Explanatory Memorandum

2004 No.1278

The Road Traffic (Permitted Parking Area and Special Parking Area) (County of Surrey) (Borough of Guildford) Order 2004 (the "Order")

This explanatory memorandum is laid before Parliament by Command of Her Majesty. It contains information for the Joint Committee on Statutory Instruments. This Order and this memorandum have been prepared by the Department for Transport.

The Order is subject to annulment in pursuance of a resolution of either House of Parliament.

Brief description of the Order

1. The Order enables Guildford Borough Council and Surrey County Council to enforce parking contraventions in Guildford through a civil law regime, as opposed to enforcement by police or traffic wardens in a criminal law context.

Enabling powers and requisite consultation

2. 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.

Policy background and wider legislative context

3. 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. The 1991 Act enables the creation of so-called "permitted parking areas" and "special parking areas", in which the 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. Pursuant to the Order, parts of Guildford will be designated as both a permitted parking and a special parking area.

Geographical application

5. In article 3, the borough of Guildford is designated as the area to which the Order applies, with the exception of those roads specified. These excepted

roads are high speed roads which are unsuitable for parking attendants to patrol, and where the police will continue to enforce parking offences.

The effect of the Order

6. 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.

7. Schedule 1 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 1 to the 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 1 to this Order.

8. Paragraphs 2 and 3 of Schedule 1 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. Guildford Borough Council will become (and Surrey County Council is) a member of this 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.

9. Schedule 2 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 Guildford Borough 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.

Compatibility with Convention Rights

10. It is the Minister's view that the provisions of the Order are compatible with the Convention on Human Rights.

Financial impact

11. A regulatory impact assessment has not been produced for the Order, as it has no impact on the costs of business.

Contact

12. The official within the Department for Transport who can be contacted with any queries in relation to this Order is Roy Martin, Department for Transport, Great Minster House, 76 Marsham Street, London SW1P 4DR; telephone 020 7498 8692; e-mail roy.martin@dft.gsi.gov.uk.

7th May 2004 Department for Transport