

The control of parking by local authorities

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Executive summary

Proper management of parking on public roads is essential to ensure the smooth flow of traffic and to allow drivers to park near their destinations. It is right that parking restrictions and charges should be imposed and that penalty charges should be imposed on those who do not comply.

It is illegal however for local authorities to set charges in order to provide a source of revenue for other activities, even if the money raised is used to fund transport provision. The level of charges must be based solely on the need to manage parking; if that level generates a surplus then it may be used for other purposes.

Context

Parking on the public highway inevitably leads to a conflict and tension. On one hand road users wish to be able to park conveniently close to their destinations but on the other hand they do not want the roads obstructed by parked vehicles. The local authorities responsible for managing highways are charged with finding the correct balance between these two conflicting demands. There has to be proper parking management, both to ensure that there is adequate provision of parking space and to ensure the smooth and efficient movement of traffic.

Proper parking management demands that the authorities impose parking charges, in order to cover the cost of administering the schemes and impose penalty charges to deter those who disobey the rules. There is however increasing concern that the scope and level of those charges appears to be driven more by the need for the local authorities to raise money than by the proper management of parking.

The note examines the duties and powers of local authorities in England and Wales to manage parking on public land. There are broadly similar powers in Scotland but that is outside the scope of this note. It also does not address ticketing or disablement (“clamping”) by private land owners or their agents.

Legal framework

The legal framework that determines what highway authorities must and may do is complicated, with many pieces of legislation, some of which amend earlier laws. The Annex to this paper summarises the legal position. The key pieces of legislation are listed below, in chronological order, with a brief summary of the contribution that each Act made to the legal position. The secondary legislation (Orders and Regulations) contains implementing details.

- Road Traffic Regulation Act 1984 – established the charging regime
- Traffic Orders (Procedure) (England and Wales) Regulations 1986 (SI 1986/180)
- London Authorities’ Traffic Orders (Procedure) Regulations 1986 (SI 1986/249).

- Road Traffic Act 1991 – decriminalised parking offences and introduced civil penalties in London
- Local Authorities' Traffic Orders (England and Wales) Regulations 1996 (SI 1996/2489)
- Civil Enforcement of Parking Contraventions (England) General Regulations 1997 – extended civil penalties regime outside London
- Traffic Management Act 2004 – extended the range of permitted uses of surpluses
- Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007 (SI 2007/3487)
- Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (Wales) Order 2008 (SI 2008/613)

Some of this legislation has been clarified by case law, which is also summarised in the Annex.

Duties and powers of highway authorities

Responsibility for the management of parking on any road in England and Wales lies with the traffic authority for that road. Major trunk roads are the responsibility of central government (Secretary of State for Transport in England, Welsh Assembly in Wales). For other, local roads, the highway authority is the appropriate local authority (see paragraphs 4 and 5 of the Annex for details).

The power to make charges for parking is defined by law to be for “relieving or preventing congestion of traffic”. There are also more general powers to manage parking for safety and amenity but these do not also permit charging. The law, both in statute and in decisions of cases, is quite clear that local authorities may only impose charges for controlling congestion. They have no power to impose charges in order to raise money for any other purpose.

There are no legal limits on the amount that a local authority may charge for parking but there are restrictions on the level of penalty charges that may be imposed (see paragraph 34 of the Annex).

The local authority has pay for administering the parking schemes in its area but it may keep the money raised from parking charges including the penalty charges for infringing parking restrictions. If the amount raised exceeds the cost of administration of the current or previous years, the local authority may either roll the surplus forward to cover the costs of future parking controls or it may use the surplus for approved purposes, which are in summary:

- contributing to the cost of off-street parking
- where it appears to the local authority that there is sufficient off-street parking:

- contributing to public passenger transport services, road improvements, environmental improvements and, for some local authorities, any other lawful activity
- in London, contributing to the costs of road maintenance or the London transport strategy.

The full list of these conditions is in paragraph 36 of the Annex.

However desirable these activities may be, local authorities are not allowed to set the level of charges in order to raise money to fund them. They may only use the surplus that results as a by-product of setting the level of charge that is necessary for “relieving or preventing congestion of traffic”.

