



Department
for Transport

Traffic Management Act 2004

The Secretary of State's Statutory
Guidance to Local Authorities on the
Civil Enforcement of Parking
Contraventions

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1. Introduction and legal basis

- 1.1** This Statutory Guidance is published by the Secretary of State for Transport under section 87 of the Traffic Management Act 2004.
- 1.2** This document is also the Secretary of State's guidelines on uniforms that Section 76(3) of the Traffic management Act 2004 allows the appropriate authority to issue.
- 1.3** The Guidance sets out the policy framework for Civil Parking Enforcement. It explains how to approach, carry out and review parking enforcement. It attempts to strike the balance between:
- as much national consistency as possible, while allowing parking policies to suit local circumstances; and
 - a system that is fair to the motorist, but also effective in enforcing parking regulations.
- 1.4** All enforcement authorities¹ in England should use this Guidance in conjunction with the Regulations that give effect to the parking provisions in Part 6 of the Traffic Management Act 2004².
- 1.5** The Guidance has no special authority in regard to matters of legal interpretation. Where there appear to be differences between the Guidance and the legislation, the legislation always take precedence.
- 1.6** Where the Guidance says that something **must** be done, this means that it is a requirement in either primary or secondary legislation, and a footnote gives the appropriate provision. In all other instances, section 87 of the Traffic Management Act 2004 stipulates that local authorities **must have regard** to the information contained in this Guidance.
- 1.7** This Guidance uses the same terminology as the Traffic Management Act 2004, so it refers to:
- *Civil Parking Enforcement* rather than *Decriminalised Parking Enforcement*;
 - *Civil Enforcement Officer* rather than *Parking Attendant*; and
 - *Civil Enforcement Area* rather than *Special Parking Area / Permitted Parking Area*³.

¹ See the Traffic Management Act 2004, Schedule 8.

² See the Traffic Management Act 2004 Sections 72 to 93 and Schedules 7 to 12; The Civil Enforcement of Parking Contraventions (England) General Regulations 2007 (SI 2007/3483); The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007(SI 2007/3482); The Civil Enforcement Officers (Wearing of Uniforms) (England) Regulations 2007(SI 2007/3485); The Civil Enforcement of Parking Contraventions (Approved Devices) (England) Order 2007(SI 2007/3486); The Removal and Disposal of Vehicles (Amendment) (England) Regulations 2007(SI 2007/3484); and The Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007(SI 2007/3487).

³ Areas which before 31st March 2008 were designated as special parking areas in London or as permitted parking and special parking areas outside London automatically become civil enforcement areas on that date: see Traffic Management Act 2004 Schedule 8, paragraphs 2(4) and 8(4).

- 1.8** The Guidance applies to all enforcement authorities in England exercising civil parking enforcement powers conferred on them by or under the Traffic Management Act 2004. The Mayor of London should consider revising the Mayor's Transport Strategy to make the parking aspects in it consistent with the new Regulations and this Guidance. The Welsh Assembly will issue Statutory Guidance for Wales.
- 1.9** Authorities **must** have regard to this Statutory Guidance (as stipulated by section 87 of the Traffic Management Act 2004) when exercising their functions. These functions include developing, implementing and reviewing their civil parking enforcement regimes. They should also read this Guidance in conjunction with the more detailed *Operational Guidance to local authorities: parking policy and enforcement*. The Statutory Guidance sets out the skeleton for how civil parking enforcement should be operated which is given greater depth in the Operational Guidance.
- 1.10** Civil Parking Enforcement is a legal process. Enforcement authorities should make sure that their employees and contractors who operate civil parking enforcement regimes have a clear and full understanding of what the law requires. If enforcement authorities are themselves uncertain about any aspects of these requirements, they should get the appropriate legal advice.

2. Objectives of Civil Parking Enforcement

Policy Objectives

- 2.1** Civil parking enforcement should contribute to the authority's transport objectives. A good civil parking enforcement regime is one that uses quality-based standards that the public understands, and which are enforced fairly, accurately and expeditiously.
- 2.2** Enforcement authorities should aim to increase compliance with parking restrictions through clear, well designed, legal and enforced parking controls. Civil parking enforcement provides a means by which an authority can effectively deliver wider transport strategies and objectives. Enforcement authorities should not view it in isolation or as a way of raising revenue.
- 2.3** Local authorities should ensure that parking in town centres and other shopping areas is convenient, safe and secure, including appropriate provision for motorcycles and deliveries. Parking policies including enforcement should be proportionate and should not undermine the vitality of town centres.
- 2.4** Enforcement authorities should design their parking policies with particular regard to:
 - managing the traffic network to ensure expeditious movement of traffic, (including pedestrians and cyclists), as required under the Traffic Management Act 2004 Network Management Duty⁴;
 - 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 depend entirely on the use of a car; and
 - managing and reconciling the competing demands for kerb space.

⁴ See the Traffic Management Act 2004, Section 16.

Financial objectives

- 2.5** For good governance, enforcement authorities need to forecast revenue in advance. But raising revenue should not be an objective of civil parking enforcement, nor should authorities set targets for revenue or the number of Penalty Charge Notices they issue.
- 2.6** Enforcement authorities should run their enforcement operations (both on- and off- street⁵) efficiently, effectively and economically. The purpose of penalty charges is to dissuade motorists from breaking parking restrictions. The objective of civil parking enforcement should be for 100 per cent compliance, with no penalty charges. Parking charges and penalty charges should be proportionate, so authorities should not set them at unreasonable levels. The income from on-street charging and any penalty charge payments received (whether for on-street or off-street enforcement) **must** only be used in accordance with section 55 (as amended) of the Road Traffic Regulation Act 1984.
- 2.7** London authorities must⁶ keep an account of all income and expenditure in respect of on-street parking places and their functions as enforcement authorities, within paragraphs 2 and 3 of Schedule 7 to the Traffic Management Act 2004. English authorities outside London must⁷ keep an account of all income and expenditure in respect of on-street parking places which are not in a Civil Enforcement Area, on-street parking spaces which are in a Civil Enforcement Area and their functions as an enforcement authority. London authorities must⁸ send a copy of the account to the Mayor of London. All authorities must comply with Part 2 of the Local Government Transparency Code 2015 <https://www.gov.uk/government/publications/local-government-transparency-code-2015> which sets out the minimum data that local authorities should be publishing, including on parking.
- 2.8** If an authority makes a surplus on its on-street parking charges and on- street and off-street enforcement activities, it must⁹ use the surplus in accordance with the legislative restrictions in Section 55 (as amended) of the Road Traffic Regulation Act 1984.
- 2.9** Previous guidance said that local authority parking enforcement should be self-financing as soon as practicable. This is still a sensible aim, but compliant applications for civil parking enforcement (see next section) will be granted without the scheme being self-financing. However, authorities will need to bear in mind that if their scheme is not self-financing, then they need to be certain that they can afford to pay for it from within existing funding. The Secretary of State will not expect either national or local taxpayers to meet any deficit.

⁵ Civil parking enforcement can only apply to privately owned car parks that are regulated by an order made under the Road Traffic Regulation Act 1984, Section 35 and provided under any letting or arrangement made by a local authority with some other person (such as a privately-owned company) under Section 33(4) of that Act.

⁶ See amendments to Section 55 Road Traffic Regulation Act 1984 in S.I. 2007/3483, Regulation 25.

⁷ S.I. 2007/3483, Regulation 25.

⁸ S.I. 2007/3483, Regulation 25.

⁹ S.I. 2007/3483, Regulation 25.

3. Issues to consider before starting to use civil parking enforcement powers

3.1 Most English local authorities are enforcing parking in their area. The remaining few that have yet to apply for designation as a civil parking enforcement area¹⁰, should ensure that certain criteria are satisfied in their application. The key criteria on which the Department for Transport will need to be satisfied prior to making the designation order for civil parking enforcement are that:

- the authority has kept the Department for Transport informed of their plans from the time they decide they would like to apply for these powers. Such liaison should enable any problems to be identified and tackled at an early stage, so that applications can be processed without delay. If no prior warning is given of the application, or there is insufficient information contained in it, there may be delays in processing the application.
- the authority has consulted as required and taken account of their views in finalising the application and in proposed CEA areas where there are military roads, the Ministry of Defence.
- any roads to be excluded in the CEA designation order are clearly defined using plain English, and Ordnance Survey National Grid References are used to the nearest point to define the excluded routes, (see Annex B for further details).
- Traffic Regulation Orders, traffic signs and road markings are in compliance with legal requirements and the traffic signs and road markings are consonant with the orders.

3.2 Before making an application for designation to the Secretary of State, the authority should consult:

- other traffic authorities (including Highways England) who may be affected;
- the emergency services; and
- the Driver and Vehicle Licensing Agency;

3.3 The Traffic Management Act 2004 enables authorities with civil parking enforcement power to enforce in a Special Enforcement Area ¹¹ prohibitions

¹⁰ In the Traffic Management Act 2004 this is referred to as a “Civil Enforcement Area for parking contraventions”: see Schedule 8.

¹¹ Traffic Management Act 2004, Schedule 10.

of double parking¹² and parking at dropped footways¹³ as if they had been introduced using a Traffic Regulations Order (Traffic Management Order in London). A Special Enforcement Area must be within a Civil Enforcement Area or cover the same area as one. An authority should consider whether to apply for Special Enforcement Area designation as part of their 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 a Special Enforcement Area.

- 3.4** Any Special Parking Area that existed before commencement of the Traffic Management Act 2004 automatically becomes a Special Enforcement Area¹⁴ but authorities should ensure that the public are aware of the new restrictions before starting enforcement.

¹² Traffic Management Act 2004, Section 85.

¹³ Traffic Management Act 2004, Section 86.

¹⁴ Traffic Management Act 2004, Schedule 10, paragraphs 1(5) and 3(5).

4. Setting charges

- 4.1** The primary purpose of penalty charges is to encourage compliance with parking restrictions. In pursuit of this, enforcement authorities should adopt the lowest charge level consistent with a high level of public acceptability and compliance. The enforcement authority **must**¹⁵ ensure that the public knows what charge levels have been set by publishing them well in advance of their introduction. They **must** also publish any subsequent change to the charge levels¹⁶. In London, penalty charges will be set by the London local authorities acting jointly and by Transport for London (in respect of Greater London Authority roads), with the approval of the Mayor (and provided that the Secretary of State does not object). Outside London, the penalty charges **must** accord with guidelines set by the Secretary of State¹⁷.
- 4.2** Parking in a place where it is always prohibited (such as on a red route, on double yellow lines, or in a disabled bay without displaying a valid badge) is considered more serious than overstaying where parking is permitted (e.g. in a parking place). There is a perceived unfairness of receiving the same penalty regardless of the seriousness of the contravention. For this reason, and in order to emphasise the traffic management purposes, enforcement authorities **must**¹⁸ apply different parking penalties to different contraventions. The higher and lower penalty charges outside Greater London are specified in the Guidelines Order¹⁹. The full lists of contravention codes is set out by the London Councils. The higher list is specified in the Guidelines Order²⁰. This Order will be varied from time to time and enforcement authorities should check with the London Councils and on the www.gov.uk website that they are using the most up to date version.
- 4.3** Where an authority has to immobilise or remove a vehicle outside London, the charges **must** accord with guidelines set by the Secretary of State²¹. In London, the charges will be set by the London local authorities acting jointly, with the approval of the Mayor (and provided the Secretary of State does not object). The charges should be set no higher than required to meet the reasonable costs of the immobilisation/removals procedure. They should not generate a surplus.

