

**To:** Ruth Kelly MP

**From:**

TM1

**Location:**

2/06

GMH

**Tel:**

Ext

**Date:**

23<sup>rd</sup> July 2007

cc:

Rosie Winterton

Jim Fitzpatrick

Tom Harris

Robert Devereux

Stephen Hickey

Tricia Hayes

PS/Secretary of State

PS/Rosie Winterton

Special Advisers

## Part 6 of Traffic Management Act (TMA) 2004: Regulation 10(c) of the General Regulations

### Issue

1. Mrs Dunwoody has written to you about a provision in the General Regulations of Part 6 of the TMA covering what are known as "drive aways".

**Formatted:** Indent: Left: 0 pt, Hanging: 21.25 pt, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 pt + Tab after: 39 pt + Indent at: 39 pt, Tabs: Not at 39 pt

### Timing

2. We are laying the draft Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 (which are subject to the affirmative procedure) on 24<sup>th</sup> July 2007. The General Regulations, and 4 other SIs subject to the negative procedure will be made available to Parliament at the same time because of cross references. All the regulations will be made in the Autumn but local authorities need to see them now to prepare for the changes.

**Formatted:** Indent: Left: 0 pt, Hanging: 21.3 pt, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 pt + Tab after: 39 pt + Indent at: 39 pt, Tabs: Not at 39 pt

### Recommendations

3. That you note the issues in this submission, and send the draft letter (attached) to Mrs Dunwoody.

**Formatted:** Indent: Left: 0 pt, Hanging: 21.3 pt, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 pt + Tab after: 39 pt + Indent at: 39 pt, Tabs: Not at 39 pt

### Background

4. A "drive away" is when a motorist tries to avoid service of a parking penalty charge notice by driving away from a civil enforcement officer (CEO, new name for a parking attendant) before a ticket is put on the windscreen.
5. When we went to consultation last year, Regulation 10 stated that:

**Formatted:** Indent: Left: 0 pt, Hanging: 21.3 pt, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 pt + Tab after: 39 pt + Indent at: 39 pt, Tabs: Not at 39 pt

### Penalty charge notices — service by post

(10) An enforcement authority may serve a penalty charge notice by post where—

- a) on the basis of a record produced by an approved device, the authority has reason to believe that a penalty charge is payable with respect to a vehicle which is stationary in a civil enforcement area;
- b) a civil enforcement officer attempted to serve a penalty charge notice in accordance with regulation 9 but was prevented from doing so by some person; or

6. We were of the view that Regulation 10 (b) covered more than just cases of physical violence and that a penalty charge notice (PCN) could be sent by post when the person tried to avoid the penalty by driving away. One of the objectives of the TMA and its regulations is to introduce a consistent enforcement system across England and Regulation 10 (b) was modelled on the provisions introduced in London local legislation in 2000. All the enforcement authorities in London thought "drive aways" were covered but a recent High Court judgement by Calvert-Smith J (*Transport for London v Parking Adjudicator and Ademolakewe*) was that they are not.

Formatted: Indent: Left: 0 pt, Hanging: 21.3 pt, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 pt + Tab after: 39 pt + Indent at: 39 pt, Tabs: Not at 39 pt

7. The High Court Judge took this view because the legislation refers to "serving" the PCN and that this does not take place until the parking attendant has taken it from his/her hand held computer or ticket pad. The Judge distinguished five stages in a typical drive-away case—

- (a) the parking attendant observes a contravention going on;
- (b) he takes notes of what has observed or is observing;
- (c) he begins to prepare a penalty charge notice by inputting the requisite information into his hand-held computer or writing it out on the appropriate form;
- (d) he finishes inputting the details or writing out the ticket and then tears the tickets from the machine or the pad and approaches the vehicle with a view to fixing it on the windscreen or handing it over;
- (e) he then attempts to serve it by fixing it to the vehicle or handing it to the person appearing to him to be in charge.

8. The question is what stage does the matter need to have reached before a penalty charge notice can be served by post. The Judge was of the view that observing a contravention (stage (a) above) is not enough because at that stage the civil enforcement officer may not have decided whether to issue a penalty charge notice. The CEO may want to see more before making up his mind whether a contravention is taking place or whether, for example, the vehicle is being loaded or unloaded. The Judge found that stage (b) (the taking of notes) was merely an act preparatory to the issue of a ticket. Again, it could be said that no settled intention on the part of the civil enforcement officer to issue a ticket had been formed. The Judge found that the attempt must start either when the parking attendant begins to put the details into the computer in order to generate the ticket or to write the ticket (stage (c)), or, when he has removed the completed ticket from the computer or the pad and starts to approach the driver or the windscreen (stage (d)). He found with **some reluctance** that under the extant legislation it began at stage (d).

Formatted: Indent: Left: 0 pt, Hanging: 21.3 pt, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 pt + Tab after: 39 pt + Indent at: 39 pt, Tabs: Not at 39 pt

- | 9. TfL wrote to Rosie Winterton's predecessor, Gillian Merron, on 26<sup>th</sup> April 2007 (see attached letter) following the judgment of Calvert-Smith J. Gillian Merron responded (again, this is attached) saying she was considering amendments that could be made to the wording of the draft regulations to cover such a situation.
- | 10. The letter from TfL highlighted the inconsistencies that drive away cases present. A vehicle keeper could stop in contravention, be captured on camera, and receive a PCN through the post a few days later, whereas in an identical situation the driver can be informed by a Civil Enforcement Officer that they are being issued with a PCN and yet unless the driver waits for the PCN to be issued, they can drive away without penalty.
- | 11. There is also a road safety concern if a driver thinks s/he can avoid a parking ticket by rushing away before the CEO has been able to place the ticket on the vehicle. Therefore, we adjusted Regulation 10 of the General Regulations to cover drive aways by proposing that in these circumstances the PCN should be sent by post. This new draft says that a PCN can be sent by post when a CEO has begun to prepare it with a view to serving it, but the vehicle was driven away before the CEO had finished preparing it. The Department's draft Operational Guidance makes clear to authorities that the provision may only be used when the CEO has started to write the ticket and would otherwise have to be written off. It also advises authorities that in many circumstances it will be more appropriate to ask the driver to bring him/her self within the law rather than issue a ticket.
- | 12. This adjustment was highlighted to Gillian Merron in a submission (sent on 20<sup>th</sup> June from Ben Still to Gillian Merron ) before we went for DA clearance on the regulations and Regulation 10 now reads:

(10) An enforcement authority may serve a penalty charge notice by post where—

- a) on the basis of a record produced by an approved device, the authority has reason to believe that a penalty charge is payable with respect to a vehicle which is stationary in a civil enforcement area;
- b) a civil enforcement officer attempted to serve a penalty charge notice in accordance with regulation 9 but was prevented from doing so by some person; or
- c) a civil enforcement officer had begun to prepare a penalty charge notice with a view to serving it under regulation 9, but the vehicle was driven away from the place in which it was stationary before the civil enforcement officer had finished preparing it or had served it in accordance with regulation 9,