

Report to: Executive Member for
Environmental Services

Date: 26th February 2008

Report of: Director of Environmental Services **Report No:** EMES/155/08

Contact Officer: Ian Taylor, Head of Parking **Tele No:** 01204 336350
Services

Report Title: Traffic Management Act 2004 (TMA 2004): Part 6

Non Confidential: **(Non-Confidential)** This report does **not** contain information which warrants its consideration in the absence of the press or members of the public

Purpose: To seek approval from the Executive Member for Environmental Services to the recommendations contained in this report and thus enable the Council to implement Part 6 of the Traffic Management Act 2004 (TMA).

Recommendations: It is recommended that the Executive for Environmental Services agrees to:

1. The Implementation of the Traffic Management Act 2004.
2. Setting the level of Penalty Charges in respect of Civil Enforcement at £70 for Higher Level Contraventions and £50 for Lower Level Contraventions, as per appendix A of this report.
3. Authorise the Director of Legal and Democratic Services to advertise these Penalty Charge levels and other additional charges as detailed in Appendix A.
4. Authorise the Director of Legal and Democratic Services to take the necessary action to comply with TMA 2004.
5. Authorise the Director of Environmental Services to consult with the Police regarding the proposal for Civil Enforcement Officers to commence enforcement of parking restrictions at Pedestrian Crossings.
6. Enforcement of Double Parking following a suitable media campaign.
7. Enforcement of Dropped Crossings following receipt of guidance from the DfT and endorsement by Policy Development Group.
8. Enforcement with approved devices by the enforcement contractor following the production and agreement to their Code of Practice.
9. Issuing of postal PCNs following camera enforcement.
10. Authorise the Director for Environmental Services to liase with the enforcement contractor to set up and implement wheel clamping and removal of persistent offender vehicles.
11. Amendment of the Scheme of Delegation.

Decision:

Background Doc(s):

Traffic Management Act 2004

(for use on Exec Rep)

Signed:

Leader / Executive Member

Monitoring Officer

Date:

Summary:

(on its own page

with background docs)

The report identifies changes to parking enforcement brought about by the Traffic Management Act 2004 (TMA) and seeks authorisation to implement changes brought about by the Act.

Introduction

The Council assumed responsibility for Decriminalised Parking Enforcement (DPE) on 4th September 2000. Parking enforcement is presently governed by the Road Traffic Regulation Act 1984 (RTRA 1984) and the Road Traffic Act 1991 (RTA1991).

The introduction of Part 6 of the Traffic Management Act (TMA) on 31st March 2008 will result in a number of changes to the enforcement process. This report sets out the issues.

The objective of the TMA is to make parking enforcement more transparent and consistent throughout the country.

Summary Of The Main Issues Included In TMA 2004

The main changes brought about by the introduction of the TMA 2004 are set out below:

Name Changes

DPE will be changed to Civil Parking Enforcement (CPE) whilst Parking Attendants (PAs) will become known as Civil Enforcement Officers (CEOs). The name changes will necessitate amendments to uniforms, stationery etc.

The name change, is intended to recognise that, local authorities may wish CEOs to undertake enforcement of other activities, although the guidance clearly indicates that authorities are not encouraged to distract CEOs from the main duty of parking enforcement.

Setting The Level Of Penalty Charges

One important aspect of the new legislation is that differential Penalty Charge levels need to be introduced based upon the type of contravention. TMA 2004 states that councils must apply either a higher or lower level of penalty charge in respect of different contraventions depending on the level of seriousness of the contravention.

Such an approach should be welcomed by the council, as it seeks to penalise significant parking offences more severely than lesser offences and hopefully this will be perceived as a fairer system. For example, parking on double yellow lines or in a disabled bay without displaying a valid disabled badge, will attract a higher level of penalty charge than an expired pay and display ticket. A list of higher and lower level contraventions are set out in Appendix A of this report. It should be noted that some of these contraventions are only applicable in London. Bolton will continue to enforce the current contraventions and will only introduce new contraventions if specifically outlined in this report.

For Authorities outside London, the new legislation provides an option of two penalty bands, either an upper tariff (Band 1) of £70 and £50 or a lower tariff (Band 2) of £60 and £40. It should be noted that a 50% discount applies to these rates if the PCN is paid within the discount period.

The Executive Member is advised that the guidance states that the requirement is to set penalty charges at a level that is reasonable and which sets out to attain a high level of compliance.

It should be noted, that if tariff Band 2 is chosen, the income generated from PCNs would not cover the budgeted expenditure on the CPE Account.

Other councils in the conurbation have indicated that they will be adopting Band 1 charges.

New charging levels are set out in Appendix B.