¹⁵ Traffic Management Act 2004, Schedule 9 paragraphs 5 (Greater London) & 9 (outside Greater London).

¹⁶ Ibid.

¹⁷ S.I. 2007/3487 (for outside London) and Section 284 of the Greater London Authority Act 1999 (for inside London).

¹⁸ S.I. 2007/3487, Schedule, Paragraph 1.

¹⁹ S.I. 2007/3487, Schedule, Table 1.

²⁰ S.I. 2007/3487, Schedule, Table 2.

²¹ S.I. 2007/3487, Schedule, Table 4.

5. Communicating civil parking enforcement

- 5.1** It is important that the public understand why an authority has introduced civil parking enforcement and what parking restrictions are in place. Motorists and other road users need to be aware that parking enforcement is about supporting wider transport objectives, in particular keeping traffic moving, rather than raising revenue.
- 5.2** It is also important that motorists and other road users understand the details of the scheme. Unclear restrictions, or restrictions that do not comply with regulations or with the Secretary of State's Guidance, will confuse people and ultimately undermine the operation and enforcement of the scheme overall. Once authorities have finalised their parking enforcement policies, they should publish and promote them openly. There should be regular communication after civil parking enforcement is introduced and when changes are made.
- 5.3** Enforcement authorities should consider the full range of media available to them when communicating with the public. They should consider telling every household in the civil enforcement area when they propose changes e.g. to the operation of a scheme.
- 5.4** Enforcement authorities should try to work regularly with neighbouring authorities to ensure a consistent approach to enforcement and good communication across the wider area and not just within local boundaries.

6. Appraising civil parking enforcement

- 6.1** Enforcement authorities should monitor their parking policies, enforcement regimes and associated regulatory framework (including penalty charge levels). They should appraise them when reviewing their Local Transport Plans (known as Local Implementation Plans in London) and make recommendations for improvements to members. If an authority does not have a Local Transport or Local Implementation Plan, the appraisal should be part of the review of the local development framework or community strategy.
- 6.2** Appraisals 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. They will benefit from interviews with civil enforcement officers, who are in a unique position to identify changes to parking patterns, and with office staff, who see challenges and representations and the reasons for them.
- 6.3** The Secretary of State recommends that enforcement authorities consult locally on their parking policies when they appraise them. They 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.
- 6.4** The appraisal should take account of:
- existing and predicted levels of demand for parking;
 - the availability and pricing of on- and off-street parking places;
 - the impact on the local economy and the viability of local shops and high streets;
 - the justification for, and accuracy of, existing traffic orders;
 - the adequacy, accuracy and quality of traffic signing and road markings which restrict or permit parking;
 - the level of enforcement necessary for compliance;
 - the levels of penalty charges;
 - the need to resource the operation effectively and ensure that all parking staff are appropriately trained; and
 - impact on traffic flow, i.e. traffic or congestion outcomes.
- 6.5** The appraisal should ensure that parking policies still apply at the right place and time. It is particularly important to check that the policies are properly underpinned by Traffic Regulation Orders that are valid, up-to-date and properly indicated with traffic signs and road markings. A parking contravention is often a breach of a provision of a Traffic Regulation Order, which **must** have been made under the correct section of the Road Traffic

Regulation Act 1984²². Flawed orders may be unenforceable, and can damage both the aims of civil parking enforcement and the public perception of how it is managed.

²² For complete lists of parking contraventions which are civilly enforceable, please see the Traffic Management Act 2004, Schedule 7, Paragraphs 2, 3 and 4.

7. Training and professionalism in civil parking enforcement

- 7.1** Once a solid foundation of policies, legitimate Traffic Regulation Orders, and clear and lawful signs and lines are in place, the success of civil parking enforcement will depend on the dedication and quality of the staff that deliver it. It is essential to give staff at all levels the skills and training to do their jobs effectively if the service is to command public confidence and respect. This should also improve the self-esteem and job satisfaction of staff, resulting in higher retention rates. Training should be seen as a legitimate and important aspect of running costs and training budgets should be protected from cuts.
- 7.2** The office processes involved are important and staff carrying them out need similar levels of skill, training and professionalism as the more visible on-street enforcement officers. Enforcement authorities should provide enough staff for the volume of work. They should also make sure that those staff (whether employed directly by the authority or by a contractor to deal with informal challenges) have the skills, training, authority and resources to give the public a high quality, professional, efficient, timely and user-friendly service.
- 7.3** Authorities that outsource any area of parking enforcement to private companies should ensure that the contractor fulfils all the requirements set down for the authority itself.

Civil Enforcement Officers

- 7.4** Civil enforcement officers are the public face of civil parking enforcement and the way they perform their functions is crucial to the success, and public perception, of an authority's operation. It is recommended that all civil enforcement officers achieve minimum standards through recognised training courses.
- 7.5** On-street enforcement officers may be required to work near schools and similar sensitive areas and be seen as a uniformed figure of authority. The Secretary of State recommends that an applicant for a job in civil parking enforcement undergoes a Criminal Records Bureau check.
- 7.6** The main objective of parking enforcement should be to ensure parking controls are observed and enforced in a fair, accurate and consistent manner. A civil enforcement officer's traffic management duties will also include related activities such as the following:
- inspecting parking equipment;
 - checking and reporting defective traffic signs and road markings;
 - issuing information leaflets or warning notices;

- providing witness statements; and
 - where appropriate, appearing before a parking adjudicator.
- 7.7** If civil enforcement officers have the time available, the authority may wish to consider asking them to carry out related traffic management tasks such as:
- informing the police of criminal parking activity;
 - reporting suspected abandoned vehicles;
 - 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;
 - assisting with on-street enforcement surveys; and
 - checking that non-
 - mobile objects in parking places (for example, skips) are in compliance with the authority's license.
- 7.8** It is important that these supplementary duties do not stop the civil enforcement officers from carrying out their principal traffic management duties and that the authority complies with the restrictions on the use of parking income set out in Section 55 (as amended) of the Road Traffic Regulation Act 1984²³.

Dual Function Civil Enforcement Officers

- 7.9** The relevant legislation (i.e. Section 76, Traffic Management Act 2004 and Section 63A, Road Traffic Regulation Act 1984) does not expressly prohibit civil enforcement officers and parking attendants respectively from carrying out functions other than those which are related to traffic management. As such, local authorities wishing to appoint officers to carry out traffic management duties in addition to, for example, environmental enforcement duties, must ensure that neither of their responsibilities are compromised as a result of the integration of duties. Income from penalties issued under each regime should be kept separate.
- 7.10** A civil enforcement officer may be authorised by an enforcement authority to carry out functions under more than one Act. For example, a civil enforcement officer may be authorised under the Traffic Management Act 2004 for the purposes of carrying out parking enforcement duties, and that same civil enforcement officer may also be authorised under environmental legislation for the purposes of carrying out environmental enforcement duties such as, issuing fixed penalty notices for littering or dog fouling. In such circumstances, local authorities must ensure that enforcement officers carrying out dual functions have the appropriate training, and wear a uniform or badge when carrying out their functions. Enforcement authorities should also ensure that officers carrying out environmental duties carry a Police and Criminal Evidence Act (PACE) notebook, for recording evidence to support a

²³ S.I. 2007/3483, Regulations 25 and 26.

prosecution if a fixed penalty notice is unpaid, (see further information on environmental guidance: <https://www.gov.uk/guidance/fixed-penalty-notices-issuing-and-enforcement-by-councils>)

- 7.11** Similarly, in areas where local authorities have yet to take over the responsibility of parking enforcement from the police, a parking attendant may be employed by an enforcement authority under Section 63A of the Road Traffic Regulation Act 1984 for the purposes of carrying out parking enforcement duties, and that same parking attendant may also be authorised under environmental legislation for the purposes of carrying out environmental enforcement duties.
- 7.12** A dual function role is likely to be more challenging as officers will be expected to understand the potentially serious consequences of non-compliance under the different sets of legislation. For instance, if a motorist thinks a parking penalty charge notice was unjustifiably issued, he/she may appeal against the penalty charge to a parking adjudicator (i.e. via a civil regime). If they do not pay the penalty charge, then it may be recovered as a civil debt. There is no formal appeal mechanism against a fixed penalty notice issued for an environmental offence. If an alleged offender disputes the alleged offence and/or does not pay the fixed penalty, then the enforcement authority should bring criminal enforcement proceedings for the original offence in a Magistrate's Court (i.e. via a criminal regime), which could result in a criminal conviction and a fine of up to £2500. More importantly, recipients of penalty charge notices or fixed penalty notices from dual function enforcement officers need to be made aware and understand the capacity in which the officer is acting at any given time. It is therefore important that local authorities ensure that officers carrying out dual functions acquire the necessary levels of skills, training and professionalism for carrying out both functions, and are properly supervised on the job.
- 7.13** Local authorities combining their traffic management enforcement activities with other enforcement activities should ensure their combined operations are run efficiently, effectively and economically. A single and more effective enforcement regime may generate further benefits to the wider community such as, for example, a reduction in traffic congestion and a cleaner neighbourhood by combining traffic management and environmental enforcement, as well as efficiency gains for local authorities. It is strongly recommended that two tier local authorities have a good working relationship and continue to maintain a dialogue where enforcement operations are combined.

The exercise of discretion

- 7.14** The Secretary of State considers that the exercise of discretion should, in the main, rest with back office staff as part of considering challenges against penalty charges and representations that are made to the local authority. This is to protect civil enforcement officers from allegations of inconsistency, favouritism or suspicion of bribery. It also gives greater consistency in the enforcement of traffic regulations.
- 7.15** However, the enforcement authority may wish to set out certain situations when a penalty charge should not be issued. For example, an enforcement authority may wish to consider issuing a verbal warning rather than a penalty

charge to a driver who has committed a minor contravention and is still with, or returns to, the vehicle before a penalty charge notice has been served. The enforcement authority should have clear policies, instructions and training available on how to exercise such authority. These policies should form the basis for staff training and should be published.

- 7.16** Enforcement authorities should ensure that civil enforcement officers are properly trained to enforce parking controls fairly, accurately and consistently. As well as formal training, it is recommended that authorities include some supervised on-street training to familiarise civil enforcement officers with the area and any special parking provisions. Enforcement authorities should make sure that all relevant exemptions are understood, such as those applying to diplomatic vehicles and the Blue Badges issued to disabled people. Civil enforcement officers should be aware of their powers to inspect and retain Blue Badges²⁴ and the sensitivity required should they need to exercise them.

²⁴ The Disabled Persons' Parking Badges Act 2013; and the Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) Regulations 2013.

8. On-street activities

- 8.1** When exercising prescribed functions²⁵ a civil enforcement officer **must**²⁶ wear a uniform. The uniform should clearly show:
- that the wearer is engaged in parking enforcement;
 - the name of the local authority/authorities of whose behalf s/he is acting; and
 - a personal identity number.
- 8.2** It is recommended that civil enforcement officers carry a photo-identity card, showing their identification number and the name of their employer. However, to protect the safety of staff, it is strongly recommended that the photo-identity card does not include the enforcement officer's name on it.

