

**DEPARTMENT FOR TRANSPORT**

**TRAFFIC MANAGEMENT ACT 2004**

**STATUTORY GUIDANCE TO LOCAL AUTHORITIES ON THE CIVIL  
ENFORCEMENT OF PARKING CONTRAVENTIONS**

**DRAFT FOR CONSULTATION**

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# STATUTORY GUIDANCE TO LOCAL AUTHORITIES ON THE CIVIL ENFORCEMENT OF PARKING CONTRAVENTIONS

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## (I) Introduction and legal basis

1. This Statutory Guidance sets out the policy framework for Civil Parking Enforcement, and how enforcement should be approached, undertaken and reviewed. It attempts to strike the balance between:
  - the desire for as much national consistency as possible, while allowing parking policies to suit local circumstances;
  - the need for the system to be fair to the motorist, but also effective in enforcing parking offences when they occur.
2. This guidance should be used in conjunction with the Regulations which give effect to the parking provisions in Part 6 of the Traffic Management Act 2004 (TMA)<sup>1</sup>. Where there appear to be differences between the regulations and the guidance, the regulations always take precedence.
3. Where the guidance says that something **must** be done, this means that it is a requirement in either primary or secondary legislation, and the appropriate provision is indicated in a footnote. In all other instances, section 87 of the TMA stipulates that local authorities *must have regard* to the information contained in this Guidance.
4. This guidance is issued by the Secretary of State for Transport under Section 87 of the TMA. To bring the guidance into line with the terminology employed in the TMA:
  - the term *Civil Parking Enforcement* (CPE) is used rather than *Decriminalised Parking Enforcement*;
  - the term *Civil Enforcement Officer* (CEO) is used rather than *Parking Attendant*; and
  - the term *Civil Enforcement Area*(CEA) is used rather than *Special Parking Area/ Permitted Parking Area* (SPA/PPA).
5. The guidance is applicable to all Local Traffic Authorities (LTAs) in England exercising CPE powers conferred on them by the Secretary of State under the Road Traffic Act 1991 (RTA) or the TMA. It supersedes the joint Department of Transport and Welsh Assembly publication *Guidance on Decriminalised Parking Enforcement Outside London* and the parking aspects of the Mayor of London's Transport Strategy<sup>2</sup>. Guidance for Wales [has been] issued by the Welsh Assembly.

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<sup>1</sup> Civil Enforcement of Parking Contraventions (England) General Regulations 2007  
Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007

Civil Enforcement Officer (Wearing of Uniforms)(England) Regulations 2007  
Civil Enforcement of Parking Contraventions (Approved Device)(England) Order 2007  
Removal and Disposal of Vehicles (Amendment)(England) Regulations 2007  
The Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges)(England) Order 2007

<sup>2</sup> Statutory Document issued under sections 142 and 294 of the GLA Act 1999.

6. Authorities should follow this guidance when developing, implementing and reviewing their CPE regimes. It should also be read in conjunction with more detailed procedural guidance ([revised 1/95 - not yet available]).
7. CPE is a legal process and LTAs should ensure that their direct and indirect employees who operate CPE regimes have a clear and full understanding of the legislative requirements and that appropriate legal advice is sought from LTA lawyers in the event of any uncertainties as to these requirements.

## **(II) Objectives of CPE**

### CPE policy objectives

8. Overall CPE should contribute to the authority's transport objectives. Its objectives and operation should be well communicated. It should be enforced fairly, accurately and expeditiously. To assist in these objectives it should be underpinned by quality-based standards.
9. LTAs should not view CPE in isolation or as a way of raising revenue. By increasing compliance through clear, well designed and enforced parking controls, CPE provides a means by which an authority can effectively deliver wider transport strategies and objectives.
10. In designing parking policies, LTAs should have particular regard to the following aims:
  - Managing the traffic network to ensure expeditious movement of traffic, (including pedestrians and cyclists), as required under the TMA Network Management Duty;
  - Improving road safety;
  - Improving the local environment;
  - Improving the quality and accessibility of public transport;
  - Meeting the needs of people with disabilities, some of whom will be unable to use public transport and are entirely dependent on the use of a car;
  - Managing the use of the kerb; and
  - Optimising the use of on-street space against competing demands.

### CPE financial objectives

11. Raising revenue should not be an objective of CPE, nor should targets be set for raising revenue or the number of PCNs to be issued.
12. LTAs should ensure that their CPE operations (both on- and off-street<sup>3</sup>) are run efficiently, effectively and economically. The objective of CPE should be for 100% compliance, with no penalty charges. The objective of penalty charges is to dissuade motorists from breaking parking restrictions. Charges should be proportionate, and hence authorities should not set unreasonable levels of parking or penalty charges. If penalty charges are received then these may be used to cover expenditure. But authorities should not set targets in order to produce financial surpluses.
13. Previous guidance stated that local authority parking enforcement should be self-financing as soon as practicable. This is still a sensible aim, but compliant applications for CPE (see next section) will be granted without the scheme being self-financing. However, authorities will need to bear in mind

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<sup>3</sup> CPE is only applicable to LA operated car parks and not privately operated ones unless regulated by an order made under s.35 of the RTRA 1984.

that if it is not self-financing then the authority will need to be certain that they can afford to meet the scheme from within existing funding. The Secretary of State will not expect the deficit to be met either by national or local taxpayers.

