

EXPLANATORY MEMORANDUM TO
THE CIVIL ENFORCEMENT OF PARKING CONTRAVENTIONS (ENGLAND)
GENERAL (AMENDMENT) REGULATIONS 2018

2018 No. 653

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of the instrument is to correct an error in regulation 11 of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 (S.I. 2007/3483) (“the 2007 Regulations”) by adding a cross-reference to a penalty charge notice served under regulation 9A(5)(a).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument corrects an error highlighted by the Joint Committee on Statutory Instruments in their consideration of the Civil Enforcement of Parking Contraventions (England) General (Amendment No.2) Regulations 2015 (S.I 2015/1001) (see JCSI’s Third Report of 2015-16 session). Those Regulations amended regulation 11 (among other provisions) of the 2007 Regulations. Accordingly this instrument is being issued free of charge.
- 3.2 These Regulations were made on 23th May 2018 but unfortunately, due to a breakdown in communication between the Department (who prepared the instrument) and the Ministry of Justice (who arranged signing), the Regulations were not laid until 31st May 2018. Unfortunately this also resulted in the Regulations breaching the 21 day rule (as they are due to commence on 18th June). The Department apologises for these mistakes and will work with the Ministry of Justice to ensure they are not repeated.

Other matters of interest to the House of Commons

- 3.3 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative context

- 4.1 The 2007 Regulations make provision for the civil enforcement of parking in England, including Greater London. The 2007 Regulations were made using powers under the Traffic Management Act 2004.

- 4.2 The 2007 Regulations were amended by the Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2015 (S.I. 2015/561) and the Civil Enforcement of Parking Contraventions (England) General (Amendment No. 2) Regulations 2015. The former introduced a 10-minute grace period before a penalty charge becomes payable. The latter introduced restrictions on the use of CCTV in the enforcement of parking contraventions.
- 4.3 Regulation 11 of the 2007 Regulations provides that it is an offence to remove or interfere with a penalty charge notice except by or under the authority of the owner, person in charge of the vehicle or the enforcement authority. Regulation 11 cross-refers to notices served in accordance with regulation 9(2)(a) (which covers off-road contraventions) and regulation 9A(2) (which covers contraventions on a road and cases where penalty charge notices must be served by a civil enforcement officer). The cross references inserted by S.I 2015/1001 were added in order to ensure that the offence in regulation 11 applies in relation to penalty charge notices that are issued in relation to both on- and off-road parking contraventions. Regulation 9A(5)(a) covers contraventions on a road and cases where a penalty charge notice may, but need not, be served by a civil enforcement officer. These Regulations add a reference in regulation 11 to a notice fixed to a vehicle accordance with regulation 9A(5)(a).

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England only.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 This instrument makes an amendment to regulation 11 of the 2007 Regulations to ensure the offence of removing or interfering with a penalty charge notice fixed to a vehicle also applies to penalty charge notices issued under regulation 9A(5)(a).
- 7.2 The policy background is the same as for the Civil Enforcement of Parking Contraventions (England) General (Amendment No. 2) Regulations 2015, which restrict local authorities from issuing parking tickets in the post based solely on evidence from CCTV cameras. The regulations require traffic wardens to either affix tickets physically to the vehicle, or hand the ticket to the person that appears to be in charge of the vehicle.
- 7.3 Parking issues and in particular overzealous enforcement by local authorities are a matter of significant public concern and have been a priority for Ministers. The independent adjudication services have also had concerns that local authorities are not using their powers in accordance with the guidance. In its written evidence to the Transport Select Committee in 2013, the Traffic Penalty Tribunal said, “Adjudicators have found cases where camera enforcement appears to be used as a matter of routine where the strict requirements for use in the Guidance do not appear to be present.” The Transport Select Committee felt sufficiently persuaded by the evidence that it

went so far as to recommend that Government should act to halt the proliferation in the use of CCTV.

- 7.4 Ministers are concerned that this overuse of CCTV has unfair consequences on the public. An individual accused via CCTV misses an initial opportunity to receive discretion; an opportunity that is available to someone who is observed by a Civil Enforcement Officer (CEO). It is also unfair because drivers receive penalty notices in the post weeks later, with no opportunity to examine the parking location as it was at the time of the alleged contravention. Signs may have been obscured or fallen down, and lines could have been hidden – which could change before the driver can return to inspect the location.
- 7.5 These legislative changes are intended to be a proportionate response to this. With local authorities seeming to ignore guidance, Ministers felt something more robust than tightened guidance would be necessary. By requiring a notice to be affixed to the vehicle whilst retaining the possibility of using CCTV and service by post in certain cases (such as contraventions outside schools and along red routes), Ministers consider the right balance will be struck between ensuring safety and traffic flow, whilst ensuring CCTV is not used excessively.

Consolidation

- 7.6 The Department does not intend to consolidate the relevant legislation.

8. Consultation outcome

- 8.1 No consultation has been carried out for these Regulations.

9. Guidance

- 9.1 None.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 Officials will continue to monitor the impact of the 2007 Regulations as amended.
- 12.2 A review clause is not required for these Regulations on the basis that the activities which they regulate are not qualifying activities as defined by section 29 of the Small Business, Enterprise and Employment Act 2015.

13. Contact

- 13.1 Sarah McLean at the Ministry of Housing, Communities and Local Government email: sarah.mclean@communities.gsi.gov.uk can answer any queries regarding the instrument.