

ED2. EXECUTIVE DECISIONS BY A CABINET MEMBER OR AN OFFICER

A. Report Title: Traffic Management Act 2004 – Differential Penalty Charges	
B. Report Author(s): Jose Garcia, Vertex Project Manager	Tel: E-mail:
C. Decision Maker: Andy Millard	
D. Position held: Head of Strategic Planning and Delivery	
E. Key decision: YES	F. Delegation ref: 20.4.32
G. Is the decision urgent? Yes	
H. If yes, state why. Delays to the implementation of this legislation would result in unacceptable financial losses to the Council and potential lead to a dangerous road safety situation.	

I. DECISION (strike out whichever does not apply) :	
1. I agree the recommendations in the attached report for the reasons given in the report; OR	
2. *My decision is:	
*The reason for my decision is:	
* Continue overleaf or on an additional sheet if necessary.	
Signed: ANDREW MILLARD	Date: 20.3.08

URGENCY

Democratic Services will arrange for the completion of the following:	
J. I confirm that in my opinion a decision on this matter is urgent and cannot reasonably be delayed:	
Signed:	Date: 20.3.08

To be completed by Democratic Services

Date decision received by Dem. Services:	Date decision published:
Implementation date:	

20 March 2008	ITEM No.
Officer Delegated Decision	
TRAFFIC MANAGEMENT ACT 2004 – DIFFERENTIAL PENALTY CHARGES	
Portfolio Holder: Councillor T Ojetola, Highways & Transport	
Report Author: Jose Garcia, Vertex Project Manager	
Accountable Head of Service: Andy Millard, Head of Strategic Planning & Delivery	
Accountable Director: Bill Newman, Sustainable Communities	
Purpose: Officer delegated decision to introduce differential parking penalty charges in compliance with Part 6 of the Traffic Management Act 2004	
Wards affected: All	Key decision: Yes
This report is Public	

1. RECOMMENDATIONS:

1.1 It is recommended that the Council chose the Band 2 option with regards Penalty Charge Notice's, therefore, the higher rate would be £70 (£35 if paid within 14 days of issue) and the lower rate would be £50 (£25 if paid within 14 days of issue).

1.2 Appropriate amendments to the Traffic Orders be made incorporating the Band and other amendments consequential upon the Traffic Management Act being in force.

2. INTRODUCTION:

2.1 Each enforcement authority outside London must¹ set the level of penalty charges in their area, and the level of those charges must² follow the guidelines appended to an Order made by the Secretary of State for Transport. When authorities outside London change the levels of their penalty charges they must³ publish these new charges in at least one local newspaper 14 days or more before the new charges come into effect.

¹ Traffic Management Act 2004, Schedule 9, paragraph 7

² *Ibid* Paragraph 8

³ *Ibid* Paragraph 9

2.2 The Secretary of State and the Mayor for London have agreed that authorities must issue two different levels of penalty charges in their area. Differential penalty charges were introduced in London in July 2007 and outside London on 31 March 2008. Parking in a place where it is always prohibited (such as on a red route, on double yellow lines, or in a disabled bay without displaying a valid badge) is considered more serious than overstaying where parking is permitted (e.g. in a parking place). There is a perceived unfairness of receiving the same penalty regardless of the seriousness of the contravention. For this reason, and in order to emphasise the traffic management purposes of CPE, enforcement authorities must⁴ apply different parking penalties to different contraventions. Outside Greater London, the current three-band system has been reduced to two, and the higher and lower penalty charges in these bands are specified in the Guidelines Order⁵. The full lists of contravention codes is set out by the London Councils and reproduced in Annex C. The higher list is specified in the Guidelines Order⁶. This Order will be varied from time to time and enforcement authorities should check with the London Councils and on the DfT website that they are using the most up to date version.

3. BACKGROUND:

3.1 Local authorities have long been responsible for managing, directly or indirectly, all on-street and some off-street parking and the Road Traffic Act 1991 (RTA) enabled local authorities to enforce that management. As the number of vehicles on the road has increased - from 24.5 million in 1991 to 32.6 million in 2004 - it has become increasingly important that they do this openly, fairly and effectively. Pressure on kerbspace is much more intense in some areas than in others and policies, local regulations and their enforcement have to be tailored to deal with those pressures. This can mean that there are differences between areas and within areas. In principle there is nothing wrong with this as long as policies and local regulations have received proper consultation and local restrictions are lawful and clearly signed and fairly enforced.

Parking is very much a local issue. Central government sets the framework but local authorities draw up policies and local regulations for their implementation and, if they have the relevant power, enforce them.

