

**EXPLANATORY MEMORANDUM TO
THE CIVIL ENFORCEMENT OF PARKING CONTRAVENTIONS
(REPRESENTATIONS AND APPEALS) (WALES) REGULATIONS 2008**

2008 No. 608

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- 1.1 This explanatory memorandum has been prepared by the Wales Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments

2. Description

- 2.1 These draft Regulations have been laid by the Secretary of State for Wales on behalf of the Lord Chancellor and are subject to the affirmative resolution procedure in Parliament. The Regulations require the consent of Parliament as they relate to non-devolved matters that are the responsibility of the Lord Chancellor.
- 2.2 The Regulations set out procedures whereby persons upon whom civil penalties have been imposed for parking contraventions in areas where civil enforcement applies, or whose vehicle has been immobilised or removed on account of such contraventions, can make representations to the enforcement authorities against the imposition of the penalties in particular cases and can appeal to an independent adjudicator if their representations are rejected. The draft Regulations set out the grounds for making representations and for appealing and the Schedule contains rules for the conduct of proceedings before adjudicators.
- 2.3 To enable the implementation of strengthened civil enforcement against parking contraventions, a further set of regulations [the draft Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008, subject to the negative resolution procedure by Parliament, and a further three Regulations and three Orders subject to the negative resolution procedure in the National Assembly for Wales must be brought into force. .
- 2.4 This total package of Regulations and Orders (Parliamentary and Assembly) is required to implement, as respects Wales, Part 6 of the Traffic Management Act 2004 in relation to the civil enforcement of parking controls by civil enforcement officers acting on behalf of local authorities, rather than police officers or police traffic wardens.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Part 6 of the Traffic Management Act 2004 confers powers on the Lord Chancellor and “the appropriate national authority” (in Wales, the Welsh Ministers) to make regulations providing for a national legislative framework for the civil enforcement by local authorities of contraventions of parking and bus lane restrictions and some moving traffic contraventions, such as box junctions and banned turns. Part 6 and the regulations will replace existing provisions in the Road Traffic Act 1991 (with regard to parking) and the Transport Act 2000 (with regard to bus lanes).

4.2 The purpose of this instrument (and the “Enforcement and Adjudication” regulations, which will be laid once these regulations have been made) is to implement Part 6 of the Traffic Management Act 2004 so far as it relates to parking contraventions. They will in due course be followed by regulations - made by Welsh Ministers - to implement Part 6 in relation to bus lane and other moving vehicle contraventions.

4.3 The effect of the package of parking instruments will be to replace the present system of decriminalised parking enforcement under Part II and Schedule 3 of the Road Traffic Act 1991. The instruments will be supplemented by Statutory Guidance issued by Welsh Ministers, to which local authorities will be required to have regard, although they will not be obliged to follow it.

4.4 Apart from these Regulations, and the “Enforcement and Adjudication” regulations, the most important element of the package will be the Civil Enforcement of Parking Contraventions (General Provisions) (Wales) Regulations 2008 (“the General Regulations”), to be made by Welsh Ministers. These regulations should be read in conjunction with The General Regulations.

4.5 The complete list of proposed instruments comprising the package follows. Those subject to **negative resolution procedure by the National Assembly for Wales are:**

The Civil Enforcement of Parking Contraventions (Representations and Appeals about Removed Vehicles) (Wales) Regulations 2008

The Civil Enforcement of Parking Contraventions (General Provisions) (Wales) Regulations 2008

The Civil Enforcement of Parking Contraventions (Wearing of Uniforms) (Wales) Regulations 2008

The Civil Enforcement of Parking Contraventions (Approved Devices) (Wales) Order 2008

The Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (Wales) Order 2008

The Disability Discrimination Act 2005 (Commencement No. 1) (Wales) Order 2007

The Regulations subject to the affirmative resolution procedure by Parliament are:

The Civil Enforcement of Parking Contraventions (Representations and Appeals) (Wales) Regulations 2008

The Regulations subject to the negative resolution procedure by Parliament are:

The Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008

- 4.6 The draft Representations and Appeals Regulations cross-refer to the proposed Civil Enforcement of Parking Contraventions (General Provisions) (Wales) Regulations 2008, and also to The Civil Enforcement of Parking Contraventions (Representations and Appeals about Removed Vehicles) (Wales) Regulations 2008. Both of these latter Regulations will be made by Welsh Ministers and subject to Assembly procedures. Subject to the draft Representations and Appeals Regulations being approved by the two Houses, it is Welsh Ministers' intention to make the other instruments at the same time and to bring them all into force on 31st March 2008. It may be necessary to postpone the making of the draft Civil Enforcement of Parking Contraventions (Approved Devices) (Wales) Order 2008 until after the others because of the requirement to notify it to the European Union, but that Order will need to come into force at the same time as the others.

