EXPLANATORY MEMORANDUM TO

THE CIVIL ENFORCEMENT OF ROAD TRAFFIC CONTRAVENTIONS (REPRESENTATIONS AND APPEALS) (ENGLAND) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

1.1 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 These Regulations (the "Appeals Regulations") and the Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provision) (England) Regulations 2022 ("the General Provisions Regulations") have been laid by the Secretary of State for Transport on behalf of the Lord Chancellor. Together with the General Provisions Regulations (which are subject to the negative procedure) and the Traffic Management Act 2004 (Commencement No. 10 and Savings and Transitional Provisions) (England) Order ("the Commencement Order"), these Regulations are designed to extend the civil enforcement of parking controls by civil enforcement officers acting on behalf of local authorities, rather than police officers or police traffic wardens.

2.2 These Regulations extend the long-established rights of representation and appeal for motorists challenging a Penalty Charge Notice ("PCN") in respect of a parking contravention, to moving traffic contraventions outside London. The rights of representation and appeal for bus lane contraventions outside London, previously under the Transport Act 2000 ("the 2000 Act"), have also been consolidated under the Traffic Management Act 2004 ("the 2004 Act") to benefit from the stronger rights available under the 2004 Act and are also covered by these regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State Lord Wolfson of Tredegar QC has made the following statement regarding Human Rights:

"In my view the provisions of the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 Part 6 of the 2004 Act confers powers on the Lord Chancellor and "the appropriate national authority" (in England, the Secretary of State) to make statutory instruments providing for a national legislative framework for the civil enforcement by local traffic authorities of contraventions of parking, bus lane, and certain moving traffic restrictions such as ignoring no entry signs, waiting on box junctions and performing banned turns. These regulations make provisions with regard to representations to the enforcement authority and appeals to an adjudicator by those on whom penalties are imposed.

7. Policy background

What is being done and why?

7.1 These regulations are part of a statutory instrument package that introduces powers to allow local authorities outside London to enforce moving traffic contraventions such as: ignoring no entry signs, performing banned turns, waiting on box junctions and incorrect use of mandatory cycle lanes. The package also brings together (with the moving traffic contraventions) existing civil enforcement powers for parking and bus lane contraventions outside London; and aligns penalty charges across all three contravention categories.

7.2 The complete list of instruments comprising the package is—

The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022;

The Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provision) (England) Regulations 2022; and

The Traffic Management Act 2004 (Commencement No. 10 and Savings and Transitional Provisions) (England) Order 2022.

7.3 It has been necessary for the subject matter to be split between two main instruments because the powers to make regulations relating to the Appeals Regulations are exercisable by statutory instrument subject to the affirmative procedure, whereas the General Provisions Regulations fall to be made under negative procedure powers. No formal Parliamentary procedure applies to the Commencement Order.

7.4 Historically, all road traffic violations were contraventions enforced by the police. However, to enable the police service to focus its resource on other priorities, several Acts have been introduced since the 1990s decriminalising some traffic contraventions, converting them to civil contraventions, and transferring to local authority enforcement.

7.5 Civil enforcement of parking and bus lane contraventions has become commonplace across England, and, since 2003, civil enforcement of moving traffic contraventions has operated successfully in London under the London Local Authorities and Transport for London Act 2003. However, elsewhere the equivalent moving traffic enforcement powers under Part 6 of the 2004 Act were never commenced.

7.6 This Government has now decided to implement the moving traffic enforcement powers; recognising the dual imperatives to improve air quality through reduced traffic congestion, and to encourage behavioural shift towards sustainable travel choices by keeping junctions and cycle lanes clear of obstructing vehicles to improve

bus reliability and to promote cycling. This commitment was made by the Prime Minister in launching the Government's broader policy to further promote active travel choices, post Covid-19, in its policy document 'Gear Change: a bold vision for cycling and walking'. That document highlights the need for local authorities to have the necessary enforcement powers to improve traffic flow.

7.7 The legislative opportunity has been taken to transfer the bus lane enforcement regime outside London from the 2000 Act to the bus lane enforcement provisions in Schedule 8 Part 2 of the 2004 Act. This reflects the original intention when the 2004 Act was introduced.

