EXPLANATORY MEMORANDUM TO

THE ROAD TRAFFIC (PERMITTED PARKING AREA AND SPECIAL PARKING AREA) (COUNTY OF HAMPSHIRE) (BOROUGH OF HAVANT) ORDER 2005

2005 No.233

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

2. Description

2.1 The Order enables Hampshire County Council to enforce parking contraventions throughout the borough of Havant 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

3.1 None

4. Legislative Background

4.1 The Order is made under powers conferred by paragraphs 1(1), 2(1) and 3(3) of Schedule 3 to the Road Traffic Act 1991, following consultation with the appropriate chief officer of police and the Council on Tribunals.

4.2 In many areas the police are no longer able to devote the resources to traffic policing that are necessary to encourage observance of traffic restrictions and prohibitions on the conduct of road traffic. This problem has been addressed in respect of parking offences by the Road Traffic Act 1991, which provides for the decriminalisation and civil enforcement of non-endorsable stationary vehicle restrictions within designated areas.

4.3 In the absence of orders made under Schedule 3 to the 1991 Act, that Act creates a regime for the civil enforcement of parking contraventions which applies to London only. However, section 43 of that Act, and Schedule 3, provide for the introduction of such a regime to areas outside London and provide for consequential modifications to be made to the 1991 Act, and other legislation, as appropriate.

5. Extent

5.1 This instrument applies to England, in particular the borough of Havant, with the exception of those roads identified in article 3.

6. European Convention on Human Rights

The Minister, Charlotte Atkins, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Road Traffic (Permitted Parking Area and Special Parking Area) (County of Hampshire) (Borough of Havant) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 Effective traffic regulation requires effective enforcement of traffic restriction and prohibition orders, otherwise they may be abused or ignored. This has been addressed in relation to parking by the Road Traffic Act 1991. That Act enables the creation of "permitted parking areas" and "special parking areas" in which responsibility for enforcing parking restrictions is transferred from the police and police traffic wardens to parking attendants employed by local authorities. Examples of such contraventions are (in a permitted parking area) overstaying the time paid for in a parking bay, and (in a special parking area) unlawful parking on yellow lines.

7.2 Pursuant to the Order, the whole of the borough of Havant will be designated as both a permitted parking and a special parking area. It is Government policy to encourage local authorities to take on these powers. Many have applied for them and many others have indicated that they will be applying for them in the future. An authority is then able to target enforcement effort to support their local traffic management policies. An increased level of enforcement helps reduce parking problems and congestion and improve safety.

7.3 Schedule 2 to the Order sets out in detail the modifications to the 1991 Act, where such modifications are required. The effect of section 66 of the 1991 Act (as modified by paragraph 1 of Schedule 2 to this Order) is to set out when and how a penalty charge notice may be issued within the designated area, what it must state, and to make it an offence to remove the notice without proper authority. The procedures to be followed when a penalty charge notice has been issued, and the subsequent procedures for enforcing the charge or making representations against the charge, are set out in Schedule 6 to the 1991 Act as modified by paragraph 8 of Schedule 2 to this Order.

7.4 Paragraphs 2 and 3 of Schedule 2 modify the provisions of the 1991 Act setting out the processes for immobilising (wheel- clamping) an unlawfully parked vehicle and for making representations against such

immobilisation (or any vehicle removal). Paragraph 4 modifies section 73 of the 1991 Act, which provides for a Joint Committee to appoint independent parking adjudicators to hear appeals against penalty charges. Hampshire County Council is already a member and Havant Borough Council will become a member of this Committee - the National Parking Adjudication Service Joint Committee. Paragraph 5 provides for the modification of the application of section 74 of the 1991 Act, such that the levels of penalty charges in the area designated under the Order will be set locally but in accordance with national guidance.

7.5 Schedule 3 to the Order modifies the operation of the relevant sections of the Road Traffic Regulation Act 1984. This includes modification to section 55, which will require Hampshire County Council to keep an account of the income and expenditure in respect of designated on-street parking places and the income from penalty charges, charges incurred for the removal, storage or disposal of vehicles and charges for the release of vehicles from wheel-clamps.

8. Impact

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

8.2 Hampshire County Council and Havant Borough Council (the enforcement authorities) may use the income from the additional parking charges to finance their enforcement operations. Hampshire County Council estimate decriminalised parking enforcement in the borough of Havant to maintain a cost neutral position, after an initial period of deficit while the initial investment is recovered.

9. Contact

Ian Boddington at the Department for Transport Tel: 020 7944 6483 or e-mail: ian.boddington@dft.gsi.gov.uk can answer any queries regarding the instrument.