

**TRAFFIC MANAGEMENT ACT 2004 Part 6 - CIVIL PARKING ENFORCEMENT**

**Agenda Item ..**

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**Background Papers:-** Traffic Management Act 2004 - Part 6 and statutory guidance issued by the Secretary of State  
**Financial Implications:-** As set out in report  
**Equalities Implications:-** .....

**Legal Implications:-** Change to Traffic Regulation Order required for off-street parking  
**Options:** None  
**Risks:** .....

**EXECUTIVE SUMMARY**

The Council assumed responsibility for Decriminalised Parking Enforcement (DPE) in October 2004 and has been enforcing parking regulations across the Braintree District on behalf Essex County Council under the provisions of the Road Traffic Act 1991.

In response to public concern about parking enforcement, the Government introduced a number of changes to current practices at a national level under the provisions of Part 6 of the Traffic Management Act 2004 (TMA) aimed at achieving a consistent approach across the country and providing a system that is fairer to the motorist. These changes took effect on 31 March 2008.

Statutory guidance has been issued by the Secretary of State on the civil enforcement of parking contraventions and local authorities must, by law, have regard to this Guidance.

The most fundamental change is the introduction of differential parking fines based on the seriousness of the contravention, but there are also changes to enforcement procedures, charge recovery procedures, the appeals process (including the use of discretion) and reporting requirements.

The attached report sets out a brief summary of the key changes imposed by the new legislation.

**DECISION**

None. Members are recommended to note the changes arising from the new legislation.

## TRAFFIC MANAGEMENT ACT 2004 Part 6 - CIVIL PARKING ENFORCEMENT

### **INTRODUCTION**

The Council assumed responsibility for Decriminalised Parking Enforcement (DPE) with powers to enforce on-street parking regulations on 1<sup>st</sup> October 2004. This was under the terms of an Agency Agreement with Essex County Council under the powers of the Road Traffic Act 1991. (RTA)

On 31<sup>st</sup> March 2008, Part 6 of the Traffic Management Act 2004 (TMA) and the regulations made under it replaced Part II of the RTA and other regulations relating to London, to provide a single framework in England for the Civil Enforcement of Parking (CPE).

The objectives of the TMA are to ensure a consistent approach to parking enforcement across England, achieve high levels of public acceptance and understanding of CPE, to give authorities the necessary powers to secure ensure high level compliance with Traffic Regulation Orders and to ensure that CPE powers are exercised in a fair and reasonable manner. The Agency arrangements with Essex County Council are unaffected by the changes. The main changes are summarised below.

### **TERMINOLOGY / IMAGE**

- All references to the Road Traffic Act 1991 removed.
- Decriminalised Parking Enforcement now called Civil Parking Enforcement.
- All Traffic Regulation Orders amended to refer to TMA.
- Parking Attendants now known as Civil Enforcement Officers (CEO).
- Special Parking Areas and Permitted Parking Areas now known as Civil Enforcement Areas
- National Parking Adjudication Service (NPAS) now known as Traffic Penalty Tribunal

### **REGULATIONS**

Much of the operational side of parking enforcement is largely unaltered, but the main changes are as follows:-

- Differential parking penalties depending on the seriousness of the contravention (described as 'higher level' and 'lower level'). The contraventions and corresponding charges are listed at Appendix A.

For authorities outside London, the new legislation gives the option of two penalty bands:-

Lower Level Band 1	£60 higher rate	£40 lower rate
Upper Level Band 2	£70 higher rate	£50 lower rate

(All with 50% reduction if paid within 14 days)

Essex County Council (ECC), as Highways Authority, has the responsibility to set, publish and advertise PCN charging levels. ECC has opted to use the upper level band and this is being applied to both on and off-street parking enforcement across the Braintree District (legislation does not allow different charge levels in the same parts of civil enforcement areas and therefore penalties in Braintree District Council's off-street car parks must be set at the same level). This replicates the picture nationally, given that the lower band will significantly reduce projected income levels. New charging levels are set out at Appendix B.

- New powers to serve Penalty Charge Notices (PCN) by post if the CEO has started to issue a ticket, but the vehicle is driven away before it can be served. *Essex local authorities are collectively seeking clarification from the Government on this issue and until this is received, it will not be possible to enforce this element of the legislation.*
- Introduction of new time limits for dealing with PCNs
- Grounds for representation have been widened and increased.
- Details of procedures for representation and appeals to be included on the PCN.
- Members and unauthorised staff must not take part in deciding challenges, appeals and representations.
- Adjudicators able to rule where incorrect procedures have been followed and instruct cancellation and repayment of PCNs. In certain circumstances, Adjudicators may direct such cases to the Council's Chief Executive and the Council has 35 days to respond.

