

# TRAFFIC MANAGEMENT ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 6: Civil Enforcement of Traffic Contraventions**

##### **Background**

195. **Part 6** provides a single framework for the civil enforcement by local authorities of parking and waiting restrictions, bus lane restrictions and some moving traffic offences. This Part, and regulations made under this Part, will, for the most part, replace existing provisions in national and London local legislation. This Part will also enable regulations to be made giving authorities outside London civil enforcement powers to cover some moving traffic offences (such as ignoring the rules at box junctions and banned turns) on the basis of camera evidence or the statement of a civil enforcement officer, and giving additional powers in respect of parking enforcement in areas outside London equivalent to those which already exist in London.
196. Regulation of the movement of traffic on roads is intended to ensure safety and to avoid congestion problems. Regulation also enables specific classes of traffic, such as buses, to be given priority in the allocation of road space. Effective enforcement is required to ensure that the regulation of traffic is effective. Increasingly, because of having to focus on their core responsibilities, the police service is not in a position to give high priority to more minor traffic contraventions, such as parking offences. The notification, adjudication and enforcement of such contraventions by civil (as opposed to criminal) bodies provides an alternative way of dealing with such contraventions.
197. Civil enforcement of traffic regulations by local authorities was first made possible in relation to parking and waiting restrictions under the Road Traffic Act 1991. This resulted in the introduction of decriminalised parking enforcement (DPE) across the whole of London in 1994. Since then over 90 authorities in England and Wales outside London have also been given DPE powers through the designation of their areas as permitted parking and special parking areas under the 1991 Act. Civil enforcement of traffic contraventions has been revised and extended in scope in London through London Local Authority Acts. The London Local Authorities Acts of 1995 and 2000 widened the 1991 Act powers for civil enforcement of parking and waiting restrictions in London. Civil enforcement of bus lanes by London authorities, on the basis of camera evidence of contraventions, was made possible by the London Local Authorities Act 1996. The Transport Act 2000 included powers to enable the appropriate national authority to make regulations to enable the civil enforcement of bus lanes generally across England and Wales. The London Local Authorities and Transport for London Act 2003 includes powers enabling the civil enforcement of certain moving traffic contraventions by London authorities.

##### **Specific provision for Wales and for London**

198. The provisions of the Road Traffic Act 1991 which first introduced DPE were first laid before Parliament in a form which applied only to London. Since that Act was

passed, London has taken the lead in civil enforcement both in terms of the volume of enforcement and (further to local legislation) in terms of the number and type of contraventions enforceable and the manner of their enforcement. Given the established and integrated mechanisms, functions and procedures in this area which the London boroughs, Transport for London, and the Mayor already have, separate provision for London is made throughout Part 6.

199. In respect of Wales, the Secretary of State's power to make an order establishing an area for DPE under the Road Traffic Act 1991 has been transferred to the National Assembly for Wales; and under the Transport Act 2000, the regulation-making powers establishing the civil enforcement of bus lanes have similarly been conferred on the Assembly. Following this precedent, Part 6 consistently provides for regulation and order making powers to be conferred on the National Assembly for Wales, in respect of Wales.

### ***Section 72: Civil penalties for road traffic contraventions***

200. *Section 72* enables the appropriate national authority (the Secretary of State in respect of England and the National Assembly for Wales in respect of Wales) to make regulations for the imposition and payment of penalty charges for traffic contraventions that are subject to civil enforcement and which are committed within an area that is designated as a civil enforcement area for the purpose of enforcing those contraventions. The regulations must specify the person or (as is expected will be the case in respect of the London lorry ban) the persons liable for payment of the penalty charge. They must also ensure either that that person (or those persons) will not be exposed to criminal proceedings for an act which is subject to civil enforcement, or that any civil enforcement penalty will be cancelled or refunded if criminal proceedings have been or are instituted. Regulations under this section may specify exemptions from penalty charges, discounts and surcharges. The regulations may require certain penalty charges to be imposed only on the basis of a record produced by an approved device or a statement made by a civil enforcement officer appointed by an enforcement authority.