Prevention of service by 'drive away'

- 8.3** A PCN may also be served by post if the CEO had begun to leave it – i.e. has completed his/her observations and had either started to write the PCN or put the data into the HHC and would, in other circumstances, have to cancel the PCN – but the vehicle was driven away before the CEO had time to finish or serve the PCN.
- 8.4** In such circumstances, the actual PCN issued by the CEO on patrol cannot be sent by post because it does not give enough information. The authority should cancel the regulation 9 PCN prepared by the CEO and serve a regulation 10 PCN by post. Enforcement authorities should make sure that they have sufficient primary and supporting evidence to deal with any subsequent representations and appeals. They will also wish to obtain a witness statement from the CEO. The Secretary of State recommends that the CEO records the vehicle licence number and tells the driver of the contravention before they drive away. Back-office staff should obtain the registered keeper's home address from DVLA. In these circumstances the motorist gets a 14 day discount period. The PCN, which serves also as the NtO, must be served by first class post²⁷. It must state:²⁸
- The date of the notice, which must be the date on which it is posted;
 - The name of the enforcement authority;
 - The registration mark of the vehicle involved in the alleged contravention;
 - The date and time at which the alleged contravention occurred;

²⁵ Traffic Management Act 2004, Section 78(2)(a) and (b) and Section 79, and RTRA, Section 99.

²⁶ Traffic Management Act 2004, Section 76(3)(a).

²⁷ S.I. 2007/3483, regulation 3(1)

²⁸ S.I. 2007/3484, Schedule 1, paragraph 2 and S.I. 2007/3482, regulation 3(4)

- The amount of the penalty charge;
- The manner in which the penalty charge must be paid;
- The grounds on which the enforcement authority believes that a penalty charge is payable;
- That the penalty charge must not be paid later than the last day of the period of 14 days, beginning with the date on which the PCN was served, the penalty charge will be reduced by any applicable discount – currently 50 percent;
- That if after the last day of the period of 28 days beginning with the date on which the penalty charge notice is served, no representations have been made in accordance with regulation 4 of the Representations and Appeals Regulations ('regulation 4'), and the penalty charge has not been paid, the enforcement authority may increase the penalty charge by the amount of any applicable surcharge – currently 50 percent – and take steps to enforce payment of the charge as so increased.
- The amount of the increased penalty charge;
- That the PCN is being served by post because a CEO had begun to prepare a PCN for service in accordance with regulation 9 (by affixing it to the vehicle or giving it to the person in charge of the vehicle) but the vehicle was driven away from the place in which it was stationary before the CEO had finished preparing the PCN or had served it in accordance with regulation 9.
- That representations on the basis specified in regulation 4 may be made to the enforcement authority against the imposition of the penalty charge but that representations made outside the period of 28 days, beginning with the date on which the PCN is served may be disregarded;
- The nature of the representations which may be made under regulation 4;
- The address (including, if appropriate, any email address, as well as the postal address) to which representations must be sent;
- The form in which they (the representations) must be made;
- That if representations which have been made within the representation period or outside the period but not disregarded, are not accepted by the enforcement authority the recipient of the PCN may appeal against the authority's decision to an adjudicator.

Collecting evidence of contraventions

8.5 The local authority **must**²⁹ provide evidence of the contravention either from direct observation, or from the record of an approved device³⁰.

²⁹ S.I. 2007/3483, Regulation 6.

³⁰ A device specified in S.I. 2007/3486.

8.6 Wherever possible drivers should be made aware of a parking contravention at the time. People should be able to examine the scene for themselves, so that they can understand the contravention. Therefore, the penalty charge notice **must**³¹ either be fixed to the vehicle or given to the person who appears to be in charge of that vehicle, although there are some exceptions to this³² - see paragraph 8.6. The information that a penalty charge notice **must**³³ contain is set out in the Regulations. It is recommended that it also gives:

- detailed location of vehicle (full street name);
- the contravention code;
- observation start and finish times;
- Penalty charge notice number (all should be uniquely identifiable);
- Civil enforcement officer identification number.

8.7 Photographs and notes by the civil enforcement officer about the circumstances should be kept as further evidence that the contravention took place and to help resolve any disputes. Authorities should provide staff with the appropriate equipment, training and guidance to collect such evidence in the circumstances that the authority has prescribed. The use of digital cameras and similar technology is strongly encouraged. Authorities should disclose their evidence at the earliest possible opportunity.

8.8 There are some circumstances in which a penalty charge notice may be served by post³⁴. One is where the contravention has been detected on the basis of evidence from an approved device (approved devices may only be used in limited circumstances – see paragraph 8.7). The second is if the civil enforcement officer has been prevented, for example by force, threats of force, obstruction or violence from serving the penalty charge notice either by affixing it to the vehicle or by giving it to the person who appears to be in charge of that vehicle. The third is if the civil enforcement officer had started to issue the penalty but did not have enough time to finish or serve it before the vehicle was driven away and would otherwise have to write off or cancel the penalty charge notice. In these circumstances a penalty charge notice is served by post on the owner (whose identity is ascertained from the Driver and Vehicle Licensing Agency), and also acts as the Notice to Owner. The Regulations set out what information **must**³⁵ be stated on a penalty charge notice sent by post. The Secretary of State suggests that postal penalty charge notices should be sent within 14 days of the contravention.

Enforcement using Approved Devices

8.9 Traffic Management Act 2004 Regulations give limited powers to authorities throughout England to issue penalty charge notices for contraventions detected solely with a camera and associated recording equipment (approved

³¹ S.I. 2007/3483, Regulation 9.

³² S.I. 2007/3483, Regulation 10(1) as amended by The Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2015.

³³ S.I. 2007/3483, Schedule, Paragraphs 1 and 2, and S.I. 2007/3482, Regulations 3(2) and 3(4).

³⁴ S.I. 2007/3483, Regulation 10 as amended by The Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2015.

³⁵ S.I. 2007/3483, Schedule, Paragraph 2 and S.I. 2007/3482, Regulation 3(4).

device). The Secretary of State **must**³⁶ certify any such device. Once certified they may be called an 'approved device'. Penalty charge notices **must not**³⁷ be served by post on the basis of evidence from an approved device other than when vehicles are parked on:

- a bus lane;
- a bus stop clearway or bus stand clearway;
- a Keep Clear zig-zag area outside schools; or
- a red route.

- 8.10** In such circumstances, the Secretary of State recommends that approved devices are used only where enforcement is difficult or sensitive and enforcement by a civil parking officer is not practical.
- 8.11** It is recommended that the authority sends a copy of the record of the contravention (in the form of a still image or images) with the penalty charge notice.
- 8.12** 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 restrictions and detecting those that do. To do this, the system needs to be well publicised and indicated with lawful traffic signs.

Grace periods

- 8.13** Parking policy should be designed to enable people to access the community and carry on their business as easily as possible. Whilst it is important to undertake enforcement, to prevent abuse of parking facilities to the detriment of the majority, enforcement should be sensitive, fair and proportionate. This would not be the case if a driver received a penalty charge notice (PCN) for returning to their vehicle only moments after the expiry of a period of permitted parking. Therefore, the law requires that a penalty charge **must**³⁸ not be issued to a vehicle which has stayed parked in a parking place on a road or in a local authority's car park beyond the permitted parking period for a period of time not exceeding 10 minutes. The grace period applies to on-street and off-street parking places provided under traffic orders, whether the period of parking is paid for or free. Any penalty charge during the 10-minute grace period would be illegal, unless the vehicle itself is parked unlawfully (e.g. where the motorist has not paid any required parking fee or displayed a parking ticket where required).
- 8.14** It is important that all civil enforcement officers understand that grace periods only apply to designated parking places where a person is permitted to park. A road with a restriction (e.g. single yellow line) or prohibition (e.g. double yellow line) is not a 'designated' parking place either during - or outside of - the period of the restriction or prohibition.

³⁶ S.I. 2007/3486 and S.I. 2007/3483, Regulation 10.

³⁷ S.I. 2007/3483, as amended by The Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2015.

³⁸ The Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2015

Out of order parking devices

- 8.15** For the same reasons of fairness mentioned above, if an on-street parking meter or pay-and-display machine is out of order (and parking has not been suspended and clearly indicated as such to motorists), motorists should not be issued with a penalty charge notice unless alternative means of payment were available to the driver and clearly indicated. It is important that suspended and reserved parking bays are clearly signed, so that motorists can easily see whether and when they are permitted to park there.

Immobilisation/ removal: general

- 8.16** Very few authorities now use immobilisation. The Secretary of State is of the view that it should only be used in limited circumstances such as where the same vehicle repeatedly breaks parking restrictions and it has not been possible to collect payment for penalties, primarily because the keeper is not registered, or is not properly registered, with the Driver and Vehicle Licensing Agency. Where a vehicle is causing a hazard or obstruction the enforcement authority should remove rather than immobilise. Immobilisation/removal activity should only take place where it gives clear traffic management benefits.
- 8.17** An enforcement authority should formulate and publish clear guidelines for civil enforcement officers on when it will be appropriate to use immobilise or remove. The guidelines should cover the order of priority in which vehicles should be dealt with, based on the nature of the contravention. Powers should not be used randomly and authorities should draw up guidelines in consultation with the police.
- 8.18** The decision on whether to immobilise or to remove a vehicle requires an exercise of judgement and **must**³⁹ only be taken following specific authorisation by an appropriately trained civil enforcement officer. The immobilisation/removal operatives should not take the decision. Vehicles should not be immobilised or removed by contractors unless a suitably trained civil enforcement officer is present to confirm that the contravention falls within the guidelines.
- 8.19** When a vehicle is parked in a parking place, there are circumstances where, authorities **must not**⁴⁰ immobilise or remove in the first 30 minutes following the issuing of the penalty notice, or the first 15 minutes in the case of 'persistent evader' vehicles (see paragraphs 8.28-8.29). The circumstances are where the contravention consists of or arises out of, a failure:
- to pay a parking charge with respect to the vehicle;
 - properly to display a ticket or parking device; or
 - to remove the vehicle from the parking place by the end of the period for which the appropriate charge was paid.
- 8.20** In the case of (c), above, a 10-minute grace period would need to be given before the penalty charge notice was issued. Once the penalty charge notice was issued the 30/15 minute rule would apply. In the case of (a) and (b), the

³⁹ S.I. 2007/3483, Regulation 13(5)(a) and (b) and The Removal and Disposal of Vehicles Regulations 1986, Regulation 5C(2) (inserted by S.I. 2007/3484).

⁴⁰ The Removal and Disposal of Vehicles Regulations 1986, Regulation 5C(3) (inserted by S. I. 2007/3484).

vehicle is parked illegally and a grace period would not apply before the penalty charge was issued.

- 8.21** When a vehicle has been immobilised, a civil enforcement officer **must**⁴¹ affix a notice to it. The regulations set out what that notice **must**⁴² say. The immobilisation device may only be removed by or under the direction of a person authorised to do so by the enforcement authority, following payment of the release fee and the penalty charge.
- 8.22** Where a vehicle is causing a hazard or obstruction the enforcement authority should remove rather than immobilise. If the vehicle is parked where parking is prohibited (such as on double yellow lines), then the vehicle can be removed as soon as a penalty charge notice has been served⁴³.
- 8.23** If a driver returns to the vehicle whilst immobilisation or removal is taking place, then unless they are a persistent evader, it is recommended that the operation is halted, unless the clamp is secured or the vehicle has all its wheels aboard the tow truck. If immobilisation or removal is halted the penalty charge notice should still be enforced.
- 8.24** When a vehicle is immobilised and subsequently removed to the pound, the driver does not have to pay the clamp release fee⁴⁴.
- 8.25** Where vehicles are removed, enforcement authorities should contact the police or, in London the towed vehicle tracing service (TRACE)⁴⁵ and advise them of the time, place, vehicle registration number, and pound to attend for retrieval so they can deal with queries from motorists who report their vehicle stolen.
- 8.26** Where a vehicle has been immobilised or removed, an authority should seek to make it available to its owner immediately upon payment. In the case of clamp release, enforcement authorities should set maximum times for releasing vehicles once they have received payment. They should publish these along with their parking policy guidelines. It is recommended that these should be within one hour from payment being received, with a maximum time limit of two hours. The immobilisation or removal is the penalty and further inconvenience and potential cost from prolonged release times is not appropriate. Enforcement authorities should publish their performance against these targets.
- 8.27** On the release of a vehicle from a clamp or from the vehicle pound the authority **must**⁴⁶ immediately inform the vehicle owner or person in charge of the vehicle about their right to make representations and their subsequent right to appeal against representations that are rejected. The vehicle will already have been issued a penalty charge notice that sets out the grounds on which representations can be made. However, the Secretary of State recommends that the notice about representations against the immobilisation or removal also gives full particulars of the grounds, procedure and time limit for representations. This is particularly important when credit or debit payments are made over the telephone.

