

**LONDON BOROUGH OF TOWER HAMLETS**

**COUNCIL MEETING**

**WEDNESDAY 15<sup>th</sup> SEPTEMBER 2010**

**LONDON LOCAL AUTHORITIES (TRAVEL CONCESSIONS) BILL**

**REPORT OF THE ASSISTANT CHIEF EXECUTIVE  
(LEGAL SERVICES)**

**1. SUMMARY**

- 1.1 This report informs the Council of the proposed deposit in Parliament of the London Local Authorities (Travel Concessions) Bill in November 2010, and recommends that Tower Hamlets Council, alongside the other London Boroughs, approves the deposit and passage of the Bill in Parliament.
- 1.2 The proposed Bill would alter the application of the Greater London Authority Act 1999 in relation to travel concessions so as to give London Borough Councils more power and flexibility in relation to the Freedom Pass scheme and minimise possible future risks in connection with the application and costs of the scheme.
- 1.3 The proposal to promote the Bill has been agreed by the London Councils Leaders' Committee. London Councils has no power to promote bills in its own right so, as for previous London Local Authorities Private Bills, the proposed Bill will be promoted by Westminster City Council at the request of the other 32 London Boroughs. The parliamentary process will be funded and coordinated centrally by London Councils.
- 1.4 As part of the statutory procedure every London Borough that wishes to participate must, before the Bill is deposited in November 2010, pass a resolution in full Council approving the promotion of the Bill. After the Bill is deposited the Council will be invited to pass a further resolution confirming its participation.

**2. RECOMMENDATIONS**

- 2.1 The Council is recommended to approve the resolution attached at Appendix 1 to this report.

### **3. BACKGROUND**

- 3.1 London Local Authorities Bills are Private Bills which apply only to the Greater London area and confer additional powers on London local authorities in specified service areas. Tower Hamlets has participated along with other London Borough Councils in approving previous London Local Authorities Bills.
- 3.2 On 13<sup>th</sup> July 2010 the Leaders' Committee of London Councils agreed in principle to promote a Private Bill which would provide flexibility in relation to travel concessions on railways and also an arbitration mechanism in relation to the cost of any reserve scheme that Transport for London (TfL) may seek to impose where agreement has not been reached on a scheme within the statutory timetable.
- 3.3 London Councils has appointed Sharpe Pritchard to act as Parliamentary Agents and legal advisers to the Bill which will again be promoted through the City of Westminster (Parliamentary rules dictate that one borough must act as the lead borough and London Councils does not have powers to promote Bills in its own right).
- 3.4 The proposed text of the Bill is attached at Appendix 2 to this report. The draft Bill is currently subject to consultation with stakeholders.
- 3.5 There is only one opportunity each year to deposit private Bills before Parliament. In order for the Bill process to start in this Parliamentary session, the draft Bill text must be deposited with the House of Commons' private bill office by Friday 26 November, in time for a first reading in January 2011.
- 3.6 In order for this to happen, a strict statutory set of procedures must be followed. Each London Borough must individually pass a resolution in support of the Bill, in the form attached at Appendix 1. After the Bill is deposited in Parliament, the Council will be invited to confirm its participation by passing a further resolution.
- 3.7 In order to be valid, the attached resolution must be passed in accordance with the provisions of section 87 of the Local Government Act 1985. In summary, the requirements of section 87 are as follows:-
  - The resolution must be passed at a full Council Meeting
  - At least half the total number of councillors must be present and voting in favour of the resolution
  - The meeting and its purpose must be advertised in a newspaper circulating in the area of the authority at least 30 clear days before the date of the meeting and this must be separate from any other usual advertisement for the meeting (a composite advertisement has been drafted by Sharpe Pritchard and placed in the London Evening Standard on behalf of all the London Boroughs).

