

GM Clean Air Quality Administration Committee

Date: 13th October 2021

Subject: GM Clean Air Plan – Operational Agreement for the Central Clean Air Service

Report of: Simon Warburton, Transport Strategy Director, TfGM

PURPOSE OF REPORT:

To outline the detail of the Operational Agreement for the Government's Clean Air Service Central Service, which in order to access, the ten Greater Manchester local authorities are required to enter into a legal agreement with the Secretary of State.

RECOMMENDATIONS:

The Air Quality Administration Committee is requested to:

1. Agree the final form of the Operational Agreement for the CAZ Central Services.
2. Authorise the making of the Operational Agreement for the CAZ Central Services on behalf of the ten GM local authorities.

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BOLTON

BURY

MANCHESTER

OLDHAM

ROCHDALE

SALFORD

STOCKPORT

TAMESIDE

TRAFFORD

WIGAN

Equalities Impact, Carbon and Sustainability Assessment:

The GM CAP is a place-based solution to tackle roadside NO₂ which will have a positive impact on carbon.

Risk Management:

Initial risk register set out in Clean Air Plan OBC (March 2019).

Legal Considerations:

The legal consideration has been set out in the GMCA report of the GM Clean Air Plan, published on 21 June 2021¹

Financial Consequences – Revenue:

Initial Financial Case set out in Clean Air Plan OBC (March 2019), with all development and delivery costs to be covered by central Government.

Financial Consequences – Capital:

Initial Financial Case set out in Clean Air Plan OBC (March 2019), with all development and delivery costs to be covered by central Government.

Number of attachments to the report: 1 (one) confidential appendix.

Comments/recommendations from Overview & Scrutiny Committee:

Not applicable

BACKGROUND PAPERS:

- 21 September, report to AQAC: GM Clean Air Plan – Clean Air Zone: Camera and Sign Installation
- 21 September, report to AQAC: GM Clean Air Plan – Bus Replacement Funds
- 25 June 2021, report to GMCA: GM Clean Air Final Plan
- 31 January 2021, report to GMCA: GM Clean Air Plan: Consultation
- 31 July 2020, report to GMCA: Clean Air Plan Update
- 29 May 2020, report to GMCA: Clean Air Plan Update

¹ <https://democracy.greatermanchester-ca.gov.uk/documents/s15281/GMCA%20210621%20Report%20Clean%20Air%20Plan%20-%20FINAL%20FINAL.pdf>

- 31 January 2020, report to GMCA: Clean Air Plan Update
- 26 Jul 2019, report to GMCA: Clean Air Plan Update
- 1 March 2019, report to GMCA: Greater Manchester's Clean Air Plan – Tackling Nitrogen Dioxide Exceedances at the Roadside - Outline Business Case
- 11 January 2019, report to GMCA/AGMA: Clean Air Update
- 14 December 2018, report to GMCA: Clean Air Update
- 30 November 2018, report to GMCA: Clean Air Plan Update
- 15 November 2018, report to HPEOS Committee: Clean Air Update
- 26 October 2018, report to GMCA: GM Clean Air Plan Update on Local Air Quality Monitoring
- 16 August 2018, report to HPEOS Committee: GM Clean Air Plan Update
- UK plan for tackling roadside nitrogen dioxide concentrations, Defra and DfT, July 2017

TRACKING/PROCESS
Does this report relate to a major strategic decision, as set out in the GMCA Constitution? No
EXEMPTION FROM CALL IN
Are there any aspects in this report which means it should be considered to be exempt from call in by the relevant Scrutiny Committee on the grounds of urgency? N/A
GM Transport Committee N/A
Overview & Scrutiny Committee N/A

1. BACKGROUND

- 1.1 The Government has instructed many local authorities across the UK to take quick action to reduce harmful Nitrogen Dioxide (NO₂) levels following the Secretary of State issuing a direction under the Environment Act 1995. In Greater Manchester, the 10 local authorities, the Greater Manchester Combined Authority (GMCA) and Transport for Greater Manchester (TfGM) are working together to develop a Clean Air Plan to tackle NO₂ Exceedances at the Roadside, herein known as Greater Manchester Clean Air Plan (GM CAP).

