EXPLANATORY MEMORANDUM TO

THE CIVIL ENFORCEMENT OF PARKING CONTRAVENTIONS DESIGNATION ORDER 2011

2011 No. 2431

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 County Council of Durham, The East Riding of Yorkshire Council, The Nuneaton and Bedworth Borough Council, Breckland District Council, Broadland District Council, North Norfolk District Council, South Norfolk District Council, Great Yarmouth Borough Council and The Borough Council of King's Lynn and West Norfolk 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 excludes certain roads around Ebbsfleet Station within the administrative area of The Dartford Borough Council from an existing civil parking enforcement scheme.

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 paragraphs 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) (County of Kent) (Borough of Dartford) Order 2001. (S.I. 2001/1855) and designates the area previously designated under the 2001 Order, with minor further exclusions around Ebbsfleet station, as a civil enforcement area and a special enforcement area under the Traffic Management Act 2004.

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 made; the effect of making a special enforcement area is that two additional parking prohibitions apply (double parking and parking at dropped footways).

7.3 Pursuant to the Order, part of the area of each of the Councils (some stretches of road are specifically excluded by the Schedules to the Order) will be designated as both a civil enforcement and a special enforcement area. In the case of The County Council of Durham part of that council's area has already been designated by a previous instrument (S.I. 2008/2567), which remains in force. This Order designates an additional part of that council's area.

- ***Consolidation***

This Order effectively combines multiple designation orders. The Order revokes, but does not amend, other legislation.

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 (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 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. However, compliant applications for civil parking enforcement will be granted without the scheme being immediately self-financing. Local authorities are reminded 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

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 (or in succession to a pre-existing civil enforcement scheme in the case of The Dartford Borough Council).

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.