EXPLANATORY MEMORANDUM TO

THE CIVIL ENFORCEMENT OF PARKING CONTRAVENTIONS (ENGLAND) GENERAL (AMENDMENT) REGULATIONS 2009

2009 No. 478

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 purpose of these Regulations is to revoke the Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2008 (S.I. 2008/1513) ("the revoked Regulations") and to amend the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 (S.I. 2007/3483) ("the General Regulations") by revoking the amendments made to them by the revoked Regulations. The effect of these Regulations will thus be to restore the General Regulations to the form in which they were when originally made.

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

3.1 None.

4. Legislative Context

4.1 Part 6 of the Traffic Management Act 2004 confers powers on the Lord Chancellor and "the appropriate national authority" (in England, the Secretary of State) to make regulations providing for a national legislative framework for the civil enforcement by local authorities of contraventions of parking, bus lane and some moving traffic contraventions. Part 6 and the regulations made under it replace existing provisions in the Road Traffic Act 1991 (with regard to parking), and will in due course replace section 144 of the Transport Act 2000 (with regard to bus lanes) and London local legislation.

4.2 Six instruments came into force on 31st March 2008 to implement Part 6 of the Traffic Management Act 2004 so far as it relates to parking contraventions.

4.3 It was realised in May 2008 that an anomaly in the Traffic Management Act 2004 meant that a Shire District Council, i.e. a non-metropolitan district council which is not a "unitary authority" having the powers of a county council, fell outside the definition of a local authority in section 92(1) of the Traffic Management Act 2004 for the purposes of Part 6 of that Act but was nevertheless defined as an enforcement authority by virtue of paragraph 8(5)(a) of Schedule 8. This meant that a Shire District Council was responsible for enforcing off-street and free on-street parking places which they had provided under section 32 (1)(a) or (b) of the Road Traffic

Regulation Act 1984 but did not have the legal power to employ Civil Enforcement Officers to carry out that enforcement.

4.4 The revoked Regulations came into force on 3 July 2008 and enabled Shire District Councils to use parking attendants appointed under section 63A of the Road Traffic Regulation Act 1984 to enforce, under the General Regulations, parking places that they had provided or authorised under section 32(1)(a) or (b) of that Act. The revoked Regulations also disapplied as respects such councils the requirement in the General Regulations that a penalty charge could only be enforced on the basis of evidence provided by an approved device or information provided by a civil enforcement officer.

4.5 At the same time a clause was inserted into the Local Transport Bill that would, once in force, amend the definition of a local authority in the Traffic Management Act 2004 to include a Shire District Council. The Local Transport Act 2008 was given Royal Assent on 26 November 2008 and on 26 January 2009 the new clause came into force as section 127 of that Act. This means that the revoked Regulations are no longer required and that there is no longer any reason to treat Shire District Councils differently in the General Regulations from other enforcement authorities.

5. Territorial Extent and Application

5.1 These Regulations apply to England.

5.2 They do not replicate legislation which already exists in another part of the United Kingdom.

6. European Convention on Human Rights

6.1 As this Instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The aim of this instrument is to return the regulatory framework to what it was before the anomaly in the Traffic Management Act 2004 became apparent and to put Shire District Councils on the same footing as all other enforcement authorities.

8. Consultation outcome

8.1 The outcome of consultation on the General Regulations was reported in the Explanatory Memorandum for those Regulations. Since the purpose of this Instrument is to restore the General Regulations to the form in which they were originally consulted upon and made, and since no objection was made to the General Regulations in that regard, there has been no consultation on this Instrument.

9. Guidance

9.1 The Department for Transport has informed the local authorities concerned that the Instrument has been made and of its effect.

10. Impact

10.1 A Public Sector Regulatory Impact Assessment was produced for the set of instruments that include the General Regulations. The old Regulatory Impact Assessment format was used rather than the new Impact Assessment format because one Regulatory Impact Assessment was produced to cover both the affirmative resolution parking regulations ("the Representations and Appeals Regulations") and the negative resolution parking regulations. The affirmative regulations were laid in Parliament in July 2007 when the old Regulatory Impact Assessment format was still in use. No significant financial implications have been identified for members of the public or the public sector.

10.2 A Regulatory Impact Assessment was prepared for the Traffic Management Bill as a whole and is available at http://www.dft.gov.uk/consultations/aboutria/ria/thetrafficmanagementbillregu5592?version=1

11. Regulating small business

11.1 The Instrument does not apply to small business.

12. Monitoring and review

12.1 The criteria for success are that enforcement authorities understand what they may and may not do and use their powers to ensure that motorists that have parked in contravention of the regulations pay a financial penalty. The department will monitor the effects of the regulations through its regular contacts with enforcement authorities as a group and individually, as well as with other stakeholders.

13. Contact

13.1 Marilyn Waldron at the Department for Transport can answer any queries regarding the instrument. Telephone: 0207 944 2468. E-mail: Marilyn.Waldron@dft.gsi.gov.uk.