Appeals And Adjudication

New administrative procedures for dealing with representations and appeals are to be introduced. These include:

- The introduction of new time limits for dealing with PCNs (these however do not give rise to a problem at Bolton as our processing is already consistently within the deadlines being introduced);
- Parking Adjudicators (NPAS) will be able to rule on mitigating circumstances;
- NPAS will be able to rule where incorrect procedures have been followed and instruct cancellation and repayment of PCNs. In certain circumstances NPAS will direct such cases to the Council's Chief Executive and the Council will have 35 days to respond;
- The Council has to make evidence, including images, available at the parking office, free of charge;
- The grounds for representation have been widened and increased; and
- First class postage is required on all challenge, representations and appeal correspondence and dates of notices must be posting dates, not printing dates.

Parking Across Dropped Crossings

The TMA makes parking across sections of footway, which have been dropped for the purpose of assisting the passage of pedestrians, cyclists and vehicles, a specific contravention. There are exemptions where loading, boarding and alighting are taking place.

Whilst the ability to enforce in these situations is a positive step, it is recommended that enforcement of residential dropped crossings does not take place unless an enforcement request is received directly from the owner/occupier. The reason for this is that householders have the right to park across their own dropped crossings and to give permission for visitors to do likewise.

The Council has been recently advised that there is no provision within The Traffic Signs Regulations and General Directions 2002 to line and sign dropped crossings. Until, this problem is resolved, by the Department for Transport (DfT) it will not be possible to enforce this contravention.

Parking On Pedestrian Crossings

Currently, only the police can enforce where vehicles are parked on restricted areas of a pedestrian crossing. With effect from 31st March 2008, CEOs will be able to issue a Penalty Charge for this contravention. This is seen as a positive move that will contribute to road safety. Consultation with the Police is required before such enforcement can commence.

Double Parking

Double parking is defined within the TMA as follows:

“In a special enforcement area a vehicle must not be parked on the carriageway in such a way that no part of the vehicle is within 50cm of the edge of the carriageway”.

It is proposed that this contravention should be applied where double parking or other inconsiderate parking affects the passage of other vehicles, cyclists or pedestrians crossing the carriageway where there is no controlled crossing.

Camera Enforcement

The TMA allows for the enforcement of parking regulations with approved devices (cameras). The camera equipment, must, be approved by the DfT.

CCTV enforcement is only allowed in specified circumstances i.e. in places where enforcement is difficult or sensitive and CEO enforcement is not practical. CCTV enforcement cannot be used where permits or exemptions apply e.g. Blue Badges.

If camera enforcement is adopted, it is proposed that it will be utilised to deal with issues such as school keep clears, in areas where a high number of low duration parking contraventions take place e.g. stopping outside takeaways, or where the CEO may be subject to threats or acts of violence or a persistent offender who does not allow adequate time for a PCN to be issued.

A Code of Practice will be developed by the enforcement contractor and shared with Members prior to camera enforcement taking place. The Code of Practice will deal with issues such as privacy, integrity and fairness.

Postal Penalty Charge Notices

The TMA permits PCNs to be issued by post to the registered owner/keeper of the vehicle in the following circumstances:

- Where the contravention has been detected on the basis of evidence from an approved device;
- If the CEO has been prevented from serving the PCN, either by affixing it to the vehicle or by giving it to the person who appears to be in charge of that vehicle. (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); and

- If the CEO had begun preparing a PCN but did not have enough time to serve it before the vehicle was driven away or the driver refuses to accept the notice.

Postal PCNs will only be issued where the contravention is supported by evidence from an approved device (CCTV vehicle and/or Headcams). The PCN must be issued within 28 days of the contravention and will offer a discount payment period of 21 days.

Clamping and Removals

The provisions within TMA 2004 allow for the vehicle of a persistent evader to be wheel clamped and removed, but only when the vehicle is observed contravening a parking regulation and a PCN has been issued.

Persistent evaders are motorists who have at least three PCNs outstanding, they repeatedly contravene parking regulations and they avoid paying usually because the owners are untraceable.

Once the vehicle has been clamped, the driver must pay both the PCN and release fee, currently £105, further costs will incur where the vehicle is stored following removal and/or disposed of. The downside is that the Regulations do not allow for the Council to insist on any other outstanding PCNs being paid before the clamp is removed. If the driver has not paid for the clamp to be removed after 12 hours, the vehicle may be lifted and put into storage. Lifting and storage fees will then apply. If the vehicle has not been claimed within 14 days, it would then be treated as abandoned and disposed of.

It is not considered that persistent offender wheel clamping and removal will recover much of the current outstanding debt but it should serve as a deterrent to individuals not paying in the future.

