

TRAFFIC MANAGEMENT ACT 2004

**Statutory Guidance to local authorities
on the civil enforcement of bus lane
and moving traffic contraventions**

JULY 2014

STATUTORY GUIDANCE TO LOCAL AUTHORITIES ON THE CIVIL ENFORCEMENT OF BUS LANE AND MOVING TRAFFIC CONTRAVENTIONS

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(i) Introduction

- 1 The Traffic Management Act (TMA) 2004 provides a single, coherent regime enabling enforcement authorities (EAs) to robustly and consistently enforce measures introduced for traffic management and the provision of bus and parking services.
- 2 This Statutory Guidance, which sets out the policy framework for bus lane and moving traffic enforcement, including how to approach, carry out and review enforcement, is published for local authorities by Welsh Ministers under Section 87 of the TMA.
- 3 The Guidance aims to strike the right balance between:
 - 4 as much overall consistency as possible, while allowing policies to suit local circumstances; and
 - 5 a system that is fair to the motorist, but also effective in enforcing traffic restrictions.
- 6 All EAs¹ in Wales should use this Guidance in conjunction with the bus lane and moving traffic provisions in Part 6 of the TMA 2004².
- 7 This document has no special authority on matters of legal interpretation. Where there appear to be differences between the Regulations and the Statutory Guidance, the Regulations always take precedence.
- 8 Where the Guidance says that something must be done, this means that it is a requirement in either primary or secondary legislation, and a footnote gives the appropriate provision. In all other instances, Section 87 of the TMA stipulates that EAs **must have regard** to this Guidance in exercising their functions in connection with the civil enforcement of bus lane and moving traffic contraventions. The EA is expected to follow the guidance unless there is a compelling reason for not doing so. The EA will be expected to give reasons for a decision not to implement the terms of the guidance, and the adjudicator may consider it to be a procedural impropriety, sufficient for an appeal to be allowed, if this is not done.
- 9 The Guidance applies to all authorities in Wales enforcing bus lane and moving traffic contraventions under the TMA.

¹ Traffic Management Act (TMA) 2004, Schedule 8.

² TMA 2004 Ss 72 to 93 and Schedule 7.

- 10 Authorities must have regard to this Statutory Guidance (as stipulated by Section 87 of the TMA) when developing, implementing and reviewing their bus lane or moving traffic regimes. They should also read this Guidance in conjunction with the more detailed Operational Guidance. This Guidance should also be read in conjunction with the Guidance on Approved Devices⁴, and the Codes of Practice produced for the operation of CCTV enforcement cameras⁵.
- 11 . The enforcement of bus lane and moving traffic contraventions is a legal process. EAs should make sure that their employees and contractors who operate their regimes have a clear and full understanding of what the law requires. If EAs are uncertain about any aspects of these requirements, they should obtain appropriate legal advice.
- 12 . Where civil enforcement applies in an area, contraventions of bus lane and moving traffic orders may continue to be enforceable as criminal offences as an alternative to the civil enforcement procedure⁶. There can be no double jeopardy for the same contravention between any criminal proceedings by the police and civil proceedings by the EA. A penalty charge is not payable where criminal proceedings have been initiated or a Fixed Penalty Notice (FPN) for an offence has been issued under the Road Traffic Offenders Act 1988. If such action takes place, the PCN must be cancelled. If a penalty charge has been paid, it must⁷ be refunded.

(ii) Policy Objectives

- 13 . Transport is responsible for 21% of the UK's greenhouse gas emissions and reducing the impact of carbon from transport is, therefore, a key priority. Local authorities are important partners in leading change, influencing journey patterns and promoting more sustainable choices. Well designed traffic management policies that are enforced effectively can play an important role in achieving change. The Welsh Government is committed to an integrated transport network that will address the key challenges of congestion and environmental pollution. Key to meeting these challenges will be measures to encourage people to use public transport for more of their journeys.

⁴ Guidance on the Certification of Approved Devices to local authorities on the Civil Enforcement of Road Traffic Contraventions: bus lane, moving traffic contraventions and parking.

⁵ Home Office Surveillance Camera Code of Practice

⁶ Regulation 7(1) The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (S.I. 2013/362).

⁷ Regulation 7(2) The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (S.I. 2013/362).