Policy implications

There has long been a suspicion amongst drivers that parking charges and penalties are being treated as “back door” taxation by local authorities. The amount that can be raised is so great – in some cases comparable to the amount raised by Council Tax – that it creates a “moral hazard” by tempting authorities to treat it (or to be perceived to be treating it) as a source of revenue.

Local authorities have no legal powers to set parking charges at a higher level than that needed to achieve the objective of relieving or preventing congestion of traffic. There is a real risk that they will misinterpret the meaning of s55 of the Road Traffic Management Act. This section prescribes the range of expenditures to which local authorities may apply any surplus funds that parking generates. It is not a list of the reasons for which they may make charges.

Any local authority that sets its parking charges or penalties in order to raise funds is acting ultra vires (i.e. illegally) and may be challenged in the Courts. It is likely to be illegal if the local authority states explicitly that it is acting from motives that appear to be illegal or if the local authority cannot present a justification for the level of charges that it intends to impose, based on evidence and reasoning as to why that level is necessary to relieve or prevent congestion of traffic.

Furthermore, a Local Authority may only spend the surplus on activities outside the list in paragraph 36 of the Annex if it has been prescribed by the Secretary of State (see paragraph 38 of the Annex). We have been unable to find any such prescriptions.

The formal mechanism to challenge an illegal charge is in the High Court, within 6 weeks of the charge being announced. It may however be sufficient to draw the local authority’s attention to the legal requirement that parking charges may only be set in for “relieving or preventing congestion of traffic” and not for any other reason. It may also be useful to notify the Local Government Ombudsman and local members of Parliament or of the Welsh Assembly if it appears that a local authority intends to act outside its legal powers.

Annex: Legal analysis of the powers and duties of Local Authorities to regulate parking

Introduction

1. This annex sets out the statutory powers that enable local authorities to make provision for the parking of vehicles, manage the operation of parking places, and enforce against non-compliance. It also examines some of the ways the courts have elaborated on local authorities' powers and duties with respect to parking.
2. It considers the situation nationwide.
3. The annex is divided into the following sections:
 - A) Traffic Regulation Orders and Orders under s.32 of the Road Traffic Regulation Act 1984: Control of Parking but without the Power to Make Charges
 - B) The primary method of controlling parking inside and outside Greater London: Designation Orders under s. 45 of the Road Traffic Regulation Act 1984
 - i) The wide powers
 - ii) Restrictions on Statutory Purpose
 - iii) Level of parking charges
 - iv) Use of Parking Revenue
 - C) Procedure for making parking orders
 - i) Consultation
 - ii) Notification
 - iii) Challenging an Order
 - D) Experimental Orders
 - E) Enforcement
 - i) Definition of civil enforcement areas
 - ii) Penalty charges
 - iii) Level of penalty charge
 - iv) Procedure for civil enforcement
 - v) Outside civil enforcement areas

A. Traffic Regulation Orders and Orders under s.32 of the Road Traffic Regulation Act 1984: Control of Parking but without the Power to Make Charges

4. Outside London, the following are defined as “traffic authorities” by the Road Traffic Regulation Act 1984:
 - i. The Secretary of State for Transport for every highway in England for which he is the highway authority;
 - ii. The National Assembly for Wales for every highway in Wales for which it is the highway authority;
 - iii. In England outside Greater London, the council of the county, unitary authority or metropolitan district for all roads for which the Secretary of State is not the traffic authority;
 - iv. In Wales the counties and county boroughs for roads which are not the responsibility of the National Assembly.
5. Inside Greater London, the “traffic authorities” are:
 - i. The council of the London borough, or the Common Council of the City of London, for all roads in the borough or City which are not GLA roads and for which the Secretary of State is not the traffic authority;
 - ii. Transport for London for every GLA road.¹