### **POLICY GUIDANCE**

The Secretary of State for Transport has issued guidance which explains how to approach, carry out and review parking enforcement. This attempts to strike a balance between as much national consistency as possible and a system that is fair to the driver, but also effective in enforcing parking regulations. Many of the recommendations in the guidance are already common practice within Braintree's parking enforcement administration. The key guidelines are:-

- The Council publishes its policies on how it deals with appeals and representations from members of the public
- Policies covering the exercise of discretion are documented and published
- The Council publishes its policies on observation periods - these are the periods following initial observation that a CEO must allow before issuing a PCN
- The service is monitored on an ongoing basis and an annual report produced for publication within six months of the year end (September 09)
- The Council publishes 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 reviews its parking policies on a regular basis in consultation with local stakeholders and, once finalised, these are made publicly available in an annual report;
- In situations where a contravention has occurred, but where mitigating circumstances may apply, the Council publishes guidelines on the use of discretion; and
- A stronger emphasis on Staff training and development.
- Authorities no longer need to demonstrate to the Secretary of State that parking enforcement is self-financing.

## **FINANCIAL IMPLICATIONS**

There are potential financial implications arising from TMA due mainly to the differential penalty charges. There are also costs associated with the introduction of TMA e.g. changes to epaulettes on uniforms, stationery, signage, legal issues (Traffic Regulation Order), training and IT systems, which will be contained within existing budgets.

The vast majority of parking revenue from on-street parking is passed back to Essex County Council and therefore the greatest impact on income to Braintree District Council will occur in relation to off-street parking.

It is difficult to accurately predict the financial impact, as there are so many variables e.g. number of tickets issues, number paid, number successfully contested, the type of contravention (and therefore level of penalty imposed) and the point at which the penalty is paid (see Appendix B). However, an analysis of the tickets issued during the last financial year show an approximate 25% / 75% split between what would now be higher level and lower level contraventions respectively.

Given that the vast majority of tickets are settled at the discounted rate, this would result in a corresponding reduction in income of £5 per ticket paid of lower level contraventions, although this would be partially offset by the extra income derived from tickets issued for higher level contraventions. As an estimate, we would anticipate a decrease in income of between 10-20% which may have a small budgetary impact.

**PARKING CONTRAVENTION LEVELS - ON STREET**

**Higher Level Contraventions**

- Parked in a restricted street during prescribed hours
- Parked or loading/unloading in a restricted street where waiting and loading/unloading restrictions are in force
- Parked in a residents' parking space without clearly displaying a valid residents' parking permit
- Parked in a permit space without displaying a valid permit
- Parked in a suspended bay/space or part of bay/space
- Parked in a parking place or area not designated for that class of vehicle
- Parked in a loading place during restricted hours without loading
- Vehicle parked more than 50 centimetres 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 in a parking place designated for police vehicles
- Parked in a taxi rank
- Parked on a clearway where stopping is prohibited
- Parked on a restricted bus stop/stand
- Stopped in a restricted area outside a school
- Parked wholly or partly on a cycle track
- A heavy commercial vehicle wholly or partly parked on a footway, verge or land between two carriageways

**Lower Level Contraventions**

- Parked after the expiry of paid for time
- Parked without clearly displaying a valid pay and display ticket
- Parked with payment made to extend the stay beyond initial time
- Re-parked in the same parking place within the return prohibited period (1hr)
- Re-parked in the same parking place within the return prohibited period (2hr)
- 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

## **PARKING CONTRAVENTION LEVELS - OFF STREET**

### **Higher Level Contraventions**

- Parked in a loading area during restricted hours without reasonable excuse
- Parked in a restricted area in a car park
- Parked in a permit bay without clearly displaying a valid permit
- Parked in a disabled person's parking space without clearly displaying a valid disabled person's badge
- Vehicle 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 for longer than the maximum period permitted
- Parked after the expiry of paid for time
- Parked in a car park without clearly displaying a valid pay and display ticket
- Parked beyond the bay markings
- Re-parked within one hour of leaving a bay or space in a car park

## APPENDIX B

### LEVEL OF PENALTY CHARGES

Below is the level of penalty charges and other additional parking charges relating to parking enforcement based on the new charges that apply in the Braintree District.

	<b>Higher Level Penalty For more serious contraventions</b>	<b>Lower Level Penalty For less serious Contraventions</b>
Level of Penalty Charge	£ 70	£ 50
If Penalty Charge is paid within the discount period	£35	£25
If penalty is paid after the discount period and the date the Notice to Owner was served	£70	£50
If the penalty is paid after service of the Charge Certificate	£105	£75
Penalty Charge if paid after the service of an Order for Recovery	£110	£ 80