- 14 . Buses already play an essential role in the transport system of our urban areas and have a major role to play in our plans for improving public transport services. Buses provide transport for people who are unable to drive themselves - and for those who do not wish to drive - to access work, retail, education, social and leisure activities.
- 15 . If buses are to fulfil their potential for providing an alternative to the private car for more journeys, local authorities and bus operators must work together to make it easier and more convenient to use bus services. For example, bus services are particularly susceptible to the effects of traffic congestion. Delays to buses increase operating costs and lead to higher fares. Passengers are often deterred from travelling on local buses because of the slower and less reliable services and higher fares.
- 16 . For these reasons, it is worthwhile to introduce traffic management measures to assist the movement of buses. Such interventions can take the form of measures to allow buses to use dedicated lanes or measures that will allow buses to undertake turning movements that are denied to other traffic. Such measures can provide substantial benefits to bus passengers by allowing faster journey times and more reliable and punctual services. Welsh Ministers believe there is greater scope for providing more priority for buses as a contribution to achieving an integrated and efficient public transport network.
- 17 . By the same token, more general traffic management measures can also assist the movement of buses. Measures to remove through traffic from congested urban streets can greatly improve road conditions for local buses as well as pedestrians and cyclists.
- 18 . The provision of bus priority measures together with other moving traffic interventions and their effective enforcement can help to deliver plans to improve the quality and integration of local bus services. A good enforcement regime is one that uses quality-based standards that the public understands, and which are enforced fairly, accurately and expeditiously.
- 19 . EAs should aim to increase compliance with bus lane and moving traffic regulations through clear, well designed, legal and enforced controls including clear signing which can readily be understood from a moving vehicle. Civil enforcement will help an authority to effectively deliver wider transport strategies and objectives. Authorities should never view enforcement in isolation and should use physical enforcement measures wherever possible to prevent contraventions. Authorities should not replace physical enforcement measures with cameras unless the physical measures have been shown to have a detrimental effect on road safety or traffic flow.

20 . EAs should design their bus lane and moving traffic policies with particular regard to:

managing the traffic network to ensure expeditious movement of traffic, (including pedestrians and cyclists), as required under the Network Management Duty⁹;
improving road safety;
improving the local environment, especially carbon reduction;
improving the quality and accessibility of public transport; and
managing and reconciling the competing demands for road space.

21 and in this, should consider all sections of the community, including disabled people.

22 EAs should also ensure that their bus lane, and moving traffic policies are integrated with their parking policies, particularly to support local communities and amenities; the need for delivering and collecting goods, and to ensure that conflicting priorities do not arise. For example, it creates confusion if a bus lane is introduced where loading and unloading is permitted.

23 . EAs should run their operations efficiently, effectively and economically. The purpose of penalty charges is to persuade motorists to comply with the bus lane and moving traffic restrictions, and therefore authorities should set the penalty charge at a level that will achieve compliance. When authorities receive penalty charge payments they must¹⁰ use them in accordance with the provisions in the regulations.

24 . It is unlikely that the enforcement of bus lane and moving traffic contraventions will be self-financing by itself. There would likely be economies of scale from combining the enforcement of civil parking, bus lane and moving traffic contraventions. Local authorities should consider the indirect financial, environmental and other benefits that would result from effective bus lane and moving traffic enforcement and take those into account when considering whether to apply for civil enforcement powers.

(iii) Bus Lanes

25 . The with flow bus lane is the most common form of bus priority measure. This is where a traffic lane is reserved for the use of buses and any other vehicles that are to be given priority. With flow bus lanes enable buses to bypass traffic queues and provide a substantial time saving for passengers.

⁹ S16 of the TMA 2004.

¹⁰ Regulation 26 The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (S.I. 2013/362).

- 26 . Contraflow bus lanes allow buses to travel against the main direction of travel, avoid unnecessary diversions, maintain route patterns and give better access to business and stopping areas. In some cases it may be appropriate to allow other classes of vehicle – such as taxis or private hire vehicles – to use the bus lane. If a significant number of exemptions is required for access purposes then the scheme may fall outside the bus lane definition¹ and the EA should consider imposing penalties under Part 4 of Schedule 7 to the TMA powers (i.e. failing to comply with the relevant traffic sign) rather than for being in a bus lane. It will also be important to consider if the restrictions of the bus lane should apply only during peak periods. This will be for the local authority to consider in the face of local priorities and traffic conditions.
- 27 . Clear signing of bus priorities is critical. A Traffic Regulation Order (TRO) under the Road Traffic Regulation Act 1984 must be made to identify the length of the bus lane and to limit its use to those types of bus and other vehicles the authority wishes to allow. All road markings and signs must comply with the Traffic Signs Regulations and General Directions 2002¹¹.

(iv) Moving Traffic Contraventions

- 28 . Buses can be given priority at road junctions, either by permitting buses to make turning movements prohibited to other traffic; by giving preference to flows containing a high proportion of buses, e.g. bus only streets or bus gates; or by adjusting signal controls when a bus is detected in the traffic stream. Allowing buses to make a turn that is prohibited to other traffic can give buses a considerable advantage by allowing them to take a shorter route than other traffic.
- 29 . The Regulations provide for the civil enforcement of both bus lane contraventions under Part 2 of Schedule 7 and moving traffic contraventions under Part 4, including all the prohibitions and signs listed in paragraph 9(4) of Schedule 7 of the TMA. In response to consultation, Welsh Ministers have decided to add signs 958, 959 and 960 relating to with-flow and contra-flow bus lanes.

v) Issues to consider before applying for bus lane and moving traffic enforcement powers

- 30 . Local authorities are required to apply to Welsh Ministers for an Order designating the whole or part of the local authority's area as a Civil Enforcement Area for bus lane and moving traffic contraventions. However, the area covered by the bus lane and moving traffic designation order will only be within, or co-extensive with, the area already designated as a civil enforcement area for parking contraventions¹².

