

WELSH GOVERNMENT

TRAFFIC MANAGEMENT ACT 2004

**CIVIL ENFORCEMENT OF ROAD
TRAFFIC CONTRAVENTIONS:
PARKING, BUS LANE AND MOVING
TRAFFIC ENFORCEMENT**

**OPERATIONAL GUIDANCE TO
LOCAL AUTHORITIES**

DECEMBER 2014

CONTENTS

CHAPTER 1: INTRODUCTION.....	9
CHAPTER 2: THE POLICY CONTEXT.....	11
Local policy.....	12
Parking provision.....	13
CHAPTER 3: OBJECTIVES OF CIVIL ENFORCEMENT.....	15
Policy objectives.....	15
Financial objectives.....	15
CHAPTER 4: APPRAISING CIVIL ENFORCEMENT, ENSURING ITS EFFECTIVENESS AND REPORTING ON IT.....	17
Appraising civil enforcement.....	17
Ensuring the effectiveness of CPE.....	18
Reporting.....	18
Annual Reports - information they might contain.....	20
Financial.....	20
Statistical.....	21
Performance against targets.....	21
Financial reporting.....	21
Code of Practice.....	21
CHAPTER 5: CONSULTATION AND COMMUNICATION.....	23
Consultation.....	23
Communication.....	24
Content of communications.....	25
CHAPTER 6: TRAINING AND PROFESSIONALISM IN CIVIL ENFORCEMENT....	27
Back Office and Management Staff.....	27
Civil Enforcement Officers (CEOs).....	28
The Duties of CEOs.....	28
Qualifications.....	30
Training.....	31
Exercising discretion.....	32
Probation.....	32
Camera operators.....	32
Immobilisation and removal teams.....	33
Disclosure and Barring Service (DBS) checks.....	33

CHAPTER 7: CHOICE AND CERTIFICATION OF DEVICES FOR CAMERA ENFORCEMENT.....	35
Devices certified by the Welsh Government.....	35
Procedures for operating enforcement systems	35
CHAPTER 8: ENFORCEMENT ACTIVITIES.....	37
Civil Enforcement Officer’s handbook.....	37
Uniforms	37
Enforcement by Approved Devices.....	38
Hand Held Computers (HHCs)	39
Mobile communications	40
Digital cameras.....	40
Suspensions	40
Transport for CEOs.....	41
The Penalty Charge.....	41
Differential Penalty Charges	43
Numbering	44
Standard contraventions and associated code numbers	45
Other points about the Penalty Charge Notice	45
Collecting evidence of the contravention	45
Service of the PCN at the time of the contravention	46
Observation periods.....	48
Loading and unloading	48
Parking at dropped footways and double parking.....	49
Service of a PCN by post.....	50
Return of motorist before the CEO has started to issue the PCN.....	53
Approved Devices.....	53
Immobilisation/Removal.....	56
Disabled (blue) badge holders and vehicles with diplomatic registration plates ...	57
Persistent Evaders.....	58
CHAPTER 9: PARKING EXEMPTIONS, WAIVERS AND DISPENSATIONS.....	59
Disabled Person's Blue Badge holders.....	59
Abuse of the Blue Badge Scheme	60
Targeted surveillance	60
Working with the police and carrying out targeted operations	61
Day to day parking enforcement inspections	61

Withdrawing badges due to repeated misuse.....	61
Reciprocal arrangements for disabled drivers from other countries.....	61
Diplomatic registered vehicles	62
Immobilisation.....	63
Removal	63
Recovery of unpaid PCNs	63
Application to HM forces and visiting forces	64
Waivers.....	64
Exemptions where parking places are suspended.....	64
Miscellaneous exemptions.....	64
Dispensations for professional care workers	64
CHAPTER 10: POLICY AND ADMINISTRATIVE FUNCTIONS	67
Providing a quality service	67
Collecting penalty charges.....	67
Location of payment centres and opening hours	69
Temporary waiving of payments.....	70
Payments for releasing a vehicle from immobilisation or vehicle pound	70
Issuing the Notice to Owner.....	71
Information from the DVLA about the registered keeper.....	72
Cases where DVLA records are incomplete	73
Diplomatic vehicles	74
Charge Certificate.....	74
Registering the Charge Certificate with the Traffic Enforcement Centre (TEC)	74
Witness Statement (formerly "Statutory Declaration")	75
Warrants of Execution and Certificated Enforcement Agents	76
CHAPTER 11: CHALLENGES, REPRESENTATIONS AND APPEALS	79
Challenges - also known as informal representation	80
Formal representations.....	81
Representations against immobilisation or removal.....	84
Consideration of Representations.....	85
Providing false information	86
Notification of the outcome of representations.....	86
Adjudication	86
Cases referred back to the Authority by the Adjudicator.....	87

CHAPTER 12: WHAT AN AUTHORITY SHOULD DO BEFORE TAKING ON CIVIL ENFORCEMENT.....	89
Formulating and reviewing policies.....	89
Traffic Regulation Orders.....	89
Pavement parking.....	90
Choosing the most appropriate package of enforcement measures.....	90
Enforcement on trunk and other high speed roads.....	90
Level of enforcement.....	91
Exemptions, waivers and dispensations.....	91
Assessing the chosen enforcement package.....	91
CHAPTER 13: KEY CRITERIA WHEN APPLYING FOR POWER TO ENFORCE ROAD TRAFFIC CONTRAVENTIONS REGULATIONS.....	93
Immobilisation and Removal.....	93
Bus lanes and Moving Traffic Contraventions.....	93
Special Enforcement Areas (SEAs).....	94
Authorities eligible to apply for CPE powers.....	94
Consultation with other local authorities.....	94
The continuing role of the police.....	94
CHAPTER 14: FINANCIAL ASSESSMENT.....	97
Parking Charges.....	98
Penalty Charges.....	99
Discounts and increases to penalty charges.....	100
Estimating income from penalty charges.....	101
Charges and income from vehicle immobilisation, removal, storage and disposal.....	101
Publication of the level of penalty and other charges.....	101
Changes to penalty and other charges.....	102
VAT and penalty charge income.....	102
CHAPTER 15: APPLICATIONS FOR A CIVIL ENFORCEMENT AREA (CEA) DESIGNATION ORDER.....	103
Table 5 12-step application procedure for CPE powers.....	105
Application form.....	107
Uniforms.....	112
Equipment.....	112

ANNEX A:	117
WHAT IS INVOLVED IN CPE UNDER THE TMA 2004 AND HOW IT DIFFERS FROM DPE UNDER THE RTA 1991	117
What CPE involves	117
Civil Enforcement Areas	118
Special Enforcement Areas	120
How CPE differs from DPE	120
Presentational.....	120
Changes to regulations (and, therefore, to Guidance)	120
New powers for authorities to:	121
Changes to Guidance	121
What authorities must do to prepare for CPE	122
ANNEX B:	123
ENFORCEMENT ACTION STARTED UNDER THE ROAD TRAFFIC ACT 1991 .	123
ANNEX C:	125
CONTRAVENTIONS FOR WHICH THE HIGHER AND THE LOWER LEVEL PENALTY CHARGES SHOULD BE MADE	125
Higher level contraventions: on-street Parking	125
Higher level contraventions: Off-street Parking	126
Lower level contraventions: On-street Parking	126
Lower level contraventions: off-street Parking	127
Higher level contraventions: Bus Lane	128
Higher level contraventions: Moving Traffic	128
ANNEX D:	129
EXAMPLES OF THE SORT OF INFORMATION THAT IT MAY BE PRUDENT FOR A CEO TO NOTE	129
Loading or unloading	129
Foreign or diplomatic plates.....	129
Conversation with motorist, breakdowns, drive aways etc.....	130
Prohibited parking.....	130
Permitted parking.....	130
Inadequate markings or signs etc.	130

ANNEX E:	132
STATISTICAL RETURN OF LOCAL AUTHORITY	132
PARKING ENFORCEMENT	132
BUS LANE AND MOVING TRAFFIC ENFORCEMENT	133
ANNEX F.....	134
APPRAISING THE ADEQUACY OF TRAFFIC SIGNS, PLATING AND ROAD MARKINGS	134
On-going maintenance of signs, meters, etc.	135
ANNEX G:.....	136
APPRAISING TRAFFIC REGULATION ORDERS (TROs)	136
Permanent TROs.....	136
Experimental Orders.....	137
Parking Designation Orders.....	137
Traffic signs and devices used to control waiting restrictions	137
TROs for special areas in the countryside	138
Temporary Prohibitions & Restrictions.....	138
Special Events	138
Procedure for making Permanent and Experimental TROs.....	139
Consultation.....	139
Publicity	140
Public Inquiry	141
Modifications prior to making an order.....	141
Orders applicable to trunk roads	141
Procedure for making Temporary TROs.....	141
Review of TROs before adoption of powers	142
Other changes to TROs required before taking on CPE power	143
Parking meters.....	143
ANNEX H	144
LIST OF ABBREVIATIONS	144

CHAPTER 1: INTRODUCTION

Part 6 of and Schedule 7 to the Traffic Management Act 2004 (TMA 2004) provide powers for Welsh Ministers to make Regulations on the road traffic contraventions that are subject to civil enforcement.

The objectives of this Operational Guidance are to:

- Supports the policy framework set out within the Statutory guidance documents for parking, bus lane and moving traffic by which the Welsh Government believes that local authorities (“authorities”) in Wales should set their parking, bus lane and moving traffic policies and, if appropriate, the enforcement of those policies.
- Inform authorities of the changes to parking, bus lane and moving traffic policy and enforcement that result from the relevant provisions in the TMA 2004.
- Inform authorities of the scope and procedure for assuming responsibility for taking action against parking enforcement and bus lane or moving traffic contraventions where appropriate.
- Advise authorities of the procedures that they must follow, the procedures to which they must have regard and the procedures that the Welsh Government recommends they follow when enforcing parking, bus lane or moving traffic regulations. And
- Inform members of the public about parking, bus lane or moving traffic policies and their enforcement.

This Operational Guidance is not the statutory guidance issued under Section 87 of the TMA 2004. It is guidance, but where it 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. Where a statute imposes a duty on an authority, either to take or not to take specified action, a failure to comply with those requirements will constitute a breach of statutory duty.

This document has no special authority in regard to matters of legal interpretation. Where there appear to be differences between the Regulations and the Guidance, the Regulations always take precedence. Section 87 of the TMA 2004 stipulates that local authorities must have regard to the information contained in Statutory Guidance, and that has been issued as a separate documents.

This Guidance supersedes the Welsh Government Civil Enforcement of Parking Contraventions Operational Guidance to Local Authorities March 2010 that is hereby revoked.

This Guidance should be read in conjunction with the TMA 2004 and the relevant statutory guidance on parking, bus lane or moving traffic enforcement issued by the Welsh Government. It should also be read alongside the various SI’s stated within

the Statutory guidance documents and read and used alongside any guidance subsequently issued by the Welsh Government or the Welsh Local Government Association (WLGA). Authorities should also take account of good practice guidance from organisations such as the Institute of Highways and Transportation (IHT), the British Parking Association (BPA), Parking Adjudicators and learn from other authorities and the police.

CHAPTER 2: THE POLICY CONTEXT

Effectively managing the road network is a key part of the Welsh Government's long-term strategy for a modern, efficient and sustainable transport system backed up by targeted investment. The TMA 2004 gives authorities an explicit duty to manage their network to reduce congestion and disruption and to appoint a traffic manager. The Act also provides additional powers to take over the enforcement of driving and parking offences from the police.

Pricing and regulation play a part in making more sustainable travel choices more attractive. Enforcing parking, bus lane and moving traffic regulations effectively can deter car use and encourage more people to use public transport. Parking, bus lane and moving traffic policies should be an important element of Regional Transport Plans (RTPs) (Local Transport Plans from 1 April 2015) and aim to tackle congestion, keep traffic moving and change travel behaviour. The objective should be maximum compliance and not raising revenue.

Every authority should develop parking, bus lane and moving traffic strategies for its area linked to local objectives and circumstances, and put them in place with Traffic Regulation Orders (TROs) and, where appropriate, indicated with traffic signs and road markings. These strategies need to take account of planning policies and transport powers and to consider the needs of disabled people.

Local authorities have long been responsible for – directly or indirectly – managing all on-street and some off-street parking. The relevant powers are contained in the Road Traffic Regulation Act 1984 (RTRA). The Road Traffic Act (RTA) 1991 changed the ways that on-street parking regulations are enforced. Prior to 1991, enforcement was carried out by the police and traffic wardens and any income from Fixed Penalty Notices (FPNs) accrued to the Exchequer. The police service was increasingly unable to provide the resources necessary and a number of forces supported another agency taking on responsibility for parking enforcement. As a result, the 1991 Act made it possible for local authorities to take on the civil enforcement of non-endorseable parking contraventions. When a local authority takes over this power from the police, staff employed directly or indirectly by them issue Penalty Charge Notices (PCNs) to motorists who appear to have contravened parking regulations and the local authority retains the income from the penalty charges.

The legal framework for local authority enforcement comprises Part 6 of the TMA 2004 and the regulations to bring Part 6 into force. The TMA 2004 and associated regulations have largely brought the powers of enforcement authorities¹ into line to provide greater consistency while allowing for parking, bus lane and moving traffic contraventions policies to suit local circumstances. The framework also seeks to ensure that the system is fair to the motorist as well as effective in enforcing parking contraventions when they occur.

¹ Traffic Management Act 2004, Schedule 7 and 8

This guidance uses the same terminology as the TMA 2004 so:

- “Civil Parking Enforcement (CPE)” is used rather than “Decriminalised Parking Enforcement” (DPE);
- “Civil Enforcement Officer (CEO)” is used rather than “Parking Attendant” (PA); and
- “Civil Enforcement Area (CEA)” is used rather than “Special Parking Area/ Permitted Parking Area (SPA/PPA)²”.

CPE is a legal process. Enforcement authorities should make sure that their CPE employees and contractors understand what the law requires. If authorities are uncertain about any aspects they should obtain appropriate legal advice.

Local policy

Whether or not it is responsible for enforcement, a local authority should have a clear parking, bus lane and moving traffic policy and know what it is intended to achieve. The policy and its objectives should be appraised regularly. When setting and appraising the policy, an authority should take account of:

- existing and projected levels of demand for parking by all classes of vehicle;
- the availability and pricing of on and off street parking places;
- the justification for, and accuracy of, existing TROs;
- the adequacy, accuracy and quality of signing and lining, which permits or restricts parking, bus lane or moving traffic movements within or outside Controlled Parking Zones, and
- policies in adjoining authorities, to ensure consistency of approach.

Authorities responsible for enforcement should also set and appraise regularly:

- the optimum level of compliance with parking, bus lane and moving traffic contravention controls;
- the level of enforcement necessary to secure such compliance;
- the levels of penalty charges; and
- the need to resource the operation effectively and ensure that all parking, bus lane and moving traffic contravention staff are appropriately trained.

² An area designated as a PPA or a SPA under the Road Traffic Act 1991 by virtue of any order currently in force automatically becomes a CEA on 31 March 2008.

In developing and appraising their parking, bus lane and moving traffic policies all authorities should ensure that as well as being appropriate in terms of place and time, their policies are properly underpinned by valid, up-to-date TROs indicated, where appropriate, with legal traffic signs and road markings. Since a parking, bus lane or moving traffic contravention is nearly always a breach of a TRO, flawed orders are unenforceable. This can have a significant detrimental impact on the aims of enforcement and the public perception of its management.

Authorities should consult on their parking, bus lane and moving traffic policies as they are formulated or appraised, seeking views of those with a range of different parking needs, and the police. Once finalised, these policies should be made available to the public. Setting the context for, and purposes behind, civil enforcement will help secure greater understanding and acceptance of parking policies and, where relevant, bus lane and moving traffic contraventions enforcement policies. Where possible, authorities should work with neighbouring authorities to ensure a consistent approach to parking policy and bus lane and moving traffic contraventions enforcement.

The Welsh Government believes that authorities should use parking, bus lane and moving traffic policies alongside other planning and transport measures to promote sustainable transport choices and reduce reliance on cars. Evidence of a contravention of an authority's bus lane and/or moving traffic regulations can only be taken and used in support of imposing a penalty charge if it has been gathered using an approved device. Evidence gathered by a CEO of a bus lane and/or moving traffic contravention is not sufficient alone to use in support of imposing a penalty charge.

Parking provision

The Welsh Government's guidance on parking provision is set out in Technical Advice Note (TAN)18: Transport. Local authorities should use parking policies alongside other planning and transport measures to promote sustainable transport choices for work and other journeys, and should not normally require developers to provide more spaces than the developer would wish. Local authorities should also encourage the shared use of parking, particularly in town centres and, where appropriate, introduce on-street parking controls in areas adjacent to developments that generate travel to minimise the potential displacement of parking where on-site parking is limited. Local authorities should set maximum levels of parking provision but planning bodies may adopt more rigorous standards.

TAN 18 advises local authorities to set maximum car parking standards for residential development and to revise existing standards to allow for significantly lower levels of off-street parking provision in areas where there is good public transport and where effective on-street parking controls exist or can be secured, such as town centres.

It also advises that local car parking standards that result, on average, in development with more than 1.5 off-street car parking spaces per dwelling are unlikely to reflect the Welsh Government's emphasis on securing sustainable residential environments. A good practice report by the IHT gives practical guidance to authorities about parking strategies including advice on the levels of provision³.

³ Parking Strategies and Management - IHT - August 2005

CHAPTER 3: OBJECTIVES OF CIVIL ENFORCEMENT

Policy objectives

Civil enforcement should contribute to an authority's transport objectives, use quality-based standards that the public understands, and be enforced fairly, accurately and expeditiously. Authorities should aim to increase compliance with their restrictions through clear, well designed, legal and enforced controls. Civil enforcement provides authorities with a means to effectively deliver wider transport strategies and objectives. It should not be viewed in isolation or used to raise revenue. Authorities should design their parking, bus lane and moving traffic policies with particular regard to:

- Managing the network to move traffic expeditiously, (including cyclists and pedestrians) as required under the TMA Network Management Duty⁴.
- Improving road safety and the local environment.
- Improving the quality and accessibility of public transport.
- Meeting the needs of disabled people, some of whom will be unable to use public transport and will depend entirely on a car; and
- managing and reconciling competing demands for kerb space from residents; businesses; deliveries and collections; visitors (especially where there is a high concentration of tourist facilities); pedestrians; public transport users (including buses, taxis, private hire vehicles and coaches); car drivers; blue badge holders; cyclists; and motorcyclists.

Financial objectives

Civil enforcement is a means of achieving transport policy objectives. For good governance, authorities need to forecast revenue in advance. But raising revenue should not be an objective of civil enforcement, nor should authorities set targets for revenue or the number of PCNs they issue.

The purpose of penalty charges is to dissuade motorists from contravening parking, bus lane or moving traffic regulations. The objective should be for 100% compliance, with no penalty charges. Penalty charges should be proportionate, and not set at unreasonable levels. When authorities receive penalty charge payments they must be used in accordance with section 55 (as amended) of the RTRA 1984.

Authorities' civil enforcement activities should be self-financing as soon as practicable. Compliant applications for relevant powers will be granted without the scheme being self-financing, but authorities should bear in mind that if their scheme is not self-financing, they need to be certain that they can pay for it from within existing funding. Any application to the Welsh Government for a scheme that is not self-funding should be supported by a resolution of the full Council to do this. Making an application for civil enforcement powers in conjunction with neighbouring

⁴ See the Traffic Management Act 2004, Section 16

authorities may be one way of addressing a potential financial shortfall. A robust agreement on sharing costs will be needed for the partnership to endure.

The Welsh Government will not expect either national or local taxpayers to meet any deficit.

CHAPTER 4: APPRAISING CIVIL ENFORCEMENT, ENSURING ITS EFFECTIVENESS AND REPORTING ON IT

Appraising civil enforcement

The Welsh Government recommends that authorities consult locally on their parking, bus lane and moving traffic policies when they develop and appraise them. They should seek the views of people and businesses with a range of different needs and take into account the views of the police.

Authorities should monitor their parking, bus lane and moving traffic policies, civil enforcement regimes and associated regulatory framework (including penalty charge levels), appraise them when reviewing RTPs and recommend improvements to members.

Appraisal should ensure that parking, bus lane and moving traffic policies still apply at the right place and time. It is particularly important to establish that the policies are properly underpinned by TROs that are valid, up to date and properly indicated with accurate and lawful traffic signs and road markings.

Appraisals should take account of any relevant information collected as part of enforcement, in particular the practical effectiveness of the scheme. Interviewing CEOs and office staff will be helpful, as they are well-placed to identify issues, and see challenges and representations and the reasoning behind them. The appraisal should take account of:

- existing and predicted levels of demand for parking;
- the availability and pricing of on-street and off-street parking places;
- the justification for, and accuracy of, existing TROs;
- the adequacy, accuracy and quality of traffic signing and road markings, which restrict or permit parking, bus lane and moving traffic contraventions within or outside CPZs;
- the level of enforcement necessary for compliance;
- the levels of penalty charges;
- the need to resource the operation effectively and ensure that all parking, bus lane and moving traffic staff are appropriately trained;
- Compliance with parking, bus lane and moving traffic policies; and
- impact on traffic flow (i.e. congestion and journey-time outcomes).

Ensuring the effectiveness of CPE

Enforcement authorities can improve the efficiency and effectiveness of CPE by maintaining a regular dialogue - and undertaking joint activity where appropriate - with their on-street contractor (if there is one), the police, neighbouring authorities, the Driver and Vehicle Licensing Agency (DVLA), the Traffic Enforcement Centre (TEC) and road user representatives.

Authorities should maintain good relations with the police, who continue to be responsible for enforcing endorsable and most types of moving traffic offences, and for taking action against vehicles where security or other traffic policing issues are involved. Regular liaison will ensure that civil and criminal enforcement operate effectively. Good relations between the police and an enforcement authority can also help in tackling threats and abuse aimed at CEOs. Enforcement authorities should also keep abreast of developments in neighbouring authorities and look into the benefits of consistent, and possibly collaborative, approaches to enforcement.

Local authorities should develop good working relations with the DVLA, in particular with regards authorities receiving keeper information promptly.

As far as possible, authorities should judge the performance of contractors and staff according to how well their transport objectives have been achieved. An enforcement authority should, wherever possible, base performance measures and rewards or penalties on outcomes rather than outputs. Performance and rewards/penalties should never be based on the number of PCNs, immobilisations or removals. Outcomes might include compliance statistics, the number of appeals, the number and length of contraventions and the localised impact they have had on congestion and journey times.

Incentives could work towards good customer service. For example, indicators for immobilisation and removals might be based on the release time of the vehicle after the owner has paid the appropriate fees.

If enforcement is carried out 'in house', a service level agreement (SLA) should incorporate specific terms and conditions required by the client department – as with a contract with an external service provider. Authorities should consider using a balanced SLA or model contract, such as that developed by the British Parking Association (BPA)⁷.

Reporting

Transparent, regular and consistent reporting will help the public understand and accept civil enforcement. Monitoring provides an authority with data for performance evaluation and helps identify if and where its enforcement regime needs to improve. Reporting also provides a framework for comparisons between councils, and should include the benefits facilitated with any net parking, bus lane or moving traffic contraventions income.

Authorities should make annual returns to the Welsh Government on the number and speed of payment of PCNs, and should also advise the adjudication service in a

⁷ Contact the BPA, reference Parking Model Contract or go to <http://www.britishparking.co.uk>

timely fashion on the number of PCNs issued. Reports may appropriately include data to assess an authority's performance over time and for achievements to be measured against comparable authorities. The Welsh Government recommends that the reports be put on the authority's website and copies made available in civic offices and local libraries.

An enforcement authority should produce an annual report about its enforcement activities no more than six months after the end of each financial year, and should submit these reports to the Welsh Government soon after they are produced. It would be good practice for the authority to also send copies to other stakeholders. Authorities should also advise the appropriate adjudication service in a timely fashion on the number of PCNs they have issued in each year.

Local authorities' income and expenditure in connection with their on-street charging and their on-street and off-street enforcement activities are governed by Section 55 (as amended) of the RTRA Act 1984. This means that all their income and expenditure as enforcement authorities (i.e. related to the issue of and income from PCNs) in respect of off-street parking places is covered by Section 55. Where an authority makes a surplus on its on-street parking charges and on-street and off-street enforcement activities, it must use the surplus in accordance with the legislative restrictions in Section 55 (as amended) of the RTRA 1984.

Local authorities must⁸ keep an account of all income and expenditure in respect of designated (i.e. on-street) parking places that are not in a CEA, income and expenditure in designated (i.e. on-street) parking places which are in a CEA and their functions (income and expenditure) as an enforcement authority.

The TMA 2004 further amends Section 55 of the RTRA 1984 so that the on-street parking account of an enforcement authority is no longer limited to parking income and expenditure. This account will also include income and expenditure relating to the enforcement of all restricted parking contraventions within a CEA - on-street as well as off-street. Local authorities should distinguish between income from off-street and on-street penalty charges and will need to devise a means of allocating costs between the two aspects of enforcement. The report should cover all on-street income from and expenditure on parking activities, including that from parking meters, pay and display machines, residents' parking permits, and PCNs.

Performance against targets should be included in annual reports and publicised on the authority's website and/or periodically in the local press, and made available to anyone who requests it. Authorities should track their performance against similar authorities and, especially if not favourable, consider how it might be improved. For example:

- Number of higher level and number of lower level PCNs issued.
- Number of PCNs paid.
- Number of PCNs paid at discount rate.

⁸ See amendments to S55 RTRA 1984 in the Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI 2013/362), Regulation 23.

- Number of PCNs against which a formal or informal representation was made.
- Number of PCNs cancelled following a successful representation.
- Number of PCNs otherwise cancelled (e.g. CEO error or driver untraceable).
- Number of vehicles immobilised, or removed.
- Total income and expenditure on the parking account.
- Breakdown of income (i.e. on-street parking charges and penalty charges).
- Total surplus or deficit on the on-street parking account.
- Action taken with respect to a surplus or deficit on the parking account. and
- Details of the benefits that can be expected from spending any surplus.

Authorities should also measure their performance to demonstrate that enforcement is being undertaken for traffic management purposes. For example:

- Is the number and duration of parking, bus lane and moving traffic contraventions reducing over time?
- Have public transport journey times across a CEA reduced?
- Have the number and severity of road traffic casualties fallen?
- How frequent are CEO patrols, especially where contraventions are high?
- What % of PCNs were subject to appeals?
- What % of appeals were successful?
- What % of immobilised vehicles were released within a specified time (e.g. one hour) of the declamping fee being paid? and
- What % of representations and other correspondence were answered within a specified period (e.g. two weeks)?

Annual Reports - information they might contain

Authorities should publish an annual enforcement report within six months of each financial year end, and cover, as a minimum, the following financial, statistical and other data (including any civil enforcement targets).

Financial

- Total income and expenditure on the civil enforcement account kept under S55 of the RTRA 1984 (as modified).
- Breakdown of income by source (i.e. parking, bus lanes, moving traffic).

- Total surplus or deficit on the civil enforcement account.
- Action taken to turn around a deficit on the account. and
- Details of how any financial surplus has been or is to be spent, including the benefits that can be expected as a result of such expenditure

Statistical

- Number of higher level PCNs issued and the number of lower level PCNs issued.
- Number of PCNs paid and the number of PCNs paid at discount rate.
- Number of PCNs against which a formal or informal representation was made and the number of PCNs cancelled as a result of a successful representation.
- Number of PCNs written off for other reasons (e.g. CEO error). and
- Number of vehicles immobilised and the number of vehicles removed.

The table later in this document sets out the form in which the Welsh Government currently prefers this information to be submitted.

Performance against targets

In respect of performance against civil enforcement targets, authorities should note the recommendations throughout this guidance on matters where such targets might be appropriate.

Financial reporting

All of the income (e.g. from PCNs) and expenditure (e.g. in issuing PCNs) of local authorities in connection with their enforcement activities is governed by Section 55 (as amended) of the RTRA 1984. Where an authority makes a surplus on its enforcement activities, it must use the surplus in accordance with the legislative restrictions in Section 55 (as amended) of the RTRA 1984. Welsh Ministers recommend that enforcement authorities publish this account in their annual report.

The Welsh Government recommends that this information be put on the authority's website and copies made available in civic offices and local libraries. There are likely to be benefits to authorities from collecting and comparing management information on other aspects of CPE, such as the grounds on which representations and appeals are made, the number of CEOs employed, and the average number of appeals per officer.

Code of Practice

In addition to annual and management reports, authorities should set out in a published code of practice the standards and guidelines that their CEOs must follow. Publishing a code of practice may help to pre-empt criticism if the following points are made:

- The authority is committed to delivering good quality public services.
- Enforcement will be delivered fairly and in accordance with the law.
- Parking restrictions improve safety, reduce congestion and pollution, and ensure an equitable distribution of parking space. and
- Enforcement will be efficient, fair and give proper regard to motorists' rights.

Where services are contracted out, the contract should provide sufficient incentives for the contractor to achieve the targets set out in the code of practice. These should not involve targets for the number of PCNs issued, or vehicles immobilised/removed. Contractors should be rewarded for their contribution to an authority's transport objectives - safety and network management in particular.