⁴¹ S.I. 2007/3483, Regulation 12.

⁴² S.I. 2007/3483, Regulation 12.

⁴³ The Removal and Disposal of Vehicles Regulations 1986, Regulation 5C(3) (inserted by S. I. 2007/3484).

⁴⁴ RTRA, Section 101A(1), and Traffic Management Act 2004 Section 79(1).

⁴⁵ TRACE is operated by the London Councils.

⁴⁶ S.I. 2007/3482, Regulation 11(2) and (3), and Regulation 8(2) and (3).

- 8.28 Storage charges should apply for each day or part of day, reckoned from 2400 midnight on the day following removal of a vehicle.

Immobilisation and removals: special consideration for disabled badge holders and vehicles with diplomatic registration plates

- 8.29 Civil enforcement officers should be aware of special considerations in respect of valid Blue Badge holders⁴⁷ and vehicles with diplomatic plates⁴⁸.
- 8.30 Vehicles displaying a valid Blue Badge **must not**⁴⁹ be immobilised 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 authorities should not charge a removal fee for the relocation of vehicles displaying a Blue Badge. They should notify the police or in London the towed vehicle tracing service in case the owner reports the vehicle stolen.
- 8.31 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 immobilised. The exception is for X registered vehicles which have been identified as persistent evaders. X registered vehicles can be removed but diplomatic vehicles with D or personalised plates that are causing an obstruction or danger should only be repositioned close by as an extreme measure. In such a circumstance, an enforcement authority should not try to recover the costs of removal.

Persistent evaders

- 8.32 Some vehicle owners contravene parking regulations deliberately and often, and fail to settle the debts they incur. A vehicle owner can be classed as a 'persistent evader' if there are three or more recorded contraventions for the vehicle and the penalties for these have not been paid, represented against or appealed against within the statutory time limits, or their representations and appeals have been rejected but they have still not paid. Usually this is because the vehicle keeper is not registered, or is not correctly registered, on the Driver and Vehicle Licensing Agency database and the owner is confident that they can avoid paying any penalty charges. Where a vehicle appears to be registered in the UK, but the identity and address is not registered, or is not correctly registered on the Driver and Vehicle Licensing Agency database, authorities should consider making the information available to the police who can, if appropriate, investigate any criminal offence.
- 8.33 When parked in contravention, a persistent evader's vehicle should be subject to the strongest possible enforcement following the issue of the penalty charge notice and confirmation of persistent evader status. This is likely to involve immobilisation or removal. The benefit of removal is that it requires proof of ownership and a registered address before release of the

⁴⁷ Further guidance can be found in the Department for Transport Blue Badge Scheme Leaflet, Parking concessions for disabled and blind people.

⁴⁸ Article 31.1 of the Vienna Convention on Diplomatic Relations; Diplomatic Privileges Act 1964; White Paper on Diplomatic Immunities and Privileges (Cmnd 9497, April 1985).

⁴⁹ S.I. 2007/3483, Regulation 13 (1).

vehicle, whereas immobilisation prevents law abiding motorists from using valuable kerb space. If a vehicle of a persistent evader is in a designated parking place, the Traffic Management Act 2004 and regulations made under it prohibit an enforcement authority from immobilisation or removing the vehicle until at least 15 minutes⁵⁰ have elapsed following the issue of a penalty charge notice. Currently, under Traffic Management Act 2004 regulations an authority can only obtain payment for the penalty charge notice of the contravention for which the vehicle is immobilised or removed and not any other outstanding penalty charge notices.

Diplomatic Registered Vehicles

8.34 Special arrangements apply to diplomatic registered vehicles. Authorities should accurately follow the procedures used by the police when dealing with diplomatic registered vehicles. Where a CEO comes across a diplomatically registered vehicle parked in contravention of a parking restriction, they should contact a manager or a supervisor who should follow the procedures set out below:

8.35 Diplomatic registered vehicles will have one of three types of plate:

- D registration plates (e.g. 123 D 321) may be carried by vehicles belonging to diplomats, members of the administrative and technical staff of missions and certain senior staff of international organisations. They may also be carried by official vehicles of diplomatic missions. They show that the owner is entitled to diplomatic immunity,
- Personalised diplomatic registration plates may, for example, include a country's initials or an abbreviation of its full name. They are sometimes issued for the official cars of Heads of Diplomatic Missions, who have full diplomatic immunity, or
- X registration plates (e.g. 987 X 789) may be used by certain consular staff or staff of international organisations. They show that the owner is entitled to limited diplomatic immunity.

8.36 The UK is a party to Article 31.1 of the Vienna Convention on Diplomatic Relations, which gives accredited diplomats immunity from the criminal jurisdiction of the host nation's law. The Article is given the force of law in the United Kingdom by section 2 of, and Schedule 1 to, the Diplomatic Privileges Act 1984. Issuing PCNs is not considered an exercise of criminal jurisdiction within the terms of Article 31.1 of the Convention, nor is the removal of diplomatic vehicles as a last resort to relieve obstruction or danger when the driver cannot be found quickly. However, immobilising or removing those vehicles in other circumstances is considered to be an exercise of such jurisdiction and is therefore ruled out. The White Paper on Diplomatic Immunities and Privileges⁵¹ commits the Government to ensuring that agencies enforcing parking controls follow these principles.

8.37 The TMA provides for non-endorsable parking contraventions to be enforceable by local authorities in a Civil Enforcement Area. But the

⁵⁰ Traffic Management Act 2004, Section 79 (6); S.I. 2007/3483, Regulation 13(5)(a); The Removal and Disposal of Vehicles Regulations 1986, Regulation 5C(4)(a) (inserted by S.I. 2007/3484).

⁵¹ Comd 9497, April 1985

immobilisation or removal of vehicles sometimes associated with the enforcement of these controls still constitute this exercise of criminal jurisdiction within the meaning of the Vienna Convention. The Diplomatic Privileges Act 1984 continues to exempt diplomatic vehicles from such enforcement.

Immobilisation

- 8.38** Authorities should not immobilise vehicles carrying 'D' registration plates or registration plates prescribed for the country anywhere on public roads. Vehicles carrying 'X' registration plates may be immobilised in the same way as vehicles without diplomatic immunity and authorities may require owners or persons in charge of such vehicles to pay the PCN and a release fee. However, the Secretary of State recommends that local authorities treat X-plated vehicles as D-plated unless they are persistent evaders. Authorities should never immobilise an X-plated vehicle where it is parked if it is causing a serious road safety or congestion hazard, even if they could justify doing so. They should move it to a place nearby or take it to the vehicle pound.

Removal

- 8.39** Authorities should only remove vehicles carrying D registration plates or registration plates personalised or the country as a last resort to relieve obstruction or danger to other road users and where the driver cannot be found quickly. In these cases, the vehicle should be removed to a more suitable location within the immediate vicinity and, where possible, a message left indicating where it can be found. Authorities should avoid moving vehicles to a car pound but if there is no viable alternative, changes should be waived as diplomats are under no obligation to pay removal or storage charges. If an authority does demand a charge and it is paid, the Embassy will appeal to the Foreign and Commonwealth Office (FCO) to recover the charges, or will appeal direct to the authority.
- 8.40** As with immobilisation, authorities may remove vehicles carrying X registration plates in the same way as those without any diplomatic immunity, and require the owners to pay the PCN and any associated removal, storage and disposal charges. The Secretary of States recommends that authorities treat X-plated vehicles as D-plated unless they are causing a serious road safety or congestion hazard or are persistent evaders.

Recovery of unpaid PCNs

- 8.41** Although the owners of diplomatic registered vehicles are required to pay PCNs, authorities should not serve an NtO if they do not pay within 28 days. The NtO would trigger procedures which could ultimately lead to action in a county court to recover the unpaid debt. Many diplomats are not subject to civil jurisdiction and there is no practical way for local authorities to distinguish between those who are those who are not. Local authorities should therefore follow existing police practice. Instead of issuing an NtO, they should record the unpaid charge. The FCO will ask for details of all unpaid PCNs annually and will pursue the contraveners for payment.

9. Policy and administrative functions

Providing a quality service

- 9.1** Enforcement authorities should make sure that their processes for recovering outstanding penalties and handling challenges, representations and appeals are efficient, effective and impartial. 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 civil parking enforcement processes.
- 9.2** Enforcement authorities should deal with motorists promptly and professionally. Authorities are encouraged to set time and quality targets for dealing with queries, in addition to any statutory time limits and those set out in this Guidance. They should report on performance against these targets in their annual report. Enforcement authorities **must**⁵² use first class post for any notice or Charge Certificate.
- 9.3** Authorities should remember that an appeal is a judicial proceeding and that time limits for correspondence may be laid down in legislation or set using adjudicator's judicial powers. Authorities are advised to respond promptly to contacts from the adjudicator concerning appeals.
- 9.4** Enforcement authorities should offer motorists flexible and efficient ways to contact them, including e-mail and telephone. They should ensure there is an adequate audit trail to rebut any accusations of unfairness.
- 9.5** Authorities should not issue PCNs when traffic signs or road markings are incorrect, missing or not in accordance with the TRO. These circumstances may make the Order unenforceable. If a representation against a PCN shows that a traffic sign or road marking was defective, the authority should accept the representation because the adjudicator is likely to uphold any appeal. An enforcement authority may be acting unlawfully and may be open to legal challenge if it continues to issue PCNs that it knows to be unenforceable.

Collecting penalty charges

- 9.6** The penalty charge is usually payable by the owner⁵³ of the vehicle, unless the vehicle was hired at the time of the contravention. Enforcement

⁵² S.I. 2007/3483), Regulation 3(2).

⁵³ This expression is defined by the Traffic Management Act 2004, Section 92 as follows: "owner", in relation to a vehicle,

authorities should offer motorists a range of facilities for paying penalty charges. Where they provide payment centres these should be safe and accessible. Enforcement authorities should ensure that any payment facility (particularly telephone and online payments) can confirm any amount outstanding if part payment only has been received.

- 9.7** If there are unusual delays with the postal system, authorities should make allowances for late payments made by post when considering whether a payment was received within the statutory period. Enforcement authorities may wish to keep the envelope that the payments came in, as the franking can be used as evidence of the date of posting.
- 9.8** A penalty charge notice is deemed 'paid' as soon as the payment arrives at any payment office belonging to the enforcement authority that issued the penalty charge notice. Whether this is the parking payment office or another payment office, the enforcement authority should promptly close the case. An authority's systems should accurately record the day on which it receives payments so that no further enforcement action is taken.
- 9.9** Where the enforcement authority receives full payment within 14 days of the service of the penalty charge notice, it **must**⁵⁴ accept the discounted amount. Unless the Secretary of State authorises a departure from the guidelines on the levels of penalty charges, the discount **must** be set at the applicable discount - currently 50 per cent of the penalty charge⁵⁵. The authority should then close the case. When a penalty charge notice has been served by post using evidence from an approved device, the discount period is 21 days from the date of service of the notice⁵⁶.

