

Explanatory Memorandum to The Civil Enforcement of Road Traffic Contraventions (Approved Devices) (Wales) Order 2013.

This Explanatory Memorandum has been prepared by the Local Government and Communities Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Ministers' Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Civil Enforcement of Road Traffic Contraventions (Approved Devices) (Wales) Order 2013.

I am satisfied that the benefits outweigh any costs.

Carl Sargeant AM

Minister for Local Government & Communities

26 February 2013

1 Description

1.1 This Order outlines the procedures and technical requirements that apply where local authorities wish to exercise powers granted to them to undertake civil traffic enforcement by camera for:

- parking contraventions under Part 6 of the Traffic Management Act 2004, and
- bus lane and other moving traffic contraventions under Part 6 of the Traffic Management Act 2004 (when related legislation takes effect – see paragraph 2).

1.2 The primary objective of any camera enforcement system is to ensure the safe and efficient operation of the road network by deterring motorists from committing road traffic offences and detecting those that do.

1.3 This is one of a basket of measures available to those local authorities who have adopted civil enforcement powers to help them to tackle congestion – especially in urban centres. Local authorities will then be able to tailor their approach to particular local circumstances, improving the likelihood of success.

2 Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 This Order is subject to negative Assembly procedure and is one of four related statutory instruments being laid before Parliament and the National Assembly for Wales with a common coming into force date. The additional three statutory instruments are:

- The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 - regulations of a composite nature comprising powers of the Lord Chancellor and the Welsh Ministers and subject to Parliamentary and Assembly negative resolution procedure;
- The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 - laid by the Secretary of State for Wales, on behalf of the Lord Chancellor in Parliament and subject to affirmative procedure. These regulations comprise non-devolved matters that are the responsibility of the Lord Chancellor; and
- The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2013 – regulations prepared by the Welsh Ministers and subject to Assembly affirmative procedure.

2.2 Together, these four statutory instruments will provide a single regulatory framework for the civil enforcement powers of local authorities to tackle parking,

bus lane and certain moving traffic contraventions. There are an additional two statutory instruments currently in force which deal with the civil enforcement of parking that complement these Regulations.

2.3 The National Technical Standards Directive 98/34/EC, as amended by 98/48/EC ("the Directive"), seeks to prevent the creation of new technical barriers to trade and lays down procedure for the provision of information in the field of technical standards and regulations. Any statutory instrument which prescribes technical standards must be notified to the Department for Business, Innovation and Skills (BIS) who in turn notify the European Commission. Article 9, paragraph 1 of the Directive requires a three month delay between the notification of the statutory instrument to the European Commission and it being made or coming into force. This statutory instrument was notified to the Commission on 5th January 2011. The three month period therefore ended on 5th March 2011.

3 Legislative Background

3.1 This Order revokes and replaces the Civil Enforcement of Parking Contraventions (Approved Devices) (Wales) (No 2) Order 2008 (SI 2008/1215 (W.123)) as part of a consolidation exercise that updates and streamlines previous legislation introduced for civil parking enforcement.

3.2 In the interests of simplifying this area of law for the general public, Welsh Ministers have consolidated the provisions in relation to parking, bus lane and moving traffic offences into four statutory instruments. One of these instruments contains powers of the Lord Chancellor and the Welsh Ministers combined in a single instrument - the Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013. This mirrors the approach taken by the Lord Chancellor and the Department for Transport in relation to the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 (S.I. 2007/3483).

3.3 The 2013 Regulations will enable local authorities to assume responsibility for tackling bus lane and moving traffic offences and will incorporate existing parking enforcement provisions. The powers to tackle parking contraventions came into force in April 2008.

3.4 Section 87 of the Traffic Management Act 2004 allows Welsh Ministers to publish statutory guidance to local authorities on the exercise of their civil enforcement powers. The Welsh Government will work closely with local authorities to prepare statutory and operational guidance in due course.

4 Purpose and intended effect of the legislation

4.1 The heavy workload of the police often means that offences such as parking offences are not given priority. In the absence of action by the police, the practical alternative is to give local authorities the necessary powers to tackle parking, bus lane and certain moving traffic contraventions. The police retain the ability to issue fixed penalty notices in relation to bus lane and

moving traffic offences and the offence of stopping of vehicles on or near pedestrian crossings, though the regulations prohibit a motorist being penalised twice (civilly and criminally) for the same offence. The police retain powers to tackle other motoring offences.