CHAPTER 5: CONSULTATION AND COMMUNICATION

Parking, bus lane and moving traffic policies and their enforcement are complex and may confuse the public if they are not explained clearly. There is often a lack of understanding about why restrictions and their enforcement are needed, and the important role they have in keeping traffic moving and roads safe. Consultation and communication underpins a fair and effective policy and will help enforcement to be understood and respected. This should be an ongoing process that takes place when changes are proposed, and at regular intervals after that.

Consultation

The Welsh Government expects authorities to consult stakeholders fully about their policies when major changes are considered. As a minimum, the following groups of stakeholders should be consulted:

- Those implementing and operating parking, bus lane and moving traffic regimes, including the police, neighbouring local authorities, DVLA and TEC.
- Wider stakeholders with an interest, including business, motoring groups and representative organisations. and
- Those who will be affected, including residents, the public and motorists. This should include a cross-representation of socially excluded groups.

For wider stakeholders including businesses, representative organisations and the public, authorities should consider setting up a "user group" prior to CPE. This should comprise representatives of motoring organisations, local residents and traders, protected groups and others with an interest in parking enforcement. Such a group may be used to test proposals to ensure the system meets the needs of road users.

Loading and unloading can be a recurrent and difficult problem. Authorities should work with deliverers, local businesses and residents to identify and address loading and unloading issues through regular dialogue (e.g. perhaps through Freight Quality Partnerships), and regularly review the environment. Authorities should have particular regard for security and health and safety issues in the handling of high value or bulky consignments and consider how the needs of the local business community can be met without endangering or inconveniencing other road users.

Authorities will need to publicise the consultation document and make it available in hard copy and on the web. A 12-week deadline for feedback is commonly used for government consultations. In any broad consultation authorities will need to show they have made every effort to gain representative feedback from stakeholders. Authorities should provide a public response outlining the feedback received and explain if and how its decisions were influenced by consultation responses.

Communication

The public should understand why an authority has introduced CPE and what parking restrictions, and later when adopting bus lane and moving traffic restrictions, are in place. Motorists and other road users need to know that parking enforcement is supporting wider transport objectives, in particular keeping traffic moving and road safety, rather than raising revenue. Motorists and other road users should also understand the scheme's details, including the areas covered and enforcement times. Restrictions that are unclear or do not comply with regulations or with Welsh Government Guidance, will confuse people and undermine the scheme. Once authorities have finalised their parking enforcement policies, they should publish and promote them openly.

Such activity will never replace clear signs and markings but providing the public with information should result in a better understanding of an authority's objectives and greater compliance with the road traffic restrictions. Informing the public in advance is particularly important if immobilisation or vehicle removal is proposed.

Authorities should consider the full range of available media when communicating with the public, and should consider telling every household in the CEA when proposing changes. They should try to work with neighbouring authorities to ensure consistent communication (and enforcement) across regions and not just locally.

High levels of public understanding and acceptance will increase compliance. As people become accustomed to a new enforcement regime, there may be a relatively large number of queries or complaints and authorities should ensure direct communication with the public, and prompt and informed responses to queries. Ideally, authorities will have a joint phone line/email address shared with the police.

Authorities need a comprehensive plan to communicate the introduction of parking or bus lane or moving traffic contravention enforcement, which includes notifying the public at least four weeks prior to its introduction, followed by a long-term plan for communicating what the system will mean in practice, as well as its benefits. Authorities may choose to use:

- **Leaflets and posters** - can reach people at the point where they are deciding about parking (i.e. on street, in car parks, or even when having received a PCN), and can be distributed through shops, local councils and libraries.
- **Websites** are effective but should be supported by other formats not to disadvantage partially sighted people and those without the internet.
- **Media (press and broadcast)** reaches a broad cross-section of people and authorities should work closely with their local media.
- **Public forums and other local events** provide opportunities to speak to people face-to-face and to keep them informed about parking in their area.
- **Paid-for advertising** should complement communications activity as part of an integrated, long-term programme.

- **Electronic updates** to an e-community of interested stakeholders makes it easy to keep people informed. A regular newsletter coupled with e-updates has worked well for some local authorities in the past.

Content of communications

When informing the public about parking, bus lane and moving traffic policies and their enforcement, authorities should cover the following subjects:

- The changes to enforcement including what people will experience, how the system will differ (where relevant).
- The benefits of civil enforcement and what it will mean for local people.
- PCNs and how to avoid getting one. Don't assume that people know what a PCN is or that they know all the parking rules.
- Where motorists can park, both on-street and off-street,
- Highlight scenarios when immobilisation and removals will be used should be highlighted.
- The appeals process giving a short and succinct summary.
- How to pay a PCN, including contact numbers.
- Exemptions including resident parking and disabled parking. and
- Where to go for more information.

Communications should be constructed using the Crystal Mark guidelines, outlined at www.plainenglish.co.uk, to ensure the benefits of the system are communicated clearly.

CHAPTER 6: TRAINING AND PROFESSIONALISM IN CIVIL ENFORCEMENT

Once a solid foundation of policies, legitimate TROs, and clear and lawful signs and lines are in place, civil enforcement will depend on the dedication and quality of the staff who deliver it. It is essential that staff (whether employed directly or by a contractor) at all levels have the skills and training to be effective. This should also improve their self-esteem and job satisfaction, resulting in higher retention rates. Training is a legitimate and important running cost. There should be enough staff for the volume of work and authorities should ensure that they provide a high-quality, professional, efficient, timely and user-friendly service.

As already referred to in this document, the BPA has produced a model contract for employing contractors that is useful for staff dealing in parking, bus lane or moving traffic contraventions.

Back Office and Management Staff

Good quality and well trained back office and management staff are as important as CEOs for a fair and effective CPE regime. All enforcement staff should be trained in general enforcement procedures and any special requirements of the authority. Not all aspects of general training will be relevant to all authorities, but the majority will be.

CPE office processes are important and office staff need similar levels of skill, training and professionalism to CEOs. Training needs to take place before they start work and at regular intervals thereafter whether personnel are employed directly by the authority or via a contractor. An authority is responsible for ensuring that an appropriate training programme is in place.

Enough staff should be provided for the volume of work, and authorities should also make sure that those staff (whether employed directly by the authority or by a contractor) have the skills, training, authority and resources to provide a high quality, professional, efficient, timely and user-friendly service. Authorities that outsource any part of enforcement to private companies should ensure that the contractor fulfils all the requirements for the authority itself.

In addition to issues about which all the staff and contractors of the authority need to know, back office, supervisory and managerial staff will also need training that includes:

- Government transport policy and objectives and the role of road traffic contraventions regulations and enforcement in delivering it.
- The legal nature of and framework for civil enforcement.
- Applying the authority's published policies.
- Contravention codes and descriptions, and their appropriate use.
- Considering representations and challenges. And
- Mitigation.

Civil Enforcement Officers (CEOs)

CEOs may collect evidence in support of proceeding against a parking, bus lane or moving traffic contravention, but an approved device must record the contravention. CEOs are the public face of civil enforcement and the way they perform their functions is crucial to the success and public perception of an authority's operation. Authorities and their service providers should carefully consider the skills and attributes required of CEOs and devise assessment criteria that will allow them to recruit suitable personnel. The Welsh Government expects authorities to have regard to these criteria when employing CEOs directly or when contracting out.

CEOs will need to be professional and efficient at all times, and also seen as such by the public. They need firmness, sensitivity, tact, common sense and patience, and be able to think clearly and react sensibly under pressure. If an existing CEO does not have the required skills to be effective an authority or its contractor should ensure s/he receives appropriate training and development opportunities.

CEOs may be required to work near schools and other sensitive areas and will be seen as uniformed figures of authority. The Welsh Government recommends that an applicant for a CEO post undergoes a Disclosure and Barring Service (formally Criminal Records Bureau) (DBS) check. These should be kept up to date by regular checks. DBS checks can be made by the authority, another organisation that employs CEOs or an umbrella organisation as long as they meet the conditions of registration.

Conditions of registration are that an organisation is entitled to ask exempted questions under the Rehabilitation of Offenders Act (ROA) 1974 Exceptions Order 1975, and is a registered body or uses the services of a registered umbrella body. Further information is available on the CRB website www.crb.gov.uk

The Duties of CEOs

The main objective of a CEO is to ensure parking, bus lane and moving traffic controls are observed and enforced fairly, accurately and consistently. It is important that CEOs use Hand Held Computers (HHCs) or a pocket book to note any other relevant information, as this may be needed when considering representations and appeals. The notes should contain a record of any non-enforcement activities undertaken (e.g. conversations with members of the public or other CEOs, missing lines or signs, defective meters/pay and display machines etc.).

CEOs, whether directly employed by an authority or by a contractor must carry out their duties in compliance with the relevant legislation that applies to local authority staff. CEO duties will also include related activities such as:

- Assisting the public as first point of contact on minor parking enquiries and enforcement matters.
- Inspecting parking meters and pay-and-display machines to ensure they work. A CEO may be able to rectify a minor fault, otherwise an "out of order" notice should be put on the meter or machine and reported.

- Checking and reporting defective (e.g. vandalised or spun round) traffic signs and broken or faded road markings. Signs or lines should accurately represent TROs on the highway. Defective or missing signs or lines may render unenforceable the TRO whose effect they have been placed to indicate and PCNs should not be issued if this is the case.
- Issuing information leaflets or warning notices.
- Reporting on suspected Blue Badge abuse.
- If appropriate, appearing before an adjudicator. and
- Where an authority operates vehicle immobilisation or removal, recommending priority cases for action in accordance with ranking and local policies. However, the task of authorising the immobilisation or removal should be undertaken by another CEO with appropriate additional training (see Chapter 6).

One of the purposes of the TMA 2004 is to encourage authorities to take a comprehensive approach to managing traffic, and to regard the setting of bus lane and moving traffic – and parking - policies and their enforcement as a means to the end of managing traffic rather than an end in itself.

Any parking attendant appointed by an authority under Section 63A of the RTRA 1984 becomes a CEO in relation to parking contraventions and may be appointed a CEO in relation to other road traffic contraventions for which they are the enforcement authority¹⁰. Section 63A is not repealed by the TMA 2004 and says that parking attendants (now CEOs) shall also have such other functions in relation to stationary vehicles as may be conferred by or under any other enactment.

The Welsh Government's view is that CEOs should only be used for duties related to the enforcement activities for which the authority is responsible, but if CEOs have time the authority may wish to consider asking them to carry out tasks such as:

- Informing police of criminal parking activity.
- Reporting suspected abandoned vehicles.
- Reporting vehicles with no valid paper tax disc to DVLA. (Paper tax discs will cease to be issued after 30 September 2014.)
- Putting in place and removing notices about the suspension of parking places.
- Checking that shops selling parking vouchers have adequate stocks.
- Reporting on changes in parking patterns.
- Assisting with on-street surveys. and

¹⁰ TMA Section 76(5)

- Checking that non-mobile objects in parking places (e.g. skips) comply with the authority's licence.

It is important that these supplementary duties do not stop CEOs carrying out their principal duties and that the authority complies with the restrictions on the use of income set out in Section 55 (as amended) of the RTRA

Qualifications

It is recommended that existing and new CEOs hold the Level 2 nationally accredited qualification listed on the national qualification framework (or future equivalents) and cross-referenced to national occupational standards. Refresher training should be undertaken regularly based on such existing qualifications or similar ones that may be developed, but should always be supplemented by further training relevant to local needs and policies. General CEO training should cover the following subjects:

- An introduction to the role and duties of CEOs.
- An understanding of the legal foundation and objectives of civil enforcement.
- How the system works in practice.
- The types of signing and road markings loading and unloading, etc..
- The role of the police and the offences that remain their sole responsibility.
- Differences between higher and lower level PCN contraventions, as well as waivers, exemptions and dispensations.
- Exemptions for vehicles displaying a valid Blue Badge and an awareness of the problems faced by disabled people, how the Blue Badge scheme works, and the reciprocal arrangements for disabled drivers from outside the United Kingdom.
- Provisions regarding picking up and setting down.
- The vehicle registration system, including foreign and diplomatic registrations.
- Using pocket books, including standard characters and dealing with erasures, lost pages, crossings out, etc.
- Using digital camera equipment to take digital pictures of sufficient quality to support evidence.
- The appropriate use of verbal warnings and requirements for uniforms.
- The adjudication service, including the preparation of witness statements.
- Using communication devices, including the phonetic alphabet.
- Dealing with the public – managing conflict and aggression.
- On-street use of techniques learned during training.

- Emergency procedures including CEO responsibilities, communication devices and personal security. and
- The need to operate within the law and, in particular, not to break road traffic contraventions regulations while enforcing them.

Training

Training in the procedures drawn up by the individual authority, including:

- Other special exemptions that the authority wishes to employ (e.g. any period of grace between permitted parking time elapsing and issue of a PCN).
- Observation periods.
- "Mitigating circumstances" which require judgement to be exercised (e.g. motorist claiming to be going for change; nearest pay-and-display machine out of order, but another machine close by; claim that meter was out of order when PCN issued; motorist claims that voucher, permit, etc. was valid when the CEO considers it was not; explanatory note left in vehicle).
- Liaising with other parts of the enforcement operation (e.g. immobilisation or removals teams, or the PCN processing unit).
- Liaising with police and traffic wardens to deal with illegally parked vehicles and vehicles that have committed a bus lane or moving traffic contravention.
- Complaints by members of the public. and
- Other aspects of parking enforcement specific to the authority (e.g. type of HHC used; performance standards expected of CEOs; types of voucher, parking meter, pay-and-display machine, etc. used in authority's area).

CEOs and immobilisation and removal staff will require further training if an authority operates vehicle immobilisation or removal. This should deal with the criteria to be used and procedures to be followed when a vehicle is deemed suitable for immobilisation or removal. Additional training will be needed for senior staff who will authorise immobilisation or removals. Advice on the procedures for recommending and authorising immobilisation or removal is contained in Chapter 6.

Organisations representing disabled people, freight hauliers, motorists, etc. may be happy to contribute to sections of a course in which they have a special interest.

If a CEO does not possess the required skills to perform their role effectively, an authority or their contractor should facilitate appropriate training and other opportunities to help the CEO to develop such attributes. All CEOs should achieve minimum standards through recognised training courses. Authorities have an important role in ensuring that suitable personnel are recruited and provided with appropriate training, equipment, guidance and supervision.

CEOs should be properly trained to enforce controls fairly, accurately and consistently. It is recommended that authorities also provide supervised on-street training to familiarise CEOs with the area and any special parking provisions. Authorities should also make sure that CEOs understand all relevant exemptions, such as for diplomatic vehicles and Blue Badges. CEOs should be aware of their powers to inspect Blue Badges¹¹ and the need to exercise them sensitively.

Authorities should ensure that the training of CEOs equips them with the necessary interpersonal, conflict-resolution and oral communications skills to perform their jobs effectively and without undue stress or personal danger. There should be regular refresher training. Training may be based on existing qualifications or other similar ones that may be developed, but should always be supplemented by further training relevant to local needs and policies. General CEO training should include:

Exercising discretion

The Welsh Government considers that discretion should mainly be exercised by back office staff considering challenges against PCNs and representations against Notices to Owners (NtOs) - especially for bus lane and moving traffic contraventions, where contraventions are to be recorded only by approved devices. CEOs should be aware of their powers to inspect Blue Badges¹¹ and exercise them sensitively. All CEOs should achieve minimum standards through recognised training courses.

However, the authority may wish to list situations when a CEO should not issue a PCN (e.g. a verbal warning for a minor contravention where the driver is still with - or returns to - the vehicle before a PCN has been served). The authority should have clear policies, instructions and training for CEOs on how to exercise such authority and those should be published.

Probation

Following the successful completion of a training course, it is advisable that a CEO should also serve a probationary period during which s/he would be under close supervision. We recommend an initial probationary period of four weeks for new CEOs, and CEOs should not undertake their duties unaccompanied until they have achieved to the authority's satisfaction the required level of competence.

Camera operators

Enforcement against parking, bus lane or moving traffic contraventions must be based on approved devices (CCTV) and authorities should ensure that operators are appropriately trained - current guidance is for operators to achieve the BTEC qualification. Further advice is in the Code of Practice for Operation of CCTV Enforcement Cameras¹² and A Code of Practice for bus lane camera enforcement using attended CCTV equipment for approved English local authorities outside

¹¹ Welsh Government: Guidance on the inspection and enforcement of blue badges for police, traffic wardens, local authority parking attendants, civil enforcement officers and issuing local authorities.

¹¹ Welsh Government: Guidance on the inspection and enforcement of blue badges for police, traffic wardens, local authority parking attendants, civil enforcement officers and issuing local authorities.

¹² Available at www.londoncouncils.gov.uk

London¹³, developed by English authorities outside London and the Home Office surveillance code of practice.

Immobilisation and removal teams

It is critical that the members of the immobilisation and/or removal teams are trained fully in legal requirements, public relations and the need to ensure that the owner of the vehicle is advised of his/her right to make representations and appeals.

Enforcement authorities may wish to build into their contract, provisions requiring that their immobiliser or removal team members wear uniforms that clearly indicate the name of the authority on whose behalf s/he is acting as well as a personal identification number. Authorities may also wish to consider using liveried vans and (if used) clamps to avoid confusion with operators enforcing on private land.

Disclosure and Barring Service (DBS) checks

CEOs may be required to work near schools and similarly sensitive areas and will be regarded as uniformed figures of authority. The Welsh Government recommends that CEO applicants undergo a Disclosure and Barring Service (formally Criminal Records Bureau) and that those appointed are checked regularly thereafter. DBS checks can be made by the authority, another organisation that employs CEOs, or by an umbrella organisation as long as they meet the conditions of registration. Conditions of registration are that the organisation is entitled to ask exempted questions under the ROA 1974 Exemptions Order 1975, and is a registered body or uses the services of a registered umbrella body (see the DBS website www.gov.uk/disclosure-barring-service-check).

¹³ Available at <http://www.manchester.gov.uk>

CHAPTER 7: CHOICE AND CERTIFICATION OF DEVICES FOR CAMERA ENFORCEMENT

Welsh Ministers will ¹⁴ certify devices used to enforce bus lane and moving traffic – as well as parking - contraventions. The Welsh Government has contracted the Vehicle Certification Agency (VCA) ¹⁵ to undertake certifications on its behalf.

Devices certified by the Welsh Government

All devices within the scope of this legislation must meet the requirements of paragraphs 1 to 5 of the Schedule of SI 2013/360. These apply to fully automatic systems and to devices that record contraventions in systems that require the presence of a CCTV operator. A device may be designed and produced by one manufacturer or may be a system specified by a system designer and incorporate sub-systems and/or equipment produced by one or more manufacturer.

Detailed information about assessing these legal requirements, and on how to make an application, is contained in the document “*Civil Enforcement of Road Traffic Contraventions – Certification of Approved Devices*”. The document includes guidance on the choice and operation of suitable equipment. Further advice about the procedure can be obtained from:

Vehicle Certification Agency
1 The Eastgate Office Centre
Eastgate Road
Bristol, BS5 6XX

Telephone 01179 515151
via the web at www.vca.gov.uk

Procedures for operating enforcement systems

An enforcement authority’s procedures must ensure systems operate in such a manner as to preserve the integrity of the evidence and to ensure that it is handled and stored in a secure environment. Procedures should ensure the competence and honesty of systems and operators to reassure the public about the privacy of private areas and domestic buildings and to comply with the requirements of the Data Protection Act (DPA) 1998. Advice on the DPA’s requirements and any subsequent amendments is available from the Information Commissioner’s website¹⁶.

The CCTV User Group¹⁷ also provides general advice and model documents to members on the use of CCTV systems. These include *CCTV User Group Code of Practice* and *Model Procedures Manual*. An authority should develop procedures for operating enforcement systems in consultation with the approved device’s manufacturer(s).

¹⁴ The Civil Enforcement of Road Traffic Contraventions (Approved Devices) (Wales) Order 2013 (SI2013/360)

¹⁵ VCA is an Executive Agency of the Department for Transport and the United Kingdom’s national approval authority for new road vehicles, agricultural tractors and off-road vehicles.

¹⁶ www.informationcommissioner.gov.uk

¹⁷ www.cctvusergroup.com

CHAPTER 8: ENFORCEMENT ACTIVITIES

The way enforcement is carried out will have a significant impact on public and press perception of the service, so it is important that an authority's systems use up to date equipment and well trained staff.

Civil Enforcement Officer's handbook

Local authorities should produce handbooks for CEOs based on their training in specific aspects of enforcement. Handbooks could be used to train CEOs and as a procedural reference for CEOs on duty. The handbook should explain the different types of parking contravention, among other things. Many authorities already with CPE powers have handbooks that can be used as models.

An authority could prepare a handbook in conjunction with the specification for tenderers wishing to provide CEO services, or could require the contractor to provide a suitable handbook to all CEOs. If the latter the authority should be satisfied the instructions in the handbook are legal and comply with this Guidance.

Uniforms

When exercising prescribed functions¹⁸ a CEO must¹⁹ wear a uniform that is readily distinguishable from those worn by police and traffic wardens, and clearly show:

- That the wearer is engaged in enforcement.
- The name of the local authority/authorities on whose behalf s/he is acting. and
- A personal identity number.

The "specified" functions to which the uniform requirement applies are the issuing of PCNs on street and authorising or carrying out the immobilisation or removal of vehicles within a CEA. If another person immobilises or removes a vehicle under a CEO's direction, that person is not required to be wearing a uniform. Some firms that immobilise vehicles on private land have a poor reputation, so an authority's contract might specify the need to identify individuals and the authority for which they work.

If an authority decides that appropriate headgear is part of the uniform, a CEO should wear it at all reasonable times unless for religious reasons. A PCN is valid even if issued when a CEO is not wearing appropriate headgear. CEOs should carry a photo-identity card showing their identification number and their employer's name. It is strongly recommended that the photo-identity card does not include the CEO's name on it. Staff working in CCTV control rooms are not required to wear uniforms.

¹⁸ TMA 2004, Section 78(2)(a) and (b) and Section 79, and Road Traffic Regulation Act 1984, Section 99.

¹⁹ TMA, Section 76(3)(a).

Enforcement by Approved Devices

TMA 2004 Regulations⁴¹ give authorities power to issue PCNs for contraventions detected with a camera and associated recording equipment (approved device). Welsh Ministers must⁴² certify any device used to detect contraventions. Once certified they may be called an “approved device”. Welsh Ministers recommend that authorities use relevant traffic signs to advise motorists of such devices. Signs must comply with Traffic Signs Regulations and General Directions (TSRGD)⁴³ or have authorisation from the Welsh Government. Camera enforcement needs to be well publicised and indicated with lawful traffic signs. It should be designed so that fully-trained staff are able to:

- Monitor traffic activity in accordance with a Code of Practice.
- Identify registration number, colour and type of vehicles contravening restrictions.
- Support serving a PCN to the registered keeper of the contravening vehicle.
- Record evidence so representations and appeals can be answered fully.
- Produce timed and dated pictures of unauthorised driving or stopping for adjudication or as information to the registered keeper of such vehicles. and
- Immediately despatch a CEO and removal truck for targeted enforcement of vehicles contravening traffic restrictions.

An essential and integral part of any system is a Code of Practice which sets out the system’s objectives and the rules by which it will operate. Authorities should ensure that they produce or adhere to a Code of Practice so that issues such as privacy, integrity and fairness are dealt with properly. It should set a minimum standard that must be adhered to by enforcement authorities using cameras. PCNs for bus lane or moving traffic contraventions must be issued only on the evidence of an approved device. Personal data from DVLA records must be used for fair and lawful purposes and its use for anything other than an actual contravention could break data protection rules. Using approved devices means that:

- Contraventions are recorded electronically, so information can be transferred quickly and cheaply to other computers for further processing or storage.
- Information in support of a PCN (e.g. a conversation with a motorist) can be typed into a CEO’s HHC, instead of being noted in a pocketbook. Such a record can make it easier to consider representations and appeals because all relevant information is readily available in one place. and

⁴¹ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI2013/362) Regulation 10

⁴² *Ibid, Regulation 10 and* The Civil Enforcement of Road Traffic Contraventions (Approved Devices) (Wales) Order 2013 (SI2013/360).

⁴³ Diagrams 878 and 879.

- Vehicles used by persistent evaders or non-payers, or vehicles with invalid permits, should be easier to identify as this information can be downloaded from a central database.

Hand Held Computers (HHCs)

The Welsh Government recommends that PCNs are issued using a HHC rather than written by hand. However, to ensure business continuity a suitable manual system should be available.

The advantages over writing parking tickets by hand are:

- Contraventions are recorded electronically, so information can be transferred quickly and cheaply to other computers for further processing or storage.
- PCNs will not be cancelled because of illegible handwriting.
- HHCs can reduce incorrect PCNs because they can be programmed to correct mistakes (e.g. wrong contravention code, street name or CEO identity number).
- Details of a conversation with a motorist can be typed into the HHC rather than noted in a pocketbook. Such records make it easier to consider representations and appeals as all relevant information is readily available in one place;
- Vehicles used by persistent evaders or non-payers, or with invalid permits, should be easier to identify as this data can be downloaded from a central database to an individual HHC at the start of a shift. In some cases, when a CEO inputs a street name the HHC can display information such as repeat contraveners or non-payers who frequently park in that street;
- Information can be produced about the number and location of different parking contraventions and the performance of different CEOs. Analysis of this information should enable on-street enforcement to be made more efficient; and
- Some HHCs enable information to be transmitted directly between CEOs and their bases, thus eliminating the need for a separate radio.

If HHC outputs cannot be transferred automatically into a host processing computer, many of their main advantages will be lost or greatly reduced. So it is important to choose a type that enables data to be readily transferred securely to and from other systems, including those of other authorities, to exchange information. The internal clock should be checked at least daily for accuracy, and the times on the HHC's internal clock synchronised with those of relevant pay-and-display machines.

Where testing a HHC prior to issuing a PCN, CEOs should exercise caution when inputting a vehicle registration number, and not use ABC 123 (an actual registration number). The test could access a "live" record held by the DVLA and not be deleted, so that a PCN would be issued to an innocent motorist. Personal data from DVLA records must be used fairly and lawfully. Using the data for anything other than an actual contravention could break data protection rules. Authorities should use the registration number of an employee's vehicle who knows what to do if the test PCN is not deleted.

HHCs vary significantly in price and performance depending on the sophistication and quality of IT software. Initial costs, maintenance and the cost of "consumables" (ribbon, paper rolls, etc.) need to be considered if an authority proposes buying or leasing its own HHCs. But, most importantly, the HHC should have a memory with sufficient capacity for the authority's street index and databases used for enforcement. It is also important that the HHC has sufficient battery life for an entire beat or patrol.

Mobile communications

One of the advantages of issuing CEOs with mobile telephones or radios is that the authority or contractor will have greater control over the CEO's movement in mid-shift, so that, for example, complaints can be dealt with more quickly. CEOs will be able to contact senior staff for advice, or to request assistance (e.g. if their personal security is threatened).

A mobile telephone would facilitate the rapid transmission of information to the police about criminal parking offences, or where a police presence may be needed. Direct communication between CEOs and the despatch controller is highly desirable - if not essential - where vehicle immobilisation or removal is to be undertaken.

Digital cameras

Digital photographs help to reduce the potential for disputes of fact. They reduce the likelihood of an appeal but, if an appeal is held, they improve the quality of justice and allow appeals to be disposed of expeditiously. They are particularly useful where, for example, a vehicle is not parked correctly within a bay or one or more of a vehicle's wheels is parked contrary to a parking order. They can also be useful to rebut claims that a PCN was not attached to a vehicle. However, such photographs are not necessary to prove that a contravention occurred.

Given the greater cost and inconvenience of removal, the Welsh Government recommends that all vehicles to be removed are photographed first so that any later dispute about the position or condition of a vehicle can be resolved. Authorities operating vehicle removals should consider issuing digital cameras to CEOs who authorise removals, or to the removal contractors. Images from digital cameras need to be of good quality, clearly display the contravention and the surrounding environment and have the ability to date and time-stamp images.

The technical specifications for approved devices are contained in the Regulations. A camera fixed on or in a vehicle may be an approved device but must record the location from which it is being operated and where the image has been taken.

Suspensions

Where suspensions of parking bays, meters, etc. are to be carried out by a CEO, a minimum amount of standard equipment will be required. All cones, tape, bags for meters or pay-and-display signs, and "cover over" signs for bay signs should clearly identify the enforcement authority and, if appropriate, the contractor.

Transport for CEOs

A CEO will spend time walking to and from beats at the start/end of shifts and to lunch and tea breaks. Subject to local traffic conditions time lost can be reduced by providing transport to and from CEOs' bases with cars, vans, motorbikes, mopeds or bicycles.

The Penalty Charge

The Penalty Charge is usually payable by the vehicle owner except if the vehicle was on hire at the time. Legislation gives the right to make a representation against the Notice to Owner (NtO), and an appeal to an adjudicator if the owner is dissatisfied that a representation has been rejected. If a representation or an appeal has not been made or has been made and rejected, a Charge Certificate (CC) may be issued if the PCN has still not been paid. The penalty charge is then recoverable through the TEC as a civil debt.