### **(III) Issues to consider in applying for CPE powers**

14. The detailed operational guidance [to be produced] sets out the application procedure for an LTA wishing to apply for designation as a CPE area. In overview, the key criteria on which DfT will need to be satisfied are:

- That a review of parking policies and an analysis of how CPE will contribute to overall transport objectives has taken place;
- That appropriate consultation has been undertaken and taken into account in finalising the application;
- That the resulting scheme is proportionate to the scale of the traffic management issues facing the LTA, in terms of the enforcement regime, penalty charges etc;
- That there is consistency with neighbouring schemes – and hence ease of comprehension by the motorists and others affected; and
- That all Traffic Regulation Orders and signs and lines are in compliance with legal requirements.

Any order already in force designating an area as a permitted parking area or special parking area under the Road Traffic Act 1991 automatically becomes a CPE area.

15. Local authorities may also apply to the Secretary of State for the whole or part of their area to be designated a Special Enforcement Areas (SEA)<sup>4</sup>. An SEA must be within or co-extensive with a CEA. Within an SEA, the local authority may prohibit and enforce double parking<sup>5</sup> and parking at dropped footways<sup>6</sup>. Any Special Parking Area that was in existence before commencement of the TMA 2004 automatically becomes an SEA<sup>7</sup>. Authorities currently without designation as a permitted parking area and special parking area who are applying to the Secretary of State for designation as a CPE area will need to consider whether they also wish to apply for SEA designation as part of their CPE application. If they do, they will have to apply under Schedule 10 paragraph 3 (1) – (4) asking the Secretary of State to designate the relevant part of their area as an SEA. In many areas this will, in practise, be the same as the CPE area.

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<sup>4</sup> Schedule 10, TMA 2004

<sup>5</sup> Section 85, *ibid*

<sup>6</sup> Section 86, *ibid*

<sup>7</sup> Schedule 10, paragraph 3(5), *ibid*

#### **(IV) Setting Charges**

16. The primary purpose of penalty charges is to encourage compliance with parking controls. The charging level chosen should have a high level of public acceptability. In pursuit of this aim, LTAs should adopt the lowest charge level consistent with a high degree of compliance. The LTA should also ensure that the public know what charge levels have been set by publishing them well in advance of their introduction. Any subsequent change to the charge levels will also need to be published<sup>8</sup>. In London, the charges will be set by Transport for London or, as appropriate, the London local authorities, with the approval of the Mayor (and provided there is no objection by the Secretary of State). Outside London, the charges must accord with guidelines set by the Secretary of State<sup>9</sup>.
17. Where immobilisation or removal takes place, the charges should be set no higher than required to meet the reasonable costs accrued through the clamping/removals procedure and therefore should not generate a surplus. In London, the charges will be set by Transport for London or, as appropriate, the London local authorities, with the approval of the Mayor (and provided there is no objection by the Secretary of State). Outside London, the charges must accord with guidelines set by the Secretary of State

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<sup>8</sup> Schedule 9 TMA 2004 paragraphs 5 (Greater London) and 9 (outside Greater London).

<sup>9</sup> The Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 200X

**(V) Communicating CPE**

18. It is important that local members of the public affected by CPE understand why a CPE scheme has been introduced and the parking restrictions that result. The LTA should make every effort to ensure that its scheme details are communicated clearly.
19. Before making an application for CPE designation to the Secretary of State, the local traffic authority should consult local stakeholders and the public, other traffic authorities (including the Highways Agency) who might be affected, the emergency services, the DVLA, the adjudication service and the Traffic Enforcement Centre at Northamptonshire County Court.
20. Communicating the rationale for the scheme is important, to ensure that those affected are aware that parking enforcement is about supporting wider transport objectives, in particular managing the network to keep traffic moving, rather than a mechanism to raise revenue.
21. Communicating the details of the scheme so that motorists and local citizens understand them is critical for enforcement. Unclear restrictions, or restrictions that are not in compliance with national or local regulations, or with the Secretary of State's guidance, will create confusion, lead to invalid enforcement and may undermine the scheme. Once parking policies have been finalised, they should be published.
22. Communication takes many forms and LTAs should consider the full range of media available to them. Advertising solely in newspapers may no longer be adequate and all media should be used. Consideration should be given to informing every household when changes are proposed.
23. Where possible, LTAs should work with neighbouring authorities to ensure a consistent approach to communication.
24. There should be formal communication and consultation at regular intervals after CPE is introduced and when changes are proposed (see next section).



## (VI) Reviewing CPE

25. LTAs should regularly review their parking policies, CPE regimes and associated regulatory framework (including penalty charge levels) when reviewing their Local Transport Plans (LTP). This applies in London through their Local Implementation Plans. If the authority does not have an LTP/LIP, this should be done when reviewing the local development framework or community strategy.
26. These reviews should take account of any relevant information that has been collected as part of the parking enforcement process, in particular about the practical effectiveness of the scheme. Reviews will benefit from interviews with CEOs, who are in a unique position to identify changes to parking patterns, and office staff, who see challenges and representations and the reasoning behind them.
27. The Secretary of State recommends that LTAs consult locally on their parking policies as they are reviewed. In doing so, LTAs should seek the views of people and businesses with a range of different parking needs as well as taking into account the views of the police.
28. As part of developing and reviewing their parking policies, LTAs should ensure that as well as being appropriate in terms of place and time, policies are properly underpinned by valid and up to date Traffic Regulation Orders (TRO)<sup>10</sup>.
29. TRO restrictions should be checked to ensure they are clearly and legally indicated with signs and lines on the street. A parking contravention is nearly always a breach of a provision of a TRO, which **must** have been made under the correct section of the Road Traffic Regulation Act 1984 (RTA). Flawed orders are unenforceable, and can have a significant detrimental impact on both the aims of CPE and the public perception of CPE management.
30. In reviewing its parking policy and CPE regime, an LTA should ensure it takes account of the following issues:
  - Existing and predicted levels of demand for parking;
  - The availability and pricing of on- and off-street parking places;
  - The justification for, and accuracy of, existing traffic orders;
  - The adequacy, accuracy and quality of signing and lining, including signing for Controlled Parking Zones;
  - The level of enforcement necessary to secure compliance;
  - The levels of penalty charges; and
  - The need to resource the operation effectively and ensure that all parking staff are appropriately trained

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<sup>10</sup> Made under s1 Road Traffic Regulation Act 1984 and, in London, Traffic Management Orders (TMOs), made under s6 of that Act.