¹ Regulation 23 Traffic Signs Regulations & General Directions 2002.

¹¹ SI2002/3113

¹² Part 2, Schedule 8 to the Traffic Management Act 2004.

31 26. EAs will be granted bus lane and/or moving traffic enforcement powers along with CPE powers where appropriate. Welsh Ministers will need to consult the relevant chief of police before making any order. We will set out in Operational Guidance how a local authority can apply for designation as a bus lane and/or moving traffic enforcement area.

32 27. The key criteria on which Welsh Ministers will need to be satisfied are that:

the authority has consulted those with an interest, including the police, and taken account of their views in finalising the application;
all relevant TROs, traffic signs and road markings are in compliance with legal requirements and the traffic signs and road markings are consistent with the Orders; and
the EA has reviewed its relevant traffic orders and signs and carriageway markings to ensure they are both necessary and correct.

33 . As part of this process, local authorities should look afresh at the measures to be enforced to ensure that there is no location where a motorist would have to contravene the provisions to avoid a road safety or congestion problem. These might include left hand turns where there is a bus lane and yellow box junctions where the exit cannot be seen before entering it.

34 . In addition, any authority considering civil enforcement of bus lane and/or moving traffic contraventions should consider whether:

enforcement will contribute to broader transport objectives;
the scheme is proportionate to the scale of the traffic management issues facing the enforcement authority;
the scheme will deliver improved performance, better reliability and punctuality for local bus services; and
there is consistency with neighbouring schemes so that motorists and others affected can understand how it works.

(vi) Setting charges

35 . The primary purpose of penalty charges is to encourage compliance with traffic restrictions. In pursuit of this, EAs should adopt the lowest charge level that is consistent with a high level of public acceptability and of compliance. The EA must¹⁴ ensure that the public knows what charge levels have been set by publishing them well in advance of their introduction in such media as to achieve a high level of recognition. They must also publish any subsequent change to the charge levels¹⁵. The charges must accord with

¹⁴ Paragraph 9, Schedule 9 to the Traffic Management Act 2004.

¹⁵ As above.

guidelines set by Welsh Ministers unless they permit the EA to depart from the guidelines¹⁶.

- 36 . Civil Parking Enforcement operates a differential parking system where different parking penalties apply to different contraventions. Welsh Ministers believe that PCNs for bus lane and moving traffic enforcement should be set at the higher penalty charge level within the chosen band. Welsh Ministers also believe that a standard penalty charge level would help motorists to better understand the objectives of enforcement and provide a simpler enforcement regime if the same charge level were applied for bus lane and moving traffic contraventions as for parking contraventions. The charge levels for bus lane and moving traffic contraventions should be the same as that for CPE contraventions.

(vii) Communicating and consulting on bus lane and moving traffic enforcement

- 37 . It is important that the public understand why an authority has introduced the enforcement regime and what regulations are in place. Motorists and other road users need to be aware that enforcement is about supporting wider transport objectives and keeping traffic moving. Once authorities have finalised their enforcement policies, it is recommended that they publish and promote them openly. There needs to be regular, formal communication after civil enforcement is introduced and when changes are made.
- 38 . It is also important that motorists and other road users understand the details of the scheme. Unclear restrictions, or restrictions that do not comply with regulations or with Welsh Ministers' Guidance will confuse people, and ultimately undermine the operation and enforcement of the scheme overall. If local authorities detect hot spots where a disproportionate number of representations or appeals are being made, that should alert them to a possible need to review what may be causing that.
- 39 . EAs should consider the full range of media available to them when communicating with the public. They should consider advising every household in the area when they propose changes to the operation of a scheme. Authorities should also consider how the restrictions will be made clear to drivers visiting from outside the area of the EA.
- 40 . It is vitally important that authorities should try to work regularly with neighbouring authorities to ensure a consistent approach to enforcement and to share best practice. This is particularly important where bus lanes pass through the areas of different EAs.
- 41 . In the interests of good public relations, for a limited period of time, (about two weeks), after cameras are installed and fully operational, it is

¹⁶ Paragraph 8, Schedule 9 to the Traffic Management Act 2004.

recommended that authorities taking on powers for the first time should not send a PCN to motorists contravening the bus lane or moving traffic regulations. Instead they should send warning notices explaining the changes to enforcement procedures and that in the future such contraventions will result in a penalty charge.

