

AGENDA MANAGEMENT SHEET

Name of Committee Cabinet

Date of Committee 7th September 2006

Report Title Government Consultation on Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions

Summary The Government has issued a consultation paper about implementing the parking provisions in Part 6 of the Traffic Management Act 2004. This report recommends how the Council should respond.

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Would the recommended decision be contrary to the Budget and Policy Framework? Yes/No

Background Papers Government Consultation Paper and Partial Regulatory Impact Assessment

CONSULTATION ALREADY UNDERTAKEN:- *Details to be specified*

- Other Committees
- Local Member(s)
(With brief comments, if appropriate)
- Other Elected Members Councillor K Browne)
Councillor Mrs E Goode) for information
Councillor Mrs J Lea)
- Cabinet Member Councillor M Heatley.
(Reports to The Cabinet, to be cleared with appropriate Cabinet Member)
- Chief Executive
- Legal I Marriott – comments incorporated.
- Finance

- Other Chief Officers
- District Councils Comments from Parking Managers at North Warwickshire Borough Council, Nuneaton and Bedworth Borough Council, Rugby Borough Council, Stratford District Council and Warwick District Council incorporated.
- Health Authority
- Police
- Other Bodies/Individuals

FINAL DECISION **YES/NO** *(If 'No' complete Suggested Next Steps)*

SUGGESTED NEXT STEPS :

Details to be specified

- Further consideration by this Committee
- To Council
- To Cabinet
- To an O & S Committee
- To an Area Committee
- Further Consultation

Cabinet - 7th September 2006

Government Consultation on Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions

Report of the Strategic Director for Environment and Economy

Recommendation

That Cabinet notes the contents of the Department for Transport's consultation paper on Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions and endorses a response as outlined in this report.

1. Introduction

- 1.1 At present all London authorities and (as at 3rd July 2006) 148 English local authorities outside London operate Decriminalised Parking Enforcement (DPE). Under DPE, parking regulations are enforced by parking attendants employed by local authorities, rather than the police service. Any revenue raised from the issue of penalty charge notices (PCNs) and the income from on-street parking charges is retained locally for funding the enforcement system. Any surpluses are required to be spent on transport related projects or environmental improvements. Appeals against the issue of PCNs are dealt with initially by local authorities and subsequently by the National Parking Adjudication Service (NPAS). In Warwickshire DPE has been in operation in Stratford District since October 2004 and is being introduced in Rugby Borough in October this year. This will be followed by Warwick District in 2007 and eventually to the whole County.
- 1.2. The Government aims to strengthen the existing system of DPE and its proposals will be given effect through regulations made under the Traffic Management Act 2004 (TMA) and associated statutory guidance. Part 6 of the TMA provides a single framework for the civil enforcement of parking, bus lanes some moving traffic offences and the London lorry ban. The Government intends to implement the provisions in Part 6 in stages, beginning with those on parking. These include new offences of "double parking" (i.e. more than 50 centimetres from the edge of the carriageway) and parking adjacent to a dropped footway. The regulations are expected to pass into Law in mid-2007. Under the TMA, DPE will become known as "Civil Parking Enforcement" (CPE). In recognition of their wider remit parking attendants will be known as Civil Enforcement Officers (CEOs).
- 1.3. The Government has issued a consultation paper on the draft statutory guidance together with a Partial Regulatory Impact Assessment (RIA) and is seeking the

County Council's views on a range of issues connected with its proposals. These have been developed with assistance from key stakeholders including local government representatives, the chief adjudicators from NPAS and motorists groups including the AA Motorists Trust and the RAC Foundation. The consultation paper and the Partial RIA are listed as background papers. A response is requested by Monday 25th September 2006. This report recommends how the Council should respond.

2. Draft Statutory Guidance

2.1. The main areas covered by the draft statutory guidance are:-

- (i) The need for clear policy and financial objectives stressing that CPE should contribute to the authorities transport objectives and that raising revenue should not be an objective nor should targets be set for raising revenue or the number of PCNs to be issued.
- (ii) More transparency and information to road users in the area on CPE together with regular reviews of parking policies by local authorities in consultation with stakeholders and the publication of parking management annual reports.
- (iii) The need for dedicated training for everyone involved in administering civil parking enforcement.
- (iv) Guidelines covering on-street activities in relation to the collection of evidence, wheel clamping and dealing with persistent evaders. Wheel clamping to only be used for the most persistent parking penalty evaders and persistent parking offenders to be targeted through a nationwide database
- (v) A more motorist friendly appeals process with a penalty charge discount reoffered after an informal challenge.
- (vi) More powers to be given to the independent adjudicators to intervene where procedures have not been followed properly.