## **(VII) Training and Professionalism in CPE**

### Introduction

31. Once a solid foundation of policies, legitimate TROs, and clear and lawful signs and lines are in place, the successful operation of CPE will depend on the dedication and quality of the staff that deliver it. Providing staff at all levels with the necessary skills and training to do their jobs effectively is essential if the service is to command public confidence and respect. It is also likely to improve the self-esteem and job satisfaction of staff themselves, resulting in higher retention rates. Training should be seen as a legitimate and high priority aspect of CPE running costs and training budgets given appropriate ring-fencing or other protection from cuts.
32. All office processes involved in CPE are important and warrant similar levels of skill, training and professionalism as the more visible on-street enforcement team. LTAs should ensure that sufficient numbers of staff are provided and that those staff (whether employed directly by the authority or by a contractor to deal with challenges) have the necessary skills, training, authority and resources to provide a high quality, professional, efficient, timely and user-friendly service to the public.
33. Authorities that outsource any area of parking enforcement to private companies should ensure that the contract enables them to ensure that the contractor fulfils all the requirements set down for the authority itself.

### Civil Enforcement Officers

34. The main objective of a CEO should be to ensure parking controls are observed and enforced in a fair, accurate and consistent manner. CEO duties will also include helping the public, inspecting parking equipment, checking and reporting for defective signs and road markings, issuing information leaflets or warning notices, providing witness statements and, where appropriate, appearing before a parking adjudicator. If CEOs have the time available, the authority may wish to consider asking them to carry out tasks such as informing the police of criminal parking activity, reporting suspected abandoned vehicles, reporting to DVLA vehicles with no valid tax disc, 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 and assisting with on-street enforcement surveys.
35. CEOs are the public face of CPE and the way that they perform their functions is crucial to the success, and public perception, of an authority's CPE operation. It is recommended that officers achieve minimum standards through recognised training courses such as those recommended by the British Parking Association.

36. CEOs are required to work in areas near schools and similar sensitive areas and can be seen as a uniformed figure of authority. The Secretary of State strongly recommends that an applicant for a job as a CEO undergoes a Criminal Records Bureau check.

The Exercise of Discretion

37. The Secretary of State is of the view that the exercise of discretion should, in the main, rest with back office staff as part of considering challenges against PCNs and representations against NtOs. This is to protect CEOs from allegations of inconsistency, favouritism or suspicion of bribery, in addition to providing motorists with greater consistency in the approach taken to enforcing traffic regulations.
38. However, the LTA may wish to set out certain situations when a CEO should not issue a PCN. For example, an LTA may wish to consider issuing a verbal warning rather than a PCN where a minor contravention has occurred and the driver is still with, or returns to, the vehicle *before* a PCN has been issued. Where this occurs the LTA should have clear policies, instructions and training for CEOs on how to exercise such authority. These policies should form the basis for staff training and should be published.

**(VIII) On-Street Activities**

39. When carrying out prescribed functions<sup>11</sup> CEOs **must**<sup>12</sup> wear a uniform determined by regulation. It is recommended that CEOs carry a photo-identity card, showing their identification number and the name of their employer. To protect the safety of staff, it may be advisable not to include the CEOs name on the identity badge.

Collecting Evidence of Contraventions

40. The local authority **must**<sup>13</sup> provide evidence of the contravention either from a CEO as to conduct observed by him, or from the record of an approved device<sup>14</sup>.

41. If the PCN is based on evidence from a CEO, the PCN **must**<sup>15</sup> either be fixed to the vehicle or given to the person who appears to be in charge of that vehicle. The information that such a PCN **must**<sup>16</sup> contain is set out in the regulations. It is recommended that the PCN also gives:

- vehicle make and colour;
- detailed location of vehicle;
- description and code of the contravention;
- observation start and finish times;
- PCN number (all PCNs should be uniquely identifiable);
- CEOs identification number;
- vehicle's tax disc number; and
- details of how and where to make an informal challenge.

42. Where appropriate, photographic evidence and information should be collected as further evidence that the contravention has taken place 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. The use of digital cameras and similar technology is particularly encouraged. Authorities should disclose their evidence at the earliest possible opportunity.

43. There are two circumstances in which a PCN may be served by post<sup>17</sup>. One is where the contravention has been detected on the basis of evidence from an approved device. The other is if the CEO has been prevented from serving the PCN either by affixing it to the vehicle or by giving it to the person

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<sup>11</sup> The "prescribed" functions to which the requirement to wear a uniform applies are the issuing of PCNs and the authorising or carrying out of wheel-clamping or the removal of vehicles within a CEA. This is taken from The Parking Attendants (Wearing of Uniforms) (London) Regulations 1993.

<sup>12</sup> The Civil Enforcement Officer (Wearing of Uniforms) (England) Regulations 2007

<sup>13</sup> Regulation 6, General Regulations 200X

<sup>14</sup> A device specified in The Civil Enforcement of Parking Contraventions (Approved Device) Regulations 200X.