4.2 One of the key aims of the Welsh Government is to improve the reliability and punctuality of local bus services as well as to reduce bus journey times. By keeping buses moving we can make local bus services a more attractive option to the private car for most journeys. The movement of buses can often be assisted by measures aimed at reducing congestion and improving the flow of traffic more generally.

4.3 Indiscriminate parking can seriously reduce the capacity of the road network and effective control of on-street parking and loading and unloading is essential to keep buses moving. In addition, it is often worthwhile to introduce other traffic management measures to assist the movement of buses. This can take the form of measures that permit buses to use lanes or make movements which are denied to other traffic. In combination, these measures can improve the image and public perception of local bus services in a way that encourages higher patronage and a move away from single occupancy car journeys. In this way, local authorities are able to assist buses to better fulfil their potential as part of a sustainable, integrated transport system

4.4 The intended effect of the regulations is to allow local authorities to put in place effective traffic management and enforcement measures that will help to tackle congestion and provide priority through traffic for local bus services that will make them more attractive for passengers.

4.5 These latest powers will complement those for parking enforcement by providing local authorities with a basket of measures to help them to tackle congestion – especially in urban centres. By having access to a range of measures, local authorities will then be able to tailor their approach to particular local circumstances, improving the likelihood of success.

4.6 This will make the administration of civil enforcement by local authorities more streamlined and efficient. It will also assist members of the public in understanding the appeal procedure where they decide to appeal against a Penalty Charge Notice.

5 Consultation

5.1 A public consultation on the proposals for the civil enforcement of bus lane and moving traffic contraventions was undertaken between 26 November 2009 and 5 February 2010. The organisations consulted were each of the 22 local authorities in Wales, the four police constabularies, the Traffic Penalty Tribunal, bodies representing taxi and private hire operators, and other stakeholders. Ten responses were received, most of those from local authorities.

5.2 A summary of the comments received and the Welsh Government's response was published on the website in April 2010. There was a broad and strong consensus in favour of the proposals.

5.3 A consultation in relation to parking contraventions was undertaken in 2007, prior to the introduction of civil parking enforcement in 2008.

<http://wales.gov.uk/consultations/transport/civilenforcement/?lang=en&status=closed>

6 Regulatory Impact Assessment

6.1 A Regulatory Impact Assessment (RIA) was carried out on the 2008 Regulations that govern the civil enforcement of parking contraventions.

6.2 The following Regulatory Impact Assessment focuses on the provisions of the 2004 Act and 2013 Regulations that deal with the civil enforcement of bus lane and moving traffic contraventions.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

1. Do Nothing

All four police forces in Wales were consulted on the proposals for the civil enforcement of bus lane and moving traffic contraventions. The evidence from the consultation exercise, suggested that the police would not be able to make the enforcement of bus lane and moving traffic contraventions a priority for action at all times.

This would mean that it would not be possible to effectively enforce the traffic management measures that have been put in place by local authorities to give buses priority through traffic congestion. Doing nothing would maintain the current situation whereby resources are not prioritised to deal with these types of contraventions.

In the absence of effective enforcement, local authorities would not be able to realise the benefits that would be gained through traffic management measures to improve the punctuality and reliability of local bus services.

2. Make the Regulations

In the absence of action by the police, the only practical alternative is to give local authorities the necessary powers to tackle bus lane and certain moving traffic contraventions. The police retain the ability to issue fixed penalty notices in relation to bus lane and moving traffic offences and the offence of stopping of vehicles on or near pedestrian crossings, though the regulations prohibit a motorist being penalised twice (civilly and criminally) for the same offence. The police retain powers to tackle other motoring offences.

Local authorities are keen to consolidate and strengthen the basket of measures that are available to them under the 2004 Act to meet their traffic management duties and to put in place the measures that are needed to make bus services more attractive.

Under Part 6 of the 2004 Act, Welsh Ministers have powers to make regulations that govern the way bus lane and certain moving traffic contraventions are to be enforced by local authorities. All of the responses to the public consultation exercise welcomed the introduction of these regulations that would form part of a broader approach for improving bus services in Wales.