2.1 The Government has requested comments on any aspect of its proposals and the associated regulations but, in particular, the consultation documents include a number of questions in relation the above guidance and other issues. These are reproduced in **Appendix A** together with the recommended responses.

3. Conclusion

3.1 The Government's aims for a fairer and more consistent parking system nationally should be welcomed. The operation of DPE in Warwickshire is already broadly in line with these aims. It is recommended that the Council provide responses to the specific questions raised in the consultation as detailed in **Appendix A**.

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23rd August 2006

Cabinet – 7th September 2006

Government Consultation on Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions

Consultation Questions

1. Regulatory Impact Assessment

- 1.1 The RIA (in **Appendix B**) discusses the purpose and intended effect of the statutory guidance and the rationale for Government intervention. It also sets out the consultation process, the options considered and an assessment of the costs and benefits of the proposals.
- 1.2 **Does the Partial RIA represent a fair analysis of the policy? What further evidence might be added to the assessment of costs and benefits in the RIA?**

Response:

The RIA does represent a fair analysis of the proposals. However, there is no specific reference made to the additional costs of establishing a National Database for persistent offenders. There may well be significant costs involved in the implementation of such a scheme. It is unclear who will fund this initiative or how this process will be introduced.

2. Information About Parking

- 2.1 The draft statutory guidance makes it clear that local authorities should review their parking policies on a regular basis in consultation with local stakeholders. Once finalised, the policies should be published. Many authorities publish information about parking provision and parking restrictions in their area and the statutory guidance could go further by encouraging all authorities to do this, perhaps in the form of 'parking maps' displayed on their website. Authorities should also publish certain items of financial and statistical data. However, it is important to ensure that the information authorities are encouraged to produce would be of real value to users. Accordingly, the Government invites views on the following questions:

2.2 To what extent and how should authorities publish information about parking provision and/or parking restrictions in their area?

Response:

Each Local Authority should ensure that their WEB site is updated regularly with all relevant information on parking provision. This should include car park locations (with maps to aid our customers), the type of car park (long/short stay, multi-storey/surface, pay and display/pay on foot) the operating hours, the number of disabled persons parking spaces available, the pricing structure, contact numbers, payment options, the permit process, along with the necessary information to assist the motorist in undertaking an informal and formal appeal (either on-line or in writing). In addition, a leaflet available in libraries, council offices and town centre shops should display the location of all the town centre car parks and on-street charging arrangements, including the pricing and type of car park, along with an information number for all car parking enquiries.

Traffic Regulation Orders should also be available for viewing at any library, or via the councils WEB site.

2.3 What additional information would be most useful to road users and how should it be presented?

Response:

Information relating to financial and statistical data and major changes in parking provision (such as the introduction of DPE, car park closures, special events which reduce available parking provision or real time car park information signing) should be available on the internet, in the local press and leaflets in libraries and council offices. In addition, the use of local newsletters or periodicals should be utilised where practical.

3. Accountability within Local Authorities

3.1 Local councillors are accountable to their electorate for the actions of their authority but the Government has reservations about them intervening in individual cases involving parking contraventions. This can mean that road users feel that there is nobody to whom they can take their concerns about how an individual case was handled if it falls outside the remit of the parking adjudicator or the Local Government Ombudsman. Some local authorities have set up within the authority a unit independent of the parking department to handle such concerns and this seems to be working effectively.

3.2 **Should the Government encourage local authorities to set up a unit independent of the parking department to handle cases where the road users had a grievance but it falls outside the remit of the adjudicator and the Ombudsman?**

Response:

There could be a role for an independent in-house “adjudicator” to support decisions on appeals of a sensitive nature. This could help to prevent an appellant proceeding to the national adjudication process. However, there are cost implications in this and it is not considered to be essential. On balance, the view is that there is sufficient impartiality and independence within the existing system that negates the need for further referral.

