

ROAD TRAFFIC, WALES

EXPLANATORY MEMORANDUM TO:

- **THE CIVIL ENFORCEMENT OF PARKING CONTRAVENTIONS (GENERAL PROVISIONS) (WALES) REGULATIONS 2008**
- **THE CIVIL ENFORCEMENT OF PARKING CONTRAVENTIONS (APPROVED DEVICES) (WALES) ORDER 2008**
- **THE CIVIL ENFORCEMENT OFFICERS (WEARING OF UNIFORMS) (WALES) REGULATIONS 2008**
- **THE CIVIL ENFORCEMENT OF PARKING CONTRAVENTIONS (GUIDELINES ON LEVELS OF CHARGES) (WALES) ORDER 2007**
- **THE REMOVAL AND DISPOSAL OF VEHICLES (AMENDMENT) (WALES) REGULATIONS 2008**
- **THE CIVIL ENFORCEMENT OF PARKING CONTRAVENTIONS (REPRESENTATIONS AND APPEALS) REMOVED VEHICLES (WALES) REGULATIONS 2008**

This Explanatory Memorandum has been prepared by the Economy and Transport Department of the Welsh Assembly Government and is laid before the National Assembly for Wales in accordance with SO 24.1.

Description

1. This set of Regulations and Orders implements Part 6 of the Traffic Management Act 2004 (TMA) in relation to the civil enforcement of parking contraventions and replaces the present system of decriminalised parking enforcement under Part II and Schedule 3 of the Road Traffic Act 1991. These instruments are supplemented by Statutory Guidance issued by Welsh Ministers with which local authorities are required to comply. Further non-statutory Operational Guidance issued by Welsh Ministers covers the day-to-day management of civil enforcement parking schemes and the technical standards and certification arrangements for "approved devices" used to enforce parking contraventions.

2. The principal elements of the new system of parking enforcement are contained in the Civil Enforcement of Parking Contraventions (General Provisions) (Wales) Regulations 2008, The Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008 and the Civil Enforcement of Parking Contraventions Representations and Appeals (Wales) Regulations 2008. However, the powers to make regulations relating to Representations and Appeals and Enforcement and Adjudication are exercisable by the Lord Chancellor and the latter two regulations above will therefore be subject to a Parliamentary procedure.

Matters of special interest to the Subordinate Legislation Committee

3. None.

Legislative Background

4. Part 6 of the TMA confers powers on the Lord Chancellor and "the appropriate national authority" (in Wales, the Welsh Ministers) to make regulations providing for a national legislative framework for the civil enforcement by local authorities of contraventions of parking and bus lane restrictions and some moving traffic contraventions, such as box junctions and banned turns. Part 6 of the TMA and the regulations replace existing

provisions in the Road Traffic Act 1991 (with regard to parking) the Transport Act 2000 (with regard to bus lanes).

5. The purpose of these instruments is to implement Part 6 of the TMA so far as it relates to parking contraventions. They will, in due course, be followed by regulations to implement Part 6 in relation to bus lane and other moving vehicle contraventions.

Purpose and intended effect of the legislation

6. The intended effect of these Instruments is to strengthen the existing system of Decriminalised Parking Enforcement (DPE), which will now be known as Civil Parking Enforcement (CPE), by providing a regulatory framework, associated Statutory Guidance and detailed Operational Guidance to local authorities. The objectives are to ensure that:

- (i) There exists a common and harmonised regulatory framework for the enforcement of civil parking contraventions by local authorities across Wales;
- (ii) There is a high level of public understanding and acceptance for CPE;
- (iii) Local authorities have the necessary enforcement powers to secure a high level of public compliance with traffic regulations, which should lead, in turn, to reductions in congestion and improvements in safety and network management; and
- (iv) CPE powers are exercised in a fair and reasonable manner by local authorities

Background

7. As the volume of traffic on the roads increases, the need for effective parking enforcement becomes critical to the successful management of congestion and road safety.

