

Explanatory Memorandum to The Civil Enforcement of Parking Contraventions (County Borough of Torfaen) Designation Order 2019

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Civil Enforcement of Parking Contraventions (County Borough of Torfaen) Designation Order 2019. I am satisfied that the benefits outweigh any costs.

Ken Skates
Minister for Economy and Transport
6 June 2019

1. Description

The Order will enable Torfaen County Borough Council (“the Council”) to enforce civil parking restrictions within the County Borough. It will apply to all public highways except those listed in Annex A below. Non-endorsable offences, such as parking on double yellow lines, would become civil enforcement matters for the local authority as opposed to being enforced by the Police as criminal offences. The enforcement duty would in practice pass from Gwent Police to the Council and from traffic wardens to civil enforcement officers (“CEOs”) employed by the Council.

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

None.

3. Legislative Background

The powers enabling this Instrument to be made are under paragraph 8(1) of Schedule 8 and paragraph 3(1) of Schedule 10, to the Traffic Management Act 2004 (the “Act”). This gives a local authority the power to enforce parking restrictions within their area under a civil regime set out in the Act. This power has been vested with the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

This instrument follows the negative procedure.

4. Purpose and intended effect of the legislation

Currently in the County Borough of Torfaen the Gwent Police enforce parking restrictions. This takes time that could be better utilised tackling other criminal activities. This Order will allow for the enforcement responsibility to pass from the Police to the Council thus enabling the Council to enforce civil parking restrictions within the County Borough. Under this system non-endorsable offences would become the subject of civil recovery procedures. The Council would be able to issue penalty charge notices where, for example, a vehicle has been parked on double yellow lines or has not paid a parking charge in contravention of a traffic order. Reduced charges will apply where payment is made within a prescribed period. The Council would like to set their penalty charge at £70 for higher level contraventions and £50 for lower level contraventions, discounted to £35 and £25 respectively for early payment. The Council would also be able to immobilise such a vehicle, although it has stated that these powers will be held in reserve and they do not intend to introduce this at the start of civil enforcement.

The Council have stated that it has no immediate plans to apply for powers for moving traffic contraventions or bus lane enforcement.

If the legislation were to be annulled the Council would be unable to implement the power to enforce civil parking restrictions. They have requested these powers with the full support of the Gwent Police. Their implementation will relieve the Gwent Police from these duties thus freeing up valuable Police time and resources to tackle other criminal activities.

This Instrument has a coming into force date of 1 July 2019 as requested by the Council. The self-financing nature of this scheme should mean that the Council can devote more resources to parking enforcement than the Gwent Police, who, with their many other more pressing duties, have often been unable to do so. Better enforcement reduces congestion caused by drivers searching for on-street parking places, and results in better turnover of on-street spaces, as drivers become less willing to overstay as the risk of getting a ticket increases. In addition, greater enforcement of on-street parking restrictions should lead to increased usage of paid parking spaces, particularly off-street.

Unlike the clamping of vehicles in private car parks, clamping in relation to the civil enforcement of parking is regulated under the Act. The immobilisation of vehicles must adhere to The Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (SI 2013 No. 362) and The Civil Enforcement of Road Traffic Contraventions (Guidelines on Levels of Charges) (Wales) Order 2013 (SI 2013 No. 1969)), which define when and how an immobilisation device may be fixed to a vehicle, and the charge payable for its release.

Enforcement will be carried out by CEOs. The Council can directly employ these CEOs or they can be an employee of a contractor appointed to undertake such activity. It is a matter for the Council to decide whether civil enforcement operations are undertaken by employees of the Council or by authorised staff of contractors. Either way the requirements of the above Regulations must equally be met in each case. The Council have confirmed that they will undertake civil enforcement operations themselves but in order to reduce costs associated with the administration of civil parking enforcement, the Council intends to partner with Rhondda Cynon Taf County Borough Council (“RCTCBC”) to produce the necessary forms, notices, letters, etc.

Drivers receiving a Penalty Charge Notice from a CEO will be able to challenge it by making representations to trained officers employed by RCTCBC, acting under the direction of the Council. Independent adjudication for drivers who are unhappy with the Council’s decision will be provided by the Traffic Penalty Tribunal.

5. Consultation

The Council consulted with all the relevant stakeholders in August 2018. A list of the consultees and responses is at Annex B. Full details of the consultation are included in paragraph 8 of the Regulatory Impact Assessment.