4. Role of the Police

- 4.1 Under the current DPE regime, where the responsibility for parking enforcement lies with the local authority, the police may only take action against parking that is causing an obstruction or is dangerous. Regulations to enact the TMA could be drawn up in a way that would enable the police to enforce parking if they so wished even where the authority had taken on this power. Any criminal offence would take precedence over the civil one and so there would be no danger of double jeopardy.
- 4.2 **Should the regulations to implement the TMA give the police the power to enforce parking if they should wish to do so?**

Response:

Once responsibility has transferred to the Local Authority there is a view that this is where it should remain. This provides a single system for all contraventions, utilising the "civil process" rather than the "criminal process", as would be the case if the police were still involved. The changes proposed aim to simplify the processes in place and not complicate the situation. A two tiered system introduces confusion to the motorist, especially in respect of payment and the appeals process. However, there may be certain circumstances, for example in the investigation of major crimes or in the interest of national security, where it may be an advantage for the police to continue to have powers to enforce parking. In any event, the public do need to be made aware of what responsibilities the police retain.

5. Procedures on the Street

- 5.1 Under these proposals, authorities will be required to ensure specified items of information appear on Penalty Charge Notices (PCNs). This is so that vehicle owners understand how they can go about paying a penalty charge, the process for enforcing a PCN and their right to make a representation against the penalty charge to the local authority.
- 5.2 Presently local authorities administer the same level of penalty charge within a defined area whatever the contravention. This means that the penalty charge for parking where it is banned - such as on double yellow lines - is the same as for overstaying in a bay where parking is permitted. The Association of London Government is currently consulting on the idea that there should be a more severe penalty for parking where it is always banned than for breaking the

regulations where it is permitted. The Government sees some merit in this idea and invites views on its introduction throughout England.

5.3 Would differential penalty charges based on the severity of the contravention help improve public acceptance of and compliance with parking regulations? Or would it be confusing to have two different levels of penalty charge in the same area?

Response:

Differential charges may well be more acceptable to the public but they could lead to confusion and would be more difficult to administer.

5.4 The Government is of the view that the exercise of discretion should, on the whole, rest with fully trained back-office staff in deciding challenges and representations against PCNs. This is to protect CEOs on the street from allegations of inconsistency, favouritism or suspicion of bribery, in addition to giving motorists greater consistency in the enforcement of traffic regulations. Authorities should publish policies setting out the circumstances in which a CEO should not issue a ticket. For example, if a driver has overstayed in a paid parking place for a short period of time and returns to the vehicle before a ticket has been issued. In such cases it may be more appropriate for the CEO to issue a verbal warning than a PCN as long as the driver agrees to bring the vehicle within the law immediately and is not a persistent evader.

5.5 Should civil enforcement officers have the discretion to decide when to issue a PCN, using the authority's published policy?

Response:

The CEO should have clear guidelines on when, and when not to issue a ticket. The guidelines need to be carefully developed with proportionality in mind and CEO's need training to exercise discretion based on "reasonable" common sense. The back office staff should be fully conversant with the policies and procedures of the Local Authority. They should also be trained in all aspects of the appeal process and be fully aware of the need to consider any mitigating circumstances.

5.6 Owners have time limits within which they must make any objections to a PCN but there are no time limits for action by authorities. The Government believes that authorities should deal with informal and formal representations in a fair and a timely fashion. But it does not want to take action that would result in authorities rejecting all representations speedily.

5.7 Should the Government suggest time limits for dealing with informal and formal representations? If so are the following fair and achievable:

**14 day national standard for dealing with informal challenges?
90% of formal representations decided within 21 days?**

Or should it be left to the individual local authority to set its own criteria?

Response:

A standard timetable for responses should be set by Government. The targets proposed (i.e. 14 days for an informal challenge and 90% of formal representations responded to within 21 days) should be achievable by most local authorities.

5.8 Where a PCN is sent by post the Government expects authorities to act in a timely fashion. The Government proposes that authorities should be required to send PCNs within a specified timeframe. In case there are problems getting the name and address of the owner from DVLA, the draft regulations stipulate that PCNs must be sent within 28 days of the alleged contravention taking place. In most cases DVLA supply the data very quickly and there may be benefits in the statutory guidance recommending that postal PCNs are sent within 14 days of the contravention.

5.9 **Should the statutory guidance recommend that a postal PCN is sent within 14 day of the contravention?**

Response:

A 14 day target is an acceptable level to be set.