<sup>15</sup> Regulation 9, *ibid*

<sup>16</sup> Paragraph 1 of Schedule. *ibid*

<sup>17</sup> Regulation 10, *ibid*.

who appears to be in charge of that vehicle. In these circumstances the PCN is sent by post to the owner using data from DVLA and also serves as a Notice to Owner. The regulations set out what information **must**<sup>18</sup> be stated in a PCN sent by post.

### Camera Enforcement

44. TMA regulations<sup>19</sup> give the power to authorities outside London (TMA 2004 repealed and replaced the powers in London) to use cameras monitored by a qualified operator, where they consider it appropriate and/or enforcement is difficult or sensitive. Camera enforcement can best be used in no stopping areas but should not be used where exemptions (such as resident permits or blue badges) not visible to the camera may apply. All equipment **must**<sup>20</sup> use a device certified by the Secretary of State.
45. It is recommended that a copy of the record of the contravention is sent with the PCN.
46. The primary objective of any camera enforcement system is to ensure the safe and efficient operation of the road network by deterring motorists from breaking road traffic regulations and detecting those that do. To do this, the system needs to be well publicised and signed.

### Wheelclamping and/or<sup>21</sup> Removals: General

47. Very few authorities now use clamping and the Secretary of State is of the view that clamping should only be used in limited circumstances such as where experience in previous contraventions has shown that payment cannot be secured, primarily because the keeper is not registered with the DVLA. Where a vehicle is causing a hazard or obstruction the LTA should remove rather than immobilise. Clamping and removals activity should only take place where it has clear transport benefits.
48. An LTA should formulate and publish clear guidelines for CEOs on the circumstances in which it will be appropriate to use clamping and removals. The guidelines should cover the relative order of priority in which vehicles should be clamped or removed based on the nature of the contravention. Powers should not be used randomly and guidelines should be drawn up in consultation with the police.
49. The decision on whether to clamp or to remove a vehicle requires an exercise of judgement and should only be taken by an appropriately trained CEO and made independent of the clamping/removals operatives. Vehicles should not

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<sup>18</sup> Paragraph 2 of the Schedule to the General Regulations 200X

<sup>19</sup> Regulation 10, General Regulations 2007

<sup>20</sup> The Civil Enforcement of Parking Contraventions (Appr<sup>20</sup> Regulation 10, General Regulations 2007  
oved Device) (England) Order 2007

<sup>21</sup> Throughout this document the term *and* will be used to represent *and/or* in relation to immobilisation and removals.

be removed or clamped by contractors unless a suitably trained CEO is present to confirm that the contravention falls within the guidelines.

50. Authorities **must not**<sup>22</sup> clamp in the first [60 minutes] following the expiry of paid for time, with the exception of persistent evaders. Where a vehicle has been clamped, a CEO **must**<sup>23</sup> affix to the vehicle a notice and the regulations set out what the notice **must**<sup>24</sup> say. The immobilisation device may only be removed by or under the direction of a person authorised to do so by the LTA, following payment of the release fee and the penalty charge (or penalty charges in the case of a persistent evader).
51. If a driver returns to the vehicle whilst clamping or removal is taking place, it is recommended that the clamping or removal is halted and not pursued, unless the clamp is secured or the vehicle has all its wheels aboard the tow truck. If clamping or removal is halted the PCN should still be enforced as normal.
52. When a vehicle is first clamped and then subsequently removed to the pound, the clamp release fee is not payable.
53. Where vehicles are removed, LTAs should ensure the police, or in London Trace Services<sup>25</sup>, are contacted and advised of the time, place, vehicle registration number, and pound to attend for retrieval so they can deal with queries from motorists who are likely to conclude that their vehicle has been stolen.
54. Where a vehicle has been clamped or removed, an authority should seek to make it available for use by its owner immediately upon payment. In the case of clamp release, LTAs should set maximum times for releasing vehicles once payment has been received. These should be published on their website along with their parking policy guidelines. These should be within one hour from payment being received, with a maximum time limit of two hours. The act of clamping and/or removal is the punishment and further inconvenience and potential cost from prolonged release times is not appropriate.
55. Authorities **must**<sup>26</sup> inform the vehicle owner in writing of the right to make a representation about a removed vehicle, the grounds on which representations can be made, and if the representation is rejected their subsequent right to appeal. This is particularly important when payments are made by credit card over the telephone. The authority will also need to set out clearly the relevant time scales for representations and appeals.

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<sup>22</sup> Regulation 13 (5)(a) and (b), General Regulations 2007

<sup>23</sup> Regulation 12, *ibid*

<sup>24</sup> *ibid*

<sup>25</sup> Trace Services are operated by the ALG. London Boroughs may also inform the ALG who will subsequently inform Trace.

<sup>26</sup> Regulation 24(3), General Regulations 2007

56. Storage charges should not begin to apply until midnight on the day following the removal of a vehicle.<sup>27</sup>

Wheelclamping and Removals: Special Consideration for disabled badge holders and vehicles with diplomatic registration plates

57. CEOs should be aware of special considerations to be followed in respect of valid Blue Badge holders<sup>28</sup> and vehicles with diplomatic plates<sup>29</sup>:

58. Vehicles displaying a valid and genuine Blue Badge **must not**<sup>30</sup> be clamped and, as a general rule, should not be removed. In exceptional circumstances (for example, where a vehicle displaying a Blue Badge is causing a safety hazard), the vehicle should be moved to a safe spot nearby, where possible within sight of its original location. The relocation of vehicles displaying a Blue Badge should not attract a removal fee. The police should be notified in case the owner reports his vehicle stolen.