8. At present, all London authorities, 167¹ local authorities in England outside London and 6 local authorities in Wales operate DPE. Under DPE, parking regulations are enforced by parking attendants employed, directly or indirectly, by local authorities. This reflects the need for the police to concentrate on core policing priorities. As part of the system, parking attendants issue Penalty Charge Notices (PCN) to the owners of vehicles they believe to be parked in contravention of traffic regulations. Representations against a PCN can be made to the issuing authority and if this is rejected there is a right of appeal to an independent adjudicator. The enforcement is funded by income from parking charges and penalty charges rather than the local or national taxpayer.

9. The Road Traffic Act 1991 and regulations made under the Act² supply the current national legislative framework for DPE. To support local authorities in their exercise of DPE powers, non-Statutory Guidance was issued by the Department for Transport/Welsh Office³ in 1995.

10. With the help of stakeholders and a working group of experts, the UK Government has reviewed the existing system of DPE to identify how it could be improved through the issue of Regulations, Statutory Guidance and Operational Guidance. The Assembly Government has kept closely in touch with this work.

¹ As at April 23rd 2007

² The Road Traffic (Parking Adjudicators) (England and Wales) Regulations 1999 (SI No 1918).

³ *Guidance on Decriminalised Parking Enforcement Outside London* (Local Authority Circular 1/95 and Welsh Office Circular 26/95) available from www.dft.gov.uk.

11. Furthermore, the draft Wales Transport Strategy “Connecting Wales” emphasises the important role that demand management measures have in increasing the attractiveness of more sustainable transport choices. Pricing mechanisms and parking regulations can act as a major deterrent to car use. Regulating the availability and pricing of parking is an important tool in restraining the growth in the use of the private car. Effective parking enforcement measures will be needed to ensure the delivery of any demand management strategy.

12. Part 6 of the TMA provides a single framework in Wales for the civil enforcement of parking, bus lanes and some moving traffic offences. The Welsh Ministers intend to implement the provisions in Part 6 in stages, beginning with parking.

13. To bring Part 6 into force, the Welsh Ministers have commenced the relevant Sections of the TMA, made regulations that provide the detail of the legislative framework for CPE and issued accompanying Statutory Guidance. Part 6 and the regulations replace existing provisions in the Road Traffic Act 1991 (with regard to parking). Any actions that commenced under the RTA 1991 or local Acts will continue to be enforceable.

14. Statutory Guidance has been issued along with the Regulations. The Assembly Government has also published non-statutory Operational Guidance. This has superseded the existing guidance.

15. Although largely based on the old system of enforcement, the legislative framework includes many changes of detail. Some of these derive from modifications to the Road Traffic Act 1991 made by London local legislation.

16. The main changes to the current parking enforcement system are:

Changes in terminology:

- Decriminalised parking enforcement (DPE) now called civil parking enforcement (CPE)
- Parking attendants now called civil enforcement officers (CEO)
- Special Parking Areas and permitted Parking Areas now called Civil Enforcement Areas

Changes to Regulations:

- Enforcement cameras (“approved devices”) now to be certified by Welsh Ministers
- 21 day discount for PCNs sent by post with evidence from an approved device
- Adjudicators now have the power to decide cases where procedural irregularity has taken place - for example where a charge certificate has been issued before an appeal has been decided
- Adjudicators now have the power to refer back to the local authority cases where a contravention has taken place but in mitigating circumstances
- Where authorities choose to clamp, the current 15 minute period before a vehicle in a parking place can be clamped or removed has changed to 30 minutes. However, the vehicles of persistent evaders may be clamped after 15 minutes.

New powers for authorities outside London currently only held by those in London

- Send PCNs by post with camera evidence or when CEO is prevented from serving it at the time by violence or driving away

- Enforce dropped footways
- Enforce double parking
- Place a 6 month time limit on authorities issuing a Notice to Owner

Changes to the Statutory Guidance:

- Authorities no longer need to be able to show that enforcement is self-funding to apply for powers
- Authorities should publish parking policies
- In situations where a contravention has occurred but where there are mitigating circumstances, authorities should make and publish guidelines on their use of discretion which should be applied flexibly
- Authorities are encouraged to use CCTV or other photographs as additional evidence to the CEO's statement that the contravention occurred
- Discouragement of the wheel clamping of vehicles except those of persistent evaders
- Where a vehicle is parked in contravention and in an obstructive manner the vehicle should be removed rather than clamped
- Where an informal challenge made against a PCN within the 14 day 50% discount period is rejected, authorities should re-offer the 14 day discount period
- Need for monitoring
- Authorities should review their parking policies on a regular basis in consultation with local stakeholders and, once finalised, these should be made publicly available
- Authorities should publish certain financial and statistical data in an annual parking report