Costs and benefits

Part 6 of the 2004 Act requires local authorities to apply to the Welsh Ministers for consent to adopt the civil enforcement powers to tackle bus lane and certain moving traffic contraventions. The enforcement of bus lane and moving traffic

contraventions must be done on the basis of a record produced by an approved device. The approved device must include a camera and a recording system that meets the requirements set out in the nationally agreed technical standards. Such devices may currently be used to enforce parking contraventions.

The costs of putting in place the approved devices and any back office systems must be met by the income generated from Penalty Charge Notices issued by the enforcing local authority and the local authorities own resources. To prevent a situation arising where the issue of Penalty Charge Notices could be used to raise money, any surplus remaining after meeting the costs of administration must be used only to support transport measures specified in the Regulations.

As part of their submissions to the Welsh Ministers to be granted civil enforcement powers, local authorities are required to explain how all associated costs will be met on the introduction of civil enforcement powers. The Regulations allow local authorities to work together in partnership, in order to reduce costs and maximise efficiency and effectiveness.

Ultimately, bus passengers – and, to some extent, other motorists - will benefit from the better enforcement of traffic contraventions. Indirectly, local authorities will benefit because bus companies' costs will be lower, leading to less demand for subsidy. Bus passengers will benefit because there will be less upward pressure on fares as a result, because of faster, more reliable and more punctual journeys.

Improved and more attractive bus services will help to attract motorists out of their cars, leading to less direct congestion and improved air quality. This outcome should also assist in the improvement of bus patronage and, as a consequence, safeguard services for those members of the community without access to an alternative. Any increased patronage of local buses will generate additional income for bus companies, safeguarding jobs and allowing them to invest in improved services.

Empowering local authorities to tackle traffic congestion is pivotal to achieving the Welsh Government's economic, social and environmental objectives, and is consistent with the Welsh Government's prioritised National Transport Plan, published in December 2011.

Consultation

A consultation on these proposals was undertaken between 26 November 2009 and 5 February 2010. The organisations consulted were each of the 22 local authorities in Wales, the four police constabularies, the Traffic Penalty Tribunal, bodies representing taxi and private hire operators, and other stakeholders.

A summary of the responses to the consultation and the Welsh Government's responses to those has been published, and is provided as an annex. There was a broad and strong consensus in favour of the proposals.

Competition Assessment

Nothing in these proposals or the regulations will impact adversely on business, charities or the third sector.

Post implementation review

Each local authority that has adopted civil enforcement powers (i.e. for parking) or will adopt such powers (i.e. for bus lane or moving traffic contraventions) in the future is required to publish an annual report. The reports will detail the effectiveness of civil enforcement in terms of traffic journey times on key routes targeted by the authority for improvement, as well as identifying the income and expenditure resulting from the scheme. Details of expenditure must identify the transport schemes on which any surplus income has been spent. Such reports must also be made available to members of the public.

Analysis of responses to the consultation on the proposed civil enforcement of bus lane and moving traffic contraventions

Ten responses to the consultation document have been received and the main points raised are outlined below. Some respondents submitted a 'free standing' response and did not specifically answer the questions set out in the consultation document. In these circumstances every effort was made to link responses to specific questions where appropriate. Where this was not possible the essence of such responses was fully considered.

1. MOVING TRAFFIC CONTRAVENTIONS

Q1a Should the proposed Regulations provide for the civil enforcement of all the prohibitions and signs listed in the table at Regulation 9(4) of the Traffic Management Act 2004?

Nine responses (90%) agreed that the Regulations should continue to cover the prohibitions and signs listed in the table at Regulation 9(4) of Schedule 7 to the Traffic Management Act 2004. One expressed no opinion.

Response

The Welsh Assembly Government's Regulations will retain the existing provision that civil enforcement applies to all of the prohibitions and signs listed at regulation 9(4) of Schedule 7 to the Traffic Management Act 2004.

Q1b Are there other traffic prohibitions and signs that should be added to the list to provide for the ease of buses through traffic flows?

Five responses (50%) agreed that there is no need for further traffic prohibitions and signs to be added to the list. Two respondents (20%) thought that more should be included, specifically diagrams 958 (with-flow bus lane that pedal cycles and taxis may also use), 959 (with-flow bus lane that pedal cycles may also use) and 960 (contra-flow bus lane). These signs meet the criteria listed in paragraph 10(2) of Schedule 7. One other argued for the addition of signs to give buses right of way where two lanes merge to one.