REGULATORY IMPACT ASSESSMENT

6. Options

Option 1: Do Nothing. If the legislation were not made the Council would be unable to implement the power to enforce civil parking restrictions in 2019. The Council has requested these powers with the full support of the Gwent Police. Their introduction will relieve the Gwent Police from these duties thus freeing up

valuable Police time and resources to tackle other criminal activities. There could be criticism for using Police resources for parking offences when they could be better utilised dealing with other criminal activities.

Option 2: Implement the provisions with effect from 1 July 2019. Making the legislation would allow the Council to implement the power to enforce civil parking restrictions thereby freeing up the Police to deal with other criminal matters. Full consultation as described below has been carried out to ensure that no specific group will be discriminated against by the legislation.

7. Costs and benefits

a) Costs

Option 1 – Do Nothing.

If the provisions are not implemented the costs will remain with Gwent Police who, due to more pressing duties, will be unable to devote sufficient resources to tackle the identified contraventions that the Council could if taking over these powers..

Option 2 – Implement the provisions from 1 July 2019.

There are no financial implications for the Welsh Government or other local authorities in providing a local authority with civil enforcement of parking contravention powers.

The costs of the scheme will be borne by the Council in collaboration with RCTCBC. The Council has expressed confidence that the full financial impact of operating civil enforcement of parking contraventions CPE as a whole has been considered and accounted for in their budget setting process. The forecasted operational cost of civil enforcement takes account of the estimated revenue raised from the issuing of Penalty Charge Notices. The Council has provided funding to cover the start up costs of the scheme. A full 5 year projected financial assessment by the Council can be found at Annex C.

The Council would like to set their penalty charge at £70 for higher level contraventions and £50 for lower level contraventions, discounted to £35 and £25 respectively for early payment. Drivers receiving a penalty charge notice will be able to challenge it by making representations to the Council. Independent adjudication must be available to drivers who remain unhappy with the Council's decision. The Traffic Penalty Tribunal will provide this service.

b) Benefits

We have identified the benefits for each option as follows:

Option 1 – Do Nothing.

There are no benefits.

Option 2 – Implement the provisions from 1 July 2019.

The current need for parking, particularly within town centre areas is placing significant pressure on some on and off street parking areas. The Council recognises that it is important to improve the enforcement of parking in town centres and to improve the current operation of the network by removing illegal parking on-street to allow free-flow of traffic through towns.

The Council state that the successful acquisition of civil parking enforcement powers has the capacity to deliver significant positive impacts to the wellbeing of current and future generations who live, visit or conduct business within the County Borough and contribute to the Council's Well-being Objectives and the Well-being Goals by (amongst other things) -

- supporting the long-term social, economic and environmental well-being for future generations within the County Borough as well as addressing an emerging critical short term need;
- enabling the authority to focus on stakeholder concerns around parking whilst supporting other council / multi agency objectives in social, economic and environmental well-being;
- reducing carbon emissions through reduction in congestion and expeditious movement of traffic through our Air Quality Management Area;
- promoting active travel (walking and cycling) throughout the County Borough;
- promoting the expeditious movement of traffic and as such have a positive impact on traffic congestion reduction;
- reducing costs to business, residents and visitors to the County Borough associated with travel congestion and parking contraventions;
- delivering new employment opportunities with the County Borough; and
- promoting well connected communities through reduced vehicular obstruction and inconsiderate parking.

8. Consultation

In accordance with the relevant guidelines, before submitting their application the Council consulted with all the relevant stakeholders in August 2018. A list of the consultees and responses is at Annex B. In addition to local councils the consultees included bus operators and motoring organisations. The Council is committed to fully informing the public of the proposed changes to the parking enforcement and they will be launching a comprehensive publicity programme prior to the proposed commencement date. This will include the use of their website, press releases and a general distribution of posters and leaflets.

On receipt of the Council's application, and in accordance with the relevant legislation, the Welsh Government consulted with Gwent Police and the Traffic Enforcement Centre. No objections were received.

9. Post implementation review

The effect of the Order will be monitored by way of an annual return from the Council to the Welsh Government. This will include the financial results of civil parking enforcement and any action the Council will take in respect of any deficit on the on-street parking account.

10. Summary

The Council, in collaboration with RCTCBC, will bear the costs of the proposals as detailed in the Costs paragraph 7a) above. The powers will enable the Council to adopt a more thorough and visible enforcement of parking contraventions. By relieving the Gwent Police from such responsibilities this will free up their time to devote themselves to dealing with other criminal activities. The implementation of the Order is consistent with applications made by 19 other local authorities in Wales who have already achieved such powers.

ANNEX A

This Order applies to the County Borough of Torfaen with the exception of —

- (a) the length of the A4042 Trunk Road within the County Borough, from the boundary with the City of Newport to the boundary with the County of Monmouthshire.