17. Statutory Guidance and detailed Operational Guidance have been issued to local authorities and stakeholders in association with the Regulations. The Statutory Guidance sets out the policy framework for CPE, and how enforcement should be approached, undertaken and reviewed. Section 87 of the TMA stipulates that local authorities “must have regard” to the Statutory Guidance. The Operational Guidance is a detailed document which informs local authorities who have not yet done so of the scope and procedure for taking over the enforcement of parking regulations from the police. It advises all local authorities of the procedures that the Government recommends they follow when enforcing parking restrictions. It also provides the framework for a consistent nationwide approach to parking policy and enforcement and a point of reference for members of the public, as well as for local authorities.

Implementation

18. The coming-into-force date for these Regulations and Orders, and similar legislation in England, is 31 March 2008.

Consultation

19. A consultation was undertaken and details follow below.

Regulatory Impact Assessment

20. A regulatory impact assessment (RIA) has been carried out in relation to this Instrument and follows below.

Options

Option 1: Do nothing

21. Under this option the Welsh Ministers would not have commenced the parking provisions in Part 6 of the TMA nor issued new Regulations or Statutory Guidance on CPE. As a result, the existing system of DPE would have remained in force and would continue to garner relatively low public support, which may lead to increases in congestion and reductions in road safety. There is currently a joint system of adjudication in England and Wales in relation to parking contraventions and if we had decided not to bring in CPE, then we would be putting our adjudication process in difficulty and would probably have to establish our own adjudication system which would be very costly.

Option 2: Replicate existing legislation and Guidance in Regulations and Guidance made under the TMA

22. This option would have commenced the parking provisions in the TMA, making Regulations that copy in their entirety the framework established by the Road Traffic Act (RTA) 1991 and its associated Regulations, and putting existing Guidance on parking enforcement on a statutory footing. It is unlikely that this would have improved public understanding and support.

Option 3: Issue Regulations and Statutory Guidance that build on the existing system of DPE

23. This option commences the parking provisions in the TMA. It entails making regulations that build upon and enhance the current legislative framework giving local authorities outside London the same powers as those in London, so that the enforcement framework is the same throughout England and Wales. It also includes the issue of Statutory Guidance that establishes the key principles and minimum standards which all authorities are expected to meet. Detailed Operational Guidance (in the form of an updated version of Local Authorities Circular 1/95) is also to be issued. We believe that this option improves the fairness and clarity of the system and encourages more local authorities to take on the responsibility of enforcing, as well as making, parking policies and local regulations (as recommended by the House of Commons Transport Committee). Furthermore, it will safeguard the present joint adjudication system in England and Wales.

24. The Assembly Government considers that this option is the most effective way to strengthen the existing system of DPE and increase its acceptability to the public.

Costs and Benefits

Sectors and groups affected

25. All options would affect all local authorities that currently operate DPE or intend to operate DPE in the future. All options would also effect the firms who are contracted to carry out the on-street enforcement, or provide the tools to operate the system, as well as consumers who park on-street and in local authority owned car parks within the authority's boundaries. There would be no material differences in the impact on other businesses, voluntary organisations and charities or people in different social groups. However, the operation of parking enforcement has an impact on all individuals who use the road network.

26. Under option 3, the new powers allow local authorities to provide enforcement with "approved devices" (these powers are already in place for local authorities inside London). The businesses that supply or design the equipment systems used for parking enforcement are required to obtain certification from the Assembly Government before their equipment can be used. This certification is needed to ensure that devices provide

correct and tamper proof evidence to a common standard. There is no charge for this certification and the information that Welsh Ministers require to support a request for certification (the details are set out in the Operational Guidance) is very much along the lines of tests that any reputable manufacturer/designer would carry out to satisfy themselves that it meets the high standards required for law enforcement. Furthermore, this will create a new market and therefore is a benefit to business.

