

The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 Debate in Commons

Defensive Briefing:

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Specific to these Regulations:

Accusation 1: LAs don't take seriously challenges to PCNs

Lines to take:

- It is more expensive for a LA to deal with an appeal to an adjudicator than to deal with a challenge that has been made to the LA itself.
- So there is a strong financial incentive on LAs to deal fairly and correctly with challenges.
- The vast majority of challenges are dealt with by the LA.

Accusation 2: LAs don't bother to refute appeals going to the adjudicator

Lines to take:

- Members of the public often give better evidence to the adjudicators than they do to the LA.

Procedural Impropriety

Lines to take

- Adjudicators will have the power to consider cases where procedural irregularity has taken place - for example where a charge certificate has been issued before an appeal has been decided.
- ‘PROCEDURAL IMPROPRIETY’ is defined in the draft Representations and Appeals Regulations as a failure by the enforcement authority to observe the statutory requirements for imposing or recovering the penalty charge or other sum.
- We believe that this provision will help to impress on local authorities that parking enforcement is a legal process and that they must follow the procedures set out in legislation.

Background

The definition is in regulation 4(5) and reads—

- (5) In these Regulations “procedural impropriety” means a failure by the enforcement authority to observe any requirement imposed on it by the 2004 Act, by the General Regulations or by these Regulations in relation to the imposition or recovery of a penalty charge or other sum and includes in particular—
- (a) the taking of any step, whether or not involving the service of any document, otherwise than—
 - (i) in accordance with the conditions subject to which; or
 - (ii) at the time or during the period when, it is authorised or required by the General Regulations or these Regulations to be taken; and
 - (b) in a case where an enforcement authority is seeking to recover an unpaid charge, the purported service of a charge certificate under regulation 21 of the General Regulations before the

enforcement authority is authorised to serve it by those Regulations.

Mitigating Circumstances

Accusation: LA don't seriously consider mitigating circumstances. The adjudicator should have the power to do this.

Lines to take

- An Adjudicator will now have the power to refer a case back to the enforcement authority for reconsideration where a contravention has taken place but in mitigating circumstances.
- The Department's Statutory Guidance makes clear that such cases should be referenced to the LAs Chief Executive.
- The enforcement authority must then reconsider the case and come to a decision within 35 days. If the authority does not reach a decision within this period, it is deemed to have accepted the adjudicator's recommendation.
- Where an enforcement authority does not accept the recommendation it must notify the adjudicator and the appellant of the reasons for its decision.
- The power to make provisions along these lines was introduced into the TMA at the specific request of Parliament.
- Government's policy is that the function of the adjudicator is to determine whether any of the statutory grounds of appeal apply and to allow appeals only where s/he makes a finding to that effect.
- Local authorities have wide discretion to cancel a PCN. To give this power to the adjudicator would strongly discourage LAs from deciding cases involving mitigating circumstances. It would also

increase substantially the number of PCNs that motorists take to appeal because the appeal is free to the motorist (the LA pays) and they will hope to put a hard luck story to the adjudicator that the local authority, with all the relevant local knowledge such as detailed location information, previous contact with the appellant, and information such as the number and nature of parking permits in the household, has rejected.

- Judges who have looked at cases involving mitigation have taken the view that decisions on cases such as these should be based on policies made and published by individual local authorities, but that those are not used rigidly or formulaically. Adjudicators are not in the position to make policies, let alone follow them consistently - making policies is the responsibility of elected councillors.
- A High Court challenge to an adjudication can only be made on a point of law and very few cases have been to the High Court since this system was introduced. If adjudicators can use discretion there will be a substantial increase in the number of cases going to the High Court because their decision will be seen as random rather than based on a balance of probabilities as to whether or not a contravention took place. This is not what parking enforcement should be about.
- If each individual adjudicator had a discretion to absolve vehicle owners from the obligation to pay a lawfully imposed penalty charge, the appeal process could be reduced to a lottery, with subsequent increases in high court challenges. Instead we are proposing that only the enforcement authorities should have the power to write off a penalty charge and that they should exercise this discretion in accordance with a carefully considered and published policy.

