

**EXPLANATORY MEMORANDUM TO
THE CIVIL ENFORCEMENT OF PARKING CONTRAVENTIONS
(PENALTY CHARGE NOTICES, ENFORCEMENT AND ADJUDICATION)
(WALES) REGULATIONS 2008**

2008 No. 609

1.

1.1 This Explanatory Memorandum has been prepared by the Wales Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations have been laid by the Secretary of State for Wales on behalf of the Lord Chancellor and are subject to the negative resolution procedure in Parliament. The Regulations relate to non-devolved matters that are the responsibility of the Lord Chancellor.

2.2 The Regulations deal with the content of Penalty Charge Notices (PCNs) and empower Civil Enforcement Officers to issue PCNs in specified circumstances, and also for PCNs to be issued by post. The Regulations make it an offence to remove or interfere with a PCN unless authorised by the person in charge of the vehicle or the enforcement authority. The Regulations also deal with the appointment of adjudicators and their functions; the enforcement of penalty charges; the issue of Notices to Owner (NtO) where the PCN has not been paid; and Charge Certificates when the NtO is ignored.

2.3 These Regulations are one of two that are subject to Parliamentary procedures. A further six are subject to the procedures of the National Assembly for Wales.

2.4 This total package of regulations and orders (both Parliamentary and Assembly) is required to implement, as respects Wales, Part 6 of the Traffic Management Act (TMA) 2004 in relation to the civil enforcement of parking contraventions 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

None.

4. Legislative Background

- 4.1 Part 6 of the TMA 2004 confers powers on the Lord Chancellor and “the appropriate national authority” (in Wales, 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.
- 4.2 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).
- 4.3 The purpose of this instrument, and the “Representations and Appeals” (Parliamentary) Regulations, is to implement Part 6 of the Traffic Management Act 2004 so far as it relates to parking contraventions.
- 4.4 The effect will be to replace the current system of decriminalised parking enforcement under Part II and Schedule 3 of the Road Traffic Act 1991. The instruments will be supplemented by statutory and non-statutory guidance issued by Welsh Ministers, to local authorities. Welsh Ministers will also issue guidance to local authorities about the design and operation of devices approved for recording alleged contraventions.
- 4.5 Apart from these regulations, and the “Representations and Appeals” 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.
- 4.6 The instruments comprising the package are as follows.

The Regulations subject to the negative resolution procedure by the National Assembly for Wales are:

The Civil Enforcement of Parking Contraventions (Representations and Appeals) 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 Removal and Disposal of Vehicles (Amendment) (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

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

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

- 4.7 The Parliamentary regulations cross-refer to the Assembly regulations, in particular The Civil Enforcement of Parking Contraventions (General Provisions) (Wales) Regulations 2008, and The Civil Enforcement of Parking Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2008. Both of these regulations will be made by Welsh Ministers and subject to Assembly procedures. Subject to completion of Parliamentary and Assembly procedures, all of the instruments will be brought into force on 31 March 2008.

5. Territorial extent and application

- 5.1 These instruments apply to Wales. However, equivalent regulations are being implemented in England, allowing strengthened civil enforcement arrangements to come into force on the same date, 31 March 2008. Although there are minor differences of detail as between the administrative arrangements in England and Wales, they are substantially the same. This similarity will allow a single adjudication procedure.
- 5.2 They do not replicate legislation that already exists in another part of the United Kingdom

6. European Convention on Human Rights

- 6.1 The Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008 are subject to negative resolution. The Secretary of State for Wales, has made the following statement regarding Human Rights:

“In my view the provisions of the Penalty Charge Notices, Enforcement and Adjudication 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 new framework includes many changes of detail.
- 7.3 In this set of Regulations there are several main changes. These include that “Decriminalised Parking Enforcement” will become “Civil Parking Enforcement”; Parking Attendants will become Civil Enforcement Officers; and Special Parking Areas and Permitted Parking Areas will be called Civil Enforcement Areas. Welsh Ministers will certify enforcement cameras – “approved devices”. Adjudicators will have the power to refer back to local authorities cases where a contravention has taken place, but in mitigating circumstances; and differential parking penalties will exist, depending on the seriousness of the contravention.
- 7.4 A public consultation exercise on the draft statutory guidance, draft regulations and on the initial 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. [A further consultation exercise on the draft “approved devices” advice and on the draft operational guidance to local authorities took place between 30 October 2007 and ran until 8 January 2008.]
- 7.5 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. There was broad consensus with and agreement of the proposals.
- 7.6 Nevertheless, 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.
- 7.7 Statutory guidance and detailed operational guidance will be issued to local authorities and stakeholders. 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.

- 7.8 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 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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