

**EXPLANATORY MEMORANDUM TO THE CIVIL ENFORCEMENT OF  
ROAD TRAFFIC CONTRAVENTIONS (GENERAL PROVISIONS) (WALES)  
REGULATIONS 2013 (2013 No. 362)**

This Explanatory Memorandum has been prepared by the Local Government and Communities Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Ministers' Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013.

I am satisfied that the benefits outweigh any costs.

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*Carl Sargeant*

Minister for Local Government & Communities

26 February 2013

## **1. Description**

1.1 These draft regulations form part of a package of statutory instruments which will enable local authorities in Wales to assume responsibility for enforcement of bus lane and some moving traffic offences. The package will enable enforcement to be carried out by civil enforcement officers acting on behalf of local authorities, in addition to police officers and traffic wardens.

1.2 These specific regulations which are made by both the Lord Chancellor and Welsh Ministers are subject to the negative procedure in both Parliament and the National Assembly for Wales. These regulations provide for the civil enforcement of road traffic contraventions in Wales and for the immobilisation of vehicles for parking contraventions, including details about the service of penalty charges. They also prescribe requirements in relation to use of income generated from penalty charge notices and deal with the appointment of adjudicators by enforcement authorities.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

2.1 There are three additional statutory instruments which complete the package of legislation on civil enforcement. These are listed below.

### **The Civil Enforcement of Road Traffic Contraventions**

#### **(Representations and Appeals) (Wales) Regulations 2013 (2013 No.**

**359)** – These regulations have been made by the Lord Chancellor following a resolution of both Houses of Parliament. They set out procedures whereby persons upon whom civil penalties have been imposed for parking, bus lane or certain moving traffic contraventions in areas where civil enforcement applies, or whose vehicle has been immobilised on account of such contraventions, can make representations to the relevant enforcement authority against the imposition of the penalties in particular cases and can appeal to an independent adjudicator if their representations are rejected. The regulations set out the grounds for making representations and for appealing and the Schedule contains rules for the conduct of proceedings before adjudicators.

### **The Civil Enforcement of Road Traffic Contraventions**

#### **(Representations and Appeals) Removed Vehicles (Wales)**

**Regulations 2013 (2013 No. 361 (W.43))** – These regulations were laid before the Assembly subject to approval by resolution and have been made by Welsh Ministers. They deal with the appeal process where a vehicle owner does not agree that a vehicle should have been removed and/or disposed of by the local authority.

**The Civil Enforcement of Road Traffic Contraventions (Approved Devices) (Wales) Order 2013 (2013 No. 360 (W.42))** – This Order has been made by Welsh Ministers and is subject to the negative procedure in the Assembly. The Order deals with the technical specifications for devices used by local authorities to capture road traffic contraventions (e.g. camera enforcement).

### **3. Legislative Background**

3.1 Part 6 of the Traffic Management Act 2004 provides power to the “appropriate national authority” to make regulations for the civil enforcement by local authorities of parking and waiting restrictions, bus lanes and some moving traffic offences. In Wales the appropriate national authority is the Welsh Ministers.

3.2 Under the Traffic Management Act the decision to increase the range of offences for which civil enforcement may be used in Wales is for Welsh Ministers.

3.3 The Act also confers powers on the Lord Chancellor to make regulations dealing with the notification and enforcement of penalty charges, representations to the enforcement authority, appeals to an adjudicator by those on whom penalties are imposed and the appointment of adjudicators. Section 89 of the Act 2004 provides the Lord Chancellor with express powers to make different provisions for Wales.

### **4 Purpose and intended effect of the legislation**

4.1 The package of legislation on civil enforcement has been introduced because the Welsh Government has decided to widen the scope of powers available to local authorities in Wales to enforce road traffic contraventions that would otherwise fall to the police.