59. Diplomatic vehicles have registration plates marked with a D or an X, or have personalised plates composed of a country's initials or an abbreviation of its full name. In general, diplomatic vehicles should not be clamped. The exception is for X registered vehicles which have been identified as persistent evaders. In terms of removals, X registered vehicles can be removed as normal, however where diplomatic vehicles with D or personalised plates are causing an obstruction or danger, they should only be repositioned close by as an extreme measure. In such a circumstance, an LTA should not seek to recover the costs of removal.

Persistent Evaders

60. Some motorists contravene parking regulations deliberately and on a regular basis and fail to settle the debts incurred. Where a vehicle has accrued 3 or more outstanding PCNs that have not been paid, represented against or appealed against within the statutory time limits, or their representations and appeals have been rejected but no payment has then been made, the owner is a "persistent evader". This is usually because the vehicle is not registered on the DVLA database and the owner is confident that they can evade paying any penalty charges incurred. Where a vehicle appears to be registered in the UK, but is not on the DVLA database, consideration should be given to involving the police.

61. When found to be parked illegally, a persistent evader should be clamped or removed 15 minutes<sup>31</sup> after the issue of the PCN and confirmation of the

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<sup>27</sup> Storage charges apply for each period of 24 hours, or part thereof reckoning from noon on the first day after removal during which the place at which the vehicle is stored is open for the claiming of vehicles before noon.

<sup>28</sup> Further guidance can be found in the DfT Blue Badge Scheme Leaflet, Parking concessions for disabled and blind people

<sup>29</sup> Foreign Office guidance

<sup>30</sup> Gen Regs. Regulation 13 (1)

<sup>31</sup> Traffic Management Act 2004 Part 6 Section 79(6) and regulation 13(5)(a) General Regulations 2007

persistent evader status. The benefit of removal is that it requires proof of ownership and a registered address before release of the vehicle. Furthermore, clamping prevents law abiding motorists from using valuable kerb space. The information about ownership and address of native vehicles should be passed to DVLA to improve their database.

62. An authority should use its statutory power<sup>32</sup> to obtain payment from a persistent evader of all outstanding PCNs, whether or not they issued them.

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<sup>32</sup> Regulation 14(2)(b), General Regulations 2007



## **(IX) Policy and Administrative Functions**

### Providing a Quality Service

63. LTAs should ensure that their processes for the pursuit of outstanding penalties and the handling of challenges, representations and appeals are efficient, effective and give impartial and objective consideration to a motorist's case. Processes **must** comply with all relevant primary legislation, regulations, traffic regulation orders and local byelaws. Authorities are encouraged to seek independent quality assurance of their CPE processes.
64. LTAs should deal promptly and professionally with contacts from motorists. Authorities are encouraged to set time and quality targets, in addition to any statutory time limits, for dealing with queries, requests for evidence, etc and should report on performance against these targets in their annual report. It is recommended that LTAs use first class post and ensure that the date appearing on official documents is the date on which that document was posted in order to avoid unnecessary delays.
65. Authorities should remember that an appeal is a judicial proceeding and that time limits for contacts are prescribed in legislation or set using adjudicator's judicial powers. Authorities are strongly advised to respond promptly to contacts from the adjudicator concerning appeals cases.
66. LTAs should offer motorists flexible and efficient ways - including e-mail and telephone - to contact the authority throughout the enforcement process whilst ensuring there is an adequate audit trail that will satisfy auditors and rebut any accusations of unfairness.

### Collecting Penalty Charges

67. The Penalty Charge is usually payable by the owner of the vehicle, except if the vehicle was hired at the time of the contravention. A penalty charge is not payable if criminal proceedings have been taken or a Fixed Penalty Notice issued with respect to the contravention. If this happens and the PCN has been paid, the LTA **must**<sup>33</sup> refund it.
68. LTAs should offer motorists a range of facilities for paying penalty charges. Where payment centres are used, authorities should ensure that these are safe and accessible. LTAs should ensure that any payment facility (particularly telephone and online payments) are able to confirm to the payer any amount outstanding if part payment only has been received and accepted.
69. Authorities should make appropriate allowances for delays to payments made by post when considering whether a payment was received within the statutory 14 day discount period.

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<sup>33</sup> Regulation 7(2), General Regulations 2007

70. A PCN is “paid” as soon as the payment arrives at any LTA payment office. Whether this is the parking payment office or another LTA payment office, the LTA should take prompt action to close the case. In particular, an authority’s systems should accurately record payments on the day they have been received so that no further enforcement action is taken.
71. Where payment is received by the LTA within 14 days of PCN issue authorities **must**<sup>34</sup> accept the discounted amount, which should be set at 50% of the penalty charge. When a PCN has been served by post using evidence from an approved device, the discount period is extended to 21 days from the date of dispatch<sup>35</sup>.

#### Issuing the Notice to Owner

72. In order to encourage the prompt payment of penalties and to minimise bad debts, LTAs may issue a Notice to Owner (NtO) 28 days after the PCN was issued if the PCN has not been paid. We expect authorities to deal with these as quickly and efficiently as possible. The ultimate limit, in the most exceptional circumstances, is 6 months<sup>36</sup>. The regulations set out the information that an NtO **must**<sup>37</sup> give.
73. LTAs should pay particular attention to ensuring that the information included on or with NtOs is clear as to what the authority can or cannot consider in the way of representations. It is recommended that where a CEO has taken a photograph, or camera evidence has been used to capture evidence of the parking contravention taking place, authorities send this evidence with the NtO as it should help to reduce unfounded representations.
74. Where a vehicle with a diplomatic registration plate receives a PCN but no payment is received within 28 days, an LTA should not issue an NtO but ensure that a record is kept of the unpaid fine. The Foreign and Commonwealth Office (FCO) will request details of all unpaid PCNs on an annual basis and then seek payment from the relevant contraveners.

