CHARGING FOR PARKING

Revised August 2011

This Note is designed to assist local authorities in setting parking charges. It also deals with some other financial considerations, including VAT issues and how authorities may use any surplus income. It can only provide an outline of the legislative position, and reference should always be made to the source legislation, circulars and case law, especially with regard to the introduction of new parking schemes.

The general principles set out in the paper apply throughout the UK England, Scotland and Wales. However, parking enforcement powers are now devolved in Scotland, Wales and Northern Ireland. Authorities adopting or seeking to adopt civil enforcement in these countries should refer enquiries to the relevant department, the Scottish Government, Welsh Assembly Government or Northern Ireland Government. Where appropriate, references are made to the separate provisions applicable in each country.


*This fourth major revision of this Note takes account of changes introduced by the Traffic Management Act 2004 and is up to date as at 15 April 2011 with the changes on that date in CPE charges in London.*
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ON AND OFF-STREET PARKING CHARGES

Local authorities may:

(ii) under the powers of section 35 of the 1984 Act, impose charges for parking in car parks provided under section 32 or 33(4) of that Act; and

(ii) under sections 45 and 46 of the 1984 Act, charge for parking at on-street parking places.

Imposing charges under these powers requires an Order. Note, however, that whilst orders are mandatory for designating and charging at on-street parking places; this is not the case for off-street car parks, unless penalties are to be imposed through penalty notices. Thus, a local authority operating a “pay-on-foot” car park or car park with an attendant collecting the fees can do this without an order; although an order may give the authority added beneficial powers. Privately owned car parks must operate without an order; unless there is an agreement with a local authority.

The legislation provides for payment to be made to a meter or ticket machine, or indicated by a parking device (which can be a card, disc, token or other similar device), and also provides for the issue of permits (with or without charge) allowing vehicles to use parking places. In recent years, payment for parking and permits, with or without display of a ticket, permit or parking device, has also been possible via mobile phone other digital communication device or the internet.

Provisions can be made for on-street parking places to be reserved for special categories (classes) of vehicle, e.g. residents’ vehicles, doctor’s vehicles, trader’s vehicles, goods vehicles, business users’ vehicles, coaches, etc; and for special charges to be made for or permits issued for those classes of vehicles. Classes of vehicle can also be determined by length, number of vehicles per household, engine capacity or type, vehicle emissions, etc; and charges can be related to these classes of vehicle.

Section 46 of the 1984 Act provides for “initial” and “excess” charges at on-street parking places. These provisions are removed in civil enforcement operations where “parking” and “penalty” charges apply. Authorities are reminded that they should not issue Excess Charge Notices in designated parking places in any circumstances other than those provided for in section 46 of the 1984 Act.

When introducing on-street parking schemes and setting parking charges, authorities must have regard for the purpose of the powers incorporated in the 1984 Act. Justice McCullough has ruled [R v Camden London Borough Council; ex parte Cran and Others (1995) (RTR 346)], that the 1984 Act “is not a fiscal measure. It contains no provision which suggests that Parliament intended to authorise a council to raise income by using its powers to designate parking places on the highway and to charge for their use”.

However, he went on to conclude that if, as a result of setting enforcement or parking charges designed to meet the objectives of the scheme, income exceeded that required simply to cover expenditure, then that is not wrong. This did not, however, apply to permits issued to (author’s addition) residents or businesses within the area.

Justice McCullough also concluded that, on the evidence before him, it was not inappropriate for there to be a borough-wide resident permit charge; nor, in the particular case, that the
proposed charge (of £82) was inappropriate. [However, in quashing the proposed Camden order, Justice McCullough said the amount to be charged for permits would need to be considered afresh.]

Further advice on parking policy and charges is given in the Secretary of State’s Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions, expanded upon in Operational Guidance to Local Authorities: Parking Policy and Enforcement.

Statutory guidance confirms that raising revenue should not be an objective of civil parking enforcement, nor should authorities set targets for revenue or the number of penalty charge notices (PCNs) they issue. However, it also confirms that, for good governance, it is appropriate for enforcement authorities to forecast revenue in advance.

It also says that charges should be proportionate, so authorities should not set them at unreasonable levels.

For authorities envisaging or operating civil parking enforcement, self-financing need not be a necessary aim. However, authorities need to bear in mind that if their scheme is not self-financing, they will need to be certain that they can afford to pay for it from within existing funding.