(viii) Appraising the regulatory regime

- 42 EAs should monitor their bus lane and moving traffic policies, regimes and associated regulatory framework (including penalty charge levels) and should aim for continuous improvement in compliance. This should be done at the same time as they review their plans for enforcing car parking contraventions. They should appraise them when reviewing Transport Plans.
- 43 Experience has shown that compliance with the restrictions markedly improves soon after enforcement is commenced. If non-compliance at a particular location persists at the same rate for a long period of time, that should alert the authority to a possible need to review carefully the lay out and signing of the restriction, including warning and advisory signs along the route, taking into account representations made about drivers' experiences.
- 44 Appraisals should take account of any relevant information collected as part of the bus lane and moving traffic enforcement process, in particular about the practical effectiveness of the schemes. They will benefit from interviews with camera operators, who are in a unique position to identify changes to bus lane and moving traffic enforcement patterns, and with office staff, who see challenges and representations and the reasoning behind them. These might, for example, identify specific enforcement issues that should be addressed to improve compliance or reduce costs.
- 45 EAs should also seek the views of people and businesses with a range of different needs as well as taking into account the views of the police.
- 46 It is recommended that the appraisal should take account of:
 - existing and predicted levels of demand for lane space;
 - the improved performance, reliability and punctuality of local bus services;
 - impact on traffic flow;
 - the justification for, and accuracy of, existing traffic orders;
 - the adequacy, clarity, accuracy and quality of traffic signing and road markings;
 - the level of enforcement necessary for compliance;
 - the number of representations received and outcomes of appeals to the adjudicators;
 - the levels of penalty charges; and

- the need to resource the operation effectively (including staff to consider representations) and ensure that all staff are appropriately trained.

(ix) Training and professionalism

- 47 Once a solid foundation of policies, legitimate TROs, and clear and lawful signs and lines are in place, the success of the enforcement regime will depend on the dedication and quality of the staff that deliver it. It is essential to give staff at all levels the skills and training to do their jobs effectively if the service is to command public confidence and respect. This should also improve the self-esteem and job satisfaction of staff, resulting in higher retention rates. Training should be seen as a legitimate and important aspect of bus lane and moving traffic enforcement running costs.
- 48 EAs should provide enough staff for the volume of work. They should also make sure that those staff, have the skills, training, authority and resources to give the public a high quality, professional, efficient, timely and user-friendly service.
- 49 Authorities that outsource any area of bus lane or moving traffic enforcement to private companies should ensure that the contractor fulfils all the requirements set down for the authority itself. However, EAs should themselves handle and consider representations, reflecting their responsibility for the policy. (N.B there are no 'informal' representations when the PCNs are sent by post).
- 50 EAs should ensure that the office staff, operating cameras are properly trained to enforce the controls fairly, accurately and consistently. EAs should make sure that the officers understand all exemptions.

The exercise of discretion

- 51 Welsh Ministers recommend that EAs set out discretionary policies as part of considering challenges and representations against PCNs. EAs may also wish to set out certain situations when a PCN should not be issued. For example, an EA may wish to consider issuing a written warning rather than a PCN in appropriate circumstances. The EA should have clear policies, instructions and training for officers on how to exercise such authority and authorities should publish them.
- 52 Authorities should always bear in mind that it could constitute a procedural impropriety not to consider representations properly and an adjudicator may allow an appeal if it is found that there was procedural impropriety on the part of the authority.

(x) Enforcement activities

Camera enforcement

- 53 Local authorities may issue PCNs for bus lane and moving traffic contraventions only on the basis of evidence from a camera and associated recording equipment (an “approved device”). Such devices must¹⁷ be approved by Welsh Ministers before they can be used for this purpose.
- 54 The approval of Welsh Ministers is accompanied by Guidance² issued by the Welsh Government. That Guidance makes it clear that the image of the vehicle and contravention must be reviewed by a properly trained CEO who should be satisfied that the image clearly established the contravention before the decision is taken to issue the PCN. If the image has not been viewed, or for any reason is not in compliance with the VCA requirements the image is rendered inadmissible as evidence of the contravention.
- 55 It is recommended that a record is kept of who viewed the image and authorized the issue of the PCN and when that happened. Ideally this should be incorporated in the PCN processing system.
- 56 If requested to do so, the authority must send a clear copy of the record of the contravention to the vehicle owner³, in the form of a still image. The authority may also provide a URL reference to an online moving image. Provided that cameras on board buses meet the requirements of Welsh Ministers (i.e. that the cameras are “approved devices”) they can be used to collect evidence of bus lane contraventions and so support the issue of PCNs.

Collecting evidence of contraventions

- 57 The EA must provide evidence of the contravention from the record of an approved device¹⁸. These data should be kept until payment has been received or all the legal processes related to pursuing payment of the penalty

¹⁷ Section 92 Traffic Management Act 2004 and the Civil Enforcement of Road Traffic Contraventions (Approved Devices) (Wales) Order 2013 (S.I. 2013/360).