Each enforcement authority must²⁰ set the level of penalty charges in its area, and the level of those charges must²¹ follow the guidelines appended to an Order made by Welsh Ministers. When authorities change their penalty charges they must²² publish the new charges in at least one local newspaper 14 or more days before the new charges come into effect.

It is recommended that an authority sends a copy of the contravention record (in the form of a still image or images) with the PCN. An authority must⁴⁶ comply within a reasonable time to requests to see this record or send a copy of the still images of the contravention. Regulations set out the way in which to calculate the date of service of a postal PCN⁴⁷. Service is taken to have been, unless proved otherwise, on the second working date after posting.

Authorities must⁴⁴ give a discount period - currently 21 days - for a PCN issued on evidence from an approved device because the PCN also serves as an NtO. The motorist does not have the opportunity to make an informal representation and, if that is rejected, a formal representation. PCNs for contraventions detected by approved devices cannot be placed on a vehicle or handed to a person who appears to be in charge of it but are posted to the owner using data from DVLA. Such a PCN serves also as a NtO and must⁴⁵ state:

- The date of the notice, which must be the date on which it is posted.
- The name of the enforcement authority.
- The registration mark of the vehicle involved in the alleged contravention.
- The date and time at which the alleged contravention occurred.

²⁰ TMA 2004, Schedule 9, Paragraph 7.

²¹ *Ibid*, Paragraph 7 and 8.

²² *Ibid*, Paragraph 9.

⁴⁶ Regulation 5 of SI 2013/359

⁴⁷ Regulation 3 of SI2013/362

⁴⁴ The Civil Enforcement of Road Traffic Contraventions (General Provisions)(Wales) Regulations 2013 (SI 2013/362).Schedule Paragraph 1

⁴⁵ *Ibid*, Paragraph 2.

- The amount of the penalty charge, and the payment methods.
- The grounds on which the authority believes that a penalty charge is payable.
- That the penalty charge must be paid not later than the last day of the period of 28 days beginning with the date on which the PCN is served.
- That if the penalty charge is paid not later than the last day of the period of 14 days beginning with the date on which the PCN was served, it will be reduced by the amount of any applicable discount - currently by 50%.
- That if after the last day of the 28 days period no representations have been made and the charge has not been paid, an authority may increase it by any applicable surcharge - currently 50% - and take steps to enforce payment of the charge as so increased; and the amount of the increased charge.
- That the PCN is being served by post from a record from an approved device.
- The basis on which representations may be made, and the address (including e-mail address or FAX number) to which representations must be sent.
- That representations may be made to the authority but any made outside 28 days beginning with the date the PCN is served may be disregarded.
- The form in which representations must be made.
- That if an authority rejects a representation the recipient of the PCN may appeal against the authority's decision to an adjudicator. and
- That the PCN's recipient may ask an authority in writing to either: let him/her (or a representative) see free of charge at the office of the authority s/he specifies, during normal office hours, the record of the contravention produced by the approved device pursuant to which the penalty charge was imposed; or provide the recipient of the PCN, free of charge, such still images from that record as, in the opinion of the authority, establish the contravention.

It is recommended that the PCN also gives:

- vehicle make and colour (if evident);
- detailed location of vehicle (full street name);
- the contravention code;
- observation start and finish times (where appropriate);
- PCN number (all PCNs should be uniquely identifiable); and
- Amount of penalty time (when relevant).

Any CEO photographs and notes should be kept as further evidence of the contravention and to help resolve disputes. CEOs should be provided with appropriate equipment, training and guidance to collect evidence, and that evidence should be disclosed at the earliest opportunity. Using digital cameras and other technology to record contraventions is mandatory. Examples of the sort of additional information it may be prudent to note are set out in Annex D.

If a vehicle contravenes more than one restriction only one PCN should be issued. If two PCNs are issued within 24 hours for the same contravention, it is current practice to normally cancel the second. It may be sensible to review both PCNs and cancel the least robust. For instance, if a digital photograph for one was taken in the light and the other in darkness, the evidence of the former contravention may be clearer. If one PCN is at the higher rate and one at the lower rate, the latter should normally be considered first for cancellation.

It is important to put the relevant information on the PCN's payment slip so that payment is assigned to the correct case. This should include the PCN number, vehicle registration mark and other identifiers such as date and time of issue, or a barcode that contains the same information. It is recommended that the payment slip states the amount of the penalty charge, so that if it becomes detached the recipient knows how much is due.

Regulations explain how to calculate the date of service of a postal PCN³⁶. Service is taken to have been on the second working day after posting, unless proved otherwise. A working day excludes Saturday, Sunday, New Year's Day, Good Friday, Christmas Day, and any bank holiday in Wales. The date of posting is not necessarily the same as the date on which the back office staff prepare the PCN, and authorities should ensure that their procedures take account of this. If the owner, as recorded on DVLA's database, was not the owner at the time of the contravention, a second postal PCN/NtO may be issued to the person who was⁴⁰.

Differential Penalty Charges

A penalty charge is usually payable by the vehicle owner except if it was hired at the time of the contravention. A representation may be made against a NtO and an appeal made to an independent adjudicator, if the owner is dissatisfied with an authority's decision to reject a representation. If a representation or appeal has not been made, or has been made and rejected, and the PCN has not been paid, a Charge Certificate (CC) may be issued. This means that the penalty charge is recoverable through the TEC as a civil debt due to the authority and is enforceable through a streamlined version of the normal civil debt recovery process.

Each authority must²⁰ set the level of penalty charges in its area, and those must²¹ follow guidelines appended to an Order made by Welsh Ministers. If authorities change

³⁶ Regulation 3 of SI2013/362

⁴⁰ The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (SI 2013/359), Regulation 4(4)(b) and 5(4)

²⁰ TMA 2004, Schedule 9, Paragraph 7.

²¹ *Ibid*, Paragraph 8.

penalty charge levels they must²² publish the new charges in at least one local newspaper 14 or more days before they come into effect.

Authorities must issue two different levels of penalty charges in their area. Parking where it is always prohibited (e.g. on double yellow lines or in a disabled bay without displaying a valid badge) is more serious than overstaying where parking is permitted (e.g. in a parking place). For this reason and to emphasise the traffic management role of CPE, authorities must²³ apply different penalties to different contraventions.

Ministers believe that penalty charges for bus lane and moving traffic contraventions should be set at the higher level penalty charge in the highest band. This will act as an affective deterrent and encourage drivers to abide with the prohibitions and signs. The higher list is specified in the Guidelines Order²⁵, which will be varied from time to time. Authorities should check on the Transport Wales website that they are using the most up to date version. The current list of contravention codes is set out in Annex C.

Table 1 PCN Charges

Band	Higher Level Penalty Charge	Lower Level Penalty Charge
1	£60	£40
2	£70	£50

The specified bands of penalty and other charges will be reviewed from time to time and the Welsh Government will consult interested parties when considering changes. Authorities will be notified if Welsh Ministers change the bands and levels, and up-to-date figures will be on the website. When new penalty charges are introduced, authorities need to advise the public at least 14 days before they come into force.

Numbering

To avoid confusion all PCNs will need to be uniquely numbered, including PCNs issued by different authorities. A PCN number should be unique and must have 10 characters. To avoid the same number being used by different authorities, the first two characters of each number should be unique to a particular authority. An authority seeking civil enforcement powers should contact the manager of the TEC, Northampton County Court at an early stage to request a prefix that has not already been allocated.

The next seven digits uniquely identify the PCN in a particular authority's area, which means each authority can have up to 9,999,999 numbers before having to start again. The final character of each PCN number will be a check digit to validate the PCN number (e.g. by detecting typing errors when PCN numbers are being processed). The TEC can advise on the formula the local authority should use to calculate the check digit. No PCN number should ever be reused without the prior consent of the TEC.

It is important to put the relevant information on the PCN's payment slip so that payment is assigned to the correct case. This should include the PCN number and the vehicle registration mark and other identifiers such as the date of issue, the time

²² *Ibid*, Paragraph 9.

²³ The Civil Enforcement of Road Traffic Contraventions (Guidelines on levels of charges) (Wales) Order 2013 (SI 2013/1969) Schedule, Paragraph 1.

²⁵ *Ibid*, Annex of the Schedule.

of issue or a barcode that contains the same information. It is also recommended that the payment slip states the amount of the penalty charge, so that if it becomes detached from the notice, the recipient knows how much is due.

Standard contraventions and associated code numbers

The statutory list of contraventions is found in Schedule 7 to the TMA 2004 and section 87 states that local authorities must have regard to the statutory guidance when exercising their functions.

The use of a single, nationwide list of contraventions and associated code numbers and suffixes i.e. the London councils codes, that enables statistics on the operation of the powers in different authority areas to be collected consistently. This makes the system easier for those who commit contraventions in more than one area to understand etc. It should also promote co-operation between authorities using common systems (e.g. where an adjudicator deals with cases from two or more authorities the standard contravention descriptions and associated codes are less likely to cause confusion. The only change we have made to the March 2010 codes is to include bus lane and moving traffic offences in the higher band.

Applications for designation orders should confirm that the authority will use the standard contravention code list issued by the London councils which is revised from time to time and available on their website. All civil enforcement authorities will need to maintain contact with London councils to note any changes or additions. To avoid error, it is recommended that an authority excludes from its list those codes not relevant to its area (e.g. if a particular contravention is not covered by any order in the authority's area), but the code numbers used should not be changed.

The standard contravention codes are numbers (01, 02, etc.). Gaps at the end of each category enable further contraventions to be added. Optional suffixes (b, d, p, etc.) can be used to clarify the nature of the contravention (e.g. depending on the types of parking bays used by an authority or banned left or right turn). Optional suffixes would not be seen by the TEC. Motorists should be able to read and understand why the PCN was issued. The use of the code on its own is not sufficient information.

Contravention codes are divided into two lists - one setting out the codes of contraventions for which the higher level penalty charge is applicable and the other setting out the contraventions for which the lower level penalty charge is applicable.

Other points about the Penalty Charge Notice

If a PCN has been issued and a representation shows that a traffic sign or road marking was defective, the representation should be accepted because an appeal is likely to be upheld. An authority acts unlawfully and risks damage to its reputation if it continues to issue PCNs that it knows to be unenforceable.

Collecting evidence of the contravention

The local authority must²⁶ provide evidence of the contravention either from a CEO's direct observation, or from the record of an approved device²⁷.

²⁶ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI 2013/362). Regulation 9

Service of the PCN at the time of the contravention

A PCN must be fixed to the vehicle or given to the person who appears to be in charge of that vehicle. The CEO should be clearly visible at all times when issuing the PCN. Authorities will need to ensure that, if they issue PCNs by post, if service is prevented by violence or “drive aways”, their procedures enable them to refute allegations that the CEO was not clearly visible.

The copy of the PCN issued to the motorist should be designed to be fixed to the windscreen, so must be weatherproof or able to fit into a weatherproof envelope. It should also be fixed such that it cannot easily be removed by a breeze or by people passing. Where PCNs are issued by HHC, details can be transferred electronically to a central database. The system should prevent any changes to the data once the PCN is issued. This means that a second printed copy can be produced automatically at any time so a second copy does not need to be produced at the time of service.

Details recorded in this way will be admissible in proceedings before an adjudicator but it needs to be a copy of the original in the sense of reproducing exactly all the text on the original. If the PCN is written by hand, two copies need to be produced, one of which is served and the other retained by the authority for monitoring payment and dealing with representations, including any before an adjudicator.

The information that a PCN served on the vehicle or to a person appearing to be in charge of the vehicle (a “Regulation 9” PCN) must²⁸ contain is:

- The date on which the notice is served.
- The name of the enforcement authority.
- The registration mark of the vehicle involved in the alleged contravention.
- The date and time of the alleged contravention.
- The grounds on which the serving CEO believes the penalty is payable.
- The amount of the penalty charge.
- That the penalty charge must be paid not later than the last day of the period of 28 days beginning with the date on which the PCN was served.
- That if the penalty charge is paid not later than the last of the 21 days beginning with that on which the notice is served, the penalty charge payable will be reduced by the amount of any applicable discount – currently 50%.
- Payment methods.

²⁷ A device specified in The Civil Enforcement of Road Traffic Contraventions (Approved Devices) (Wales) Order 2013 (SI 2013/360).

²⁸ *Ibid*, Schedule, Paragraphs 1 and 2, and The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (SI 2013/359).

- That if the penalty charge is not paid before the end of the period of 28 days beginning with the date on which the PCN was served an NtO may be served by the enforcement authority on the owner of the vehicle.
- That a person on whom an NtO is served will be entitled to make representations to the enforcement authority against the penalty charge and may appeal to an adjudicator if those representations are rejected.
- If representations against the penalty charge are received at the specified address before the NtO is served they will be considered. and
- But if a NtO is served notwithstanding those representations received against the penalty charge before the NtO is served, those representations must be made in the form and manner and at the time specified in the NtO.

It is recommended that the PCN also gives:

- Vehicle make and colour (if evident).
- Detailed location of vehicle (full street name).
- The contravention code.
- Observation start and finish times (where appropriate).
- PCN number (all PCNs should be uniquely identifiable).
- CEO's identification number.
- The vehicle's paper tax disc number and expiry date (Paper tax discs will cease to be issued after 30 September 2014.) (give reasons if not recorded).
- Amount of penalty time (when relevant). and
- Serial number and expiry time of pay and display ticket/voucher (if relevant).

Permitted parking places locations can be identified by meter number, parking place or bay number, or the name of the car park on the PCN. It is likely to be inadequate to describe the location in terms of the street only if there is permitted and prohibited parking along it. The location should be unambiguously described using the HHC.

The CEO's photographs and notes should be kept as further evidence of the contravention and to help resolve disputes. Authorities should provide CEOs with the appropriate equipment (e.g. digital cameras), training and guidance to collect such evidence. Authorities should disclose their evidence at the earliest opportunity. Additional information to enable validation, resolution of disputes and adjudications to be made, should be collected on the CEO's copy of the PCN or the HHC.

If a vehicle contravenes more than one restriction (e.g. parked partly on a yellow line and partly in a marked bay with inadequate payment), only one PCN should be

issued. CEOs should be instructed which takes precedence in such circumstances. If two PCNs are issued within 24 hours for the same contravention (i.e. to a vehicle that has not been moved), it is current practice to normally cancel the second PCN. It may be sensible to review both PCNs and cancel that with the least robust evidence (e.g. if the digital photograph for one was taken in the light and the other in the hours of darkness). If one PCN is at the higher rate and the other at the lower rate, the lower rate PCN should normally be considered first for cancellation.

It is important to put the relevant information on the PCN's payment slip so that payment is assigned to the correct case. This should include the PCN number and the vehicle registration mark and other identifiers such as the date of issue, the time of issue or a barcode that contains the same information. It is also recommended that the payment slip states the amount of the penalty charge, so that if it becomes detached from the notice, the recipient knows how much is due.

Observation periods

For some contraventions, it is necessary to observe the vehicle for a period of time to ascertain whether a contravention is taking place. This will depend on the type of contravention and authorities will need to set periods and ensure they are observed. For reasons of open government, authorities may wish to publish these observation periods. Authorities in a continuous urban area should consider setting the same observation periods as drivers may not know where one ends and another starts.

There are two types of observation - casual and continuous. For casual observation, the standard procedure is for a CEO to note the vehicle details when first observed and to return a short while later or at intervals to see if there is any sign that loading/unloading is taking place. If not, a PCN will be issued.

For continuous observation, the standard procedure is for a CEO to note the vehicle details when first observed and then stay next to or near the vehicle, keeping it in sight at all times, for a set period (usually at least five minutes) to see if there is any sign that loading or unloading is taking place. If not, a PCN will be issued. A period of continuous observation without any sign of activity provides better evidence that loading or unloading was not taking place. However it should not be considered to be conclusive proof that it was the case, even after a relatively long observation period, as there are circumstances that could lead to the activity not being seen.

Casual observation allows the CEO freedom to cover a larger area that may be more useful at busy times. An observation period is not a grace period, which is a period of time where a contravention is taking place but the authority chooses not to enforce.

Loading and unloading

Parking restrictions vary from area to area and visitors (e.g. delivery drivers) may not be familiar with them. It is therefore important for restrictions to be clearly indicated by traffic signs and road markings. Delivery staff may also fail to comply with restrictions that they think do not take account of what they see as their legitimate need to carry out loading and unloading activities.

This is not a justification but, to try to avoid it, authorities should include local businesses and representatives of logistics companies in their consultations and, as

far as possible, take their needs into account when developing parking and enforcement policies. Authorities should also establish regular dialogue with deliverers (for example through Freight Quality Partnerships).

To help avoid contraventions of parking restrictions while loading and unloading, authorities should ask applicants seeking planning permission for new commercial developments or, where appropriate, changes to or within commercial use, to make adequate provision for the loading and unloading needs of the business(s).

Rules for loading and unloading are different to other parking activities. TROs that restrict or prohibit vehicles from waiting in a street usually exempt loading or unloading. The precise nature of such an exemption will depend on the Order. Some authorities designate on-street parking places only for vehicles being loaded. If waiting for the purpose of loading is prohibited or restricted, the extent of the prohibition or restriction must be indicated by appropriate traffic signs and road markings. Loading or unloading must be continuous while the vehicle is parked in restricted areas. It is important to clarify to CEOs that loading/unloading includes taking goods into a premises to where the recipient may reasonably require them, waiting for them to be checked, getting delivery or collection documents signed and returning to the vehicle. Once the delivery process has been completed the vehicle must be moved even if within the maximum period allowed. If a vehicle is locked, the loading/unloading process may be ongoing as that process refers not only to the physical element but also to checking the delivery/pickup and completing paperwork.

Parking at dropped footways and double parking

The TMA 2004 enables CPE authorities to enforce in a Special Enforcement Area (SEA)²⁹ prohibitions of double parking³⁰ and parking at dropped footways³¹ as if they had been introduced using a TRO. Any SPA that existed before commencement of the TMA 2004 automatically becomes an SEA³² but authorities should make sure that the public are aware of the new restrictions before starting enforcement.

There are various exceptions to the prohibitions in the relevant sections of the TMA. Principally they cover vehicles parked wholly within a designated parking place or any other part of the carriageway where parking is specifically authorised; vehicles used for fire brigade, ambulance or police purposes; and loading and unloading. The Act's provisions mean a TRO is not required to introduce such a prohibition but that the prohibition must be indicated with traffic signs or road markings.

Many such prohibitions are already indicated – for instance at street corners. The Welsh Government will provide guidance on appropriate indicators. These enforcement powers may be most suitable where there is a persistent rather than occasional problem. Restrictions on when the powers can be used mean that if an authority wishes to use them it will need to publicise beforehand when they will enforce.

The Highway Code tells drivers “Do not stop or park...where the kerb has been lowered to help wheelchair users and powered mobility vehicles, in front of an entrance

²⁹ TMA 2004, Schedule 10.

³⁰ *Ibid*, Section 85.

³¹ *Ibid*, Section 86.

³² *Ibid*, Schedule 10, Paragraphs 1(5) and 3(5).

to a property or where you would obstruct cyclists' use of cycle facilities...except when forced to do so by stationary traffic." Parking contraventions on a part of a road adjacent to a dropped or raised kerb (subject to specified exemptions – emergency services, alighting, unloading, building works, road works etc.) apply if a vehicle parks on the carriageway adjacent to a footway, cycle track or verge where the footway, cycle track or verge has been lowered to the level of the carriageway (or where the carriageway has been raised to meet the level of the footway, cycle track or verge) to:

- Assist pedestrians crossing the carriageway.
- Assist cyclists entering or leaving the carriageway. and
- Assist vehicles entering or leaving the carriageway across the footway, cycle track or verge.

A contravention does not apply if a vehicle is parked outside residential premises by or with the consent (but not consent given for reward) of the occupier. This exception does not apply in the case of a shared driveway. This suggests that enforcement action should not be taken where a vehicle is parked outside residential premises unless and until the authority has been asked to act by the occupier. Authorities will need to establish the bona fides of the individual making such a request.

The contravention of double parking applies if a vehicle parks on any part of the carriageway of a road where no part of the vehicle is within 50 cms of the edge of the carriageway, subject to the exemptions in the TMA 2004.

Service of a PCN by post

There are three situations in which a ("Regulation 10") PCN may be served by post³³:

- Where the contravention has been detected using an approved device.
- If the CEO has been prevented by violence from serving the PCN by fixing it to the vehicle or giving it to the person who appears to be in charge of that vehicle. and
- If the CEO had started to issue the PCN but did not serve it before the vehicle was driven away and would otherwise have to write off or cancel the PCN.

This includes situations where the person who appears to be in charge of the vehicle is abusive or prevents service indirectly through intimidation or directly through threats or actual physical force. In serious cases, the authority should contact the police.

In any of these circumstances a PCN is served by post on the owner (whose identity is ascertained from the DVLA) and also acts as the NtO. Welsh Ministers suggest that postal PCNs should be sent within 14 days of the contravention.

In such circumstances, the PCN issued by the CEO on patrol cannot be served by

³³ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI2013/362). Regulation 10

post as the information it gives is insufficient. The “Regulation 9” PCN issued by the CEO should be cancelled and a “Regulation 10” PCN served by post. Authorities should ensure there is sufficient primary and supporting evidence to deal with any subsequent representations and appeals and should obtain the CEO’s witness statement. Back-office staff should trace the registered keeper’s address via the DVLA. In these circumstances the motorist has a 21-day discount period to pay the PCN. The PCN, which is now also the NtO, must be served using first class post³⁴ and state³⁵:

- The date of the notice (i.e. the date on which it is posted).
- The name of the enforcement authority.
- The registration mark of the vehicle involved in the alleged contravention.
- The date and time at which the alleged contravention occurred.
- The amount of the penalty charge.
- The payment methods.
- The grounds on which the authority believes that a penalty charge is payable.
- That the penalty charge must be paid not later than the last day of the period of 28 days beginning with the date on which the PCN is served.
- That if the penalty charge is paid not later than the last day of the period of 21 days, beginning with the date on which the PCN was served, it will be reduced by the amount of any applicable discount - currently by 50%.
- That if after the last day of the 28-day period no representations have been made and the penalty charge has not been paid, the enforcement authority may increase the penalty charge by the amount of any applicable surcharge - currently 50% - and enforce payment of the charge as so increased.
- The amount of the increased penalty charge.
- That the PCN is being served by post because a CEO attempted to serve a PCN by fixing it to the vehicle or giving it to the person in charge of the vehicle but was prevented from doing so by some person.
- That representations may be made to the authority against the penalty charge but that representations made outside the period of 28 days beginning with the date on which the PCN is served may be disregarded.
- The basis on which representations may be made.
- The address (including any e-mail address or FAX/telephone number) to which representations must be sent.

³⁴ *Ibid. Regulation 3*

³⁵ *Ibid*, and The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 Schedule 1, paragraph 2.

- The form in which representations must be made. and
- That if the representations are not accepted by the enforcement authority the recipient of the PCN may appeal against the authority's decision to an adjudicator.

It is recommended that the PCN also gives:

- Vehicle make and colour (if evident).
- Detailed location of vehicle (full street name).
- The contravention code.
- Observation start and finish times (where appropriate).
- PCN number (all PCNs should be uniquely identifiable).
- The CEO's identification number;
- The vehicle's paper tax disc number and expiry date (Paper tax discs will cease to be issued after 30 September 2014.) (give reason if not recorded).
- Amount of penalty time (when relevant). and
- Serial number and expiry time of pay and display ticket or voucher (when relevant).

The regulations set out the way in which the date of service of a postal PCN must³⁶ be calculated. Service is taken to have been, unless proved otherwise, on the second working date after posting. A working day excludes a Saturday, a Sunday, New Year's Day, Good Friday, Christmas Day, and any other day which is a bank holiday in Wales. The posting date is not necessarily the date on which the back office staff prepare the PCN, authorities' procedures should take account of this.

As for PCNs successfully served on-street, photographic evidence and information should be collected, where appropriate, as further evidence of a contravention and to resolve any unnecessary disputes. Authorities should provide CEOs with the appropriate equipment, training and guidance to collect such evidence in the prescribed circumstances, bearing in mind that this may be harder where service is being prevented. If the owner, as recorded by the DVLA, was not the owner at the time of the contravention, a second postal PCN/NtO may be issued to the person who was the owner at the time of the contravention⁴⁰.

³⁶ Regulation 3 of SI2013/362

⁴⁰ The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (SI 2013/359), Regulation 4(4)(b) and 5(4)

Return of motorist before the CEO has started to issue the PCN

Once the CEO has started to issue the PCN s/he should not stop. If this causes the motorist difficulties, the CEO should direct the attention of the motorist to the procedures set out on the PCN for making representations.

A PCN may not be served by post if the motorist returns to the vehicle before the CEO has started to issue the PCN. If the CEO is observing the vehicle s/he has not started to issue the PCN - jotting down some details is not part of starting to issue the PCN. Only when the CEO starts to create the PCN and would otherwise have to formally cancel it has s/he started to issue the PCN. If the CEO has not started and the motorist returns, the CEO should establish whether the vehicle is parked in contravention (e.g. if loading/unloading is taking place). If the vehicle is in contravention, the CEO should ask the motorist to bring him/herself inside the restrictions.

Approved Devices

TMA Regulations⁴¹ give the power to authorities throughout Wales to issue PCNs for contraventions detected with a camera and associated recording equipment (an approved device). Welsh Ministers will ⁴² certify any device used solely to detect contraventions (i.e. with no supporting CEO evidence). Once certified they may be called an 'approved device'.

Welsh Ministers recommend that authorities ensure that motorists are advised of such devices with relevant traffic signs. Any signs used must comply with TSRGD⁴³ or have special authorisation from the Welsh Government. Welsh Ministers recommend that approved devices are used only where parking enforcement is difficult or sensitive and CEO enforcement is not practical. Approved devices should not be used where permits or exemptions (e.g. resident permits or Blue Badges) not visible to the equipment may apply.

The primary objective of camera enforcement is to ensure the safe and efficient operation of the road network by deterring motorists from breaking road traffic restrictions and detecting those that do. To do this, the system needs to be well publicised and indicated with lawful traffic signs. Authorities should ensure that there are procedures in place that prevent the service of two PCNs - one at the time of the contravention and one by post with evidence from an approved device.

A system should be designed so that fully trained staff:

- Monitor traffic activity in accordance with a Code of Practice.
- Identify vehicle registration number, colour and type of vehicles contravening traffic restrictions.
- Support the serving of PCNs to the registered keeper of a vehicle identified contravening the restrictions.

⁴¹ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI2013/362). Regulation 10

⁴², The Civil Enforcement of Road Traffic Contraventions (Approved Devices) (Wales) Order 2013 (SI 2013/360).

⁴³ Diagrams 878 and 879.

- Record evidence of each contravention to ensure that representations and appeals can be answered fully.
- Produce timed and dated pictorial evidence of any unauthorised driving or stopping to be produced for adjudication or as information to the registered keeper of such vehicles. and
- Immediately despatch a CEO and removal truck for targeted enforcement of vehicles contravening traffic restrictions.

An essential part of any system is a Code of Practice that sets out the objectives of the system and the rules by which it will be operated. Authorities should ensure that they produce or adhere to a Code of Practice that is published and which ensures issues such as privacy, integrity and fairness are dealt with properly. It should set a minimum standard that must be adhered to by all those authorities enforcing traffic restrictions using cameras to ensure public confidence in the scheme.

Authorities must⁴⁴ give a discount period (currently 21 days) for a PCN issued on the basis of evidence from an approved device. This is because the PCN also serves as the NtO, so the motorist cannot make an informal representation and, if that were rejected, a formal representation against it. PCNs for contraventions detected by approved devices are sent by post to the owner using data from the DVLA. The PCN sent by post on the basis of evidence produced by an approved device must⁴⁵ state:

- The date of the notice, which must be the date on which it is posted.
- The name of the enforcement authority.
- The registration mark of the vehicle involved in the alleged contravention.
- The date and time at which the alleged contravention occurred.
- The amount of the penalty charge.
- The payment methods.
- The grounds on which the authority believes that a penalty charge is payable.
- That the penalty charge must be paid not later than the last day of the period of 28 days beginning with the date on which the PCN is served.
- That if the penalty charge is paid not later than the last day of the period of 21 days, beginning with the date on which the PCN was served, it will be reduced by the amount of any applicable discount - currently by 50%.
- That if after the last day of 28-day period no representations have been made and the penalty charge has not been paid, the authority may increase the

⁴⁴ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI2013/362). Schedule 1 Paragraph 3

⁴⁵ *Ibid*, Paragraph 2.

penalty charge by the amount of any applicable surcharge - currently 50% - and take steps to enforce payment of the increased charge.

- The amount of the increased penalty charge.
- That the PCN is served on the basis of a record from an approved device.
- That representations may be made to the authority against the PCN but those made outside the 28 days beginning with the date on which the PCN is served may be disregarded.
- The basis on which representations may be made.
- The address (postal, e-mail, or FAX or telephone number) to which representations must be sent.
- The form in which representations must be made.
- That if an authority does not accept a representation the recipient of the PCN may appeal to an adjudicator against the authority's decision. and
- That the PCN's recipient may write to ask the authority to either: let him/her (or a representative) see free of charge at an office of the authority s/he specifies, during normal office hours, the record of the contravention produced by the approved device; or provide the PCN's recipient free of charge such still images that the authority believes establish the contravention.

