

Workplace Parking Levy

Completing the Legal Framework

A consultation document

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ISBN 978-1-906581-65-7

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Consultees listed in section 6
of consultation document

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11 December 2008

Dear consultee

WORKPLACE PARKING LEVY

Completing the Legal Framework

This letter invites your comments on the Government's proposals for regulations to enable local authorities to introduce workplace parking levy (WPL) schemes should they choose to do so.

The primary powers allowing local authorities to introduce WPL schemes are in the 2000 Transport Act (TA2000). But the legislation left some of the details of the legislative framework to be dealt with in regulations.

This consultation is likely to be of interest to local authorities, business and trade union organisations and educational establishments. Comments from any other groups or individuals would also be welcomed.

Attached for your consideration is a consultation document (which we have also published on our website at <http://www.dft.gov.uk/consultations/>) containing:

- an executive summary
- information on how to respond to the consultation
- the proposals in detail
- questions for consultees
- draft regulations (Annex A)
- an impact assessment (Annex B)
- a consultation response questionnaire (Annex C)

The consultation period will run for a 12 week period until 5 March 09. Please ensure that your response reaches us by that date.

This consultation has been produced in accordance with the principles of the Government's "Code of Practice on Consultation". A copy of the Consultation Criteria is included in section 5 of the consultation document.

Yours sincerely,

Kitty Vernon

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1. Executive Summary

- 1.1 This document seeks views on the Government's proposals for regulations to enable local authorities in England outside London to introduce workplace parking levy (WPL) schemes should they choose to do so.
- 1.2 The primary powers allowing local authorities to introduce WPL schemes are in the 2000 Transport Act (TA2000). But the legislation left some of the details of the legislative framework to be dealt with in regulations.
- 1.3 Without national regulations, particularly with regard to the imposition of penalty charges and the adjudication of disputes, any authority wishing to implement a WPL scheme will be unable to do so. Since Parliament has decided to create powers for WPL schemes the Government is ready to make them usable through the proposed regulations, on which we are now seeking views.
- 1.4 Our proposals for use of the various regulation making powers in the TA2000 can be summarised as follows:
- 1.5 The Government does not intend to make regulations
 - specifying the form of Scheme Orders, how proposed Orders should be published, and objections considered, and how the final Order itself should be published;
 - specifying charging levels, exemptions and discounts. If any arrangements are proposed that conflict with national policy the Secretary of State may decide not to confirm the Scheme Order.
- 1.6 As regards the enforcement procedure and the adjudication of disputes resulting from it, the Government is proposing to make regulations covering the following four areas:
 - Providing for contraventions giving rise to penalty charges. We are open to suggestions as to the kind of contravention which might need to be included in order to make schemes workable and allow effective and proportionate enforcement but the consultation paper focuses on three, namely:
 - providing a workplace parking place at unlicensed premises;

- providing more workplace parking places than the maximum covered by a licence;
- failing to comply with the conditions of a licensing scheme, other than a condition as to the maximum number of vehicles which may be parked.
- The setting of penalty charge rates.
- Providing for notification of penalty charges to be given to the person liable to pay the penalty charge.
- Providing for the resolution of disputes in two stages:
 - enabling businesses and other relevant organisations to make representations about alleged contraventions and penalty charge notices and have them considered by the local authority;
 - if the dispute is not resolved by that process, enabling an appeal to be made to the County Court (rather than a specially created adjudication system, because of the nature and low number of appeals expected).

1.7 It is also proposed that the Regulations should:

- exempt local authorities from the requirement to have an order confirmed when it is only a variation of a scheme increasing charges in line with inflation;
- make provision as to liability to pay licence charges where there is an arrangement between the occupier and another business for the provision of parking places.