It is proposed that the Council engage with NCP to deliver this service. A Code of Practice will be shared with Members prior to clamping and removal being introduced.

Proposed charges are included in Appendix B to this report.

Policy Issues

Following the introduction of the new legislation, a number of policy changes will be necessary. These are summarised below:

- The Council must publish its policies on how it deals with appeals and representations from members of the public;
- Policies covering the exercise of discretion need to be documented, agreed with the Council's Legal Services Department and published;
- The Council must publish its policies on observation periods - these are the periods following initial observation that are PA must allow before issuing a PCN;

- The service must be monitored as an ongoing process and an annual report has to be produced for publication within six months of year end;
- The Council are required to publish the standards and guidelines under which CEOs will operate, when vehicles will be removed, how the Council will exercise its discretion to cancel PCNs and when it will consider late representations;
- The Council needs to review its parking policies on a regular basis in consultation with local stakeholders and, once finalized, these should be made publicly available in an annual report;
- The Council is encouraged to have independent assessment and quality assurance of their CPE process (Parking Services are regularly reviewed by independent private sector specialists and are already Quality Assured);
- In situations where a contravention has occurred but where mitigating circumstances may apply the Council will make and publish guidelines on the use of discretion; and
- The Council is also required to produce an annual report of their enforcement activities to provide, financial, statistical and performance information. The Act recommends that the report should be publicized on the web site and made available to anyone who requests it.

It is recommended that, all of the policy issues referred to above should be incorporated within the TMA 2004 Office Procedures Manual that is currently being produced by Argonaut Services. The manual will then be made available for public inspection thus demonstrating the Council's commitment to transparency of the operation

Implementing Other Requirements Of The TMA 2004

There are many other legal, procedural, administrative and operational requirements of the new Act. It is proposed that the Executive Member for Environmental Services agrees to allow officers to progress these matters over the period up to 31st March 2008. The issues are as follows:

Amendment To Standing Orders

The Secretary of State in the Statutory Guidance states that Councils should amend their Standing Orders to identify named officers responsible for the cancellation of PCNs. The Secretary of State also recommends that only fully trained officers make such decisions.

Traffic Regulation Orders (TROs)

TROs will need to be amended to take account of the changes in enforcement legislation.

Staff Training

Parking Services staff and CEOs need to be fully briefed and were necessary undertake training in the implementation of the new policies and legislation.

IT System Changes

There is a need to liaise with our current IT provider to implement changes to the notice processing system for differential penalty rates, camera and postal notices and various new time limits. It will also be necessary for the IT system to be able to accommodate both TMA 2004 penalties and RTA 1991 penalties simultaneously for at least a six month period after 31st March 2008.

Initial indications are that changes to the existing IT system are deliverable by the deadline.

Publicity

The intention behind many of the requirements of the TMA is to make the enforcement of parking more transparent to the public. There is therefore, a requirement to undertake a media campaign to advise motorists of the new proposals. It is a requirement that the new levels of penalty are published not less than 14 days (17th March) before their commencement.

Financial Implications

There are potential financial implications and these are outlined in the report. In broad terms, the effect of the differential level of PCN, depending on the severity of the offence and the level of penalty charge, is likely to have an effect on the enforcement revenues.

There will be some costs associated with the introduction of TMA 2004, for example, changes in uniforms, stationery, CCTV enforcement, signage, legal changes, training and to the IT system.

It is expected that these costs will be contained within existing budgets.

Risk

There is one significant area of risk, which is, that the changes required by the TMA 2004 are not implemented by 31st March 2008 and parking enforcement has to cease.

Conclusion

TMA 2004 will undoubtedly make parking enforcement more complex to administer, but it should result in a more fair, equitable and reasonable service.

The introduction of the new legislation will bring new challenges and it will also allow us to build on the success of recent years.

Recommendations

It is recommended that the Executive Member for Environment agrees to:

1. The Implementation of the Traffic Management Act 2004.

2. Setting the level of Penalty Charges in respect of Civil Enforcement at £70 for Higher Level Contraventions and £50 for Lower Level Contraventions, as per appendix A of this report.
3. Authorise the Director of Legal and Democratic Services to advertise these Penalty Charge levels and other additional charges as detailed in Appendix A.
4. Authorise the Director of Legal and Democratic Services to take the necessary action to comply with TMA 2004.
5. Authorise the Director of Environmental Services to consult with the Police regarding the proposal for Civil Enforcement Officers to commence enforcement of parking restrictions at Pedestrian Crossings.
6. Enforcement of Double Parking following a suitable media campaign.
7. Enforcement of Dropped Crossings following receipt of guidance from the DfT and endorsement by Policy Development Group.
8. Enforcement with approved devices by the enforcement contractor following the production and agreement to their Code of Practice.
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10. Authorise the Director for Environmental Services to liaise with the enforcement contractor to set up and implement wheel clamping and removal of persistent offender vehicles.
11. Amendment of the Scheme of Delegation.