We recommend that the authority sends a copy of the contravention (in the form of still image(s)) with the PCN. The authority must⁴⁶ comply within a reasonable time to requests to see the record of the contravention, or send a copy of the still images of the contravention.

It is recommended that the PCN also gives:

- vehicle make and colour (if evident);
- detailed location of vehicle (full street name);
- the contravention code;
- observation start and finish times (where appropriate);
- PCN number (all PCNs should be uniquely identifiable); and
- Amount of penalty time (when relevant).

The regulations set out the way in which the date of service of a postal PCN must⁴⁷ be calculated. Service is taken to have been, unless proved otherwise, on the

⁴⁶ Regulation 5 of SI2013/359

⁴⁷ Regulation 3 of SI2013/362

second working date after posting. A working day excludes a Saturday, a Sunday, New Year's Day, Good Friday, Christmas Day, and any other day which is a bank holiday in Wales. The posting date may not be the same as that on which back office staff prepare the PCN, and authorities' procedures should take account of this.

Immobilisation/Removal

Very few authorities now use immobilisation. Welsh Ministers believe it should only be used in limited circumstances such as where the same vehicle repeatedly breaks bus lane or moving traffic restrictions and it has not been possible to collect payment for penalties, primarily because the keeper is not registered, or is not properly registered, with the DVLA. If a vehicle is causing a hazard or obstruction the authority should remove rather than immobilise. Immobilisation/removal should only take place where it produces clear traffic management benefits.

An authority should develop and publish clear guidelines for CEOs on when it is appropriate to immobilise or remove. These should cover the order of priority in which vehicles should be dealt with, based on the nature of the contravention. Powers should not be used randomly and authorities' guidelines should be drawn up in consultation with the police. Guidelines about immobilisation and removal should have regard to the inconvenience of motorists, the potential obstruction or loss of space that results from immobilisation, and the impact that immobilisation and removal can have on public perception and acceptance.

The decision to immobilise or remove requires an exercise of judgement and must⁴⁸ only be taken following specific authorisation by an appropriately trained CEO. Immobilisation/removal operatives should not take the decision. The immobilisation device may only be removed by or under the direction of a person authorised to do so by the authority following payment of the release fee and the penalty charge.

Contractors should not immobilise or remove vehicles unless a suitably trained CEO is present to confirm the contravention is within the guidelines. A CEO must⁵⁰ affix a notice to the driver's side windscreen or door glass of an immobilised vehicle to say:

- An immobilisation device has been fitted and warning that no attempt should be made to drive it or otherwise put it in motion until it has been released.
- The steps to secure release. and
- Unlawful removal of the device is an offence.

If a vehicle is causing a hazard or obstruction an authority should remove rather than immobilise. If a driver returns to the vehicle while immobilisation or removal is taking place, then unless s/he is a persistent evader, it is recommended that the operation

⁴⁸ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI 2013/362) Regulation 12 and The Removal and Disposal of Vehicles Regulations 1986 (SI1986/183) as amended by the Removal and Disposal of Vehicles (Amendment) (Wales) Regulation 2014 (SI2014/1388).

⁵⁰ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI2013/362).Regulation 12

is halted unless the clamp is secured or the vehicle has all its wheels aboard the tow truck. If immobilisation or removal is halted the PCN should still be enforced. When a vehicle is immobilised and subsequently removed to the pound, the driver does not have to pay the clamp release fee⁵².

If a vehicle is removed, authorities should advise the police of the time, place, vehicle registration number, and pound to attend for retrieval so they can deal with queries from motorists who report their vehicle stolen. If a vehicle is immobilised or removed, an authority should seek to make it available immediately upon payment.

Authorities should remember that motorists have a right to recover their vehicles 24 hours a day. In the case of clamp release, authorities should publish maximum times for releasing vehicles once paid. It is recommended these should be within one hour of payment with a maximum limit of two hours. Removal or immobilisation is the penalty and further inconvenience and potential cost from prolonged release times is not appropriate. Authorities should measure and publish their performance.

On the release of a vehicle from a clamp or from the vehicle pound the authority must⁵³ immediately inform the vehicle owner or person in charge of the vehicle about their right to make representations and their subsequent right to appeal against representations that are rejected. The vehicle will already have been issued a PCN that sets out the grounds on which representations can be made.

However, Welsh Ministers recommend that the notice about representations against immobilisation or removal also gives full particulars of the grounds, procedure and time limit for representations. This is particularly important when credit or debit payments are made over the telephone. Storage charges should apply for each day or part of day, reckoned from 2400 midnight on the day following removal of a vehicle.

Disabled (blue) badge holders and vehicles with diplomatic registration plates

Vehicles displaying valid Blue Badges⁵⁴ and diplomatic plates⁵⁵ are not exempt from civil enforcement unless by a valid TRO. Badged vehicles must not⁵⁶ be immobilised and, in general, should not be removed. Exceptionally, (e.g. if a badged vehicle causes a safety hazard), it should be moved to a safe spot nearby, if possible in sight of its original location. Authorities should not charge for the relocation of badged vehicles but should notify police in case the owner reports it stolen.

Diplomatic vehicles have registration plates marked with a D or an X, or have personal plates composed of a country's initials or abbreviation of its full name. In

⁵² RTRA 1984, Section 101A(1), and the TMA 2004 Section 79(1).

⁵³ The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2013 (SI 2013/361) Regulation 3(2) and 3(3), and The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (SI 2013/359). Regulation 8(2) and (3)

⁵⁴ Further guidance can be obtained in the Welsh Government's Blue Badge Scheme leaflet, Parking Concessions for Disabled and Blind People.

⁵⁵ Article 31.1 of the Vienna Convention on Diplomatic Relations; Diplomatic Privileges Act 1964; White Paper on Diplomatic Immunities and Privileges (Cmnd 9497, April 1985).

⁵⁶ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI 2013/362), Regulation 13.

general diplomatic vehicles should not be immobilised, except for X registered vehicles that are persistent evaders. X registered vehicles can be removed but diplomatic vehicles with D or personal plates causing an obstruction/danger should only be repositioned nearby. An authority should not try to recover the removal costs.

Persistent Evaders

Some owners contravene regulations deliberately and often and fail to settle debts. An owner can be classed a 'persistent evader' if there are three or more recorded contraventions for the vehicle and those PCNs have not been paid, represented against or appealed against within statutory time limits, or the representations and appeals have been rejected but they have still not paid. Usually this is because the vehicle keeper is not registered, or is not correctly registered, on DVLA's database and the owner is confident s/he can avoid paying any penalty charge.

An authority should not treat a motorist as a persistent evader unless enforcement agent Enforcement Agents have failed to recoup outstanding and unchallenged penalty charges. If a vehicle appears registered in the UK but the identity and address are not – or not correctly - registered on DVLA's database, authorities should consider advising police who are able to investigate any criminal offence. When in contravention a persistent evader's vehicle should be subject to the strongest enforcement following the issue of a PCN and confirmation of his/her evader status (likely to involve immobilisation or removal).

Proof of ownership and a registered address are required before a vehicle is released but immobilisation takes up valuable road space. If a persistent evader's vehicle contravenes bus lane or moving traffic regulations, an authority is prohibited from immobilising or removing it until at least 15 minutes⁵⁷ have elapsed following the issue of a PCN. Currently, an authority can only obtain payment for the PCN of the contravention for which the vehicle is immobilised or removed and not any other outstanding PCNs. Authorities may wish to maintain a database themselves or in conjunction with neighbouring authorities.

⁵⁷ TMA 2004, Section 79(6); The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI 2013/362), Regulation 12 The Removal and Disposal of Vehicles Regulations 1986 (SI1986/183) Regulation 5C(4)(a) as amended by the Removal and Disposal of Vehicles (Amendment) (Wales) Regulation 2014 (SI2014/1388).

CHAPTER 9: PARKING EXEMPTIONS, WAIVERS AND DISPENSATIONS

When formulating their enforcement policies authorities should consider the need for exemptions, waivers and dispensations and adopt those that are required.

Disabled Person's Blue Badge holders

The Disability Discrimination Act (DDA) 1995, as inserted by Section 3 of the DDA 2005, along with the Equality Act 2010, require all public authorities in carrying out their functions to have due regard: to eliminate discrimination and harassment that is unlawful; the need to promote equality of opportunity between disabled persons and other persons; and the need to take steps to provide for disabilities, even where that involves treating disabled persons more favourably than other persons.

The parking concessions available to Badge holders continue to apply automatically when CPE applies. All TROs should include exemptions for Blue Badge holders that enable them to park:

- Free without time limit at on-street parking meters and pay-and-display spaces.
- As long as they wish where others may park only for a limited time unless an Order specifically time-limits parking for Badge holders. and
- On single or double yellow lines for up to three hours except where there is a ban on loading and unloading.

Blue Badge holders must obey the rules of the road as set out in the Highway Code (e.g. they cannot park in loading bays during operating hours; on pedestrian crossings (including zig-zag areas); at bus stop clearways or school "Keep Clear" markings during operating hours). They should also not park where it would endanger, inconvenience or obstruct pedestrians or other road users (e.g. on a bend, close to a junction or where the kerb has been lowered or the road raised for wheelchair users). Further information about the Blue Badge scheme is contained in booklet "The Blue Badge Scheme: Rights and Responsibilities in Wales", available from the Welsh Government at <http://www.wales.gov.uk/topics/transport/road-users/bluebadgeschemeinfo>.

The Welsh Government recommends that vehicles displaying a valid Blue Badge are removed only for an emergency, security or ceremonial reason, or if it is causing a serious safety hazard or obstruction. If removal is absolutely necessary and the driver cannot be located within a reasonable time, police may re-locate the vehicle nearby where it will not cause a hazard or obstruction and leave a message indicating where the vehicle is located. Welsh Ministers recommend that authorities do the same.

Welsh Ministers attach particular importance to the needs of older and disabled people, and have appointed a Commissioner for Older People to champion and strengthen their voice. Around 10% of adults have some form of disability and when other factors are taken into account the proportion of people with a mobility problem is much greater. It is an important part of Welsh Government policy that disabled people or those with mobility problems should be able to move around with the minimum of difficulty.

The Blue Badge (BB) Scheme provides a range of on-street parking concessions for people with impaired mobility who find it difficult to use public transport, and is designed to help severely disabled people to travel independently, as either a driver or passenger, by allowing them to park close to their destination.

However, Ministers do not consider it appropriate to extend similar concessions to BB holders if they contravene bus lane or moving traffic regulations. This is not unique. BB holders like other road users must obey the Highway Code. Further information is in the Welsh Government's "The Blue Badge Scheme: Rights and responsibilities" booklet, and in "The Blue Badge Scheme Local Authority Guidance (Wales)".

The TMA 2004 provides that vehicles displaying a valid BB must not be immobilised in CEAs, recognising the difficulties that many BB holders would have getting to a payments centre and the risk of injury or undue suffering if forced to wait for their vehicle to be released. The TMA 2004 also provides a power for police constables and enforcement officers (e.g. traffic wardens and CEOs) to inspect BBs.

Valid BB holders are not statutorily exempt from removal action, but disabled people often heavily or completely rely upon their vehicles and removal can cause them great inconvenience. The Welsh Government recommends that such vehicles are only removed for an emergency, security or ceremonial reason, or if it is causing a serious safety hazard or obstruction. The procedure followed by police is that if removal is absolutely necessary and the vehicle's driver cannot be located within a reasonable time, the vehicle is removed to a position nearby where it will not cause a hazard or obstruction. Whenever possible, they leave a message for the driver indicating where the vehicle is located. Welsh Ministers recommend that authorities do the same.

Abuse of the Blue Badge Scheme

There are several ways in which Blue Badges can be misused, including:

- Use of a Badge that is no longer valid.
- Misuse of a valid badge by a friend/relative (with or without the holder's knowledge or permission).
- Use of a badge reported "lost or stolen" (by the badge holder – so that another is supplied to a friend or relative). and
- Use of a stolen or copied badge (by the thief or forger or by someone who has acquired the badge through unauthorised channels).

Targeted surveillance

The most common misuse tends to be by friends and family of the badge holder. Where this is a clear problem (and there is a financial case for tackling abuse) the Welsh Government strongly recommends the establishment of specialist Blue Badge enforcement teams to carry out undercover surveillance work. Such teams can identify suspected systematic abuse and seek permission for undercover surveillance under the Regulation of Investigatory Powers Act 2000 (RIPA) to build up evidence that can later be used to prosecute the individual in a magistrate's court.

Working with the police and carrying out targeted operations

Local enforcement teams can identify Blue Badge abuse 'hot spots' (e.g. football stadia, schools, shopping centres or entertainment/sports facilities). Parking enforcement officials have powers to inspect badges but only police officers may seize and confiscate lost, stolen, fraudulent, invalid or misused badges. Local authorities may wish to work with the police to carry out 'inspection swoops' on hot spot areas.

Day to day parking enforcement inspections

Although operations in partnership with police are often the most effective ways of tackling abuse, there is still a role for CEOs in identifying, lost, stolen and fraudulent badges as part of their day to day activities. Whenever misuse is suspected the CEO needs to deal with the badge holder sensitively. No assumption or questions should be raised about why an individual has a badge as this is not the CEO's role, and some disabilities may not be immediately visible. In enforcing the Blue Badge scheme, it is strongly recommended that CEOs receive disability awareness training beforehand.

The TMA 2004 introduced the power to inspect Blue Badges for police officers, traffic wardens, local authority parking attendants and CEOs ("authorised officers"). Under this Act it is an offence to fail to produce a Badge when asked to do so by an authorised officer. However, this power can only be legally exercised when a person is in the vehicle or when they are leaving the vehicle or returning to the vehicle displaying a Badge. Only a police officer has power to seize a Badge where it is required as evidence in a criminal prosecution, so it is often helpful to work with the police.

When inspecting badges, authorised officers can check through the windscreen and, if necessary, ask to see the badge under the "power to inspect" so that they can check the detailed information and photograph of the badge holder on the reverse to verify whether the badge is being used by the correct badge holder. To aid inspection, from October 2007 a gender marker has been added to the TSO serial number, prefixed by an "x" for males and a "y" for females. The marker has been added to help enforcement officers to identify obvious cases of badge misuse.

Withdrawing badges due to repeated misuse

Under the Disabled Persons (Badges for Motor Vehicles) (Amendment) (Wales) Regulations 2000, local authorities can withdraw a badge if the holder has at least three relevant convictions for misuse. An authority can also ask for a badge to be returned if it is satisfied the badge was obtained by false representation. It is strongly recommended that an authority warns a badge holder who is misusing a badge, or allowing their badge to be misused, prior to considering withdrawing the badge.

Reciprocal arrangements for disabled drivers from other countries

Following the introduction of a common European disabled persons' parking card (the Blue Badge), the UK now has reciprocal arrangements with all EU Member States under which badge holders can enjoy the parking concessions provided in the host country by displaying the badge issued under their own national scheme.

CEOs should treat vehicles displaying a Blue Badge of a participating country as if it were displaying a UK Blue Badge, although the concessions entitlements vary from

country to country. Details can be found in "European Parking Card for People with Disabilities – How, When and Where to Use it in 29 Countries", at:
<http://www.fiadisabledtravellers.com/en/home/home.htm>

If a vehicle displays a Blue Badge equivalent from a country without reciprocal arrangements the Blue Badge exemptions need not apply unless the authority recognises badges from that country. But the general obligation contained in the DDA still applies if a vehicle is believed to be used by a disabled person and an enforcement authority should take great care to ensure that their obligations are met.

Diplomatic registered vehicles

In enforcing parking regulations, an authority should follow accurately the procedures used by the police when dealing with diplomatic registered vehicles. If a diplomatically registered vehicle is contravening a parking restriction, before taking any action a CEO should contact a manager or supervisor who should then follow the procedures set out below. Diplomatic registered vehicles will have one of three types of plate.

- **D Registration Plates** (e.g. 123 D 321) may be carried by vehicles belonging to diplomats, administrative and technical staff of Missions and certain senior staff of international organisations. They may also be carried by official vehicles of Diplomatic Missions. The vehicle owners have diplomatic immunity.
- **Personalised Diplomatic Registration Plates** may indicate a country's initials or an abbreviation of its full name, and are sometimes issued for the official cars of Heads of Diplomatic Missions, who have full diplomatic immunity.
- **X Registration Plates** (e.g. 987 X 789) may be carried by certain consular staff or staff of international organisations. They indicate limited diplomatic immunity.

The Vienna Convention on Diplomatic Relations, to which the UK is a party, gives accredited diplomats immunity from the criminal jurisdiction of the host nation's law (see also section 2 of, and Schedule 1 to, the Diplomatic Privileges Act 1964). Issuing parking tickets, whether FPNs or PCNs, is not considered an exercise of criminal jurisdiction in the Convention, nor is the removal of diplomatic vehicles where the action can be justified as a last resort to relieve obstruction or danger and the driver cannot be located quickly. However, immobilising or removing those vehicles in other circumstances is considered an exercise of such jurisdiction and is therefore ruled out. The UK Government is committed to ensuring that these principles are followed by agencies enforcing parking controls.

The TMA 2004 provides for permitted parking at designated on-street parking places to be made civil offences and for this to be applied to certain non-endorsable parking offences in CEAs. But the immobilisation or removal action sometimes associated with the enforcement of these controls still constitutes the exercise of criminal jurisdiction within the meaning of the Vienna Convention and the provisions of the Diplomatic Privileges Act 1964 continue to provide exemptions for diplomatic vehicles.

Immobilisation

Vehicles carrying D registration plates or registration plates personalised for the country should not be immobilised anywhere on public roads. Vehicles carrying X registration plates may be immobilised in the same way as vehicles without diplomatic immunity and owners or persons in charge of such vehicles should be required to pay the PCN and a release fee. Welsh Ministers recommend, however, that local authorities treat X-plated vehicles as D-plated vehicles unless they are persistent evaders. Although an authority might be able to justify such action, an X-plated vehicle should never be immobilised where it is if it is causing a serious road safety or congestion hazard. It should be moved to a place nearby or removed to the vehicle pound.

Removal

Vehicles carrying D registration plates or registration plates personalised for the country should only be removed as a last resort to relieve obstruction or danger to other road users and where the driver cannot be located quickly. In these cases, the vehicle should be removed to a more suitable location within the immediate vicinity and a message left indicating where the vehicle can be found. Removal to a car pound should be avoided but if there is no viable alternative, charges should be waived as diplomats are under no obligation to pay removal or storage charges of vehicles. If a charge is paid, the Embassy will appeal to the Foreign and Commonwealth Office (FCO) to recover the charges from the authority or make the appeal itself.

As with immobilisation, vehicles carrying X registration plates may be removed in the same way as vehicles without any diplomatic immunity, and they should be required to pay the PCN and any associated removal, storage and disposal charges. Welsh Ministers recommend that authorities treat X-plated vehicles as D-plated unless they are causing a serious road safety or congestion hazard or are persistent evaders.

Recovery of unpaid PCNs

Although owners of diplomatic vehicles are required to pay PCNs, they should not be issued with a NtO if it is not paid within 28 days. Issuing a NtO would trigger procedures that could ultimately lead to action in a county court to recover the debt. Many diplomats are not subject to civil jurisdiction and there is no practical method for authorities to distinguish between those who are and those who are not. Authorities should therefore arrange to follow police practice and, instead of issuing a NtO, should keep a record of the unpaid charge. The FCO will request details of all unpaid PCNs on an annual basis and will pursue the relevant contraveners for payment at this time.

Persistent disregard of parking controls and refusal to pay by diplomats may lead the UK Government to ask that they be withdrawn from duty in the UK. The FCO will report annually to Parliament the number of each country's outstanding PCNs issued in respect of diplomatically registered vehicles. Local authorities should ensure that appropriate details are notified to:

Team 1
Diplomatic Missions and International Organisations Unit
Protocol Directorate
Room 1/61, Old Admiralty Building
LONDON SW1A 2AH
Telephone 020 7008 0975

Application to HM forces and visiting forces

Local authorities with CPE powers must not use those powers against certain vehicles⁵⁸, namely any vehicle that:

- At the relevant time is being used or appropriated for use by HM Forces. and
- Belongs to, or at the relevant time is being used or appropriated for use by visiting forces (such as the United States Visiting Forces).

These vehicles will generally bear identification – rather than registration – plates. The effect of this is that vehicles used by HM's army, navy and air forces, or vehicles used by visiting armed forces, will not be subject to civil parking controls in CEAs.

Waivers

In certain circumstances it is necessary for vehicles to be parked such that they cannot comply with the regulations (e.g. removal vehicles or scaffolding lorries). In these cases authorities should issue special waivers (or “dispensations”) to allow these vehicles to park without enforcement action. It is important that authorities establish their own policies and procedures for waivers and provide for these in their TROs. Policies need to balance the importance to businesses of accessible parking in special circumstances with the need to keep roads clear, and ensure that the use of waivers is not excessive.

Exemptions where parking places are suspended

Parking places may be suspended for a number of reasons and TROs may permit certain vehicles to park in suspended places (e.g. cranes and lorries where a bay is suspended for building work or highway maintenance; vans for furniture removals; hearses for funerals). Similarly, TROs may allow parking bays to be reserved for use by a doctor, Blue Badge, diplomat or resident, if that person's usual parking bay is suspended. Such exemptions are a matter for local authorities. However, it is important that suspended and reserved parking bays are clearly signed so motorists can easily see whether they are permitted to park and under what, if any, circumstances.

Miscellaneous exemptions

TROs invariably exempt vehicles used for fire service, ambulance or police purposes, or if being used to remove an obstruction (e.g. attending to a broken down vehicle). TROs usually also exempt service vehicles, but only if being used for certain activities (e.g. laying telecoms lines, or on behalf of a universal postal service provider). These are not general exemptions for vehicles of a certain type, irrespective of use. Persons in charge of vehicles benefiting from such exemptions should be familiar with the extent to which they are exempt from parking controls, but CEOs should also know local exemptions. The exact extent of exemptions depends on the precise terms of the TRO.

Dispensations for professional care workers

The London Health Emergency Badge scheme allows doctors, nurses, midwives and health visitors engaged in urgent or emergency care in a patient's home to park without payment, to park in residents' or other reserved parking bays and to park on yellow lines where loading and unloading is not prohibited if there is no alternative.

⁵⁸ TMA 2004, Section 90.

The latter concession is subject to the proviso that a serious obstruction or other endorsable offences are not committed. It is not valid for routine home visits.

Enforcement authorities should consult the relevant health trust(s) in their areas about a scheme to permit parking by professional health care workers when making emergency or urgent health calls in areas where controls are in force. Without such a scheme the health trust may be unable to provide these services. Authorities should ensure that professional health care workers are aware of their policies before CPE begins and alerted to any subsequent changes in the arrangements. Welsh Ministers recommend conditions to help ensure such a scheme is not abused. A suitable badge should be issued by the local authority indicating:

- The badge's purpose (e.g. "Waiting and loading and Designated Parking Place Orders: Waiver - Consent to park and conditions imposed").
- The name of the relevant local authority.
- The name and contact details of the badge holder (if appropriate).
- The registration number of the relevant vehicle (if appropriate).
- That the vehicle should be moved if instructed by a police officer, traffic warden or CEO.
- The badge should be signed and dated by a suitable council official and the holder of the badge.
- an expiry date.
- The badge should be displayed on or inside the windscreen so that it can be seen clearly from the outside.
- The badge should only be used when the badge holder is away from his or her base and directly involved in patient care, and where there are no legal parking places available.
- If misuse of the badge is suspected, a PCN may be issued or the vehicle may be immobilised or removed. But a vehicle displaying a valid badge should not normally be clamped, removed or ticketed without an attempt being made to contact the driver at the contact details shown on the badge. and
- If frequent or regular misuse occurs, the badge may be withdrawn. Dispensations do not apply if the vehicle is causing a serious obstruction or has been left for an excessive time in the same position.

CHAPTER 10: POLICY AND ADMINISTRATIVE FUNCTIONS

Providing a quality service

Authorities should make sure their processes for pursuing outstanding penalties and handling challenges, representations and appeals are efficient, effective and impartial. These processes must comply with all relevant primary legislation, regulations, TROs and local byelaws. Authorities are encouraged to seek independent quality assurance of their civil enforcement processes. IT systems that facilitate speedy and accurate processes should be used.

Authorities should deal with motorists promptly and professionally and are encouraged to set time and quality targets for dealing with queries, in addition to any statutory time limits and those set down in the Statutory Guidance. Authorities should remember that an appeal is a judicial proceeding and that time limits for correspondence may be laid down in legislation or set using adjudicators' judicial powers. Authorities are strongly advised to respond promptly to contacts from the adjudicator concerning appeals.

Authorities should offer motorists flexible and efficient ways to contact them, including e-mail and telephone, must⁵⁹ use first class post for any notice or CC, and should ensure an adequate audit trail to rebut any accusations of unfairness.

Collecting penalty charges

The penalty charge is usually payable by the owner⁶⁰ of the vehicle, unless it was hired at the time of the contravention. No criminal proceedings may be instituted and no FPN may be served in respect of any contravention occurring in a CEA, except a pedestrian crossing contravention⁶¹. A penalty charge is not payable if criminal proceedings have been taken or a FPN issued with respect to the contravention. If a penalty charge has been paid in these circumstances, the authority must refund it.

Successful civil enforcement requires convenient and up to date facilities for payments, and motorists are more likely to pay if it is quick and easy to do so. An efficient and secure system for collecting revenue will improve an authority's financial performance by minimising bad debts and time-consuming and costly actions to collect them.

Authorities should offer motorists a range of facilities for paying penalty charges, and where they provide payment centres, these should be safe and accessible. Payment centres should be an integral part of the system for processing PCNs, so that financial transactions are recorded immediately and any further action cancelled. Authorities should ensure that any (particularly telephone and online) payment facility can confirm any amount outstanding if part payment only has been received.

⁵⁹ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI2013/362) Regulation 3(2)

⁶⁰ This expression is defined by the TMA 2004 Section 92 as follows: "Owner", in relation to a vehicle, means the person by whom the vehicle is kept, which in the case of a vehicle registered under the Vehicle Excise and Registration Act 1994 (c. 22) is presumed (unless the contrary is proved) to be the person in whose name the vehicle is registered.

⁶¹ Defined by regulation 2(1) of the Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI 2013/362).

The choice of payment methods needs to balance ease of settlement for the motorist with security of payment and cost-effectiveness for the authority. The range should reflect the scale of each authority's enforcement operations, including the number of penalty charges to be collected and payments from immobilisation or removals. It is important that the system does not inadvertently discriminate against some groups of people and that motorists are able to pay by methods most convenient to them - cash, a cheque not guaranteed by a cheque guarantee card paid through the post, a cheque supported by a cheque guarantee card at a payments centre, Sterling travellers' cheque, debit or credit card, by telephone or via the internet.

If payment is made or claimed to have been made before the six-month limit on service of an NtO, is then cancelled or withdrawn and the six-month period has passed, an NtO may still be served⁶². Some cheques received through the post will be made out in error to the wrong payee (e.g. to a neighbouring authority). If this happens on a regular basis, authorities may wish to consider establishing a payment exchange.

Cheques endorsed "A/C Payee Only" and "Not Negotiable" - invariably pre-printed on company cheques and often pre-printed on personal cheques - cannot be made over by the payee to others. A cheque endorsed in this way could be returned to the drawer - either directly if the address is known or via the drawer's bank - with an instruction that it be made payable to the correct payee. Or an authority could transfer the cheque to the payee on the cheque in return for a corresponding cheque made payable to it.

It is important that a misdirected cheque is dealt with promptly and that its drawer is sent an acknowledgement explaining how the cheque has been handled and why. Unsecured cheques should not be acknowledged until they have cleared. It may help to advise people paying by cheque through the post to record key details (PCN number or car registration number) on the cheque's reverse to minimise the risk of errors.

An authority will need to have procedures for cases where payment is made within the discount period but subject to "conditions" or in envelopes that are not stamped. It may be better to refuse payments made on conditions rather than to accept the payment. Authorities will also need procedures for dealing with over – and under – payments and unidentified payments. Enforcement authorities should ensure that unidentified payments are credited as soon as possible to the correct PCN record.

If an authority immobilises and/or removes the amount to be paid, allowing for an outstanding penalty charge, may exceed a cheque guarantee or debit card limit. Conditions governing their use may state that a bank guarantees payment of a single transaction up to the limit. Accepting a series of payments up to the limit is considered fraudulent, and the bank could return the second and subsequent cheques unpaid. A more secure method than a partially secured cheque will minimise bad debts.

Accepting payment by online debit and credit cards combines a convenient method of payment with security for authorities because electronic readers automatically seek authorisation for values previously agreed by the card holder and the card company and "blacklisted" cards are automatically barred.

⁶² The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI2013/362) Regulation 10(6)(a) or (b)

Auditors favour online debit and credit cards as a means of avoiding bad debts and minimising collection costs. There are operational savings to debit/credit cards so surcharges for their use are unjustified. Paying penalty charges by credit or debit cards on the telephone or over the internet has many advantages for authorities and is very effective for collecting release fees for immobilised vehicles as well as a penalty charge for a vehicle issued with a PCN. Authority to debit the account can be obtained from the cardholder by telephone subject to agreement of the credit or debit card companies concerned. Even if they do not have internet access at home motorists can still make such payments from a local library or internet café. There may be a case for providing a terminal in the authority's customer contact centre or (if they have one) parking shop.