27. There are existing requirements about the wearing of uniforms by parking attendants and these provisions would have been carried forward largely unchanged in all three options. So there is no change in their impact on the businesses that currently supply uniforms for parking attendants.

28. The procedures to be carried out in connection with the removal and disposal of vehicles are very much the same in all three options and, to a large extent replicate, what is already in place, so there is no change in the impact that they would have on the businesses that operate these services on behalf of local authorities. The discouragement of clamping and removal for vehicles except those of persistent evaders may reduce in the long term the number of vehicles clamped and removed on-street and in local authority owned car parks. This could potentially have a negative effect on clamping companies and may lead to an increase in costs per unit. It should be noted that these Regulations and Guidance make no change to wheel-clamping or removal of vehicles parked on private land, which is currently unregulated and causes a significant number of complaints from members of the public.

Analysis of costs and benefits

Option 1

29. As it would not have involved changes to the existing DPE system, this option would not have imposed any new costs. But neither would it have delivered any benefits over and above those derived from the existing DPE system. There would have been a number of disadvantages to this option.

30. By not implementing Part 6 of the TMA the changes would not have been made that are necessary to ensure that authorities conduct their parking enforcement in a transparent, fair and proportionate manner. This would have led to continued press and public antipathy and accusations that parking enforcement is only about raising money rather than enforcing transport objectives. Furthermore, authorities outside London currently lack certain powers that have been given to London authorities through local legislation. These are important to the efficient running of CPE and include the power to:

- (i) Serve a PCN by post where a CEO is prevented from fixing a PCN to a vehicle or handing it to the driver. Implementing this will tackle the problem in the current system of parking attendants being unable to serve a PCN as a result of a motorist driving away or making threats against the attendant.
- (ii) Issue a PCN on the basis of information provided by an “approved device” (currently a camera plus the associated system). Implementing this will help authorities target enforcement activity on sensitive areas (e.g. in “no stopping” areas such as clearways) and areas where there is a high level of short-stay contraventions such as dropping off children at school.
- (iii) Ensure specified items of information appear on PCNs so that vehicle owners understand how they can go about paying a penalty charge, the process for enforcing a PCN and their right to appeal to an adjudicator.

- (iv) Place a 6 month time limit on the issue of a Notice to Owner.

Option 2

31. Authorities would have faced additional enforcement costs resulting from the exercise of the new powers conferred on them by the TMA. However, these costs could have been funded from any additional parking income.

32. This option would have delivered some benefits to road users in terms of improved traffic flow and safety. These would derive from the greater levels of compliance with traffic regulations that authorities' additional enforcement powers could be expected to bring about.

33. However the underpinning legislation is out of date and is not built on the experience that has been garnered since the beginning of DPE. Since the RTA 1991 proposed decriminalised parking enforcement in 1991 much has been learnt about the most efficient ways to carry out enforcement and by simply replacing existing legislation with that made under the TMA would not update the system.

34. During the consultation on the Traffic Management Bill in 2002 it was established that key stakeholders supported the adoption of regulations under the TMA and that there should be a further process of consultation to establish how best to update decriminalised parking in the light of experience. There are no powers in the RTA 1991 to make regulations that would allow these necessary changes to be made. Therefore option 2 would not have fulfilled our stakeholders' requirements.

Option 3

35. Under this option, local authorities who opt into CPE will face the following additional costs:

- (i) Implementing costs:
 - a. Local authorities who do not yet operate DPE will not face any higher costs in bringing in CPE than they would have faced bringing in DPE.
 - b. For authorities who already have DPE powers (at present all London authorities, 167 local authorities in England outside London and 6 local authorities in Wales), there will be some up front costs for the transition from DPE to CPE. These costs include training, IT, stationary, uniform and promotional costs. There are also costs involved in the time it will take to understand the implications of the TMA and to change processes and procedures.
 - c. Up front costs for the transition from DPE to CPE have been estimated as between £8,000 and £54,000. These costs vary because large local authorities with more employees will have more training costs for their employees, more uniforms to change for their CEOs, and may have a larger amount of stationary to replace. IT costs also vary from nothing (since local authorities could do this when they are due to have an IT upgrade) to £20,000.
- (ii) Running costs:
 - a. Local authorities that do not respond positively to the enhanced regime (either through pursuing over-zealous enforcement decisions, or through inefficiency) may face additional adjudication costs resulting from more appeals on the ground that there was procedural impropriety, or

mitigating circumstances. This is unlikely to be the case for authorities that follow the Regulations and Guidance. As local authorities improve their service and provide better trained staff to deal with appeals, the number of appeals to the adjudicators may decrease.