### ***Section 73 and Schedule 7: Contraventions subject to civil enforcement***

201. *Section 73* and Parts 1 to 4 of *Schedule 7* set out the contraventions which are subject to civil enforcement. These are contraventions of parking and waiting restrictions (Part 1), orders establishing bus lanes (Part 2), specified moving traffic offences (Part 4) and the London lorry ban (Part 3). The appropriate national authority can make regulations adding to the lists of parking contraventions and moving traffic contraventions. Contraventions which would lead to obligatory licence endorsement may not be added to the list of moving traffic contraventions. *subsection (4)* enables the appropriate national authority to amend *Schedule 7* to reflect future changes to secondary legislation in that Schedule.

### ***Section 74 and Schedule 8: Civil enforcement areas***

202. *Section 74* and *Schedule 8* establish (and enable the establishment of) geographical areas in which there will be civil enforcement for one or more classes of contravention that are subject to civil enforcement. These provisions also identify the enforcement authority for such areas. Part 1 of *Schedule 8* covers enforcement in London and Part 2 enforcement outside London. All areas where decriminalised parking enforcement has been introduced under the Road Traffic Act 1991 will become civil enforcement areas for parking contraventions.
203. The whole of Greater London will be a civil enforcement area for parking contraventions within paragraph 2 of *Schedule 7* (contraventions relating to parking places). The whole of London will also be a civil enforcement area for bus lane contraventions and for London lorry ban contraventions. A London local authority or Transport for London may declare its own area to be a civil enforcement area for moving

traffic contraventions, and the Secretary of State may make an order, on the application of a London local authority, designating all or part of that authority's area to be a civil enforcement area for parking contraventions within paragraph 3 of Schedule 7. Outside London the appropriate national authority will be able by order to designate additional local authority areas as civil enforcement areas for enforcement in respect of parking or (in existing civil enforcement areas for parking) bus lane or moving traffic contraventions.

***Section 75: Power to require authority to apply for civil enforcement powers***

204. *Section 75* confers on the appropriate national authority a power to give notice to a local authority outside Greater London requiring the authority to apply under paragraph 8 of Schedule 8 for designation of the whole or part of its area as a civil enforcement area for parking contraventions. Such a notice must be preceded by a notification to the authority and the appropriate chief officer of police that the giving of such a notice is being contemplated to enable them to make representations to the national authority. The national authority must take such representations into account in deciding whether to give a notice to apply. The terms of a notice to apply may subsequently be modified by agreement between the national authority and the local authority.

***Section 76: Civil enforcement officers***

205. *Section 76* enables the appointment of civil enforcement officers by authorities undertaking the civil enforcement of traffic contraventions. It provides that a parking attendant appointed under section 63A of the Road Traffic Regulation Act 1984 is a civil enforcement officer in relation to parking contraventions and may also be appointed as a civil enforcement officer in relation to other road traffic contraventions subject to civil enforcement in the area of the local authority concerned.

***Section 77 and Schedule 9: Setting the level of penalty charges***

206. *Section 77* provides that the level of penalty charges for traffic contraventions (including discounts or surcharges to encourage payment), charges for the removal, storage and disposal of unlawfully parked vehicles, or charges for the release from an immobilisation device shall be set in accordance with the arrangements detailed in *Schedule 9*. Part 2 of that Schedule provides for charges in London to be set by London local authorities and Transport for London and submitted to the Mayor for his approval. If Transport for London or the London local authorities fail to set the charges, or if the Mayor does not approve the levels of charges set by the London local authorities, the charges are set by the Mayor. The Schedule gives the Secretary of State a reserve power to intervene if he thinks any or all of the charges approved or set by the Mayor are excessive, and it enables him by regulations to set the level of charges. Part 3 of the Schedule provides for charges outside London to be set by each enforcement authority taking account of guidelines set out in an order made by the appropriate national authority.