#### **4. THE CONCESSIONARY TRAVEL SCHEME IN GREATER LONDON**

- 4.1 London has the most extensive concessionary travel for older and disabled people in the UK. The current scheme is managed by London Councils on behalf of the 32 London boroughs and the City of London. It offers free travel on all Transport for London (TfL) services and on most national rail services in Greater London. However, whilst passes are valid 24 hours a day on TfL services (including TfL run rail services - Underground, Overground and DLR), the arrangements on national rail services are negotiated separately, and access to services on National Rail agreed through the Association of Train Operating Companies (ATOC) excludes the Monday – Friday morning peak period.
- 4.2 There are three categories of passes available to people who have their sole or principal residence in Greater London. The older persons' pass is available to people who have reached the age for women to receive a state pension. Until 5 April 2010, this was age 60 but it is moving gradually to 65 so that most people born in 1955 will not get their pass until they are 65. The statutory disabled pass is available to people who meet criteria set out in national legislation. In addition some boroughs choose to offer a pass on a discretionary basis to disabled people who do not meet the national criteria. The older person's pass and the statutory disabled pass are also valid on buses on local buses in England outside London between 9.30am and 11pm Monday to Friday and anytime at weekends and public holidays. There are currently about 1.2m Freedom Pass holders.
- 4.3 The Freedom Pass scheme operates under powers in the Greater London Authority Act 1999, as amended in particular by the Concessionary Bus Travel Act 2007. The legislation which governs concessionary travel arrangements in London differs from the rest of England. One key difference is that whilst in the whole of England there is a minimum requirement to offer free travel to eligible older and disabled people on local buses, in London there are additional statutory requirements.
- 4.4 The London legislation requires there to be a concessionary scheme on the London local transport network, in effect this is all the services operated or managed by TfL. There are separate categories for bus, railway, tramway and river services, but railway is not divided into individual services such as London Underground, London Overground or Docklands Light Railway. For each category of pass holder, there has to be a uniform offer on each category of TfL service. So this means that the offer to Freedom Pass holders has to be the same over the entire route of every single railway service operated by TfL.

#### **5. THE PROPOSED CHANGES: (i) RAILWAY SERVICES**

- 5.1 The effect of the requirement at 4.4. above is that at present, the same times of eligibility must be offered on all railway services operated or managed by TfL even if they are outside Greater London or where there are parallel

national rail services serving the same stations which have a different eligibility to TfL. When TfL took control of the former Silverlink Metro services in November 2007, London Councils was advised that it had to offer the same times of eligibility as on other TfL rail services. This was a relatively small change but if more franchises are transferred to TfL, under the current arrangements London Councils would be obliged to offer the same concession on all, either extending the concession into the morning peak on National Rail services – at high cost – or uniformly restricting existing access to TfL services.

- 5.2 Following the TfL takeover of the former Silverlink Metro services to form London Overground mentioned above, there are now a couple of places where parallel services with different eligibility exist - e.g. Clapham Junction to Harrow & Wealdstone/Watford Junction and New Cross Gate to West Croydon/Crystal Palace. This will become a major issue if TfL takes charge of more suburban rail services e.g. in south London.
- 5.3 The Government has suggested that it wants to give TfL more say over National Rail services in London and it is possible TfL could gain control over franchises in London in the same way as with London Overground.
- 5.4 As part of the general extension of Freedom Pass into the morning peak in 2008 ATOC gave an indication of the cost by Freedom Pass holders to national rail services during the morning peak. It is possible that costs could be in excess of £100m. The risk is, therefore, that without any legislative change, boroughs would be faced with a choice either of extending Freedom Pass into the morning peak on National Rail services at a cost which might exceed £100m or having to reduce the current scheme by removing the concession during the morning peak on the Underground, Overground and DLR. What is clear is that under these circumstances the current status quo could not be continued.
- 5.5 The proposed Bill will therefore include an amendment to the existing legislation to introduce more flexibility in relation to the concession on railway services. This would allow London boroughs and Transport for London (TfL) to negotiate different eligibility for different railway services (or parts of railway services) operated or managed by TfL.
- 5.6 The proposal would also allow the concession to be limited to Greater London. At present, Freedom Pass holders can travel to the ends of the Metropolitan and Central lines on London Underground and to Watford Junction on London Overground. However concessionary travel pass holders in those areas do not have any travel concessions on these rail services and often complain to London Councils that this is unfair.

## **6. THE PROPOSED CHANGES (ii) – ARBITRATION ON THE RESERVE SCHEME**

- 6.1 The existing London legislation also requires there to be in place a concessionary travel scheme for TfL services by 31 December prior to the beginning of each financial year. If London Councils and TfL do not agree on a scheme that meets the statutory requirements by this date, then a statutory reserve scheme comes into effect and TfL can charge London boroughs for its costs. There is no negotiation or appeal mechanism if the reserve scheme is invoked, so neither London Councils nor individual boroughs would have a say in how much the scheme would cost or how the costs were to be apportioned.
- 6.2 Hitherto London Councils and TfL have always been able to negotiate settlements within the statutory timetable and so the reserve scheme has never had to be invoked. London Councils and TfL wish this to continue. However London Councils feels strongly that the way in which the legislation on the reserve scheme has been drawn up gives too much control to TfL.
- 6.3 The proposed Bill therefore includes a second amendment to introduce the possibility of an arbitration process if London boroughs were unhappy with TfL's proposals in relation to the costs of the reserve scheme. This would give the London Councils an opportunity to contest the fees imposed by TfL, and should there be a dispute, it would be settled by an arbitrator from the Chartered Institute of Arbitrators. This would only affect the amount the scheme cost London boroughs and would not impact on the concessions available to pass holders.