Traffic Regulation Orders

6. Traffic authorities may make Traffic Regulation Orders (“TROs”) for specific purposes set out in the 1984 Act, including, in the context of parking control:
 - i. For avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising, or
 - ii. For facilitating the passage on the road or any other road of any class of traffic (including pedestrians), or
 - iii. For preserving or improving the amenities of the area through which the road runs.²
7. Further purposes apply to TROs in London, including the making of orders to provide “*places in streets where vehicles, or vehicles of any class, may, or may not, wait, either generally or at particular times*”.³
8. The parking control power of a TRO is that it may prohibit or restrict the waiting of vehicles or the loading or unloading of vehicles.⁴

¹ GLA roads are the main ‘A’ roads in London: see London Government Highways (England) (GLA Roads Designation Order) 2000 (SI 2000/1117)

² 1984 Act, s.1

³ 1984 Act, Sch. 1 paragraph 15 and s.6(1)(a)

⁴ 1984 Act, s.2(2)(c)

9. Importantly, a TRO does not enable a traffic authority to charge for parking. The parking related powers which come with the making of a TRO extend only to the following:
 - i. Power to require the issue and display of certificates or other means of identification of vehicles which are excepted from the restriction (e.g. vehicles for disabled persons), whether generally or in particular circumstances at particular times.⁵
 - ii. Power to require the issue, display and operation of devices for indicating the time at which a vehicle arrived at, and the time which it should leave, any place in a road in which waiting is restricted by the order (or one or other of those times), and the power to treat the indications given by any such device as evidence of such facts and for such purposes as may be prescribed by the order.⁶
10. A person who contravenes a TRO is guilty of an offence.⁷
11. TROs are therefore most commonly used for controlling parking in places where there is a need to keep traffic moving or to protect members of the public, for example to prevent parking outside school gates or to impose 'yellow lines' on busy shopping streets.
12. They can be:
 - i. Permanent (i.e. last until they are revoked or suspended);
 - ii. Experimental (which may last up to 18 months, with extensions available in certain circumstances);
 - iii. Temporary (e.g. for road works, or for the avoidance of danger to the public, or for litter clearance and cleaning which may last up to 6 months for byways open to all traffic and up to 18 months on other roads, with extensions available in certain circumstances).

Section 32 Orders

13. This section of the 1984 Act allows local authorities outside London to make orders authorising the use of any part of a road in their area as a parking place.
14. The purpose for which such an order may be made is for "*relieving or preventing congestion of traffic*".
15. This provision only allows for areas of the highway to be used for regulated parking. Again, it does not allow the authority to impose charges.
16. Orders under s.32 permitting parking may make provision as to the:

⁵ 1984 Act, s.4(2) (outside London), s.7(2) (in Greater London)

⁶ 1984 Act, s.4(3) (outside London), s.7(3) (in Greater London)

⁷ 1984 Act, s.5 (outside London), s.8 (in Greater London)

- i. Use of the parking place, and in particular the vehicles or class of vehicles which may be entitled to use it;
 - ii. Conditions on which it may be used;
 - iii. Removal of vehicles from it, and safe custody of a vehicle left there in contravention of the order.⁸
17. It is an offence to contravene an order made under s.32 or fraudulently to interfere with any apparatus or device or to operate or display a parking device other than in the prescribed manner.⁹
18. Section 32 orders are permissive, in the sense that they permit parking, subject to certain conditions. Examples of their use are to provide for specific areas of the highway to be used for cycle or motorcycle parking, or for parking by public service vehicles.

B. The primary method of controlling paying parking places inside and outside Greater London: Designation Orders under s. 45 of the Road Traffic Regulation Act 1984

19. Designation orders may be made by any local authority, either inside or outside Greater London.¹⁰ The local authority may designate parking places on highways for vehicles or vehicles of any class specified in the order *and* may make charges for vehicles left in a parking place so designated.¹¹
20. Further powers include:
- i. Placing restrictions on the persons or classes of vehicles that can use the parking place, including provisions restricting its use to persons holding a permit;¹²
 - ii. Making charges for the issuing of permits;¹³
 - iii. Requiring the display of permits and for treating a failure to display a permit as evidence of such facts as may be provided by the order;¹⁴
 - iv. Regulating the time at which and the method by which any charge is to be paid;¹⁵
 - v. Requiring the use of parking meters including provisions forbidding “feeding” the meter;¹⁶
 - vi. Making exemptions to the charges;¹⁷

