

TRAFFIC MANAGEMENT ACT 2004 (TMA)

1. INTRODUCTION

- 1.1 On 31 March 2008 the Department of Transport (DFT) intends to bring into force its Civil Enforcement of Parking Contraventions General Regulations 2007. The effect of this in relation to Parking Enforcement is that the existing Decriminalised Parking Enforcement Regulations will be replaced by the new Civil Enforcement Regulations. The objective of the TMA being to make parking enforcement more transparent and for there to be greater consistency throughout the Country, at the same time allowing parking policies to be made to suit local circumstances.

This report provides a summary of the changes and particularly those which require Cabinet resolutions to implement.

- 1.2 The Department of Transport is currently undertaking a consultation concerning the Operational Guidelines which it will publish to Local Authorities. The results of this consultation are not expected until late November/December and not all the necessary regulations have completed the Parliamentary process. It is expected that any changes resulting from these procedures will be of a detailed nature. However should this not be the case the Portfolio Holder will be immediately consulted. It is necessary for Cabinet to consider these matters at the present time for two reasons, firstly in order that they can be properly considered within the Council's budget making timetable and secondly help ensure that all necessary actions have been taken to prepare for the implementation of the new regulations.

2. SUMMARY OF THE PRINCIPLE DIFFERENCES BETWEEN THE NEW REGULATIONS AND THOSE IMPLEMENTED BY THE COUNCIL AT THE PRESENT TIME

- 2.1 Legally required changes.

2.1.1 Terminology

A number of legal descriptions have been altered, for example, Parking Attendants will be called Civil Enforcement Officers (CEO). This will require changes in stationery and uniforms.

2.1.2 Procedures

Because Penalty Charge Notices will be issued under a different Act (TMA2004) and new regulations the computer system and administrative procedures will need to be updated. An example of this being:-

- Differential charging between Contraventions.
- In certain circumstances notices can be served by post.
- Time limits have been set concerning sending out of documentation.

2.1.3 New Powers

Central Government's intention is to allow Council's to enforce the contraventions set out below. Unfortunately there is some legal debate concerning the legality of the drafting of these regulations. Given this it would be unwise of the Council to enforce these contraventions until this matter has been clarified.

- Civil Enforcement Officers will be able to issue PCNs to vehicle's obstructing dropped kerbs. However, there are a number of exceptions from this regulation, for example vehicles parked in a permitted parking area or with the agreement of the property occupier/owner.
- Issue PCNs for double parking. However there are exemptions to this rule for example if a vehicle is parked for the purposes of loading / unloading goods.
- Civil Enforcement Officers will be able to issue PCNs to vehicles parked on Zig Zag lines, for example on the approach to pedestrian crossings.

2.1.4 Changes to Guidance

The Council must have regard to the Guidance (as stipulated in Section 87 of the TMA) when developing and reviewing their parking regimes. The necessary statutory changes to allow Civil Parking enforcements to be introduced must be undertaken taking full account of the guidance notes. Officers will review the operation of Parking Enforcement in light of the new guidance. Examples of the guidance include;

- Publication of statistical and financial information concerning the Parking Service
- Publication of policy relating to:
 - Cancellation of Penalty Charge Notices,
 - Use of discretion when considering Challenges and representations
- Stronger emphasis on staff training
- Guidance on how to deal with appeals which are made after payment has been made

2.1.5 Delegations

The guidance states that "Elected members may wish to review their parking representations policies, particularly in the area of discretion, to ensure consistency with published policies. However, elected members and unauthorised staff should not, under any circumstances, play a part in deciding the outcome of individual challenges or representations. This is to ensure that only fully trained staff make decisions on the facts presented. The authority's standing orders should be specific as to which officers have the authority to cancel

PCNs. There should also be a clear audit trail of decisions taken with reasons for those decisions.”

Cabinet will be asked to approve delegated powers to specific officers when the requisite regulations have completed the Parliamentary process

2.1.6 Opportunities for Members to Review the Policy concerning consideration of Challenges and Representations relating to Penalty Charge Notices.

A report will be presented to the Planning and Transportation Scrutiny Panel giving members the opportunity to comment and make recommendations concerning proposed procedures for dealing with these matters.

2.1.7 Use of CCTV for the issue of Penalty Charge Notices

The new Traffic Management Act does allow for limited use of CCTV enforcement in specified circumstances provided the equipment used has been approved by the Department of Transport. The recommendation from the Department of Transport is that CCTV is only used when it is not practical to enforce by means of normal foot patrols. CCTV should not be used in any location where Permits or Disabled Parking Badges may give exemption from regulations. The Parking Manager and CCTV & Licensing Manager will investigate the practicalities of utilising the Council's CCTV for the enforcing of Traffic Regulations. Given the current work programme the officers concerned will consider these issues when the Statutory requirements and Guidance Notes recommendations of TMA have been implemented.

2.1.8 Moving Traffic Offences.

The TMA does allow local Authorities to apply to the DfT to enforce a limited number of moving traffic offences. These contraventions are confined to the enforcement of specified traffic signs, for example no right turn or no entry to vehicular traffic. These require camera enforcement by a device approved by the Department For Transport. The cost, practicality and benefits of this Council of undertaking moving traffic enforcement needs to be carefully assessed before any decision to request these powers is made. As with CCTV these issues will be considered further when the Statutory Requirements and guidance notes concerning the implantation of the TMA have been implemented.

2.1.9 Adjudicators Powers

The Adjudicator will be able to refer cases back to the Local Authority if it believes the Authority should have used its discretion and cancelled the case. Any cases referred back must be considered by the Chief Executive of the Authority concerned.