## **7. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 7.1 One purpose of the proposed Private Bill is to limit the potential future costs to London Boroughs of the Concessionary Travel scheme agreed with TfL.
- 7.2 In relation to the costs of promoting the Bill itself, these are expected to be relatively low given the brevity of the text, and the scope to minimise objection through the consultation process. Initial estimates of the external cost of co-ordinating the Bill through Sharpe Pritchard were between £10,000 and £15,000 although this sum is likely to increase as a result of additional advertising in certain boroughs where the Evening Standard is no longer widely distributed.
- 7.3 The costs are being borne centrally by the London Council's Services Directorate and are low compared with the potential additional cost of extending 24 hour Freedom Pass eligibility to future London Overground services as outlined in the report.

**8. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)**

8.1 The comments of the Assistant Chief Executive (Legal Services) have been incorporated into the body of this report.

**9. IMPLICATIONS FOR ONE TOWER HAMLETS**

9.1 The enactment of the Bill proposals could affect details regarding future delivery of the Freedom Pass scheme provided to elderly and disabled Londoners.

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**LOCAL GOVERNMENT ACT, 2000 (SECTION 97)  
LIST OF "BACKGROUND PAPERS" USED IN THE PREPARATION OF THIS REPORT**

Brief description of "background paper"	Name and telephone number of holder and address where open to inspection
None	N/A



## APPENDIX 2

Consultation Version August 2010

# DRAFT

## London Local Authorities (Travel Concessions) Bill

### EXPLANATORY MEMORANDUM

This Bill is promoted by Westminster City Council at the request of the other 32 London Borough Councils.

The Bill relates to the concessionary travel scheme that operates in Greater London for the benefit of persons of pensionable age and the disabled who, in either case, are resident in Greater London ("eligible persons"). The legislation underpinning the scheme is Chapter VIII of Part IV of the Greater London Authority Act 1999 ("the 1999 Act").

Section 240 of the 1999 Act provides, amongst other things, that any local authority, or any two or more local authorities acting jointly, may enter into arrangements with Transport for London ("TfL") under which TfL grants, or arranges for others to grant, travel concessions for eligible persons and under which the local authority or authorities reimburse TfL the cost in granting the concessions.

Under section 240 and its predecessor, arrangements have been in place between all of the London borough councils and TfL for a number of years. The arrangements provide for free travel on services provided by TfL, including London Underground services, the Docklands Light Railway, London Overground services, London buses and Thames river boat services.

Section 241 of the 1991 Act makes provision about a reserve free travel scheme. The scheme would automatically come into effect where it appears to TfL that there are not for the time being in force arrangements under section 240(1) for travel concessions which meet the requirements of section 242 as to scope and the requirements of section 243 as to uniformity in respect of the next following financial year. Schedule 16 to the 1999 Act makes further detailed provision in relation to the reserve free travel scheme.

The effect of this is that there has to be in place some scheme, whether it be agreed between the London boroughs councils and TfL under section 240, or under the reserve free travel scheme. Since 1999 (and before then under previous similar legislation) the reserve free travel scheme has never needed to be implemented.



Section 242 of the 1999 Act sets out the requirements for scope which must be met under the arrangements under section 240 in order for the reserve free travel scheme to be avoided. Section 243 sets out the requirements as to uniformity which must be met.

*Clause 1* of the Bill makes provision about citation and commencement. The Bill, if enacted, would come into operation on the date on which it is passed.

*Clause 2* alters the way in which section 242 of the 1999 Act (the requirements as to scope) applies as regards London Borough Councils. Section 242 lists three main requirements in subsection (1). Only one of those three requirements is affected by the Bill, namely the requirement of subsection (1)(a). It provides that in order for the arrangements to meet the requirements as to scope they must provide for the grant of travel concessions to all eligible London residents on journeys falling within subsection (2). These are journeys between places in Greater London, between such places and places outside but in the vicinity of Greater London, or between places outside but within the vicinity of Greater London and which are on the "London Local Transport Network". The London Local Transport Network is, in summary, bus services which make up the London bus network, TfL guided transport services (of which there is currently none), TfL railway services, TfL tramway services and TfL River Thames services.

*Clause 2* would alter section 242 in relation to the provision of TfL railway services. "Railway services" include the whole of the London Underground network and the London Overground network, the latter of which currently consists of two former network rail lines which have been taken under the control of TfL. The TfL railway services also include the Docklands Light Railway.