² Guidance on the Certification of Approved Devices to Local Authorities on the Civil Enforcement of Road Traffic Contraventions: bus lane, moving traffic contraventions and parking.

³ See Regulation 3(5) of the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359).

¹⁸ Regulation 10 The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (S.I. 2013/362).

have been exhausted. Welsh Ministers recommend that appropriate quality checks on evidence are carried out periodically.

58 Authorities should disclose their evidence at the earliest possible opportunity. PCNs must be served by first class post¹⁹ to the owner of the vehicle, whose identity is ascertained from the DVLA. Welsh Ministers will require all postal PCNs to be sent within 28 days of the contravention.

59 Regulations will set out what information must²⁰ be stated on a PCN. This will include:

vehicle make and colour (see above);
detailed location of vehicle;
the contravention code; and
PCN number (all PCNs should be uniquely identifiable).

60 If a motorist appears to commit both a moving traffic and a bus lane contravention at the same time, local authorities should determine whether they should be treated as a bus lane or a moving traffic offence and a single PCN issued.

61 Any vehicle that is parked in a bus lane in contravention of the TRO will be subject to the Regulations governing civil parking enforcement.

(xi) Policy and administrative functions

Providing a quality service

62 EAs should make sure that all processes and procedures for pursuing outstanding penalties and handling challenges, representations and appeals are efficient, effective, fair and impartial. Processes must comply with all relevant primary legislation, regulations, traffic regulation orders and administrative law. It would be prudent for authorities to obtain appropriate legal appraisal of their draft documents and proposed procedures before implementation.

63 Authorities are reminded of their duties with regard to the Welsh language as public bodies under the Welsh Language (Wales) Measure 2011⁴.

64 EAs should deal with motorists promptly and professionally. Authorities are encouraged to set time and quality performance indicators for dealing with queries, in addition to any statutory time limits and those set down in this

¹⁹ Regulation 3 The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (S.I. 2013/362).

²⁰ Schedule 1, The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (S.I. 2013/362) and regulation 3, The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359).

⁴ 2011 c.01

Guidance. They should report on performance against these indicators in their annual report.

- 65 Authorities should remember that an appeal is a judicial proceeding and that time limits laid down in regulations or set by adjudicators must be adhered to strictly. Authorities should respond promptly to contacts from the adjudicator concerning appeals.
- 66 It is recommended that EAs offer motorists flexible and efficient ways to contact them, including e-mail and telephone. They should ensure there is an adequate audit trail to defend any accusations of unfairness. It is recommended that EAs re-offer the option of a reduced penalty where representations are received within the 21-day period allowed.

Collecting penalty charges

- 67 The penalty charge is usually payable by the owner²³ of the vehicle, unless the vehicle was hired at the time of the contravention.
- 68 EAs should offer motorists a range of facilities for paying penalty charges. Where they use payment centres, authorities should make sure that these are safe and accessible. EAs should make sure that any payment facility (particularly telephone and online payments) can confirm any amount outstanding if part payment only has been received. Local authorities should not charge an additional surcharge (i.e. towards administrative costs) for a particular method of payment. The penalty collected must adhere to the Guidelines.
- 69 If there are unusual delays with the postal system, authorities should make allowances for late payments made by post when considering whether a payment was received within the statutory period. This will also apply to representations. EAs may wish to keep the envelope that the payments came in, as the franking can be used as evidence of the date of posting. It is recommended that authorities use their discretion to extend payment periods where it seems reasonable to do so.
- 70 A PCN is deemed 'paid' as soon as the payment is received at any payment office belonging to the enforcement authority that issued the PCN. When the payment of the PCN is received in full the enforcement authority should promptly close the case. An authority's systems should accurately record the day on which it receives the full payment of the PCN so that no further enforcement action is taken.

²³ Regulation 5 of The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (S.I. 2013/362).

- 71 Where the EA receives full payment within the period of 21 days beginning with the date of service of the PCN, it must²⁴ accept the discounted amount. Welsh Ministers have determined that the discounted amount must be set at 50% of the penalty charge²⁵. The authority should then close the case. This is similar to the arrangement that applies to civil parking enforcement.
- 72 Local authorities should develop clear strategies for taking action against vehicle owners who persistently fail to pay PCNs for bus lane or moving traffic offences. Welsh Ministers note that suggestions have included vehicle seizure and the use of certificated bailiffs (another was making this an offence punishable by penalty points being put on a driver's licence).

Issuing the PCN

- 73 There is no Notice to Owner procedure for bus lane and moving traffic contraventions. Where a photograph or other camera evidence shows the contravention taking place, it is recommended that authorities send this with the PCN, since it is helpful for the vehicle owner to see the evidence. Authorities must also specify on the PCN the statutory grounds on which representations will result in a penalty charge being cancelled.
- 74 The PCN is deemed to have been served on the date two days following the date on which the PCN was posted. PCNs must be served by first class post within the period of 28 days beginning with the date of the contravention. This period can be extended where keeper details cannot be supplied by the DVLA. A suitably senior local authority officer should review all cases in which a delayed PCN is being considered because of a problem in obtaining data from the DVLA.

