



Haringey Council

Agenda item:

[No.]

Report to Cabinet 18th September 2007

Report Title: **Review of Parking Enforcement Policy**

Forward Plan reference number (if applicable):

Report of: **Niall Bolger, Director of Urban Environment**

Wards(s) affected: **All**

Report for: **Key**

1. Purpose

1.1 This report informs Members about legislative and London Council's changes to Parking policies which will require changes to Haringey's parking enforcement policy. The report explains the Mayor's caveat to the introduction of differential parking charges; the changes anticipated in the new statutory guidance on the implementation of the Traffic Management Act 2004 published on 24 July 2007 and comes into effect on 31 March 2008; and general improvements to working practices. This report highlights how these changes will impact on many aspects of the parking service with the aim of ensuring a more customer focused approach.

2. Introduction by Cabinet Member (if necessary)

2.1 This report is brought to Cabinet to highlight legislative and policy changes to parking enforcement resulting from the new statutory guidance on Part 6 of the Traffic Management Act and the introduction of differential parking charges. Those changes will introduce a more proportionate, customer focused approach to parking.

3. Recommendations

3.1 It is recommended that the Cabinet note the changes to parking enforcement policy as set out in paragraph 17 of this report.

Report Authorised by: **Niall Bolger, Director of Urban Environment**

Contact Officer: **Ann Cunningham, Head of Parking**

4. Director of Finance Comments

- 4.1 This report outlines proposed legislative and other changes to parking enforcement policies which will have significant financial implications for the parking account and hence the Council's budget. The changes are still subject to approval by Parliament which is expected by Autumn 2007. A financial assessment of the changes indicates potential loss of income of £575k against existing financial plans.
- 4.2 This shortfall needs to be considered in the context of the Council's existing financial plans and proposed financial planning for the period 2008/09 to 2010/11. The parking budget has an already agreed savings target of £256k over the planning period and Streetscene (including parking) has a new savings target of £3m over the same period. The financial shortfall indicated above and resulting mainly from legislative changes is on top of these savings proposals.
- 4.3 The Service is intending to cover the shortfall by identifying additional savings of £575k as part of the Council's budget process for 2008/09 to 2010/11.

5. Acting Head of Legal Services Comments

- 5.1 The Acting Head of Legal services comments that the Regulations will not be made until approved by both Houses of Parliament and it is possible that there may be changes in the Parliamentary Procedure. The Department of Transport anticipate that the regulations will be made in the Autumn of 2007 and that they will come into force on 31 March 2008.
- 5.2 The Statutory Guidance sets out the policy of the Secretary of State on Civil Parking Enforcement. The Final Guidance will be published with the Regulations. Where the Guidance states that authorities must do something then it is referring to mandatory requirements in legislation. In other areas the Guidance makes recommendations about what a local authority should do. This is explained in paragraph 9 of this report

6. Local Government (Access to Information) Act 1985

- 6.1 Road Traffic Act 1984 and 1991
6.2 Greater London Authority Act 1999
6.3 London Local Authorities Act 2000
6.4 Report to Executive 10 June 2003 Review of Parking
6.5 Traffic Management Act 2004 and Statutory Guidance
6.6 Mayors Caveat - letter to London Councils dated 15 February 2007

7. Strategic Implications

7.1 This report informs Cabinet of mandatory changes to policy resulting from the introduction of differential parking charges by the Mayor of London and the new statutory guidance to the Traffic Management Act 2004. Parking enforcement policy has also been looked at in the widest sense, learning from best practice across London and advice from London Councils. The aim is to ensure that the Council not only operates in line with minimum legal standards, but gives due regard to recommendations from the parking and traffic adjudicators and adopts a customer friendly approach to parking enforcement. The changes proposed as a result will have significant implications for how the Parking Service operates on-street and in dealing with representations and appeals.

7.2 Decriminalised parking operates under the 1984 and 1991 Road Traffic Acts [as amended], and the London Local Authorities Act 2000. These are now consolidated under Part 6 of the 2004 Traffic Management Act. Within this framework, individual Councils define local parking policy, through the Councils Traffic Management Orders and working practices and interpret legislation in the local context to address local issues.