1.8 The detailed provisions are set out in the draft Regulations at Annex A.

2. How to Respond

- 2.1** The consultation period will run for 12 weeks until 5 March 09. Please ensure that your response reaches us by that date. If you would like further copies of this consultation document it can be found at www.dft.gov.uk/consultations

or you can contact the Department for Transport. If you have queries about the contents of the consultation documents please contact Kitty Vernon at

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- 2.2** When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

- 2.3** A list of organisations/stakeholders that we have sent this consultation to is included in this consultation document. If you have any suggestions of others who may wish to be involved in the consultation process please let us know.
- 2.4** This consultation has been produced in accordance with the principles of the Government's "Code of Practice on Consultation".
- 2.5** According to the requirements of the Freedom of Information Act (2000), all information contained in your response to this consultation may be subject to publication or disclosure. This may include personal information such as your name and address. If you want your response **or your name and address** to remain confidential, you should explain why confidentiality is necessary. Your request will be granted only if it is consistent with Freedom of Information obligations. An automatic confidentiality disclaimer generated by your e-mail system will not be regarded as binding on the Department.
- 2.6** A summary of responses to this consultation will be published on our website: www.dft.gov.uk after the consultation period has closed. Paper copies will be available on request. The Government will then announce its conclusions following the consultation.

3. The proposals in detail

Introduction

- 3.1** This document seeks views on draft regulations for completing the legal framework to enable local authority workplace parking levy schemes in England outside London.
- 3.2** The Transport Act 2000 (TA2000) contains powers to enable local authorities in England and Wales to introduce workplace parking levy (WPL) schemes. (The TA 2000 powers also cover schemes made jointly by authorities inside and outside London. Powers for schemes operating in London only have been provided in the Greater London Authority Act 1999.)
- 3.3** The TA2000 has deliberately not set out all the detailed provisions that would be necessary to provide the full legal framework for a WPL scheme. Instead it contains powers to do this through regulations. The Government is ready to make the necessary regulations, and is seeking views on the statutory provisions proposed.
- 3.4** One local authority, Nottingham City Council (NCC), has designed a WPL scheme and has submitted a Scheme Order to the Secretary of State for confirmation. The Government will decide whether or not to confirm NCC's Scheme Order in due course on the merits of their proposal, and our proposals for regulations should not be interpreted as implying that a decision on confirmation has been taken.
- 3.5** The Government's proposed regulations would apply to any local WPL scheme in England outside London made under TA2000, but not to schemes in Wales or to joint schemes made by authorities outside London with a London authority.

Background to the Workplace Parking Levy

- 3.6** The Government first consulted on the idea of a workplace parking levy in December 1998.

- 3.7** The most serious congestion problems in most towns and cities are associated with peak commuting, and car use is influenced by the availability of free or relatively cheap workplace parking. The principal aim of the levy is to provide an incentive to employers and educational establishments to discourage car commuting and use alternative modes of transport (including car-sharing). This would be achieved by imposing a levy on employers and educational establishments relating to the amount of workplace car parking they provide.
- 3.8** Since the TA2000 came into force the Government has been encouraging local authorities to consider the use of road pricing, which we believe is likely to be more effective in tackling congestion. But the Government does not wish to rule out the use of WPL. This document therefore signals our readiness to put the necessary regulations in place to allow the TA2000 powers to be used.

Provisions to be included in regulations

- 3.9** Decisions about whether to introduce a WPL scheme and details of how it will operate are the responsibility of the local authority proposing to make the scheme. But the TA2000 provides for regulations to be made by a Minister at the Department for Transport (DfT) for various purposes, including specifying the procedures for making a scheme order, specifying who is liable to pay WPL charges and penalty charges and making provision for the imposition, payment and level of penalty charges. There is also provision for DfT regulations to require licensing schemes to provide for exemptions from licensing, set reduced rates and set limits on charges, and to disapply in specified circumstances the need to submit a WPL order for confirmation by the Secretary of State.
- 3.10** It falls to the Lord Chancellor to make regulations to make provision for the notification, adjudication and enforcement of penalty charges, for appeals against decisions relating to licences, determination of disputes relating to licensing schemes, appeals against such determinations and the appointment of persons to hear any such appeals.
- 3.11** Rather than having separate sets of regulations, the enclosed draft regulations cover the operation of WPL schemes generally and make provision for them to be signed by Ministers at DfT and the Ministry of Justice.
- 3.12** The following paragraphs set out our proposals for using (or not using) the various regulation making powers in the TA2000.

Specifying scheme details

- 3.13** Section 183 of the TA 2000 specifies that where local authorities wish to introduce a WPL scheme or subsequently vary it they must do this by an Order. But DfT regulations may specify:
- the form of Orders
 - how proposed Orders should be published, and objections considered
 - how the final Order itself should be published.
- 3.14** The Government does not propose to exercise this regulation making power. The Order would in any case need to be approved by the Secretary of State before it could come into force.