Issuing the Notice to Owner

- 9.10** If the penalty charge is not paid the enforcement authority may issue a Notice to Owner. The purpose of this is to ensure that the penalty charge notice was received by the vehicle owner and to remind the vehicle owner that the payment in full is now due and if it is not paid within a further 28 days it may be increased. The Notice to Owner may be issued 28 days after serving the penalty charge, and we expect authorities to send them within 56 days. The ultimate time limit, in exceptional circumstances, is six months⁵⁷ from the "relevant date". There should be a very good reason for waiting that long to serve a Notice to Owner⁵⁸. The Regulations set out the information that the Notice to Owner **must**⁵⁹ give. There are different requirements when the penalty charge notice acts as the Notice to Owner (see paragraph 8.6).
- 9.11** Authorities **must**⁶⁰ specify on the Notice to Owner (or the penalty charge notice when served by post) the statutory grounds on which

means the person by whom the vehicle is kept, which in the case of a vehicle registered under the Vehicle Excise and Registration Act 1994 (c. 22) is presumed (unless the contrary is proved) to be the person in whose name the vehicle is registered.

⁵⁴ S.I. 2007/3483, Schedule, Paragraph 1(h).

⁵⁵ S.I. 2007/3487.

⁵⁶ S.I. 2007/3483, Schedule, Paragraph 3(a).

⁵⁷ S.I. 2007/3483, Regulation 20.

⁵⁸ S.I. 2007/3483, Regulation 20.

⁵⁹ S.I. 2007/3483, Regulation 19(2) and S.I. 2007/3482, Regulation 3(3).

⁶⁰ S.I. 2007/3483, Regulation 19(2) Schedule, Paragraph 2, and S.I. 2007/3482, Regulation 3(3) and 3(4).

representations may be made. Where a photograph or other camera evidence shows that the parking contravention took place, authorities should send this with the Notice to Owner as it should help to prevent unfounded representations.

- 9.12** Where a penalty charge is served on a vehicle with a diplomatic registration plate but no payment is received within 28 days, an enforcement authority should not issue a Notice to Owner but keep a record of the unpaid penalty charge. Every year the Foreign and Commonwealth Office will request details of all unpaid penalty charge notices and then seek payment from the relevant contraveners.

Charge Certificate

- 9.13** The Charge Certificate tells the vehicle owner that the penalty charge has been increased and that action will be taken to recover the amount due through the County Court if it is not paid within 14 days. Unless the Secretary of State authorises a departure from the guidelines, the increase in the penalty charge **must**⁶¹ be set at the applicable surcharge - currently 50 per cent.
- 9.14** The authority may issue a Charge Certificate where a Notice to Owner has been served, the penalty charge has still not been paid and no representation or appeal is under consideration. This **must not**⁶² be done before the end of 28 days beginning with the date on which the Notice to Owner was served.
- 9.15** Where representations have been made and rejected, and no appeal has been made, the enforcement authority **must not**⁶³ issue the Charge Certificate before the end of 28 days beginning with the date on which the Notice of Rejection was served. This is to give the vehicle owner time in which to appeal.
- 9.16** Where cases go to adjudication, authorities **must not**⁶⁴ issue a Charge Certificate before all due processes have been completed. If an appeal is made and withdrawn before the hearing the authority may, after 14 days beginning with the date on which the appeal was withdrawn, issue the Charge Certificate. If an authority issues a Charge Certificate before an appeal is decided, the adjudicator may then cancel the penalty charge notice on the grounds of procedural impropriety. The authority should cancel the void Charge Certificate.
- 9.17** If the penalty charge has not been paid 14 days after the Charge Certificate was served, the authority may apply to the Traffic Enforcement Centre at Northampton County Court to recover the increased charge as if it were payable under a county court order.

⁶¹ S.I. 2007/3487, Schedule, Paragraph 1(3).

⁶² S.I. 2007/3483, Regulation 21.

⁶³ S.I. 2007/3483, Regulation 21.

⁶⁴ S.I. 2007/3483, Regulation 21, and S.I. 2007/3482, Regulation 4(5)(b).

10. Considering challenges / representations / appeals

- 10.1** The vehicle owner may dispute the issuing of a penalty charge notice at three stages:
- Owners may make so-called ‘informal challenges’ or ‘informal representations’ against the penalty charge before the authority has served a Notice to Owner ⁶⁵;
 - Once a Notice to Owner has been served, an owner may make a formal representation to the authority; and
 - If a formal representation is rejected the owner may appeal against the Notice of Rejection to an independent adjudicator.
- 10.2** It is in the interests of the authority and the vehicle owner to resolve any dispute at the earliest possible stage. Authorities should take account of the civil enforcement officer’s actions in issuing the penalty charge but should always give challenges and representations a fresh and impartial consideration.
- 10.3** An authority has a discretionary power to cancel a penalty charge notice at any point throughout the process. It can do this even when an undoubted contravention has occurred if the authority deems it to be appropriate in the circumstances of the case. Under general principles of public law, authorities have a **duty** to act fairly and proportionately⁶⁶ and are encouraged to exercise discretion sensibly and reasonably and with due regard to the public interest.
- 10.4** Enforcement authorities have a **duty**⁶⁷ not to fetter their discretion, so should ensure that penalty charge notices, Notices to Owners, leaflets and any other advice they give do not mislead the public about what they may consider in the way of representations. They should approach the exercise of discretion objectively and without regard to any 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 then publish their policies on the exercise of discretion. They should apply these policies flexibly and judge each case on its merits. An enforcement authority should be ready to depart from its policies if the particular circumstances of the case warrant it.

⁶⁵ S.I. 2007/3482, Regulation 3(2). The enforcement authority must consider representations made at this stage but if it proceeds to serve a Notice to Owner after receiving such representations, then those or other representations can be made in accordance with S.I. 2007/3482, Regulation 4.

⁶⁶ Failure to act in accordance with the general principles of public law may lead to a claim for a decision to be judicially reviewed.

⁶⁷ Ibid.

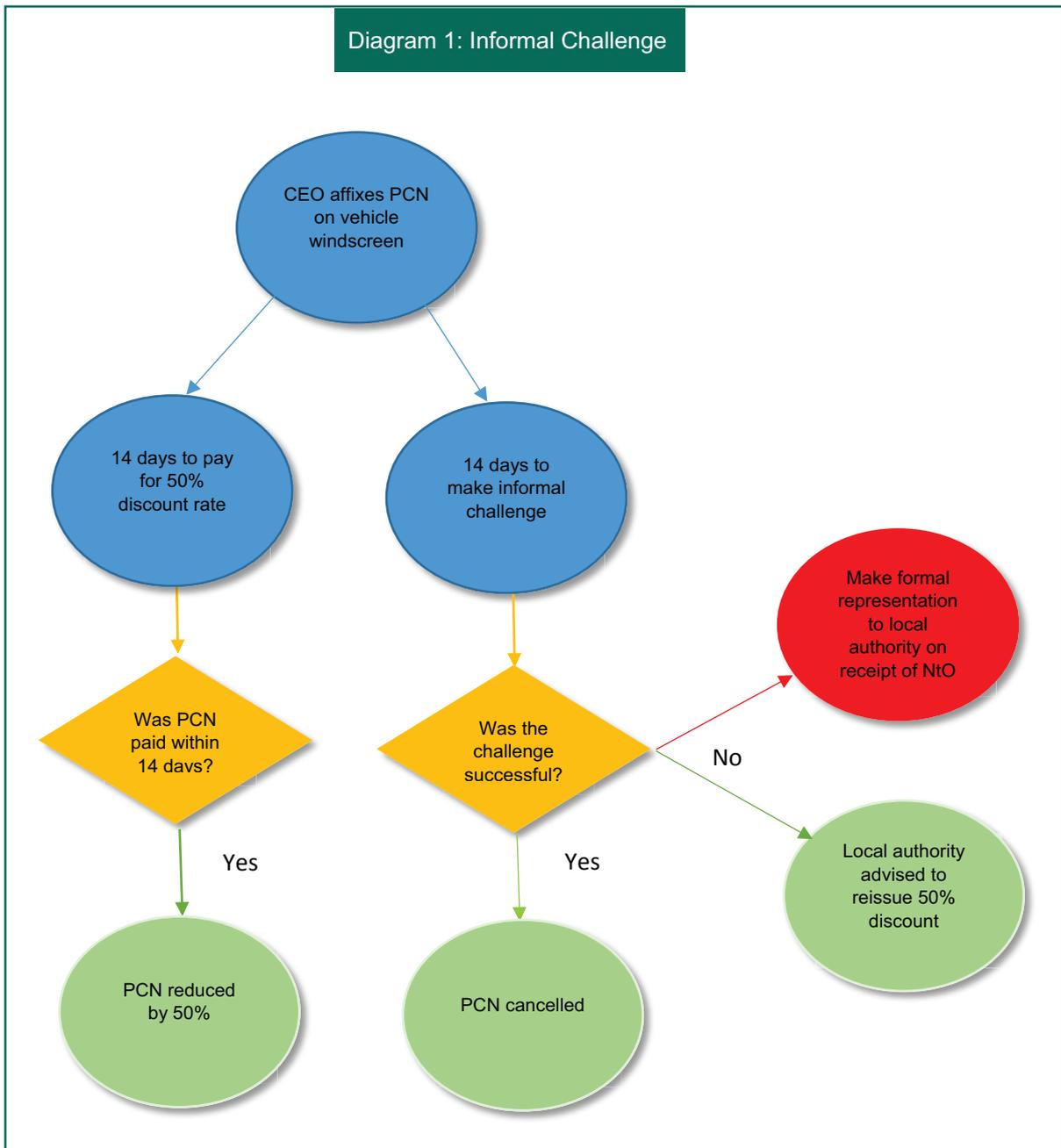
- 10.5** The process of considering challenges, representations and defence of appeals is a legal process that requires officers dealing with these aspects to be trained in the relevant legislation and how to apply it. They should be well versed in the collection, interpretation and consideration of evidence; writing clear but concise case-specific responses to challenges, enquiries and representations; presenting the authority's case to adjudicators.
- 10.6** Authorities should ensure that their legal departments are involved in establishing a processing system that meets all the requirements of the law. They should also consult them about complex cases.

Challenges - also known as informal representations

- 10.7** It is likely that an enforcement authority will receive informal challenges against penalty charges before they issue the Notice to Owner and authorities should consider them (the concept of informal challenge does not apply to penalty charges issued by post where the penalty charge notice will act as a Notice to Owner). They are likely to receive these within the 14 day discount period. Enforcement authorities should give proper consideration and respond to these challenges with care and attention, and in a timely manner in order to foster good customer relations, reduce the number of Notice to Owners sent and the number of formal representations to be considered. The Secretary of State suggests that authorities should respond within 14 days. Enforcement authorities should also have suitably trained staff with the appropriate authority to deal with these challenges.
- 10.8** The consideration should take into account the grounds for making representations and the authority's own guidelines for dealing with extenuating, or mitigating circumstances. As with statutory representations, the authority should ensure that, whatever ways are available to lodge an informal representation, there is an adequate audit trail of the case, showing what decision was taken and why.
- 10.9** If the evidence or circumstances (including mitigating circumstances) provide grounds for cancelling the penalty charge notice, then the enforcement authority should do so and let the vehicle owner know.
- 10.10** If a number of motorists have parked their vehicles at the same site in the mistaken belief that this is permitted, the authority should consider what can be done to make the restrictions clearer to the public.
- 10.11** If the enforcement authority considers that there are no grounds for cancellation, it should tell the vehicle owner and explain its reasons.
- 10.12** If a challenge is received within the discount period and subsequently rejected, the Secretary of State recommends that the enforcement authority should consider re-offering the discount for a further 14 days to incentivise payment. Authorities should always make it clear that an owner who has an informal challenge rejected may still make a formal challenge if a Notice to Owner is served⁶⁸. Diagram 1 below outlines the process for challenging a PCN at the first stage of the appeal system:

⁶⁸ S.I. 2007/3482, Regulation 3(2).