7.3 The Department for Transport has consulted on new statutory guidance on the implementation of part 6 of Traffic Management Act [TMA] 2004. It is clear that this guidance will have a significant impact on parking enforcement policy, as authorities move to Civil Parking Enforcement (currently decriminalised parking) under the Traffic Management Act 2004. On Tuesday the 24th of July this statutory guidance was released and the Council was sent a pack containing;

- Statutory Guidance
- Commencement Order
- General Regulations
- Removal and Disposal of Vehicles Regulations
- Representations and Appeals Regulations
- Approved Devices Order
- Guidelines on Levels of Charges Order

7.4 Under powers in the 1991 Road Traffic Act, as amended by the Greater London Authority Act 1999, the London Councils Transport and Environment Committee [London Council's TEC] is responsible, subject to agreement by the Mayor for London and the Secretary of State, for setting additional parking charges on Borough roads within London.

7.5 The Mayor for London, in agreement with the Secretary of State, approved the introduction of differential parking charges from 1 July 2007, but requested that Councils should not remove vehicles unless traffic is being obstructed or is likely to be obstructed. This has implications for the Council, as in 2004 clamping and removal was introduced to reinforce all parking contraventions.

8 Financial Implications

8.1 The mandatory changes in policy noted in this report presents significant financial implications for the parking service. Those implications are an estimate at present and the true position will be established on receipt of the operational guidance. Details are provided in the table below;

Estimated impact of changes to clamp & removal	455
Possible reduction of recovery rate calculated at 1%	120
Estimated total loss in income	575

8.2 There are costs associated with implementing the new statutory guidance and those are being absorbed within the existing parking expenditure budgets.

9 Legal Implications

9.1 Under the Traffic Management Act (Commencement No 5 and Transitional Provisions) (England) Order 2007, which is in draft at present, some sections of Part 6 of the TMA 2004 came into force on 23rd July 2007 and the rest of Part 6 of the TMA 2004 comes into force on 31st March 2008. The sections which will be in force once the Order is approved by Parliament permit the Lord Chancellor to make regulations to provide a framework for the civil enforcement of parking. However, under section four of the Commencement Order it states that none of the provisions of Part 6 of the TMA 2004 or any regulations or orders made under the TMA 2004 shall have effect in relation to a parking contravention which occurred before the [31st March 2008]. Therefore, all the changes brought in by the TMA and the regulations which are now before Parliament will have no effect on any parking contraventions until 31st March 2008.

9.2 The draft regulations which have been prepared by the Secretary of State and placed before Parliament together with the draft Commencement Order are:

- (a) The Civil Enforcement of Parking Contraventions (England) General Regulations 2007
- (b) The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007
- (c) The Removal and Disposal of Vehicles (Amendment) (England) Regulations 2007
- (d) The Civil Enforcement of Parking Contraventions (Guidelines on Level of Charges) (England) 2007 [this Order only applies outside of Greater London]
- (e) The Civil Enforcement Officers (Wearing of Uniforms) (England) Regulations 2007

9.3 It is anticipated that the draft regulations will be approved by Parliament, perhaps with some amendments, by autumn 2007. Under section 87 of the TMA 2004, which is one of the sections which comes into force on 23rd July 2007, a national authority can produce statutory guidance to which a local authority must have regard. The Secretary of State has produced some statutory guidance to accompany the draft regulations which will be finalised when the regulations have been approved by Parliament.

9.4 Within the Statutory Guidance there are distinctions between what must be done which means that those matters are requirements of primary or secondary legislation and all

other matters which are not required by legislation but to which, as prescribed under s87 of the TMA 2004, civil enforcement authorities must have regard.