⁸ 1984 Act, s.35(1)

⁹ 1984 Act, s.35A

¹⁰ I.e. Outside London: the council of a county or metropolitan district; In London: the London Borough, the Common Council of the City of London and, in relation to GLA roads, Transport for London; In Wales: the county or county borough (1984 Act, s.45(7))

¹¹ 1984 Act, s.45(1)

¹² 1984 Act, s.45(2)(a)

¹³ 1984 Act, s.45(2)(b)

¹⁴ 1984 Act, s.46(2)(j)

¹⁵ 1984 Act, s.46(2)(a)

¹⁶ 1984 Act, s.46(2)(c)

¹⁷ 1984 Act, s.46(2)(f)

- vii. Removing from a parking place vehicles in respect of which any order relating to the parking place has been contravened or not complied with and for the safe custody of vehicles so removed.¹⁸
21. Designation orders do not affect the operation of TROs or orders under s.32 of the 1984 Act.¹⁹

Restrictions on Statutory Purpose

22. The 1984 Act sets out precise considerations that a local authority must adhere to in designating paying parking places on highways.
23. It shall consider both the interests of traffic and those of the owners and occupiers of adjoining property, and in particular the matters to which the authority shall have regard include:
- i. The need for maintaining the free movement of traffic;
 - ii. The need for maintaining reasonable access to premises; and
 - iii. The extent to which off-street parking is available in the neighbourhood or is likely to be encouraged.²⁰
24. Furthermore, s.122 of the 1984 Act provides the general duty of every local authority upon whom functions are conferred by or under the Act, to exercise those functions to secure the: “*expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway*”.
25. This duty must be exercised so far as is practical having regard to:
- i. The desirability of securing and maintaining reasonable access to premises;
 - ii. The effect on the amenities of any locality affected;
 - iii. The importance of facilitating the passage of public service vehicles and securing the safety and convenience of persons using or desiring to use such vehicles; and
 - iv. Any other matters appearing to the local authority to be relevant.
26. Judicial authority is clear that, where a local authority acts pursuant to its powers under an Act, it must act only for the purpose for which the legislative power was conferred (see e.g. *Padfield v. Minister of Agriculture, Fisheries & Food* [1968] AC 997).
27. Therefore, a local authority should not be motivated by some aim or purpose regarded by the law as illegitimate (see e.g. *R v. Inland Revenue Commissioners, ex p Preston* [1985] AC 835 at 865 per Lord Templeman), however desirable that object may seem to the authority (see e.g. *Stewart v. Perth and Kinross Council* [2004] UKHL 16, at [28] per Lord Hope).

¹⁸ 1984 Act, s.46(2)(e)

¹⁹ 1984 Act, s.45(5)

²⁰ 1984 Act, s.45(3)

28. In the context of the 1984 Act, the High Court has stated that the purpose of the Act is: *“the expeditious, convenient and safe movement of traffic and the provision of suitable and adequate parking facilities on and off the highway”* (R v. London Borough of Camden (ex parte Cran) [1995] RTR 346 at 360 per McCollough J).
29. In particular, it is *“not a revenue raising Act”* (Cran at 365D) and *“is not a fiscal measure”* (Cran at 360J). Furthermore, local authorities, in determining charges to be made in pursuance of the designation of parking places, should not have regard to the manner in which the Act permits any resulting surplus to be spent (Cran at 365D-F).
30. The principles in Cran were approved by Scott Baker J in *R v. The Parking Adjudicator (ex parte the London Borough of Bexley)* [1998] RTR 128.

Level of Parking Charges

31. The 1984 Act does not place any express restriction on the level of charges that may be set for parking in a designated space. The charge must be prescribed by the designation order or separate order made by the authority²¹ and can be either an “initial charge” for a certain period followed by an “excess charge” or an amount payable regardless of the period for which a vehicle is left.
32. Charges may be varied by notice.²²
33. The Secretary of State’s ‘Traffic Management and Parking Guidance for London’ (February, 1998) states that the level of parking charges: *“must be set for traffic management reasons, such as to ration available space and ensure that there is a rapid turnover of parking places, rather than to maximise revenue. This is because section 122 of the Road Traffic Regulation Act 1984 does not include the maximisation of revenue from parking charges as one of the relevant considerations to be taken into account in securing the safe, expeditious and convenient movement of traffic.”*
34. There are guidelines for setting the level of penalty charges but these are not mandatory^{23, 24}.