High profile Issues

Adjudication Committees (more than one outside London)

Lines to Take

- NPAS (National Parking Adjudication Service), in their response to the consultation, suggested that the regulations should change the provisions in the 1991 Act that give local authorities the power, should they wish to use it, to set up more than one adjudication service outside London.
- The Government does not wish to take powers away from LAs without consultation.
- We need to consider the potential for a large increase in case load in the future due to congestion charging or road pricing.

Background

The Road Traffic Act 1991 allowed for the possibility of more than one joint adjudication committee outside London. We have retained this option in the General Regulations on parking. NPAS (the adjudication committee outside London) feel that this is not justified for 3 main reasons:

- i) that it has the potential to cause confusion amongst local authorities and motorists [NB it seems that few LAs realise that they have the power to set an alternative adjudication service];
- ii) that the integrity of smaller bodies will be open to challenge; and
- iii) the increase in workload envisaged when the 1991 Act was drafted has not materialised.

NPAS has asked that we use the bus lane / moving traffic regs to disallow this possibility.

We did not consult on this option in the parking consultation, since it was simply carried over from existing legislation. However the only subsequently dissenting voices have been from NPAS itself, and the current chair of the NPAS Advisory Board. We might do so further in the context of the moving traffic working group / consultation, but would need to consider impact for parking regs.

We also need to consider the potential for a large increase in case load due to congestion charging.

- NPAS voiced concern at its low profile - would it not be more logical to combine NPAS and PATAS?
- Seems unlikely that an LA would want to establish a rival NPAS - has not been done so far.
- Ministers do not wish to take power away from LAs without consultation but most LAs unaware they have it - consulting may alert disgruntled LAs to the fact that they have it.

Delays to implementation

Accusation: DfT has taken too long to get these regulations ready for consideration.

Lines to Take

- The regulations have to balance the needs of all our stakeholders. We have worked hard with local authorities, adjudicators, police, motoring groups and other government departments to ensure the regulations are robust and workable. This has taken longer than expected, but we did not want to risk putting in place regulations that would not stand the test of time.

[If asked why there is so long before they come into force: Local Authorities have asked for this time to prepare their IT systems and train their staff for the changes]

DfT delay giving LAs approval to enforce.

Accusation: DfT delay giving LAs approval to enforce

Lines to take:

- The SoS needs to be sure that the LA will enforce firmly but fairly and that get from LA confirmation that all traffic regulation orders and signs and lines are in order.

Differential Charging

Accusation; The Penalty Charge levels you have set will mean that many LAs will no longer be able to do enforcement.

Accusation: Penalty Charge levels will rocket with Differential Charging.

Lines to Take

- Differential Charging was strongly supported by the public at consultation.
- It was introduced in London in July 2007 and has been very successful in getting across to the public the message
- The principle is that there will be two levels of penalty charge depending on the seriousness of the contravention.
- Outside London the level of penalty charges have not gone up since 2001 and concern has been expressed that current levels are no longer an effective deterrent to breaking parking regulations
- Penalty charges for parking where parking is never permitted go up, but others go down.
- There should be no change at the national level in income from penalty charges.
- The Government believes differential penalties are fair to the motorist and demonstrate that we are tough on the traffic management side of parking enforcement.

- They also show that parking enforcement is about keeping traffic moving not about raising revenue.
- However, I understand that there is some concern that parking income may reduce. If any of the local authorities find this is the case, I would ask them to send robust evidence that this has had an adverse impact on their income which I will consider.

Background

The principle of differential charging is that there would be two levels of penalty charge depending on the gravity of the contravention (e.g. £X for overstaying where parking is permitted but £1½ X for parking where it is never permitted).

The public were particularly in favour of differential parking penalties and the Government believes that it is fair to the motorist and demonstrates that we are tough on the traffic management side of parking enforcement. It also shows that parking enforcement is about keeping traffic moving safely and not about raising revenue.

London (where around 70% of all English PCNs are issued) have recently introduced this system, and it would therefore be in the interests of consistency that this system applied throughout the country.

There is some concern outside London that proportionately more PCNs are issued for parking where parking is permitted (the lower level charges) than in London. Therefore, parking income outside London may reduce. We have asked LAs who have raised this to send robust evidence that this has had an adverse impact on their income for Minister's to consider.

Drive Aways

Accusation: Parking attendants won't bother to serve PCNs on the car now that they can serve them by post.