***Section 78: Notification of penalty charges***

207. *Section 78* enables regulations to be made by the Lord Chancellor for the notification of penalty charges in relation to traffic contraventions subject to civil enforcement. In the case of a parking contravention the regulations may provide for the penalty charge notice to be fixed to the vehicle, given to the person appearing to be in charge of it, or given in some other manner as prescribed, for example by post. Notification of a penalty charge in respect of traffic contraventions involving moving vehicles may be given in such manner as may be prescribed; however, regulations made under this section may not confer a power to stop vehicles.
208. The regulations may create criminal offences. For example, regulations are expected to create an offence of unauthorised interference with a penalty charge notice fixed

to a vehicle, which is expected will be punishable by a fine not exceeding level 2 on the standard scale (i.e. a maximum fine of £500). The regulations are also expected to enable a local authority to require by notice an operator of goods vehicles to provide the name and address of the person whose driving contravened the London lorry ban (thus replicating the effect of section 5 of the London Local Authorities and Transport for London Act 2003). It is expected the regulations will make the giving of false information in respect of such a notice to be punishable by a fine not exceeding level 5 on the standard scale (i.e. a maximum fine of £5,000).

### ***Section 79: Immobilisation of vehicle where penalty charge is payable***

209. Immobilisation of vehicles using wheel clamps is an additional measure used by some enforcement authorities to deter illegal parking. *Section 79* provides for regulations to be made for or in connection with the immobilisation of unlawfully parked vehicles, and with the release of such vehicles on payment of the penalty charge imposed for it being unlawfully parked, a release fee, and any unpaid penalty charges previously incurred by the vehicle. The regulations may provide for a notice to be fixed to the vehicle warning that it has been immobilised, and explaining both how to secure its release and that the notice should not be interfered with except under the authority of the owner or person in charge of the vehicle or the enforcement authority. Regulations may also provide that a vehicle may only be released under the direction of a person authorised by the enforcement authority and that any unauthorised attempt to release a vehicle shall be an offence punishable by a fine not exceeding level 3 on the standard scale (i.e. a maximum of £1,000).
210. The regulations must provide that a vehicle in a parking place shall not be immobilised for a failure to pay a parking charge, to display a ticket showing that a charge has been paid or to remove a vehicle at the end of a period of paid for parking until 15 minutes after the issue of a penalty charge notice. The regulations shall also provide that a vehicle must not be immobilised if it displays a disabled person's badge (a "blue badge"). However, the regulations will make it an offence, punishable by a fine not exceeding level 3 on the standard scale, if a person inappropriately uses a blue badge and as a result the vehicle in question is not immobilised.

### ***Section 80: Representations and appeals***

211. *Section 80* enables regulations to be made entitling a person liable for payment of a penalty charge or who secures the release of a vehicle from an immobilisation device to make representations to the enforcement authority and to appeal to an independent adjudicator if his representations are not accepted. The regulations may require these rights to be notified to the appropriate person when a penalty charge is issued or when the vehicle concerned is released from an immobilisation device. The regulations may make provision in relation to representations and appeals, including as to the circumstances in which there is a right of appeal to an adjudicator. By virtue of *subsection (3)*, regulations may provide grounds for appeal in respect of which an adjudicator's function will be to consider whether to direct an enforcement authority to consider or reconsider representations.
212. The regulations may make it an offence not to attend a hearing before an adjudicator or to fail to provide certain documents, and these offences will be punishable by a fine not exceeding level 2 on the standard scale (i.e. a maximum of £500). Similarly, the regulations may make it an offence to deliberately or recklessly make false representations in respect of penalty charges, which offence will be punishable by a fine not exceeding level 5 on the standard scale (i.e. a maximum of £5,000). Regulations may authorise an adjudicator to award costs against a party to an adjudication in such circumstances as may be specified. Regulations under this section require approval by a resolution of each House of Parliament, further to *subsection (5)* of *section 89*.