ANNEX B

SCHEDULE OF CONSULTATION

Organisation	Response
The AA	No response
Blaenau Gwent County Borough Council	No response
Bus Operators	Supported
Caerphilly County Borough Council	Supported
Confederation of Passenger Transport	Supported
DVLA Swansea	No response
Freight Transport Association	No response
Gwent Police	No response
Monmouthshire County Council	No response
Newport City Council	No response
Road Haulage Association	No response
The Royal Automobile Club	No response
South Welsh Ambulance Service	No response
South Wales Chamber of Commerce	No response
South Wales Fire & Rescue Service	No response
Sustrans Cymru	Supported

Traffic Enforcement Centre (TEC)	No response
Traffic Penalty Tribunal (TPT)	No response
Welsh Government	No comments

Annex C - Financial Assessment

TMA 2004 - FINANCIAL MODEL OF IMPLEMENTATION

MODEL VERSION: B2
MODEL DATE: 04-Jul-17

CLIENT: *Torfaen County Borough Council*

VERSION: B2
ENFORCEMENT IN HOUSE ADMINISTRATION EXT

MODEL OPTIONS SELECTED:

CEO TIME ALLOCATION:

If the Parking Attendants have duties which reduce the effective time they will spend enforcing the parking regulations, this will be reflected by a proportional split being entered for the Other Duties (Enforcement Duties will adjust automatically).
Actions: Enter required percentages under On-Street and/or Off-Street

Non-Parking Enforcement Duties		Parking Enforcement
	Options:	Selected Option
On-Street	0 - 100%	0%
Off-Street	0 - 100%	0%
		Balance
		100%
		100%

ON-STREET PAY & DISPLAY CHARGING:

The model has three possible options which can be selected as follows: -

- Current Select for no-change to the current status on implementation of DPE
 - New P&D-1 Includes the income and expenses derived from schedule "P&D-1"
 - New P&D- 1&2 Includes the income and expenses derived from schedule "P&D-1" and schedule "P&D-2".
- Actions: Select one "Option" and copy over "Selected Option" to revise model

Options:	Selected Option	Option Number
Current	Current	1
New P&D-1		
New P&D-1&2		

Refresh PCN Tables after Changing Selection

OFF-STREET CAR PARK CHARGING

The model has three possible options which can be selected as follows: -

- Current Select for no change to tariffs or transaction volumes
 - Option 1 Considers revised tariffs, transaction volumes and distributions of transaction by tariff.
 - Option 2 Considers same changes as Option 1 but for alternative tariff structure.
- Actions: Select one "Option" and copy over "Selected Option" to revise model

Options:	Selected Option
Current	Current
Option 1	
Option 2	

OFF-STREET CAR PARK TRANSACTION VOLUMES INCREASE

This is the estimated increase in transaction volumes experienced in Off-Street Car Parks post DPE.

- Apply percentage volume increase to "Current" Income
- Actions: Select the required option to apply or not apply the percentage change to "Current Income"; then Enter required percentage volume increase under "Selected Option"

Options:	Selected Option
Yes or No	Yes
0 - 100%	1%

OFF-STREET CAR PARK CHARGING IN FREE CAR PARKS

Selecting the "Yes" Option will include an estimated volume of transactions from Free Car Parks to be included in the calculation of "Off-Street Car Park Charging". It will also modify the Enforcement required now these Car Parks are charged for.

- Actions: Select one "Option" and copy over "Selected Option" to revise model

Options:	Selected Option
Yes	No
No	

CURRENT VAT RATE

The model will use this rate for all calculations involving VAT
Actions: Enter current VAT rate under "VAT Rate"

Range	VAT Rate
0 - 100%	20.0%

LEASING RATES

The model uses 3 or 5 year periods for leasing items, as selected per item. Enter current rates per £1,000 per annum:

Rate for 3 year leases:	£310
Rate for 5 year leases:	£230

TMA 2004 - FINANCIAL MODEL OF IMPLEMENTATION

MODEL VERSION:	B2
MODEL DATE:	04-Jul-17

CLIENT: *Torfaen County Borough Council*

VERSION: B2
ENFORCEMENT IN HOUSE ADMINISTRATION EX1

SUMMARY OF MARGINAL INCOME & EXPENDITURE

START-UP =	Enter 1 - 3 1 MONTHS	SCH REF	START-UP PERIOD (months)	START-UP CAPITAL	START-UP EXPENSES	FIRST 12 MTHS	SECOND 12 MTHS	THIRD 12 MTHS	FOURTH 12 MTHS	FIFTH 12 MTHS
INCOME										
	PCNs ISSUED				0	4,714	5,139	5,139	5,139	5,139
	PCN PAYMENTS	1			£0	£111,853	£141,927	£141,927	£141,927	£141,927
	CLAMP & REMOVAL PAYMENTS				£0	£0	£0	£0	£0	£0
	PERMIT PAYMENTS	2			£0	£0	£0	£0	£0	£0
	CAR PARK RECEIPTS	3			£0	£0	£0	£0	£0	£0
	ON STREET CHARGING	3			£0	£0	£0	£0	£0	£0
	NET C.COURT PROCEEDS	4			£0	£2,905	£11,622	£11,622	£11,622	£11,622
	TOTAL PAYMENTS				£0	£114,759	£153,549	£153,549	£153,549	£153,549
EXPENSES:										
				Inflation factor		3%	3%	3%	3%	
	OPERATIONAL MANAGEMENT	5	1	£102,150	£3,100	£18,000	£18,540	£19,096	£19,660	£20,259
	ON-STREET ENFORCEMENT	6	1	£15,350	£14,226	£109,601	£112,889	£116,276	£119,764	£123,357
	OFF-STREET ENFORCEMENT	7	1	£3,120	£1,414	£1,310	£1,350	£1,390	£1,432	£1,475
	CLAMP & REMOVAL CONTROL		1	£0	£0	£0	£0	£0	£0	£0
	TICKET & PERMITS PROCESSING	8	1	£12,000	£4,138	£36,941	£38,049	£39,190	£40,366	£41,577
	PAY & DISPLAY	9	1	£0	£0	£0	£0	£0	£0	£0
	TOTAL EXPENSES			£132,620	£22,878	£165,852	£170,828	£175,953	£181,231	£186,668
ANNUAL NET SURPLUS OR (DEFICIT)					(£132,620)	(£22,878)	(£51,094)	(£17,279)	(£22,404)	(£27,682)
CUMULATIVE NET SURPLUS OR (DEFICIT) EXCLUDING CAPITAL						(£22,878)	(£73,972)	(£91,250)	(£113,654)	(£141,336)
CUMULATIVE NET SURPLUS OR (DEFICIT) INCLUDING CAPITAL						(£155,498)	(£206,592)	(£223,870)	(£246,274)	(£273,956)
NPV INTEREST RATE	6%									
YEAR END NPVs (EXCLUDING CAPITAL)						(£71,080)	(£86,458)	(£105,268)	(£127,195)	(£151,944)
NPV INTEREST RATE	6%									
YEAR END NPVs (INCLUDING CAPITAL)						(£203,700)	(£219,078)	(£237,888)	(£259,815)	(£284,564)

Notes:-

- 1 NPV - Calculation assumes that the Start Up Cost is a negative cash flow at the start of year 1 and that each years cash flow thereafter is received at the end of the year.
- 2 SCH REF - Reference to the detailed working schedules attached.
- 3 Start up costs include capital costs, one-off costs incurred before commencement, and percentage of first year expenses calculated from number of months selected in Start-up Period.

Paul,

I write with reference to your letter of 24th August requesting comments with regards to the change of parking enforcement legislation in Torfaen from the Police to the local authority.

I would note that in general, Stagecoach is supportive of such applications, and in places where the local authority already has such powers (for example, RCT) works closely with them to target areas where bus flow is impeded by poor parking and ensure that services may continue to operate reliably.

Our concern would be that the authority should also apply for powers to enforce bus lanes and moving traffic violations at the same time - I note that these powers are available, and whilst it may not be appropriate to enforce any of the infrastructure in Torfaen at present, in the future it would prevent separate application and allow for easy extension of the scheme.

To give an example, if the bus lane at the Avondale Rd (Ashbridge) roundabout were enforced, this would speed bus journey times at peak, where cars illegally queue in the infrastructure.

If we can be of any further assistance, please don't hesitate to contact me.

Kind regards

David

David Conway
Operations Director

Stagecoach in South Wales
1 St David's Road
Cwmbran
Torfaen NP44 1PD

Dear Paul

I write with reference to your letter of 24th August requesting comments with regards to the change of parking enforcement legislation in Torfaen from the Police to the local authority.

The Confederation of Passenger Transport Wales (CPTCymru) is the professional trade association of the bus, coach and light rail industry in Wales and is part of CPT UK. Its members in Wales include operators which are subsidiaries of large national transport operators, municipally owned operators, large independents and small family businesses. CPTCymru members provide around 90% of all bus journeys and around 75% of all public transport journeys made across Wales. Its members are also significant employers with 5100 full time employees in Wales, including many in rural areas.

