

## **Guidance note for authorities applying for CPE powers under the Traffic Management Act 2004**

### **Introduction**

This note has been produced by the Department for Transport to supplement and expand the existing guidance set out in Chapter 15 of the “Operational Guidance to Local Authorities: Parking Policy and Enforcement” dated March 2008 in respect of applications for a Civil Enforcement Area (CEA) and Special Enforcement Area (SEA) designation order (referred to in this note as a “CEA designation order”).

In the event of a conflict between the two documents, the Operational Guidance prevails.

The purpose of this guidance note is to assist authorities in preparing their applications for CEA designation orders. For the reasons explained below, the Department has to be satisfied in relation to various matters before a CEA designation order can be made. Delays in providing the information fully at the outset may result in delays in the Order being drafted, urgent requests for further information, and tying up of resources for the authority and the Department. Ultimately, this could lead to the Department being unable to agree to meet any proposed coming into force date .

### **Background**

Orders made under Schedule 8 to the Traffic Management Act 2004 (in respect of CEAs) and under Schedule 10 to the Act (in respect of SEAs) are made by the Secretary of State. The Act provides that Orders are statutory instruments which must be laid before Parliament. As such, special drafting rules apply and they are subject to a high level of scrutiny from Parliamentary Committees. Ultimately, Orders can be annulled by Parliament if they are prayed against by MPs or Lords. The nature and extent of Parliamentary scrutiny means the drafting of the Orders requires particular consideration than might otherwise be the case in respect of local Orders such as Traffic Regulation Orders. The Orders thus need to be drafted in a very clear and precise manner.

This is particularly the case bearing in mind the need to minimise the risk of a successful legal challenge to Penalty Charge Notices issued under in respect of a CEA or SEA on the basis that the area to which the powers apply, or the roads which are to be excluded, are ambiguous and insufficiently clear in the Order.

It is for these reasons that it is important to provide as much information as possible to ensure that the Order is legally robust and achieves the policy aims of the Department and the applying authority.

Authorities are strongly advised to seek advice from their legal advisers when filling out the application form.

## Specific matters to consider

### 1. *The name of the applying authority*

This must be clearly set out with supporting legal references where necessary. For instance, in the case of a recent structural change, abolition or other change of name of the authority, references to the legislation (such as a Statutory Instrument) is likely to be required.

The authority must specify what type of authority it is, i.e. whether it is a county council, a borough council, a district council, a unitary authority or a metropolitan district council. In the case of a metropolitan district council, the authority must indicate whether it is applying jointly with another metropolitan district council or in respect of its own area only. In cases where it is not immediately apparent how the authority is entitled to apply for CPE powers (for instance, if it is a single tier authority), the application should also explain why it is entitled to make an application.

Acceptable:

“Bedford Borough Council, as established by article 3(3) of the Bedfordshire (Structural Changes) Order 2008 (S. I. 2008/907)”

“St Helens Metropolitan Borough Council”

Unacceptable:

“Bedford”

“St Helens”

### 2. *The area to be designated*

The area in respect of which designation is applied for must be clearly set out. This includes specifying the following:

(1) in the case of a county or county borough council, the area in respect of which civil enforcement powers are requested.

This can be by reference to districts or boroughs within the county (in which case supporting legal references should be provided as for 1 above), or by reference to a plan or map.

Acceptable:

“the District of West Wiltshire”

“the Borough of Eastbourne”

Unacceptable

“West Wiltshire”

“the area previously designated under the old regime”

(2) in the case of a metropolitan district council (either acting singly or jointly with another metropolitan district council), any parts of its area it wishes the Secretary of State to consider excluding must be set out. For instance, this may include any parts of the area that are motorways or high speed roads. Please see point 3 below on the detail required.

*3. Any roads to be excluded, or to be considered for exclusion by the Secretary of State (in the case of metropolitan district councils)*

It is important for the application to be precise in relation to the roads or areas to be excluded from the designation. Ordnance Survey National Grid reference points should be included where non-visible boundaries such as the boundary between local authority areas are being relied on. Moveable or non-permanent road fixtures, such as bus stops, should also not be used to specify excluded roads. The application should also specify whether slip roads are included or excluded.

In the case of a motorway or high speed road running through the entirety of the area to be designated, the reference to the road itself is likely to be sufficient.

Acceptable:

“the M6 southbound carriageway from the boundary of the district of South Staffordshire (at Ordnance Survey National Grid reference point SJ979023) to the boundary of the Metropolitan Borough of Sandwell (at Ordnance Survey National Grid reference point SP017954)”

Or

“the M53 and M56 (including their slip roads)”

Unacceptable

“the M6 southbound from South Staffordshire to Sandwell”

“the A457 from the bus stop at the junction with the A789 to the roundabout”

*4. Military roads*

The application must indicate if there are any military roads in the area to be designated. If there are, the Department will need to seek comments on the

Order from the Ministry of Defence and authorities will need to factor in additional time for this consultation.

**Note on liabilities to third parties in connection with civil enforcement powers**

It is for authorities to consider what are the appropriate triggers for the crystallisation of any contractual obligations with a third party to provide civil enforcement. In the case of particularly complex orders, authorities may wish to consider using the making of the Order by the Department, or the entry into force of that Order, rather than specifying a particular date, as the trigger to crystallise contractual arrangements.