

**EXPLANATORY MEMORANDUM TO**  
**THE CIVIL ENFORCEMENT OF PARKING CONTRAVENTIONS**  
**(ENGLAND) GENERAL (AMENDMENT) REGULATIONS 2008**

**S.I. 2008/1513**

1. This explanatory memorandum has been prepared by the Department of Transport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 This instrument makes two amendments to the Civil Enforcement of Parking Contraventions (England) General Regulations (S.I. 2007/3483, “the General Regulations”).

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

3.1 The General Regulations contain several references to “civil enforcement officers”. In the absence of any provision to the contrary this expression will, in the Regulations, bear the meaning given by section 76 of the Traffic Management Act 2004. Regulation 3 of these Regulations extends the definition of “civil enforcement officer” to include (except in regulation 6 of the General Regulations) a parking attendant appointed under section 63A of the Road Traffic Regulation Act 1984. This extension only applies in relation to parking contraventions in a civil enforcement area outside Greater London relating to a parking place provided or authorised under section 32(1)(a) or (b) of the Road Traffic Regulation Act 1984, that is an off-street or free on street parking place.

3.2 Regulation 4 of these Regulations substitutes a new version of regulation 6 of the General Regulations. Regulation 6 was included in reliance on section 72(4) of the Traffic Management Act 2004. The effect of the new version will be that this regulation will not apply in relation to parking contraventions of the kind referred to in the preceding paragraph. In relation to such contraventions there will be no limitation on the type of evidence that may be used as a basis for imposing a penalty charge. In cases of dispute, it will be for adjudicators to determine whether the evidence relied upon by the enforcement authority is sufficient to establish that a contravention has indeed taken place. There is however nothing in the Regulations which would enable local authorities to impose penalty charges without proper evidence that a parking contravention had taken place. A local authority which issued a penalty charge notice without adequate evidence that a parking contravention had occurred would find itself unable to resist an appeal to an adjudicator by a dissatisfied motorist. The position of local authorities in relation to

enforcement will, in this regard, be exactly as it was under the Road Traffic Act 1991 before its repeal on 31st March 2008.

3.3 Both regulations 3 and 4 make different provision in relation to a limited class of parking contravention occurring outside Greater London from that applying to all other such contraventions. In this regard they are made in reliance upon section 73(3) of the 2004 Act, which enables regulations under Part 6 of that Act to make different provision “in relation to different descriptions of contravention”, and section 89(1) which enables such regulations to make provision for Greater London different from that made for the rest of England. The expression “description” is not defined in the Act and the Department has considered whether “parking contraventions in a civil enforcement area outside Greater London relating to a parking place provided or authorised under section 32(1)(a) or (b) of the Road Traffic Regulation Act 1984” can properly be regarded as a description of contravention for the purposes of section 73(3).

3.4 In the Department’s view they can be so regarded. Section 73(1) specifies four main sets of contraventions, the first set of which is parking contraventions, but the term “description” is not used in relation to them. There are moreover several different types of parking contravention referred to in Part 6 of the 2004 Act and this type of contravention is expressly referred to in paragraph 8(5)(a)(i) of Schedule 8 to the 2004 Act (see also the list at paragraph 4 of Schedule 7). Thus the Act itself recognises it as a description of contravention. The Department has also had regard to the case of *Petherick v Buckland* [1955] 1 All E.R. 151. In that case, Lord Goddard CJ held that, in the exercise of a power to limit the disqualification of a convicted driver to vehicles of the same class or description as the vehicle in relation to which the offence was committed, a Magistrates’ court had power, in the absence of a statutory definition of “description”, to define their own description of motor vehicle.

#### **4. Legislative Background**

4.1 Part 6 of the Traffic Management Act 2004 provides for the civil enforcement of certain traffic contraventions, in particular of parking contraventions. Civil enforcement means that such contraventions are not enforced through the criminal law by the giving of fixed penalty notices under the Road Traffic Offenders Act 1988 or the bringing of prosecutions in magistrates’ courts. Instead the system is based on the issue of a “penalty charge notice” imposing a “penalty charge” which, subject to a right of appeal to an independent adjudicator, can be recovered as a civil debt through the county court. Part 6 of the Traffic Management Act 2004 leaves the detail of civil enforcement to be dealt with in Regulations. A series of Regulations (see S.I. 2007/ 3482 to 3487) implementing the civil enforcement of parking in England came into force on 31st March 2008.