Guidance also indicates that when setting on- and off-street parking charges, authorities should consider lower charges off-street than on-street. This would encourage drivers to park off-street, thus minimising on-street congestion caused by vehicles searching for spaces.

INCREASES IN PARKING CHARGES - NOTICE/ORDER PROCEDURE

Increases in parking charges introduced by Order can be made either by Amendment Order or, under section 35C or 46A of the 1984 Act (as appropriate), by Notice. Making changes by Notice means that objections to the changes need not be entertained, as would be the case if an amendment order was advertised. Changes can thus be made more quickly.

However, the Notice procedure can only be used to change charges. It cannot be used to amend other conditions relating to the use of a car park or parking place.

Regulations governing the Notice and Order making procedure are provided in the Local Authorities’ Traffic Orders (Procedure) (England and Wales) Regulations 1996. [In Scotland, the provisions of the Local Authorities’ Traffic Orders (Procedure) (Scotland) Regulations 1999 (as amended) apply.]

These formal procedures apply in civil and non-civil enforcement operations, but are not required to change charges in car parks that do not operate under an Order. This will apply at most cashier controlled, pay-on-foot or pay machine at entry/exit car parks.
CHARGING FOR AMENDMENTS OR EXEMPTIONS TO AN ORDER

Under the powers of the Local Authorities (Transport Charges) Regulations, local authorities may charge for actions taken to provide amendments or exemptions to traffic management orders. Table 2 of these Regulations deals with parking operations.

The regulations emphasise that the power to charge is for actions taken by the authority and not for the financial consequences of such actions. Specifically, the regulations do not allow authorities to charge for loss of income from parking meters, etc.

In setting charges, authorities should have regard to the need to cover the costs of providing the service; but are not permitted to set charges calculated to produce a profit.

Dispensations

Item 1 in Table 2 of the Regulations provides for authorities to charge for providing exemptions, pursuant to the provisions of orders made under section 1, 6, 9 or 14 of the 1984 Act, prohibiting or restricting stopping, parking, waiting, loading or unloading.

These exemptions are commonly known as dispensations or waivers. Charges and conditions of issue vary widely between authorities.

[There are also powers (Item 3 in Table 2) to charge for making an amendment to an order under section 1, 6, 9 or 14 (and for any consequential actions) designed to provide an exemption to or exclusion from a prohibition or restriction on stopping, parking, waiting, loading or unloading.]

Suspensions

Item 6 in Table 2 of the Regulations provides for authorities to charge, under the powers of section 49(4) of the 1984 Act, for the suspension of parking places. Provisions under these powers are normally incorporated in an authority’s Parking Places Order. As noted above, authorities may not charge for loss of income from meters, etc. As with dispensation charges, charges made for suspending parking places vary widely.

Revocation of or amendment to parking places

Item 2 in Table 2 of the Regulations provides for authorities to charge for anything done in consequence of a request to amend or revoke an order made under section 6, 32(1)(b) or 45 of the 1984 Act, in order to provide for the removal of a provision in the order for vehicles to park in a particular length of road.

Other matters

The Regulations also contain (Items 4, 5 and 9 of Table 2) provisions for charging in connection with temporary traffic orders made under sections 14(1) and 14(2) of the 1984 Act, and ‘special events’ orders made under section 16A of the 1984 Act or section 9 of the London Local Authorities Act 1995.
CIVIL PARKING ENFORCEMENT

Advice on CPE operations in England is given fully in the Secretary of State’s Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions, expanded upon in the Operational Guidance to Local Authorities: Parking Policy and Enforcement; and the reader is referred to these important documents and the supporting regulations for advice and guidance on CPE policy and charging.

Paragraphs 14 – 16 of Statutory Guidance are relevant to ‘CPE Financial Objectives’ and paragraphs 21 -23 to ‘Setting Charges’. For convenience, these paragraphs are reproduced in the Appendix to this Note. Relevant regulations are The Civil Enforcement of Parking Contraventions (England) General Regulations 2007, SI 2007 No.3483 and The Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Regulations 2007, SI 2007 No.3487.

This Note simply outlines the more important aspects of CPE charges.

“Additional Parking Charges”

Although the term “Additional Parking Charges” is no longer used in legislation or guidance, it is convenient here to continue to use it to refer to the group of CPE charges - ie the penalty charge, any charges paid to secure the release of an immobilised (clamped) or impounded vehicle (after tow-away), and storage and disposal charges - which are set under the provisions of the 2004 Act.

