

To: Lord Bassam

From:

TM Division

Location: 2/06
GMH

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Date: 17th October 2007

Lord Bassam

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Affirmative Regulations: Traffic Management Act (TMA) 2004: Part 6: The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007

GRAND COMMITTEE DEBATE ON 23 OCTOBER 2007 AT 3.30 PM

ISSUE

1. Rosie Winterton has previously approved The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 ("The Representation and Appeals Regulations") which were laid on 24 July. These regulations must be approved by both Houses of Parliament. This note provides some background ahead of the Grand Committee.

TIMING

2. We understand that the parking regulations will be the second item considered by the Committee.

RECOMMENDATIONS

3. That you note the briefing and speech attached with this submission.

BACKGROUND

The current situation

4. At present, all London authorities and 187 of the 321 local authorities in England outside London operate Decriminalised Parking Enforcement (DPE), using powers from the Road Traffic Act 1991. Under DPE, parking regulations are enforced by

5. As part of the system, parking attendants issue Penalty Charge Notices (PCNs) 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.
6. There is no requirement to take on DPE powers if an authority does not wish to. This will also be the case with the new CPE powers (one change is to call the new system 'Civil Parking Enforcement', or CPE). The SoS does, however, have power under the TMA to force a local authority to take on these powers if s/he so wished.

Rationale for government intervention and what the new parking regulations will bring

7. The existing legislative framework and supporting guidance for DPE has been successful in helping authorities to enforce their traffic restrictions more effectively. Nevertheless, the experience of DPE so far has shown that there is scope for improving the public's understanding of and confidence in the system and that there are some areas where it would be beneficial to amend the existing legislative framework. There is also a need to improve consistency as at present London has some additional powers.
8. The implementation of the new system for the civil enforcement of parking will require the making of six statutory instruments. The headline changes they contain are:
 - Improved **national consistency** by giving new powers to authorities outside London currently only held by those in London. These include enforcing dropped footways and double parking and sending PCNs by post with camera evidence or when CEO is prevented from serving it at the time by violence or driving away.
 - Increased **discount period** for PCNs sent by post.
 - **Higher parking penalties for more serious contraventions** and lower penalties for more minor ones.
 - **Quicker clamping and removal times for persistent evaders**, and guidance on tackling persistent evaders. We have dropped provisions to recoup earlier unpaid PCNs of persistent evaders outside London in response to the 2nd London Local Authorities and Transport for London Bill (see annex B for more details of the persistent evader issue).

Specific to the Representation and Appeals Regulations are the following headline changes:

- Adjudicators will have the power to allow appeals where **procedural irregularity** has taken place - for example where a charge certificate has been issued before an appeal has been decided or the enforcement authority has failed to comply with some other procedural requirement in the Regulations:

- Adjudicators will have the power to refer back to LA cases where a contravention has taken place but in **mitigating circumstances**;
9. More detailed changes to the terminology, regulations and statutory guidance are shown in Annex A.
 10. There may be some questions about the length of time taken to develop these regulations. There are two main reasons why the process has taken longer than expected: The first was the need to get things right. The second was deciding the policy on tackling persistent evaders. These issues are covered in annex B.
 11. We have agreed with Communities and Local Government that the new powers are a cost-neutral process for local authorities.

THE INSTRUMENTS

12. The six Instruments are:
 - The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 (“the Representations and Appeals Regulations”).
 - The Civil Enforcement of Parking Contraventions (England) General Regulations 2007.
 - The Removal and Disposal of Vehicles (Amendment) (England) Regulations 2007.
 - The Civil Enforcement of Parking Contraventions (Approved Devices) (England) Order 2007.
 - The Civil Enforcement Officers (Wearing of Uniforms) (England) Regulations 2007.
 - The Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges (England) Order 2007.
13. Only the Representation and Appeals Regulations are affirmative regulations and therefore have to be debated in Parliament. The other instruments are subject to negative Parliamentary procedure. Once the Representations and Appeals Regulations have been approved by both Houses the whole set of instruments can be made and the statutory guidance published. The instruments will come into force on 31st March 2008 to give local authorities time to adjust to the changes. The draft regulations have been sent to all LAs and stakeholders.
14. The Representations and Appeals Regulations are to be made in the name of the Lord Chancellor but have been prepared in this Department, as have the Civil Enforcement of Parking Contraventions (England) General Regulations which are to be made by the Lord Chancellor and the Secretary of State. The other Instruments all fall to be made by the Secretary of State alone.
15. The Regulations are implementing policy agreed when the TMA was a Bill and there are no new issues. The Regulations and associated documents have been discussed and agreed with interested other Government Departments (Ministry of Justice, Home Office, Communities and Local Government) and by DA Committee.

EXPLANATORY MEMORANDUM

16. This highlights the main points of the Representation and Appeals Regulations and sets out the changes made to reflect concerns raised by stakeholders during the consultation. It also explains that the Representation and Appeals Regulations need to be read in conjunction with the other 5 instruments as there are cross references to two of them. These two instruments (The Civil Enforcement of Parking Contraventions (England) General Regulations 2007 and The Removal and Disposal of Vehicles (Amendment) (England) Regulations 2007) are attached at the end of the Regulatory Impact Assessment.
17. There is one statement in relation to the European Convention on Human Rights, stating that the Regulations are compatible with the Convention rights.