At present, all London authorities and 148² local authorities in England outside London carry out parking enforcement using powers contained in the RTA and regulations made under it³. This is called Decriminalised Parking Enforcement (DPE). Local authorities employ parking attendants to enforce national and local regulations. This reflects the need for the police to concentrate on core policing priorities. As part of the system, parking attendants issue Penalty Charge Notices (PCNs) to the owners of vehicles they believe to be parked illegally. Representations against a PCN can be

⁴ The Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007(SI 2007/3487).

⁵ *Ibid*, Schedule.

⁶ *Ibid*, Annex of the Schedule.

made to the issuing authority and if this is rejected there is a right of appeal to an independent adjudicator. The enforcement is funded by income from parking charges and penalty charges rather than the local and national taxpayer.

Building on the 1991 Act, London local authorities have used local legislation to take additional enforcement powers and alter certain aspects of the enforcement process ⁴. To support local authorities in the exercise of their DPE powers, non-statutory guidance on DPE was issued by the Department for Transport/Welsh Office (for authorities outside of London) ⁵ and by the Mayor for London (for London Boroughs) ⁶. Parking enforcement action started under the RTA 1991 will continue to be valid when the TMA comes into force.

Part 6 of the TMA enables new regulations to be put in place for the civil enforcement of parking, bus lanes, some moving traffic offences and the London lorry ban. The Government intends to implement Part 6 in stages, beginning with parking. Under the TMA, Decriminalised Parking Enforcement will become known as "Civil Parking Enforcement" (CPE). In recognition of their wider remit parking attendants will become known as Civil Enforcement Officers (CEOs).

3.2 The most fundamental change under the new legislation is the introduction of differential penalties which will be levied, depending on the seriousness of the contravention. The new legislation states that for Authorities outside of London, the higher rate will be £60 (Band 1) or £70 (Band 2), and the lower rate will be £40 (Band 1) or £50 (Band 2) (£30 or £35, and £20 or £25 respectively if paid at the reduced rate). Please see table below:

<i>(1)</i> <i>Band</i>	<i>(2)</i> <i>Higher level penalty charge</i>	<i>(3)</i> <i>Lower level penalty charge</i>	<i>(4)</i> <i>Higher level penalty charge paid early</i>	<i>(5)</i> <i>Lower level penalty charge paid early</i>	<i>(6)</i> <i>Higher level penalty charge paid after service of charge certificate</i>	<i>(7)</i> <i>Lower level penalty charge paid after service of charge certificate</i>
1.	£60	£40	£30	£20	£90	£60
2.	£70	£50	£35	£25	£105	£75

4. ISSUES AND/OR OPTIONS:

4.1

Thurrock Income Forecast for Differential Charges						
Contravention Code	Description	New Tier from 31/03/08	PCN's issued 06/07	Income		
				100% @ flat £60	Band 1 (L) £40 & (H) £60	Band 2 (L) £50 & (H) £70
05	Parked after the expiry of paid for time	Lower	803	£48,180.00	£32,120.00	£40,150.00
06	Parked without clearly displaying a valid pay and display ticket or voucher	Lower	610	£36,600.00	£24,400.00	£30,500.00
07	Parked with payment made to extend the stay beyond initial time	Lower	67	£4,020.00	£2,680.00	£3,350.00
15	Parked in a residents' or shared use parking place or zone (19) displaying an invalid permit, an invalid voucher or an invalid pay & display ticket (12) without clearly displaying either a permit or voucher or pay & display ticket issued for that place	19 Lower & 12 Higher Tier	1282	£76,920.00	£58,980.00	£71,800.00
16	Parked in a permit place without displaying a valid permit	Higher	1	£60.00	£60.00	£70.00
80	Parked for longer than the maximum period permitted	Lower	1	£60.00	£40.00	£50.00
82	Parked after the expiry of paid time	Lower	387	£23,220.00	£15,480.00	£19,350.00
83	Parked in a car park without clearly displaying a valid pay & display ticket or voucher or parking clock	Lower	1021	£61,260.00	£40,840.00	£51,050.00
84	Parked with additional payment made to extend the stay beyond time first purchased	Lower	30	£1,800.00	£1,200.00	£1,500.00
85	Parked in a permit bay without clearly displaying a valid permit	Higher	44	£2,640.00	£2,640.00	£3,080.00
86	Parked beyond the bay markings	Lower	2	£120.00	£80.00	£100.00
87	Parked in a disabled person's parking space without clearly displaying a valid person's badge in the prescribed manner	Higher	17	£1,020.00	£1,020.00	£1,190.00
			4,265	£255,900.00	£179,540.00	£222,190.00
					-£76,360.00	-£33,710.00