### ***Section 81: Adjudicators***

213. The European Convention on Human Rights (as incorporated in domestic law by the Human Rights Act 1998) requires adjudication of a penalty charge to be by an independent and impartial tribunal. *Section 81* enables the Lord Chancellor to make regulations to provide for the appointment of adjudicators to hear appeals by persons who are or may be liable to pay penalty charges for traffic contraventions. It specifies the legal qualifications of adjudicators and limits the grounds for removal from office of an adjudicator. The regulations will provide for the consent of the Lord Chancellor to be obtained prior to the appointment, re-appointment or removal from office of an adjudicator. Enforcement authorities will be responsible for providing accommodation and administrative support for adjudicators, and setting their terms of work and for their remuneration. Adjudicators will be required by regulations to make an annual report to the enforcement authorities and those authorities in turn will be required to make an annual report to the appropriate national authority on the discharge by the adjudicators of their functions.
214. The regulations relating to the appointment of adjudicators may make transitional provisions treating adjudicators already appointed for the purpose of hearing appeals, in the case of parking under section 73 of the Road Traffic Act 1991 or in the case of bus lane contraventions under section 144 of the Transport Act 2000, as if they had been appointed under the Act. Such regulations may also continue in force existing arrangements for their accommodation, administrative support and fees. In practice this will mean adjudication continuing to be undertaken by bodies corresponding to the London Parking and Traffic Appeals Service, in London, and the National Parking Adjudication Service, outside London. Both were originally constituted as adjudication bodies for the purpose of decriminalised parking enforcement.

### ***Section 82: Enforcement of penalty charges***

215. It is necessary to have the ability to enforce payment of penalty charges and *section 82* enables regulations to be made by the Lord Chancellor for this purpose. The first step to induce payment will be the imposition of a surcharge on the original penalty. If this does not secure payment then an enforcement model (which is expected substantially to replicate by regulations the procedure under the Road Traffic Act 1991) will be followed. The procedure is for unpaid penalty charges to be registered at the Traffic Enforcement Centre (TEC) – part of the Northampton County Court – and enforced as a county court debt if the TEC so orders. The regulations are expected to provide that if no payment is made, and no statutory declaration disclaiming responsibility is received, the enforcement authority may seek to enforce payment by execution by a certificated bailiff.
216. The regulations may create an offence, punishable by a fine not exceeding level 5 on the standard scale (i.e. a maximum of £5,000), and it is expected that regulations will create an offence of making a false statutory declaration to avoid enforcement. Provision is made for continuing in force existing provisions in respect of parking fines incurred under the 1991 Act and regulations in connection with the execution of warrants of execution by bailiffs.

### ***Section 83: Certificated bailiffs***

217. *Section 83* re-enacts in substance the provisions of section 78 of the Road Traffic Act 1991. It provides for the Lord Chancellor to make regulations which will control the certification of bailiffs and the execution of warrants by bailiffs. Regulations in respect of bailiffs currently in existence by virtue of section 78 will continue in force under this section.

