EXPLANATORY MEMORANDUM TO

THE CIVIL ENFORCEMENT OF PARKING CONTRAVENTIONS (COUNTY OF CHESHIRE) (CITY OF CHESTER AND BOROUGH OF ELLESMERE PORT & NESTON) DESIGNATION ORDER 2008

2008 No. 3198

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

The Civil Enforcement of Parking Contraventions (County of Cheshire) (City of Chester and Borough of Ellesmere Port & Neston) Designation Order 2008 ("the Order") enables Cheshire County 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.

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

None

4. Legislative Context

4.1 The Order is made under powers conferred by 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.

4.2 The regime for civil enforcement of parking contraventions in England is set out in Part 6 of the 2004 Act together with regulations made under that Part of the Act (the Civil Enforcement of Parking Contraventions (England) General Regulations 2007, the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007, the Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007 and three other sets of Regulations). The 2004 Act regime has replaced the previous civil enforcement regime under the Road Traffic Act 1991.

4.3 It should be noted that, with effect from 1 April 2009, the county of Cheshire will be abolished as a local government area and Cheshire County Council will be wound up and dissolved. From the same date: (a) a new district council, to be known as Cheshire East Council, will be established as the sole principal authority for the new non-metropolitan district of Cheshire East and (b) a new district council, to be known as the Cheshire West and Chester Council, will be established as the sole principal authority for the new non-metropolitan district of Cheshire West and Chester. See the Cheshire (Structural Changes) Order 2008 (SI 2008/634). After 1 April 2009 the designation of the areas made by this statutory instrument will be preserved by

virtue of the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008 (SI 2008/2867) (see regulations 3(4) and 4(3) and 4(4)(e)). From that date, however, the enforcement authority for civil enforcement of parking contraventions purposes will be Cheshire West and Chester Council.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to 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 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 made, the effect of which is that two additional parking prohibitions apply (double parking and parking at dropped footways).

7.3 Pursuant to the Order, the administrative area of the City of Chester and the Borough of Ellesmere Port & Neston (other than the excluded areas described in the schedule to Article 2 of the designation order) will be designated as both a civil enforcement and a special enforcement area. It is Government policy to encourage local authorities to take on these powers. Many have applied for them in the past under provisions in the Road Traffic Act 1991 which Part 6 of the 2004 Act replaces. To date, 259 local authorities in England have civil parking enforcement powers. Eight councils are in the process of applying and we expect approximately 50 authorities to apply to introduce civil parking enforcement within the next year.

8. Consultation outcome

The Secretary of State has a statutory obligation to consult the appropriate chief officer of police before making an order (paragraphs 8(3) of Schedule 8 and 3(4) of Schedule 10 of the 2004 Act). The Secretary of State also consults the Administrative Justice and Tribunal Council and the Highways Agency. The relevant local authority

consults the police, the Highways Agency, DVLA, the Traffic Enforcement Centre, the Adjudication Service and neighbouring authorities. In practice, only the police tend to raise objections, but 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 it 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 Regulations 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 As regards local authorities' civil parking enforcement financing 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. This is a sensible aim, but compliant applications for civil parking enforcement will be granted without the scheme being immediately self financing. Local authorities will need to bear in mind 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.

10. Impact

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

11. Regulating small business

This legislation does not apply to small business. It relates to only local authorities in Cheshire.

12. Monitoring & review

It will be for Cheshire County Council to keep the civil enforcement of parking in their area under review.

13. Contact

Mary Maxwell at the Department for Transport tel: 020 7944 3155 / email: mary.maxwell@dft.gsi.gov.uk can answer any queries regarding the instrument.