

## **EXPLANATORY MEMORANDUM TO**

### **THE CIVIL ENFORCEMENT OF PARKING CONTRAVENTIONS DESIGNATION ORDER 2010**

**2010 No. 98**

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 The Civil Enforcement of Parking Contraventions Designation Order 2010 (“the Order”) enables local authorities to enforce parking contraventions within their administrative areas through a civil law regime, as opposed to enforcement by police or traffic wardens in a criminal law context.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Context**
  - 4.1 The Order is made using powers conferred by paragraph 8(1) of Schedule 8 and paragraph 3(1) of Schedule 10 to the Traffic Management Act 2004 (“the 2004 Act”), following consultation with the appropriate chief officer of police for each area designated by the Order. The power in section 89(3) of the 2004 Act is also cited given the revocation by the Order of orders made under the predecessor Act, the Road Traffic Act 1991.
  - 4.2 The regime for civil enforcement of parking contraventions in England is set out in Part 6 of the 2004 Act together with instruments made under that Part of the Act. Those instruments are the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 (S.I. 2007/3482), the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 (S.I. 2007/3483), the Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007 (S.I. 2007/3487) and two other instruments (S.I. 2007/3485 and 2007/3486). A further instrument, S.I. 2007/3484 (which amended S.I. 1986/183), was made under other powers, but in relation to civil enforcement areas. The 2004 Act regime has replaced the previous civil enforcement regime under the Road Traffic Act 1991.
  - 4.3 The Order revokes the Road Traffic (Permitted Parking Area and Special Parking Area) (County of Lancashire) Order 2004 (S.I. 2004/2028), the Road Traffic (Permitted Parking Area and Special Parking Area) (County of Cheshire) (Borough of Crewe and Nantwich) Order 2007 (S.I. 2007/3566), the Civil Enforcement of Parking Contraventions (County of Cornwall) Designation Order 2008 (S.I. 2008/1055) and the Civil Enforcement of

## **5. Territorial Extent and Application**

5.1 This instrument applies to England.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to the negative resolution procedure (section 89(6) of the 2004 Act) and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 Effective traffic regulation requires a robust enforcement of traffic restriction and prohibition orders to promote safety and traffic flow, and to deal with abuses of the system. This has been addressed in relation to parking by the 2004 Act. That Act enables the creation of "civil enforcement areas" and "special enforcement areas" in which responsibility for enforcing parking restrictions is transferred from the police and police traffic wardens to civil enforcement officers employed by local authorities.

7.2 When an area is designated as a civil enforcement area, the effect is that certain specified parking offences are enforced by the local authority. Where such a designation is in place, a special enforcement area may also be made; the effect of making a special enforcement area is that two additional parking prohibitions apply (double parking and parking at dropped footways).

7.3 Pursuant to the Order, part of the area of each of the following councils will be designated as both a civil enforcement and a special enforcement area: the Cheshire East Borough Council, The Lancashire County Council and The North Lincolnshire Borough Council. The whole of the area of The Cornwall Council will be so designated. It is Government policy to encourage local authorities in England to take on these powers. Many have applied for them in the past under provisions in the Road Traffic Act 1991 which Part 6 of the 2004 Act replaces. To date, 265 local authorities in England have civil parking enforcement powers.

## **8. Consultation outcome**

8.1 The Secretary of State has a statutory obligation to consult the appropriate chief officer of police before making an order (paragraphs 8(3) of Schedule 8 and 3(4) of Schedule 10 to the 2004 Act). The Secretary of State also consults the Administrative Justice and Tribunals Council and the Highways Agency. The relevant local authority consults the police, the Highways Agency, DVLA, the Traffic Enforcement Centre, the Adjudication Service and neighbouring authorities. An application will not proceed unless any objections have been resolved.

## **9. Guidance**

- 9.1 Statutory Guidance and Operational Guidance to Local Authorities on the Civil Enforcement of Parking was published in March 2008 under section 87 of the 2004 Act. The guidance sets out the policy framework for civil parking enforcement and explains how local authorities should approach, carry out, and review their parking enforcement activities. All enforcement authorities in England should use the guidance in conjunction with the statutory instruments that give effect to the parking provisions in Part 6 of the 2004 Act. Section 87 of the 2004 Act stipulates that local authorities must have regard to the information contained in the guidance.
- 9.2 As regards local authorities' civil parking enforcement financing operations, the guidance provides that enforcement authorities should run their civil parking enforcement operations (both on and off-street) efficiently, effectively and economically. The purpose of penalty charges is to dissuade motorists from breaking parking restrictions. The objective of civil parking enforcement should be 100 per cent compliance, with no penalty charges. Parking charges and penalty charges should be proportionate, so authorities should not set them at unreasonable levels. Any penalty charge payments received (whether for on-street or off-street enforcement) must only be used in accordance with section 55 (financial provisions relating to designation orders) of the Road Traffic Regulation Act 1984.
- 9.3 The guidance also provides that local authority parking enforcement should be self-financing as soon as practicable. This is a sensible aim, but compliant applications for civil parking enforcement will be granted without the scheme being immediately self-financing. Local authorities will need to bear in mind that if their scheme is not self-financing, then they need to be certain that they can afford to pay for it from within existing funding. The Secretary of State will not accept that national or local tax payers should meet any deficit.

## **10. Impact**

- 10.1 An impact assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **11. Regulating small business**

- 11.1 This legislation does not apply to small business.

## **12. Monitoring & review**

- 12.1 It will be for the authorities whose areas are designated by the Order to keep the civil enforcement of parking in their area under review.

## **13. Contact**

- 13.1 Renata Williams at the Department for Transport (tel: 020 7944 6483 / email: [Renata.Williams@dft.gsi.gov.uk](mailto:Renata.Williams@dft.gsi.gov.uk)) can answer any queries regarding the instrument.