REGULATORY IMPACT ASSESSMENT (RIA) (ATTACHED TO THE EXPLANATORY MEMORANDUM)

18. The consultation on the parking provisions included a partial RIA which has been updated on the basis of this consultation to produce the final RIA. There were no changes of substance.
19. We have agreed with Communities and Local Government that our regulations are cost-neutral. The RIA has been updated to reflect this more clearly and this is the only change from the RIA that was approved in principle on 25th June when we went for DA clearance.

STATUTORY GUIDANCE

20. Section 87 of the TMA gives the Secretary of State the power to produce Guidance to which Local Authorities must have regard. This Guidance sets out our policy intent on civil parking enforcement. Where the guidance states that an authority *must* do something then it refers to specific legislation. In other areas the guidance makes recommendations about what an authority *should* do.
21. The Statutory Guidance was sent to all local authorities in draft form when the Regulations were laid in Parliament. Once the Regulations have been made, the final Statutory Guidance will be produced and published

PRESENTATIONAL ISSUES

22. There has been some media interest around some parking issues including the SoS discouraging wheel-clamping and use of CPE as a revenue raising tool, following publication on the DfT website of the draft Statutory Guidance. Drive Aways and Differential Parking Penalties have also attracted media interest. None of these issues are covered by the Representations and Appeals Regulations, but they are all covered in the briefing pack.
23. We have developed robust lines to defend these issues, and others that may crop up. These are all in the briefing pack.
24. Attached with this submission are copies of recent press articles, a selection of relevant PQs, and a Hansard parking debate from January 2007.
25. Since 2004, the main themes of PQs have been about parking income and the timetable for the regulations under the TMA. The MPs who have asked the most questions are Gwyneth Dunwoody (Crewe and Nantwich), Tom Brake (Carshalton and

CLEARANCES

26. This submission has been cleared with Legal and Communication Directorate. There are no financial implications.

[REDACTED] TM DIVISION
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Annex A. Main changes to the current parking enforcement system

The main changes to the current parking enforcement system by the whole package of proposals are:

Changes in terminology:

- Decriminalised Parking Enforcement to be called Civil Parking Enforcement
- Parking Attendants to be called Civil Enforcement Officers
- Special Parking Areas and Permitted Parking Areas to be called Civil Enforcement Areas

Changes to Regulations:

- Enforcement cameras (“approved devices”) to be certified by the Secretary of State;
- 21 day discount for PCNs sent by post with evidence from an approved device except if the CEO has been prevented from serving the PCN or if the CEO did not have enough time to serve the PCN before the vehicle was driven away;
- Adjudicators will have the power to allow appeals where procedural irregularity has taken place - for example where a charge certificate has been issued before an appeal has been decided or the enforcement authority has failed to comply with some other procedural requirement in the Regulations;
- Adjudicators will have the power to refer back to LA cases where a contravention has taken place but in mitigating circumstances;
- Where authorities choose to clamp the current 15minute period before a vehicle in a parking place can be clamped or removed is changed to 30 minutes. However, the vehicles of persistent evaders may be clamped after 15 minutes.
- Differential parking penalties to different contraventions depending on the seriousness of the contravention.
- Details of procedures for representations and appeals on PCN

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 by the vehicle being driven 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 in mitigating circumstances authorities should make and publish guidelines on their use of discretion which should be applied flexibly.
- More emphasis on staff training;
- 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 of parking restrictions 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 14 day discount period.
- Need for monitoring.
- Authorities should regularly review their parking policies in consultation with local stakeholders and their current policies should be made publicly available.
- Authorities should publish certain financial and statistical data in an annual parking report.
- Authorities should make it clear that performance and rewards/penalties for contractors or civil enforcement officers should never be based on the number of PCNs, clampings or removals.

Annex B. Delays to the timetable

Since the consultation, there have been some delays to the timetable for laying the regulations. There are two main reasons for these delays:

- One is the issue of persistent evaders. We originally had provisions in the regulations to allow local authorities the power to recover the money for all unpaid and unchallenged penalty charge notices of persistent evaders that are clamped or removed. Persistent evaders are most significantly a problem in London and The London Local Authorities and Transport for London, having looked at the powers possible under the TMA, wanted to introduce additional powers to tackle persistent evaders when legally parked. These additional powers also include extra safeguards to protect innocent drivers.
- The previous Minister (Gillian Merron) agreed in March 2007 to drop our original objections to the 2nd London Local Authorities and Transport for London Bill which proposed the additional powers for tackling persistent evaders in London. It is not possible to implement the powers to tackle persistent evaders when legally parked in the rest of the country at the present time because there is no power in primary legislation. We propose to monitor how the scheme runs in London for a year, and then recommend to you whether or not to implement the provisions in the rest of the country and to seek new primary legislation.
- The second main reason for delays to the timetable is the need to ensure that, as far as possible, we have got everything correct in the Regulations and that what is in the Regulations is reflected in the Guidance