Who is liable to pay a WPL?

- 3.15** Section 178 of the TA 2000 provides that charges shall be paid by the occupier of the premises, and section 189 that any penalty charges shall also be paid by the occupier. But there may be cases where this is inappropriate. So TA2000 enables DfT Ministers to specify in regulations the circumstances in which another person must pay and who that person is.
- 3.16** The following is an example of where this might apply: It often happens that parking places at one set of premises are made available by the occupier of those premises for use by a business operating from different premises. As a principal aim of the levy is to provide an incentive to employers to discourage car commuting (including through promoting car-sharing), the regulations have been drafted with the intention of assigning responsibility for applying for a licence and paying the levy to the business which actually makes parking places available to its employees. Where occupiers of premises provide evidence of arrangements for another business to use parking places for its workforce, the responsibility for applying and paying for a licence is assigned (by regulation 4) to that other business.

Amending the approval role by national authority

- 3.17** Section 184 of the TA2000 provides that scheme orders, or variation orders, must be confirmed by the national authority (for England the Secretary of State). But this requirement can be amended by regulation.
- 3.18** Through the Local Transport Act 2008 we have removed the Secretary of State's approval role in England for road charging schemes. But we do not currently believe this is appropriate for WPL schemes. No WPL schemes have yet been implemented in the UK, and in the absence of experience it seems right to provide for confirmation in most cases by the Secretary of State. The one circumstance in which we agree it should not be necessary

for a local authority to seek approval is where a variation order is proposed to raise charges in line with an increase in the retail prices index, so the draft regulation 3 dispenses with the section 184(1) requirement for confirmation in such cases.

Charges, exemptions and discounts

- 3.19** Section 187 of TA 2000 provides that the national authority may make regulations requiring that schemes contain provisions covering exemptions, discounts and limits on charges.
- 3.20** The draft regulations do not include such requirements, leaving it for local authorities to decide whether to set exemptions, discounts or limits locally. The Government recognises that there are concerns about the potential impact of a workplace parking levy on small businesses (defined in the Government's Enterprise Strategy as those employing fewer than 20 full time employees). The Government is open to using its regulation-making powers in TA2000 to mitigate the impacts of WPL schemes on business, especially small businesses, and would welcome views on practical ways of achieving this. The Government notes that the scheme proposed for Nottingham would not apply a levy to businesses providing 10 or fewer workplace parking places.

Definition of offences and setting of penalty charges

- 3.21** Section 189 provides that the national authority may make regulations specifying offences connected with failing to comply with a scheme and the penalty charges payable for such a failure.
- 3.22** Regulation 5 of the draft regulations specifies the following offences:
- Providing a workplace parking place without a licence
 - Providing more workplace parking places than the maximum covered by a licence
 - Failing to comply with conditions of a licensing scheme, other than a condition as to the maximum number of vehicles which may be parked. (An example might be failing to pay the levy within the prescribed payment period.)

The Government is ready to consider providing for other offences that might be required to make schemes workable and allow effective and proportionate enforcement.

- 3.23** The procedures in draft regulations 8 to 16 for enforcing WPL contraventions are not intended or expected to be applied on the same basis as contraventions of parking controls by individual motorists. It is

expected that scheme orders will take account of the different parking requirements for businesses from those of individual motorists – for example by recognising that the number of workplace parking places will increase temporarily during changes of shift working. Local authorities will be able to exercise their discretion as to how they deal with such matters in the light of local circumstances.

- 3.24** The Government also intends to require that the rates of penalty charges be specified in the local authority's scheme. But we have left the method for determining penalty rates to the decision of the licensing authority. We have not specified fixed rates of penalty charge in the draft regulations, nor have we required that penalty charges should be in proportion to the amount payable for a licence, the proportion by which the licensed number is exceeded or the frequency with which the licensed number is exceeded. We have however specified in the draft Regulations (regulation 6) that penalty charges may be discounted if paid within a specified time.
- 3.25** The draft regulations require (in regulation 5) that a scheme which provides for penalty charges must allow a period for payment of the penalty charge of not less than 28 days from the date on which the penalty charge notice (PCN) is served. Regulation 6 provides that the rates of penalty charge must be specified in the scheme, that different amounts may be charged in different circumstances, and that the amount of charge may be reduced for early payment (within the time limit specified in the scheme).