#### Charge Certificate

75. Where an NtO has been served, the penalty charge has not been paid and no representation or appeal is under consideration, the authority may issue a charge certificate. This advises the vehicle owner that the penalty charge has been increased. Where no representations or appeals are under consideration, the LTA **must not**<sup>38</sup> issue the charge certificate before the end of 28 days beginning with the date on which the NtO was sent.

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<sup>34</sup> Paragraph 1(g), Schedule, General Regulations 2007

<sup>35</sup> Paragraph 2(d), Schedule, General Regulations 2007

<sup>36</sup> Regulation 20, General Regulations 2007

<sup>37</sup> Regulation 19(2), General Regulations 2007

<sup>38</sup> Regulation 21, General Regulations 2007

76. Where representations have been made and rejected, and no appeal has been made, the LTA **must not**<sup>39</sup> issue the charge certificate before the end of 28 days beginning with the date on which the Notice of Rejection (NoR) was served. This is to give the vehicle owner time in which to make an appeal.
77. Where cases proceed to adjudication, authorities **must not**<sup>40</sup> issue a charge certificate before the due processes have been completed. If an appeal is made and withdrawn before the adjudicator serves notice of the decision, the authority may, after 14 days beginning with the date on which the appeal was withdrawn, issue the charge certificate. Where a charge certificate is issued before an appeal is decided the appellant may use a witness statement<sup>41</sup> to render the charge certificate null and void. The adjudicator may then cancel the PCN on the grounds that the authority acted inappropriately.
78. If the penalty charge has not been paid 14 days after the Charge Certificate was sent, the authority may make application to the [Traffic Enforcement Centre at Northamptonshire County Court] to recover the increased charge as if it were payable under a county court order.

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<sup>39</sup> *ibid*

<sup>40</sup> Regulation 21, General Regulations 2007. Regulation 5(g), Representations and Appeals Regulations 2007

<sup>41</sup> A witness statement is a written oath made to the Traffic Enforcement Centre by the person who has had a debt registered against them either that they did not receive the NtO, they did not receive a Notice of Rejection after making a formal representation, or they did not receive a response to a appeal to the Parking Adjudicator.

## **(X) Considering Challenges / Representations / Appeals**

79. The vehicle owner may dispute the issuing of a PCN at three stages:
- Informal challenges (also known as informal representations) against the PCN may be made to a local authority before an NtO has been served;
  - Once served, a formal representation against the NtO may be made to the authority; and
  - If a formal representation is rejected the motorist may appeal against the Notice of Rejection to an independent adjudicator.
80. It is in the interests of the authority and the motorist to resolve any dispute at the earliest possible stage. Regard should be given to the action taken by the CEO in issuing the PCN but representations should always be given a fresh and impartial consideration.
81. An authority has the power of discretion to cancel a PCN at any point throughout the CPE process. Furthermore LTAs have the discretion to cancel a PCN even if a contravention has occurred if they deem it to be appropriate. Under general principles of public law authorities have a duty to act fairly and proportionately<sup>42</sup> and they are encouraged to use discretion sensibly and reasonably and in line with the public interest.
82. The exercise of discretion should be approached objectively and without regard to the LTA's financial interest in the penalty, or decisions that may have been taken at an earlier stage in proceedings. Authorities should formulate (with advice from their legal department) and subsequently publish their policies on the exercise of discretion. These should be exercised flexibly and each case should be judged on its merits. An LTA should be ready to depart from its policies if this is warranted.
83. LTAs have a duty<sup>43</sup> not to fetter their discretion, so should ensure that PCNs, NtOs, leaflets and the ad hoc advice they give to motorists does not mislead the public about what an authority may consider in the way of representations. Whilst it is legitimate for authorities to specify the statutory grounds on which representations might result in a penalty charge not being pursued, authorities should not suggest that certain grounds cannot be considered or will not result in the cancellation of a penalty charge.
84. The process of considering challenges, representations and defence of appeals is a legal process that requires officers dealing with these aspects to be trained in the relevant legislation and how to work within it

### Challenges - also known as informal representations

85. It is likely that an LTA will receive informal challenges against PCNs before the issue of the NtO. These are likely to be received within the 14 day

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<sup>42</sup> Failure to act in accordance with the general principles of public law may lead to a claim for a decision to be judicially reviewed.

<sup>43</sup> As above.

discount period (21 days when PCN issued by post). In order to foster good customer relations and reduce the number of NtOs sent and the number of representations to be considered, LTAs should respond to these challenges with care and attention, and in a timely manner. LTAs should also ensure that suitably trained staff are in place with the appropriate authority to deal with these challenges. If the evidence or circumstances (including mitigating circumstances) provide genuine grounds for cancellation, then the LTA should cancel the PCN and advise the motorist accordingly. If the LTA considers that there are no grounds for cancellation the LTA should inform the motorist and explain the reasons.

86. If a challenge is received within the discount period and subsequently rejected, the Secretary of State recommends that the LTA should consider re-offering the discount for a further 14/21 days to incentivise payment.