Diagram 1: Informal Challenge



Formal representations

10.13 Many enforcement authorities contract out on-street and car park enforcement and the consideration of informal representations. Enforcement authorities should not contract out the consideration of formal representations. Enforcement authorities remain responsible for the whole process, whether they contract out part of it or not, and should ensure that a sufficient number of suitably trained and authorised officers are available to decide representations of their merits in a timely and professional manner.

10.14 Where on-street and car park enforcement and associated operations are done by in-house staff, there should be a clear separation between the staff

that decide on the issuing and processing of penalty charge notices and the staff that decide on representations. This is particularly important for cases referred back by the adjudicators. It ensures that decisions are seen to be impartial.

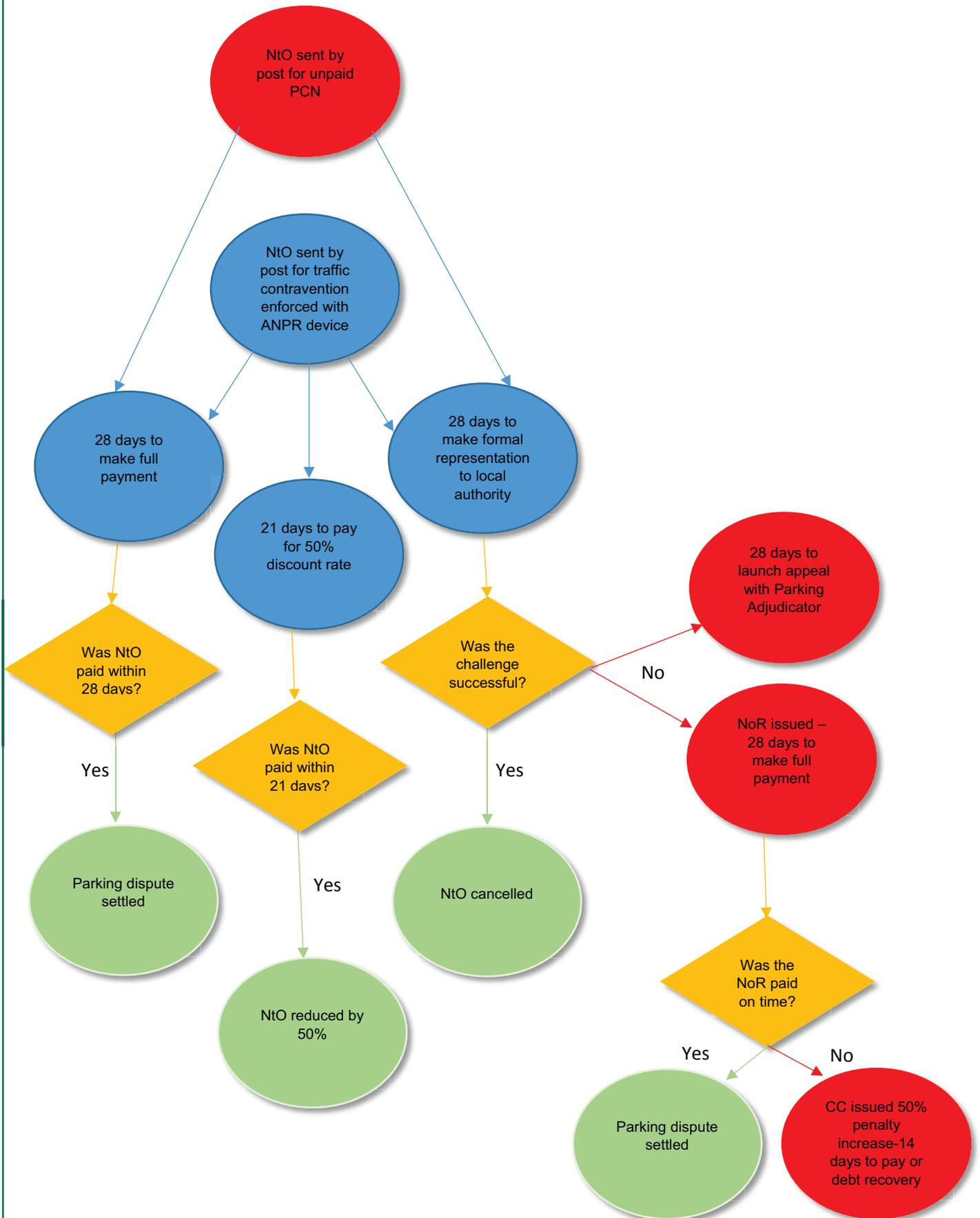
- 10.15** Officers dealing with formal representations should be familiar with all aspects of civil parking enforcement, particularly the legal nature of the process, so that they can judge whether or not a representation falls within the statutory grounds or the authority's guidelines for exceptional cases. Fair and efficient systems for carrying out this work should ensure that the number of cases going to an adjudicator is minimised – so saving the authority time and expense – without allowing motorists who have committed a contravention to evade the appropriate penalty.
- 10.16** 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 and unauthorised staff should not, under any circumstances, play a part in deciding the outcome of individual challenges or representations. This is to ensure that only fully trained staff make decisions on the facts presented. The authority's standing orders should be specific as to which officers have the authority to cancel penalty charge notices. There should also be a clear audit trail of decisions taken with reasons for those decisions.
- 10.17** The grounds on which representations may be made are set out in the Regulations⁶⁹ and **must**⁷⁰ be stated on the Notice to Owner. Representations must be to either or both of the following effects:
- that, in relation to the alleged contravention on account of which the Notice to Owner was served, one or more of the grounds specified below apply; or
 - that, whether or not any of those grounds apply, there are compelling reasons why, in the particular circumstances of the case, the enforcement authority should cancel the penalty charge notice and refund any sum paid on account of it.
- 10.18** Authorities **must**⁷¹ consider representations made on any grounds. Representations must be made within 28 days of service of the Notice to Owner. Authorities have the discretion to accept late representations, and we encourage them to use this discretion when a vehicle owner gives a valid reason for the delay and has strong grounds for representations. Diagram 2 below outlines the process for making a formal representation to the local authority following receipt of a Notice to Owner (NtO) in the post:

⁶⁹ S.I. 2007/3482, Regulations 4, 8 and 11.

⁷⁰ S.I. 2007/3482, Regulation 3(3).

⁷¹ S.I. 2007/3482, Regulation 4 (2)(b)(ii).

Diagram 2: Formal Representation to Local Authority following receipt of Notice to Owner (NtO)



10.19 The enforcement authority **must**⁷² consider representations and any supporting evidence against a Notice to Owner or immobilisation or removal, and serve notice of its decision on the person making the representations within 56 days of the service of the representations whether or not it accepts that the ground in question has been established. The 56 day period in the Regulations should be seen as the maximum period and authorities should aim to decide representations as quickly as possible. The Secretary of State considers that all decision notices should be served within 21 days.

If an authority accepts a representation against a Notice to Owner, it **must**⁷³ cancel it and refund any sum already paid. Cancellation does not prevent the authority from serving another Notice to Owner for the same contravention to another person⁷⁴. Where an authority accepts a representation against immobilisation or removal, it **must** refund any sums paid to release the vehicle, except to the extent (if any) to which those sums were properly paid⁷⁵. Where the removed vehicle has already been sold and representations against removal are accepted, the enforcement authority **must**⁷⁶ refund all the sale proceeds to the vehicle owner. It is likely that the vehicle owner will already have received the proceeds of the sale minus the cost of removal, storage and sale, and if this is the case the enforcement authority **must**⁷⁷ at this point refund the costs of removal, storage and sale. Any authority that undertakes immobilisation or removal should ensure that its staff are full familiar with the relevant legislation⁷⁸. Diagram 3 below represents the process for appealing a PCN or NtO following the immobilisation or removal of a vehicle for a parking contravention:

10.20 Where a response or notice of decision is likely to be delayed for any reason, the enforcement authority should acknowledge receipt of the representation and explain the representation process, including when a decision notice will be dispatched.

⁷² S.I. 2007/3482, Regulations 5, 9 and 12.

⁷³ S.I. 2007/3482, Regulation 5(3).

⁷⁴ S.I. 2007/3482, Regulation 5(4).

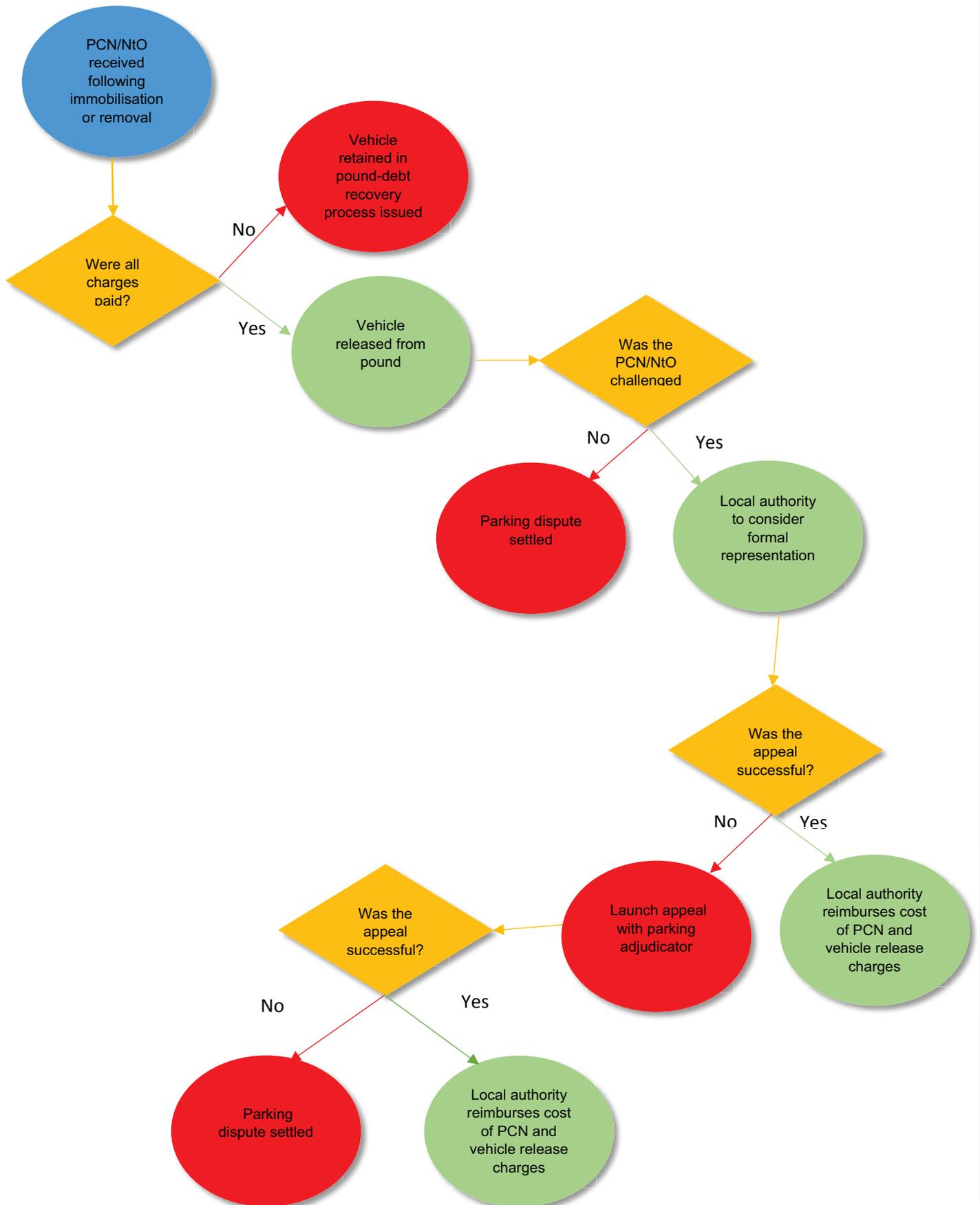
⁷⁵ S.I. 2007/3482, Regulation 9(4).