Explanations

What did any law do before the changes to be made by this instrument?

7.8 These powers of representation and appeal were only previously available to motorists challenging civil enforcement of parking contraventions.

Why is it being changed?

7.9 Under the 2000 Act, motorists contravening bus lane restrictions outside London did not have the following stronger rights of representation and appeal available to them under the 2004 Act for parking (and the new moving traffic) contraventions. These are: procedural impropriety on the part of the local authority; an express duty placed on local authorities to consider 'compelling reasons' put forward by appellants to support their case; the power for adjudicators to refer cases back to local authorities, and a requirement for local authorities to respond to representations within 56 days. Aligning bus lane contraventions under the 2004 Act corrects this anomaly by giving motorists equal rights of representation and appeal in parking, bus lane and moving traffic cases.

What will it now do?

7.10 The instrument extends the long-established rights of representation and appeals for parking contraventions to bus lane and moving traffic contraventions outside London.

7.11 Bringing bus lane powers under the 2004 Act also enables Ministers to publish statutory guidance to local authorities on bus lane enforcement for the first time, which local authorities must have regard to. This provides an opportunity to set out best practice in how bus lane enforcement powers should be exercised.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 The principle of providing civil enforcement powers for moving traffic contraventions outside London was approved by Parliament as part of its consideration of the 2004 Act. The decision to commence these powers was announced by the Prime Minister in the July 2020 policy statement 'Gear Change: a bold vision for cycling and walking'. The development of detailed statutory guidance has reflected input secured through

engagement with a range of key stakeholders, including: motoring groups (The AA, RAC and RAC Foundation), local government (Local Government Association and London Councils), active travel groups (including Sustrans, British Cycling, Living Streets), the British Parking Association and the Traffic Penalty Tribunal.

11. Guidance

11.1 Section 87 of the 2004 Act allows for the Secretary to State to publish statutory guidance for civil enforcement of traffic contraventions, to which local authorities must have regard in conjunction with the regulations. Draft statutory guidance has been developed, informed by the stakeholder engagement referred to above, and will be published on the Department for Transport website on the date these regulations come into force. The statutory guidance highlights the importance of ensuring citizens are properly consulted in advance of enforcement going live, and the need for prescribed traffic signs to be placed to ensure that the restrictions are clear to drivers. The statutory guidance also sets out the duties on local authorities in respect of representations made against a PCN and the process for appeals to an independent adjudicator when such representations are rejected by the local authority.

11.2 To promote compliance by helping motorists understand the seriousness of moving traffic contraventions, the statutory guidance recommends that local authorities outside London issue warning notices for a first-time moving traffic contravention occurring within a six-month period after enforcement commences in practice. The warning notice will advise that any further moving traffic contravention would result in the issue of a Penalty Charge Notice.

11.3 Within London, where moving traffic contraventions have been enforced for many years, local authorities will be expected to issue warning notices for first-time contraventions of the new cycle lane and ‘buses prohibited’ contraventions (civilly enforceable in London for the first time) when they occur within six months from when enforcement commences.

12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because compliance with existing road traffic restrictions does not create an impact on business. The regulations merely extend enforcement powers to local authorities as a civil matter. Instead, a De Minimis Assessment has been carried out.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Department for Transport will work with local authorities to review the impact on local roads of the powers to enforce moving traffic contraventions after five years following the instruments coming into force. The intended outcome of the instruments is a reduction of moving traffic contraventions over time.

14.2 The instruments do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 The Parliamentary Under Secretary of State Lord Wolfson of Tredegar QC has made the following statement:

"There is no, or no significant, impact on business, charities or voluntary bodies associated with these instruments, and the annual cost to the public sector is unlikely to exceed £5 million. However, the Department for Transport will work with local authorities to review the impact on local roads of the powers to enforce moving traffic contraventions after five years following the instruments coming into force."

15. Contact

15.1 Richard Creese at the Department for Transport, telephone 07747 627256, email: Richard.creese@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Anthony Ferguson, Deputy Director for Traffic and Technology, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Parliamentary Under Secretary of State Lord Wolfson of Tredegar QC at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.