These charges are set, in London, by London Councils’ (see under ‘London’ below) and, in the rest of England, by each enforcement authority under guidance issued by the Secretary of State (see under ‘Outside London’ below).

Authorities must publish the charges applicable in their area. This applies on first introducing charges and on any subsequent revision. Current requirements are, as a minimum, for the charges to be published in a local paper at least 14 days before implementation.

Penalty charges are reduced by a fixed proportion where payment is made within 14 days (or, in cases where the PCN is sent by post, 21 days). This is currently set, both inside and outside of London, at 50%. The 14 or 21 day period begins with the day on which the notice is served.

The penalty charge increases by 50% on issue of a charge certificate and (currently) by a further £7 on registration of the debt at the county court. The penalty charge does not increase further. [The amount to be paid to settle the debt will increase, however, if (in accordance with the provisions of the 2004 Act) it is passed to certificated bailiffs for collection. The extra costs arise from the bailiffs’ collection costs.]

The charges made must not exceed those set. Credit card fees, for example, cannot be added to the approved charges for penalty charge notices, vehicle release or storage.

All income from these additional charges accrues to the local authority.
London

Additional parking charges for London authorities are agreed by London Councils following public consultation and submission to the Mayor of London for his approval, with the Secretary of State having over-riding powers of veto should he consider the proposed charges to be excessive.

London Councils regularly reviews these charges. On 1 July 2007, London Councils introduced differential penalty charges based on the seriousness of the contravention. Following a further review, revised charges apply from 15 April 2011. From that date there are two penalty charge bands in London, designated Band A and Band B (with Band A being the highest). Details are given in the table below. However, for full up-to-date information on this and the contravention code list go to the London Councils’ website (www.londoncouncils.gov.uk).

London authorities can apply to London Councils for their penalty charge (or charges) to be in one or more of these bands. Different charge bands can apply in different parts of a local authority’s area; however, the application of the penalty charge bands in individual boroughs is determined by London Councils on the basis of proposals by individual authorities and any general principles it may adopt.

There are fixed charges in London for recovery of clamped and removed vehicles, and for storage of vehicles, as shown below.

Red Routes

The Mayor of London is responsible for setting additional parking charges on the Transport for London Road Network (the red routes) in London. The Mayor of London has approved the same charges for the red route network as those adopted by London Councils. All red routes are in Band A, and all parking contravention on red routes are in the “more serious” category.

<table>
<thead>
<tr>
<th>&quot;ADDITIONAL PARKING CHARGES&quot; IN LONDON. [FROM 15 APRIL 2011]</th>
<th>More serious contraventions</th>
<th>Less serious contraventions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penalty Charge</td>
<td>Band A £130</td>
<td>Band B £110</td>
</tr>
<tr>
<td>Recovery of towed-away vehicle</td>
<td></td>
<td>£200</td>
</tr>
<tr>
<td>Recovery of immobilised (clamped) vehicle</td>
<td></td>
<td>£70</td>
</tr>
<tr>
<td>Pound storage charge (per day)</td>
<td></td>
<td>£40</td>
</tr>
<tr>
<td>Vehicle disposal charges</td>
<td></td>
<td>£70</td>
</tr>
</tbody>
</table>
Outside London

The principles of having differential penalty charges and two penalty charge bands, designated here as Band 1 and Band 2 (with Band 2 being the highest), and the ability to vary the level adopted by area (as described for London above) also apply outside London. However, having once set and obtained approval for their additional parking charges, and advertising these charges as required, authorities outside London have more flexibility than London authorities in that they can change the banding without reference to a higher authority.

Consultation is currently taking place on the whether there is a justifiable need to change the current charges. Authorities should keep in touch with the DfT on this matter.

As in London, there are fixed charges for recovery of clamped and removed vehicles, and for storage of vehicles, as shown below.