- b. It is not possible to quantify the exact additional costs that local authorities will face because these will vary between different local authorities, and will depend on the size of the local authority. Other factors include whether the local authority area is predominantly urban or rural; the number of PCNs issued; the extent to which these are paid or challenged; and the efficiency with which the parking system is run. However, under CPE (as with DPE) local authorities will be able to cover the costs of their enforcement activity through income from parking charges and from any parking penalty charges.

36. We expect that contracts will be varied to take account of any additional costs incurred by firms carrying out enforcement on behalf of local authorities.

37. There will also be some very minimal administrative costs in amending the Traffic Enforcement Centre's procedure for processing statutory declarations.

38. There will be benefits to local authorities, some of which will have a positive financial impact. This option will make enforcement easier and we expect that, overall, this will reduce the costs. This is because the Assembly Government's objective is for the public to see civil enforcement as fair, and the levy of penalty charges for parking contraventions as more acceptable through changes such as limiting the use of clamping and encouraging authorities to be transparent. Changes such as allowing service of a PCN on the basis of camera evidence will facilitate the provision of robust evidence that will make it more difficult to dispute that a contravention took place. This will help protect the motorist who has not committed a contravention.

39. This option will deliver a number of benefits for all road users within CPE authorities, especially those using parking facilities:

- (i) Harmonising the powers available will improve levels of consistency between authorities using CPE and, through this, public understanding of the system;
- (ii) The enhancements to local authorities' enforcement powers should result in higher levels of compliance with traffic regulations and concomitant improvements to traffic flow and road safety;
- (iii) Placing a 6 month time limit on the issue of a Notice to Owner will encourage authorities to follow up their PCNs in a prompt and efficient manner;
- (iv) Introducing greater transparency into civil parking enforcement, for example by publishing policies and annual reports on CPE activities, will improve public understanding and acceptance of CPE;
- (v) CEOs undergoing independently assessed training and demonstrating a satisfactory level of competence will result in improved effectiveness and professionalism of civil enforcement;

(vi) The additional grounds of appeal to an adjudicator should help to ensure that authorities give proper consideration to representations made against PCNs on the basis of procedural impropriety or mitigating circumstances;

(vii) Clarifying issues where High Court judgements have changed the assumptions on which LAs have been enforcing for a number of years;

(viii) The principles and standards set out in the Statutory Guidance will help to ensure that local authorities exercise their functions in a fair and reasonable manner, and in a way that increases public understanding and acceptance of CPE.

Competition Assessment

40. Many local authorities in England and Wales contract out CPE functions following competitive tenders. This means that this new legislation will affect private sector contractors who deliver public services. However, we believe that the changes will not have a competition impact because they do not favour one type of supplier or market.

Consultation

Within Government

41. The main elements of the UK Government's proposals to strengthen DPE were worked up during the preparation, and passage through Parliament, of the Traffic Management Act. In the course of this work, the Department for Transport (DfT) worked closely with other relevant policy Departments including the Lord Chancellor's Department, the Home Office and the Office of the Deputy Prime Minister. The Assembly Government ensured that comments from a Wales perspective were taken into account as these proposals were developed.

Public consultation

42. In 2002, DfT consulted local authorities and a number of representative organisations about proposals to give non-London local authorities the additional powers that had been taken by London authorities since the RTA 1991. The responses showed clear support for this approach. Following the successful passage of the Traffic Management Bill in 2004, the Government gave further consideration to proposals to strengthen DPE.

43. The Assembly Government conducted an 8 week public consultation on the draft Statutory Guidance, Regulations and RIA from 30 January 2007 to 28 March 2007. This consultation set out the Assembly Government's position on CPE and sought to establish views on a number of specific issues that were set out in the consultation document.