Where it has a significant number of foreign visitors an authority may wish to take payment, particularly for immobilisation or removals, in foreign currency, using a bureau de change to quote the day's exchange rate. It may be more difficult to detect forged foreign currency. Authorities will need to consider who will pay any conversion charges. Visitors may claim that they have been unfairly penalised if they are asked to pay it but if the conversion charge is not charged the authority might become a cost-effective way of exchanging unused foreign currency for local residents.

A PCN is deemed 'paid' as soon as payment arrives at a payment office belonging to the authority that issued the PCN. Whether the parking payment office or another payment office, the case should be closed promptly. An authority's systems should accurately record the day on which it receives payments so no more action is taken. If there are unusual delays with the postal system, authorities should make allowances when considering whether a payment was received within the statutory period, and may wish to keep the envelope in which the payment came, as franking can be used as evidence of the date of posting.

Where an authority receives full payment within 21 days of the service of the PCN, it must⁶³ accept the discounted amount. Unless Welsh Ministers authorise a departure from the guidelines on levels of penalty charges, the discount must be the applicable discount - currently 50% of the penalty charge⁶⁴. The authority should then close the case. When a PCN has been served by post using evidence from an approved device, the discount period is 21 days from the date of service of the notice⁶⁵.

Location of payment centres and opening hours

If an authority's regime does not include immobilisation and removal, most payments are likely to be by telephone, post and, when possible, the internet. If a motorist wishes to pay in person it may be most efficient to provide facilities at a town hall, civic centre or other location where payments are made to the authority. It may be possible to use a building used for enforcement activities by an outside contractor. Enforcement without immobilisation or removal will not deprive a motorist of the use of their vehicle so there is less need for payment centres to be open outside normal office hours. Authorities may wish to extend opening hours if that might encourage prompt payment.

⁶³ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI2013/362) Schedule 1 Paragraph 1(h) and 3

⁶⁴ The Civil Enforcement of Road Traffic Contraventions (Guidelines on levels of charges) (Wales) Order 2013 (SI 2013/1969).

⁶⁵ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI2013/362) Schedule 1 Paragraph 3(a)

If immobilisation or removal exists it is important that payment methods are convenient and accessible. A payment centre should be an integral part of the pound to which vehicles are removed so that motorists can pay the charges outstanding and reclaim their vehicle at the same time. If the pound is inconveniently situated, one or more payment centres should be provided in or near areas where immobilisation commonly occurs to allow motorists to pay in person rather than over the telephone.

A vehicle pound payment centre and any payment centre intended primarily for paying immobilisation charges should be open during the hours that immobilisation and removal activities take place. If this is not feasible, they should be open between 8am and midnight, Monday to Saturday, and between 9am and 5pm on Sundays and public holidays. Longer opening hours may be necessary at certain times, such as summer weekends and bank holidays at seaside resorts. There should also be an out of hours emergency service so motorists can pay for their vehicles to be released from a wheel-clamp or vehicle pound at any time. Procedures will need to be co-ordinated to ensure that vehicles can always be released within a reasonable time after payment.

Temporary waiving of payments

Authorities should have policies for circumstances where a motorist cannot pay to release a vehicle from a clamp or pound, but where there are strong compassionate grounds for doing so (e.g. the person reclaiming the vehicle is a vulnerable person with no immediate means of payment and it is late at night). Before a vehicle is released the person should be asked to sign a promissory note to pay the outstanding debt.

One way to minimise bad debts where vehicles are released on compassionate grounds is to accept part-payment where the motorist pays some of the money due on the spot. It is arguable that accepting part-payments would make it uneconomic to recover small debts, and that this could become an "unofficial discount" by default. On the other hand, while recovering debts through the County Court is unlikely to be economic if viewed in isolation, the deterrence of proceedings to recover all bad debts may keep non-payment levels down and outweigh the cost of proceedings. Authorities will need to consider these arguments when deciding their policy on part-payments.

If authorities accept part-payments it is advantageous to ensure that part-payment is made first in respect of immobilisation, removal, storage or disposal charges because unpaid charges can be recovered using cheaper procedures under the TMA 2004. In cases of proven hardship local authorities may wish to consider allowing outstanding penalty or other charges to be paid in instalments.

Payments for releasing a vehicle from immobilisation or vehicle pound

After full or part-payment or waiving of charges, a vehicle's release from immobilisation or a pound should be documented. Motorists must immediately be given written advice about their right to make a representation and, if that is rejected, an appeal⁶⁶ and the grounds upon which they can be made. To collect payment in full or in part before a vehicle is released and comply with the law, authorities will need to have procedures for handling payments and issuing written advice about appeals and representations.

⁶⁶ The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (SI 2013/359), Part 3.

Issuing the Notice to Owner

If the penalty charge is not paid, the authority may issue an Notice to Owner (NtO). The NtO's purpose is to ensure the PCN was received by the vehicle owner and to remind them that the PCN is due to be paid in full, and if not within a further 28 days may be increased – currently by 50%. It also gives them an opportunity to make a formal representation.

The NtO may be issued 28 days after serving a PCN and authorities should send them within 56 days after serving the PCN. In exceptional circumstances the ultimate time limit is six months⁶⁷ from the “relevant date” (usually that on which the PCN was served), but there should be a very good reason for waiting that long. It may also be the date on which a district judge serves written notice in response to a witness statement, the date on which an earlier NtO relating to the contravention is cancelled, or the date on which the authority is notified that payment (or purported payment) of a PCN has been cancelled or withdrawn. The NtO must⁶⁸ state:

- The date of the NtO, which must be the date on which it is posted.
- The name of the enforcement authority.
- The amount of the penalty charge payable.
- The date on which the PCN was served.
- The grounds on which the penalty charge is payable with respect to the vehicle.
- That the penalty charge, if not already paid, must be paid within 28 days beginning with the date on which the NtO is served.
- That if, after that 28 day period beginning with the date on which the NtO is served, no representations have been made and the penalty charge has not been paid, the authority may increase it by the applicable surcharge - currently 50%.
- The amount of the increased penalty charge.
- That representations may be made to the authority against the imposition of the penalty charge but that representations made outside the period of 28 days beginning with the date on which the PCN is served may be disregarded.
- The basis on which representations may be made.
- The address (including any e-mail address or FAX telephone number) to which representations must be sent.
- In general terms, the form and manner in which representations must be made.

⁶⁷ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI2013/362) Regulation 18

⁶⁸ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI 2013/362), and The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (SI 2013/359).

and

- That if the representations are not accepted by the authority the recipient of the PCN may appeal against the authority's decision to an adjudicator.

The regulations set out how to calculate the date of service of an NtO⁶⁹. Service is taken to have been, unless proved otherwise, on the second working day after posting. A working day excludes a Saturday, a Sunday, New Year's Day, Good Friday, Christmas Day, and any other bank holiday in Wales. The date of posting is not necessarily the same as the date on which the back office staff prepare the NtO, and authorities should ensure that their procedures take account of this.

Authorities must⁷⁰ specify on the NtO (or PCN when served by post) the statutory grounds on which representations may be made. If a penalty charge has been paid or is purported to have been made (e.g. by cheque or credit card) and the payment has been cancelled after the limitation period has expired, Regulations permit the authority to serve an NtO⁷¹ in these circumstances.

Information from the DVLA about the registered keeper

To issue an NtO, an authority needs to ascertain from DVLA the name and address of the person who was the vehicle's registered keeper at the time the unpaid PCN was served⁷². Contractors may approach DVLA direct provided that each request is supported by a letter of authority from the council on whose behalf they are working. The letter must never be dated more than three months before the request is made.

Authorities preparing their civil enforcement applications should contact DVLA at an early stage to discuss methods of transmitting data and other technical requirements, and check whether the IT provider they propose using already has a DVLA interface.

A request for the name and address of a registered keeper should be sent to DVLA at least seven days before the NtO is due to be served. For each unpaid PCN, an authority needs to provide DVLA with the vehicle registration number and date of the contravention. Requests may be submitted via dedicated, secure electronic links or established paper channels. DVLA endeavours to process data sent by electronic link during the following night if received before 5pm. Requests processed during the night will usually be returned to the local authority concerned by 7am the following day.

Information provided by DVLA should be cross-referenced with recorded details to ensure the make, model and colour provided by DVLA matches that recorded at the roadside, and any errors are identified before a PCN is incorrectly generated. The information returned to an authority in response to each request will comprise:

⁶⁹ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI 2013/362).

⁷⁰ The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (SI 2013/359), Regulation 4.

⁷¹ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI2013/362). Regulation 18

⁷² Vehicles Policy Group, Driver and Vehicle Licensing Agency (DVLA), Longview Road, Swansea SA6 7JL.

- Vehicle registration mark (i.e. number plate).
- Name and address of the registered keeper.
- Date for which the results are provided.
- Vehicle make, mode and colour. and
- Other indicators that a vehicle has been scrapped, stolen, etc. (only electronically).

Information from DVLA will need to be checked to identify vehicles registered in the name of a corporate body. For an NtO to be served correctly in these cases, it will need to be sent specifically to the secretary or clerk of the body corporate and it is unlikely that DVLA will have a record of the name. Where a vehicle is registered in the name of a partnership, the notice can be served on any of the partners at the address which carries out the business. A sole trader is in the same position as any individual, whether or not s/he carries out business under a business name or his or her own name and the notice can be sent to the person's home or business address.

Cases where DVLA records are incomplete

If requests for information from DVLA are unsuccessful it may be that the vehicle is new and still to be registered (its registration number will indicate whether this is likely), or that a change of keeper of a used vehicle has not yet been notified to DVLA. The authority should confirm the correct vehicle details were sent to DVLA and that the request was properly processed by the authority. A further request with any incorrect details amended should be made and if this second enquiry is also unsuccessful, the contravention and vehicle details should be added to the authority's list of "untraceable owners". When a vehicle on this list is in contravention and has three or more unpaid and unchallenged PCNs recorded, it may be immobilised or removed ahead of others.

Authorities applying for civil enforcement need to agree with DVLA on the provision of information - which should reduce the number of cases where there is inadequate information to trace a vehicle owner issued with a PCN. The initial information returned to a council will be taken from DVLA's vehicle record, but will include a marker to cases where there is an enforcement history file which may contain a more recent address. Where vehicle record data does not enable an owner to be traced, the authority will then be able to request name and address details from the enforcement history file. Authorities should note this information is the last known name and address of the last alleged contravener or (in the case of criminal matters) offender. It should not be taken as confirmation that the current owner is responsible for the outstanding penalties.

Many authorities currently operating civil enforcement provide DVLA with information about vehicles without a valid VED paper disc (paper tax discs will cease to be issued after 30 September 2014) that have been issued with a PCN, thus helping to track down VED evaders and improve the accuracy of records. DVLA will establish similar relations with authorities preparing to introduce civil enforcement. Authorities should contact the Vehicle Customer Services, eVRE Section, DVLA, well in advance for more details.

Diplomatic vehicles

Where a PCN is served on a vehicle with a diplomatic registration plate but no payment is received within 28 days, an authority should not issue an NtO but keep a record. Every year the Foreign and Commonwealth Office will request details of all unpaid PCNs and then seek payment from the relevant contraveners.

Charge Certificate

The CC tells the vehicle owner that the penalty charge has been increased and that action will be taken to recover the amount through the County Court if it is not paid within 14 days. Unless Welsh Ministers authorise a departure the increase in the penalty charge must⁷³ be set at the applicable surcharge - currently 50%.

An authority may issue a CC if an NtO has been served, the charge has not been paid and no representation or appeal is under consideration. This must not⁷⁴ be done before the end of 28 days beginning with the date on which the NtO was served.

Where representations have been made and rejected, and no appeal has been made, the enforcement authority must not⁷⁵ issue the CC before the end of 28 days beginning with the date on which the Notice of Rejection (NoR) was served. This gives an owner time to appeal. Where cases go to adjudication, authorities must not⁷⁶ issue a CC 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 CC. If an authority issues a CC before an appeal is decided, the adjudicator may then cancel the PCN on the grounds of procedural impropriety. The authority should cancel the void CC.

Where an appeal is made but refused, the authority must not issue a CC before the end of 28 days beginning with the date the adjudicator's decision was served on the appellant⁷⁷. If the penalty charge has not been paid 14 days after the CC was served, the authority may apply to the TEC at Northampton County Court to recover the increased charge as if it were payable under a county court order

Registering the Charge Certificate with the Traffic Enforcement Centre (TEC)

The TEC at Northampton County Court processes requests to register CCs and for authority to enforce orders for recovering unpaid penalty charges. The TEC's Code of Practice for authorities describes the procedures to be followed where a penalty charge has not been paid following service of a CC. The Code is specified within the TEC's rules of membership issued to all prospective CPE authorities who register their intention to enforce PCNs via the TEC.

⁷³ The Civil Enforcement of Road Traffic Contraventions (Guidelines on Levels of Charges) (Wales) Order 2013 (SI 2013/1969), Schedule, Paragraph 1.

⁷⁴ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI2013/362) Regulation 18

⁷⁵ *Ibid*, Regulation 18 and The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (SI 2013/359) regulation 6.

⁷⁶ *Ibid*, Regulation 18 and The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (SI 2013/359).Regulation 4(5)(b)

⁷⁷ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI2013/362) Regulation 20(2)(c)

Witness Statement (formerly "Statutory Declaration")

Where a CC has been served but the penalty charge not paid after 14 days, an authority may apply to the county court (the TEC) to register the CC and recover the increased penalty charge as if it were payable under a county court order. A fee of £5.00⁷⁸ is payable for the registration of each CC. The authority must allow 21 days from the date that the CC was posted before registering it. Once registered, the TEC will send the authority a sealed authority to issue an order to recover the amount outstanding - the unpaid penalty charge, any costs awarded by an adjudicator, plus the registration fee.

Within seven days the authority must then send an order informing the motorist that, within a further 21 days from receipt of the order, s/he must either pay the amount outstanding or send to the TEC a Witness Statement to refute the need to pay and that the registration of the unpaid penalty charge should be revoked.

The Witness Statement can be made on one of the following grounds⁷⁹:

- S/he did not receive the NtO in question.
 - S/he made representations to the enforcement authority about the penalty charge and did not receive a rejection.
 - S/he appealed to the adjudicator against the enforcement authority's decision to reject her/his representation but either received no response to the appeal; the appeal had not been determined by the time that CC had been served; or the appeal was determined in his/her favour. and
 - S/he paid in full the penalty charge to which the CC relates.

A valid Witness Statement automatically revokes the order for recovering the unpaid penalty charge and the CC. If the motorist has declared that s/he did not receive the NtO to which the CC relates, the NtO is also deemed to have been cancelled. The authority must then address the procedural error in the Witness Statement and decide if it intends pressing for payment of the outstanding penalty charge.

If the motorist claims that s/he did not receive the NtO it is advisable that the authority serves a second NtO personally by a process server. If the motorist claims that s/he paid the penalty charge or made representations to the authority about it and did not receive a rejection the authority must⁸⁰ refer the case to an adjudicator who may give such direction as s/he considers appropriate. If the motorist claims that s/he appealed to the adjudicator against the authority's decision to reject his/her representation but received no response, the authority must⁸¹ refer the case to an adjudicator who may give such direction as s/he considers appropriate.

⁷⁸ As at 01/08/07. Please check the figure on the TEC website (www.hmccourts-service.gov.uk).

⁷⁹ Regulation 22(2) of SI2013/362

⁸⁰ Regulation 22(7) of SI2013/362

⁸¹ Regulation 22(7) of SI2013/362

Issuing a CC prematurely or, for instance, before a decision about a representation or an appeal has been notified is a procedural irregularity, and one of the grounds on which an adjudicator may now consider an appeal. Authorities should ensure that their systems are not programmed to send out CCs regardless of the circumstances. Authorities should note that some of the information above may differ following a review of Part 75 of the Civil Procedure Rules.

Warrants of Execution and Certificated Enforcement Agents

Where a motorist has been served with an order to recover the unpaid penalty charge and fails to pay or complete a Witness Statement, an authority can ask the TEC for authority to prepare a warrant of execution. This authorises a certificated enforcement agent to seize and sell goods to the value of the outstanding amount plus the cost of execution.

An authority can ask the TEC for authority to prepare a warrant of execution if all of the following criteria are met:

- 21 days have elapsed since service of the registration order was effected.
- Full payment has not been received.
- No witness statement.
- No time extension for making a witness statement has been approved. and
- The motorist lives in Wales or England. (Registrations with the TEC can be transferred so that enforcement can be carried out against motorists living in Scotland⁸². However, registrations against motorists living in the Isle of Man, the Channel Islands and foreign countries cannot be enforced.)

An authority must produce a warrant within seven days of receiving authorisation to do so from the TEC, and a copy of it should be given to a certificated enforcement agent (i.e. one who holds a general certificate granted by the Lord Chancellor's Department under the Distress for Rent Rules 1988, as opposed to a enforcement agent employed by the county court) for execution. Each authority will obtain the services of certificated enforcement agents, as necessary, either by employing in-house staff or through contracts. A certificated enforcement agent will seek to execute a warrant in broadly the same way as a court order.

The warrant of execution must be carried by the certificated enforcement agent when s/he visits a person or premises with a view to enforcing it and s/he must produce it on demand to anyone who has reasonable grounds to see it. A certificated enforcement agent can alter the address on the warrant if s/he discovers that the respondent has moved. However, if the name on the warrant is incorrect, this would suggest that the order for recovery also gave the incorrect name. If so, the order must be re-served before the authority can ask for permission to prepare a warrant. A warrant of execution has a life span of 12 months and cannot be reissued after that elapse. If an authority does not recover the charge with a warrant within this time and wishes to pursue this

⁸² Part 35 of the County Court Rules 1981 (SI 1981/1687).

means of enforcement it must ask the TEC for authorisation to prepare another warrant.

A warrant of execution is the normal means of collecting unpaid debts, but there are circumstances in which an authority can use other means to collect the amount owing:

- If an execution against goods has been tried but the enforcement agent was unable to seize goods because access was denied or the goods had been removed.
- If goods seized are insufficient to meet the outstanding amount, plus the costs of execution.
- If goods to be seized would be insufficient to cover the cost of their removal and sale. and
- If an authority has reason to believe that execution against goods will fail to raise the outstanding debt and the costs of execution.

Other means of recovery cannot be used simply because the person has ceased to occupy the premises stated in the warrant. A certificated enforcement agent has authority to levy against the respondent's goods irrespective of address and can thus amend the address on the warrant and seek to enforce the warrant at their new address.

The other means of enforcement are:

- An attachment of earnings order - deducting money from the person's earnings to discharge the amount outstanding.
- A garnishee order - preventing the person withdrawing any money from their bank or building society account until the outstanding debt is paid and requiring the bank or building society to discharge the debt using money in the account. and
- A charging order - an order preventing the motorist selling his or her house or land unless the outstanding debt is paid.

An authority can also ask the defendant's local county court to issue an oral examination. An oral examination is a way of finding out about the motorist's income and expenses in order to decide on the most appropriate means of enforcement. If it wishes to issue an oral examination or to enforce judgement using one of the methods set out in this Chapter, an authority must ask the TEC to transfer the case to the person's local County Court. A person's credit rating will not be affected by proceedings as the debt will not be entered in the Register of County Court Judgements while the case is at the TEC or on transfer to another county court for non-warrant enforcement.

Authorities should note that some of the terminology and information that has been used above is due to provisions in the *Tribunals, Courts and Enforcement Act 2007*. "Warrants of Execution" are now known as "Warrants of Control", "Enforcement

agents" are now known as "Enforcement Agents", and goods are no longer be seized but are taken into control. In addition there are new certification processes for enforcement agents, issued under the 2007 Act and its underpinning regulations (formerly known as the Distress for Rent Rules).

CHAPTER 11: CHALLENGES, REPRESENTATIONS AND APPEALS

The vehicle owner may dispute the issuing of a PCN at three stages:

- 'Informal challenges' or 'informal representations' (or 'pre NtO letters') before the authority has served an NtO (this does not apply when the PCN is issued by post as the PCN then acts as the NtO)⁸⁶.
- Once an NtO has been served, by a formal representation against it to the authority. and
- If a formal representation is rejected the owner may appeal against the Notice of Rejection (NoR) to an independent adjudicator.

But where a Regulation 10 (postal) PCN has been served, there are only two stages at which the vehicle owner may dispute the PCN – formal representations (after the PCN, which is also the NtO) has been served and an appeal against a NtO rejection.

Authorities and vehicle owners will wish to resolve disputes at the earliest possible stage. An authority has discretion to cancel a PCN at any point - even if a contravention has occurred - if it deems it appropriate in the circumstances of the case. Under general principles of public law, authorities have a duty to act proportionately⁸⁷ and fairly and are encouraged to exercise discretion sensibly and reasonably with due regard to the public interest.

Enforcement authorities have a duty⁸⁸ not to fetter their discretion, so should ensure that PCNs, NtOs, leaflets and any other advice does not mislead the public about what they may consider in the way of representations. They should approach their discretion objectively and without regard to financial interest in the penalty or decisions that may have been taken earlier in proceedings. Authorities should formulate (with advice from their legal department) and then publish their policies on the exercise of discretion. They should apply these policies flexibly and judge each case on its merits, and be ready to depart from its policies if the particular circumstances of the case warrant it.

Considering challenges and representations and defending appeals is a legal process that requires officers to be trained in the relevant legislation and how to apply it. They should be well-versed in collecting, interpreting and considering evidence; writing full, clear but concise responses to challenges, enquiries and representations; presenting the authority's case to adjudicators; and relevant government guidance. Recognised training courses will help them achieve minimum

⁸⁶ The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (SI 2013/359). Regulation 3(2) The enforcement authority **must** consider representations made at this stage but if it proceeds to serve an NtO after receiving such representations, then those or other representations can be made in accordance with The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (SI 2013/359), Regulation 4.

⁸⁷ Failure to act in accordance with the general principles of public law may lead to a claim for a decision to be judicially reviewed.

⁸⁸ *Ibid.*

standards. Authorities' legal departments should help produce a processing system that meets the requirements of the law and be consulted about complex cases.

Authorities must⁸⁹ use 1st class post for all notices, but the term "first class" does not imply only using the service provided by the Post Office⁹⁰. Authorities should ensure the date of service of a notice or CC shall, unless proved to the contrary, be taken to have been effected on the second working day after the day of posting⁹¹.

Authorities need to decide the media that may be used to make representations, and to assure themselves that those protect social inclusion, allow the person making the representation to make his/her case clearly and coherently, and that there is an adequate audit trail to show what was said if the decision is questioned.

Challenges - also known as informal representation

Statutory representations cannot be made until a NtO has been served, but many motorists will write to authorities before then if they feel a PCN is not merited. These informal representations or challenges can be made any time before receipt of the NtO.

An authority will probably receive informal challenges against PCNs before they issue the NtO and authorities must⁹² consider them (the concept of informal challenge does not apply to PCNs issued by post where the PCN will act as an NtO). Authorities are likely to receive these within the 21-day discount period, and should properly consider and respond to these challenges with care and attention, and in a timely manner to foster good relations, and reduce the numbers of NtOs and formal representations. Authorities should respond within 14 days and have suitably trained staff with the appropriate authority to deal with these challenges.

Although there is no legal requirement for informal challenges to be dealt with by the directly employed staff of the authority as opposed to staff of a contractor - if there is one – it may help transparency if they are considered in-house. If enforcement is carried out by in-house staff, there should be a clear separation at all but the most senior levels between the CEOs and their managers and staff dealing with challenges.

The consideration should take into account the grounds for representations and the authority's own guidance for dealing with extenuating, or mitigating, circumstances. An authority may wish to provide on its website and in its offices a form on which a motorist can say why s/he thinks that the penalty charge is not merited, with supporting evidence. As with statutory representations, it is vital to ensure that, whatever ways are available for motorists to lodge an informal representation, there is an adequate audit trail of the case put forward, what decision was taken and why.

If evidence or circumstances (including mitigating circumstances) provide grounds for cancelling the PCN, then the enforcement authority should do so and let the motorist know. They should refund promptly any money that has already been paid.

⁸⁹ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI2013/362) Regulation 3

⁹⁰ Postal Services Act 2000, Schedule 8, Paragraph 4(1).

⁹¹ Regulation 3(2) of SI2013/362

⁹² The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013.

An authority must decide what constitutes "satisfactory" evidence and may give a motorist the benefit of the doubt on the first occasion but question the circumstances more closely if a subsequent PCN is challenged. Authorities should examine with particular care the alleged circumstances of a challenge that appears to be based on guidance from websites or lobby groups. If several motorists have parked their vehicles at the same time in the mistaken belief that this is permitted, the authority should consider what can be done to make the restrictions clearer to the public.

If the authority considers that there are no grounds for cancellation, it should tell the motorist and explain its reasons. They should also make clear that:

- If the penalty charge is not paid they will issue an NtO enabling the vehicle owner to make a formal representation.
- The authority must consider any representations made, even where it has previously concluded that the evidence does not merit cancellation of the PCN.
- If an authority rejects the owner's formal representation s/he may appeal to an independent parking adjudicator, who will be able to consider whether the motorist's case falls within any of the statutory grounds for the appeal. and
- For legal reasons it is not possible to appeal to a parking adjudicator without making a formal representation to the local authority.

If a challenge is received within the discount period and subsequently rejected, the authority should consider re-offering the discount for a further 14 days to incentivise payment. Authorities should always make it clear that an owner who has an informal challenge rejected may still make a formal challenge if an NtO is served⁹³.

If the challenge is received after the 21-day discount period and it is rejected, the authority should consider re-offering the discount if circumstances have adversely affected the ability of the motorist to challenge within 21 days.

Formal representations

Many authorities contract out on-street and car park enforcement and handling informal representations. Authorities should not contract out consideration of formal representations. They are responsible for the whole process whether a part is contracted out or not, and for ensuring enough suitably trained and authorised officers to decide representations and appeals in a timely and professional manner.

Where CPE on-street and car park enforcement and associated operations are done by in-house staff, there should be a clear separation between staff who decide on the issuing and processing of PCNs and those who decide on representations. This is particularly important for cases referred back by adjudicators as it ensures that decisions are seen to be impartial.

⁹³ The Civil Enforcement of Road Traffic Contraventions (Representation and Appeals) (Wales) Regulations 2013 (SI 2013/359), Regulation 3(2)

Officers dealing with formal representations should be familiar with all aspects of CPE, particularly the legal ones, so that they can judge whether or not a representation falls within the statutory grounds⁹⁴ or the authority's guidelines for exceptional cases. Fair and efficient systems for carrying out this work should ensure that only a minimum of cases go to an adjudicator - so saving the authority time and expense without allowing motorists who have committed a contravention to evade the appropriate penalty.

Elected members may wish to review their 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 will ensure that only trained staff take decisions on the facts. The authority's standing orders should be specific as to which officers have authority to cancel PCNs. There should also be a clear audit trail of decisions and reasons for those decisions.

The grounds on which representations may be made are set out in the Regulations⁹⁵ and must⁹⁶ be stated on the NtO. They must be to either or both of the following effects:

- That, in relation to the alleged contravention for which the NtO was served, one or more of the grounds specified below apply; or
- That, whether or not any of those grounds apply, there are compelling reasons why, in the particular circumstances of the case, the authority should cancel the PCN and refund any sum paid on account of it.

The grounds are:

- That the alleged contravention did not occur.

This is likely to be the most common ground for representations. It includes cases where a vehicle was allegedly loading or unloading in accordance with a TRO, where a PCN was allegedly issued too early by the CEO, or where a vehicle was allegedly displaying a valid permit, ticket, voucher, badge, etc..

- That the recipient:
 - Never was the owner of the vehicle in question.
 - Had ceased to be its owner before the date on which the alleged contravention occurred. Or
 - Became its owner after that date.

⁹⁴ *Ibid*, Regulation 4(4).

⁹⁵ *Ibid*, Regulations 4, 8 and 11.

⁹⁶ *Ibid*, Regulation 3(3).

Where a representation is made under the second or third circumstances above, s/he is legally obliged to state the name and address of the person to whom the vehicle was disposed of (or from whom it was acquired), if that is in the recipient's possession.

- That the vehicle had been permitted to remain at rest in the place in question by a person who was in control of the vehicle without the consent of the owner.

This covers stolen vehicles and vehicles used without the owner's consent but which were not stolen. It may apply in circumstances where a vehicle was used by a member of the owner's family without his/her express consent – e.g. where the family member has no permission to use the vehicle and took the keys without the owner's knowledge.

- That the recipient is a vehicle-hire firm⁹⁷ and:
- the vehicle in question was at the material time hired from that firm under a vehicle hiring agreement⁹⁸; and
- the person hiring it had signed a statement acknowledging liability for any PCN served in respect of any contravention involving the vehicle.

The NtO should request the hire-firm to supply the authority with the name and address of the hirer at the material time and a copy of the hirer's statement of liability. This information should be used to issue a second NtO, on the hirer (who shall be deemed to be the owner of the vehicle for the purposes of processing the PCN).

- That the penalty charge exceeded the amount applicable in the circumstances.
- That there has been a procedural impropriety on the part of the authority.