Charge Certificate

- 75 The Charge Certificate informs the vehicle owner that the penalty charge has been increased because the PCN has not been paid and that action will be taken to recover the sum through the County Court if it is not paid within 14 days. Welsh Ministers have determined that the increase in the penalty charge must²⁶ be set at 50%.
- 76 The authority may issue a Charge Certificate where the penalty charge has not been paid and all avenues for making representations or for appealing have been exhausted.

²⁴ Paragraph 2, Schedule 1, The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (S.I. 2013/362).

²⁵ Paragraph 1(2) of the Schedule to the Civil Enforcement of Road Traffic Contraventions (Guidelines on Levels of Charges) (Wales) Order 2013 (S.I. 2013/1969).

²⁶ Paragraph 1(3) of the Schedule to the Civil Enforcement of Road Traffic Contraventions (Guidelines on Levels of Charges) (Wales) Order 2013 (S.I. 2013/1969).

- 77 Where representations have been made and rejected, and no appeal has been made, the enforcement authority must not²⁷ issue the Charge Certificate before the end of 28 days beginning with the date on which the Notice of Rejection was served.
- 78 Where cases go to adjudication, authorities must not²⁸ issue a Charge Certificate before all due processes have been completed. If an appeal is made and withdrawn before the hearing the authority may, after 14 days beginning with the date on which the appeal was withdrawn, issue the Charge Certificate. If an authority issues a Charge Certificate before an appeal is decided, the adjudicator may then cancel the PCN on the grounds of procedural impropriety. The authority should also be instructed to cancel the void Charge Certificate.
- 79 If the penalty charge has not been paid 14 days after the Charge Certificate was served, the authority may apply to the Traffic Enforcement Centre at Northampton County Court to recover the increased charge as if it were payable under a county court order.
- 80 If a payment is received and then subject to dispute, the EA may not serve a Charge Certificate without first issuing a Notice of Rejection (so providing a right to appeal to have a dispute about payment determined by an adjudicator) when the payment charge notice is first received²⁹.

(xii) Considering challenges / representations / appeals

- 81 The vehicle owner (or the person whom the authority believes to be the owner) may dispute the issuing of a PCN at two stages:

An owner may make a representation to the EA against the PCN.
If a representation is rejected the owner may appeal against the Notice of Rejection to an independent adjudicator.

- 82 It is in the interests of the authority and the motorist to resolve any dispute at the earliest possible stage. Authorities should always give representations objective and impartial consideration.

- 83 An authority has discretion to cancel a PCN at any point throughout the enforcement process. It can do this if the authority deems it to be appropriate in the circumstances of the case. Under general principles of public law, authorities have a duty to act fairly and proportionately³⁰. Authorities are

²⁷ Regulation 20, The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (S.I. 2013/362).

²⁸ As above.

²⁹ As above.

³⁰ Failure to act in accordance with the general principles of public law may lead to an application for a judicial review.

encouraged to exercise discretion sensibly and reasonably and with due regard to the public interest.

- 84 EAs have a duty³¹ not to fetter their discretion, so should ensure that PCNs, leaflets and any other advice they give do not mislead the public about what they may consider in the way of representations. They should approach the exercise of discretion objectively and without regard to any financial interest in the penalty or decisions that may have been taken at an earlier stage in proceedings. Authorities should formulate their policies on discretion with advice from their legal department, and should publish them. They should apply these policies flexibly and judge each case on its merits. An EA should be ready to depart from its policies if the particular circumstances of the case warrant it.
- 85 The process of considering representations and defence of appeals is a legal process that requires officers dealing with these aspects to be trained in the relevant legislation and how to apply it.

Consideration of representations

- 86 Ministers believe strongly that EAs should not contract out the consideration of representations made following the issue of a PCN for bus lane or moving traffic contraventions. Handling representations is a quasi-judicial function. However, local authorities may consider working together such that one authority deals with representations on behalf of several authorities.
- 87 Where bus lane and moving traffic and associated operations are done by in-house staff, there should be a clear separation between the staff that decide on the issuing and processing of PCNs and the staff that decide on representations. This is particularly important for cases referred back by the adjudicators. It ensures that decisions are impartial.
- 88 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.
- 89 The grounds on which representations may be made are set out in the Regulations³² and must³³ be stated on the PCN. Authorities must³⁴ consider representations made on these grounds.

³¹ As above.

³² Regulations 4 and 8 of the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359) and regulation 3 of the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2013 (S.I. 2013/361).