44. The consultation documents were sent to all local authorities in Wales and to many other organisations who would be expected to be interested in the proposals. A list of the consultees is attached at Annex A. There were 16 responses, including 10 from local authorities and local authority transport consortia, while most of the others were from organisations representing the bus and road haulage sectors and the police. A list of those who responded is attached at Annex B.

45. All the responses welcomed the proposed Regulations/Orders and statutory guidance as an effective way to ensure a standard, fair and enforceable framework, which would provide a consistent and harmonised regime with common standards that would apply across Wales. In general there was widespread support for the RIA and a strong call for consistency among local authorities. Respondents agreed that it gave a fair analysis of the policy. Detailed responses to the consultation questions can be seen at Annex C.

46. Respondents agreed with the vast majority of the issues, and the policy on these remains as proposed in the consultation.

47. Most respondents argued that there would be little added value from an independent unit in the local authority to handle grievances. It was also agreed that the exercise of discretion should rest solely with the back office staff responsible for considering representations and challenges. Finally, it was agreed that the time before a vehicle can be clamped or removed in a parking place would be 30 minutes after the PCN is issued rather than the 60 minutes proposed in the consultation.

48. There have been a number of minor changes to the details of the Regulations. These cover points of principle that were not specifically consulted on. The main change is that local authorities will not be able to recover the money for all past PCNs from persistent evaders that are clamped or removed. The decision to remove this provision was taken to protect innocent drivers and also in response to the 2nd London Local Authorities and Transport for London Bill. This Bill has proposed a system for tackling persistent evaders in London that is not possible to implement in the rest of the country at the present time because there is no power in primary legislation. After a trial in London consideration will be given as to whether to implement the provisions in Wales.

Post implementation review

49. Local authorities will be encouraged to monitor the effectiveness of these Regulations. Consideration is being given to the production of a monitoring toolkit that would enable this to be done by local authorities across the country on a consistent basis.

Summary

50. Option 3 is considered the most effective way to strengthen the existing system of DPE and increase its acceptability to the public. The benefits of improved parking enforcement resulting from publication of the Guidance and the making of the Regulations will more than outweigh any additional up-front costs. Enforcement will be easier and we expect that, overall, this will reduce costs.

Consultation List

Age Concern Cymru
ARUP Consulting Engineers
Association of Transport Co-ordinating Officers
Babtie
Blaenau Gwent County Borough Council
Brecon Beacons National Park
Bridgend County Borough Council
Caerphilly County Borough Council
Capita Gwent Consulting
Capita Symonds
Cardiff Chamber of Commerce and Industry
Cardiff City and County Council
Carmarthenshire County Council
CBI Wales
Ceredigion County Council
Chamber Wales
Chartered Institute of Transport
Chief Constables' Office
Citizens Advice Cymru
Community Transport Association
Confederation of Passenger Transport
Conwy County Borough Council
Council for National Parks
County Surveyors Society Wales
Denbighshire County Council
Disability Rights Commission
Disability Wales
Disabled Persons Transport Advisory Committee
Faber Maunsell
Federation of Small Businesses
Flintshire County Council
Freight Transport Association
Funky Dragon
Gwynedd County Council
Halcrow
Hyder Consulting
Institute of Directors
Institute of Welsh Affairs
Isle of Anglesey County Council
Merthyr Tydfil County Borough Council
Monmouthshire County Council
Mott McDonald
National Association of Licensing and Enforcement Officers
National Federation of Bus Users
Neath Port Talbot County Borough Council
Newport City Council
North Pembrokeshire Transport Forum
North Wales Economic Forum

North Wales Police
Parsons Brinckerhoff
Pembrokeshire Coast National Park
Pembrokeshire County Council
Powys County Council
Public Services Ombudsman in Wales
Rhondda Cynon Taff County Borough Council
Royal Institute of Chartered Surveyors Wales
Royal Society for the Prevention of Accidents Wales
Snowdonia National Park
South East Wales Economic Forum
South East Wales Transport Alliance
South West Wales Economic Forum
South West Wales Integrated Transport Consortium
Sustainable Development Forum for Wales
Sustainable Wales
Sustrans
Swansea City and County Council
TACP
TAITH Joint Board
Torfaen County Borough Council
TraCC Regional Transport Consortium
Traffic Commissioner for Wales
TRL Limited
Vale of Glamorgan County Borough Council
Wales Council for Voluntary Action
Wales Social Partners Unit
Wales Transport Research Centre
Welsh Consumer Council
Welsh Local Government Association
West Wales Chamber of Commerce
Wrexham County Council
WS Atkins
Wyn Thomas Gordon Lewis Limited