The regulations define a procedural impropriety as a failure by the authority to observe any requirement imposed on it by the TMA 2004 or the TMA regulations in relation to imposing or recovering a penalty charge or other sums and include, in particular, the taking of any step, whether or not involving the service of a document and the purported service of a CC, in advance of the time scale set out in the regulations⁹⁹.

This will also be ground for a representation against a served PCN if a FPN as defined by the Road Traffic Offenders Act 1988 was given in respect of that conduct, or the conduct constituting a parking contravention for which a PCN was given is the subject of criminal proceedings. This is only likely on or near pedestrian crossings.

- That the Order which is alleged to have been contravened in relation to the vehicle concerned is invalid.

⁹⁷ "Vehicle hire firm" has the same meaning as in S66 of the Road Traffic Offenders Act 1988.

⁹⁸ "Hiring agreement" has the same meaning as in S66 of the Road Traffic Offenders Act 1988.

⁹⁹ The Civil Enforcement of Road Traffic Contraventions (Representation and Appeals) (Wales) Regulations 2013 (SI 2013/359).

- That the NtO should not have been served because the charge had already been paid in full or by the discounted amount¹⁰⁰ within the period set.

This ground includes cases where a TRO's wording is deficient or contradictory. A TRO may be invalid where, for instance, the citation states that it is made under Sections 1 and 2 of the RTRA but it purports to make pay and display permitted parking spaces.

If a TRO is not properly indicated with traffic signs or road markings or the signs or road markings are not in order, or where the restriction marked on the street goes beyond what is provided for in the TRO, the TRO is unenforceable (rather than invalid) and cannot be contravened. Authorities should review all TROs before introducing CPE.

- In the case where a PCN was served by post on the basis that a CEO was prevented by some person from fixing it to the vehicle concerned or handing it to the owner or person in charge of the vehicle, that no CEO was so prevented.
- That the NtO should not have been served because the penalty charge had been paid in full or by the discounted amount within the period set¹⁰⁰.

Authorities must¹⁰¹ consider representations made on any grounds. Representations must be made within 28 days of service of the NtO. Authorities may accept late representations, and we would encourage them to use this discretion when a vehicle owner gives a valid reason for the delay and has strong grounds for representations.

Representations against immobilisation or removal

The grounds on which representations (and appeals) against immobilisation or removal can be made differ in some respects to those against a PCN¹⁰².

The grounds against immobilisation are:

- The contravention was not covered by paragraphs 2, 3 or 4 of Schedule 7 of the TMA.
- The vehicle had been parked by someone without the consent of the owner.
- The vehicle was not parked in a CEA.
- A valid disabled person's or current recognised badge was displayed.
- The penalty charge or release charge exceeded the amount applicable in the circumstances of the case. and

¹⁰⁰ The discount must be in accordance with Schedule 9 of the TMA 2004.

¹⁰⁰ The discount must be in accordance with Schedule 9 of the TMA 2004.

¹⁰¹ The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (SI 2013/359). Regulation 4(2)(b)(ii).

¹⁰² *Ibid.*

- There was a procedural impropriety by the enforcement authority.

The grounds against removal are:

- The contravention was not covered by paragraphs 2, 3 or 4 of Schedule 7 of the TMA.
- A PCN had not been served before removal took place.
- The vehicle was removed more quickly than it should have been after the service of the PCN.
- The vehicle had been parked by someone without the consent of the owner.
- The vehicle was not parked in a CEA.
- The penalty charge or removal charge exceeded the amount applicable in the circumstances. and
- There was a procedural impropriety by the enforcement authority.

Consideration of Representations

An authority must¹⁰³ consider representations and any supporting evidence against a NtO, Regulation 10 PCN or immobilisation or removal, and serve notice of its decision on the person making the representation within 56 days of the service of the representation whether or not it accepts that the ground in question has been established.

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. The Welsh Government considers that all decision notices should be served within 21 days. If an authority accepts a representation against a NtO it must¹⁰⁴ cancel the NtO and inform that person that it has done this. It must refund any sum already paid.

The PCN should also be cancelled, except where the recipient of the NtO proves s/he was not the owner of the vehicle at the time of the alleged contravention or the owner was a vehicle hire company. Cancellation does not prevent the authority from serving another NtO for the same contravention to another person¹⁰⁵.

If an authority accepts a representation against immobilisation or removal it must refund any sums paid to release the vehicle, except to the extent (if any) to which those sums were properly paid¹⁰⁶. If the removed vehicle has already been sold and representations against removal are accepted, the authority must¹⁰⁷ refund all

¹⁰³ The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2013 (SI 2013/361), Regulation 4.

¹⁰⁴ *Ibid*, Regulation 5(3).

¹⁰⁵ *Ibid*, Regulation 5(4).

¹⁰⁶ The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (SI 2013/359).Regulation 6.

¹⁰⁷ The Road Traffic Regulation Act 1984, Section 101A (2).

proceeds to the owner. It is likely that the owner will already have received the proceeds of the sale less the cost of removal, storage and sale, and if so, the authority must¹⁰⁸ at this point refund the cost of removal, storage and sale. Authority staff who undertake immobilisation or removal should be familiar with the legislation.

If a response or notice of decision is likely to be delayed, an authority should acknowledge receipt of the representation and explain the representation process, including when a decision notice will be dispatched.

Providing false information

A person who recklessly or knowingly makes a representation to an authority or adjudicator which is false in a material particular is guilty of an offence, and on summary conviction may be liable to a fine not exceeding level 5 on the standard scale (currently £5,000).

Notification of the outcome of representations

Once an authority has decided on a representation, it should promptly tell the person who made the representation (usually the vehicle owner) what it has decided and why. If the person making the representation is not the owner (but is acting officially on their behalf) then the owner should be informed, where possible, of the decision.

If the authority rejects the representation, it must¹⁰⁹ serve a NoR stating that it will issue a CC unless the PCN is paid, or an appeal made to an adjudicator. The NoR must¹¹⁰ set out the general form and manner in which an appeal can be made and that the adjudicator has the power to award costs against either party.

The NoR may contain such other information as the authority considers appropriate, and could include the effect of the CC to increase the penalty charge. The authority should give the owner clear and full reasons for its decision on a representation, in addition to the minimum required. This is not just a courtesy to the motorist as failure to explain might be seen as maladministration and the provision of relevant information reduces the number of cases taken to adjudication. Moreover, where disputes go to an adjudicator, the authority's case will rely to quite a large extent on the NoR, so it is in the authority's interests to set out in sufficient detail its reasons for rejecting a motorist's representations. Authorities may wish to attach to the NoR a separate form on which the recipient can make his or her appeal.

If, following an unsuccessful representation, an authority decides to offer a new discount period for prompt payment, it should set out those dates in the NoR.

Adjudication

Adjudicators are appointed jointly by all the relevant CPE authorities with the agreement of the Lord Chancellor, and are wholly independent. They have a judicial position and should be treated accordingly. An adjudicator's decision is final subject

¹⁰⁸ *Ibid*, Section 101A(2).

¹⁰⁹ The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (SI 2013/359), Regulation .

¹¹⁰ *Ibid*, Regulation 6.

to a power of adjudicators to review a decision¹¹⁴. A further challenge can be made only on a point of law through application to the High Court for judicial review.

If an authority rejects a formal representation, that person has a right to appeal to an adjudicator within 28 days of the date of service of the NoR. An adjudicator has discretion in appropriate circumstances to consider an appeal made after 28 days. The grounds for appeal are the same as those for formal representations and are set out in the regulations¹¹². If an adjudicator allows the appeal, s/he may direct the authority s/he considers appropriate, usually to cancel the PCN, the NtO and refund any sum already paid. The authority must¹¹³ comply with this direction without delay.

The UK Government's Tribunals for Users programme emphasises the importance of feedback to improve these procedures and help prevent unnecessary appeals.

Persistently losing cases at appeal wastes time, is costly and also undermines public confidence in local authority administration. If an authority is losing a noticeably larger proportion of appeals than comparable authorities, it should consider possible reasons for this. Consultation with comparable authorities and stakeholders may identify simple changes that can be made to ensure that the situation does not continue.

Authorities should have in place a mechanism by which general lessons are learned from adjudicators' decisions on their own and others' cases. Those lessons should be built into the practices of the authority and the decisions taken on representations.

Cases referred back to the Authority by the Adjudicator

An adjudicator may only allow an appeal if one of the statutory grounds for appeal applies. Where a contravention has taken place but the adjudicator considers that the enforcement authority should have used its discretion to cancel the NtO, the adjudicator may refer the case back for the enforcement authority to reconsider¹¹⁵.

This power covers appeals against immobilisation or removal as well as against NtOs. Such cases should be directed to the Office of the Chief Executive to ensure that the case is given proper consideration on the facts presented without preconceptions. It should not be dealt with by the team who considered the original representation.

A decision must¹¹⁶ be reached within 35 days from the notice of the adjudicator's decision. If the enforcement authority does not reach a decision within this period, it

¹¹⁴ The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013, Schedule, Paragraph 12.

¹¹² The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2013, and The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013, Schedule, Paragraphs 7 and 10.

¹¹⁵ The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013.

¹¹⁶ The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2013, Regulation 5, and The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013, Regulation .

is deemed to have accepted the adjudicator's recommendation and must¹¹⁷ cancel the NtO.

The enforcement authority must¹¹⁸ have regard to the reasons given by the adjudicator for his/her recommendation. Where it does not accept this recommendation it must¹¹⁹ notify the adjudicator and the appellant of the reasons for its decision before issuing the CC.

If the penalty charge is not paid after 28 days beginning with the date on which the authority notified the appellant that it does not accept the recommendation of the adjudicator, the authority may issue a CC.

If the enforcement authority decides to accept the recommendation of the adjudicator, it must cancel the NtO without delay and refund any sums paid in relation to the NtO. Refunds in relation to immobilised or removed vehicles must¹²⁰ be made within 35 days of the adjudicator's direction.

¹¹⁷ The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2013, Regulation, and The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013, Regulation .

¹¹⁹ The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2013, Regulation , and The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013, Regulation .

¹²⁰ , Regulation 7(3), and Regulation 10, respectively.

CHAPTER 12: WHAT AN AUTHORITY SHOULD DO BEFORE TAKING ON CIVIL ENFORCEMENT

Formulating and reviewing policies

Before applying to Welsh Ministers for an order creating a CEA, an authority should appraise its parking, bus lane and moving traffic policies and the way those are operating to see which traffic management objectives are being met and where improvements are needed. Unless these policies have been regularly appraised, this can be a major task and sufficient time and resources need to be used if the results are to be of value.

If an authority has not already done so, it should develop policies that are consistent with and contribute to its overall transport policy with particular regard to the provisions in Chapters 2 and 3. Where an authority has already formulated its policies these should be appraised taking account of Chapter 4.

Welsh Ministers strongly recommend that the public should easily access an authority's enforcement policies and priorities. This makes an authority more accountable to its residents and should also help counter accusations that enforcement is being carried out in an arbitrary or unfair way. If an authority does not already monitor the effectiveness of its policies, this should be put in place as early as possible before enforcement is introduced to judge impacts on road safety and congestion.

Traffic Regulation Orders

Civil enforcement policy appraisal should include the scope and relevance of all existing on-street and off-street TROs and what changes would be required to meet the authority's parking policy objectives. A review of TROs should check whether restrictions indicated by traffic signs and road markings are the same as those authorised by the TRO. If not, they should be made consistent. Welsh Ministers will not sign an Order until an authority's senior officer has confirmed in writing that all existing and new TROs, traffic signs and road markings in the proposed CEA have been reviewed; comply with relevant regulations¹²⁶ and guidance on relevant chapters of the Traffic Signs Manual or have special authorisation from the Welsh Government; are consistent with each other and in a good state of repair. Confirmations should be based on independent audit by a qualified consultant. An adjudicator may uphold appeals against PCNs where parking controls are not properly indicated with traffic signs. Annex G advises on appraising traffic signs, plating and road markings and Annex H on TROs.

An authority will need to consider whether it is desirable for TRO restrictions to apply beyond the normal working day and/or at weekends to meet local needs and circumstances. An authority should examine the scope for relaxing or removing existing controls that are no longer appropriate or necessary. Unnecessary restrictions are quickly identified when an authority becomes responsible for enforcement and can result in complaints and adverse publicity.

¹²⁶ Principally, the Traffic Signs, Regulations and General Directions 2002 (SI 2002/3113) or subsequent editions

Authorities may wish to consider placing all their TROs on a geographical information system and on their website so that accurate, up-to-date maps can be supplied to contractors and the public can see where and when parking is, and is not permitted.

As part of their appraisal of TROs, authorities should identify technical changes needed to comply with the TMA 2004 (e.g. to reflect the switch from traffic offence provisions to penalty charges and civil liabilities). Existing on-street and off-street orders will need to be amended to reflect the removal of "initial" and "excess" parking periods. Ideally, this changeover should be when CPE comes into force. If this is not possible authorities may include a provision, valid for no more than three months from the introduction of CPE, enabling CEOs to impose a penalty charge when the excess charge flag or display is showing. Similar provision may be needed in off-street car parks where meters are used giving time to dispense with obsolete "excess charge" indicators.

It would be expedient for TROs to retain a provision relating to "anything done with the permission or at the direction of a police constable in uniform" to cover emergencies. Once an authority has CPE its TROs should not cover the means of enforcement or the level of penalty charges, as these are covered in legislation.

Pavement parking

Parking a heavy goods vehicle (HGV) on a road footway contravenes the RTA 1988 and can be enforced by a CEO in a CEA. Pavement parking by all motorised vehicles may be banned by local Acts of Parliament. In these circumstances a ban does not need to be signed but compliance may be better if it is. An authority may ban pavement parking in a CEA with a TRO, enforceable by its CEOs. Such a ban must be indicated by authorised signs. Measures such as high kerbs and bollards improve compliance.

When an authority appraises its parking policies it should consider if pavement parking is a problem in its area. If so, and it is not covered by an existing TRO the authority may wish to amend its TROs or make new ones. Sections 2(3); 6(3)(a) and 126 of the RTRA 1984 give the power to make a TRO in respect of any part of the width of a road.

Welsh Ministers recommend that, if prohibition of pavement parking is taken forward, its provisions, date of introduction and reasons are widely publicised beforehand.

Choosing the most appropriate package of enforcement measures

When parking policies, parking capacity, controls, usage, bus lane, moving traffic policies and enforcement have been appraised, an authority should decide whether its policies need to be adjusted and, if so, what changes are needed to achieve its objectives. In particular, it will need to consider what type of enforcement regime would achieve acceptable compliance. The type of regime available to authorities can vary according to local circumstances, and it is important to consider the factors set out below before deciding on the measures likely to produce the most effective results.

Enforcement on trunk and other high speed roads

In the past it has been considered inappropriate for authorities to use enforcement powers on trunk and other high speed roads because of the dangers to CEOs. The power in the TMA to use approved devices, which are best suited for high speed roads where stopping and parking are banned, makes it practical to enforce parking on such roads. Some authorities may wish to include some such roads in their orders.

The TMA 2004 does not preclude parking enforcement on a trunk road within a CEA because Welsh Government is the traffic authority. If the police and Welsh Government agree, such applications will be considered because it may be sensible for parking on the trunk road and on surrounding roads to be subject to civil enforcement.

If such enforcement by an authority is not feasible or desirable the trunk road would be excluded from the Order and police would continue to enforce. This would need to be discussed with and agreed by the police before applying for CPE. A local authority should consult the Welsh Government at an early stage if considering creating a CEA.

Level of enforcement

The level of enforcement will depend on the amount and nature of parking problems in different parts of an authority's area. To minimise accusations of favouritism the relative levels of enforcement throughout a CEA should reflect an authority's policy objectives (e.g. improve traffic flows by targeting roads where parking problems are frequent, or improve pedestrians' amenity by targeting footway parking (where this is prohibited)).

Exemptions, waivers and dispensations

In preparing to apply for a CEA an authority should consider its policies for parking exemptions, waivers and dispensations for special categories of vehicle user, or users in special circumstances. In some cases exemptions are statutory and the authority must honour them, but in others there is scope for policies to suit local circumstances.

Assessing the chosen enforcement package

Once the most suitable enforcement package has been chosen, it should be assessed against the authority's parking policy objectives. This assessment should cover the proposed package itself and any complementary changes (e.g. to TROs or off-street parking tariffs). The key questions to address are:

- Will the enforcement package and associated changes achieve an acceptable level of compliance with road traffic contraventions controls?
- Where will motorists who previously offended park in future?
- Will parking problems in one area be displaced to another?
- Will the public accept enforcement and its consequences, particularly motorists, local businesses and local residents?
- How will it affect public transport users, pedestrians and cyclists?
- Is there adequate provision for special categories of motorist (e.g. disabled people, professional carers, drivers delivering or collecting goods, or drivers of statutory undertakers' vehicles)? and
- What are the expected financial results?

The enforcement package should be adapted to address any weaknesses that the assessment reveals.

CHAPTER 13: KEY CRITERIA WHEN APPLYING FOR POWER TO ENFORCE ROAD TRAFFIC CONTRAVENTIONS REGULATIONS

The key criteria on which the Welsh Government will need to be satisfied are that:

- An authority has reviewed its existing civil enforcement policies and analysed how they will contribute to overall transport objectives.
- An authority has consulted as required and taken account of responses in finalising the application.
- Proposed penalty charges are proportionate to the scale of the traffic management issues facing the authority.
- There is consistency with neighbouring schemes so motorists and others can understand how it works. and
- All TROs, traffic signs and road markings comply with legal requirements and the traffic signs and road markings are consonant with the orders.

Before applying for civil enforcement designation an authority should consult:

- Other traffic authorities (e.g. the Welsh Government) who may be affected.
- The emergency services.
- The DVLA.
- The adjudication service. and
- The TEC at Northampton County Court.

Other powers received along with the power to enforce parking

Immobilisation and Removal

When an authority receives the power to enforce road traffic contraventions it will also receive power to immobilise or remove vehicles parked in contravention. Welsh Ministers do not expect authorities to use immobilisation except for persistent evaders but accepts that removals may be necessary to keep traffic moving.

Bus lanes and Moving Traffic Contraventions

Welsh Ministers recommend that an authority new to civil enforcement familiarises itself with the concepts through parking enforcement before undertaking the enforcement of bus lanes and moving traffic contraventions.

Special Enforcement Areas (SEAs)

The TMA 2004 enables authorities with CPE powers to enforce in a Special Enforcement Area (SEA)¹²¹ prohibitions of double parking¹²² and parking at dropped footways¹²³ as if they had been introduced using a TRO. An SEA must be within a CEA or cover the same area as one.

An authority should consider whether to apply for SEA designation as part of its CEA application. If it does it will have to apply under Schedule 10 paragraph 3 (1) – (4) asking Welsh Ministers to designate the relevant part of its area as an SEA.

Authorities eligible to apply for CPE powers

Authorities eligible to apply are unitary authorities in Wales, and they can apply for designation orders covering the whole or any part of their areas. Priority cannot be given to a request for small changes to the area covered by the existing CEA so authorities should consider the area to be included in the original designation.

Consultation with other local authorities

Local authorities should consult neighbouring authorities before applying. The consultation should cover the proposed levels of charges as well as the opportunities for co-operation - in the form of shared facilities or services - immediately or in the longer term. The public should receive clear and accurate information about enforcement and how it will operate. Consultation is particularly important if authorities share a common built-up area or there are heavy traffic flows across the boundaries. The following considerations should be taken into account:

- Improved enforcement by one authority but not by its neighbour can result in the transfer of a parking problem from one authority to another.
- Where possible, authorities should take account of neighbouring authorities' parking charges to ensure consistency for road users.
- In such roads, it must be clear to the public which authority's controls apply. and
- It is recommended that neighbouring CPZs harmonise hours to reduce confusion, although this may not be practical if parking demand varies significantly in adjoining areas, or where controls of short duration are used to deter commuter parking. This information needs to be communicated to the public at appropriate points and in appropriate ways.

The continuing role of the police

If an authority has civil enforcement powers police are specifically excluded from yellow line parking enforcement but retain sole responsibility for certain non-yellow line parking offences in a CEA:

¹²¹ TMA 2004, Schedule 10.

¹²² TMA 2004, Section 85.

¹²³ TMA 2004, Section 86.

- Enforcing certain non-yellow line parking offences, principally endorsable offences such as dangerous parking, obstruction, and failure to comply with police "no parking" signs placed in emergencies.
- Enforcing the full range of moving traffic offences and infringements.
- Taking action against any vehicle where security or other traffic policing issues are involved, including the need to close roads or set up diversions.
and
- Enforcing all parking restrictions on roads outside CEAs.

TMA 2004 gives authorities the power, among other things, to enforce prohibitions against vehicles stopping on or near pedestrian crossings¹²⁴. This is the only area subject to CPE where police retain the power of enforcement¹²⁵. If the authority and police both take enforcement action, the criminal action has precedence and the PCN must be cancelled. If the PCN has been paid, the money must be refunded.

Welsh Ministers are under a statutory duty to consult the appropriate Chief Police Officer before making any designation orders to create CEAs. It is therefore important that authorities confirm with police at an early stage their proposals to adopt civil enforcement. This should include a timetable for proposals, proposed geographic boundaries and whether the regime will include immobilisation and/or removals, and should plan for a smooth and orderly transfer of responsibilities.

¹²⁴ TMA 2004, Schedule 7, Paragraphs 3(2)c and h(i) and 4(2)c and (i)(i).

¹²⁵ The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013, Regulation 10.

CHAPTER 14: FINANCIAL ASSESSMENT

When preparing to apply for Orders creating CEAs, an authority should thoroughly assess the expected costs of and revenues from all aspects of on-street and off-street parking, drawing on in-house or outside expertise, as necessary. The assessment should consider direct and indirect financial implications. For example, it is unlikely that income from PCNs will cover all new costs but effective enforcement should increase income from paid on-street and off-street parking. The financial assessment should be undertaken in conjunction with the policy assessment described in Chapters 12 and 13.

Assessment of costs should take account of start-up and running costs once civil enforcement is under way. As with all types of financial assessment, it is important that the estimated figures are as realistic as possible. Enforcement costs will vary from authority to authority, according to local circumstances. Authorities considering such powers should consult those who have already done so for up to date information.

Assessments of income should include existing sources, such as off-street car parks, on-street (e.g. pay and display and meter parking, and residents' parking permits), off-street parking operated by the authority on privately owned land [CPE only applies to authority-owned car parks unless privately-owned ones are regulated by Orders made under Section 35 of the RTRA 1984, and provided under any letting or arrangements made by an authority with some other person (such as a privately-owned company) under Section 33(4) of that Act], as well as any new enforcement income. Most authorities will already have figures for on-street and off-street parking income and will only need to consider the impact of effective enforcement on demand for paid parking. All income from penalty charges is subject to the restrictions on usage in Section 55 of the RTRA. Income from immobilisation and vehicle removal, storage and disposal activities should be assessed separately, as these activities should not make a surplus.

Expenditure - should include all expenditure on in-house staff, contractors (if any), installation, renewal and maintenance of equipment, signs and lines on the highway, and equipment to issue and record penalty charges. Even if on-street work is contracted out, an authority will need to directly employ back office staff. The need for advice from the authority's Legal and Chief Executive's departments should not be overlooked when calculating in-house costs. In-house staff costs should include overheads as well as salaries and care should be taken to ensure only the proportion of time spent on bus lane or moving traffic matters is included.

Client management, publicity and policy review - the cost of these activities will depend to some extent on the enforcement package chosen by an authority and how many (if any) functions are contracted out. However, the authority will always be responsible for monitoring the effectiveness of civil enforcement and will need to ensure that sufficient resources exist to maintain and improve service quality and value for money.

Civil Enforcement Officers - the cost of providing a CEO will vary with location. Authorities should consult others similar to themselves already with these powers to establish likely costs. Authorities that already employ staff to issue Excess Charge Notices will have a good idea of costs in their areas. These authorities are likely to find that the existing workforce is well placed to carry out enforcement.

PCN processing - this activity can be contracted out or undertaken in-house. If the latter, investment in new or improved IT equipment may be necessary.

Immobilisation and removals - fees are set by Welsh Ministers (see Chapter 8) based on likely costs. These operations should not generate revenue and so affect the financial performance of an authority's enforcement regime.

Dealing with representations - authorities should not contract out responsibility for dealing with representations against PCNs. This is a quasi-legal task and should, where necessary, involve input from the Legal and Chief Executive's Departments. It is not possible to estimate of the number of representations an authority might receive, but it is likely that the more accurate the on-street performance the fewer there will be.

Cases going to adjudication - This is another area where authorities need to ensure adequate input from the Legal and Chief Executive's Departments so that appeals are dealt with properly. On average, less than 1% of all PCNs issued have gone to adjudication but it is higher in some authorities. Authorities should ensure that their cost estimates include annual payments to adjudicators and staff and legal costs involved in responding to an appeal. Authorities should not think the way the appeal service is funded makes it cheaper to go to appeal than deal properly with a representation.

Contract management - if any tasks are contracted out an authority will need to devote enough in-house time so that contractual duties and SLA terms are met.

Training – authorities should take into account the training that will be required before civil enforcement is introduced and afterwards for continuing professional development.

Other costs - assessment should include initial costs of reviewing all relevant TROs, signs and lines and putting them into a good state of repair, as well as installing any new equipment, such as signing, plating, road markings and approved devices. If in-house enforcement is used, the assessment will need to take account of the costs of uniforms and equipment for the CEOs. The costs of maintaining and replacing equipment, uniforms, etc. will also need to be included in the assessments for future years.

Parking Charges

Individual authorities are responsible for setting charges for parking off-street or on-street in designated areas in accordance with the RTRA 1984. Charges should be reviewed periodically and account taken of their effectiveness in meeting policy objectives and the above criteria. Local authorities can vary their parking charges using a simplified procedure of public notices under the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996. Welsh Ministers recommend that charges should be set at levels consistent with ensuring the amount of parking space and its cost helps deliver the authority's overall transport strategy.

Authorities should never use parking charges to raise additional revenue or as local taxation, but where parking demand is high, delivering transport objectives with realistic demand-management prices for parking may create some surplus. In such cases

authorities must¹²⁷ ensure that any on-street revenue not used for enforcement is used for legitimate purposes only and that its main use is to improve, by whatever means, transport provision in the area so that road users benefit. The authority's auditor may decline to certify an authority's accounts if it has used on-street parking (and all enforcement) income not in accordance with Section 55 of the RTRA. There are a number of factors to which authorities should have regard when setting charges:

- If on-street charges are too low they could attract higher levels of traffic than are desirable, discourage the use of off-street car parks and lead to demand for parking spaces to exceed supply so drivers spend longer finding a vacancy.
- Parking charges can help curb unnecessary car use where there is adequate public transport or walking or cycling are realistic alternatives.
- Charges can reflect the value of kerb-space, encouraging all but short-term parking to be in nearby off-street car parks. This implies a hierarchy of charges in an authority's area, so that charges for prime parking space in a busy town centre would normally be higher than at nearby off-street car parks or at designated places in more distant residential areas. Such hierarchies should be as simple as practicable and applied consistently so that charges are readily understood and accepted by regular and occasional users. and
- Charges should be set to encourage compliance with parking restrictions. If set too high they could encourage drivers to risk non-compliance or to park in unsuitable areas, possibly in contravention of parking restrictions. In certain cases they could encourage motorists to park in a neighbouring authority's area that may not be able to handle the extra vehicles and in commercial districts which may have a negative impact on businesses.

Authorities need to decide on a desirable occupancy rate for paid on-street parking. High rates may encourage the use of non-car modes (if available) or diversions elsewhere in the long-term, but may also increase congestion in the short term as drivers search for spaces. Lower charges may mean less efficient use kerb space.

Utility companies have complained about the substantial variation in charges made by authorities for suspending parking places. Authorities should ensure that these charges are realistic and can be explained to the utility company.

Penalty Charges

Authorities should read Chapter 8 and decide which penalty charge band to use.

The primary purpose of penalty charges is to encourage compliance. So, authorities should adopt the lowest charge level consistent with high public acceptability and compliance. An authority must¹²⁸ ensure that the public knows the charge levels by publishing them well in advance of introduction, and must also publish any subsequent changes. Charges must accord with Welsh Ministers'¹³⁰ guidelines.

¹²⁷ RTRA 1984, Section 55.

¹²⁸ TMA 2004, Schedule 9,.

¹³⁰ SI2013/1969

The Welsh Government considers that a variety of penalty charge bands, either between authorities or within an individual authority's area, would not be appropriate. In most cases, it will be more effective to tailor an authority's level of enforcement according to the seriousness of non-compliance with controls (e.g. by introducing more frequent patrols, immobilisation or removals), rather than use variable levels of penalty charges. In general, therefore, the Welsh Government would expect a uniform band of penalty charges throughout an authority's area. Where there are different penalty charge bands within an authority's area it is important that reasons for this can be easily understood and accepted by the public. Differences that appear to be arbitrary (e.g. along the centre line of a road) may well attract criticism.

Discounts and increases to penalty charges

To encourage the prompt payment of PCNs, an Order provides¹³¹ for the motorist to receive a discount (currently 50%) if the penalty charge is paid within 21 days of the service of the PCN. Motorists do not have the benefit of an informal and formal challenge periods so the discount period for PCNs sent by post on the basis of evidence from an approved device is 21 days.