³³ Regulation 3, Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359)

- 90 The TMA Regulations introduced a new ground of appeal, namely that there was a procedural impropriety on the part of the EA. The vehicle owner also has a right to set out compelling circumstances, which the authority must consider. Welsh authorities undertaking civil parking enforcement will be familiar with these provisions: however they now apply to bus lane and moving traffic enforcement. The authority is under a duty to consider ‘compelling reasons and these should be given equally objective and impartial attention as the other grounds.
- 91 Failure to consider representations properly may amount to a procedural impropriety and an adjudicator may subsequently allow an appeal on that ground if it is evident that the actual representations were not considered and addressed.
- 92 Representations must be made within 28 days of service of the PCN. Authorities have the discretion to accept late representations, and Welsh Ministers would encourage them to use this discretion when a vehicle owner gives a valid reason for the delay and has strong grounds for representations.
- 93 The EA must³⁵, having considered the representations and any supporting evidence against a PCN, serve notice of its decision on the person making the representations within 56 days of the service of the representations. The 56 day period in the Regulations should be seen as the maximum period and authorities should aim to decide representations as quickly as possible.
- 94 If an authority accepts a representation against a PCN, it must³⁶ cancel the PCN and refund any sum already paid. Cancellation does not prevent the authority from serving another PCN for the same contravention on another person³⁷.
- 95 Where a response or notice of decision is likely to be delayed for any reason, the EA should acknowledge receipt of the representation and explain the representation process, including when a decision notice will be dispatched.

Notification of the outcome of representations

- 96 Once an authority has come to a decision about a representation, it should promptly tell the person making the representation (usually the owner of the vehicle) what they have decided to do and why. If the person making the

³⁴ Regulations 5 and 9 of the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359) and regulation 4 of the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2013 (S.I. 2013/361).

³⁵ As above.

³⁶ As above.

³⁷ Regulation 5(4) Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359)

representation is not the owner (but is acting officially on their behalf) then the owner should be informed, where possible, of the decision.

- 97 If the authority rejects the representation, it must³⁸ serve a notice of rejection (NoR) stating that it will issue a Charge Certificate unless the PCN is paid, or an appeal made to an adjudicator. The notice of rejection must³⁹ set out the general form and manner in which an appeal can be made and the nature of the adjudicator's power to award costs against either party. The information about the Traffic Penalty Tribunal that the Adjudicators require to be given in the Notice of Rejection should be followed, and this may cover the statutory requirements. In addition to the minimum required information, the authority should give the owner clear and full reasons for its decision on a representation. Feedback is important to improve the representations and appeals procedure and help prevent unnecessary appeals. Authorities should take note of any patterns discerned from representations as these may imply that action is required. They should also take account of reasons the adjudicator gives in relation to an appeal and apply the principles to future consideration of representations.
- 98 If the representations have been made by email or through the authority's website the Notice of Rejection may be emailed provided that a hard copy is also sent. This will provide a more immediate and responsive service, and begin to establish the 'digital by default' initiative.
- 99 If, following an unsuccessful representation, an authority decides to offer a new discount period for prompt payment, it should set out the dates of this period in the Notice of Rejection.

Adjudication

- 100 The adjudicators for the bus lane and moving traffic enforcement are also the adjudicators for civil parking enforcement⁴⁰ and there is a common process set down in the TMA regulations The adjudicators are wholly independent.
- 101 If an EA rejects a formal representation, the person who made the representation has the right to appeal to an adjudicator within 28 days of the date of service of the NoR⁴¹. An adjudicator has the discretion to consider an appeal made after 28 days in appropriate circumstances. The grounds for appeal are the same as those for formal representations and are set out in the Regulations⁴².

³⁸ Regulation 6 Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359)

³⁹ As above.

⁴⁰ Schedule 1 to the Representations and Appeals Regs

⁴¹ Regulations 7 and 10 of the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359) and regulation 5 of the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2013 (S.I. 2013/361).

⁴² As above.

- 102 If an adjudicator allows the appeal, the adjudicator may issue appropriate directions for giving effective decisions, including a direction to the authority to cancel the PCN and refund any sum already paid in respect of the penalty charge. The authority must⁴³ comply with any direction without delay.
- 103 Where the adjudicator has questioned or criticised an EA's signing, that authority should review the particular case, and also consider applying the effect of the adjudicator's decision to other cases.
- 104 The adjudicator's decision is final, subject to the limited circumstances where the regulations permit the decision to be reviewed by the same or a different adjudicator⁴⁴. For example if either party considers that fresh evidence has come to light that was not available or could not have been envisaged at the time the decision was made.
- 105 No further challenges can be made other than on a point of law through an application for judicial review to the High Court.