Notification, adjudication, enforcement

- 3.26** Section 189 also provides that the Lord Chancellor may make regulations about the notification, adjudication and enforcement of licensing scheme penalty charges.
- 3.27** Regulation 7 provides for notification of penalty charges to be given to the business which has been identified as being liable to apply for a WPL licence (as discussed in paragraph 3.16 above) and for the charges to be paid by that business. Regulation 8 specifies the information that must be included in a PCN. Regulation 17 specifies the procedure for serving notice by first-class post or electronically (this also applies to other forms of notice given under regulations 9, 11 and 13). Your views are invited on whether these provisions for specifying penalties and serving PCNs and other notices are appropriate and adequate, and whether other methods of service need to be included.
- 3.28** Regulation 9 of the draft regulations makes provision for representations against PCNs to be made to the licensing authority, and sets out the grounds on which a PCN may be challenged. It also requires the licensing authority to consider representations, provided these are made within 28 days of the PCN being served, and serve notice of their decision. Your

views are invited on whether the grounds proposed for contesting a PCN are appropriate and adequate.

- 3.29** Regulation 10 provides that the licensing authority must cancel a PCN – and serve notice that they have done so – if they accept the ground(s) on which the representation was made. It also provides that a fresh PCN may be served on the chargee or on another person. Your views are invited on whether it would be helpful to specify that the licensing authority may agree not to enforce the PCN if the chargee pays a mutually agreed amount which is different from that specified in the PCN.
- 3.30** Regulation 11 specifies the procedure for notifying a chargee that a representation has been rejected, and the information that must be included in a notice of rejection. It also permits the inclusion of such other information as the authority may consider appropriate. We would welcome your views on whether there is a need to provide discretion for other information to be included, and what sort of information it might be appropriate to include.

Appeals, disputes and appointment of adjudicators

- 3.31** Section 195(1) provides that the Lord Chancellor may make regulations to make provision for appeals against decisions relating to licences, determination of disputes relating to licensing schemes, appeals against such determinations and the appointment of persons to hear any such appeals.
- 3.32** It is not currently expected that there will be very many disputes and appeals, or that there will be many cases that need to be referred to an independent adjudicator. This is partly because we do not expect many WPL schemes and partly because of the nature of schemes. Unlike parking or road user charging, where enforcement would be against a wide range of individuals, under WPL schemes the employer is liable so the number of potential offenders is much smaller. Also, local authorities have no powers to vary or limit the number of workplace parking places provided – section 178(4) of TA 2000 specifies that a licence relating to premises must cover the provision at the premises of the number of workplace parking places requested by the applicant for the licence.
- 3.33** However, if there are disputes leading to appeals the issues could be complex and involve large businesses (and relatively large amounts of money). For these reasons, we believe that a County Court would be the appropriate body to hear appeals. The draft regulations therefore make provision in regulation 12 for appeals to be referred to a County Court, and be dealt with in accordance with standard court procedures.
- 3.34** Regulation 13 makes provision for the licensing authority to issue a charge certificate (increasing the amount of penalty charge payable) if a penalty

charge has not been paid within the specified period. It also specifies the period within which the increased charge must be paid, depending on whether or not a representation or appeal has been made (and if made, rejected). Regulations 14-15 provide for the payment of penalty charges and their recovery by court order if necessary, and regulation 16 provides for a court order to be revoked and the PCN and charge certificate cancelled if there has been a breakdown in the procedure for serving them so that the person charged has been unfairly prejudiced.

Other issues:

London

3.35 We are not aware of any plans for WPL schemes in London. In keeping with the principle (set out in the draft impact assessment at Annex B) of proposing regulations only where they are essential to the operation of a scheme, the draft regulations do not cover schemes made by London authorities under the Greater London Authority (GLA) Act 1999. They would also not apply to schemes made under TA2000 by London authorities jointly with another, non-metropolitan local traffic authority. The draft regulation 1(2) specifies that the regulations do not apply in Greater London.