Experience shows that collection costs and the number of representations and appeals to adjudicators can be reduced if authorities reply promptly and give considered replies to written correspondence on PCNs received within the discount period, and give the motorist a further 14 days to pay at the discounted rate if it rejects their informal representation against the PCN. If the penalty is unpaid and no successful representation or appeal is made within the framework and timescales of the statutory process, regulations provide for the penalty charge to increase - currently by 50%.

Table 3 PCN amounts payable according to the time within which it is paid

Level of PCN	Paid within 21 days	Paid between 22 days and service of an NtO	Paid between issue of NtO and service of charge certificate	Paid after service of charge certificate
PCN £40	20	40	40	60
PCN £60	30	60	60	90
PCN £50	25	50	50	75
PCN £70	35	70	70	105

¹³¹ Article 1 of SI2013/1969

Estimating income from penalty charges

When assessing likely income from penalty charges (not including fees from removal or immobilisation) for its civil enforcement application, an authority will need to estimate the proportion of PCNs at the higher and lower levels, and how many will be paid within the discount period, paid after the CC is served, and how many will be cancelled or go to adjudication. There is currently no information available to guide authorities on the proportion of PCNs that are likely to be at the higher and the lower levels. Authorities need to bear in mind that 50% to 55% of PCNs are paid at the discount rate and 12% are paid at the full rate. The remainder incur additional costs for the authority either from action to pursue payment or to deal with representations and appeals.

Charges and income from vehicle immobilisation, removal, storage and disposal

Where an authority has to immobilise or remove a vehicle, the charges must accord with guidelines set by the Welsh Government¹³². The charges should be set no higher than required to meet the reasonable costs of the removal or immobilisation procedure. They should not generate a surplus.

Table 4 Charges for vehicle immobilisation, removal, storage and disposal

Type of charge	Amount of charge
Vehicle immobilisation	£40
Vehicle removal	£105
Vehicle storage	£12 for each day, or part-day, during which the vehicle is impounded
Vehicle disposal	£50

Authorities should not apply storage charges for removed vehicles until 2400 Midnight on the day following removal, because it is a harsh additional penalty for motorists who recover their vehicles relatively quickly.

Publication of the level of penalty and other charges

The level of penalty charges and, where applicable, charges relating to vehicle immobilisation and vehicle removal should be properly publicised before civil enforcement is introduced. Before the CEA designation order is made, the Welsh Government requires an authority to publish in at least one local newspaper notice of the charges it plans to impose. Such notices need to be published at least 14 days before the charges are due to come into force. A list of the intended charges will also need to be placed on deposit at council offices in the area concerned.

Local authorities should note that the Welsh Government imposes this as a minimum legal requirement, and that other media should be considered to ensure that motorists are made aware of the levels of penalty and other charges. One option is that shortly before or following the introduction of enforcement, an authority should issue warning notices rather than PCNs to vehicles that contravene Regulations.

¹³² The Civil Enforcement of Road Traffic Contraventions (Guidelines on Levels of Charges) (Wales) Order 2013.

Changes to penalty and other charges

Authorities must choose between the two bands of penalty charges. Any subsequent change to the charge band must accord with guidance given by the Welsh Government and be publicised as set out above. Any departure from the Guidelines requires the permission of the Welsh Government¹³³.

VAT and penalty charge income

HM Revenue and Customs advises that penalty charges fall outside the scope of VAT.

¹³³ TMA 2004, Schedule 9, Paragraph 8(3).

CHAPTER 15: APPLICATIONS FOR A CIVIL ENFORCEMENT AREA (CEA) DESIGNATION ORDER

If an authority wishes to introduce civil enforcement in all or part of its area it must apply to Welsh Ministers for one or more designation orders on the form at the end of this Chapter. Authorities eligible to apply and the types of order for which they may apply are described in Chapter 13. If Welsh Ministers are satisfied they will make an order, or orders, enabling the relevant contraventions to be enforced by the authority rather than police - either throughout the authority's area, or in a specified part or parts of its area.

It is essential that authorities keep the Welsh Government informed from the time they decide they would like to apply for powers to enable problems to be identified and tackled at an early stage. If no prior warning is given of an application, there may be delays in processing it. Authorities should address correspondence and applications to:

Transport Planning and Governance Division
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

Authorities considering applying for power should as a first step contact officials in the above Division to discuss the proposed commencement date and any issues relating to the content of the application. The authority will need to demonstrate support in the formal application that it has consulted neighbouring traffic authorities, the Police, Traffic Wales, TEC, DVLA, and Adjudication service. Welsh Ministers will then consider each application and are under a statutory duty¹³⁴ to consult the appropriate chief police officer before taking a decision. Ministers also consult the Council for Tribunals and Traffic Wales. Authorities should be prepared to answer questions about their application and provide additional information to help its processing.

Once an application has been made the authority will need to make the necessary minor amendments to its existing TROs so they can be enforced from the proposed commencement date (see Chapter 12). However, authorities are strongly advised to review their TROs, road signs, lines and markings at least 12 months beforehand.

The Local Authorities' Traffic Orders (Procedure) (England and Wales) (Amendment) Regulations 1996 provide a simplified and streamlined procedure for "consolidation" and "minor" orders. Substantive changes to TROs will take longer and procedures for any changes that need to come into force on the commencement of civil enforcement will need to be initiated at a suitably early date. Annex H gives further guidance.

Welsh Ministers will not approve an order unless they have received six weeks before commencement an undertaking signed by a senior Council official confirming that all TROs, traffic signs and road markings in the proposed CEA/SEA have been reviewed and are now lawful, consistent and in good order. Details of the confirmation required are set out below. The designation order will then be made and laid before the National Assembly for Wales 21 days before it is due to come into force.

¹³⁴ TMA 2004, Schedule 8, Paragraph 2(3).

When Welsh Ministers are satisfied with the information from the applicant authority and have completed consultations, they will signal whether the application is acceptable in principle and they are minded to make an appropriate Order, subject to the satisfactory completion of outstanding tasks by the authority. Welsh Ministers will aim to give agreement within 20 weeks of receiving a formal application.

Publicity and notice of the proposed level of penalty charges need to have been completed at least 14 days before the commencement date.

Table 5 12-step application procedure for CPE powers

The following 12 steps outline the processes that must be completed prior to a local authority being granted decriminalised parking enforcement (CPE) powers.

Step	Timeframe*
1. Initial contact.	n/a
Local authority notifies Welsh Government of impending application and proposed commencement date. The Welsh Government will provide an application pack.	
2. Troubleshooting.	n/a
At this stage the authority may seek advice on any issues or if appropriate meet the Welsh Government to discuss issues in more depth.	
3. Application submission.	n/a
Local authority submits its application electronically.	
All parts of application must be completed in full prior to submission to the Welsh Government.	
4. Application processing.	25 w/d
Welsh Government processes application and responds as necessary to authority.	15 w/d
Local authority adds to or amends its application as directed by the Welsh Government.	10 w/d
5. Legal order drafting.	15 w/d
Welsh Government drafts legal Order.	
6. Application and legal order consultation.	20 w/d
Welsh Government seeks comments from consultees on both the application and draft legal order.	10 w/d
Welsh Government informs authority of issues arising from the consultation and asks for those to be resolved.	10 w/d
7. Legal order checking.	10 w/d
Welsh Government runs second legal check on the draft order. TRO confirmation statement required at this stage.	
8. Order signing.	10 w/d
Welsh Government submits legal order to Welsh Ministers for signing.	
9. Proofing, printing and arrangements for laying of Order.	5 w/d
Welsh Government sends application and legal Order for proofing and printing and arranges for the laying of Order.	
10. Laying of the Order in the National Assembly for Wales.	21 days (incl. weekends)
Order is laid there for 21 days.	
11. AMs/Council Leader/Determination letters.	n/a
Welsh Government sends electronic Determination letter to authority confirming new powers. Welsh Ministers write to local AMs and Council Leader confirming the date the powers will come into effect.	
12. Powers come into effect.	n/a

Application form



Llywodraeth Cymru
Welsh Government

Application for Civil Parking Enforcement, Moving Traffic Contraventions and Bus Lane Enforcement

**** Council
**** on behalf of **** Council
**** month/year ****

Introduction

State here the powers being applied for and confirm whether the Council intends to use these powers from the outset of civil enforcement coming into effect.

This document represents the formal application for:

1. An order designating the whole or part of the authority's area as a civil enforcement area for parking contraventions under section 74 and Part 2 of Schedule 8 to the Traffic Management Act 2004. YES/NO
2. An order designating the whole or part of the authority's area as a special enforcement area (SEA) for parking contraventions under section 84 and Schedule 10 to the Traffic Management Act 2004. YES/NO
3. An order designating the whole or part of the authority's area as a civil enforcement area for bus lane contraventions under section 74 and Part 2 of Schedule 8 to the Traffic Management Act 2004. YES/NO
4. An order designating the whole or part of the authority's area as a civil enforcement area (CEA) for moving traffic contraventions under section 74 and Part 2 of Schedule 8 to the Traffic Management Act 2004. YES/SO

If only applying for 3 and/or 4 please indicate below when the powers under 1 and/or 2 were granted.

Powers under 1 granted: _____

Powers under 2 granted: _____

Proposed Commencement Date

State proposed commencement date(s). [You should first seek agreement from the Welsh Government about the proposed COMING INTO FORCE date – see below].

The proposed date should be realistic, bearing in mind that it takes on average 5 months from the date of the formal application until the order comes into force.

Definition of CEA/SEA and Excluded Roads

Provide a clear and accurate description of the area excluded from the CEA /SEA and also explain the area that is included within the CEA.

Please include full and clear definitions of any such roads. If part of a road is to be excluded, the Welsh Government will require clear definitions of that part including the name or road numbers intersecting it. These definitions **MUST** have been agreed with the appropriate police force.

Off-street Car Parks

Confirmation required that all off-street car parks owned by the Council are included within the proposed CEA/SEA.

If military roads are not defined within the excluded routes the Department requires confirmation that this is the case.

Map

Include a detailed map of the proposed CEA/SEA and all of the excluded roads at Appendix A.

TRO/Signs/Road Markings Confirmation

Formal confirmation of the state of the TROs, signs, lines and road markings **MUST** be confirmed by a senior Council official **AT LEAST** six weeks prior to the commencement date. A formal letter to the Welsh Government should be drafted along the following lines:

This section MUST be completed in full and signed by a senior council official. *Welsh Ministers* will not approve the designation order unless a satisfactory confirmation has been received at least six weeks before the proposed commencement date.

1) A complete review of the Traffic Regulation Orders (TROs), traffic signs and road markings within the council's entire proposed Civil Enforcement Area/Special Enforcement Area has taken place in order to highlight any deficiencies.

2) Any deficiencies highlighted as part of this review have been rectified.

3) As a result of this work, all TROs, traffic signs and road markings within the entire proposed CEA/SEA conform to the legislation and are consistent with one another.

4) This requirement extends to all TROs, traffic signs and road markings with no exceptions and therefore includes existing, new and replacement TROs, traffic signs and road markings.

Signed: _____

Printed: _____

Position: _____

Dated: _____

Alteration of Equipment

The authority will need to confirm either that all pay-and-display equipment including all parking meters, are altered to use the term 'penalty' and not 'initial' or 'excess' when CPE is introduced or no later than three months after its introduction.

Parking and Traffic Management Strategies and Policies

Provide a summary of the Council's parking and traffic management strategy (including Moving Traffic Contraventions and/or Bus Lane Enforcement if applicable) as set out in the Council's LTP.

Parking Management Review

Outline the scope of the parking management review that has taken place as a result of current enforcement problems and the impending introduction of these powers.

Civil Parking Enforcement

Explain the current level of parking provision in place for both on and off-street.

Moving Traffic Contraventions and/or Bus Lane Enforcement Review

Outline the scope of the Moving Traffic Contraventions and/or Bus Lane Enforcement review that has taken place as a result of current traffic enforcement problems and the impending introduction of these powers.

Overall Enforcement Picture after the Acquisition of these Powers

Explain why the introduction of these powers will help to improve parking and moving traffic management within the Council's administrative area.

Include a paragraph here outlining the projected levels of parking provision both on and off-street in the five year period that will follow the introduction of these powers.

Financial Assessment

Provide confirmation here that the Council has considered the financial implication of acquiring these powers.

A full financial assessment should be included at Appendix B and this should incorporate an assessment of income and expenditure during the first five years of acquiring these powers. Any significant changes in financial performance expected in the following years should also be noted.

Include a section here summarising the key findings of the financial assessment carried out in preparation for the introduction of these powers.

Evidence is required that the authority has considered the effectiveness and the financial implications of operating the new controls and the extent to which the local authority's civil enforcement operations are expected to be self-financing.

A full financial assessment should be included at Appendix D, incorporating an assessment of income and expenditure during the first full year of acquiring these powers. Any significant changes in financial performance expected in the following years should also be noted.

Documentation

Explain here who will be responsible for providing and designing the necessary documentation (i.e. forms, notices, letters, PCNs, NtOs and Charge Certificates).

Notice Processing

State who will be responsible for processing the notices.

Explain here how the authority will liaise with the police on cancelling and refunding PCN, where paid, when a Fixed Penalty Notice or criminal proceedings have been initiated for contraventions of bus lane and moving traffic orders.

Contravention Codes

Confirm which version will be implemented.

Confirm the PCN numbering system

Civil Enforcement Officers

Explain how many CEOs will be required and how they will be deployed on and off street. (If this application is only to secure Moving Traffic Contraventions and Bus Lane Enforcement powers indicate whether you intend operating within existing CEO levels or intend appointing additional CEOs or other staff).

Training

Include a section here detailing the extent of the training that will be provided for existing and newly recruited Civil Enforcement Officers.

Uniforms

Describe what type of uniform will be worn by CEOs, which is in accordance with Welsh Ministers' requirements, that is how will CEOs be identified from other CEOs and confirm whether they will be carrying or wearing an ID.

Equipment

Describe the equipment that CEOs will be provided with for the purposes of communication.

PCNs

Penalty Charge Levels

Include a description of the Penalty Charge levels that will be used from the outset of the Council's scheme. This should include the penalty charge level that is applicable at all of the stages after the PCN is first issued, and whether any variable charge levels will apply. You should include confirmation that the proposed level of charges is in line with those specified by *Welsh Ministers* and how these will be advertised.

Payment Methods

Include a bullet point section here detailing the range of payment facilities that will be available.

Exemptions and dispensation notices

What type of vehicles or group of individuals will be eligible for exemptions? Include descriptions here of how the system of exemptions/dispensation notices will work in practice for each vehicle type/group of individuals.

Pavement Parking

What plans, if any, does the Council have to enforce pavement parking contravention.

Dropped-kerb Parking

Explain the Council's plans to enforce parking contraventions at dropped kerbs (if any).

Double parking

Explain the Council's plans to enforce parking contraventions more than 50 cm from the kerb (if any).

Vehicle Immobilisation and Removals

Explain the Council's policy on the practice of vehicle immobilisation as a measure for enforcing parking contraventions and at what stage is the Council intending to implement immobilisation. State whether the Council will comply with TMA regulations and guidelines.

Representations and Appeals - Informal representations

The Council are now obliged to consider informal representations and should set out how they propose to deal with them, including the processes associated with this form of appeal.

Representations and Appeals - Formal representations

Detail the format in which formal representations will be accepted and handled (i.e. whether representations will be dealt with by post/and or electronically).

Adjudications

Confirm whether the Council has joined the Traffic Penalty Tribunal (TPT) and applied for the necessary powers to undertake adjudications.

Confirm the venue/venues that will be used for carrying out adjudication services and provide evidence that TPT have approved the venue.

PCN Recovery

Provide evidence that the Council has liaised with both the Driver Vehicle and Licensing Agency (DVLA) and the Traffic Enforcement Centre (TEC), and append consultation responses confirming that both agencies are content with the Council's arrangements for the requesting of information on registered vehicle keepers and for requesting the registration of charge certificates and the granting of authority to prepare warrants of execution.

Publicity

Describe in bullet form the different elements that will be included within the publicity programme for the implementation of civil enforcement (including Moving Traffic Contraventions and/or Bus Lane Enforcement if applicable). When will the publicity be conducted and for what length of period.

Consultation

List all the consultees with regard to the introduction of civil enforcement powers or where powers already granted for Moving Traffic Contraventions and/or Bus Lane Enforcement. The following **MUST** be consulted:

- Neighbouring local authorities
- Police
- Ambulance Service
- Fire Service
- DVLA and TEC
- Welsh Government
- Traffic Penalty Tribunal (TPT)

Or where powers for civil enforcement powers have already been granted, list all the consultees for the introduction of Moving Traffic Contraventions and/or Bus Lane Enforcement. The following **MUST** be consulted:

- Neighbouring local authorities
- Police
- Ambulance Service
- Fire Service
- DVLA and TEC
- Welsh Government
- Traffic Penalty Tribunal (TPT)
- Representatives of road users i.e. AA, RAC, Sustrans etc

Copies of correspondence with the police, neighbouring local authorities, DVLA, the ambulance service, the fire service, and the Welsh Government where any part of one or more trunk roads would fall within the proposed CEA. This should indicate whether they support the application, or any reservations they may have.

Statistics Collection

The Council must confirm that it will report annually to the *Welsh Government* on the financial results of civil parking enforcement, and any action the Council takes in respect of any deficit or surplus on the on-street parking account.

Legal Documentation

The Council must supply evidence of its current legal name where Civil Enforcement will be introduced.

Appendix A – Map

Attach a detailed map of the entire area covered by the CEA/SEA here, including a list of all the excluded roads.

Appendix B – Financial assessment

Attach a copy of the Council's full financial assessment here.

Appendix C – Consultation

Attach copies of consultation documents here. All consultation responses should indicate that the party consulted is content with the Council's application and that any contentious issues have been fully resolved.

Consultation responses from the DVLA, TPT and the TEC should all include details of the arrangements that have been made/need to be made between the Council and the relevant body prior to the introduction of CPE.

Appendix D – Legal name(s)

Confirm the Council's legal name here and include a copy extract from the appropriate legal instrument or resolution that grants the Council its name in law.

WHAT IS INVOLVED IN CPE UNDER THE TMA 2004 AND HOW IT DIFFERS FROM DPE UNDER THE RTA 1991

What CPE involves

Regulations made under Part 6 of the TMA 2004 enable a local traffic authority in Wales, once it has been given the relevant power by Welsh Ministers, to enforce parking regulations within a particular geographical area:

- Enforcement primarily becomes the responsibility of the authority but the police remain responsible for endorsable offences such as dangerous parking, obstruction, failure to comply with police "no parking" signs placed in emergencies, and any vehicle where security or other traffic policing issues are involved, including the need to close roads or set up diversions. Parking offences at pedestrian crossings or zigzag lines may be enforced by the police or the authority but any action by the police takes precedence.
- CEOs employed directly or indirectly by the local authority place PCNs on vehicles contravening parking regulations and can, in appropriate cases, authorise the removal or immobilisation of vehicles.
- If the penalty charge remains unpaid after the relevant time and processes, it becomes a civil debt due to the authority and enforceable through a streamlined version of the normal civil debt recovery process in the county court.
- A motorist wishing to contest liability for a penalty charge may make representations to the authority and, if these are rejected, may have grounds to appeal to an independent adjudicator. The adjudicator's decision may be reconsidered by another adjudicator but there is no right of further appeal through the courts except on a point of law.
- An enforcement authority retains any proceeds from penalty charges, which are used to finance the enforcement and adjudication systems. Any financial surpluses from enforcement must be used only for the purposes set out in Section 55 (as amended) of the RTRA and authorities need to keep separate accounts of PCN income and expenditure.
- The system of "initial" and "excess" charges for paid parking used by local authorities when on-street parking is enforced by the police service do not apply. and
- Outside the areas where local authorities are responsible for civil parking enforcement all parking offences will remain subject to the criminal law.

The main advantages of CPE by a local authority are:

- Authorities are able to ensure that their policies are implemented effectively, with consequent benefits through improved traffic flow, better management of overall traffic levels, fewer accidents and a more pleasant environment.
- The integration of enforcement and policy responsibilities should provide better monitoring of the effectiveness and value of these controls, so that provision of bus lane and/or moving traffic constraints becomes more responsive to the public's needs. and
- Authorities may use any revenue they receive from enforcement to fund those enforcement activities. Any surpluses can be used to improve certain other transport-related purposes and environmental schemes.

Civil Enforcement Areas

Schedule 8 of the TMA 2004 enables an eligible local authority to apply to Welsh Ministers for an order creating a "Civil Enforcement Area" (CEA). CEAs replace the "Permitted Parking Areas (PPAs) and "Special Parking Areas" (SPAs) created under the Road Traffic Act 1991. All existing PPAs/SPAs automatically become CEAs under the TMA.

Within a CEA, contraventions of orders designating permitted on-street parking places such as meter bays, residents' and disabled persons' bays and free parking bays, are subject to civil enforcement by the local authority.

Within a CEA most other non-endorsable parking contraventions can be enforced by the local authority. They are:

- Contraventions of permanent, experimental and temporary traffic regulation orders made under sections 5, 11 and 16C of the RTRA 1984 prohibiting or restricting waiting or relating to loading or unloading or delivery or collections.
- Contraventions of section 19 of the Road Traffic Act (RTA) 1988 prohibiting the parking of heavy commercial vehicles on verges, central reservations and footways, etc..
- Contraventions of section 21 of the RTA 1988 prohibiting parking on cycle tracks.
- Contraventions of or non-compliance with an order under section 35(1), RTRA 1984 in relation to local authority off-street parking places (see section 53(5) and (6), RTRA 1984).
- Contraventions of a designation order having effect by virtue of section 53(1)(a), RTRA 1984, or contraventions of or non-compliance with a designation order having effect by virtue of section 53(1)(b), RTRA 1984 (see section 53(5) and (6), RTRA 1984). and
- Contraventions of off-street loading area orders under section 61, RTRA 1984 prohibiting the parking of unauthorised vehicles.

Schedule 7 of the TMA 2004 sets out the additional situations in which a civil enforcement authority may issue a PCN. Until the TMA 2004's provisions came into force, police were responsible for enforcement. Police no longer have enforcement powers with the exception of an offence under section 25(5) of the Road Traffic Regulations Act 1984 of contravening Regulation 18 or 20 of the Zebra, Pelican and Puffin Pedestrian Crossings Regulations and General Directions 1997 (S.I. 1997/2400) (prohibition of stopping vehicles on or near pedestrian crossings).

This is because of the road safety implications of stopping vehicles on or near pedestrian crossings. In Wales these are:

- An offence under section 64(3) of the Local Government (Miscellaneous Provisions) Act 1976 (c. 57) of causing a vehicle to stop on part of a road appointed, or deemed to have been appointed, as a hackney carriage stand;
- An offence under section 5, 11, 16(1) or 16C of the Road Traffic Regulation Act 1984 (c. 27) (contravention of certain traffic orders) of contravening a prohibition or restriction on waiting, or loading or unloading, of vehicles.

A CPE authority may enforce, among other things, contraventions of TROs in a CEA that restrict or prohibit traffic on roads for the purposes of facilitating the holding of a sporting, social or entertainment event on a road, enabling the public to watch such an event (which must be held on the road) or reducing disruption caused by the event. Before making such an Order, the local authority must be satisfied that it has the power to make such an Order, for instance, that it could not reasonably be held off-road, and that the type of contravention is one that can be enforced under CPE powers. Enforcement of these matters by an authority will not remove the need for a police presence and before making such an Order, an authority should ensure the relevant Chief Constable is content for the Order to be made and will provide the necessary police resources to ensure the safety of the public:

- An offence under section 25(5) of the Road Traffic Regulation Act 1984 of contravening regulation 18 or 20 of the Zebra, Pelican and Puffin Pedestrian Crossings Regulations and General Directions 1997 (S.I. 1997/2400) (prohibition on stopping vehicles on or near pedestrian crossings);
- An offence under section 35A(1), 47(1) or 53(5) or (6) of the Road Traffic Regulation Act 1984 (offences in connection with parking places);
- An offence under section 61(5) of the Road Traffic Regulation Act 1984 (parking in loading areas);
- An offence under section 6(6) of the Essex Act 1987 (c. xx) of leaving a vehicle on any land in contravention of a prohibition under that section (prohibitions relating to verges and certain other land adjoining or accessible from highway);
- An offence under section 19 of the Road Traffic Act 1988 (c. 52) (parking of HGVs on verges, central reservations or footways);

- An offence under section 21 of the Road Traffic Act 1988 (offences relating to cycle tracks) of parking a vehicle wholly or partly on a cycle track, and
- An offence under section 36(1) of the Road Traffic Act 1988 (failure to comply with traffic sign) of failing to comply with a sign of a type referred to in:

Regulation 10(1)(b) of the Traffic Signs Regulations and General Directions 2002 (S.I. 2002/3113) (zig-zag lines relating to certain crossings), or Regulation 29(1) of those regulations (bus stop or bus stand markings).

Special Enforcement Areas

The TMA enables authorities with CPE power to enforce in a Special Enforcement Area (SEA)¹³⁵ prohibitions of double parking¹³⁶ and parking at dropped footways¹³⁷ as if they had been introduced using a Traffic Regulations Order. Any Special Parking Area that existed before commencement of the TMA 2004 automatically becomes an SEA¹³⁸ and the restrictions need to be indicated with traffic signs or road markings. Authorities should make sure that the public is aware of the new restrictions before starting enforcement.

How CPE differs from DPE

The arrangements under Part 6 of the TMA 2004 largely replicate and update those under Part II of the RTA 1991.

Presentational

- Decriminalised Parking Enforcement to be called Civil Parking Enforcement;
- Parking Attendants to be called Civil Enforcement Officers, and
- Special Parking Areas and Permitted Parking Areas to be called Civil Enforcement Areas

Changes to regulations (and, therefore, to Guidance)

- Different road traffic contravention penalties depending on the seriousness and type of the contravention;
- Details of procedures for representations and appeals on PCN;
- Power to serve PCN by post if CEO has started to issue it but driver leaves with the vehicle before it can be served;
- Enforcement cameras (“approved devices”) to be certified by the Welsh Government;

¹³⁵ TMA 2004, Schedule 10.

¹³⁶ *Ibid*, Section 85.

¹³⁷ *Ibid*, Section 86.

¹³⁸ *Ibid*, Schedule 10, Paragraphs 2(5) and 3(5).

- 21 day discount for PCNs sent by post with evidence from an approved device;
- Authorities must not immobilise a vehicle within 30 minutes of the issue of a PCN in a parking place, with the exception of persistent evaders who may be immobilised 15 minutes after the issue of the PCN;
- NtOs must be issued within 6 months of the relevant date (usually the date of service of the PCN);
- Procedures to reissue Notices if payments cancelled after payment;
- Local authorities must decide representations within 56 days;
- Adjudicators will have the power to decide cases where procedural irregularity has taken place (for example where a charge certificate has been issued before an appeal has been decided); and
- Adjudicators have the power to refer back to the authority for reconsideration cases where a contravention took place but in mitigating circumstances.

New powers for authorities to:

- Send PCNs by post with approved devices evidence;
- Send by PCNs by post when prevented from serving by the motorist;
- Enforce dropped footways in an SEA;
- Enforce double parking in an SEA, and
- Place a six-month time limit on authorities issuing a Notice to Owner.

Changes to Guidance

- Authorities no longer need to demonstrate to the Welsh Government that parking enforcement would be self-funding;
- Authorities should publish parking policies;
- In situations where a contravention has occurred but in mitigating circumstances authorities should make and publish guidelines on their use of discretion that should be applied flexibly;
- Stronger emphasis on staff training;
- Authorities are encouraged to use approved devices (photographic) evidence obtained by CEOs and CCTV as additional evidence that the contravention has occurred;
- Discouragement to immobilise vehicles except those of persistent evaders;

- Where a vehicle is parked in contravention and in an obstructive manner the vehicle should be removed rather than immobilised;
- Where an informal challenge made against a PCN within the 14 day 50% discount period is rejected, authorities are encouraged to re-offer discount;
- Authorities should review their parking policies on a regular basis in consultation with local stakeholders and, once finalised, these should be made publicly available for annual report;
- Authorities should publish certain items of financial and statistical information, and
- More emphasis on monitoring.

What authorities must do to prepare for CPE

- Ensure that their staff and the staff of their contractor - if they have one - are fully aware of and trained in the new procedures;
- Make the necessary changes to their documents;
- Make the necessary changes to their IT system;
- Appraise their policy and enforcement package to ensure it still meets their needs;
- Appraise their TROs, traffic signs and road markings to ensure they conform to the legislation and are consistent with one another and the TROs, and make any necessary changes to rectify deficiencies;
- Advise the public of changes to enforcement such as dropped footways; and

Advise the public of changes to penalty charge levels

ANNEX B:

ENFORCEMENT ACTION STARTED UNDER THE ROAD TRAFFIC ACT 1991

The transitional provisions in the Commencement Order¹³⁹ set out the parts of the TMA that have been brought into force and the legislation they repeal. The following legislation has been repealed:

- The Road Traffic Act 1984 section 8(1A); section 11(2) and (2A); part of section 47(1); section 101(4) to (6); and part of section 102(8).
- The Road Traffic Act 1991 section 43; sections 65 to 67; section 69 to 74A; sections 76 to 79; Schedule 3; and Schedule 6.
- The Local Government Wales Act 1994 (b) Schedule 7, paragraph 43(b).

