B - Report to the Mayor – PCN Consultation 2017

Appendix C - Greater London (Central Zone) Congestion Charging (Variation) Order 2017

Appendix D – PCN Consultation 2017 (Impact Assessment)

Appendix E – PCN consultation report 2017

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) 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 approval or on the defer date.

Part 1 Deferral:**Is the publication of Part 1 of this approval to be deferred? YES**

If YES, for what reason: Publicity regarding change planned for 15 December – should not be published in advance.

Until what date: (a date is required if deferring) 15 December 2017

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be 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:

Claire Hamilton has drafted this report in accordance with GLA procedures and confirms the following:

✓

Sponsoring Director:

Fiona Fletcher Smith has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser:

Valerie Shawcross 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 4 December 2017.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. D. Allge

Date

4.12.17

CHIEF OF STAFF:

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

Signature

D. Bellamy

Date

4/12/2017.