

London Councils' Transport and Environment Committee

Constitutional Matters - Minor Variations Item to the London Councils Transport and Environment Committee Governing Agreement No: 9

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Summary: This report proposes a minor variation to the London Councils Transport and Environment Committee (LCTEC) Governing Agreement

The proposed changes do not alter any of the functions of the LCTEC committee or the responsibilities delegated to it. They are intended to provide flexibility to conduct business in a way that meets the current and future needs of the organisation. The LCTEC Governing Agreement makes provision for minor variations, thereby avoiding the need to negotiate and agree a formal variation with all the participating authorities in respect of minor matters affecting London Councils' constitution and governance.

Recommendation: The Committee is recommended to:

- Approve the proposed minor variation to the LCTEC Governing Agreement set out in Appendix 1;
- Note that the variation to the LCTEC Governing Agreement, if approved by LCTEC, shall come into effect following 28 days' written notice of the variation to each Participating Council and Transport for London, if no objection is received from any Participating Council and/or Transport for London during the notice period.

Background

1. “London Councils” is a term that is used to refer collectively, and for convenience, to three separately constituted, but inter-related, statutory joint committees appointed by the 33 London local authorities for the joint discharge of their functions i.e.:
 - a. the London Councils Leaders’ Committee (“Leaders’ Committee”),
 - b. the London Councils Transport and Environment Committee (“LCTEC”), and
 - c. the Grants Committee.
2. Leaders’ Committee has been appointed with the authorities’ agreement under sections 101 and 102 of the Local Government Act 1972 and section 9EB of the Local Government Act 2000 (and the relevant Regulations). LCTEC is similarly constituted.
3. The LCTEC Governing Agreement has been formally amended (varied) four times since 2001 to delegate the exercise of additional functions to LCTEC.¹
4. London Councils must operate within the delegations which have been made to the joint committees (Leaders, Grants and LCTEC) by the London local authorities and Transport for London (TfL), as set out in the Governing Agreements. There have been occasions when it has been necessary to supplement or amend these arrangements and this has been achieved by varying the terms of the Governing Agreements. If this is not done, decisions taken by London Councils without appropriate delegated authority to do so will be *ultra vires*. Additionally, a failure to comply with the governance framework, set out in the Governing Agreements, to support the effective discharge of the functions delegated to the London Councils joint committees, could be subject to challenge.
5. Each Agreement includes a number of clauses that are very specific about the way in which London Councils conducts its business. The rationale behind these was to ensure appropriate information flow between the joint

¹ Refer: LCTEC Agreement dated 13 December 2001, the First Variation dated 1 May 2003, the Further Variation dated 30 November 2006, the Second Further Variation dated 8 June 2009 and the Third Further Variation dated 14 May 2015.

committees as well as enshrining their relative roles and responsibilities to provide for the effective and efficient discharge of the functions delegated.

6. Since 2001, changes to the way work is managed by the joint committees has meant some of the provisions are restrictive and outdated.
7. Clause 15.1 of the London Councils Transport and Environment Committee Governing Agreement provides for minor variations to be made.
8. It will benefit London Councils to have greater flexibility in managing the operation of the joint committees and enable it to more easily meet the current and future wishes of the participating authorities in relation to how London Councils is run.

Proposed changes

9. The proposed changes, set out at Appendix 1, remove the restriction in Paragraph 3.2 of Part 3 to Schedule 2 of the LCTEC Governing Agreement which limits the term of contracts for Taxicard services to a maximum of four years.
10. It is proposed to remove this limitation which is now overly restrictive having regard to current procurement law which has been implemented and enacted since the LCTEC Governing Agreement was entered into in 2001. Insofar as the restriction goes beyond current procurement law requirements LCTEC complies with, LCTEC has less flexibility in respect of contract terms which can have cost implications. It is therefore proposed to remove the contract term limitation.

Recommendation:

11. The Committee is recommended to:
 - Approve the proposed minor variation to the LCTEC Governing Agreement set out in Appendix 1;

- Note that the variation to the LCTEC Governing Agreement, if approved by LCTEC, shall come into effect following 28 days' written notice of the variation to each Participating Council and Transport for London, if no objection is received from any Participating Council and/or Transport for London during the notice period.

Legal Implications for London Councils

12. Variations to London Councils Governing Agreements must be properly made in a manner which is consistent with the terms of those Agreements. Each Governing Agreement makes provision for minor variations to the governance arrangements for each joint committee, albeit by different procedures.
13. It is the responsibility of the relevant joint committee to determine whether a change can be considered minor. In the past, variations have been considered minor if they do not involve any additional financial contribution or changes to the delegated powers or the functions of the committees. For example, in 2006 the organisation changed the name it is known by from the Association of London Government to London Councils, which was considered a minor variation on the grounds that it did not change the purpose of the organisation.
14. The changes proposed in this report relate solely to the way the LCTEC operates and do not change the functions delegated to LCTEC. Further information to support this is provided in the Proposed Changes section of this report above.
15. Clause 15.1 of the LCTEC Agreement provides for minor variations of the LCTEC Governing Agreement to be achieved by a decision of that joint committee, subject to both: the variation not involving any additional financial contributions (otherwise than already specifically provided for in the LCTEC Governing Agreement); and further to there being no objection to the variation by the London local authorities and/or TfL within 28 days' written notice of the variation.

16. Should any committee decide that a variation is not considered minor, in order for that change to be effected a formal Variation to the relevant Agreement would need to be authorised, and the terms agreed in writing, by each local authority. A formal Variation would also be required if there was a need to delegate the exercise of new functions from the authorities to a joint committee, to allow the committee to do something it does not currently have the authority to do. This is required to enable the joint committee to act *intra vires*.

17. The variation to the LCTEC Governing Agreement, if approved by LCTEC, shall come into effect following 28 days' written notice of the variation to each Participating Council and Transport for London, if no objection is received from any Participating Council and/or Transport for London during the notice period. The notice shall be effective as set out in clause 14.1 of the LCTEC agreement. For example, if notice is delivered by first class post, notice will take effect 48 hours after posting.

Equalities Implications for London Councils

18. There are no specific equalities implications for London Councils.

Financial Implications for London Councils

19. There are no specific financial implications to London Councils.

Appendices:

Appendix 1 — Proposed changes to the London Councils Transport and Environment Committee (LCTEC) Governing Agreement 2001