List of those who responded to the Consultation

Conwy County Borough Council
Denbighshire County Borough Council
South East Wales Transport Alliance
Confederation of Passenger Transport
Wrexham County Borough Council
Caerphilly County Borough Council
North Wales Police
Torfaen County Borough Council
City and County of Cardiff Council
Anglesey County Council
Pembrokeshire County Council
Carmarthenshire County Council
Road Haulage Association
Institution of Civil Engineers
National Parking Adjudication Service
Jacobs

WELSH ASSEMBLY GOVERNMENT

Summary of responses to the public consultation on Part 6 of the Traffic Management Act 2004: Civil Enforcement of Parking Contraventions

Background

The Welsh Assembly Government published a consultation paper on 30 January 2007 that set out proposals for the civil enforcement of parking contraventions. The consultation paper also asked for detailed comments on 13 specific questions set out in the paper. The consultation paper was issued to all local authorities in Wales, the Regional Transport Consortia, Police and a wide range of other interested organisations. The consultation paper was also made available on the Transport Wales Internet site. A full list of the organisations that were consulted is at Annex A.

We received 16 responses (Annex B). Most of the responses came from local authorities although comments were also received from the Police, Confederation of Passenger Transport and the Road Haulage Association. This report provides a summary of the responses received.

In general, the responses welcomed the draft Regulations and statutory guidance as providing a standard, fair and enforceable framework. This framework would enable key principles and minimum standards to be established that all local authorities would be expected to meet.

Enforcement of parking regulations is important to reduce congestion, tackle pollution and keep traffic flowing. It will also help to improve the attractiveness of local bus services by ensuring that they are more punctual and reliable.

The new measures would provide for a standard regime throughout Wales and deny offenders the opportunity to avoid payment.

Q1 Should the Regulatory Impact Assessment (RIA) include other evidence, for example the impact on small firms? What further evidence might be added to the assessment of costs and benefits in the RIA?

On balance, there was general support for the partial RIA and respondents felt that it contained sufficient information. The overriding requirement was that the Regulations should be clear and enforceable. Some comments of detail were made about additional costs for local authorities and this is covered in the final RIA.

Information about parking

Q2 To what extent, and how, should local authorities publish information about parking provision and/or parking restrictions in their area?

Q3 What information would be most useful to road users and how should it be presented?

The response to this section was encouraging and suggested a wide variety of ways that local authorities could communicate effectively with the public about their parking policies and enforcement.

Public information should be presented simply and at minimal cost. It should be unambiguous and explain where and how motorists could park legally and what would happen if they do not. A range of media should be used to raise awareness of the penalties for illegal parking. Possible media might include websites, local authority

newspapers, leaflets and posters. A common approach should be applied throughout Wales in both English and Welsh.

Technology should provide real time information about the number of spaces available in car parks, and this information should be made available at key strategic approaches to town centres. Local authorities would have to ensure that highway signage was clearly visible and up to date. That would ensure the Regulations could be enforced at all times.

Information should also be provided at key public offices (e.g. libraries, community centres, information points, schools), Tourist Information Centres, hotels, fuel stations and elsewhere. Local authorities could organise public exhibitions. Local authorities' newspapers could also be used to publicise a scheme, especially in its initial stages.

This material will help to inform the preparation of a communications toolkit for authorities to use.

Accountability within local authorities

Q4 *Should local authorities set up a unit independent of the parking department to handle cases where the road users had a grievance but it falls outside the remit of the adjudicator and the Ombudsman? Are the existing procedures for handling complaints suitable for independent assessment?*

Most of the responses argued that there would be little added value from having an independent unit in the local authority to handle grievances. An independent unit would add bureaucracy and potentially create greater inconsistency and complexity.

It was more important to have an open and transparent complaints procedure with an independent senior council officer as arbitrator for more complex cases. This would provide an effective and impartial assessment of a case and complement the role of the Adjudicator and Ombudsman. Effective and efficient complaints procedures already exist within many local authorities.