- 9.5 The Statutory Guidance applies to all enforcement authorities in England exercising Civil Parking Enforcement powers. The Statutory Guidance sets out what factors a local authority needs to take into account to apply for designation as a Civil Parking Enforcement Area.
- 9.6 Under Schedule 8 Part I of the TMA 2004 the whole of Greater London is a Civil Enforcement Area for parking contraventions relating to parking places, bus lane contraventions and London lorry ban contraventions. If a London local authority wish to declare the whole or part of its area to be a civil enforcement area for specified moving traffic contraventions, it must pass a resolution and must publish in a local newspaper that the resolution has been passed and the general effect of the provision of the TMA 2004 coming in to operation because of the resolution. If a London local authority wish to make an order designating the whole or part of an authorities area as a Civil Enforcement Area for other parking contraventions including parking on footways, contravention of certain traffic orders, prohibitions on stopping vehicles near pedestrian crossings and offences relating to cycle tracks, then it must apply to the Secretary of State who may make an order designating the whole or part of the authority's area as a civil enforcement area for the parking contraventions within paragraph 3 of Schedule 7.
- 9.7 The Statutory Guidance advocates comprehensive consultation for Civil Parking Enforcement designation and any change in parking policy which is being appraised because of the changes in the law as a result of the TMA 2004.
- 9.8 The Statutory Guidance not only outlines what a local authority must do to comply with the regulations and the TMA 2004 but it also recommends how Civil Parking Enforcement ought to be conducted by both Civil Enforcement Officers and other staff at a local authority. These recommendations encompass the exercise of discretion with respect to the issue or cancelling of PCNs, the use of approved devices for parking enforcement, when to clamp and remove vehicles, how to process representations on both PCNs and Notices to Owners, how to assess a local authorities performance on parking enforcement and how to structure an annual report on a local authorities on-street and off street enforcement activities. The recommendations within the Statutory Guidance are contained in Appendix 1 to this report.

10 Equalities Implications

- 10.1 There are no specific equalities implications. A firm, fair and transparent approach to parking enforcement benefits the community as a whole.

11 Consultation

- 11.1 Extensive consultation was undertaken by the London Council's on the introduction of differential parking charges. Likewise the DfT have consulted widely on the new statutory guidance for the TMA 2004. Both the TMA 2004 and the differential parking charges amendments were consulted widely with the public in 2006. Operational guidance is due out in August 2007 for consultation with local authorities.
- 11.2 Some changes may be required to the Council's Traffic Management Orders which will require a 21 day statutory consultation process.

12 Background

- 12.1 Haringey's Parking Enforcement Policy was formally reviewed in 2003, when the Council agreed to introduce clamping & removal to reinforce all parking contraventions. In practice this operated in line with a priority guide recommended by the London Councils.
- 12.2 This achieved the desired results of improving compliance levels and improving the payment rate of penalty charge notices. The number of PCN's issued on street have reduced by approximately 20% since 2004, with high compliance levels achieved in Wood Green. The parking payment rate has improved from 48% in 2004 to 62% in 2007. We now need to review our policy in light of ;
- Differential parking charges and the mayor's caveat
 - New statutory guidance on part 6 of the Traffic Management Act 2004 and its implications on on-street enforcement and representations and appeals
 - Revised working practices
- 12.3 The handling of Representations and Appeals are reviewed regularly in light of Adjudicators decisions and advice and guidance from London Councils. However, the Council now needs to formalise policy in this area, which is subject to an increasing level of scrutiny, in particular how local authorities deal with discretion and mitigation.

13. Differential Parking Charges – Impact on Removal Policy

- 13.1 In summer 2006 the London Council's and Transport for London consulted on changes to additional parking charges and sought views on the appropriateness of a system of differential parking penalties. The Mayor of London approved for the purposes of Section 74(4) Road Traffic Act 1991 the additional parking charges but requested that those visitor to residents who had not displayed a visitor's parking voucher should be notified that a lower penalty would be payable if the visitor provided a visitor's voucher for the time of contravention which resulted in a penalty charge notice, and that Council's should publicise the ability to pay at the lower rate. The Mayor also requested that Councils should not tow away vehicles unless traffic is being obstructed or likely to be obstructed.
- 13.2 The outcome of this consultation was that differential parking charges would be introduced. This was approved by the Mayor for London, in agreement with the Secretary of State, but with the requests or caveat stated. London Councils have agreed these caveats. In the main this would mean that vehicles in permitted parking spaces would not be towed, unless there are circumstances when towing would be appropriate e.g. illegal parking in a disabled bay or the removal of vehicles identified as persistent evaders.