### Formal Representations

87. The LTA should not contract out the consideration of formal representations. LTAs should ensure that a sufficient number of suitably trained and authorised officers are available to decide representations and appeals on their merits in a timely and professional manner.
88. Where CPE on-street enforcement and associated operations are done by in-house staff, there should be a clear separation between the staff that make decisions about the issuing and processing of PCNs and the staff that make decisions about representations. This is particularly important for cases referred back by the adjudicators. This ensures decisions can be reached impartially.
89. Elected Members may wish to review their parking representations policies, particularly in the area of discretion to ensure consistency with published policies. However, elected Members or unauthorised staff should not, under any circumstances, play a part in deciding the outcome of individual challenges or representations. This is to ensure that all decisions are made by fully trained staff on the facts presented. The authority's standing orders should be specific as to which officers have the authority delegated to them to cancel PCNs. There should also be a clear audit trail of decisions taken with reasons for those decisions
90. The grounds on which a representation can be made **must**<sup>44</sup> be stated on the Notice to Owner and are set out in the regulations<sup>45</sup>. Authorities have the discretion to accept late representations, and are encouraged to use this discretion when a valid reason for the delay is given.
91. The LTA **must**<sup>46</sup> consider representations and any supporting evidence, and the Secretary of State recommends that this is done promptly and

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<sup>44</sup> Regulation 19, General Regulations 2007

<sup>45</sup> Regulation 4, Representations and Appeals Regulations 2007

<sup>46</sup> Regulation 5, Representations and Appeals Regulations 200X

conscientiously. The LTA **must**<sup>47</sup> tell the person who made the representation what they have decided and why. If the representation is accepted, the authority **must**<sup>48</sup> cancel the PCN and refund any sum already paid. Cancellation does not prevent the authority from serving another PCN for the same contravention to another person.

92. Local authorities **must**<sup>49</sup> consider representations against clamping or removal, and to have served notice of their decision on the person concerned within 56 days of receiving such a representation. It is recommended that this time limit is adopted for all other representations, although representations should be considered in the quickest possible timeframe.

93. Where a response or notice of decision is likely to be delayed for any reason, the LTA should send an acknowledgement of receipt of representation and explain the representation process, including relevant timescales as to when a notice of decision will be dispatched.

#### Notification of the outcome of representations

94. Once an authority has come to a decision about a representation, it should promptly inform the person making the representation – who would usually be the owner of the vehicle. If the person making the representation is not the owner, then the owner should be informed, where possible, of the decision.

95. If the representation is rejected, the authority **must**<sup>50</sup> serve a notice of rejection (NoR) stating that a Charge Certificate will be issued unless the PCN is paid, or an appeal made. The notice of rejection **must**<sup>51</sup> set out the general form and manner in which an appeal can be made and that the adjudicator has the power to award costs. The Government's Tribunals for Users programme emphasises the importance of giving feedback to improve the representations and appeals procedure and help prevent unnecessary appeals. Therefore, following any decision on a representation the authority should give the owner, in addition to the minimum required information, brief reasons for the decision.

96. If, following an unsuccessful representation, an authority decides to offer a new discount period for prompt payment, it should set out the relevant dates of this period in the Notice of Rejection.

#### Adjudication

97. Adjudicators are appointed jointly by all the local authorities with CPE powers, with the agreement of the Lord Chancellor, and are wholly independent. They have a judicial position and should be treated accordingly.

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<sup>47</sup> *ibid*

<sup>48</sup> *ibid*

<sup>49</sup> Regulation 25(2) General Regs, and Regulation 9(2), Representations and Appeals Regs,

<sup>50</sup> Regulation 6, Representations and Appeals Regulations 200X

<sup>51</sup> *ibid*

98. If a local authority rejects a formal representation, the person who made the representation has the right of appeal within 28 days of the date of service of the NoR<sup>52</sup> to an adjudicator. An adjudicator has the discretion to consider an appeal made after 28 days in appropriate circumstances. The grounds for appeal are the same as those for formal representations and are set out in the regulations<sup>53</sup>.
99. If an adjudicator allows the appeal they may direct the authority to cancel the NtO and refund any sum already paid in respect of the penalty charge. The authority **must**<sup>54</sup> comply with this direction without delay.

#### Cases referred back to the Authority by the Adjudicator

100. The adjudicator has no power to direct the LTA to cancel an NtO when a contravention took place where there are mitigating circumstances. The adjudicator does, however, have the power<sup>55</sup> to refer a case back to the LTA for reconsideration. Such cases should be directed to the Office of the Chief Executive and a decision **must**<sup>56</sup> be reached within a period of 35 days from the notice of an adjudicator's direction, otherwise the adjudicator's finding is automatically deemed to have been accepted. The LTA **must**<sup>57</sup> have regard to the reasons given by adjudicators for their recommendation and where it does not accept an adjudicator's recommendation it **must**<sup>58</sup> notify the adjudicator and the appellant to inform them of the reasons for its decision before issuing the charge certificate. If the LTA decides to accept the recommendation of the adjudicator, it **must**<sup>59</sup> cancel the NtO without delay and refund any sums paid in relation to the NtO.

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<sup>52</sup> Regulation 7, *ibid*

<sup>53</sup> Regulation 26 General Regulations 2007, Paragraph 7 Schedule to the Appeals and Representations regulations, 2007; Paragraph 10, Schedule to the Appeals and Representations Regulations 2007,

<sup>54</sup> *ibid*

<sup>55</sup> Regulation 26(5) General Regulations 200X and Regulation 10(5) Representations and Appeals Regulations 200X

<sup>56</sup> Regulation 26(6) General Regulations 200X and Regulation 10(6) Representations and Appeals Regulations 200X

<sup>57</sup> *ibid*

<sup>58</sup> Regulation 26(7) General Regulations 200X and Regulation 10(7) Representations and Appeals Regulations 200X

<sup>59</sup> Regulation 26(8) General Regulations 200X and Regulation 10(8) Representations and Appeals Regulations 200X