Higher Level Contraventions

- Parked in a restricted street during prescribed hours i.e. parked on yellow lines
- Parked or loading/unloading in a restricted street where waiting and loading restrictions are in force
- Parked in a residents/shared use parking place without clearly displaying a permit/pay and display ticket
- Parked in a suspended bay
- Parked in a parking place or area not designated for that class of vehicle
- Parked in a loading place during restricted hours without loading
- Vehicles parked more than 50cm from the edge of the carriageway and not within a designated parking place
- Parked adjacent to a dropped footway
- Parked in a designated disabled person's parking place without clearly displaying a valid disabled person's badge
- Parked on a taxi rank
- Stopped on a restricted bus stop/stand
- Stopped in a restricted area outside school
- Parked wholly or partly on a cycle track
- A commercial vehicle parked in a restricted street in contravention of the Overnight Waiting Ban
- Parked in contravention of a commercial vehicle waiting restriction
- Parked in contravention of a coach ban
- A heavy or commercial vehicle wholly or partly parked on a footway, verge or land between two carriageways
- Parked with one or more wheels on any part of an urban road other than a carriageway (footway parking)
- Stopped on a pedestrian crossing and/or crossing area marked by zig-zags
- Parked in a loading gap marked by a yellow line
- Parked in a parking place designated for police vehicles
- Stopping where prohibited (on a red route or clearway)
- Parking in a permit space without displaying a valid permit
- Parking in a parking place designated for diplomatic vehicles
- Parked in an electric vehicles' charging place during restricted hours without charging
- Using a vehicle in a parking place in connection with the sale or offering or exposing for sale goods when prohibited

In respect of off-street parking places

- Parked in a loading area during restricted hours without reasonable excuse
- Parked in a restricted area in a car park
- Parked in a car park disabled person's parking space without clearly displaying a valid disabled person's badge
- Parked in a permit bay without displaying a valid permit
- Using a vehicle in a parking place in connection with the sale or offering or exposing for sale goods when prohibited

- Vehicles parked exceeds maximum weight and/or height and/or length permitted in the area
- Parked in a car park or area not designated for that class of vehicle
- Parked causing an obstruction

Lower Level Contraventions

- Parked without clearly displaying a valid pay & display ticket
- Parked after the expiry of paid for time
- Parked in a meter bay when penalty time is indicated
- Parked with payment made to extend the stay beyond initial time
- Parked at an out-of-order meter during controlled hours
- Parked displaying multiple pay & display tickets where prohibited
- Parked with engine running where prohibited
- Parked without clearly displaying two valid pay and display tickets when required
- Parked without payment of the parking charge
- Parked in a residents' parking space without clearly displaying a valid residents parking permit
- Parked in a residents' or shared use parking place displaying an invalid permit, an invalid voucher or an invalid pay and display ticket
- Re-parked in the same parking place within one hour of leaving
- Not parked correctly within the markings of the bay or space
- Parked for longer than permitted
- Parked in a disc parking place without clearly displaying a valid disc
- Parked in a disc parking place for longer than permitted
- Parked in a car park without clearly displaying a valid pay and display ticket
- Parked with additional payment made to extend the stay beyond time first purchased
- Parked beyond the bay markings
- Re-parked within one hour of leaving a bay or space in a car park
- Parked in car park when closed
- Parked in a pay and display car park without clearly displaying two valid pay and display tickets when required
- Parked in a parking place for a purpose other than the designated purpose for the parking place
- Parked with the engine running where prohibited

Level Of Penalty Charges

Below is the level of penalty charges and other additional parking charges relating to parking enforcement, assuming that the Executive Member for Environment agrees to set Band 1 charges.

Amounts payable by owners of vehicles issued with PCNs in respect of contraventions of both on and off street parking places orders, waiting and loading restrictions and all relevant parking contraventions, within the area of Bolton.

	Higher Level Penalty	Lower Level Penalty
Level of Penalty Charge	£70	£50
If the Penalty Charge is paid within the discount period	£35	£25
If the penalty is paid after the Discount period and the date The Notice to Owner was served	£70	£50
If the Penalty Charge is paid after Service of the Charge Certificate	£105	£75
Penalty Charge if paid after the Service of an Order for Recovery	£110	£80
Removal Release Fee	£105	
Vehicle Pound Storage Fee	£12 for each 24 hours or part thereof, that the vehicle is impounded	
Disposal of unclaimed vehicle	£50	