

Additional clarification evidence submitted by the PATROL (Parking and Traffic Regulations Outside London) Joint Committee in response to the Transport Committee inquiry into pavement parking

Submitted by:

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1. The Traffic Regulation Order (TRO) Process

Traffic Regulation Orders (TROs) and Traffic Management Orders (TMOs) – as they are known in London – are made under the powers of the *Road Traffic Regulation Act 1984*.

The process for making TROs is laid down in the *Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996*. This includes the requirement to advertise on the printed press.

It goes without saying that legislation dating from thirty and twenty years ago, respectively, does not necessarily reflect changes in society and technology.

The Traffic Penalty Tribunal adjudicators and PATROL have already sent a submission to this effect to a recent Law Commission inquiry on the various laws that should apply to autonomous vehicles. This includes digital connection with the vehicle and digital mapping of the applicable rules of the road, for most of which the local authority is responsible.

It is therefore clear that there is a pressing need to bring the legislation about making TROs, what should properly be contained within them and the process required fit for purpose in the modern world.

Therefore, it may in due course become more straightforward for authorities to apply pavement parking prohibition to the areas where it is required.

While those legislative changes are being considered, however, providing enforcement authorities with the power to issue a PCN for obstruction would enable them to deal with the most problematic cases, and areas where motorists persistently park on pavement.

2. Defining which obstruction offences should be subject to civil enforcement by local authorities and the role of Adjudicators in determining ambiguities

First, *Traffic Management Act 2004* (TMA) enforcement can only apply to stationary vehicles. Therefore it would not apply to any other forms of highway obstruction, for example blocking the road with objects or public protests.

There are some clear and unambiguous examples of obstruction on pavements and these can be highlighted in public information campaigns, together with possible illustrations in updated Statutory Guidance that can be issued to accompany the powers.

Section 87 of the TMA (see below) provides the Secretary of State to issue guidance. Therefore the Statutory Guidance to accompany the new powers should include examples of what would always be regarded as obstruction together with advising caution in interpreting the powers too widely.

87 Guidance to local authorities

(1)The appropriate national authority may publish guidance to local authorities about any matter relating to their functions in connection with the civil enforcement of traffic contraventions.

(2)In exercising those functions a local authority must have regard to any such guidance.

Because authorities must have regard to the Statutory Guidance, Traffic Penalty Tribunal Adjudicators would interpret a failure to do so as a procedural impropriety. This a ground of appeal giving rise to the cancellation of the penalty charge notice.

Moreover, ambiguities in the interpretation of what is and what is not an obstruction, on a case-by-case basis, will be scrutinised by Adjudicators in the appeal process.

This is the common judicial approach by District Judges, both in the Magistrates' and County Courts, where judges have to give rulings on interpretations based on the particular facts of the individual cases.

Therefore, a body of case law and precedents will soon be established from appeals and the decisions can be circulated to give further judicial guidance to authorities as to the extent of the powers.

3. Obstruction other than on a pavement

Many authorities have observed that it would be useful for them to enforce parked vehicles obstructing of the highway near junctions. This would be an added benefit of including obstruction in Schedule 7 of the Traffic Management Act 2004.

4. Existing *Traffic Management Act 2004* powers for the issuing of Penalty Charge Notices for parking adjacent to a dropped kerb

Authorities already have the power to issue penalty charge notices (PCNs) for parking adjacent to a dropped kerb.

The *Traffic Management Act 2004* (TMA) creates two new parking contraventions enforceable by local authorities in a special enforcement area (i.e. in the area of an authority that has civil enforcement powers):

- Section 85 creates a prohibition of double parking; and
- Section 86 creates a prohibition of parking at dropped footways

It stands to reason that these prohibitions cannot be signed.

Enforcement authorities have approached enforcement of these new contraventions with a light touch. They tend to issue PCNs when there has been a complaint by the public about parking in front of / access to a property, or where they are aware of streets with problems of this nature, which they target.

This approach to enforcement could and should be adopted were obstruction to be included in the list of contraventions subject to civil enforcement by enforcement authorities.

The difficulty arises insofar as sections 85 and 86 only apply in special enforcement authorities and therefore do not apply in the twenty remaining local authority areas that have not adopted civil enforcement powers. The same would apply to obstruction, were it to be included in Schedule 7 of the TMA, since that would only apply in special enforcement authorities.

However, both the Department for Transport (DfT) and Ministry of Housing, Communities & Local Government (MHCLG) are encouraging the last remaining

authorities who have not adopted civil enforcement to do so. Of course, they would not be able to enforce pavement parking as an obstruction in their areas, just as the prohibition against double parking and parking by a dropped kerb does not apply.

5. Public information about pavement parking and new powers of enforcement for obstruction

Public information will be key, both to discourage pavement parking by raising public awareness of the difficulties and dangers that it causes, and to warn of any new enforcement powers. Many local authorities already have embarked on campaigns to discourage pavement parking.

PATROL, on behalf of the more than 300 authorities the Joint Committee represents outside London, is committed to spearhead a national campaign to raise public awareness and would provide coverage of any new powers and how they might be applied.

This campaign can also be effectively distributed at a local level through local authority owned channels (social media, etc.) and, in addition, each local authority can issue its own public information, focusing on particularly problematical areas and streets.

The issuing of warning notices to vehicles parked on the pavement, stating that in future they may incur a PCN, is another important strategy to achieve compliance. This should be addressed in the Statutory Guidance.

6. Conclusion

Deterring pavement parking and enforcing offences in contraventions will never be straightforward. There are problems as well as advantages with any perceived solutions.

That said, it is no reason not to achieve the possible and take steps to manage the worst incidents that cause so many difficulties.

Using statutory instrument to add obstruction by stationary vehicles could go some way to give authorities the power to take enforcement action, while reform to the TRO provisions are being considered.

Furthermore, there are other offences, which could also be usefully added to Schedule 7 of the TMA. These can be further discussed.