4.2

Vertex Income Forecast for Differential Charges

Contravention Code	Description	New Tier from 31/03/08	PCN's issued 06/07	Income		
				100% @ flat £60	Band 1 (L) £40 & (H) £60	Band 2 (L) £50 & (H) £70
01	Parked in a restricted street during prescribed hours	Higher	1447	£86,820.00	£86,820.00	£101,290.00
02	Parked of loading/unloading in a restricted street where loading/unloading restrictions are in force	Higher	359	£21,540.00	£21,540.00	£25,130.00
22	Re-parked in the same parking place within one hour or other specified time of leaving	Lower	5	£300.00	£200.00	£250.00
23	Parked in a parking place or area not designated for that class of vehicle	Higher	13	£780.00	£780.00	£910.00
25	Parked in a loading place during restricted hours without loading	Higher	1206	£72,360.00	£72,360.00	£84,420.00
30	Parked for longer than permitted	Lower	166	£9,960.00	£6,640.00	£8,300.00
40	Parked in a designated disabled persons parking place without clearly displaying a valid disabled persons badge in the prescribed manner	Higher	275	£16,500.00	£16,500.00	£19,250.00
42	Parked in a parking place designated for police vehicles	Higher	0	£0.00	£0.00	£0.00
45	Parked on a taxi rank	Higher	89	£5,340.00	£5,340.00	£6,230.00
47	Stopped on a restricted bus stop/stand	Higher	7	£420.00	£420.00	£490.00
48	Stopped in restricted area outside a school when prohibited	Higher	46	£2,760.00	£2,760.00	£3,220.00
55	A commercial vehicle parked in a restricted street in contravention of the overnight waiting ban	Higher	2	£120.00	£120.00	£140.00
56	Parked in contravention of a commercial vehicle waiting restriction	Higher	20	£1,200.00	£1,200.00	£1,400.00
			3635	£218,100.00	£214,680.00	£251,030.00
					-£3,420.00	£32,930.00

4.3 The above graph shows what the income forecast is for Thurrock council based on previous ticket issue. Please note that all figures are based on the full charge. It must be noted that if a Penalty Charge Notice is paid within 14 days of issue then a 50% discount applies. Taking this in to consideration would mean an even heavier loss to the Council.

4.4 In order to introduce differential parking the Council must ensure that the TRO (Traffic Management Order) is amended to reflect the changes. The Council must also publicly announce the changes. In order to meet both of these criterion the timeline below has been agreed with the Traffic section.

- Notice published in press on 15th March 2008
- Delegated Decision published on Forward Plan 15th March 2008
- Decision made 19th March 2008
- Traffic Orders amended to show new Band and other amendments 20th March 2008
- Amendment Traffic Order and Public Notice published in press 28th March 2008
- Amended Traffic Orders sealed and 'Has Made Order' Published in press 25th April 2008
- New Differential Parking rates implemented 30th April 2008

4.5 Should the Council not be in a position to implement differential parking on the 31st March 2008, the Council would be unable to enforce any parking restriction, the impact of which would as a minimum, be financial, in respect of the loss of income from parking revenue.

4.6 It is proposed that the period between the 31st March (the effective date of the Traffic Management Act 2004 coming into force) and the 30th April (when the Council will be in a position to enforce the new penalty rates) be used as a public awareness period to advise members of the public who contravene the new legislation of their contravention and the new fines appropriate to that contravention.

5. IMPACT ON CORPORATE PRIORITIES:

5.1 The implementation of the provisions of the Traffic Management Act contribute towards creating a safer, cleaner and greener environment as well as improving value for money from Council services.

6. OVERVIEW AND SCRUTINY:

6.1 This report has not been reported to Overview and Scrutiny, however, should it be proposed at a later date that additional contraventions, as defined in part 6 of the TMA 2004, be introduced, these should be referred to the appropriate Overview and Scrutiny committee.

RELEVANT POLICIES

FINANCIAL IMPLICATIONS

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The financial implications are set out within the report (Section 4). As at 30th March 2008 the current penalty rates cease to exist and the new rates will need to be enforced. The financial impact to the Council as set out in 4.1 is, based on 2006/7 levels, a reduction in income of £76,360 applying Band 1 and a reduction of income of £33,710 applying Band 2. For Vertex, there will be a loss of income of £3,420 for Band 1 and a gain of £32,930 for Band 2. Any financial impact of the loss of income will need to be borne from within existing resources.

LEGAL IMPLICATIONS

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The main legal implications are set out in the report.

Part 3 of Schedule 9 to the Traffic Management Act 2004 enables the Council to set the level of charges for contraventions. The level of charges must accord with guidelines issued by the Department for Transport: these were published in regulations made in December 2007 and came into effect on 20th January 2008.

In accordance with paragraph 4.29 of Circular 1/95 details of the proposed charges must be published in a local newspaper at least 14 days before they are due to come into effect

DIVERSITY & EQUALITY IMPLICATIONS

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The report relates to the introduction of new legislation.

There are no direct Diversity implications noted.

OTHER IMPLICATIONS

BACKGROUND PAPERS

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