4.2 The Welsh Government has assessed that the heavy workload of the police in Wales limits their ability to prioritise enforcement of bus lane and other moving traffic offences. Its view is that a practical alternative is to use its powers to provide Welsh local authorities with the necessary powers to tackle these contraventions. The police retain the ability to issue fixed penalty notices in relation to bus lane and moving traffic offences and the offence of stopping of vehicles on or near pedestrian crossings, though the regulations prohibit a motorist being penalised twice (civilly and criminally) for the same offence. The police retain powers to tackle other motoring offences.

4.3 The Welsh Government is concerned that the extent of indiscriminate parking can seriously reduce the capacity of the road network. It has assessed that effective control of on-street parking and loading and unloading is essential to keep buses moving. In addition, its view is that additional traffic management measures, for example, permitting buses to use lanes or make

movements which are denied to other traffic, will assist the movement of buses.

4.4 Overall the Welsh Government's assessment is that in combination, these measures can improve the image and public perception of local bus services in a way that encourages higher patronage and a move away from single occupancy car journeys. The Welsh Government's view is that bus passengers – and, to some extent, other motorists - will benefit from the better enforcement of traffic contraventions. The Welsh Ministers also conclude that indirectly, Welsh local authorities will benefit because they have assessed that bus companies' costs will be lower than otherwise, leading to less demand for subsidy. It has also been concluded that bus passengers will benefit because of less expected upward pressure on fares as a result, and because of expected faster, more reliable and more punctual journeys.

4.5 The intention, through the package of regulations, is to allow Welsh local authorities to put in place effective traffic management and enforcement measures. This, they believe, will help to help tackle congestion and provide priority through traffic for local bus services in Wales making them more attractive to passengers.

4.6 In the interests of simplifying this area the opportunity has been taken to consolidate the law. Provisions relating to civil enforcement of parking, bus lanes, and moving traffic offences have been consolidated throughout the package of statutory instruments.

## **5. Consultation**

5.1 A public consultation was carried out on the proposals for civil enforcement between 26 November 2009 and 5 February 2010. The organisations consulted were each of the 22 local authorities in Wales, the four police constabularies, the Traffic Penalty Tribunal, bodies representing taxi and private hire operators, and other stakeholders. Ten responses were received, most of those from local authorities.

5.2 A summary of the comments received and the Welsh Government's response was published on the website in April 2010:

<http://wales.gov.uk/consultations/transport/civilenforcement/?lang=en&status=closed>

5.3 The Welsh Government concluded that there is a broad and strong consensus in favour of the proposals and that no material changes were required to the proposals as a result of the consultation exercise.

5.4 In accordance with paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 the Administrative Justice and Tribunals Council has also been consulted on these specific regulations.

## **6. Guidance**

6.1 Section 87 of the Traffic Management Act 2004 allows Welsh Ministers to publish statutory guidance to local authorities on the exercise of their civil enforcement powers. The Welsh Government intends to work closely with local authorities to prepare statutory and operational guidance in due course.

## **7. Regulatory Impact Assessment**

7.1 No separate regulatory impact assessment has been prepared in relation to these specific regulations as no impact on business, charities or voluntary bodies is anticipated.

7.2 Civil enforcement is intended to be self financing. Enforcement authorities will have responsibility for funding any additional appeals dealt with by the Traffic Penalty Tribunal resulting from greater enforcement of traffic contraventions. They will also be responsible for providing accommodation and administrative support for adjudicators, and setting their terms of work and for their remuneration.

7.3 The Welsh Government has produced a regulatory impact assessment on its overall policy on civil enforcement in Wales. This meets the Welsh Government's requirement for impact assessments in Wales. It is attached for information at **Annex A**.

7.4 An impact Assessment was also previously prepared for the Traffic Management Bill as a whole. For information this is available at the link.

<http://webarchive.nationalarchives.gov.uk/20070305174115/http://www.dft.gov.uk/consultations/aboutria/ria/thetrafficmanagementbillregu5592?version=1>

## **8. Monitoring & review**

8.1 Each Welsh local authority that has adopted civil enforcement powers or will adopt such powers in the future is required to send copies of their income and expenditure accounts relating to civil enforcement to Welsh Ministers.