Its governance includes the Bus and Coach Commissions Cymru and also its Committee for Wales, which all members may attend, and members are consulted widely on the whole range of issues affecting road based public transport.

In general CPT Cymru is supportive of the authorities application to Welsh Government to obtain the powers to undertake Civil Parking Enforcement under decriminalised parking arrangements authorised by the Traffic Management Act 2004, we would encourage the authority however to also apply for powers to enforce bus lanes and moving traffic violations at the same time, powers which are available. This would remove the need to submit any additional application in the future and allow for an easy extension of the scheme, and greatly assist operators in maintaining service reliability within the area.

If you require any more information from CPT Cymru please feel free to contact me.

Regards,

Colin Thomas

General Manager, CPT Wales

Hi Paul,

Thanks for including us in this consultation. We would very much support your application and have a view that local parking issues are much better dealt with by local people who know the local issues rather than going into the police and it potential being forgotten because they have other priorities. This process appears to have improved things in Cardiff and I understand that Newport City council are proposing similar messages.

During our work for a number of authorities auditing routes for both the Existing routes Map (ERM) and the Integrated Network Map (INM), as part of the active travel process , many routes could have been improved instantly, especially for walkers, people with pushchairs and young children and disabled people by removing pavement parking and the blocking of dropped Kerbed areas. So we would especially support areas of this enforcement (although I appreciate the pavement parking law appears to be confusing).

I also think there are potentially huge cost saving to be made by reducing pavement parking, especially by large vehicles because of the damage they cause to surfaces and possibly the services below.

Going forward I think that fines should be set to be in line with neighbouring authorities and other authorities should also embrace this process. I don't see why people could potentially be fined for offences in one street and get away scot free in the next street over because it's in another authority.

...And finally could a proportion of the fines be set aside for active travel/pavement enhancements and repairs?

Good luck with the process.

Gwyn

Gwyn Smith

Network Development Manager (South Wales)/Rheolwr Datblygu Rhwydwaith (De Cymru)

Sustrans Cymru

123 Bute Street / 123 Stryd Bute

Cardiff / Caerdydd

CF10 5AE

Tŷ Tredomen,
Parc Tredomen,
Ystrad Mynach,
Hengoed CF82 7WF

Tredomen House,
Tredomen Park,
Ystrad Mynach,
Hengoed CF82 7WF



Cyfarwyddwr Corfforaethol Dros Dro - Cymunedau
Interim Corporate Director - Communities

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Torfaen County Borough Council

FAO Mr. Paul Wheeldon
Sent via email to:

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Marcus Lloyd B.Eng.
MBA.C.ENG.
MICE, MCMI, MCIHT
Pennaeth Isadeiledd

Contact/Cysylltwch â:

Our Ref/Ein Cyf:

Your Ref/Eich Cyf:

Telephone/Ffon:

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PW/KJS: CPE

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10 September 2018

Dear Sirs,

Re: Application for Civil Parking Enforcement Powers

I refer to your letter dated 24th August 2018 regarding the above. As you will be aware, Caerphilly County Borough Council is embarking on a similar process to seek CPE powers from Welsh Government, therefore we are fully supportive of your application.

We wish you every success with its implementation and confirm our willingness to consider any ways in which we may collaborate on this service for mutual benefit.

Yours faithfully

A handwritten signature in black ink, appearing to read 'C. Campbell'.

HEAD OF INFRASTRUCTURE

Gallwch ohebu mewn unrhyw iaith neu fformat | Correspondence may be in any language or format
Ni fydd gohebu yn Gymraeg yn creu unrhyw oedi | Corresponding in Welsh will not lead to any delay



Appendix D - Confirmation of Council's Legal Title

Torfaen County Borough Council confirms its legal title to be "Torfaen County Borough Council" in accordance with the Local Government Act 1972 (as amended by the Local Government (Wales) Act 1994) Section 20 and Part II of Schedule 4.

Appendix E – Council Decisions and Resolutions

Report to Cabinet – 5 June 2018: Civil Parking Enforcement

Minutes/decision

TITLE: Civil Parking Enforcement

DECISION:

Cabinet:

- (i) Noted the information contained in this report, and approved the progression of an application for a CPE/SEA scheme based on model B2 as described in para 5.8 above, with the required financial set up resource being made available from General Fund Balances up to £163,000 for option B2. Revenue costs will be considered within the construction of the Neighbourhood Planning and Public Protection Services.
- (ii) Agreed that the Chief Officer Neighbourhoods Planning and Public Protection be delegated authority to implement the scheme, including all technical and legal aspects of implementation.

REASON FOR DECISION: As set out in the report.

CONSULTATION: As set out in the report.

MEMBERS' INTERESTS: None declared.