

**Department of the Environment
2 Marsham Street London
SW1**

Telephone 01-212 3434

Our Ref HM 3/74/06

Circular ROADS No: 46/74

The Town Clerk
The Chief Executive Officer
Greater London Council
County Councils in England
London Borough Councils
The Common Council of the City of London

6 December 1974

Dear Sir

**ROAD TRAFFIC ACT 1974: SECTION 6
TRAFFIC SURVEYS**

1. Section 6, which will come into force on 1 January 1975, inserts a new section 22A after section 22 of the Road Traffic Act 1972. The new section 22A removes the limitation in section 22 referred to in the judgement of the High Court in the case of Hoffman v Thomas (1974 [2] AER 233-239), where it was held that a motorist committed no offence under section 22(1) of the Road Traffic Act 1972 when he failed to comply with a direction given by a police constable to drive off the carriageway and report to a traffic survey point. The High Court held that the constable had neither a common law nor a statutory right to give that direction. Accordingly, the police constable was not acting in the execution of his duty and the defendant had committed no offence. This limitation on the constable's powers would have made it impracticable to carry out traffic surveys which are an essential part of road planning, traffic and transportation studies.

2. The new section 22A removes the limitation by providing that for the purposes of section 22 of the Road Traffic Act 1972, a traffic direction given by a constable in connection with a traffic survey shall be treated as a direction given by him in the execution of his duty at a time when he is engaged in the regulation of traffic. It also gives statutory authority to a traffic sign erected for the purpose of the survey, and enables a constable to direct traffic to a survey point off the carriageway.

3. The section makes it clear, however, that although a person driving or propelling a vehicle is required to comply with a traffic direction as indicated above, the requirement does not extend to the furnishing of any information for the purposes of a traffic survey. Moreover the powers provided in this section must be so exercised as not to cause unreasonable delay to any person who does not wish to furnish any information.

4. In order to minimise the risk of accidents and obstruction of traffic which might occur when vehicles are stopped on the carriageways, survey sites should, wherever possible, be positioned off the carriageway. In addition, the statutory requirements will usually mean that provision for access will also have to be made so that motorists who have complied with a police constable's traffic direction to drive to the survey point, but who do not wish to take part, may continue their journey with minimum delay. In consequence of these requirements, surveys which require the stopping or delaying of vehicles should not be carried out on motorways. On other roads, where traffic volume is high in relation to carriageway widths, it will usually be necessary to choose a location where there is either a wide verge or a layby.

5. An alternative for which there are powers would be to use private land adjoining the highway for the survey site. But this, it is advised, is unacceptable on practical grounds. It would considerably increase the cost of the survey and require the acquisition of rights but more importantly would give rise to unacceptable difficulties about motor insurance. Although the insurance cover taken out by most motorists would extend to such sites, some motorists would not be covered but might not realise this when they were invited to take part in the survey. The statutory insurance requirements would not apply while they were on the site, so no offence would have been committed, but the consequences could be very serious if an accident were to occur. We are advised that the Motor Insurance Bureau would not meet the claim in these circumstances because there would be no statutory requirement to be insured. The only remedy for someone seriously injured or whose vehicle was badly damaged would be through the courts against the uninsured motorist.

6. In many locations in urban areas there may not be sufficient highway land to permit survey sites to be positioned off the carriageway. The statutory requirements outlined in paragraphs 3 and 4 must nevertheless be met and this will require the location of the survey sites to be chosen with great care.

7. In conducting surveys it is essential that the willingness or otherwise of motorists to take part in the survey should be established as soon as possible after their arrival at the survey point, and that the sites are arranged in a way which enables non-participating motorists to depart without being impeded by cars or drivers being questioned or waiting to be questioned.

8. Guidance on where traffic surveys may safely be carried out and on the detailed design of survey sites and methods of operation will be issued separately.

Yours faithfully

G COCKERHAM

Enquiries on the content of this Circular should be made to HLL 2(a) (Telephone 01-211 5512). Distribution enquiries 01-212 4944.