***Section 84 and Schedule 10: Designation of special enforcement areas***

218. *Section 84* and *Schedule 10*, paragraph 1, enable the Secretary of State, on the application of a London local authority or Transport for London to designate the whole or part of its area as a special enforcement area (SEA) provided it is within or co-extensive with a civil enforcement area for parking contraventions designated under paragraph 2 of Schedule 8. An order made by the Secretary of State designating a special parking area in London under section 76 of the Road Traffic Act 1991 will have effect as an order made under Schedule 10 designating the area as a SEA. However, the nature of any such area will change to become an area in which forms of conduct are specified as contraventions peculiar to that area (as per the approach of the 1991 Act) but (unlike the approach of the 1991 Act) not an area in which, by definition, there will be civil enforcement of those or other contraventions.
219. *Paragraph 2* of Schedule 10 preserves the ability of the Mayor of London under section 76A of the Road Traffic Act 1991 to vary an order designating a SEA with the consent of the relevant London authority for every road that may be added or removed from the area. The relevant London authority is, as regards GLA roads, Transport for London, and as regards roads other than GLA roads, the London local authority in whose area the road is situated. Orders made by the Mayor under section 76A(1) or (3) (a) of the Road Traffic Act 1991 prior to the coming into force of this Section shall have effect as if made under paragraph 2 of Schedule 10.
220. *Paragraph 3* of Schedule 10 enables the appropriate national authority to designate SEAs outside Greater London on the application of an authority specified in paragraph 3(3). An order designating a special parking area outside Greater London made under paragraph 2(1) of Schedule 3 to the Road Traffic Act 1991 will continue to have effect as an order made under paragraph 3 of Schedule 10 designating the area as an SEA.

***Section 85: Prohibition of double parking etc.***

221. Parking a vehicle adjacent to another parked vehicle or at some distance away from the kerbside has the potential to obstruct the flow of other traffic. Within an SEA, *section 85* makes parking a vehicle such that no part of it is within 50 centimetres of the edge of the carriageway a traffic contravention for which a penalty charge may be issued. A number of exceptions are set out in *subsections (2) to (5)*, e.g. for the emergency services and for loading and unloading in certain circumstances. There is no contravention if, for example, a vehicle is prevented from proceeding due to circumstances beyond the driver's control.

***Section 86: Prohibition of parking at dropped footways etc.***

222. Dropping the level of a footway, cycle track or verge to the level of the carriageway assists pedestrians crossing a road, cyclists entering or leaving the carriageway and vehicles crossing a footway, cycle track or verge in order to access off-road parking. Raising the level of the carriageway to meet the level of a footway, cycle track or verge similarly provides such assistance. *Section 86* makes it a contravention for which a penalty charge may be issued to park a vehicle within a SEA and adjacent to either a dropped footway, cycle track or verge, or where the carriageway is raised to assist pedestrians, cyclists or vehicles. A number of exceptions are set out in *subsections (2) to (6)*, e.g. for the emergency services and for loading and unloading in certain circumstances. There is no contravention if, for example, a vehicle is prevented from proceeding due to circumstances beyond the control of the driver.

***Section 87: Guidance to local authorities***

223. *Section 87* enables the appropriate national authority to publish guidance to local authorities about any matter relating to the civil traffic enforcement functions which may be conferred on them by Part 6. In exercising those functions authorities must have regard to any such guidance.

***Section 88: Financial provisions***

224. *Section 88* provides for regulations to be made for the keeping of accounts in respect of the income and expenditure from each form of civil enforcement. Section 55 of the Road Traffic Regulation Act 1984 (which is amended by *section 95* of this Act) provides for how surpluses generated in respect of parking charges may be applied.

***Section 90: Application to Crown and visiting forces***

225. *Section 90* provides that Part 6 does not apply to vehicles being used for national naval, military or airforce purposes or vehicles similarly being used by visiting forces, but that they do apply to registered vehicles being used in the public service of the Crown and vehicles driven by persons in the public service of the Crown. Part 6 does not enable civil enforcement of traffic contraventions on Crown roads unless an order to that effect has been made. Section 131 of the Road Traffic Regulation Act 1984 enables the Secretary of State, with the consent of the appropriate Crown authority, to direct by order that a road traffic enactment (which definition includes the Traffic Management Act) shall apply to Crown roads.

***Section 91 and Schedule 11: Consequential amendments***

226. Regulations under Part 6 will replace existing provisions contained in the Road Traffic Act 1991, the Transport Act 2000 and various London Local Authorities Acts. *Section 91* and *Schedule 11* to the Act make consequential amendments to existing legislation.