4.2 In accordance with paragraph 8 of Schedule 8 to the Act of 2004, except in the areas of unitary authorities, the enforcement of parking controls in the non-metropolitan counties is shared between district councils and

county councils. The district councils are the enforcement authorities for parking contraventions in off-street parking places provided by them and in free on-street parking places authorised by them. The county councils are the enforcement authorities for all other types of parking contravention.

4.3 Section 76(1) enables officials called “civil enforcement officers” to be appointed and section 76(5) provides that a parking attendant appointed under section 63A of the Road Traffic Regulation Act 1984 is a civil enforcement officer for parking contraventions. However, the section contains an anomaly in that the power in subsection (1) to appoint civil enforcement officers is only exercisable by a “local authority” (which is defined by section 92 so as to exclude a non-metropolitan district council) which is an enforcement authority. In subsection (5), a similar issue may arise as the subsection refers to a “parking attendant” appointed under section 63A of the Road Traffic Regulation Act 1984 “by a local authority that is an enforcement authority”. While the matter is not beyond doubt, the Department’s view is that “local authority”, in this particular context, should be interpreted in accordance with the 1984 Act where it would include a non-metropolitan district council.

4.4 An amendment to section 75 of the Traffic Management Act 2004 has been included in Local Transport Bill which, if enacted, will solve the difficulty in the longer term, but these Regulations, which aim to remove now the effect of the anomaly are necessary to deal with the problem in the meantime.

## **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 negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The first aim of the new parking framework introduced on 31 March 2008 was to replace the unsatisfactory state of the statute law on the civil enforcement of parking. This has hitherto rested on Part II of the Road Traffic Act 1991 and the Road Traffic Regulation Act 1984 in relation to parking places in Greater London. A series of orders extended this legislation to other parking contraventions in designated “special parking” areas in London and to certain areas outside London designated by order in relation to all types of parking contravention. Each order, applying in London or elsewhere, contained modifications of both the 1991 and the 1984 Acts in their application to the designated area. Such modifications will no longer be necessary.

7.2 Secondly, although it is largely based on the old system of enforcement, the framework includes many changes of detail. Some of these derive from modifications to the Road Traffic Act 1991 made by London local legislation.

7.3 A public consultation (“Better Parking – Keeping Traffic Moving”) on the draft Statutory Guidance, draft Regulations and on the Partial RIA was conducted from 12th July 2006 to 25th September 2006. The consultation document set out the Government’s position on civil parking enforcement and sought views on 20 specific issues set out in the document.

7.4 The document was sent to all Local Authorities in England, 85 other organisations (including the key stakeholders, members of the working group and the Council on Tribunals), and specific individuals who requested the consultation. There were 112 responses, 77 from Local Authorities, 13 from the public and motorists groups and 22 from businesses and other interested parties

7.5 Those who responded agreed with the lines taken in the consultation document on the vast majority of the issues and the policies on these will remain as suggested in the consultation. Unfortunately, the anomaly that this Instrument remedies was identified neither by the Department nor by any of the consultees. The instrument is therefore required for the proper working of the new system of enforcement.

## **8. Impact**

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 A Regulatory Impact Assessment was prepared for the Traffic Management Bill as a whole and a further Regulatory Impact Assessment was prepared for the set of regulations referred to in paragraph 4 above and these are available at <http://www.dft.gov.uk/results?view=Filter&t=parking+impact+assessment&pg=1>

## **9. Contact**

9.1 Marilyn Waldron at the Department for Transport Tel: 020 7944 2468 or email: [marilyn.waldron@dft.gsi.gov.uk](mailto:marilyn.waldron@dft.gsi.gov.uk) can answer any queries regarding the instrument.