8.2 Statutory guidance, published by the Welsh Government in April 2008, states that enforcement authorities should produce and publish an annual report about their enforcement activities within six months of the end of each financial year. The reports aim to detail the effectiveness of civil enforcement in terms of traffic journey times on key routes targeted by the authority for improvement, as well as identifying the income and expenditure resulting from the scheme. Details of expenditure must identify the transport schemes on which any surplus income has been spent. Finally, such reports must be made available to members of the public.

8.3 Enforcement authorities in Wales should also monitor their enforcement policies and the associated regulatory framework (including penalty charge levels). They should appraise them when reviewing the Regional Transport Plans and make recommendations for improvements.

8.4 Appraisals should take account of any relevant information that has been collected as part of the civil enforcement process, in particular about the practical effectiveness of the scheme. The Welsh Government intends that enforcement authorities will benefit from interviews with Civil Enforcement Officers, who it is assessed are in a unique position to identify changes to parking patterns, as well benefitting from interviews with office staff, who see challenges and representations and the reasons for them.

## **ANNEX A**

### **REGULATORY IMPACT ASSESSMENT**

#### **Options**

##### **1. Do Nothing**

All four police forces in Wales were consulted on the proposals for the civil enforcement of bus lane and moving traffic contraventions. The evidence from the consultation exercise, suggested that the police would not be able to make the enforcement of bus lane and moving traffic contraventions a priority for action at all times.

This would mean that it would not be possible to effectively enforce the traffic management measures that have been put in place by local authorities to give buses priority through traffic congestion. Doing nothing would maintain the current situation whereby resources are not prioritised to deal with these types of contraventions.

In the absence of effective enforcement, local authorities would not be able to realise the benefits that would be gained through traffic management measures to improve the punctuality and reliability of local bus services.

##### **2. Make the Regulations**

In the absence of action by the police, the only practical alternative is to give local authorities the necessary powers to tackle bus lane and certain moving traffic contraventions. The police retain the ability to issue fixed penalty notices in relation to bus lane and moving traffic offences and the offence of stopping of vehicles on or near pedestrian crossings, though the regulations prohibit a motorist being penalised twice (civilly and criminally) for the same offence. The police retain powers to tackle other motoring offences.

Local authorities are keen to consolidate and strengthen the basket of measures that are available to them under the 2004 Act to meet their traffic management duties and to put in place the measures that are needed to make bus services more attractive.

Under Part 6 of the 2004 Act, Welsh Ministers have powers to make regulations that govern the way bus lane and certain moving traffic contraventions are to be enforced by local authorities. All of the responses to the public consultation exercise welcomed the introduction of these regulations that would form part of a broader approach for improving bus services in Wales.

#### **Costs and benefits**

Part 6 of the 2004 Act requires local authorities to apply to the Welsh Ministers for consent to adopt the civil enforcement powers to tackle bus lane and certain moving traffic contraventions. The enforcement of bus lane and moving traffic contraventions must be done on the basis of a record produced by an approved device. The approved device must include a camera and a recording system that meets the requirements set out in the nationally agreed technical standards. Such devices may currently be used to enforce parking contraventions.

The costs of putting in place the approved devices and any back office systems must be met by the income generated from Penalty Charge Notices issued by the enforcing local authority and the local authorities own resources. To prevent a situation arising where the issue of Penalty Charge Notices could be used to raise money, any surplus remaining after meeting the costs of administration must be used only to support transport measures specified in the Regulations.

As part of their submissions to the Welsh Ministers to be granted civil enforcement powers, local authorities are required to explain how all associated costs will be met on the introduction of civil enforcement powers. The Regulations allow local authorities to work together in partnership, in order to reduce costs and maximise efficiency and effectiveness.

Ultimately, bus passengers – and, to some extent, other motorists - will benefit from the better enforcement of traffic contraventions. Indirectly, local authorities will benefit because bus companies' costs will be lower, leading to less demand for subsidy. Bus passengers will benefit because there will be less upward pressure on fares as a result, because of faster, more reliable and more punctual journeys.

