

**To:** 1) Rosie Winterton  
2) Ruth Kelly

**From:** [REDACTED]  
**Location:** TM8  
2/06  
GMH  
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**Date:** 19th September 2007

cc:

Jim Fitzpatrick  
Tom Harris  
Robert Devereux  
Stephen Hickey  
Tricia Hayes

[REDACTED]  
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PS/Secretary of State  
[REDACTED]  
PS/Rosie Winterton  
[REDACTED]  
Special Advisers

**MSU RK/020934/07 - Letter from Gwyneth Dunwoody about Regulations to implement Part 6 of Traffic Management Act 2004 (TMA)**

**Issue**

1. Mrs Dunwoody has written to the Secretary of State about provisions in the General Regulations covering "drive aways" and differential parking penalties. Mrs Dunwoody wrote on 23 July about "drive aways".

**Timing**

2. We laid 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 have been made available to Parliament because of cross references. All the regulations will be made in the autumn.

**Recommendations**

3. That you note the issues and send the attached draft letter (first attachment) to Mrs Dunwoody.

**Background**

"Drive aways"

4. A "drive away" is when a motorist avoids a parking penalty charge notice by driving away before a parking attendant can put the ticket on the windscreen or give it to the driver. Mrs Dunwoody wrote to the Secretary of State on 23<sup>rd</sup> July (second attachment) about this and a response was sent on 27 July (third attachment). The associated submission (fourth attachment) explains the matter.
5. It is true that this was not consulted on in July 2005. The same is true of a number of other issues - the consultation took views when we were uncertain about the way forward. The July 2005 consultation replicated provisions introduced in London by the London Local Authorities Act 2000, which enable authorities to

send a PCN by post if the contravention has been observed by a parking attendant who has been prevented from placing the PCN on the vehicle or giving it to the person who appears to be in charge of the vehicle. Since this provision was introduced it had been understood by the local authorities that "prevented" included driving away and many PCNs have been issued in London on this basis. It appears that the parking adjudicators did not share this view, although they failed to tell us this when discussing the provisions with the working group set up to advise the Department on the parking regulations and guidance. When the consultation took place DfT shared the view of the LAs that "prevented" included driving away. In April this year the High Court (*Transport for London v Parking Adjudicator and Ademolake*) took the view that it did not.

6. The regulations were amended to reflect the Department's policy intention.

#### Differential parking penalties

7. The consultation sought views on the introduction of penalty charges that differed depending on the severity of the contravention, with overstaying where parking is permitted receiving a lower PCN than parking where parking is never permitted (e.g. on a double yellow line). The responses (particularly from non-LA respondents) indicated support for the introduction of differential penalty charges. London (where around 70% of all English PCNs are issued) carried out a more detailed consultation on this issue. Their results showed strong support from LAs and non-LAs and differential charging was introduced in London on July 1<sup>st</sup> 2007. One of the objectives of the TMA 2004 was to have the same civil parking enforcement regime in London and the rest of England and it would confuse motorists if differential penalties applied only in London.
8. Mrs Dunwoody seems to have received a slightly garbled version of the concerns a couple of LAs have raised about differential penalties following the placing of the regulations before the House. Some did not realise that the Secretary of State would determine which contraventions would incur the higher level and which the lower level. We are trying to make parking enforcement clearer and fairer and it could baffle drivers if the same parking error incurred a higher level penalty in one town and a lower level penalty in another. Other LAs have said that their total parking income will reduce, because a larger proportion of contraventions outside London involve overstaying where parking is permitted (we based our calculations on what had been done in London). We have asked the authorities that have raised this matter to see how it works out and to give us robust evidence if their concerns are realised, so Ministers can consider whether PCN levels outside London should be increased. This seemed to satisfy them. PCN levels outside London were last raised in 2001 and an increase would not be unreasonable. We had expected LAs to raise this in the consultation but none did. The increase could be made now but I do not recommend this course of action. It would dominate press coverage of a wide range of largely positive measures. If the evidence from LAs is persuasive an increase in about a year would show that we have monitored the performance of the new regulations and made amendment where necessary.