Procedures on the street

Q5 *Would differential penalty charges based on the severity of the contravention help improve public acceptance of and compliance with parking regulations? Or would it be confusing to have two different levels of penalty charge in the same area?*

Opinion was equally divided between a single charge irrespective of the severity of an offence, and a differential charging regime based on the seriousness of the offence.

Providing the scheme and its associated charges were publicised widely and effectively, there seems merit in two levels of charges. Parking where it is always prohibited (e.g. on double yellow lines), where road safety is compromised, or where traffic flows are disrupted are considered more serious and should incur a higher level of PCN than overstaying where parking is permitted. Such a policy would be fair to the motorist and demonstrate that we are tough on the traffic management side of parking enforcement. It would also communicate the message that parking enforcement is not about raising revenue but about keeping traffic moving.

Q6 *Should civil enforcement officers (CEOs) have the discretion to decide when to issue a Parking Contravention Notice (PCN), using the local authority's published policies?*

It was agreed that the exercise of discretion should rest with back office staff who are responsible for considering representations and challenges. This would protect CEOs from allegations of inconsistency or favouritism. It would also support the objective of making the parking system fairer.

This should not preclude local authorities setting out certain situations where a CEO should not issue a PCN. For example, a verbal warning may be more appropriate if a minor contravention has occurred and the driver is with or returns to the vehicle before a PCN has been issued. If so, local authorities should have clear instructions, policies and training for CEOs on how to exercise such authority, and those should also be available to the public.

It was desirable for all local authorities to adopt the same systems, and that would be helped if all CEOs were trained and appraised according to the same essential principles.

The statutory guidance will ask local authorities to produce well publicised discretionary policies for on-street enforcement officers about situations where they may not wish to issue a PCN.

Q7 *Should there be time limits for dealing with informal and formal representations? If so, are the following fair and achievable?*

- ***14 day national standard for dealing with informal challenges?***
- ***90% of formal representations decided within 21 days?***

Respondents agreed that these targets would be reasonable and achievable although more time would be needed to deal with complex cases.

Or should it be left to the local authority to set its own targets?

It was also agreed that local authorities should adopt the same standards. This would encourage clarity for drivers and owners and improve understanding of parking schemes.

Q8 *Should the statutory guidance recommend that a postal PCN is sent within 14 days of the contravention?*

This was agreed. Local authorities and the Driver and Vehicle Licensing Agency (DVLA) should discuss ways in which local authority requests for information can be sent sooner, and responses sent quicker by the DVLA.

Q9 *Should the 50% discount be available for 21 days for certain cases where the PCN was issued by post?*

This was agreed.

Q10 *Should the statutory guidance encourage local authorities to re-offer a discount period after refusing an informal challenge? Or should it be at the discretion of the local authority to do this?*

It was agreed that local authorities should re-offer a discount period after rejecting an informal challenge to a PCN. That should be made clear on the PCN itself.

Q11 *How long should the period following the issue of a PCN be before a vehicle should be removed or clamped?*

There was agreement that a vehicle causing an obstruction, impeding traffic or causing a safety hazard should be removed as soon as practically possible once a PCN has been issued. In all other cases, except for persistent evaders, a vehicle should be clamped if it remained 30 minutes after the PCN had been issued. If parked in a designated parking space, the vehicle of a persistent evader must not be clamped or removed until 15 minutes have elapsed following the issue of a PCN.

Q12 *Do you agree with the proposed definition of a persistent evader as an individual with three or more outstanding and uncontested PCNs?*

Respondents agreed that a persistent evader should be classed as an individual with three or more recorded contraventions that have not been paid, represented against or appealed against in any rolling 12-month period.

Q13 *What options might be suitable to develop a persistent evader database?*

In principle, a national database is desirable. However, a number of technical issues would need to be addressed to make the system effective.

Consistency

A strong and recurring theme in responses to this consultation has been the importance of a consistent approach within and between local authorities. Sharing existing and future experience should also produce savings in the operations of those local authorities that choose to adopt civil enforcement of parking contraventions. This sort of consistency should also help to improve the recognition and acceptance of the scheme by motorists.