⁷⁶ The Road Traffic Regulation Act 1994, Section 101A (2).

⁷⁷ Ibid.

⁷⁸ The removal and disposal of vehicles by local authorities is governed by the RTRA, Sections 99 to 103, and The Removal and Disposal of Vehicles Regulations 1986 (SI 1986/183) as amended. S.I. 2007/3484 inserted a new regulation 5C into the 1986 Regulations whereby civil enforcement officers are authorised to remove illegally parked vehicles from roads in Civil Enforcement Areas. Representations and Appeals against charges for removal, storage and disposal are governed by Part 4 of S.I. 2007/3482 and the setting of those charges by Schedule 9 to the Traffic Management Act 2004 and, outside London, by S.I. 2007/3487.

Diagram 3: Appeal Process following receipt of PCN/NtO for Immobilisation/Removal of vehicle



Notification of the outcome of representations

- 10.21** Once an authority has come to a decision about a representation, it should promptly tell the person making the representation (usually the owner of the vehicle) what they have decided to do and why. If the person making the representation is not the owner (but is acting officially on their behalf) then the owner should be informed, where possible, of the decision.
- 10.22** If the authority rejects the representation, it **must**⁷⁹ serve a notice of rejection stating that it will issue a Charge Certificate unless the penalty is paid or an appeal made to an adjudicator. The notice of rejection **must**⁸⁰ set out the general form and manner in which an appeal can be made and that the adjudicator has the power to award costs against either party. The adjudicator may make an order—
- against a party (including an appellant who has withdrawn his appeal or an enforcement authority which has consented to an appeal being allowed) if he is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable; or
 - against an enforcement authority where he considers that the disputed decision was wholly unreasonable.

The authority should give the owner clear and full reasons for its decision on a representation, in addition to the minimum required information. Failure to explain such a decision may be seen as maladministration. If, following an unsuccessful representation, an authority decides to offer a new discount period for prompt payment, it should set out the dates of this period in the Notice of Rejection.

Adjudication

- 10.23** Adjudicators are appointed jointly by all the relevant local authorities with civil parking enforcement powers, with the agreement of the Lord Chancellor, and are wholly independent. They have a judicial position and should be treated accordingly.
- 10.24** If a local authority rejects a formal representation, the person who made the representation has the right to appeal to an adjudicator within 28 days of the date of service of the Notice of Rejection⁸¹. An adjudicator has the discretion in appropriate circumstances to consider an appeal made after 28 days. The grounds for appeal are the same as those for formal representations and are set out in the Regulations⁸².
- 10.25** If an adjudicator allows the appeal, s/he may make such directions to the authority s/he considers appropriate, most usually to cancel the penalty charge notice, the Notice to Owner and refund any sum already paid in

⁷⁹ S.I. 2007/3482, Regulation 6.

⁸⁰ S.I. 2007/3482, Regulation 6.

⁸¹ S.I. 2007/3482, Regulation 7.

⁸² S.I. 2007/3482, Regulation 13 and Schedule, Paragraphs 7 and 10.

respect of the penalty charge. The authority **must**⁸³ comply with this direction without delay.

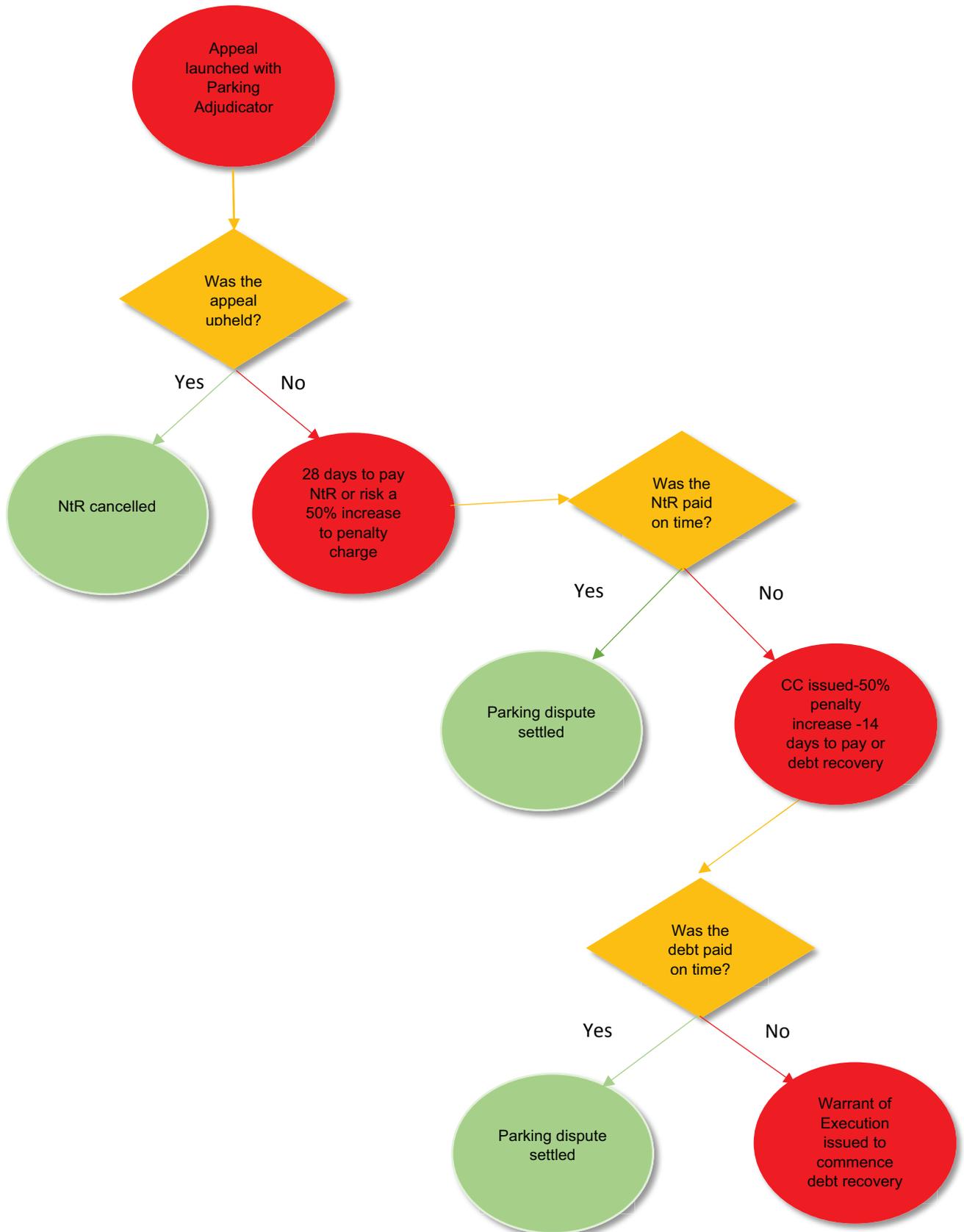
10.26 The adjudicator's decision is final, subject to the power of adjudicators to review a decision⁸⁴. No further challenges can be made other than on a point of law through an application to the High Court for judicial review.

10.27 If an authority is losing a noticeably larger proportion of appeals than comparable authorities, they should consider the possible reasons for this. Consultation with comparable authorities and interested parties may help to identify factors. Authorities should ensure that they have in place a mechanism by which general lessons are learnt from the decisions of adjudicators on their own cases and the cases of other authorities. Those lessons should be built into the practices of the authority and the decisions taken on representations. Diagram 4 represents the process of appeal at the adjudication stage or following receipt of a Notice of Rejection;

⁸³ S.I. 2007/3482, Regulation 13 and Schedule, Paragraphs 7 and 10.

⁸⁴ S.I. 2007/3482, Schedule, Paragraph 12.

Diagram 4: Appeals Process at Adjudication Stage and or following receipt of Notice of Reject (NoR)



Cases referred back to the authority by the adjudicator

- 10.28** An adjudicator may only allow an appeal if one of the statutory grounds for appeal applies. Where a contravention has taken place but the adjudicator considers that the enforcement authority should have used its discretion to cancel the Notice to Owner, the adjudicator may refer the case back for the enforcement authority to reconsider⁸⁵. Such cases should be directed to the Office of the Chief Executive, and should not be dealt with by the person who considered the original representation. A decision **must**⁸⁶ be reached within 35 days from the notice of the adjudicator's decision. If the enforcement authority does not reach a decision within this period, it is deemed to have accepted the adjudicator's recommendation and **must**⁸⁷ cancel the Notice to Owner. The enforcement authority **must**⁸⁸ have regard to the reasons given by the adjudicator for his/her recommendation. Where it does not accept this recommendation it **must**⁸⁹ notify the adjudicator and the appellant of the reasons for its decision before issuing the Charge Certificate.
- 10.29** If the enforcement authority decides to accept the recommendation of the adjudicator, it **must**⁹⁰ cancel the Notice to Owner without delay and refund any sums paid in relation to it.

⁸⁵ S.I. 2007/3482, Regulation 13(5) and Regulation 10(5).

⁸⁶ S.I. 2007/3482, Regulation 13(6) and Regulation 10(6).

⁸⁷ S.I. 2007/3482, Regulation 13(8) and Regulation 10(8).

⁸⁸ S.I. 2007/3482, Regulation 13(8) and Regulation 10(8).

⁸⁹ S.I. 2007/3482, Regulation 13(7) and Regulation 10(7).

⁹⁰ S.I. 2007/3482, Regulation 13(8) and Regulation 10(8).