5. Territorial Extent and Application

- 5.1 These instruments apply to Wales. However, equivalent Regulations are being implemented in Parliament for England, allowing strengthened civil enforcement arrangements to come into force on the same date, 31 March 2008. Although there will be minor differences of detail as between the administrative arrangements in England and

Wales, they will be very substantially the same, allowing a single adjudication procedure, for example.

- 5.2 They do not replicate legislation which already exists in another part of the United Kingdom

6. European Convention on Human Rights

- 6.1 The Representations and Appeals Regulations 2008 are subject to affirmative resolution. The Secretary of State for Wales, has made the following statement regarding Human Rights:

“In my view the provisions of the Representations and Appeals Regulations 2008 are compatible with the Convention rights.”

7. Policy background

- 7.1 The first aim of the new framework will be to replace and strengthen the unsatisfactory state of the current statute law on the civil enforcement of parking in both England and Wales.
- 7.2 Secondly, although it is largely based on the old system of enforcement, the framework includes many changes of detail.
- 7.2 In the these Regulations there are two main changes. First “procedural impropriety”, that is to say a failure by the enforcement authority to observe any of the detailed statutory requirements for imposing a penalty charge, is made a ground for representations and for appealing to an adjudicator. Secondly an adjudicator may refer a case back to the enforcement authority for reconsideration, where the finding is that none of the grounds of appeal apply but that there are compelling reasons for remitting a charge. There are however many differences of detail between the Representations and Appeals Regulations and the existing legislation.
- 7.3 A public consultation exercise on the draft Statutory Guidance, draft Regulations and on the Partial Regulatory Impact Assessment was conducted in Wales from 30 January 2007 to 28 March 2007. This followed an equivalent consultation by the Department for Transport in England.
- 7.4 These documents were sent to all local authorities in Wales, and to 59 other organisations including key stakeholders. There were 16 responses, including several from individual local authorities and local authority associations, the Confederation of Passenger Transport, the Road Haulage Association and the police. Those who responded agreed with the vast majority of the issues and the policies on these remain unchanged from the consultation.

- 7.5 There was widespread support for the Partial Regulatory Impact Assessment, with three out of four respondents agreeing that the Partial Regulatory Impact Assessment represented a fair analysis of the policy. There was support for differential penalty charges based on the severity of the contravention, and for a 50% discount to be available for 21 days where the PCN is issued by post on the basis of camera evidence.
- 7.6 Most of the responses to the consultation concerned issues relating to instruments other than the Representations and Appeals Regulations.
- 7.7 The consultation resulted in a number of changes to the proposals. These included that a grievance and complaints unit need not be established in each local authority; that the police should not have powers to also enforce parking contraventions in areas where that power had been taken by a local authority; and a vehicle in a parking place should be clamped or removed 30 (rather than 60) minutes after the PCN is issued.
- 7.8 Statutory Guidance and detailed Operational Guidance will be issued to local authorities and stakeholders in association with the Regulations. The Statutory Guidance will set out the policy framework for Civil Parking Enforcement, and how enforcement should be approached, undertaken and reviewed. Section 87 of the Traffic Management Act 2004 (TMA) stipulates that local authorities “must have regard” to the Statutory Guidance in exercising their civil enforcement functions. The Operational Guidance is a detailed document which informs local authorities in Wales which have not yet done so of the scope and procedure for taking over the enforcement of parking regulations from the police. It also advises all local authorities in Wales of the procedures that Welsh Ministers recommend they follow when enforcing parking restrictions, and provides the framework for a consistent approach to parking policy and enforcement throughout Wales. It also acts as a point of reference for members of the public, as well as for the local authorities.

8. Impact

- 8.1 A Regulatory Impact Assessment for this set of instruments is attached to this memorandum. No significant financial implications have been identified for members for the public or the public sector.
- 8.2 A Regulatory Impact Assessment was prepared for the Traffic Management Bill as a whole and is available at: <http://www.dft.gov.uk/consultations/aboutria/ria/thetrafficmanagementbillregu5592?version=1>

9. Contact

9.1 Susan Olley of the Wales Office can answer any queries regarding the instrument. Telephone: 029 2089 8568.

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