

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

**2008/No. 913**

**1.**

- 1.1 This explanatory memorandum has been prepared by the Wales Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments

**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 draft Regulations that require the consent of Parliament, relate to non-devolved matters that are the responsibility of the Lord Chancellor.
- 2.2 The Regulations amend sub-paragraph 1(g) of the Schedule to the Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008 (“the original Regulations”). The effect of the amendment is to provide a uniform period within which persons served with a penalty charge notice must pay the penalty charge.
- 2.3 The original sub-paragraph 1(g) of the Schedule required payment of the penalty charge within 28 days of the date of the alleged contravention. This meant that those persons who received their penalty charge notice in person from a civil enforcement officer, or by the notice being affixed to their vehicle, were at an advantage in terms of the length of time in which to pay the penalty charge, over those persons who were not present at the time of the alleged contravention and therefore received the penalty charge notice in the post several days later.
- 2.4 By amending sub paragraph 1(g) of the Schedule to require payment of the penalty charge within 28 days of the date of notice of the penalty charge is received, this ensures that all persons that receive a penalty charge notice, by whatever method, will have an equal time limit in which to respond.

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

- 3.1 The Wales Office wish to lay this statutory instrument as soon as possible, in breach of the 21-day rule.
- 3.2 The amendment to the original Regulations has come about as a result of a point raised by the House of Lords Merits Committee. The discrepancy in the time limits within which to pay the penalty charge notice was notified to the Wales Office on 20<sup>th</sup> March 2008, and in turn the Welsh Assembly Government on 25<sup>th</sup> March 2008. An amending statutory instrument was drafted as soon as possible after this date.
- 3.3 The original Regulations are part of a package of Regulations made by both the Lord Chancellor and the Welsh Assembly Government which introduce a national legislative framework for the civil enforcement by local authorities of parking contraventions. These instruments apply to Wales. However, equivalent Regulations are being implemented in Parliament for England, allowing strengthened civil enforcement arrangements to come into force on the same date, 31 March 2008. Although there will be minor differences of detail as between the administrative arrangements in England and Wales, they will be very substantially the same, allowing a single adjudication procedure, for example.
- 3.4 By delaying the making of the amending Regulation, this will result in different enforcement arrangements being in place in England and Wales, whereas the policy intention of both the UK Government and the Welsh Assembly Government, was for a uniform approach to civil parking enforcement and adjudication. It may also generate a number of appeals to the parking adjudicators on the grounds of unfair application of the time limits for payment.

### **4. Legislative Background**

- 4.1 Part 6 of the Traffic Management Act 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. 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).

4.2 The effect of the package of parking instruments will be to replace the present system of decriminalised parking enforcement under Part II and Schedule 3 of the Road Traffic Act 1991. The instruments will be supplemented by Statutory Guidance issued by Welsh Ministers, to which local authorities will be required to have regard, although they will not be obliged to follow it.

4.3 The complete list of proposed instruments comprising the package follows. Those subject to negative resolution procedure by the National Assembly for Wales are:

The Civil Enforcement of Parking Contraventions (Representations and Appeals about 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 Disability Discrimination Act 2005 (Commencement No. 1) (Wales) Order 2007

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

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

The Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008

4.4 The Representations and Appeals Regulations cross-refer to the proposed Civil Enforcement of Parking Contraventions (General Provisions) (Wales) Regulations 2008, and also to The Civil Enforcement of Parking Contraventions (Representations and Appeals about Removed Vehicles) (Wales) Regulations 2008. Both of these latter Regulations will be made by Welsh Ministers and subject to Assembly procedures.

## **5. Territorial extent and application**

5.1 These instruments apply to Wales, however equivalent Regulations are being implemented in England with the same Coming Into Force date of 31<sup>st</sup> March 2008.

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

- 6.1 The Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) (Amendment) 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) (Wales) (Amendment) Regulations 2008 are compatible with the convention rights.”

## **7. Impact**

- 7.1 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>

## **8. Policy Background**

- 8.1 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.
- 8.2 Secondly, although it is largely based on the old system of enforcement, the new framework includes many changes of detail.
- 8.3 In the 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. 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.
- 8.4 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.]

- 8.5 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.
- 8.6 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.
- 8.7 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.
- 8.8 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.

## **9. Contact**

- 9.1 Sue Olley of the Wales Office can answer any queries regarding the instrument. Telephone: 029 2089 8568.

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27<sup>th</sup> March 2008