- 1.2 The GMCA – Clean Air Final Plan report on 25 June 2021² set out the Final Clean Air Plan and policy following a review of all of the information gathered through the GM CAP consultation and wider data, evidence and modelling work has been agreed by the ten GM Local Authorities. This includes the GM Clean Air Plan Policy, that outlines the boundary, discounts, exemptions, daily charges of the Clean Air Zone (CAZ) as well as the financial support packages offered towards upgrading to a compliant vehicle, including the eligibility criteria to be applied.
- 1.3 The report set out that in order to access central government services such as the national payment portal, the ten Greater Manchester local authorities will be required to enter into a legal agreement with the Secretary of State for Transport to provide the CAZ Central Services. The services will consist of a vehicle compliance checker, a customer payment portal, and a centralised vehicle database (which are being made available by the government’s Joint Air Quality Unit (JAQU) to enable the operation of all UK Clean Air Zones).
- 1.4 In providing the CAZ central service customer payment portal JAQU charge a £2 fee per transaction³. This transaction charge is payable by all Authorities operating UK Clean Air Zones. For example, in respect of a taxi driver paying a £7.50 daily charge, £2 will be kept by JAQU to cover the costs of their service and £5.50 will be paid to the ten Greater Manchester local authorities to manage and operate the zone.
- 1.5 The 10 GM Authorities in their consideration of the GM Clean Air Final Plan report noted the Air Quality Administration Committee has the authority to agree the final form of the Operational Agreement for the Central Clean Air Service, and to authorise the making of the agreement, on behalf of the ten GM local authorities.
- 1.6 To outline of the detail of the Operational Agreement for the Government’s Clean Air Service Central Service, which, in order to access, the ten Greater Manchester local authorities are required to enter into a legal agreement with the Secretary of State.

2. INFORMATION

- 2.1 The CAZ Central Services has been developed over a two-year period by JAQU to deliver a consistent set of services to all Authorities who are implementing a Clean Air Zone and the impacted motorists who will access them the services.
- 2.2 The CAZ Central Service comprises three key services:

Vehicle Compliance Checker

- 2.3 Vehicle Compliance Checker will allow a Motorist to determine whether they will incur a charge for entering or driving within a CAZ by entering the Valid Vehicle Registration Number.

² Also considered by the GM Authorities through their own constitutional decision-making arrangements.

³ The Clean Air Zones Central Services (Fees) (England) Regulations 2020 set out the fee per transaction payable by charging authorities for use of the customer payment portal.

- 2.4 The Vehicle Checker will determine, in respect of all UK-registered vehicles and as many non-UK-registered vehicles as is reasonably practicable, whether a vehicle is a compliant or non-compliant vehicle;
- where a vehicle has been determined to be a non-compliant vehicle, determine the applicable charge for that vehicle to enter or drive within the CAZ;
 - provide dedicated and integrated web links to the Customer's website including an integrated view of the boundary maps of each CAZ;
 - links to local exemptions that are documented on the Customer's website;
 - links detailing alternative options to using a motor vehicle to travel in the CAZ including public transport and alternative travel options.

The Payment Portal

- 2.5 The Payment Portal will allow Motorists to pay any charge incurred as a result of driving a non-compliant vehicle into/within the Clean Air Zone pursuant to the Clean Air Zone Charging Order, which will be made pursuant to the Transport Act 2000, through a secure online payment system. The Payment Portal will provide for:
- full integration with GOV.UK Pay including GoCardless for Direct Debit payments and Stripe for Credit/Debit Card payments in respect of all card-based transactions;
 - payments to be made in respect of individual vehicles or, for business account users, for multiple vehicles in a single transaction;
 - payments to be made for single or multiple days in a single transaction; Payments to be made either 6 days in advance, on day of travel or 6 days after a journey has been completed in the Customer's CAZ;
 - TfGM to query specific payment status of a vehicle as defined in the Interface Control Document;
 - Payments from non-UK based users;
 - The prevention of duplicate payments in respect of the same vehicle using the CAZ on the same charging day;

A Motorist Support Service

- 2.6 A Motorist Support Service in the form of a multi-channel contact centre that will provide a first point of contact for the resolution of any queries by the Motorist relating to their use of the Vehicle Checker or the Payment Portal. The Motorist Support Service will:
- be able to validate what charge, if any, is payable by a Motorist in respect of the CAZ;

- support users who have assisted digital needs including taking payments via the telephone;
- accept queries from Motorists.