Use of Parking Revenue

35. A local authority must keep an account of its income and expenditure in respect of designated parking places²⁵ and a London authority must do the same in

²¹ 1984 Act, s.46(1) and (1A)

²² 1984 Act, s.46A

²³ Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007 (SI 2007/3487)

²⁴ Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (Wales) Order 2008 (SI 2008/613)

²⁵ 1984 Act, s.55

relation to any parking places provided on the highway, and must also report to the Mayor in relation to its application of these funds.²⁶

36. At the end of each financial year, any deficit in the account shall be made good out of the general fund²⁷ or, in Wales the council fund, and any surplus must be either carried forward to the following year or applied²⁸ for all of any of a number of specific purposes,²⁹ as follows:
- i. The making good to the general fund of any amount charged to that fund in relation to parking in the preceding four years;
 - ii. Meeting all or any part of the cost of the provision and maintenance by the local authority of off-street parking accommodation, whether in the open or under cover;
 - iii. Making contributions to other local authorities, or to other persons towards the cost of the provision and maintenance by them, in the area of the local authority or elsewhere, of off-street parking accommodation
 - iv. Where it appears to the local authority that the provision in its area of further off-street parking accommodation is unnecessary or undesirable, in meeting costs incurred, whether by the local authority or by some other person, in the provision and operation of, or of facilities for, public passenger transport services, for the purposes of a highway or road improvement project in the local authority's area, for the purposes of environmental improvement in the local authority's area, and, in the case of such local authorities as may be prescribed, any other purposes for which the authority may lawfully incur expenditure;
 - v. In London: where it appears that the provision of further off-street parking accommodation is unnecessary or undesirable, in meeting costs incurred in respect of the maintenance of roads maintained at the public expense by the local authority;
 - vi. In London: in meeting all or any part of the cost of the doing by the authority in its area of anything which facilitates the implementation of the London transport strategy, and which is for the time being satisfied in that strategy as a purpose for which a surplus may be applied;³⁰
 - vii. In London: the making of contributions to any other London authority towards the cost of doing anything to which the authority making the contributions would have had power in its own area to apply any surplus.
37. Therefore, local authorities are empowered not only to designate and control parking spaces in their area, but to keep the charges recovered. Surpluses may be carried forward until they are applied to projects that fall within the specific statutory purposes. The purposes are wide-ranging and, although in general they relate to transport services or to road improvements, are not limited to parking

²⁶ 1984 Act, s.55(3A)

²⁷ 1984 Act, s.55(2)

²⁸ It can be carried forward indefinitely until it is applied to a project for one of the statutory purposes.

²⁹ 1984 Act, s.55(4), as amended by the Traffic Management Act 2004, s.95

³⁰ The Mayor is required to provide a Transport Strategy in accordance with the Greater London Authority Act 1999 for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London.

facilities or even vehicular transport. In London, parking charges can fund anything in the London transport strategy, including projects outside the particular local authority's area.

38. The Traffic Management Act 2004 extended the purposes to which surplus income may be applied to funding local environmental improvements, which is defined in a broad sense to encompass recreational or scenic improvements. Notably, the 2004 Act also amended the 1984 Act to enable the appropriate national authority to make regulations prescribing classes or descriptions of authorities, or particular authorities (for example those which may be designated under section 99 of the Local Government Act 2003 as high-performing authorities), as having complete freedom in the way they spend surplus parking income once the needs of parking provision have been considered.³¹

C. Procedure for Making Parking Orders

39. The procedure for making any type parking order under the Road Traffic Regulation Act 1984 described above,³² is contained in Schedule 9 of the 1984 Act, supplemented by Regulations.³³

