EXPLANATORY MEMORANDUM TO THE

ROAD TRAFFIC (PERMITTED PARKING AREA AND SPECIAL PARKING AREA) (METROPOLITAN BOROUGH OF SOUTH TYNESIDE) ORDER 2006 No. 3424

AND

THE BUS LANE CONTRAVENTIONS (APPROVED LOCAL AUTHORITIES (ENGLAND) (AMENDMENT) (NO.7) ORDER 2006 No. 3425

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

2. Description

2.1 The Road Traffic (Permitted Parking Area and Special Parking Area) (Metropolitan Borough of South Tyneside) Order 2006 ("the Order") enables South Tyneside Metropolitan Borough Council to enforce parking contraventions within its administrative area through a civil law regime, as opposed to enforcement by police or traffic wardens in a criminal law context.

The Bus Lane Contraventions (Approved Local Authorities) (England) (Amendment) (No.7) Order 2006 ("the Approved Authorities Order") designates South Tyneside Metropolitan Borough Council as an " approved local authority" for the purposes of section 144 of the Transport Act 2000. This allows South Tyneside Metropolitan Borough Council to also enforce bus lanes by the imposition of civil penalty charges.

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

3.1 None

4. Legislative Background

4.1 The Order is made under powers conferred by paragraphs 1(1) and 2(1) of Schedule 3 to the Road Traffic Act 1991 (as read with paragraph 3(3) of that Schedule), following consultation with the appropriate chief officer of police.

4.2 Part II of that Act creates a regime for the civil enforcement of parking contraventions which applies to London only. Schedule 3 enables the Secretary of State by order to provide for the introduction of such a regime to areas outside London and to make consequential modifications to the 1991 Act, and other legislation, as appropriate.

4.3 The Approved Authorities Order is made under powers conferred by section 144(3) of the Transport Act 2000. Under that section the Secretary of State and the Lord Chancellor have made the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005 which provide for the introduction in England outside London of a regime for the civil enforcement of bus lane orders by "approved local authorities". An authority is an approved local authority if an order under Schedule 3 to the Road Traffic Act 1991 has been made giving it parking enforcement powers in all or part of its area and it is specified as an approved authority by an order made by the Secretary of State. The Approved Authorities Order specifies South Tyneside Metropolitan Borough Council for these purposes.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 The Minister, Gillian Merron, has made the following statement regarding human rights:

"In my view the provisions of the Road Traffic (Permitted Parking Area and Special Parking Area) (Metropolitan Borough of South Tyneside) Order 2006 and The Bus Lane Contraventions (Approved Local Authorities) (England) (Amendment) (No.7) Order 2006 are compatible with the Convention rights."

7. Policy background

7.1 Effective traffic regulation requires effective enforcement of traffic restriction and prohibition orders to promote safety and traffic flow, and deal with abuses of the system. This has been addressed in relation to parking by the Road Traffic Act 1991. That Act enables the creation of "permitted parking areas" and "special parking areas" in which responsibility for enforcing parking restrictions is transferred from the police and police traffic wardens to parking attendants employed by local authorities. Examples of such contraventions are (in a permitted parking area) overstaying the time paid for in a parking bay, and (in a special parking area) unlawful parking on yellow lines.

7.2 Pursuant to the Order, the Metropolitan Borough of South Tyneside will be designated as both a permitted parking and a special parking area. It is Government policy to encourage local authorities to take on these powers. Many have applied for them and many others have indicated that they will be applying for them in the future. An authority is then able to target enforcement effort to support their local traffic management policies. Effective enforcement helps reduce parking problems and congestion and improve safety.

7.3 Schedule 1 to the Order sets out in detail the modifications to the 1991 Act, where such modifications are required. The effect of section 66 of the 1991 Act (as modified by paragraph 1 of Schedule 1 to this Order) is to set out when and how a penalty charge notice may be issued within the designated area, what it must state, and to make it an offence to remove the notice without proper authority. The procedures to be followed when a penalty charge notice has been issued, and the subsequent procedures for enforcing the charge or making representations against the charge, are set out in Schedule 6 to the 1991 Act as modified by paragraph 8 of Schedule 1 to this Order.

7.4 Subject to any exemptions under section 70 of the 1991 Act, paragraphs 2 and 3 of Schedule 1 modify the provisions of the 1991 Act setting out the processes for immobilising (wheel-clamping) an unlawfully parked vehicle and for making representations against such immobilisation (or any vehicle removal). Paragraph 4 modifies section 73 of the 1991 Act, which provides for a Joint Committee to appoint independent parking adjudicators to hear appeals against penalty charges. South Tyneside Metropolitan Borough Council will become a member of this Committee - the National Parking Adjudication Service Joint Committee. Paragraph 5 provides for the modification of the application of section 74 of the 1991 Act, such that the levels of penalty charges in the area designated under the Order will be set locally but in accordance with national guidance.

7.5 Schedule 2 to the Order modifies the operation of the relevant sections of the Road Traffic Regulation Act 1984. This includes modification to section 55, which will require South Tyneside Metropolitan Borough Council to keep an account of the income and expenditure in respect of designated on- street parking places and the income from penalty charges, charges incurred for the removal, storage or disposal of vehicles and charges for the release of vehicles from wheel-clamps.

7.6 It is also government policy to encourage local authorities to undertake the enforcement of bus lanes by civil means and the effect of the Approved Authorities Order is to enable South Tyneside Council to exercise the powers to undertake such enforcement conferred on “approved local authorities” by the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005. Offences against bus lane restrictions are not decriminalised by these 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.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 South Tyneside Metropolitan Borough Council (the enforcement authority) may use the income from the additional parking charges to finance their enforcement operations. They estimate that the DPE operation will operate with a small deficit of around £98,033 in the first year.

9. Contact

Darwin Gunewardena at the Department for Transport tel: 020 7944 2484 / e-mail: Darwin.gunewardena@dft.gsi.gov.uk can answer any queries regarding the instrument.