Differential parking penalties are compulsory and adoption of the two tier system is not optional.

- 13.3 Further clarification from the London Council's suggests that removal policy is dependent on the extent of parking pressure faced in the particular bay. For example, if parking pressure is so great that an illegally parked car will mean that a resident returning home will not have anywhere to park and is likely to block traffic by parking illegally, then it would make sense to remove the illegally parked car blocking the resident who would have parked legally.
- 13.4 The caveat makes no reference to clamping; however clamping is used as a deterrent and to secure payment of the penalty charge notice and is used only where vehicles are not causing an obstruction. This applies to vehicles parked illegally in permitted parking bays. As such, in view of changes anticipated in the new statutory guidance, clamping should in the short term be restricted to persistent evaders, and in the longer term ceased in favour of removals.
- 13.5 The Councils removal policy should be revised in line with the Mayor's caveat and advice from London Council's. This would focus removals on vehicles causing obstructions; including those parked on yellow lines, parked illegally in disabled bays, persistent evaders, those parked for extended periods and illegal parking in designated bays which may displace legitimate permit holders onto yellow lines. Detailed operational guidance will be drafted for enforcement staff, to ensure accurate interpretation and adherence to policy.

14. New Statutory Guidance on Part 6 of the Traffic Management Act 2004.

- 14.1 The Department for Transport consulted on part 6 of the Traffic Management Act 2004 and statutory guidance last summer. Consultation documents on operational guidance are expected this summer, with an implementation date of 31 March 2008.
- 14.2 The statutory guidance sets out the policy framework for Civil Parking Enforcement [currently decriminalised parking]. The guidance is applicable to all local authorities exercising Civil Parking enforcement powers conferred on them by the Secretary of State under the 1991 Road Traffic Act or the TMA.
- 14.3 This guidance presents significant change implications for parking enforcement and sees a relaxation of parking enforcement in particular in relation to clamping and removal. The main implications are:
- Partial re-criminalisation, where the police may enforce some contraventions, which takes precedence over the local authority's action.
 - Removal of the requirement for Civil Parking Enforcement to be self-financing, but that it's still desirable.
 - Enforcement is seen as a traffic management tool, aiming to achieve 100% compliance.
 - Enforcement policies must be published and reviewed and consulted on regularly
 - All in house enforcement operations to introduce a Service Level Agreement incorporating terms and conditions as for an external service provider.

- CCTV cameras must be to an approved specification [currently this applies to Bus Lane enforcement only].
- Time for removal of vehicles from permitted bays extended to 30 minutes after PCN issued, with clamping limited to persistent evaders only and a time limit of 15 minutes. The only instant removals will be for vehicles parked where parking is always prohibited (such as double yellow lines)
- The exercise of discretion and completeness of responses when dealing with representations and appeals is stressed, with the provision for an adjudicator to refer cases back to the Chief Executive if it is felt that due consideration has not been given to the motorists case.
- The introduction of two new grounds for appeal, 'procedural impropriety' and 'already paid'
- The introduction of strict correspondence time frames with Informal challenges on PCN's responded to within 14 days and formal representations within 21 days.
- Transparency of regular and consistent reporting with the requirement to publish annual parking reports to maintain accountability.

14.4 A presentation on the Traffic Management Act 2004 and statutory guidance will be organised for Elected Members and Senior Council Officers in the autumn of 2007.

14.5 This framework will apply to all local authorities operating Civil Parking Enforcement. It is recommended that the Cabinet note the changes that will apply on implementation of Part 6 of the Traffic Management Act 2004 and the new statutory guidance.

15. General Enforcement Policy [Working Practices]

15.1 It is accepted that exactly the same working practices are not always appropriate in different parts of London, but Council's are persuaded to use consistent practices, as far as possible to avoid confusion in the enforcement and adjudication practices. There are a number of areas where policy needs definition to ensure a degree of reasonableness and consistency.

15.3 **Pay & display parking**; it is recognised that drivers who have paid to park specifically sought to park legally, but due to a very short delay in returning to their vehicle may be penalised. This falls into the category of 'de minimus' rules and it is proposed that a PCN should be not issued unless a pay & display ticket has expired by at least 5 minutes.