Lines to Take

- The Government's policy intention was always to cover these cases. The new regulations were amended following the result in a high court case in March this year to make this clear.
- The Government is concerned about the potential road safety implications that may occur without these provisions.
- No LA is FORCED to use this provision - it is a power they may use if they wish.
- I know that concern has been expressed by some MPs that some local authorities may use this power instead of placing PCNs on the vehicle. I think that this concern is not merited. The provisions have been used in London for some years and no problems of this kind have been brought to my attention. Furthermore, it will not just be a case of putting the PCN that would have been served at the time into an envelope. A postal PCN contains different information and will have to be served by the back office after the keeper details have been determined from DVLA. This is not an easy option for the enforcement authority.

Background

From March 2008 civil enforcement authorities will be able to send PCNs by post when the vehicle is captured on camera, or when a person tries to avoid a PCN by threatening the CEO, or by driving away before the CEO can put the ticket on the windscreen or give it to the driver.

Without this change there is an inconsistency in the treatment of parking contraventions detected by cameras and those recorded by a CEO. A contravention captured on camera could be enforced, whereas in an identical situation recorded by a CEO the driver could drive away without penalty. This would be unfair. Websites and books encourage drivers to do this and the Government is seriously concerned about the potential danger if a driver has an incentive to leave the place where s/he is parked hastily, because a CEO is standing beside the vehicle writing a ticket.

The Department's Guidance makes clear to authorities that the provision may only be used when the CEO has started to write the ticket and it 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. If the authority serves a PCN when the CEO was not, in fact, in the process of issuing the PCN when the drive away took place, the driver may make representations and, if necessary, a subsequent appeal on the basis that a procedural impropriety took place. Furthermore, the authority has to show that the contravention took place whether the PCN is served by post, placed on the windscreen of the vehicle or given to the person who appears to be in charge of the vehicle.

Funding for Adjudicators

Lines to Take

- The adjudicators are funded by the member Local Authorities who have parking enforcement powers.
- The LA contribution is based on the number of PCNs they issue.
- This not only ensures the adjudicators have a broad and stable financial base, but also acts as a disincentive to LAs to issue unnecessary PCNs.

Incentives for issuing PCNs

Accusation: Parking Attendants are incentivised to issue PCNs

Accusation: The increase in the number of PCNs issued shows that LAs are just doing this to make money

Lines to take

- Latest Home Office figures show that the number of PCNs issued dropped between 2004 and 2005.
- Government has always criticised the use of contracts that base incentives on the number of PCNs issued. However, there is no evidence of this taking place.
- The more PCNs issued, the more the LA has to pay to the adjudicator which acts as a disincentive.

Background

Another perennial criticism by the press is that PAs are paid bonuses based on the number of PCNs they issue. We have never seen any evidence of this.

Income from parking

Accusation: LAs only enforce to make money

Lines to take

- Any surplus parking revenue can only be used for specific transport related purposes.
- Most parking revenue is from parking charges, not from parking penalty charges (fines)
- The Statutory Guidance says that local authorities should use parking enforcement policy to keep traffic flowing and improve road safety.
- DfT regulations require on-street revenue to be ring fenced for parking, passenger transport, environmental and road improvement projects and, in London only, road maintenance.
- Total parking income has increased because:
 - the number of authorities enforcing their parking regulations has increased: and
 - more authorities are charging for parking in car parks and on the street

Background

There is no evidence that there is a widespread problem of LAs using parking enforcement to raise additional revenue.

Increase in Number of PCNs

Lines to take

- The main purpose of a LA taking over parking enforcement from the police is so that parking restrictions are enforced throughout the area and at all times that restrictions apply.
- This means that as more authorities take on parking enforcement, more PCNs are issued in the short term.
- As drivers realise that restrictions will be enforced they should modify their behaviour.

Background

The number of PCNs served dropped each year from 1999 to 2002 but since then has increased each year both inside London and outside London. We do not have a plausible explanation for this.

Parking Attendants breaking the rules

Accusation: Parking Attendants breaking the rules themselves

Accusation: LAs don't treat parking enforcement as a legal process

Line to take

- LAs and their employees are subject to the law just like anyone else.
- Checks and balances in the system prevent abuse of power
- Adjudications will have with these regulations, the specific power to consider appeals against procedural impropriety by the LA.