<table>
<thead>
<tr>
<th>“ADDITIONAL PARKING CHARGES” OUTSIDE LONDON... [FROM 31 MARCH 2008]</th>
<th>More serious contraventions</th>
<th>Less serious contraventions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penalty Charge Band 1 Band 2</td>
<td>£60</td>
<td>£40</td>
</tr>
<tr>
<td></td>
<td>£70</td>
<td>£50</td>
</tr>
<tr>
<td>Recovery of towed-away vehicle</td>
<td></td>
<td>£105</td>
</tr>
<tr>
<td>Recovery of immobilised (clamped) vehicle</td>
<td></td>
<td>£40</td>
</tr>
<tr>
<td>Pound storage charge (per day)</td>
<td></td>
<td>£12</td>
</tr>
<tr>
<td>Vehicle disposal charges</td>
<td></td>
<td>£50</td>
</tr>
</tbody>
</table>

Scotland and Wales

Scottish and Welsh authorities are recommended to contact their own Executives in order to find out current rules on CPE charges.

VAT

VAT does not apply to any on-street meter, ticket machine, voucher, permit, etc income, nor to any of the additional parking charges (on- or off-street) received under the powers of the 2004 Act. VAT does, however, apply to charges (other than the penalty charge) made by bailiffs acting under the 2004 Act.

As a result of a 2002 VAT tribunal decision (the Bristol City case), VAT no longer applies to income received from penalty notices (which can be known variously as excess, fixed or standard charge notices) in car parks operating under an Order made under section 32 of the 1984 Act. Any remaining authorities using Notices of Intended Prosecution in on-street parking operations would similarly not be subject to VAT on any income received.

VAT is normally paid on all other off-street income. Some councils have contested the application of VAT to off street parking income with HMRC and this is currently being considered in the Court of Appeal.

Authorities are advised to keep in touch with their VAT advisers on this issue.
USE OF PARKING SURPLUS AND REPORTING

Authorities are required under section 55 of the RTRA 1984 to keep an account of income and expenditure relating to their on-street parking places; as well as income from and expenditure relating to their functions as enforcement authorities. This includes all of their income and expenditure related to the issue of and income from PCNs in respect of off-street parking places, but not income from ordinary car park charges nor any other expenditure in car parks.

Section 55 is modified by regulation 25 of The Civil Enforcement of Parking Contraventions (England) General Regulations 2007.

Section 55(4) outlines the purposes for which any surplus in the parking account can be used. It also provides for the making up of any deficit in the parking account from the general fund, and for surpluses to be used to repay the general fund for any charges to that fund in the previous four years, or may be carried forward.

The purposes for which the parking surplus can be used apply across England, but London authorities can use the surplus in two additional areas. These are, firstly, expenditure on anything which facilitates the implementation of the London transport strategy or which is identified in that strategy as a purpose for which the surplus may be applied. [NB. The original London transport strategy published in July 2001 provided a list of purposes for which the parking surplus could be used. However, in the May 2010 version of the strategy this list has been deleted. A GLA officer has advised that “It was not thought necessary or appropriate to use this power in the Transport Strategy the Mayor approved in May 2010. This is in line with the Mayor’s much less prescriptive approach and his policy of allowing boroughs to determine their own spending priorities.”]. Secondly, the surplus can be used on expenditure on highway maintenance.

Statutory guidance recommends that authorities operating civil parking enforcement should produce an annual report of their parking operations, to include (amongst other things) details of CPE income and expenditure and action taken in respect of the surplus or deficit.

Further information on parking reports is given in the BPA Parking Practice Note No. 28 on Annual Reporting under the Traffic Management Act; and on parking accounts and the ways in which parking surpluses can be spent, including extensions provided for by the 2004 Act, in the BPA Parking Practice Note No. 24 on Parking Accounts under the Traffic Management Act.

NB. The 2004 Act also provides that in the case of “such local authorities as may be prescribed”, parking surpluses can be used for “any other purpose for which the local authority may legally incur expenditure”. However, the DfT has confirmed to the author that as at November 2010, no authorities had been so prescribed (or were treated as being so prescribed under any previous legislation).

Safer Parking

In deciding how to spend their parking surplus, local authorities should have regard for the advice given in the Local Government Association’s Circular 535/00. This circular urges authorities to work towards Safer Parking Accreditation (Park Mark®), and to consider using parking surpluses to fund the necessary measures.