Improved and more attractive bus services will help to attract motorists out of their cars, leading to less direct congestion and improved air quality. This outcome should also assist in the improvement of bus patronage and, as a consequence, safeguard services for those members of the community without access to an alternative. Any increased patronage of local buses will generate additional income for bus companies, safeguarding jobs and allowing them to invest in improved services.

Empowering local authorities to tackle traffic congestion is pivotal to achieving the Welsh Government's economic, social and environmental objectives, and is consistent with the Welsh Government's prioritised National Transport Plan, published in December 2011.

## **Consultation**

A consultation on these proposals was undertaken between 26 November 2009 and 5 February 2010. The organisations consulted were each of the 22 local authorities in Wales, the four police constabularies, the Traffic Penalty



Tribunal, bodies representing taxi and private hire operators, and other stakeholders.

A summary of the responses to the consultation and the Welsh Government's responses to those has been published, and is provided as an annex. There was a broad and strong consensus in favour of the proposals.

### **Competition Assessment**

Nothing in these proposals or the regulations will impact adversely on business, charities or the third sector.

### **Post implementation review**

Each local authority that has adopted civil enforcement powers (i.e. for parking) or will adopt such powers (i.e. for bus lane or moving traffic contraventions) in the future is required to publish an annual report. The reports will detail the effectiveness of civil enforcement in terms of traffic journey times on key routes targeted by the authority for improvement, as well as identifying the income and expenditure resulting from the scheme. Details of expenditure must identify the transport schemes on which any surplus income has been spent. Such reports must also be made available to members of the public.

## Annex

### Analysis of responses to the consultation on the proposed civil enforcement of bus lane and moving traffic contraventions

Ten responses to the consultation document have been received and the main points raised are outlined below. Some respondents submitted a 'free standing' response and did not specifically answer the questions set out in the consultation document. In these circumstances every effort was made to link responses to specific questions where appropriate. Where this was not possible the essence of such responses was fully considered.

#### **1. MOVING TRAFFIC CONTRAVENTIONS**

##### **Q1a Should the proposed Regulations provide for the civil enforcement of all the prohibitions and signs listed in the table at Regulation 9(4) of the Traffic Management Act 2004?**

Nine responses (90%) agreed that the Regulations should continue to cover the prohibitions and signs listed in the table at Regulation 9(4) of Schedule 7 to the Traffic Management Act 2004. One expressed no opinion.

#### **Response**

The Welsh Assembly Government's Regulations will retain the existing provision that civil enforcement applies to all of the prohibitions and signs listed at regulation 9(4) of Schedule 7 to the Traffic Management Act 2004.

##### **Q1b Are there other traffic prohibitions and signs that should be added to the list to provide for the ease of buses through traffic flows?**

Five responses (50%) agreed that there is no need for further traffic prohibitions and signs to be added to the list. Two respondents (20%) thought that more should be included, specifically diagrams 958 (with-flow bus lane that pedal cycles and taxis may also use), 959 (with-flow bus lane that pedal cycles may also use) and 960 (contra-flow bus lane). These signs meet the criteria listed in paragraph 10(2) of Schedule 7. One other argued for the addition of signs to give buses right of way where two lanes merge to one.

Paragraph 10(1) of Schedule 7 to the TMA 2004 allows Welsh Ministers to make Regulations adding additional signs to the list in paragraph 9(4). For a traffic sign to be added to the list, in accordance with paragraph 10(2) of Schedule 7, it must:

- Regulate the movement of vehicles, not stationary vehicles;
- Be a sign to which section 36 of the Road Traffic Act 2988 applies; and

- Be a sign to which a failure to comply must not involve obligatory endorsement.

### **Response**

Subject to the required consultation with appropriate Chiefs of Police and local authorities, the Welsh Assembly Government's Regulations will ensure that diagrams 958, 959 and 960 will be added to the list of traffic prohibitions and signs to ease the flow of buses. Local authorities may continue to apply to the Welsh Assembly Government for priority to be given to buses at specific locations (e.g. at traffic lights where two lanes merge into one).