11. Use of Enforcement Agents (previously known as Bailiffs)

- 11.1** Local Authorities should remember that enforcement agents are acting on their behalf and that ultimately they are responsible and accountable for the behaviour of the enforcement agents acting on their behalf.
- 11.2** Enforcement agents responsible for executing warrants of control on behalf of local authorities are obliged to follow the code set out in Part 3 of, and Schedule 12 to, the Tribunals, Courts and Enforcement Act 2007 and the Taking Control of Goods Regulations 2013.
- 11.3** Local Authorities are encouraged to have regard to the good practice set out in the Taking Control of Goods: National Standards 2014, and the Guidance to Local Councils on Good Practice in the Collection of Council Tax Arrears (June 2013). Some key points from this are:
- Local Authorities should ensure that clear information is provided about the enforcement process, and should publicise details of where to go for help and advice.
 - Information provided should be geared towards avoiding the need for enforcement action in the first place, warning about the implications of not paying and the benefits of engaging early with the Local Authority. This should include clear information on the costs of legal proceedings and enforcement action.
 - Local Authorities may only charge reasonable costs. In relation to fees for enforcement agents these are clearly set out in the Taking Control of Goods (Fees) Regulations 2014. It is inappropriate for authorities to receive extra payment or profit-sharing from the use of enforcement agents and the charging of fees.
 - Local Authorities should have robust contracts in place with their enforcement agents. These contracts should not involve rewards or penalties that incentivise the use of enforcement agents. When contracting and working with enforcement agents, they should at all times be guided by the National Standards for Enforcement Agents. These clearly set out the expectations of a responsible creditor. Equally Local Authorities should expect enforcement agents they work with to uphold the standards.
 - We would expect Local Authorities to actively manage their contracts with enforcement agents, ensuring that they are aware of how their enforcement agents are operating
 - Enforcement agents and those who employ them or use their services, must maintain high standards of business ethics and practice. Any fraudulent practices (for instance ‘phantom visits’) should be reported to

the police as a criminal offence under the Fraud Act and that Local Authority should terminate any contract with companies whose activities are proved fraudulent.

- Local Authorities should have a clear complaints procedure in place to address complaints regarding the performance of those recovering debts on their behalf.

12. Ensuring the effectiveness of civil parking enforcement

- 12.1** Enforcement authorities can improve the efficiency and effectiveness of their civil parking enforcement regimes by maintaining a regular dialogue - and undertaking joint activity where appropriate - with their on-street contractor (if there is one), the police, neighbouring authorities, the Driver And Vehicle Licensing Agency, the Traffic Enforcement Centre and representatives of road user groups.
- 12.2** In particular, authorities should maintain good relations with the police. The police continue to have responsibility for enforcing endorsable and most types of 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 civil and criminal enforcement operate effectively. Good relations between the police and an enforcement authority can also help in tackling threats and abuse aimed at civil enforcement officers.
- 12.3** It is recommended that enforcement authorities keep abreast of developments in neighbouring authorities' civil parking enforcement operations and look into the benefits of consistent, and possibly collaborative, approaches to enforcement.
- 12.4** Authorities should develop good working relations with the Driver and Vehicle Licensing Agency, in particular with regards local authorities receiving keeper information promptly.
- 12.5** As far as possible, the performance of contractors and of staff should be judged according to how far desired transport objectives have been achieved. An enforcement authority should base performance measures and rewards or penalties, wherever possible, on outcomes rather than outputs. Performance and rewards/penalties should never be based on the number of penalty charge notices, immobilisations or removals. Outcome indicators might include compliance statistics, the number of appeals, the number and length 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, indicators for immobilisation and removals might be based on the release time of the vehicle after the owner has paid the appropriate fees.
- 12.6** When enforcement operations are carried out 'in house', there should be a service level agreement incorporating the specification terms and conditions required by the client department - the same as for a contract with an external service provider.

12.7 The Secretary of State recommends that enforcement authorities use a balanced service level agreement or model contract, such as the one developed by the British Parking Association⁹¹.

Reporting

12.8 Reporting is an important part of accountability. The transparency given by regular and consistent reporting should help the public understand and accept civil parking enforcement. Monitoring also provides the authority with management information for performance evaluation and helps to identify where it needs to improve. It provides a framework for performance comparisons between councils.

12.9 Enforcement authorities should produce an annual report about their enforcement activities within six months of the end of each financial year. The report should be published and as a minimum it should cover the financial, statistical and other data (including any parking or civil parking enforcement targets) set out in Annex A.

12.10 The Government believes that in principle all data held and managed by local authorities should be made available to local people unless there are specific sensitivities to doing so (e.g. protecting vulnerable people). The Government also expects local authorities to be transparent about how they spend taxpayers' money and the services they deliver. It is a legal requirement for local authorities to comply with Part 2 of the Local Government Transparency Code 2015 <https://www.gov.uk/government/publications/local-government-transparency-code-2015> which sets out the minimum data that local authorities should be publishing.

12.11 Among other key information of interest to local people, local authorities must publish on an annual basis, a breakdown of income and expenditure on the authority's parking account, how the authority has spent any surplus on its parking account and the number of marked out controlled on and off-street parking spaces within their area, or an estimate of the number of spaces where controlled parking space is not marked out in individual parking bays or spaces.

12.12 The income and expenditure of local authorities in connection with their on-street charging and their on-street and off-street enforcement activities are governed by Section 55 (as amended) of the Road Traffic Regulation Act 1984. This means that all their income and expenditure as enforcement authorities (i.e. related to the issue of and income from penalty charge notices) in respect of off-street parking places is covered by section 55. London authorities **must**⁹² keep an account of all income and expenditure in respect of designated (i.e. on-street) parking places and their functions as enforcement authorities, within paragraphs 2 and 3 of Schedule 7 to the Traffic Management Act 2004. English authorities outside London **must**⁹³ keep an account of all income and expenditure in respect of designated (i.e. on-street) parking places which are not in a Civil Enforcement Area, designated (i.e. on-street) parking spaces which are in a Civil Enforcement

⁹¹ For further details contact the BPA ref: Parking Model Contract 2005 or go to <http://www.britishparking.co.uk>

⁹² See amendments to Section 55 Road Traffic Regulation Act 1984 in S.I. 2007/3483, Regulation 25.

⁹³ S.I. 2007/3483, Regulation 25.

Area and their functions as an enforcement authority. London authorities **must**⁹⁴ send a copy of the account to the Mayor of London.

- 12.13** Where an authority makes a surplus on its on-street parking charges and on-street and off-street enforcement activities, it **must**⁹⁵ use the surplus in accordance with the legislative restrictions in Section 55 (as amended) of the Road Traffic Regulation Act 1984.

⁹⁴ S.I. 2007/3483, Regulation 25.

⁹⁵ S.I. 2007/3483, Regulation 25.

Annex A

What enforcement authority annual reports should include

Financial

- Total income and expenditure on the parking account kept under section 55 of the Road Traffic Regulation Act 1984 as modified by regulation 25 of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 (see paragraph 12.12 above).
- Breakdown of income by source (i.e. on-street parking charges, on-street penalty charges and off-street penalty charges)
- Total surplus or deficit on the parking account
- Action taken with respect to a surplus or deficit on the parking account
- Details of how any financial surplus has been or is to be spent, including the benefits that can be expected as a result of such expenditure.

Statistical

- Number of higher level penalty charge notices issued
- Number of lower level penalty charge notices issued
- Number of penalty charge notices paid
- Number of penalty charge notices paid at discount rate
- Number of penalty charge notices against which an informal or formal representation was made
- Number of penalty charge notices cancelled as a result of an informal or a formal representation is successful)
- Number of penalty charge notices written off for other reasons (e.g. an error by the civil enforcement officer or driver untraceable)
- Number of vehicles immobilised
- Number of vehicles removed

Performance against targets

- Performance against any parking or civil parking enforcement targets. Authorities should note the recommendations throughout this Guidance on the areas where such targets might be appropriate.

Annex B

Guidance notes for authorities applying for CPE powers under the Traffic Management Act 2004

Introduction

The purpose of this guidance note is to assist authorities in preparing their applications for CEA designation orders. For the reasons explained below. The Department has to be satisfied in relation to various matters before a CEA designation order can be made. Delays in providing the information fully at the outset may result in delays in the Order being drafted, urgent requests for further information, and tying up of resources for the authority and the Department. Ultimately, this could lead to the Department being unable to agree to meet any proposed coming into force date.

Background

Orders made under Schedule 8 to the Traffic Management Act 2004 (in respect of CEAs) and under Schedule 10 to the Act (in respect of SEAs) are made by the Secretary of State. The Act provides that Orders are statutory instruments which must be laid before Parliament. As such, special drafting rules apply and they are subject to a high level of scrutiny from Parliamentary Committees. Ultimately, Orders can be annulled by Parliament if they are prayed against by MPs or Lords. The nature and extent of Parliamentary scrutiny means the drafting of the Orders requires particular consideration than might otherwise be the case in respect of local Orders such as Traffic Regulation Orders. The Orders thus need to be drafted in a very clear and precise manner.

This is particularly the case bearing in mind the need to minimise the risk of a successful legal challenge to Penalty Charge Notices issued under in respect of a CEA or SEA on the basis that the area to which the powers apply, or the roads which are to be excluded, are ambiguous and insufficiently clear in the Order.

It is for these reasons that it is important to provide as much information as possible to ensure that the Order is legally robust and achieves the policy aims of the Department and the applying authority.

Authorities are strongly advised to seek advice from their legal advisers when filling out the application form.

Specific matters to consider

1. *The name of the applying authority*

This must be clearly set out with supporting legal references where necessary. For instance, in the case of a recent structural change, abolition or other change of name of the authority, references to the legislation (such as a Statutory Instrument) is likely to be required.

The authority must specify what type of authority it is, i.e. whether it is a county council, a borough council, a district council, a unitary authority or a metropolitan district council. In the case of a metropolitan district council, the authority must indicate whether it is applying jointly with another metropolitan district council or in respect of its own area only. In cases where it is not immediately apparent how the authority is entitled to apply for CPE powers (for instance, if it is a single tier authority), the application should also explain why it is entitled to make an application.

Acceptable:

“Bedford Borough Council, as established by article 3(3) of the Bedfordshire (Structural Changes) Order 2008 (S. I. 2008/907)”

“St Helens Metropolitan Borough Council”

Unacceptable:

“Bedford”

“St Helens”

2. *The area to be designated*

The area in respect of which designation is applied for must be clearly set out. This includes specifying the following:

(1) in the case of a county or county borough council, the area in respect of which civil enforcement powers are requested.

This can be by reference to districts or boroughs within the county (in which case supporting legal references should be provided as for 1 above), or by reference to a plan or map.

Acceptable:

“the District of West Wiltshire” “the
Borough of Eastbourne”

Unacceptable:

“West Wiltshire”

“the area previously designated under the old regime”

(2) in the case of a metropolitan district council (either acting singly or jointly with another metropolitan district council), any parts of its area it wishes the Secretary of State to consider excluding must be set out. For instance, this may include any parts of the area that are motorways or high speed roads. Please see point 3 below on the detail required.

3. *Any roads to be excluded, or to be considered for exclusion by the Secretary of State (in the case of metropolitan district councils)*

It is important for the application to be precise in relation to the roads or areas to be excluded from the designation order. Ordnance Survey National Grid reference points should be included up to the nearest point (i.e. 10 digits) where non-visible boundaries such as the boundary between local authority areas are being relied on. Moveable or non-permanent road fixtures, such as bus stops, should also not be used to specify excluded roads. The application should also specify whether slip roads are included or excluded.

In the case of a motorway or high speed road running through the entirety of the area to be designated, the reference to the road itself is likely to be sufficient.

Acceptable:

“the M6 southbound carriageway from the boundary of the district of South Staffordshire (at Ordnance Survey National Grid reference point SJ9790235454) to the boundary of the Metropolitan Borough of Sandwell (at Ordnance Survey National Grid reference point SP0179542134)”

Or

“the M53 and M56 (including their slip roads)”

Or

from junction11 of the M23/A23 (at Ordnance Survey National Grid reference point TQ2625633492) to the boundary with Horsham District (at Ordnance Survey National Grid reference point TQ2482934455),

Unacceptable

“the M6 southbound from South Staffordshire to Sandwell”

“the A457 from the bus stop at the junction with the A789 to the roundabout”