Paragraph 10(1) of Schedule 7 to the TMA 2004 allows Welsh Ministers to make Regulations adding additional signs to the list in paragraph 9(4). For a traffic sign to be added to the list, in accordance with paragraph 10(2) of Schedule 7, it must:

- Regulate the movement of vehicles, not stationary vehicles;
- Be a sign to which section 36 of the Road Traffic Act 2988 applies; and
- Be a sign to which a failure to comply must not involve obligatory endorsement.

Response

Subject to the required consultation with appropriate Chiefs of Police and local authorities, the Welsh Assembly Government's Regulations will ensure that diagrams 958, 959 and 960 will be added to the list of traffic prohibitions and signs to ease the flow of buses. Local authorities may continue to apply to the Welsh Assembly Government for priority to be given to buses at specific locations (e.g. at traffic lights where two lanes merge into one).

2. SETTING CHARGES

Q2 Should the charge level applicable to bus lane and moving traffic contraventions be set at the higher penalty charge level in each band?

Nine respondents (90%) agreed that the charge level applicable to bus lane and moving traffic contraventions should be set at the higher penalty charge level.

Paragraph 8 of Schedule 9 to the TMA 2004 allows Welsh Ministers to set guidelines for the level of charges, and allows different guidelines to be given for different classes of contravention. The Order itself provides an annex containing a list of higher level contraventions, and that will need to be amended to include all the bus lane and moving traffic contraventions.

Response

The Welsh Assembly Government's Regulations will set the charge level applicable to bus lane and moving traffic contraventions at the higher penalty charge level in each band.

Q3 Should the charge level applicable to bus lane and moving traffic contraventions be the same as that for CPE contraventions?

Eight respondents (80%) agreed that the charge level applicable to bus lane and moving traffic contraventions should be the same as that for civil parking enforcement contraventions, thereby providing clarity and consistency.

Paragraph 8 of Schedule 9 to the TMA 2004 allows Welsh Ministers to set guidelines for the level of charges, and allows different guidelines to be given for different classes of contravention. The Order itself provides an annex containing a list of higher level contraventions, and that will need to be amended to include all the bus lane and moving traffic contraventions.

Response

The Welsh Assembly Government's Regulations will require that the charge level applicable to bus lane and moving traffic contraventions will be the same as that for Civil parking Enforcement contraventions.

3. ENFORCEMENT ACTIVITIES

Q4 Do you agree that Penalty Charge Notices for bus lane and moving traffic contraventions should only be issued on the basis of evidence from a camera and associated recording equipment?

Eight respondents (80%) agreed that Penalty Charge Notices for bus lane and moving traffic contraventions should only be issued on the basis of evidence from a camera and associated recording equipment. This would ensure that motorists are presented with clear evidence and help minimise unfounded challenges and appeals. One respondent (10%) argued that action against alleged contraventions should also be permitted on the basis of witness statements.

Response

In accordance with section 72(4)(a) of the TMA 2004, the Welsh Assembly Government's regulations will stipulate that PCNs for bus lane and moving traffic contraventions can only be issued on the basis of evidence from a camera and associated recording equipment.

Q5 Provided that cameras on board buses meet the requirements of Welsh Ministers, and are "approved devices", should they be used to obtain evidence of bus lane contraventions and support the issue of PCNs?

Eight respondents (80%) agreed that cameras on board buses that meet the requirements of Welsh Ministers and are "approved devices" should be used to obtain evidence of contraventions.

Response

The Approved Devices Order contains technical specifications for approved devices. This includes cameras that are not mounted in one place but are fixed to vehicles. Where the device does not occupy a fixed location, it must record the location from which it is being operated.

The Welsh Assembly Government's Regulations will stipulate that cameras on board buses that are "approved devices" may be used to obtain evidence of bus lane contraventions in support of the issue of PCNs.

Q6 Do you agree that where a bus lane and moving traffic contravention happen at the same time, they should be treated separately and two PCNs issued? If not, which do you believe should take precedence?

Five respondents (50%) agreed that where a bus lane and moving traffic contravention happen at the same time, they should be treated separately and two Penalty Charge Notices issued. Four (40%) did not agree.

