EXPLANATORY MEMORANDUM TO

THE BUS LANE CONTRAVENTIONS (APPROVED LOCAL AUTHORITIES) (ENGLAND) (AMENDMENT) (NO. 2) AND CIVIL ENFORCEMENT OF PARKING CONTRAVENTIONS DESIGNATION (NO. 4) ORDER 2010

2010 No. 2790

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 the Darlington Borough Council and the council of the City of Westminster 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.

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 Darlington Borough Council, The North East Lincolnshire Borough Council and The West Berkshire District Council as approved local authorities for the purposes of section 144 of the Transport Act 2000 ("the 2000 Act"). This enables the authorities 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 paragraphs 2(1) and 8(1) of Schedule 8, and paragraphs 1(1) and 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 (Special Parking Area) (City of Westminster) Order 1994 and the Road Traffic (Special Parking Area) (City of Westminster) (Amendment) Order 1996.

4.4 The Order is also made using the power conferred by section 144(3)(b) of the 2000 Act. Under that section 144, the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005 (S.I. 2005/2757) have been made; those regulations provide for the introduction in England outside London of a regime for the civil enforcement of bus lane contraventions by "approved local authorities". By virtue of that section 144(3), as transitionally modified, an authority is an approved local authority if an order designating the whole or any part of its area as a civil enforcement area for parking contraventions has been made under paragraph 8(1) of Schedule 8 to the Traffic Management Act 2004 ("the 2004 Act") and the relevant national authority has made an order specifying it as an approved local authority for the purposes of section 144. By inserting the authorities mentioned at paragraph 2.2 above into the 2005 Order, this Order specifies those authorities for these purposes.

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 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 authorities whose names are inserted into the 2005 Order to exercise the powers to undertake such enforcement conferred on "approved authorities" by the Bus Lane Contravention (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005. Offences regarding 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***

7.3 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 officer of police before making an order (paragraphs 2(3) and 8(3) of Schedule 8, and 1(4) and 3(4) of Schedule 10, to the 2004 Act). The Secretary of State also consults the Administrative Justice and Tribunals Council and the Highways Agency when a local authority (such as the Darlington Borough Council) 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 information contained in the guidance.

9.2 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 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 authority to enforce existing controls as an alternative to 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.