Joint licensing schemes

3.36 Section 178(5) of TA 2000 provides that licensing schemes may be made jointly by more than one authority. We consider that it should be permissible for a joint scheme to be administered by one lead authority on behalf of the other authority or authorities. Provision for a lead authority to exercise the functions of licensing authority for the scheme generally is made in regulation 2(b)(ii).

4. Questions for consultees – see also the consultation response questionnaire at Annex C

- Q1** Are you content with the proposal for determining who is liable to apply for a WPL licence and pay charges (and penalty charges) where arrangements are made between the owner of car park premises and another person or firm for the use, say, of part of that car park? (see paragraph 3.16 in the detailed proposals above and draft regulations 4 and 7). If not, what alternative do you propose, and why?
- Q2** Do you agree that decisions about WPL exemptions, discounts and the level of charges should be the responsibility of the local authority making the scheme (see paragraphs 3.19 and 20 above)? If not, why not?
- Q3** There are concerns about the impact of WPL schemes on small businesses. Is there a role for the Government in addressing these through regulations? If yes, how should this be done? If no, what other approaches could be adopted?
- Q4** Do you agree that national regulations should specify the contraventions proposed in paragraph 3.22 above and draft regulation 5?
- Q5** Are there other contraventions that you consider need to be included?
- Q6** Do you agree that it should be for the licensing authority to set the rates of penalty charges? If not, what arrangements do you consider appropriate for setting rates of penalty charges?
- Q7** Are you content with the procedures proposed for considering representations, and appeals and for appeals to be referred to a County Court (see paragraphs 3.31 – 3.34)? If not, what alternative procedure do you think should be used and why?
- Q8** Are you content with the procedures proposed in regulation 17 for serving notices? If not, what changes need to be made?
- Q9** Are there issues not covered by the draft regulations that you think need to be covered? If so, what are they and what would be the consequences of not including them?

5 Code of Practice on Consultation

The Government has adopted a code of practice on consultations. The code of practice applies to all UK public consultations by government departments and agencies, including consultations on EU directives.

Though the code does not have legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), it should otherwise generally be regarded as binding unless Ministers conclude that exceptional circumstances require a departure.

The code contains seven criteria. They should be reproduced in all consultation documents. There should be an explanation of any departure from the criteria and confirmation that they have otherwise been followed.

Consultation criteria

Criterion 1 – When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 – Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 – Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 – Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 – The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 – Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 – Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria should be reproduced in consultation documents

A full version of the code of practice is available on the Better Regulation Executive web-site at:

<http://www.berr.gov.uk/files/file47158.pdf>

If you consider that this consultation does not comply with the criteria or have comments about the **consultation process** please contact:

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6. List of those consulted

There are no statutory consultees. The Department has specifically sought views from:

All local authorities in England (except Parish and Community Councils)

Association of Car Fleet Operators

Association of Chief Police Officers

Alliance of Small Firms and Self-Employed People

Association of Independent Businesses

Association of Justices Chief Executive

Association of Magistrates' Officers

Automobile Association

British Chambers of Commerce

British Motorcycle Federation

British Parking Association

British Retail Consortium

British Vehicle Rental and Leasing Association (BVRLA)

Campaign for Better Transport

Chief Fire Officers Association

Confederation of British Industry

Confederation of Passenger Transport UK

County Surveyors Society

Disabled Persons Transport Advisory Committee (DPTAC)

Environmental Transport Association

Federation of Small Businesses

Forum of Private Business

Freight Transport Association

General Executive Council of the TGWU

Institute of Highway Incorporated Engineers

Institute of Logistics and Transport

Institution of Highways and Transportation

Institute of Transport Administration

Local Government Association

Mobilise Organisation

Motorcycle Action Group

Motorcycle Industry Association

Motorists Forum

National Association of Local Councils

National Taxi Association
National Union of Teachers
NHS confederation
Passenger Transport Executive Group
Police Federation of England and Wales
RAC Foundation
Retail Motor Industry Federation
Road Haulage Association
Road Users' Alliance
Society of Motor Manufacturers and Traders Ltd
TUC
Union of Shop, Distributive and Allied Workers (USDAW)
University and College Union

ISBN 978-1-90658-165-7



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