15.4 **Observation periods on yellow lines**; at present policy requires a five minute observation period before a PCN may be issued for illegal parking in designated parking bay. This allows for exemptions such as loading or unloading, allowing a parking attendant time to observe any sign that this may be the case. It also allows motorists time to obtain a visitors' permit or purchase a pay & display ticket. There are some exceptions to this, for example illegal parking in a disabled permit bay.

15.5 Some parking contraventions are 'instant' and a PCN may be issued immediately. These include 'absolute' contraventions such as parking on the footway (where this is prohibited) and locations where there is a ban on loading and unloading. In other cases there may be sufficient exemptions to a general rule to cause doubt as to whether a

contravention has occurred at the time of the initial appearance of the parking attendant. This applies in situations of loading or unloading where waiting restrictions apply [yellow lines]. At present those contraventions relating to private vehicles or small unlicensed commercial vehicles, result in an 'instant' PCN, with motorists providing proof of loading or unloading to claim the exception.

- 15.6 This represents a significant level of representations to the Council and also places a burden of proof on the motorist, where some may not have documentation to support their appeal. To reduce the unnecessary administration burden on the Council and on motorists, it is recommended that a five minute observation period should be introduced on waiting restrictions. This observation is intended to observe for an exemption that applies to the regulations. It is not intended as a grace period and will not apply to those clearly in contravention.
- 15.7 An observation period of twenty minutes applies to commercial vehicles, which is the maximum time allowed for loading and unloading [after 11am]. Currently the time period allowed for loading and unloading on yellow lines, where this is not prohibited, differs between boroughs, some of whom [including Haringey] still use the "11 o'clock rule", whereby loading and unloading is unlimited until 11.00 am and limited to 20 minutes thereafter.
- 15.8 The London Councils consulted boroughs on loading and unloading and time limits that should apply. It was felt that the 11 o'clock rule is no longer relevant, especially in the inner London boroughs, where traffic flow is now more constant throughout the day, from early morning and late evening. It was felt that any change to the loading and unloading restrictions should make them fairer, more consistent across the capital and less complicated to the freight industry and the public.
- 15.9 The outcome of the consultation was that stopping for loading and unloading, where it is not prohibited, should be permitted for up to 40 minutes if and only if loading and unloading operations are continuously being performed during the time that the vehicle is in place, and that the restriction should be in force during those hours when the yellow lines themselves are in force unless it is necessary to prohibit stopping completely at any point.
- 15.10 An observation of ten minutes is sufficient to determine whether or not an exemption applies and as such it is recommended that members endorse the changes to loading and unloading restrictions as approved by the London Council's TEC and that the observation period for commercial vehicles is reduced to ten minutes, making the best use of resources and allowing proactive enforcement actions to be carried out nearby.
- 15.11 A comprehensive parking enforcement manual will be developed, which will incorporate Council enforcement policies, and industry best practice. This will be published on our website and the Parking and Enforcement Plans updated accordingly.

16. Representations and Appeals

- 16.1 Council's handling of representations and appeals is subject to an increasing level of scrutiny. Representations are increasingly technically sophisticated, with many 'experts' offering specialist assistance for motorists wishing to challenge a PCN. There is also an acceptance that the appeal process is a quasi judicial process and some recent reviews recommend that staff employed in this area should have a legal background.
- 16.2 At present staff are employed in generic capacity and they may deal with correspondence received at any stage of the recovery process. In practice more experienced officers tend to deal with formal appeals. However, while performance in this area has improved, there is a need for further improvement and a necessity to generally improve the infrastructure to cope with the implications of the new statutory guidance.
- 16.3 The issue of discretion and mitigation is again emphasised in the new guidance. It is acknowledged that discretion should be with back office staff not parking attendants and as such staff must exercise that discretion and cancel a PCN if it falls within guidelines. The Adjudicators will have the powers to refer cases back to the Chief Executive if they feel that the cases have not been adequately dealt with.
- 16.4 Detailed guidance on representations and appeals handling will be provided for staff to take account of the TMA 2004 and statutory guidance, London Councils code of practice and issues arising from Adjudicators. This will underpin other training being delivered, improving standards and instilling a level of consistency.