Consultation

40. Local authorities must consult with the chief officer of police for the area before making a parking order³⁴ and must also consult with a number of specified organizations and bodies, including such: *“other organisations (if any) representing persons likely to be affected by any provision in the order as the order making authority thinks it appropriate to consult”*³⁵.
41. As with all consultation processes, the consultation pertaining to a proposed parking order must be properly carried out, so that:
- a. The proposals are still at a formative stage at the time of consultation enabling the consultation results to influence the decision whether to make, and what to include in, the proposed parking order;
 - b. The results of the consultation are conscientiously taken into account in finalising any proposals.³⁶

³¹ This enables certain councils to put parking revenue surplus into their general budget. See, for example, the Royal Borough of Kensington and Chelsea who benefit from this by virtue of being rated 'Excellent' in the Comprehensive Performance Assessment by the Audit Commission (http://www.rbkc.gov.uk/rbkcdirect/rdtransportation/trans0607_story1.asp: accessed 10 May 2010).

³² I.e. Traffic Regulation Orders, Section 32 Orders and Designation Orders

³³ The Local Authorities' Traffic Orders (England and Wales) Regulations 1996 (SI 1996/2489), as amended; the Secretary of State's Traffic Orders (Procedure) (England and Wales) Regulations 1986 (SI 1986/180) and the London Authorities' Traffic Orders (Procedure) Regulations 1986 (SI 1986/249).

³⁴ 1984 Act, Sch. 9, paragraph 20(1)

³⁵ See SI 1996/2489, Regulation 6

³⁶ See *R (Wainwright) v. Richmond upon Thames LBC* [2001] EWCA Civ 2062; *Bovis Homes Ltd. v. New Forest DC* [2002] EWHC 483; *Cran v. Camden LBC* [1995] RTR 346.

42. Consultation must be procedurally fair³⁷ and once an authority has made the decision to consult a particular category of people, it must actually do so.³⁸
43. Although there is no general duty to consult members of the public, those most likely to be affected by a proposed parking order, are likely to become aware of the proposals through the procedure for publicity and notices allowing objections to be lodged.³⁹

Notification

44. Local authorities are required to publish notice of their proposals to make a parking order in a local paper or, in London, the *London Gazette*.⁴⁰ Further, authorities must take such other steps as they consider appropriate for ensuring that adequate publicity about the proposed order is given to the people likely to be affected by its provisions. What an authority decides to do is up to them, but they must act reasonably in deciding whether to undertake these discretionary steps. For example, they may display notices of the proposed order in affected roads, or deliver notices or letters to premises appearing likely to be affected by any provision in the order.
45. Any person or organization may object in writing to the making of an order by the end of a period of 21 days (or by the date specified in the notice of proposals, if later).⁴¹
46. A local authority must consider any objections received. They have a discretion to hold a public local inquiry, if considered appropriate. Furthermore, there are two specific instances when a local authority is obliged to hold a public inquiry. They are:
 - i. Where the effect of an order is to prohibit the loading or unloading of vehicles or vehicles of any class in a road on any date of the week at all times, before 0700 hours, between 1000 and 1600 hours, or after 1900 hours, and an objection has been made to the order (other than one which the order-making authority is satisfied is frivolous or irrelevant) and not withdrawn;
 - ii. Where the effect of the order is to prohibit or restrict the passage of public service vehicles along a road and an objection has been made to the order in accordance with the specified procedure, in the case of a road outside Greater London, by the operator of a local service, the route of which includes that road; or, in the case of a road in Greater London, by the operator of a London bus service the route of which includes that road or by Transport for London.⁴²

³⁷ *R (Medway Council) v. Secretary of State for Transport* [2002] EWHC 2516 (Admin)

³⁸ *R (Derwent Holdings Ltd.) v. Liverpool City Council* [2008] N.P.C. 140

³⁹ SI 1996/2489, Regulation 7

⁴⁰ SI 1996/2489, Regulation 7

⁴¹ SI 1996/2489, Regulation 8

⁴² SI 1996/2489, Regulation 9

Making the Order

47. After the last day when any person is entitled to lodge objections (but before the expiration of two years beginning with the date on which a notice of proposals relating to the order is first published), the authority may make the order. However, if there have been substantial modifications as a result of the consultation process, they may need to first take such steps as appropriate to inform people likely to be affected, give them an opportunity to make representations, and take those representations into account, before making the order.⁴³
48. Once an order is made, the authority must publish a notice to that effect in a local newspaper within 14 days and notify any person who has objected to the order and not withdrawn the objection. If applicable, the notice must include the reasons for the decision not to accede to an objection. An authority may also decide to publish a site notice or inform other people, as it considers appropriate.⁴⁴
49. The order may not come into effect until the date when the authority intends to publish the notice of the order.