Response

There is nothing in the TMA 2004 that prevents the issuing of two separate PCNs where two contraventions have been committed, even if during the same incident. The Welsh Assembly Government's Regulations will therefore recommend that, where bus lane and moving traffic contraventions happen at the same time, they are treated separately and two PCNs are issued.

4. COLLECTING PENALTY CHARGES

Q7 Where vehicle owners persistently fail to pay PCNs for bus lane or moving traffic conventions, what action by local authorities do you think would be most effective to deter evasion?

Respondents suggested variously that vehicles should be seized (to prevent a recurrence of the contravention until the payment has been made); that drivers should have penalty points put on their licences; or that certificated bailiffs should be employed.

Response

There are already mechanisms in place within the existing Enforcement and Adjudication Regulations that allow the enforcement of unpaid PCNs under a county court order. The Lord Chancellor also has power to create criminal offences where PCNs are not paid. Section 19 of the TMA 2004 also provides Welsh Ministers with power to immobilise vehicles where there are outstanding unpaid charges. In addition, the Welsh Assembly Government's Regulations will encourage local authorities to consider a wide range of mechanisms to deter motorists from evading paying PCN penalties.

5. ISSUING THE PENALTY CHARGE NOTICE

Q8 Do you agree that all Penalty Charge Notices must be served by first class post within 14 days of the contravention?

Six respondents (60%) agreed that Penalty Charge Notices should be served by first class post within 14 days of the contravention to ensure that any necessary action is prompt. This may be especially important if the PCN is sent to a hiring or leasing company that must then contact the driver. One respondent argued that the Penalty Charge Notice should be served by first class post within 21 days of the contravention to accommodate absences such as holiday periods.

Response

The existing Enforcement and Adjudication Regulations already specify a period of 28 days for the issue of a PCN. The Welsh Assembly Government's Regulations will stipulate that in future all PCNs must be served by first class post within 14 days of a contravention.

6. CHARGE CERTIFICATE

Q9 Should the date that the Penalty Charge Notice was "served" be the date on which it was issued or the date on which it was received by the motorist deemed to have committed the contravention?

Seven respondents (70%) argued that the date that a Penalty Charge is served should be the date on which it was issued. Two respondents (20%) suggested that the date should be two days after it was sent by first class post, to allow for it to be delivered.

Response

The existing Enforcement and Adjudication Regulations already specify that service of a notice or charge certificate contained in a letter sent by first class post which has been properly addressed, pre-paid and posted will be taken to have been effected on the second day after the day of posting. The Welsh Assembly Government's Regulations will retain this criterion.

7. REPRESENTATIONS

Q10 Should local authorities retain responsibility for handling representations from motorists who are deemed to have committed a bus lane or moving traffic contravention, or would it be acceptable for such responsibility to be contracted-out?

Three respondents (30%) agreed that local authorities should retain responsibility for handling representations from motorists who are deemed to have committed a bus lane or moving traffic contravention. Apart from consistency, it was made clear that handling representations is a quasi-judicial function. Also, an authority is able to undertake the handling of representations on behalf of other authorities, thereby offering efficiencies of scale. Five respondents (50%) thought that this should be a matter for individual local authorities to determine.

Response

The Welsh Assembly Government's Regulations will stipulate that local authorities must be responsible for handling representations from motorists who are deemed to have committed a bus lane or moving traffic contravention, and not contracted-out. This will ensure the retention of a direct, transparent link between enforcement and handling of representations.

Q11 Should all decision notices following consideration of representations be issued within 21 days of receipt of the contraventions?

Six respondents (60%) agreed that all decision notices following the consideration of representations should be issued within 21 days of receipt of the contravention. One respondent argued that while 21 days should be the target, a period of 56 days should be permitted.

Response

The existing Representations and Appeals Regulations stipulate a period of 56 days beginning with the date on which representations were served on the local authority, for it to serve notice of its decision. The Welsh Assembly Government's new Regulations will nevertheless stipulate that all future decision notices must be issued within 21 days of receipt of a representation.

Respondents to the consultation:

South East Wales Transport Alliance (SEWTA)
Association of Transport Co-ordinating Officers
City and County of Cardiff Council
Bridgend County Borough Council
Neath Port Talbot County Borough Council
The Traffic Penalty Tribunal Adjudicators
Confederation of Passenger Transport
Flintshire County Council
Carmarthenshire County Council
One Voice Wales