## **2. SETTING CHARGES**

### **Q2 Should the charge level applicable to bus lane and moving traffic contraventions be set at the higher penalty charge level in each band?**

Nine respondents (90%) agreed that the charge level applicable to bus lane and moving traffic contraventions should be set at the higher penalty charge level.

Paragraph 8 of Schedule 9 to the TMA 2004 allows Welsh Ministers to set guidelines for the level of charges, and allows different guidelines to be given for different classes of contravention. The Order itself provides an annex containing a list of higher level contraventions, and that will need to be amended to include all the bus lane and moving traffic contraventions.

### **Response**

The Welsh Assembly Government's Regulations will set the charge level applicable to bus lane and moving traffic contraventions at the higher penalty charge level in each band.

### **Q3 Should the charge level applicable to bus lane and moving traffic contraventions be the same as that for CPE contraventions?**

Eight respondents (80%) agreed that the charge level applicable to bus lane and moving traffic contraventions should be the same as that for civil parking enforcement contraventions, thereby providing clarity and consistency.

Paragraph 8 of Schedule 9 to the TMA 2004 allows Welsh Ministers to set guidelines for the level of charges, and allows different guidelines to be given for different classes of contravention. The Order itself provides an annex containing a list of higher level contraventions, and that will need to be amended to include all the bus lane and moving traffic contraventions.

## **Response**

The Welsh Assembly Government's Regulations will require that the charge level applicable to bus lane and moving traffic contraventions will be the same as that for Civil parking Enforcement contraventions.

### **3. ENFORCEMENT ACTIVITIES**

#### **Q4 Do you agree that Penalty Charge Notices for bus lane and moving traffic contraventions should only be issued on the basis of evidence from a camera and associated recording equipment?**

Eight respondents (80%) agreed that Penalty Charge Notices for bus lane and moving traffic contraventions should only be issued on the basis of evidence from a camera and associated recording equipment. This would ensure that motorists are presented with clear evidence and help minimise unfounded challenges and appeals. One respondent (10%) argued that action against alleged contraventions should also be permitted on the basis of witness statements.

## **Response**

In accordance with section 72(4)(a) of the TMA 2004, the Welsh Assembly Government's regulations will stipulate that PCNs for bus lane and moving traffic contraventions can only be issued on the basis of evidence from a camera and associated recording equipment.

#### **Q5 Provided that cameras on board buses meet the requirements of Welsh Ministers, and are "approved devices", should they be used to obtain evidence of bus lane contraventions and support the issue of PCNs?**

Eight respondents (80%) agreed that cameras on board buses that meet the requirements of Welsh Ministers and are "approved devices" should be used to obtain evidence of contraventions.

## **Response**

The Approved Devices Order contains technical specifications for approved devices. This includes cameras that are not mounted in one place but are fixed to vehicles. Where the device does not occupy a fixed location, it must record the location from which it is being operated.

The Welsh Assembly Government's Regulations will stipulate that cameras on board buses that are "approved devices" may be used to obtain evidence of bus lane contraventions in support of the issue of PCNs.

#### **Q6 Do you agree that where a bus lane and moving traffic contravention happen at the same time, they should be treated**

**separately and two PCNs issued? If not, which do you believe should take precedence?**

Five respondents (50%) agreed that where a bus lane and moving traffic contravention happen at the same time, they should be treated separately and two Penalty Charge Notices issued. Four (40%) did not agree.

**Response**

There is nothing in the TMA 2004 that prevents the issuing of two separate PCNs where two contraventions have been committed, even if during the same incident. The Welsh Assembly Government's Regulations will therefore recommend that, where bus lane and moving traffic contraventions happen at the same time, they are treated separately and two PCNs are issued.

**4. COLLECTING PENALTY CHARGES**

**Q7 Where vehicle owners persistently fail to pay PCNs for bus lane or moving traffic conventions, what action by local authorities do you think would be most effective to deter evasion?**

Respondents suggested variously that vehicles should be seized (to prevent a recurrence of the contravention until the payment has been made); that drivers should have penalty points put on their licences; or that certificated bailiffs should be employed.