¹³⁹ TMA 2004.

ANNEX C:

CONTRAVENTIONS FOR WHICH THE HIGHER AND THE LOWER LEVEL PENALTY CHARGES SHOULD BE MADE

* = or other specified time
specified distance

**** = or other number

† = or other

Higher level contraventions: on-street Parking

Code	Description
01	Parked in a restricted street during prescribed hours
02	Parked or loading/unloading in a restricted street where waiting and loading/unloading restrictions are in force
12	Parked in a residents' or shared use parking place or zone without clearly displaying either a permit or voucher or pay and display ticket issued for that place
14	Parked in an electric vehicles' charging place during restricted hours without charging
16	Parked in a permit space without displaying a valid permit
18	Using a vehicle in a parking place in connection with the sale or offering or exposing for sale of goods when prohibited (off street)
20	Parked in a loading gap marked by a yellow line
21	Parked in a suspended bay/space or part of bay/space
23	Parked in a parking place or area not designated for that class of vehicle
25	Parked in a loading place during restricted hours without loading
26	Vehicle parked more than 50 cm [†] from the edge of the carriageway and not within a designated parking place
27	Parked in a special enforcement area adjacent to a dropped footway
40	Parked in a designated disabled person's parking place without clearly displaying a valid disabled person's badge in the prescribed manner
41	Parked in a parking place designated for diplomatic vehicles
42	Parked in a parking place designated for police vehicles
45	Parked on a taxi rank
46	Stopping where prohibited (on a red route or clearway)
47	Stopped on a restricted bus stop/stand
48	Stopped in a restricted area outside a school when prohibited
49	Parked wholly or partly on a cycle track
55	A commercial vehicle parked in a restricted street in contravention of the Overnight Waiting Ban
56	Parked in contravention of a commercial vehicle waiting restriction
57	Parked in contravention of a coach ban
61	A heavy commercial vehicle wholly or partly parked on a footway, verge or land between two carriageways
62	Parked with one or more wheels on any part of an urban road other than a carriageway (footway parking)
99	Stopped on a pedestrian crossing and/or crossing area marked by zig-zags

Higher level contraventions: Off-street Parking

Code	Description
70	Parked in a loading area during restricted hours without reasonable excuse
74	Using a vehicle in a parking place in connection with the sale or offering or exposing for sale of goods when prohibited
81	Parked in a restricted area in a car park
85	Parked in a permit bay without clearly displaying a valid permit
87	Parked in a disabled person's parking space without clearly displaying a valid disabled person's badge in the prescribed manner
89	Vehicle parked exceeds maximum weight and/or height and/or length permitted in the area
91	Parked in a car park or area not designated for that class of vehicle
92	Parked causing an obstruction

Lower level contraventions: On-street Parking

Code	Description
04	Parked in a meter bay when penalty time is indicated
05	Parked after the expiry of paid for time
06	Parked without clearly displaying a valid pay & display ticket or voucher
07	Parked with payment made to extend the stay beyond initial time
08	Parked at an out-of-order meter during controlled hours
09	Parked displaying multiple pay & display tickets where prohibited
10	Parked without clearly displaying two**** valid pay and display tickets when required
11	Parked without payment of the parking charge
19	Parked in a residents' or shared use parking place or zone displaying an invalid permit, an invalid voucher or an invalid pay & display ticket
22	Re-parked in the same parking place within one hour* of leaving
24	Not parked correctly within the markings of the bay or space
30	Parked for longer than permitted
35	Parked in a disc parking place without clearly displaying a valid disc
36	Parked in a disc parking place for longer than permitted
63	Parked with engine running where prohibited

Lower level contraventions: off-street Parking

Code	Description
73	Parked without payment of the parking charge
80	Parked for longer than the maximum period permitted
82	Parked after the expiry of paid for time
83	Parked in a car park without clearly displaying a valid pay & display ticket or voucher or parking clock
84	Parked with additional payment made to extend the stay beyond time first purchased
86	Parked beyond the bay markings
90	Re-parked within one hour* of leaving a bay or space in a car park
93	Parked in car park when closed
94	Parked in a pay & display car park without clearly displaying two**** valid pay and display tickets when required
95	Parked in a parking place for a purpose other than the designated purpose for the parking place
96	Parked with engine running where prohibited

Higher level contraventions: Bus Lane

Code	Description
34	Being in a bus lane

Higher level contraventions: Moving Traffic

Code	Description
32d	Vehicular traffic must proceed in the direction indicated by the arrow
32	Vehicular traffic must turn ahead in the direction indicated by the arrow
32	Vehicular traffic must comply with the requirements in regulation 15
50r	No right turn for vehicular traffic
50l	No left turn for vehicular traffic
50u	No U-turns for vehicular traffic
37	Priority must be given to vehicles from the opposite direction
51	No entry for vehicular traffic (when the restriction of prohibition is one that may be indicated by another traffic sign subject to civil enforcement)
52v	All vehicles prohibited except non-mechanically propelled vehicles being pushed
53	Entry to pedestrian zone restricted (alternative types)
54	Entry to and waiting in pedestrian zone restricted (alternative types)
54	Entry to and waiting in pedestrian zone restricted (variable message sign)
52	Motor vehicle prohibited
52	Motor vehicles except solo motor cycles prohibited
52	Solo motor cycles prohibited
52	Goods vehicles exceeding the maximum gross weight indicated on the goods vehicles symbol prohibited
32	One way traffic
33	Buses prohibited
33e	Route for use by buses, taxis and pedal cycles only
33r	Route for use by tramcars only
33p	Route for use by pedal cycles only
33	Route for use by pedal cycles and pedestrians only
33	Route comprising two ways, for use by pedal cycles only and by pedestrians only
38	Failing to comply with a sign indicating that vehicular traffic must pass to the specified side of the sign
52	With-flow cycle lane
52	Contra-flow cycle lane
31	Box junction markings

EXAMPLES OF THE SORT OF INFORMATION THAT IT MAY BE PRUDENT FOR A CEO TO NOTE

- Postcode of street (particularly if more than one street with the same name in an area or if a common street name, e.g. Station Road).
- Confirmation that PCN affixed to vehicle, handed to motorist or to be posted (this information may be useful in case a motorist subsequently denies knowledge of the PCN). If CEOs have a digital camera for recording contraventions, a picture of the vehicle with the PCN attached to it will be useful evidence if the motorist claims that it was not served. Such a claim is not likely to be made in many cases but it may be prudent to take such photographs in areas or on occasions when the removal of PCNs by strangers from vehicles is prevalent.
- Numbers of any other PCNs - to prevent more than one PCN being issued on the same day when the vehicle has not been moved.
- Any permit, badge, voucher or pay-and-display ticket displayed.
- Pocket book reference number and page number (if applicable).
- Tyre valve positions and whether off side or near side.
- Whether immobilisation or removal has been requested by the CEO.
- Class of VED licence (e.g. PLG, HGV).
- Whether PCN spoilt and whether it was re-issued.
- Taking photos before and after serving the PCN if CEO likely to serve ticket

Loading or unloading

- Loading or unloading seen (for example, if loading seen earlier in day, but not taking place when PCN issued, or if loading taking place when prohibited).
- Length of observation period and whether constant or casual.

Foreign or diplomatic plates

- Foreign or diplomatic plates (to highlight use of special procedures for processing diplomats' PCNs).

Conversation with motorist, breakdowns, drive aways etc.

- Driver seen (time and other details) or vehicle otherwise occupied.
- Description of person who appeared to be in charge of the vehicle if seen.
- Conversation with driver or other person with/in the vehicle (time and other details).
- Details of any note displayed on windscreen.
- Evidence of any breakdown.

Prohibited parking

- Details of yellow/red lines/kerb stripes (e.g. single, double line/ one, two kerb stripes).
- Details of kerbside plates (e.g. position relative to the vehicle, times of loading and waiting restrictions).
- Detailed location of vehicle (e.g. by/on N/S/E/W kerb; outside/opposite No.; X yards N/S/E/W of junction with Y Road)

In yellow/redline cases, CEOs should record as much information as possible to establish the precise location of the vehicle, especially in streets where there may be a range of different regulations in different parts

Permitted parking

- Expiry time of pay and display ticket or voucher (if appropriate).
- Parking zone / parking place identifier.
- Details of signs and their position relative to the vehicle.
- Details of vehicle location (e.g. outside/opposite no.).
- If prohibited, whether meter feeding detected and details.
- If meter or machine out of order.
- Display on meter/machine if not just penalty time (e.g. Out Of Order / No parking until...).
- On P&D machines, time shown on machine compared to time on PAs watch or HHC.
- Details of any suspension.

Inadequate markings or signs etc.

- Details of any inadequacies in road markings.
- Details of any damage to kerbside plates or missing plates.
- Damaged street furniture or any other health and safety issues

ANNEX E:

STATISTICAL RETURN OF LOCAL AUTHORITY

PARKING ENFORCEMENT

Name of Local Authority

Calendar Year

DESCRIPTION	NUMBER	ANY COMMENT
Higher level PCNs served for parking contraventions		
lower level PCNs served for parking contraventions		
PCNs paid		
PCNs paid at the discount		
PCNs against which an informal or a formal representation was made		
PCNs cancelled as a result of an informal or a statutory representation		
PCNs written off for other reasons (e.g. CEO error or driver untraceable).		
Vehicles immobilised		
Vehicles removed		

Name:

Address:

Email Address:

Telephone No:

Signed:

Date:

This return should be submitted by 30 June following the calendar year to which it refers, giving figures as at 31 May. Please return this form to: Transport Planning and Administration Division, Welsh Government, Cathays Park, CARDIFF CF10 3NQ

BUS LANE AND MOVING TRAFFIC ENFORCEMENT

Name of Local Authority:

Calendar Year:

<i>DESCRIPTION</i>	<i>NUMBER</i>	<i>COMMENTS</i>
Higher level PCNs served for bus lane and/or moving traffic contraventions		
Lower level PCNs served for such contraventions		
PCNs paid		
PCNs paid at the discount		
PCNs against which informal or formal representation was made		
PCNs cancelled as a result of informal or statutory representation		
PCNs written off for other reasons (e.g. recording error or driver untraceable).		
Vehicles immobilised		
Vehicles removed		

Name:

Address:

Email Address:

Telephone No:

Signed:

Date:

This return should be submitted by 30 June following the calendar year to which it refers, giving figures as at 31 May. Please return this form to: Transport Planning and Administration Division, Welsh Government, Cathays Park, CARDIFF CF10 3NQ

APPRAISING THE ADEQUACY OF TRAFFIC SIGNS, PLATING AND ROAD MARKINGS

Local authorities are responsible for the accuracy and condition of traffic signs and road markings that identify parking, bus lane and moving traffic restrictions. Such signs and markings must conform strictly to relevant Regulations (currently TSRGD 2002 or subsequent amendments) or have received special authorisation from the Welsh Government. They should also conform to guidance in Chapters 3 and 5 of the Traffic Signs Manual (TSM). PCNs are not valid if issued where signs and markings are incorrect or in poor condition, and representations demonstrating this should be accepted. If such representations are not accepted a subsequent appeal is likely to succeed. Authorities should have the services of an employee or contractor who is capable of reading and applying TSRGD 2002 and the TSM. When the IHIE qualification in traffic sign design is in place, the employee or contractor should have achieved this to at least “Practitioner” level. Before applying for new powers, as part of their review of existing TROs, authorities should ensure that the relevant traffic signs and road markings are present and:

- Consistent with TSRGD.
- In a good state of repair. And
- That their meaning will be clear to visitors to the area as well as to local people.

Authorities will have to confirm in writing that this has been done before Welsh Ministers will give them enforcement powers. Welsh Ministers consider it unreasonable to expect motorists to read, understand and remember parking restrictions at the entrance to a CPZ that comprises many streets. CPZs rely solely on the entry signs to give times of operation and to remove the need for time plates within the zone, except on lengths of road where the restrictions apply at different times to the rest of the zone. The area of a CPZ should, therefore, be restricted to, for example, a town centre shopping area. To have one zone covering a whole town, or suburb of a conurbation, would be much too large. Conventional time plate signing, without zone entry signs, should accompany yellow sign markings where large areas have waiting restrictions (time plates are not of course necessary where double yellow lines are used).

Where CPZ (or Restricted Parking Zone (RPZ), where authorised) signing is to be used, care should be taken when signing the zone entry signs to ensure that they are clearly and safely visible to drivers. Unless unavoidable, they should not be close to junctions on busy roads, where drivers are likely to be concentrating on direction signs, traffic lights and other directional manoeuvring. Locations where the zone entry signs are likely to be obscured by large vehicles (e.g. delivery vans, or buses at bus stops) should also be avoided. Local authorities will also need to ensure that they do not become obscured by vegetation or street furniture, including other traffic signs. In areas of the greatest sensitivity there may be ways of balancing the need for clear signs against visual intrusion.

On-going maintenance of signs, meters, etc.

Chapter 4 says that CEOs may be given the task of checking and reporting on the state of signs, plating, markings, parking meters, pay-and-display machines, etc., as one of their patrol duties. It might also be appropriate for them to carry out minor repairs to meters and pay-and-display machines, but it will be for the authority to arrange for any major defects to be quickly rectified, either by its own staff or a contractor.

APPRAISING TRAFFIC REGULATION ORDERS (TROs)

The foundation of an effective enforcement regime is lawful and up-to-date Traffic Regulation Orders (TROs). The Road Traffic Regulation Act 1984 gives local traffic authorities wide powers to make TROs on the roads for which they are responsible. Welsh Ministers have similar powers for trunk roads.

This annex summarises the generally applicable requirements and procedures for making orders and the specific arrangements for review when adopting civil enforcement powers. This guidance is based on the current legislation as described in the footnotes.

Permanent TROs

A TRO may only be made for the following purposes¹⁴⁰:

- Avoiding danger to persons or traffic (including for anti-terrorist purposes).
- Preventing damage to the road or to buildings nearby (including for anti-terrorist purposes).
- Facilitating the passage of traffic.
- Preventing use by unsuitable traffic.
- Preserving the character of a road especially suitable for walking or horse riding.
- Preserving or improving amenities of the area through which the road runs.
- For any of the purposes specified in paragraphs (a) to (c) of the Environment Act 1995 (air quality).

To meet one or more of the above a TRO may prohibit, restrict or regulate the use of a road or any part of the width of a road by vehicular traffic of any class. It may have effect at all times or at specified periods or times. Specific classes of traffic may be excepted. A TRO can¹⁴¹:

- Require all or specified classes of vehicular traffic to proceed in a specified direction or prohibit it from so proceeding.
- Specify the part of the carriageway to be used by such traffic proceeding in a specified direction.
- Prohibit or restrict the waiting of vehicles or the loading and unloading of vehicles.
- Prohibit the use of roads by through traffic.
- Prohibit or restrict overtaking.

¹⁴⁰ RTRA 1984, Section 1(1).

¹⁴¹ *Ibid*, Section 2.

A TRO can specify through routes for heavy vehicles, or prohibit or restrict their use in specified roads or zones in order to preserve or improve amenities in the area.

A TRO can regulate the use of a road by pedestrians but must not have the effect of preventing pedestrian access at any time, or preventing vehicular access for more than 8 hours in 24, to premises on or adjacent to the road.

However, the restriction on vehicular access does not apply if the local authority states in the order that they are satisfied that it should not so as to:

- Avoid danger to persons or other traffic using the road to which the order relates or any other road.
- Prevent the likelihood of any such danger arising.
- Prevent damage to the road or buildings on or near it.
- Facilitate the passage of vehicular traffic on the road.
- Preserve or improve the amenities of an area by prohibiting or restricting the use on a road or roads in that area of heavy commercial vehicles.

Experimental Orders

A traffic authority may test a scheme of traffic control, normally for up to 18 months, using an “experimental traffic order” before deciding whether to make it permanent¹⁴³.

To avoid accusations that an experimental order has been used to avoid the requirements of a permanent order, a LA should ensure that robust arrangements are in place to measure the traffic situation before and after the introduction of the experimental measure and monitor its effect. Substantial capital investment in the measures introduced by an experimental TRO is likely to undermine confidence in its investigative nature.

Parking Designation Orders

Local authorities may, for the purpose of relieving or preventing congestion of traffic, provide suitable parking places on a highway for vehicles or vehicles of any class¹⁴⁴. Similarly, they can designate highway parking places for vehicles of any class (and subject to conditions of use) for which a charge may be made when used¹⁴⁵.

Traffic signs and devices used to control waiting restrictions

TROs may specify authorised traffic signs to identify the traffic regulation involved¹⁴⁶.

A TRO that imposes any restriction on the use by vehicles of a road, or the waiting of vehicles in a road, may include provision with respect to the issue and display of

¹⁴³ RTRA 1984.

¹⁴⁴ *Ibid*, Section 32.

¹⁴⁵ *Ibid*, Section 45.

¹⁴⁶ *Ibid*, Sections 4(1) and 7(1).

certificates or other means of identification of vehicles which are exempted from the restriction¹⁴⁷.

A TRO may include provisions on the issue, display and operation of devices for indicating the time at which a vehicle arrived at, and the time at which it ought to leave, any place in a road in which waiting is restricted¹⁴⁸.

TROs for special areas in the countryside

TROs can be made for roads in special areas of the countryside (e.g. National Parks) for the purposes of conserving or enhancing the natural beauty of the area or of affording better opportunities for the public to enjoy its amenities, including for recreation or the study of nature.

Temporary Prohibitions & Restrictions

Where a traffic authority is satisfied that traffic on a road should be restricted or prohibited:

- because works are being or are proposed to be executed on or near the road; or
- because of the likelihood of danger to the public, or of serious damage to the road, which is not attributable to such works; or
- for the purpose of litter clearance and cleaning in accordance with section 89(1)(a) or (2) of the Environmental Protection Act 1990

it may, by temporary order, restrict or prohibit the use of the road, or of any part of it, by vehicles of any class, or by pedestrians, as they consider necessary.

A temporary restriction cannot normally remain in force for more than six months if it is in respect of a footpath, bridleway, cycle track or byway open to all traffic, and for more than 18 months in any other case. (The 18-month limit does not apply where an authority is satisfied, and it is stated in the order that it is satisfied, that works in question will take longer, provided that the authority then revokes the order as soon as the works have been completed).

The authority must consult the National Park authority for any National Park that would be affected by the order.

Where the traffic authority is satisfied that the works, danger, or litter clearance should come into force without delay, the temporary restriction or prohibition may be imposed by notice.

Special Events

If the traffic authority is satisfied that traffic should be restricted or prohibited in connection with a sporting event, social event or entertainment which is held on a road, it may by order restrict or prohibit temporarily the use of that road to such extent and subject to such conditions or exceptions as they consider necessary or expedient.

¹⁴⁷ *Ibid*, Sections 4(2) and 7(2).

¹⁴⁸ *Ibid*, Sections 4(3) and 7(3).

(Such regulation is permitted to: facilitate the holding of the event; or enable members of the public to watch the event; or to reduce the disruption to traffic likely to be caused by the event). Before making such an order, the authority must be satisfied that it is not reasonably practicable for the event to be held otherwise than on a road; and the authority must have regard to the safety and convenience of alternative routes suitable for the traffic which will be affected by the order.

This sort of order cannot be made in relation to any race or trial falling within subsection (1) of section 12 of the Road Traffic Act 1988 (motor racing on public ways); nor in relation to any competition or trial falling within subsection (1) of section 13 of that Act (regulation of motoring events on public ways) unless the competition or trial is authorised by or under regulations under that section; nor in relation to any race or trial falling within subsection (1) of section 31 of that Act (regulation of cycle racing on public ways) unless the race or trial is authorised by or under regulations made under that section.

Unlike for permanent orders and certain other types of temporary TRO, there are no statutory requirements on the procedure for making “special events” orders. Further guidance is, however, given on the Welsh Government’s website.

See Annex A advice about enforcement of parking at special events.

This sort of “special events” order cannot be made in relation to any race or trial falling within subsection 12 of the RTA 1988 (motor racing on public ways); nor in relation to any competition or trial falling within subsection (1) of section 13 of that Act (regulation of motoring events on public ways) unless the competition or trial is authorised by or under regulations under that section; nor in relation to any race or trial falling within subsection (1) of section 31 of that Act (regulation of cycle racing on public ways) unless the race or trial is authorised by or under regulations made under that section.

Procedure for making Permanent and Experimental TROs

The procedures for making permanent and experimental TROs (i.e. including those made under sections 1,6,9, 32 and 45 of the RTRA) are set out in the Local Authorities' Traffic Orders (Procedures) (England and Wales) Regulations 1996.

Consultation

Before making an order, there must be consultation on the proposals as follows:

Table 6 Consultation

Circumstances	Consultee
Where the order relates to, or appears to the order making authority to be likely to affect traffic on a road for which another authority is the highway authority or the traffic authority.	The other authority.
Where the order relates to, or appears to the order making authority to be likely to affect traffic on, a Crown road.	The appropriate Crown authority (i.e. Traffic Wales).
Where the order relates to, or appears to the order making authority to be likely to affect traffic on, a road subject to a concession.	The concessionaire.
Where the order relates to, or appears to the order making authority to be likely to affect traffic on, a road on which a tramcar or trolley vehicle service is provided.	The operator of the service.
Where the order relates to, or appears to the order making authority to be likely to affect traffic on a road which is included in the route of a local service.	The operator of the service.
Where it appears to the authority that the order is likely to affect the passage on any road of ambulances.	The chief officer of the appropriate NHS Trust.
Where it appears to the authority that the order is likely to affect the passage on any road of fire-fighting vehicles.	The chief officer of the fire brigade of the fire authority.
All cases.	a) The Freight Transport Association (b) The Road Haulage Association (c) Such other organisations (if any) representing persons likely to be affected by any provision in the order as the order making authority thinks it appropriate to consult.

Publicity

Before making a permanent order, there must be publication of the proposals as follows.

- A notice of intention to make the order must be published in the local press and by such other means considered appropriate (e.g. roadside notices and letters to premises) to publicise the order.
- A period of at least 21 days must be allowed for objections to the consultation and notice to be made.

Public Inquiry

A Public Inquiry must be held if:

- A bus operator objects to an order that prohibits or restricts the passage of public service vehicles; or
- if there are objections to a prohibition on the loading or unloading of vehicles of any class on any day of the week:

at all times;

- before 07.00 hours;
- between 10.00 and 16.00 hours; or
- after 19.00 hours.

A Public Inquiry may, at the traffic authority's discretion, be held in other circumstances.

For experimental orders, these publication and objection provisions do not apply. However, an experimental order cannot come into force for at least seven days after a notice of making it has been published; and the authority must comply with the requirements in the procedures regulations for making deposited documents available for public inspection.

Modifications prior to making an order

A traffic authority may modify an order, whether in consequence of any objections or otherwise, before it is made provided the modification does not alter a form already approved by Welsh Ministers. The authority should take appropriate steps to:

- inform persons likely to be affected by the modifications;
- give those persons an opportunity of making representations; and
- ensure that any such representations are duly considered by the authority.

Orders applicable to trunk roads

The procedures are similar in principle to those for orders for other roads and are prescribed in the Traffic Orders (Procedure) (England and Wales) Regulations 1990.

Procedure for making Temporary TROs

Temporary orders are made under section 14 of the RTRA 1984 as described above are subject to the Road Traffic (Temporary Restrictions) Procedure Regulations 1992. The principal requirements are:

- Not less than seven days before making an order, the traffic authority shall publish notice of its intention to make the order in newspaper(s) circulating in the area and explaining its effect.
- The traffic authority shall, on or before the day on which the order is made, give notice:

- to the Chief Officer of Police of any police area in which any road to which the order relates is situated;
 - where the traffic authority is not the fire authority for the area in which any road to which the order relates is situated, to the chief officer of the fire authority for that area;
 - to any other traffic authority affected by the order; and
 - to any concessionaire directly affected.
- Within 14 days after making the order the traffic authority shall publish a notice of the making of the order in newspaper(s) circulating in the area
 - When the order has been made, the traffic authority shall take such steps as are necessary to secure (before the instrument comes into force) the placing of traffic signs to give persons using the road adequate information as to its effect (and the covering or removal of other signs). It shall maintain such signs so long as the measures are in force.

Review of TROs before adoption of powers

Prior to the adoption of CPE powers, the traffic authority should review all existing TROs and consider what changes would be required to meet the authority's parking policy objectives. The review should check whether the restrictions indicated by the signs and road markings are the same as those authorised by the order. Welsh

Ministers will not sign an Order granting CPE until the local authority has confirmed in writing that:

- A complete review of the Traffic Regulation Orders (TROs), traffic signs and road markings within the council's entire proposed Civil Enforcement Area/Special Enforcement Area has taken place in order to highlight any deficiencies.
- Any deficiencies highlighted as part of this review have been rectified.
- As a result of this work all TROs, traffic signs and road markings within the entire proposed CEA/SEA conform to the legislation, are consistent with one another and are in a good state of repair.
- This requirement extends to all TROs, traffic signs and road markings with no exceptions and therefore includes existing, new and replacement TROs, traffic signs and road markings.

Traffic controls that are not backed by valid TROs may be unenforceable and it is likely that any appeals against PCNs will be successful where TROs are not valid.

An authority will need to consider whether it is desirable for restrictions to apply beyond the normal working day and/or at weekends to meet local needs and circumstances. The authority should examine the scope for relaxing or removing any existing parking controls that are no longer appropriate or necessary. Unnecessary restrictions are very quickly identified when the authority takes over responsibility for their enforcement and

this can result in complaints from motorists and adverse publicity. It is better to deal with them before civil enforcement commences.

Authorities may also wish to consider placing all their TROs on a graphical information system and on their website so that, for example, accurate, up-to-date maps can be supplied to contractors and to inform the public

Other changes to TROs required before taking on CPE power

As part of their review of TROs, local authorities should also identify the technical changes that would be needed to comply with the TMA 2004. For example, amendments will be needed to reflect the switch from traffic offence provisions to the new system of penalty charges and civil liabilities. Existing on-street and off-street parking orders will need to be amended to reflect the removal of "initial" and "excess" parking periods.

If an authority does not remove excess charge flags when CPE is introduced, it should include a provision, valid for no more than three months from the introduction of civil parking enforcement, to enable civil enforcement officers to impose a penalty charge when the excess charge flag or display is showing on parking meters (see section below). Similar provision may be needed in off-street car park orders.

Once an authority has CPE power, its TRO should not set out the penalty charges to be used, as these are set by Welsh Ministers. It would also be expedient for TROs to retain a provision relating to "anything done with the permission or at the direction of a police constable in uniform" in order to cover emergencies.

Attention is drawn to Regulations 21 of The Local Authorities' Traffic Orders (Procedures) (England and Wales) Regulations 1996, which disapplies most of the normal consultation and making procedures for:

- "consolidation" orders to re-enact existing provisions without any changes of substance other than those listed in Part 1 of Schedule 4 to the regulations; and
- "minor" orders in this context, also listed in Schedule 4.

The definition of "minor" order is not being amended as a consequence of the Traffic Management Act and its subsidiary legislation. This is because TROs should not contain matters covered by national legislation.

Parking meters

Local authorities enforcing parking will no longer be using the system of "initial" and "excess" parking charges. The obsolete "excess charge" indication will therefore need to be removed from parking meters in CEAs. This change cannot be made overnight on the introduction of civil parking enforcement, but Welsh Ministers believe that the conversion of all affected meters should be completed within three months of the commencement of the new penalty charge system in a local authority's area. In the interim period, a notice should be affixed to unconverted meters indicating that the authority can impose a penalty charge when the excess charge flag or display is showing. These changes will need to be provided for in the relevant TROs.

LIST OF ABBREVIATIONS

BB	Blue Badge	RTA	Road Traffic Act
BPA	British Parking Association	RTP	Regional Transport Plan
CC	Charge Certificate	RTRA	Road Traffic Regulation Act 1984
CEA	Civil Enforcement Area	SEA	Special Enforcement Area
CEO	Civil Enforcement Officer	SIA	Security Industry Association
CPE	Civil Parking Enforcement	SLA	Service Level Agreement
CPZ	Controlled Parking Zone	SPA	Special Parking Area
DBS	Disclosure and Barring Service	TEC	Traffic Enforcement Centre
DDA	Disability Discrimination Act	TMA	Traffic Management Act 2004
DfT	Department for Transport	TMO	Traffic Management Order
DPE	Decriminalised Parking Enforcement	TSRGD	Traffic Signs Regulations and General Directions
DVLA	Driver and Vehicle Licensing Agency	TRO	Traffic Regulation Order
FCO	Foreign and Commonwealth Office	VED	Vehicle Excise Duty
FPN	Fixed Penalty Notices	VI	Vehicle Immobiliser
HHC	Hand Held Computer		
LIP	Local Implementation Plan		
NoR	Notice of Rejection		
NtO	Notice to Owner		
PA	Parking Attendant		
PCN	Penalty Charge Notice		
PPA	Permitted Parking Area		
RIPA	Regulation of Investigatory Powers Act		
ROA	Rehabilitation of offenders Act 1974		