Section 242 currently requires concessions to be given on all of the TfL railway services and the same concessions to be given on each journey. *Clause 2* would alter subsection (5) of section 242 by enabling the arrangements to make different provision for different railway services, categories of railway services or sections of a journey on a railway service.

*Clause 3* amends Schedule 16 to the 1999 Act. As mentioned above, Schedule 16 sets out details in relation to the reserve free travel scheme, which would take effect if it appeared to TfL that there were no arrangements in place for the forthcoming financial year which met the requirements as to scope and uniformity. Schedule 16 provides TfL with control over the amount that the London borough councils would have to pay to finance the reserve scheme. The effect of the amendment proposed in *clause 4* would be to provide a mechanism for arbitration in cases where a London authority considered the amount to be excessive.

# DRAFT

## London Local Authorities (Travel Concessions) Bill

### CONTENTS

- 1 Citation and commencement
- 2 Application of section 242 of 1999 Act
- 3 Amendment of Schedule 16 to 1999 Act

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**BILL**

To amend certain provisions of the Greater London Authority Act 1999 relating to travel concessions.

WHEREAS—

- (1) It is expedient that section 242 of and Schedule 16 to the Greater London Authority Act 1999 (c. 29) (“the 1999 Act”) should be amended as they apply in relation to London Authorities:
- (2) It is expedient that the other provisions contained in this Act should be enacted:
- (3) The objects of this Act cannot be attained without the authority of Parliament:
- (4) In relation to the promotion of the Bill for this Act the Westminster City Council have complied with the requirements of section 239 of the Local Government Act 1972 (c. 70) and the other participating London borough councils have complied with the requirements of section 87 of the Local Government Act 1985 (c. 51):
- (5) In relation to the promotion of the Bill for this Act the requirements of section 79 of the 1999 Act have been complied with:
- (6) In relation to the promotion of the Bill for this Act the London borough councils have acted through their representation in London Councils, a statutory joint committee whose membership is made up from members of all the London borough councils.

**1 Citation and commencement**

- (1) This Act may be cited as the London Local Authorities (Travel Concessions) Act 2011.
- (2) This Act shall come into operation on the date on which it is passed.

**2 Application of section 242 of 1999 Act**

- (1) In its application to arrangements between a London Authority and Transport for London, section 242 of the Greater London Authority Act 1999 (c. 29)(requirements as to scope) has effect as follows.
- (2) In subsection (5) after “preclude” insert—
  - “(a) the making of different provision for different railway services, categories of railway service or sections of a journey on a railway service; or
  - (b)”.

- (3) In subsection (1), “London Authority” has the same meaning given to it in section 240 of the said 1999 Act.

### **3 Amendment of Schedule 16 to 1999 Act**

- (1) Schedule 16 to the Greater London Authority Act 1999 (the free travel scheme) is amended as follows.
- (2) After paragraph 5(7) insert—
- “(7A) If within 7 days of being notified by Transport for London of the charge under paragraph 5(1) a London authority gives to Transport for London notice that it considers the charge to be excessive, the question of the amount of the charge shall be referred to arbitration.
- (7B) Where under subsection (7A) a question is to be referred to arbitration, the question shall be referred to, and settled by, a single arbitrator to be agreed between the parties or, in default of agreement, to be appointed on the application of either party, after notice in writing to the other, by the President of the Chartered Institute of Arbitrators.
- (7C) If the arbitrator decides that the proposed charge is excessive, he shall determine the amount which the authority shall pay and notify Transport for London and the authority by means of a written and reasoned decision.
- (7D) The President of the Chartered Institute of Arbitrators may, on request or otherwise, direct that—
- (a) a group of arbitral proceedings under subsection (7A) is to be consolidated, or
- (b) concurrent hearings are to be held in a group of arbitral proceedings under subsection (7A).
- (7E) A request for a direction under subsection (7D) may be made by the arbitrator or any of the arbitrators (as well as by a party).
- (7F) A direction under subsection (7D) shall specify the terms on which the proceedings are to be consolidated or on which concurrent hearings are to be held.
- (7G) Where a direction under subsection (7D) provides for the consolidation of proceedings that do not all have the same arbitrator, the terms that may be specified in the direction include (in particular)—
- (a) terms specifying the person who is to be the arbitrator in the consolidated proceedings;
- (b) terms under which that person is selected for appointment as the arbitrator.”.
- (3) In paragraph 6(1)(a) after “fixed by Transport for London” insert “or notified by an arbitrator as the case may be”.

DRAFT London Local Authorities (Travel Concessions) Bill

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BILL

To amend certain provisions of the Greater London Authority Act 1999 relating to travel concessions.

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SESSION 2010-11

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