**Response**

There are already mechanisms in place within the existing Enforcement and Adjudication Regulations that allow the enforcement of unpaid PCNs under a county court order. The Lord Chancellor also has power to create criminal offences where PCNs are not paid. Section 19 of the TMA 2004 also provides Welsh Ministers with power to immobilise vehicles where there are outstanding unpaid charges. In addition, the Welsh Assembly Government's Regulations will encourage local authorities to consider a wide range of mechanisms to deter motorists from evading paying PCN penalties.

**5. ISSUING THE PENALTY CHARGE NOTICE**

**Q8 Do you agree that all Penalty Charge Notices must be served by first class post within 14 days of the contravention?**

Six respondents (60%) agreed that Penalty Charge Notices should be served by first class post within 14 days of the contravention to ensure that any necessary action is prompt. This may be especially important if the PCN is sent to a hiring or leasing company that must then contact the driver. One respondent argued that the Penalty Charge Notice should be served by first class post within 21 days of the contravention to accommodate absences such as holiday periods.

## **Response**

The existing Enforcement and Adjudication Regulations already specify a period of 28 days for the issue of a PCN. The Welsh Assembly Government's Regulations will stipulate that in future all PCNs must be served by first class post within 14 days of a contravention.

## **6. CHARGE CERTIFICATE**

### **Q9 Should the date that the Penalty Charge Notice was "served" be the date on which it was issued or the date on which it was received by the motorist deemed to have committed the contravention?**

Seven respondents (70%) argued that the date that a Penalty Charge is served should be the date on which it was issued. Two respondents (20%) suggested that the date should be two days after it was sent by first class post, to allow for it to be delivered.

## **Response**

The existing Enforcement and Adjudication Regulations already specify that service of a notice or charge certificate contained in a letter sent by first class post which has been properly addressed, pre-paid and posted will be taken to have been effected on the second day after the day of posting. The Welsh Assembly Government's Regulations will retain this criterion.

## **7. REPRESENTATIONS**

### **Q10 Should local authorities retain responsibility for handling representations from motorists who are deemed to have committed a bus lane or moving traffic contravention, or would it be acceptable for such responsibility to be contracted-out?**

Three respondents (30%) agreed that local authorities should retain responsibility for handling representations from motorists who are deemed to have committed a bus lane or moving traffic contravention. Apart from consistency, it was made clear that handling representations is a quasi-judicial function. Also, an authority is able to undertake the handling of representations on behalf of other authorities, thereby offering efficiencies of scale. Five respondents (50%) thought that this should be a matter for individual local authorities to determine.

## **Response**

The Welsh Assembly Government's Regulations will stipulate that local authorities must be responsible for handling representations from motorists who are deemed to have committed a bus lane or moving

traffic contravention, and not contracted-out. This will ensure the retention of a direct, transparent link between enforcement and handling of representations.

**Q11 Should all decision notices following consideration of representations be issued within 21 days of receipt of the contraventions?**

Six respondents (60%) agreed that all decision notices following the consideration of representations should be issued within 21 days of receipt of the contravention. One respondent argued that while 21 days should be the target, a period of 56 days should be permitted.

**Response**

The existing Representations and Appeals Regulations stipulate a period of 56 days beginning with the date on which representations were served on the local authority, for it to serve notice of its decision. The Welsh Assembly Government's new Regulations will nevertheless stipulate that all future decision notices must be issued within 21 days of receipt of a representation.

**Respondents to the consultation:**

South East Wales Transport Alliance (SEWTA)  
Association of Transport Co-ordinating Officers  
City and County of Cardiff Council  
Bridgend County Borough Council  
Neath Port Talbot County Borough Council  
The Traffic Penalty Tribunal Adjudicators  
Confederation of Passenger Transport  
Flintshire County Council  
Carmarthenshire County Council  
One Voice Wales