5.10 To encourage prompt payment, there is currently a 50% reduction if the penalty charge is paid within 14 days of the contravention. When a PCN is issued by post the discount is still 14 days, some of which is lost before the PCN reaches the vehicle owner. Some PCNs are served by post because the CEO was prevented from serving it at the time of the contravention because the owner drove away. The 14 day discount is appropriate in these circumstances. However, when a PCN is served by post for other reasons, for instance the contravention was detected by an proved device rather than a CEO on the street, the Government believes that the 50% discount should be available for 21 days from the date of the contravention.

5.11 **Should the 50% discount be available for 21 days for certain cases where the PCN was issued by post?**

Response:

Yes.

5.12 The purpose of the current 14 day discount is to encourage prompt payment of the penalty charge. If an informal challenge to the PCN is made during the 14 days, and that challenge is rejected, the owner may have to pay the full amount. A number of authorities offer a further discount period if an informal challenge is rejected and it has been suggested that all authorities should do this, especially where they have not reached a decision within 5 days. The Government wishes to encourage local authorities to deal with informal representations speedily but to give them proper consideration and accept those where a good case is made. Encouraging local authorities to offer a further discount period after an informal

challenge may help to do this. But it may encourage all drivers to challenge a PCN as a matter of course because they have nothing to lose. The Government is of the view that local authorities should be encouraged in statutory guidance, as a method of best practice, to re-offer the whole discount period after refusing an informal challenge to a PCN.

5.13 Should the statutory guidance encourage local authorities have to re-offer a discount period after rejecting an informal challenge? Or should it be at the discretion of the local authority to do this?

Response:

A further extension (14 days) being offered at the discounted rate where an informal challenge has been rejected is supported. This approach introduces an opportunity for the motorist to challenge a PCN at no risk of facing the full penalty, along with the advantage of having received a detailed explanation of the reasons why the PCN was correctly issued. Introducing discretion unfortunately compromises consistency, and for this reason a mandatory period should always be offered following informal rejection. A possible exception should be in the case of a persistent offender abusing the system.

5.14 The Government is of the view that the need to use clamping has been superseded by effective on-street enforcement and should only be used in circumstances where payment cannot be secured through the normal channels. Where a vehicle is parked illegally - e.g. on a double yellow line - or in an obstructive manner it should be removed rather than clamped. However, if the local authority continues to use clamping, there is a need for regulations to be changed. At the moment, a vehicle may be clamped 15 minutes after a PCN has been issued in a paid for parking place. The Government thinks this is too short a period and proposes that, with the exception of a vehicle on the persistent evader database, the period be extended to 60 minutes. This would help to reduce the number of cases where vehicles are clamped for minor breaches such as overstaying at a paid parking place.

5.15 How long should the period following the issue of a PCN be before a vehicle should be removed or clamped?

Response:

Clamping should always be a last resort, the current 15 minute period is totally inadequate and the proposal to extend to 60 minutes is certainly an improvement. The costs involved in this process are extremely high, and a more common sense approach by increasing the time lag is certainly a step in the right direction.

5.16 Where a vehicle already has 3 or more outstanding, unpaid and unchallenged PCNs the Government is of the view that the owner - a "persistent evader" - should be subject to the strongest possible means of enforcement if a further contravention takes place. When the vehicle of a persistent evader is found to be parked illegally, it should be immobilised after the appropriate period and the

authority should seek payment of **all** outstanding penalty charges, no matter which local authority issued the previous PCNs. This will require authorities to share data on persistent evaders with other authorities and the DVLA, and develop a system to transfer payments to any other authorities' owed money by the persistent evader. It is difficult to see this system being effective without a nationally respected database of persistent evaders. Central Government is not in a position to do this, so the local authorities would need to produce and maintain it.

5.17 Do you agree with the proposed definition of a persistent evader as an individual with 3 or more outstanding and uncontested PCNs?

Response:

Yes.

5.19 Would it be acceptable for the Association of London Government to expand their persistent evader database for use across England? If not, what other options might be suitable?

Response:

The implementation of a national database would be an extremely costly exercise and it is difficult to conclude that any added value would be gained from any such process outside of London. In the main, repeat offenders are likely to be localised and should be dealt with on that basis. Unpaid PCN's can ultimately be pursued by bailiffs and this process is appropriate in the circumstances.