Persistent evaders and foreign registered vehicles (and the 2nd London Local Authorities and TfL Bill – Provisions on Clamping and Removal of the Vehicles of Persistent Evaders)

Line to take

- Provisions covering authorities outside London were removed from the regulations because of concerns about their effectiveness and to enable a tougher regime to be tested in London.
- We understand that persistent evasion is primarily a problem in London. We appreciate what the London joint bill provisions on persistent evaders are trying to achieve – getting tougher on persistent evaders is a priority for the Government.
- After a trial in London Government will consider whether to implement these persistent evader provisions in the rest of the country with new primary legislation

Background

The issue of persistent evaders is difficult. Our Regulations initially provided that a vehicle with 3 or more outstanding and unchallenged penalty charge notices, which had been clamped or removed for being illegally parked, could only be released if all outstanding PCNs had been paid. Ministers agreed that we change this so that local authorities will not be able to recover the money for all past PCNs from persistent evaders that are clamped or removed. This was in response to the 2nd London Local Authorities and Transport for London Bill, which proposes a system for tackling persistent evaders in London for which there is no primary legislative power in the rest of the country, in that it would enable the vehicles of persistent evaders to be clamped or removed even though they were legally parked. After a trial in London Government will consider whether to implement the provisions in the rest of the country with new primary legislation.

Timetable

Lines to take

- The Regulations will come into force at the end of March 2008 to give authorities time to change their systems and train their staff.
- LAs received in July 2007 the regulations placed before Parliament so they could plan the introduction of CPE.

Wheel clamping and vehicle removal

Accusation: LAs clamp irresponsibly

Lines to take

- Government's guidance makes clear that it does not see a role for wheel clamping by local authorities in parking enforcement unless the driver has a history of ignoring PCNs.
- The Regulations will forbid clamping when a driver has over-stayed where parking is permitted until 30 minutes after the PCN has been issued, unless the driver is a persistent evader in which case clamping can happen after 15 minutes.

Accusation: What is DfT doing to stop clamping in private car parks?

- The Private Security Industry Act 2001 requires individual vehicle immobilisers to be licensed by the Security Industry Authority (SIA) and wear their licence when carrying out their professional activities of attaching or removing a clamp, blocking in, towing away or charging a release fee. It is for the police to take action against those who do not obey the law.
- The rights of the land owner and the vehicle owner need to be balanced. This is done in DBERR's consumer protection legislation. Trading standards officers have the power to take action.

Background

Few authorities outside London use clamping powers. But its use is prevalent on private land and we get a lot of correspondence about this. Home office is responsible for regulations on clamping on private land and DTI consumer protection legislation governs terms and conditions. They are considering some changes.

General Briefing

Disabled parking

Lines to take

- The Blue Badge scheme is a valuable facility and we support the view that misuse of the scheme should be tackled.
- From 15 October 2007, an anti-fraud hologram is being added to the badge to help prevent forgeries, along with a dedicated telephone number to allow members of the public to report stolen badges.
- As part of a current strategic review of the scheme we are considering future eligibility for the Scheme, the nature of the concessions provided how the Scheme should be administered and what can be done to harness new technologies to prevent perceived abuse.
- The review will report to ministers shortly and a reform strategy will be published by April 2008.

Provision for blue badge holders

- The Department has taken steps to ensure local authorities and other providers are aware of the needs of disabled people by providing extensive advice through:
 - Traffic Advisory leaflet 5/95; and
 - Inclusive Mobility - A guide on best practice on the access needs of disabled people

Foreign Drivers

Accusation: DfT is doing nothing to have effective enforcement against foreign registered vehicles

Line to take

- Government is aware of the growing importance of establishing a robust cross border data sharing process for criminal and administrative matters. The Agency is proactively engaging with other EU authorities to address this matter
- Government aims to establish processes to improve recovery of unpaid fines and PCNs from foreign drivers
- DfT are developing an overall strategic policy on cross border enforcement.