Cases referred back to the authority by the adjudicator

- 106 An adjudicator must allow an appeal if one of the statutory grounds for appeal applies. Where a contravention has taken place but the adjudicator considers that the EA should have used its discretion to cancel the PCN, the adjudicator may refer the case back for the EA to reconsider⁴⁵. Such cases should be directed to the Office of the Chief Executive and a decision must⁴⁶ be notified within 35 days from the notice of the adjudicator's decision. If the EA does not notify a decision within this period, it is deemed to have accepted the adjudicator's recommendation and must⁴⁷ cancel the PCN. The EA must⁴⁸ have regard to the reasons given by the adjudicator for the recommendation. Where the authority does not accept this recommendation it must⁴⁹ notify the adjudicator and the appellant of the reasons for its decision before issuing the Charge Certificate

⁴³ As above.

⁴⁴ Paragraph 12, Schedule 1, Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359).

⁴⁵ Regulation 7(5), Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359)

⁴⁶ Regulation 7(6) Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359)

⁴⁷ Regulation 7(10) Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359)

⁴⁸ Regulation 7(6), Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359)

⁴⁹ Regulation 7(7), Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359)

107 If the EA decides to accept the recommendation of the adjudicator, it must⁵⁰ cancel the PCN without delay and refund any sums paid in relation to the PCN. It should also notify the adjudicator that the recommendation has been accepted so that the outcome of the case can be fully recorded in the adjudicators' register.

(xiii) Ensuring the effectiveness of bus lane and moving traffic enforcement

108 EAs can improve the efficiency and effectiveness of their enforcement regimes by maintaining a regular dialogue - and undertaking joint activity where appropriate - with the police, neighbouring authorities, the DVLA, the Traffic Enforcement Centre (TEC) and representatives of road user groups. An EA should also ensure that it has an effective working relationship with any contractor it employs on its behalf. This will be vital to ensure that the contractor is managed and supervised appropriately, and that the authority remains properly accountable.

109 It is especially important that authorities should maintain good working relations with the police. The police continue to have responsibility for enforcing some types of moving traffic offences, and for taking action against vehicles where security or other traffic policing issues are involved. Regular liaison will help to ensure that the civil and the criminal enforcement operate effectively.

110 It is recommended that EAs keep abreast of developments in neighbouring authorities' operations and look into the benefits of consistent, and possibly collaborative, approaches to enforcement. It is particularly important regularly to liaise with any neighbouring authority where a bus lane crosses the boundary with that authority's area. Where possible the same exemptions should be agreed and applied to avoid a class of vehicle being exempt in one authority but not in the other (see also paragraph 21).

111 Authorities should develop good working relations with the DVLA, in particular with regard to EAs receiving keeper information promptly.

112 As far as possible, the performance of contractors and of staff should be judged according to how far desired transport objectives have been achieved. Wherever possible, an EA should base performance measures and rewards or penalties on outcomes. Performance indicators should never be based on the number of PCNs issued or income from them, and local authority action on signage will impact on enforcement figures. Performance indicators might include compliance statistics, how quickly PCNs are sent following detection of the contravention, accuracy of documents, the number of appeals, the number and length of contraventions and the localised impact they appear to have had on road safety and congestion. Incentives could work towards good customer service.

⁵⁰ Regulation 7(9), Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359)

113 When enforcement operations are carried out 'in house', there may need to be a service level agreement (SLA) incorporating the terms and conditions required by a client department (the same as for a contract with an external service provider). This would potentially apply if, for example, different functional responsibilities (e.g. for technical issues and PCN processing) are not handled within one department in the authority.

114 Reporting

115 All income and expenditure by EAs in connection with their bus lane and moving traffic enforcement activities must be applied in accordance with the regulations⁵¹.

116 This means that authorities must⁵² keep an account of all income and expenditure in respect of their bus lane enforcement, and another account of all income and expenditure in respect of their moving traffic enforcement. These reports should be combined with the authorities' parking reports, but the amounts for each listed separately and not as overall income and expenditure.

117 Where an authority makes a surplus on its bus lane and moving traffic enforcement operations, it must⁵³ use the surplus in accordance with the legislative restrictions.

118 Welsh Ministers believe strongly that reporting is an important part of accountability. The transparency given by regular and consistent reporting should help the public understand and accept enforcement. Monitoring also provides the authority with management information for performance evaluation and helps to identify where it needs to improve its enforcement regime. It provides a framework for performance comparisons between councils.

119 Welsh Ministers believe strongly that EAs should produce a report dealing with their civil enforcement duties, whether just parking, or including bus lanes and minor traffic. That report should be expanded to include enforcement activities that contribute to meeting traffic management objectives, and be published on the authority's website within six months of the end of each financial year. As a minimum the report should cover financial and statistical data. Welsh Ministers believe that local authorities' annual reports should therefore combine reports about civil parking enforcement as well as bus lane and moving traffic contraventions.

⁵¹ Regulation 26, The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (S.I. 2013/362).

⁵² Regulation 24, The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (S.I. 2013/362).

⁵³ Regulation 25, The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (S.I. 2013/362).