2.1.10 Traffic Orders

Some minor amendments to some Traffic Regulation Orders may be required. This will need to be undertaken by the Highway Authority who have been made aware of the position.

3. MATTERS WHICH NEED TO BE CONSIDERED BY CABINET

3.1 Setting the levels of Penalty Charge Notice.

3.1.1 The new regulations set out two bands of charges and different levels of penalty depending on the type of contravention. The Council is required to make a decision on which penalty charge band to use and publicise its decision. Set out below are the charging bands permitted in the legislation together with information concerning existing penalties.

TABLE 1

Existing Tariff *	New Band 1 *	New Band 2 *
£60	£60 Higher	£70
£60	£40 Lower	£50

* 50% discount on all tariffs if paid within 14 days, a 50% surcharge on all tariffs if paid more than 28 days from issue of Notice to Owner.

- Higher level charge relates to those contraventions which prohibit e.g. parking on double yellow lines or single lines during a prohibited period.
- Lower level charges relate to those contraventions which occur if a Traffic Regulation Order allows waiting but some contravention of that permitted waiting has taken place. Examples of this being waiting over the prescribed period on street or parking in an off-street location without displaying a valid ticket / clock.

3.2 Consideration of Tariffs

3.2.1 Option 1 - Band 1 Tariff

If this band is adopted revenue is likely to reduce from current levels by £73000. This band keeps the penalty levels for the more serious contraventions at their present levels. However it significantly reduces the penalties for the less serious off street contraventions by some 33%. As a result this markedly decreases the deterrent effect of the penalty.

3.2.2 Option 2 - Band 2 Tariff

If this band is adopted overall revenue is likely to reduce from current levels by £26000. Those who have committed contraventions in the lower penalty category in band 2 (which includes the majority of off-street contraventions) will pay approximately 17% less than they do at the present time. However those who have committed more serious contraventions, for example parking on double yellow lines or on zig zag lines approaching a pedestrian crossing will pay 17% more. Band 2 does appear to be set at a level to provide a deterrent to those who may consider contravening a Traffic Regulation Order.

- 3.3 Predicted Effect on Overall Budget of New Penalty Charge Tariffs.
- 3.3.1 The Council's current budget for PCN's is £246450, which is less than 06/07 outturn figures. Therefore, while income reductions are as set out in Section 3.2 the impact on the budget is less dramatic. Adopting Band 1 would require a bid of £34000 but adopting Band 2 would add an income of £13000 to the current budget level.
- 3.4 Amendments required to the District of New Forest (Off Street Parking Places) Order 2005.
- 3.4.1 Part IV of the Council's Off Street Parking Order sets out the level of penalty charges applicable in off street car parks. This will need to be amended to reflect the new penalty charge levels agreed by the Council and the different legislative provisions under which they are made. A resolution is required to be made by Cabinet in order to make the necessary amendments to the Council's Parking Order.

4. PUBLICITY

- 4.1 As part of the introduction of Civil Parking Enforcement the District Council should publicise the changes.

5. TIMETABLE

- 5.1 The new regulations come into force on the 31 March 2008 and therefore, all the legally required changes must be in place by that date. It is unlikely that all the necessary regulations will be in place until January 2008. This gives Local Authorities and particularly their IT providers little time to prepare for the change. This very tight timetable and could lead to some logistical problems when all local Authorities in England use new software for the first time on the same day. This Council will be as prepared as it can be given the time table given.

6. ENVIRONMENTAL IMPLICATIONS

- 6.1 None

7. EQUALITY AND DIVERSITY ISSUES

- 7.1 There are no Equality or Diversity issues raised by this new legislation.

8. FINANCIAL IMPLICATIONS

- 8.1 Section 3.2 of this report sets out the predicted financial implications of the new Penalty Charge levels.
- 8.2 There will be some costs associated with the introduction of the TMA, for example changes in uniforms and stationery this is likely to cost in the region of £5,000 and will be met within existing budgets.

9. SUMMARY

- 9.1 The new Regulations give a limited number of new enforcement powers, alter Penalty Charge Notice levels and change a number of procedures through the guidance notes. The objective of the new regulations is to make parking enforcement more transparent, more constant throughout the country and fairer to the motorist. The levels of penalties set in Band 2 are likely to deter motorists from contravening parking orders. Although this level produces less income than the current system it will generate £13,000 more income than the current budget.

10. PORTFOLIO HOLDERS COMMENTS

The Portfolio Holder supports the recommendations of this Report.

11. RECOMMENDATION

- 11.1 That this Council adopt Band 2 for all Penalty Charge Notices issued under the Traffic Management Act 2004 as from 31 March 2008 as set out in section 3.1.1 of this report.
- 11.2 That Officers be authorised to take the necessary steps to amend the Off Street Parking Places Order to ensure the order is compliant with the Traffic Management Act 2004 and reflect the band of Penalty Charge agreed.
- 11.3 That officers be authorised, acting as Hampshire County Council's agent, to take the necessary steps to make such minor amendments to existing Traffic Regulation Orders as may be required to bring orders into compliance with the Traffic Management Act 2004. Any amendments should not result in any material change to the extent or nature of waiting restrictions as marked on the highway and are subject to the approval of Hampshire County Council.
- 11.4 That the new powers described in section 2.1.3 are actioned when the Council's Parking Manager and Head of Legal and Democratic Services are satisfied that they are legally enforceable.
- 11.5 In the event of any changes in Operational Guidance or Regulations , which may affect the recommendations in this report , the Portfolio Holder be informed and decide on the appropriate action.

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