Background

Many foreign registered vehicles park with impunity because co-operation between national authorities is ineffective. DVLA has an advisory role on the SPARKES and EUROSPARKES projects, aiming to establish processes for recovery of fines issued to persistent offenders where the vehicle is registered outside of the UK. DVLA is also a member of the Association of European Registration Authorities (EReg), and is at the forefront of taking forward a work plan for 2007.

Licensing, Roadworthiness & Insurance Division in DfT are co-ordinating an overall strategic policy on cross border enforcement.

LA's forced to take on powers?

Accusation: What are DfT going to do to force all LAs to take on this power as recommended by the Transport Committee?

Line to take

- Civil Parking Enforcement powers may not be suitable for all local authorities to take on just yet, although we encourage them to do so. Local authorities are best placed to choose whether and when CPE powers would bring benefits to the area.
- However, if the police service unilaterally withdraw from enforcing parking and the local authority was unwilling to take the responsibility, we would need to consider using this power.

Background

Section 75 of the Traffic Management Act 2004 enables the Secretary of State to compel local authorities to apply for civil enforcement powers but Ministers do not at the moment plan to use those powers.

Parking of commercial vehicles in residential areas

Lines to take

- Restrictions are a matter for the local authority

Background

- In areas where such parking is a problem the local authority can use their wide and flexible powers to control parking contained in the Road Traffic Regulation Act 1984.

Pavement parking

Accusation: LAs outside London should have power to enforce parking on the pavement like LAs inside London

Lines to take

- Enforcement of pavement parking is done by the police or the local authority as appropriate
- Where the local authority is responsible, enforcement is effective when combined with publicity and, where there is a particular problem, physical measures.
- Because a local authority outside London can introduce a ban on pavement parking using a Traffic Regulation Order it was not considered appropriate to introduce a nationwide ban into the TMA, which does not take account of local circumstances.
- The ban on pavement parking in London was introduced by local, not national, legislation and so is a matter for the local authorities.

Background

There is a general ban in London under local legislation. It would be difficult for an authority outside London to introduce a general ban because it would be unenforceable unless there were adequate traffic signs to indicate it. The London ban does not have to be signed except where parking is permitted.

Pedicabs

Line to Take

- TMA covers “vehicles” so where a robust licensing or registration system is in place that enables the licensing or registration authority to transfer the keeper details of the pedicab to the enforcement authority, TMA powers may be used.
- Getting a robust licensing or registration system in place is a matter for the local authority.

Persistent evader database

Line to take

- Our consultation on parking regulations asked whether the London Councils database might be used as a national database. There was support for this.
- Persistent evader provisions will work best with a database and so the consultation proposed that the London Councils make their database available to all English Councils.
- There would be no pressure on Councils to use this database - it will be up to them.

Background

There was support for the London Councils extending their database nationwide; however there were a number of important concerns. Firstly the problem of persistent evaders is one that is particularly focussed on heavily urbanised areas (notably London). Many small local authorities were not interested in contributing to a national database. There were suggestions though of opt-in regional databases that would allow local authorities who wished to be involved to take part.

Regulation of private car parks

Lines to take

- Parking enforcement on land that is in private ownership (other than public car parks regulated under the Road Traffic Regulation Act 1984) is not within the scope of Part 6 of the TMA, nor within the remit of the SoS for transport.

Background

The Department's legislation covers parking on the street, in car parks that are owned by local authorities and in car parks owned by the private sector that are regulated by an order made under Section 35 of the Road Traffic Regulation Act 1984. The Consumer Protection Act 1987 provides certain legal safeguards for consumers.

Training

Lines to take

- The Department places great emphasis on the need for all staff involved with the civil enforcement of parking regulations to receive a high quality of training.
- If needed: It is not appropriate for the regulations to include information on training for staff, but this is included in the Guidance

Situation in Scotland, Wales and Northern Ireland

Lines to take

- Wales are introducing similar regulations under the Traffic Management Act 2004 which applies to Wales as well as England.
- Scotland operate decriminalised parking enforcement under the Road Traffic Act 1991 but they do not have anything comparable to the Traffic Management Act 2004 and are not at present planning to introduce any new primary powers.
- Northern Ireland operate decriminalised parking enforcement, operated by the Northern Ireland Central Government for all the Northern Ireland local authorities. They do not have anything comparable to the Traffic Management Act 2004 and are not at present planning to introduce any new primary powers