17. Recommendations;

- 17.1 It is recommended that Members note the following changes to parking enforcement policy;
- a) That legislative and new statutory guidance are to be introduced on the 31st of March 2008 under the Traffic management Act 2004..
 - b) That clamping is restricted to persistent evaders only in the short term and in the longer term ceased in favour of removals
 - c) That Members endorse the change to the removal policy in line with the Mayor's caveat so that removals focus on vehicles causing obstructions. This includes those parked on yellow lines, parked illegally in disabled bays, persistent evaders, those parked for extended periods or those parked illegally in designated bays which displace legitimate permit holders onto yellow lines.
 - d) That a PCN may only be issued when a pay & display ticket has expired by a minimum of five minutes.
 - e) That a five minute observation period should be introduced for private vehicles parked on yellow lines subject to waiting restrictions, where an exemption may apply. This observation is intended to observe for an exemption that applies to the regulations. It is not intended as a grace period and will not apply to those clearly in contravention.
 - e) That a ten minute observation period should apply to commercial vehicles parked on a yellow line subject to waiting restrictions.
 - f) That Members endorse the forty minute time limit to loading and unloading.

- g) That Members note the implications in terms of representations and appeals handling and in particular note that the requirement to take mitigation into account.

17.2 That Members note the financial and resource implications of these changes and agree that these are addressed as part of the 2008/09 business planning process.

18. Use of Appendices / Tables / Photographs

Appendix 1

Recommendations in the Statutory Guidance

Devices/Clamping and Removal

- a) To only use approved devices i.e. cameras where enforcement is difficult or sensitive
- b) To only use clamping for persistent evaders
- c) To remove rather than clamp if the vehicle is causing an obstruction
- d) Not to continue removing or clamping if the driver returns to the vehicle while clamping is in progress unless the vehicle is a persistent evader
- e) To contact TRACE to advise of details of vehicles which have been removed
- f) To set maximum times of no more than two hours for the release of vehicles which have been removed

Notice to Owner and Representations and Exercise of Discretion

- g) To give full particulars to an owner of a vehicle of the grounds, procedure and time limit for representations once payment is made
- h) To make allowances for late payments if there are unusual postal delays
- i) To send out a Notice Owner within 56 days after serving a PCN and the penalty charge is not paid even though the statutory limit is six months
- j) To ensure that the Notice to Owner clearly states what an authority can and can't consider with respect to representations and to include any photographic evidence with the Notice to Owner
- k) To give representations and challenges a fresh consideration and should exercise discretion to cancel a PCN sensibly and reasonably
- l) To formulate and publish policies on exercise of their discretion
- m) To respond to informal challenges against PCNs with care and attention and win 14 days and should consider any mitigating circumstances
- n) To extend the discount period by 14 days if a challenge is rejected
- o) Not to contract out the consideration of formal representations
- p) To ensure that the authorities standing orders should be as specific in describing which officers have the authority to cancel PCNs
- q) To ensure that back office staff instead of Civil Enforcement Officers should exercise their discretion not to enforce a PCN so as to avoid allegations of bias

- r) To exercise their discretion to accept late representations where vehicle owners give a valid reason for the delay and has strong representations
- s) To respond within 21 days to representations even though the statutory time limit is 56 days

Performance Standards and Accounting Practices

- t) To maintain regular dialogue with on-street contractors, neighbouring authorities, DVLA, TEC and representatives of road use groups and, in particular, the police
- u) To base performance measures and rewards or penalties on outcomes not outputs such as compliance statistics and the number of appeals rather than the number of PCNs or removals
- v) To ensure a Service Level Agreement is in place where enforcement operations are carried out in house
- w) To produce an annual report about their on-street and off-street enforcement activities within six months of the end of each financial year
- x) To make annual returns to the Government about the number of speed of the payment of PCNs
- y) To include in the annual report the total income and breakdown of income by source and the total surplus or deficit and how the surplus is spent. The report should also include statistics about how many PCNs are issued and paid, the number of representations made and the number of PCNs cancelled and the number of vehicles removed and/or clamped.