**(XI) Ensuring the Effectiveness of CPE**

101. LTAs can improve the efficiency and effectiveness of their CPE regimes by maintaining a regular dialogue - and undertaking joint activity where appropriate - with their service providers, the police, neighbouring authorities, the Driver and Vehicle Licensing Agency (DVLA) and the Traffic Enforcement Centre (TEC).
102. In particular, authorities should develop and maintain good relations with the police. In many areas the police continue to have responsibility for enforcing endorsable and moving traffic offences, and for taking action against vehicles where security or other traffic policing issues are involved. Regular liaison will help to ensure that the civil and the criminal enforcement operate effectively. Effective relations between the police and an LTA can also assist in tackling threats against, or abuse of, CEOs.
103. It is recommended that LTAs keep abreast of developments in the CPE operations of neighbouring authorities' and investigate the benefits of consistent, and possibly collaborative, approaches to enforcement.
104. Authorities should develop good working relations with the DVLA, in particular with regards local authorities receiving keeper information promptly. Authorities should also consider assisting DVLA in tracking down Vehicle Excise Duty (VED) evaders by notifying them of any vehicles that are not displaying a valid VED disc.
105. Where a LTA draws up its own contract for the provision of CPE services by independent contractors or CEOs employed directly by the authority, it should take care to ensure that the measures of effectiveness incorporated in the contract and the basis upon which any rewards or penalties will be calculated are, wherever possible, based on outcomes rather than outputs. Contracts should never assess performance and calculate rewards or penalties on the basis of the number of PCNs, clappings or removals. Outcome indicators might include the number and duration of contraventions and the localised impact they appear to have had on road safety and congestion. Incentives could work towards good customer service, for example in matters of clamping and removals, that performance figures be primarily based on the release time of the vehicle.
106. When enforcement operations are carried out "in house", there should be a service level agreement (SLA) incorporating the specification terms and conditions required by the client – in the same manner as for a contract with an external service provider.
107. As far as possible, the success of contractors and CEOs should be judged according to how far desired transport outcomes have been achieved.



The Secretary of State recommends that LTAs use a balanced SLA or model contract, such as the one developed by the British Parking Association.<sup>60</sup>

### Reporting

108. All incomes and expenditure by local authorities in connection with their parking activities under Part 6 of the TMA are governed by Section 55 (as amended) of the Road Traffic Regulation Act 1984. This means that London authorities **must**<sup>61</sup> keep an account of all income and expenditure in respect of designated parking places and their functions as an enforcement authority, within paragraphs 2 and 3 of schedule 7 to the TMA. English authorities outside London **must**<sup>62</sup> keep an account of all income and expenditure in respect of designated parking places which are not in a civil enforcement area, designated parking spaces which are in a civil enforcement area and their functions as an enforcement authority.
109. Where an authority makes a surplus on its CPE operations, it **must**<sup>63</sup> act in accordance with legislative restrictions set down for on street parking income in S55 (as amended) of the RTRA 1984 on the purposes to which any surplus may be put.
110. Reporting is an important part of accountability. The transparency given by regular and consistent reporting should help the public understand and accept CPE. Monitoring also benefits the authority by providing management information for performance evaluation and help to identify where improvements need to be made to the CPE regime. It provides a framework for performance comparisons between councils.
111. LTAs should produce an annual report on their enforcement activities, within six months of the end of each financial year. The report should be published in appropriate media and as a minimum cover the financial, statistical and other data (including any parking or CPE targets) set out in Annex A.

**DfT**  
**July 2006**

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<sup>60</sup> For further details contact the BPA ref: Parking Model Contract 2005 or go to <http://www.britishparking.co.uk>

<sup>61</sup> See amendments to s55 Road Traffic Regulation Act 1984 in Regulation 29, General Regulations 200X

<sup>62</sup> *ibid*

<sup>63</sup> Road Traffic Regulation Act 1984, Section 55 as amended.

## **Annex A**

### **LTA Annual Reports - information they might contain**

#### Financial

- Total income and expenditure on the on-street and off-street parking account;
- Breakdown of income by source (i.e. 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 on-street account; and
- Details of how any financial surplus has been spent, including the benefits that can be expected as a result of such expenditure.

#### Statistical

- Number of PCNs issued for on-street parking contraventions;
- Number of PCNs issued for off-street parking;
- Number of PCNs paid;
- Number of PCNs paid within 14 days;
- Number of PCNs against which a formal or informal representation has been made;
- Number of PCNs cancelled (i.e. where an informal or statutory representation is successful);
- Number of PCNs written off
- Number of vehicles wheelclamped on-street; and
- Number of vehicles removed from on-street.

The above statistics refers only to PCNs issued during a set period [to be described], this will ensure that authorities do not count payments made during that period, but where the PCN was issued outside the period. This will contribute towards honesty and transparency.

#### Performance against targets

- Performance against any parking or CPE targets. (Authorities should note the recommendations throughout this guidance on the areas in which such targets might be appropriate.)

**Annex B****List of Abbreviations Used In This Publication**

ALG	Association of London Government
CEO	Civil Enforcement Officer
CEA	Civil Enforcement Area
CPE	Civil Parking Enforcement
CPZ	Controlled Parking Zone
DfT	Department for Transport
DVLA	Driver and Vehicle Licensing Agency
FCO	Foreign and Commonwealth Office
LTA	Local Traffic Authority
LTP	Local Transport Plan
PCN	Penalty Charge Notice
NtO	Notice to Owner
RTRA	Road Traffic Regulation Act 1984
SLA	Service Level Agreement
TEC	Traffic Enforcement Centre
TfL	Transport for London
WAG	Welsh Assembly Government