Challenging an Order

50. If any person desires to question the validity of, or of any provision contained in, an order, on the grounds that either it is not within the relevant powers or any of the relevant requirements has not been complied with in relation to the order, that person may make an application to the High Court,⁴⁵ who may quash the order.⁴⁶
51. There is a strict six-week time period within which any legal challenge to the order may be made, starting from the date when the order was made. After that time period expires, the order may not be challenged in any legal proceedings whatsoever.⁴⁷ This has been held not to be a breach of Article 6 of the European Convention on Human Rights.⁴⁸

D. Experimental Orders

52. Traffic authorities may make experimental orders for the purpose of carrying out an experimental scheme of traffic control⁴⁹. An experimental order may not

⁴³ SI 1996/2489, Regulation 14

⁴⁴ SI 1996/2489, Regulation 17

⁴⁵ 1984 Act, Schedule 9, Part VI, paragraph 35

⁴⁶ 1984 Act, Schedule 9, Part VI, paragraph 36(1)

⁴⁷ *R v. Secretary of State for the Environment (ex parte Ostler)* [1977] QB 122; *R v. Cornwall CC (ex parte Huntington)*; *R v. Devon CC (ex parte Isaac)* [1994] 1 All ER 694. Although note that it may nevertheless be possible to obtain a declaration that the rules have been breached and / or to pursue other remedies which do not involve questioning the validity of the order itself.

⁴⁸ *R (Derwent Holdings Ltd.) v. Liverpool City Council* [2008] N.P.C. 140; *Matthew v. Secretary of State for Transport, Local Government and the Regions* [2002] 2 P & CR 34

⁴⁹ 1984 Act, s.9

continue in force for longer than 18 months. With regard to parking, these replicate the 'real' orders that could be made as TROs outside and inside Greater London and s.45 designation orders (in Greater London only).⁵⁰ They do not, however, require the same procedural steps to be taken as apply to the making of permanent traffic orders.

53. Any person who acts in contravention of, or fails to comply with, an experimental traffic order is guilty of an offence.⁵¹

E. Enforcement

54. The Road Traffic Act 1991 introduced a scheme of civil enforcement which decriminalised the vast majority of contraventions of the regulation of parking. Its provisions in relation to civil enforcement have now been replaced by the Traffic Management Act 2004.

Definition of Civil Enforcement Areas

55. The whole of Greater London is a civil enforcement area for parking contraventions relating to parking places.⁵²
56. Outside Greater London, all permitted and special parking areas designated under the 1991 Act are civil enforcement areas. Further, authorities may apply for an area to be designated as a civil enforcement area by an order made by the Secretary of State.⁵³ To date some 200 councils are operating civil parking enforcement outside London.⁵⁴
57. The authorities that designated or provided the parking place are the relevant enforcement authorities for contraventions of parking. This is generally, in London, the local authorities and Transport for London in respect of GLA roads.
58. Civil enforcement officers may be appointed by the enforcing authority to enforce parking contraventions.⁵⁵

Penalty Charges

59. Parking contraventions are now subject to penalty charges, rather than criminal prosecution by the issuing of fixed penalty notices. The charge is payable (ultimately by the registered keeper of the vehicle) to the authority responsible for enforcement. Thus, local authorities are empowered not only to enforce parking control, but also to keep the penalties recovered. The income from penalties must, however, only be used for transport purposes, in the same

⁵⁰ 1984 Act, s.9(1)

⁵¹ 1984 Act, s.11

⁵² 2004 Act, Schedule 8, paragraph 1

⁵³ 2004 Act, s.75, Schedule 8, paragraph 8(4)