The circular refers to section 17 of the Crime and Disorder Act 1998 and argues that this Act together with the provisions of section 55 of the 1984 Act makes it both necessary and desirable for authorities to prioritise spending on crime prevention measures in car parks before consideration is given to spending parking surpluses in other areas.
REFERENCES

<table>
<thead>
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<th>Reference</th>
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<tbody>
<tr>
<td>Road Traffic Regulation Act 1984 (Chapter 27)</td>
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<td>Road Traffic Act 1991 (Chapter 40)</td>
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<tr>
<td>Traffic Management Act 2004 (Chapter 18)</td>
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<tr>
<td>The Civil Enforcement of Parking Contraventions (England) General Regulations 2007, SI 2007 No.3483</td>
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<tr>
<td>The Secretary of State’s Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions, DfT, February 2008</td>
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<tr>
<td>Operational Guidance to Local Authorities: Parking Policy and Enforcement, DfT, March 2008 (Revised November 2010)</td>
<td></td>
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<tr>
<td>London Local Authorities Act 1995</td>
<td></td>
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<tr>
<td>The Local Authorities (Transport Charges) Regulations 1998, SI 1998 No. 948</td>
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</tr>
<tr>
<td>“Secured Car Parks/Parking Surpluses”, Circular 535/00, Local Government Association, 1 August 2000.</td>
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<tr>
<td>“Parking Act 1989”, Local Authority Circular 2/90 (Department of Transport), Circular 21/90 (Welsh Office), 14 May 1990.</td>
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</table>

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Whilst the BPA and the author have made every effort to check facts and statements in this note, no liability can be accepted for negligence or otherwise in relation to the contents of the note. Legislation and guidance are subject to change, and readers should seek appropriate up-to-date specialist advice relating to their circumstances.

Any views expressed in this note are those of the author.

The author was for over 20 years a parking engineer with the London Borough of Richmond upon Thames. He is a former Council member of the BPA.
CPE Financial Objectives

14. For good governance, enforcement authorities need to forecast revenue in advance. But raising revenue should not be an objective of CPE, nor should authorities set targets for revenue or the number of Penalty Charge Notices (PCNs) they issue.

15. Enforcement authorities should run their CPE operations (both on- and off-street) efficiently, effectively and economically. The purpose of penalty charges is to dissuade motorists from breaking parking restrictions. The objective of CPE should be for 100% compliance, with no penalty charges. Parking charges and penalty charges should be proportionate, so authorities should not set them at unreasonable levels. Any penalty charge payments received (whether for on-street or off-street enforcement) must only be used in accordance with section 55 (as amended) of the Road Traffic Regulation Act 1984.

16. Previous guidance said that local authority parking enforcement should be self-financing as soon as practicable. This is still a sensible aim, but compliant applications for CPE (see next section) will be granted without the scheme being self-financing. However, authorities will need to bear in mind that if their scheme is not self-financing, then they need to be certain that they can afford to pay for it from within existing funding. The Secretary of State will not expect either national or local taxpayers to meet any deficit.

Setting Charges

21. The primary purpose of penalty charges is to encourage compliance with parking restrictions. In pursuit of this, enforcement authorities should adopt the lowest charge level consistent with a high level of public acceptability and compliance. The enforcement authority must ensure that the public knows what charge levels have been set by publishing them well in advance of their introduction. They must also publish any subsequent change to the charge levels. In London, charges will be set by the London local authorities acting jointly and by Transport for London (in respect of GLA roads), with the approval of the Mayor (and provided that the Secretary of State does not object). Outside London, the charges must accord with guidelines set by the Secretary of State.

22. 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 must 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 Order. The full lists of contravention codes is set out by the London Councils and reproduced in the Operational Guidance. The higher list is specified in the Guidelines Order. 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.
23. Where an authority has to immobilise or remove a vehicle outside London, the charges must accord with guidelines set by the Secretary of State. In London, the charges will be set by the London local authorities acting jointly, with the approval of the Mayor (and provided the Secretary of State does not object). The charges should be set no higher than required to meet the reasonable costs of the immobilisation/removals procedure. They should not generate a surplus.

1 CPE can only apply to privately owned car parks that are regulated by an order made under the Road Traffic Regulation Act 1984, Section 35 and provided under any letting or arrangement made by a local authority with some other person (such as a privately-owned company) under Section 33(4) of that Act.

2 TMA, Schedule 9 paragraphs 5 (Greater London) and 9 (outside Greater London).

3 Ibid.


5 S.I. 2007/3487, Schedule, Paragraph 1

6 S.I. 2007/3487, Schedule, Table 1

7 S.I. 2007/3487, Schedule, Table 2

8 S.I. 2007/3487, Schedule, Table 4