3. CAZ CENTRAL SERVICES CONTRACT

3.1 In order to access the CAZ Central Services, the ten Greater Manchester local authorities are required to enter into a legal agreement with the Secretary of State. The key aspects of the contract are:

- Termination: should the CAZ Central Service be down for 30 consecutive days then GM would have right of termination with JAQU providing funding to source a replacement service;
- It is a requirement of the agreement that the parties enter into a data sharing agreement, which is good practice where data controllers are sharing personal data;
- There is a mutual limit of liability of £5m for each party excluding death or personal injury caused by its negligence, fraud, or fraudulent misrepresentation. This liability cap would primarily cover lost income from the CAZ for GM and is the same limit of liability for all CAZs. This mutual limit of liability excludes losses resulting from the other party's breach of data protection legislation, which is uncapped;
- There is a formal dispute and escalation procedure;
- Both parties have an obligation to provide accurate data to one another i.e., accurate Vehicle Registrations from the ANPR reads and accurate Registered Keeper details and compliance status of the Vehicle Registration;
- There is formal recognition that GM have appointed Egis Projects SA to deliver and operate the CAZ;
- There are identified Performance Metrics and a mechanism for GM to withhold 10% of the payment during periods of non-performance. However, if JAQU successfully deliver the service at or greater than the key performance level for two consecutive quarters then they will have the right to invoice GM for the withheld payment;
- The Contract formalises that The New Burdens Doctrine⁴ will apply to the operation of the GM Clean Air Zone should a net shortfall arise.

⁴ The new burdens doctrine is part of a suite of measures to ensure Council Tax payers do not face excessive increases. [New burdens doctrine: guidance for government departments - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/new-burdens-doctrine)

- 3.2 It is GM's view that the service is provided under the "Hamburg Exemption" codified under regulation 12(7) of the Public Contracts Regulations 2015. Under this exemption a contract concluded between two or more contracting authorities are exempt from application of the regulations where the contract implements a co-operation between the participating authorities with the aim of ensuring that public services, they have to perform are provided with a view to achieving objectives they have in common.
- 3.3 The Joint Air Quality Unit (JAQU) is a joint venture between Department of the Environment Food and Rural Affairs (Defra) and the Department for Transport (DfT) to deliver the Government's NO2 reduction strategies. DfT will be the contracting Authority for this agreement and GM consider that no competitive procurement is required in order to contract for this service with the Department.
- 3.4 The Clean Air Zones Central Services (Fees) (England) Regulations 2020 set out the fee per transaction payable by charging authorities for use of the customer payment portal.
- 3.5 For each payment processed by the CAZ Central Service Payment Portal, GM will be liable for a £2 fee which will be invoiced for on a quarterly basis. If a refund is required due to a system or hybrid error,⁵ then the £2 fee would not apply.
- 3.6 At the £2 level and at the volumes modelled in the Clean Air Plan Financial model, it is anticipated that £19.1m of expenditure will be made during the anticipated lifetime of the Clean Air Zone.
- 3.7 The final form of the Operational Agreement for the Clean Air Zone Central Service is attached at Appendix 1. The Agreement contains commercial or industrial information in respect of which confidentiality is provided by law to protect a legitimate economic interest, and disclosure would adversely affect that confidentiality. As such, it is considered that this agreement reports falls within the exception under regulation 12(5)(e) EIR and that, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

4. RECOMMENDATIONS

- 4.1 The recommendations are set out at the front of the report.

⁵Service Error: there is a system/service error which is beyond the user's control i.e., DVLA records incorrectly list vehicle as non-compliant.

Hybrid Error: where there is a combination of user error which is not picked up by the system, for example, duplicate payments or payments made for non-chargeable/compliant vehicles.