EXPLANATORY MEMORANDUM TO

THE BUS LANE CONTRAVENTIONS (PENALTY CHARGES, ADJUDICATION AND ENFORCEMENT) (ENGLAND) REGULATIONS 2005

2005 No.2757

THE BUS LANE CONTRAVENTIONS (APPROVED LOCAL AUTHORITIES) (ENGLAND) ORDER 2005

2005 No.2755

THE BUS LANES (APPROVED DEVICES) (ENGLAND) ORDER 2005

2005 No.2756

THE TRIBUNALS AND INQUIRIES (BUS LANE ADJUDICATORS) (ENGLAND) ORDER 2005

2005 No. 2758

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

2. Description

2.1 The **Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005** ("the Regulations") make provision for the enforcement of bus lane contraventions by local authorities which are approved for the purposes of section 144 of the Transport Act 2000, as an alternative to enforcement by the police. In particular, they provide for penalty charges to be set by the local authorities, these charges being imposed only on the basis of a record produced by an approved device. Charges are payable by the owner of the vehicle with certain exceptions relating to hired vehicles and vehicles kept by vehicle traders (see regulation 5). A charge cannot be recovered if the contravention in question is also subject to criminal proceedings or the serving of a fixed penalty notice. The regulations also provide for the making of representations to the local authority concerned, the appointment of bus lane adjudicators, the procedures for appeals to the adjudicators and related matters. Finally they deal with the keeping of accounts and the uses to which any surplus can be applied.

2.2 The three **Orders** are supplementary and concern respectively:

(a) the local authorities in England (outside Greater London) approved for the purpose of the Regulations ("the Approved Local Authorities Order") - these are all local authorities whose areas in whole or part are designated under the Road Traffic Act 1991 for decriminalised parking enforcement;

(b) the devices approved for the purpose of the regulations ("the Approved Devices Order");

(c) the addition of bus lane adjudicators in England to the list of tribunals under the direct supervision of the Council on Tribunals ("the Tribunals and Inquiries Order").

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

None.

4. Legislative Background

4.1 The Regulations are made under section 144 of the Transport Act 2000 ("the Act"). So far as they concern the notification, adjudication and enforcement of parking charges they are made by the Lord Chancellor (see section 144(11)), otherwise they are made by the Secretary of State.

4.2 The Approved Local Authorities Order and the Approved Devices Order are likewise made under section 144 of the Act. The Tribunals and Inquiries Order is made under section 13(1) of the Tribunals and Inquiries Act 1992 and is made jointly by the Lord Chancellor and the Secretary of State.

4.3 Section 144 provides for the Secretary of State (or, in Wales, the National Assembly for Wales) to make regulations in connection with allowing approved local authorities outside London, Transport for London and London local authorities to impose penalty charges for moving bus lane contraventions, and the payment of penalty charges. The section provides that regulations made must include provision for matter such as setting the levels of penalty charges, specifying the person responsible for paying the penalty charge and the application of sums received from penalty charges. They may also include matters such as exemptions from penalty charges, provision for discounts or surcharges and the keeping of accounts. It also gives the Lord Chancellor powers to make regulations about the notification, adjudication and enforcement of penalty charges. And it empowers the Secretary of State (in England) to approve local authorities and devices for the purpose of the section.

4.4 Section 144 does not give local authorities the power to stop vehicles. Nor does it remove the power of the police to enforce moving traffic

offences in bus lanes. It makes provision to avoid double jeopardy for the same offence.

4.5 This will be the first use of the regulatory and order-making powers in section 144. The regulations are closely modelled on the decriminalised parking provisions under Part 2 of the Road Traffic Act 1991 (traffic in London) and in designation orders made under Schedule 3 to that Act (extending the provisions with modification to places outside London). They also draw on the provisions in Part 2 of the London Local Authorities Act 1996 which have been successful in reducing the number of bus lane contraventions in London.

4.6 The Council on Tribunals is responsible for supervising the administrative tribunals specified in Schedule 1 to the Tribunals and Inquiries Act 1992, including Parking Adjudicators under the Road Traffic Act 1991. There are provisions to add the names of further bodies by Order. The Tribunals and Inquiries Order adds Bus Lane Adjudicators to the Council's responsibilities.

5. Extent

These instruments apply to England (excluding London). In Wales the powers of the Secretary of State under section 144 rest with the National Assembly for Wales. (The Lord Chancellor's powers under section 144 apply in both England and Wales).

6. European Convention on Human Rights

The Parliamentary Under-Secretary, Karen Buck, has made the following statement:

In my view the provisions of the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005, the Bus Lane Contraventions (Approved Local Authorities) (England) Order 2005, the Bus Lanes (Approved Devices) (England) Order 2005 and the Tribunals and Inquiries (Bus Lane Adjudicators) (England) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 Part 2 of the Transport Act 2000 made provision for the improvement of local public transport, in particular buses, giving new duties and powers to local transport authorities.

7.2 Bus lanes are a means of improving the speed and punctuality of bus services. By encouraging the use of buses rather than private cars in areas of high traffic density they can relieve traffic congestion overall and reduce environmental pollution. Except in London, where local legislation applies (Part 2 of the London Local Authorities Act 1996), traffic restrictions in bus lanes are currently enforceable only by the

police. Extending enforcement to local authorities will increase the resources available for the task while allowing the police to concentrate on other traffic management functions. Local authorities will only be able to enforce bus lane orders on the evidence of records of approved devices. The system has worked well in London for a number of years and the authorities outside London to which these regulations will apply are all authorities which have enforced parking offences by a similar penalty charge method, and with similar adjudication procedures.

7.3 The Department for Transport consulted on the proposal in 2002. 54 responses were received and are summarised on the Department's website. Most of them generally supported the proposal. A number of detailed comments were made, and some details in the draft regulations were changed in the light of these. In particular: *(a)* the maximum period within which a penalty charge notice may be served was increased from the proposed 14 days to 28 days; *(b)* the notice is to be served on the "owner" of the vehicle as defined in Regulation 2(2) rather than the registered keeper, following a precedent in the Road Traffic Act 1991 for parking enforcement; *(c)* surplus funds may be spent on improving public transport services rather than (as previously proposed) providing off-street parking places.

8. Impact

8.1 A Regulatory Impact Assessment has not been carried out because the proposals embodied in the draft regulations are concerned with the enforcement of existing traffic regulations relating to the use of bus lanes. As such the draft Regulations and Orders do not amount to a new burden on businesses or others.

8.2 For local authorities undertaking enforcement the costs will be defrayed by the income from the penalty charges. Any surplus income is to be applied for the purposes specified in regulation 36 of the Regulations. For other public authorities the impact is minimal.

9. Contact

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