EXPLANATORY MEMORANDUM TO

THE BUS LANE CONTRAVENTIONS (APPROVED LOCAL AUTHORITIES) (ENGLAND) (AMENDMENT) AND CIVIL ENFORCEMENT OF PARKING CONTRAVENTIONS DESIGNATION (NO. 2) ORDER 2012

2012 No. 2659

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Order enables Lincoln City Council, East Lindsey District Council, West Lindsey District Council, Boston Borough Council, South Holland District Council, North Kesteven District Council, South Kesteven District Council, and South Bucks District Council, to enforce parking contraventions within their administrative areas through a civil law regime, as opposed to enforcement by police or traffic wardens in a criminal law context. It also has the effect of extending the civil enforcement area and special enforcement area of the Council of the City of Salford to include some of the roads previously excluded by Article 3 of the Road Traffic (Permitted Parking Area and Special Parking Area) (City of Salford) Order 2001 (S.I. 2001/894).

2.2 The Order also amends the Bus Lane Contraventions (Approved Local Authorities) (England) Order 2005 (S.I. 2005/2755, "the 2005 Order"). The effect of the amendment is to specify The Lincolnshire County Council as an approved local authority for the purposes of section 144 of the Transport Act 2000 ("the 2000 Act") to enforce bus lane contraventions within their administrative area by means of civil penalty charges.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Order is made using powers conferred by section 89(3), paragraph 8(1) of Schedule 8, and paragraph 3(1) of Schedule 10, to the Traffic Management Act 2004 ("the 2004 Act"), following consultation with the appropriate chief officer of police for each area designated by the Order.

4.2 The regime for civil enforcement of parking contraventions in England is set out in Part 6 of the 2004 Act together with instruments made under that Part of that Act. Those instruments are the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 (S.I. 2007/3482), the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 (S.I. 2007/3483), the Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007 (S.I. 2007/3487) and two other instruments (S.I. 2007/3485 and 2007/3486). A further instrument, S.I. 2007/3484 (which amended S.I.

1986/183), was made under different powers, but in relation to civil enforcement areas. The 2004 Act regime has replaced the previous civil enforcement regime under the Road Traffic Act 1991.

4.3 The Order revokes the Road Traffic (Permitted Parking Area and Special Parking Area) (City of Salford) Order 2001 (S.I. 2001/894) and re-designates under the 2004 Act the area previously designated under the 2001 Order with the exception that the roads excluded by paragraphs (a)-(g) of Article 3 of the Order now form part of the Council's civil enforcement area.

5. Territorial Extent and Application

5.1 This Order applies to England.

6. European Convention on Human Rights

6.1 As the Order is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 Effective traffic regulation requires a robust enforcement of traffic restriction and prohibition orders to promote safety and traffic flow, and to deal with abuses of the system. This has been addressed in relation to parking by the 2004 Act. That Act enables the creation of "civil enforcement areas" and "special enforcement areas" in which responsibility for enforcing parking restrictions is transferred from the police and police traffic wardens to civil enforcement officers employed by local authorities.

7.2 When an area is designated as a civil enforcement area, the effect is that certain specified parking offences are enforced by the local authority. Where such a designation is in place, a special enforcement area may also be created; the effect of creating a special enforcement area is that two additional parking prohibitions apply (double parking and parking at dropped footways).

7.3 It is Government policy to encourage authorities who have civil enforcement powers under paragraph 8(1) of Schedule 8 to the 2004 Act to take on civil enforcement powers in relation to bus lane contraventions. The effect of the Order is to enable The Lincolnshire County Council to exercise the powers to undertake such enforcement conferred on "approved authorities" by the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005 (S.I. 2005/2757). Offences relating to bus lane restrictions are not decriminalised by those regulations and, in the area of an approved local authority, the contravention of a bus lane order will remain a criminal offence. It will accordingly be possible in such areas for such contraventions to be dealt with either as a criminal offence by the police or by civil enforcement by the approved local authority.

- ***Consolidation***

7.4 The Order amends the 2005 Order. The Department for Transport does not consider that the amendment being made warrants a consolidation of the 2005 Order.

8. Consultation outcome

8.1 The Secretary of State has a statutory obligation to consult the appropriate chief officers of police before making an order (under paragraph 8(3) of Schedule 8, and paragraph 3(4) of Schedule 10, to the 2004 Act) and has done so. The Secretary of State has also consulted the Administrative Justice and Tribunals Council and the Highways Agency in cases where a local authority is applying for civil parking enforcement powers for the first time. The relevant local authority consults the police, the Highways Agency, DVLA, the Traffic Enforcement Centre, the Adjudication Service and neighbouring authorities. An application will not proceed unless any objections have been resolved.

9. Guidance

9.1 Statutory Guidance and Operational Guidance to Local Authorities on the Civil Enforcement of Parking was published in March 2008 under section 87 of the 2004 Act. The guidance sets out the policy framework for civil parking enforcement and explains how local authorities should approach, carry out, and review their parking enforcement activities. All enforcement authorities in England should use the guidance in conjunction with the statutory instruments that give effect to the parking provisions in Part 6 of the 2004 Act. Section 87 of the 2004 Act stipulates that local authorities must have regard to the guidance.

9.2 As regards the financing of local authorities' civil parking enforcement operations, the guidance provides that enforcement authorities should run their civil parking enforcement operations (both on and off-street) 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 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. Any penalty charge payments received (whether for on-street or off-street enforcement) must only be used in accordance with section 55 (financial provisions relating to designation orders) of the Road Traffic Regulation Act 1984.

9.3 The guidance also provides that local authority parking enforcement should be self-financing as soon as practicable. However, compliant applications for civil parking enforcement will be granted without the scheme being immediately self-financing. Local authorities are reminded 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 accept that national or local tax payers should meet any deficit.

9.4 The provisional Guidance on Bus Lane (including tramway) Enforcement in England (outside London) published in November 2005 sets out to (a) inform English local authorities outside London about the scope for them to set up and operate the civil enforcement of bus lanes under the provisions of the 2000 Act, (b) advise English local authorities outside London how to apply to the Secretary of State for the necessary powers and, (c) advise English local authorities outside London how to set up and operate an effective and efficient civil enforcement regime.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies. The Order does not impose additional parking or bus lane controls; it simply allows the local authorities to enforce existing controls as an alternative to, or alongside in the case of bus lanes in Lincolnshire, enforcement by the police.

10.2 There is no adverse impact on the public sector. This is for the same reasons as those mentioned at 10.1 above.

10.3 An impact assessment has not been prepared for this Order as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 This legislation does not apply to small business.

12. Monitoring & review

12.1 It will be for the authorities whose areas are designated by the Order to keep the civil enforcement of parking and bus lanes in their area under review.

13. Contact

13.1 Mary Maxwell at the Department for Transport, telephone: 020 7944 3155 or email: Mary.Maxwell@dft.gsi.gov.uk can answer any queries regarding the Order.