⁵⁴ http://www.patrol-uk.info/site/scripts/documents_info.php?documentID=17&pageID=34 (accessed: 21 March 2010)

⁵⁵ 2004 Act, Part VI, Schedules 7-10

manner as the income and expenditure from charges for parking in the 1984 Act (see above).⁵⁶

Level of Penalty Charge

60. The level of penalty charges applicable must be set by the relevant authority by resolution.⁵⁷
61. Within Greater London, Transport for London must consult with other London local authorities and all authorities must obtain the approval of the Mayor who has a default power to set the charges, subject to the ultimate veto by the Secretary of State.
62. Outside Greater London, local authorities must set penalty charges which accord with published guidance issued by the Secretary of State.⁵⁸

Procedure for Civil Enforcement

63. The procedure for civil enforcement is relatively detailed and governed by a series of regulations⁵⁹. In summary:
 - i. A penalty charge notice (PCN) is served, where this is possible, by affixing the notice to the vehicle or giving it to the driver and, in other cases, by posting it to the owner of the vehicle;⁶⁰
 - ii. Payment of the penalty charge within a prescribed period attracts a discount;
 - iii. If the penalty charge has not been paid within the prescribed period, a notice to owner (NtO) will be sent out (in cases where the PCN was affixed to the vehicle or given to the driver);
 - iv. Representations may be made to the enforcement authority as to why the penalty charge should not be payable;⁶¹
 - v. An appeal may be made to the Parking Adjudicator;
 - vi. If the penalty charge is not paid within the prescribed time, it may be increased;
 - vii. Vehicles may be immobilised which are parked in contravention of parking restrictions.⁶²
64. PCNs and NtOs need to contain specific information so that the recipient is in a position to know exactly what contravention is alleged and the existence of the

⁵⁶ 1984 Act, s.55; 2004 Act, s.88

⁵⁷ 2004 Act s.77, Schedule 9

⁵⁸ See Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007 (SI 2007/3487); Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (Wales) Order 2008 (SI 2008/613)

⁵⁹ See Civil Enforcement of Parking Contraventions (England) General Regulations 2007 (SI 2007/3484); Civil Enforcement of Parking (Representations and Appeals) (England) Regulations 2007 (SI 2007/3483) and similar regulations in Wales

⁶⁰ See *R v. Parking Adjudicator (ex parte Wandsworth LBC)* [1998] RTR 51. Note that liability to pay the penalty charge ultimately falls on the owner of the vehicle, except in the case of hired vehicles

⁶¹ See Department for Transport, *Traffic Management Act 2004. The Secretary of State's Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions* (London TSO 2008), paragraph 3

⁶² Civil Enforcement of Parking Contraventions (England) General Regulations 1997, regulations 12-14

right to make representations and appeal. If the required information is missing or unclear, notices may be successfully appealed or quashed by the High Court.⁶³

65. The High Court has also made clear that the enforcement authority has a discretion not to enforce penalty charges and, therefore, where representations are made that the penalty should not be levied, that discretion must be exercised properly.⁶⁴

Outside Civil Enforcement Areas

66. Outside civil enforcement areas, a local authority may provide for the supervision of parking places by parking attendants, who have powers in relation to the enforcement of parking restrictions.⁶⁵ Enforcement is, however, a criminal matter, and is normally carried out by traffic wardens appointed to discharge, in aid of the police, functions normally undertaken by the police in connection with the control and regulation of, or enforcement of, the law relating to traffic or stationary vehicles.⁶⁶ Parking wardens act under the direction of the chief officer of police and have a number of powers including powers relating to the removal of vehicles.⁶⁷

⁶³ See *R (Barnet) v. Parking Adjudicator* [2006] EWHC 2357 (Admin)

⁶⁴ *R (Dolatabi) v. Transport for London* [2005] EWHC 1942 (Admin) 45

⁶⁵ 1984 Act s.63A

⁶⁶ 1984 Act ss.95-7

⁶⁷ See Functions of Traffic Wardens Order 1970 (SI 1970/1958), as amended