

**Report to:** Lead Cabinet Member for Transport and Environment

**Date of meeting:** 20 March 2017

**By:** Director of Communities, Economy and Transport

**Title:** Issuing of Penalty Charge Notices (PCNs) by post

**Purpose:** To consider the option of issuing postal (or Regulation 10 Penalty Charge Notice's) for parking contraventions where the vehicle has been driven away before the Penalty Charge Notice can be issued

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**RECOMMENDATION:** Lead Member is recommended to authorise the use of the powers in the Traffic Management Act 2004 and regulations made under it for the enforcement by the County Council of Regulation 10 Vehicle Drive Away Penalty Charge Notices from 1 April 2017.

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## **1 Background information**

1.1 The County Council's parking team frequently receive complaints about parents stopping on school keep clear markings for short periods of time. Drivers will often park in contravention in the knowledge that a civil enforcement officer (CEO) generally takes a couple of minutes to issue a penalty charge notice (PCN) and affix the same to the windscreen. This is supported by the number of vehicles moved on by CEO's on school visits in 2016 see Appendix 1 - CEO school visit report for vehicle drive away (VDA). Currently the PCN is not enforceable unless it is affixed to the vehicle or handed to the driver.

1.2 The Traffic Management Act 2004 enables enforcement authorities to pursue 'vehicle driven away' through the service of a postal PCN. Regulation 10 of The Civil Enforcement of Parking Contraventions (England) General Regulations 2007 gives powers to an enforcement authority to serve a PCN by post; full details can be found in Appendix 2. Such a situation could arise when a CEO had begun to prepare a PCN for issue, but the vehicle was driven away before the CEO had finished preparing the PCN or had served it.

1.3 When a Regulation 10 PCN is issued, the PCN is sent to the registered keeper using the details supplied by the Driver Vehicle Licence Agency. The PCN would also serve as the Notice to Owner (NtO) with details of how to pay or make a formal challenge, or representation, to the notice.

1.4 The parking team also receive complaints about vehicles parking on single and double yellow lines or where a driveway is blocked. There are a number of permitted exemptions for parking in such a location, and a CEO is required to carry out evidence based observations to demonstrate these exemptions are not relevant. This means that a PCN could only be served under Regulation 10 after these observations are complete.

## **2 Supporting information**

2.1 If a vehicle is seen parked in contravention a CEO will start to gather the required evidence and issue a penalty charge notice. This process usually takes two minutes to complete. The driver of the vehicle is usually nearby and will often return to the vehicle and drive away as soon as they see a CEO, leaving no choice for the CEO but to void the PCN.

2.2 A CEO would need to record sufficient evidence to prove a contravention before been able to issue a postal PCN, including taking photographs. This will not eliminate all vehicles currently recorded as 'vehicle driven away' (VDA). However, the adoption of the power to issue Regulation 10 PCNs to vehicles seen to be parked on a school keep clear restriction would reduce the number of PCNs evaded in this way. This is because the only evidence required in such a case is a

photograph of the vehicle parked on the restriction and the notification to the driver that a PCN is being issued.

2.3 All CEO's will have to complete a training course at no additional cost, before being authorised to issue postal PCN's. Part of the course would be to make sure that the CEO offers the driver the opportunity to wait for the PCN to be printed. They would then need to advise the driver that if they did not wait for the PCN to be printed, it would be sent via post. The CEO's will be trained on when the PCN becomes valid, and what evidence would need to be collected, including photographs of the vehicle in contravention and any additional photographs of signage. If the vehicle is driven away before the PCN can be issued then photographs would need to be taken of the area where the vehicle was parked.

2.4 The problem of parents parking in contravention to drop their children off at school on the keep clear markings is frequently reported across the county. The parking team receive many complaints from Councillors and parents about the impact this inconsiderate parking has on the safety of the children attending the school. The extent of the problem is demonstrated by the number of vehicles moved on from outside of schools each month in reports collated by CEO's on the current school visits. Drivers have become complacent of the parking restrictions in the knowledge that they will be asked to move the vehicle prior to a PCN being issued. It is felt that the ability to issue postal PCNs will have a positive effect on reducing this and further improve safety outside schools.

2.5 All other current processes will still apply after the PCN has been issued. The registered keeper will have the ability to pay at the discounted amount or make a challenge when mitigating factors will be considered.

### **3 Conclusion and Reasons for Recommendation**

3.1 It is considered that having the facility to issue Regulation 10 PCNs would have a positive effect on the CEO's ability to enforce parking restrictions and reduce the number of vehicles parking on school keep clear restrictions.

3.2 It is recommended that the introduction of Regulation 10 PCNs is approved and should commence when all necessary training has been completed and after a detailed letter explaining the new process has been sent to the schools so they are able to advise their parents and guardians of the new action that will be undertaken.

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### LOCAL MEMBERS

All

### BACKGROUND DOCUMENTS

None

## Appendix 1

### EASTBOURNE

### CEO School Visit 2016

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
VDA	157	86	169	103	115	98	71	0	121	80	98	107	1205
PCN	11	9	11	3	13	3	1	0	18	14	3	6	92
Visits	39	34	35	30	36	32	26	0	41	33	46	32	384

### LEWES

VDA	50	21	57	80	66	70	20	0	34	39	89	45	571
PCN	1	3	2	2	2	5	7	0	0	0	3	1	26
Visits	58	33	34	31	39	36	27	0	31	22	44	26	381

### HASTINGS

VDA	101	79	96	60	91	78	68	0	89	87	98	99	946
PCN	15	14	8	6	3	17	8	0	8	10	3	10	102
Visits	36	31	33	29	37	37	29	0	33	28	46	28	367

- VDA - Vehicle Drive Away  
PCN - Penalty Charge Notice  
Visits - Total number of school visits undertaken

## Appendix 2

### Traffic Management Act 2004

#### Section 78 Notification of penalty charge

- (1) The Lord Chancellor may make regulations for and in connection with the notification of penalty charges.
- (2) The regulations may provide for notification of a penalty charge to be given in respect of a stationary vehicle—
  - (a) by a notice affixed to the vehicle,
  - (b) by a notice given to a person appearing to be in charge of the vehicle, or
  - (c) in such other manner as may be specified by the regulations.
- (3) The regulations may provide for notification of a penalty charge otherwise than in respect of a stationary vehicle to be given in such manner as may be specified by the regulations.
- (4) The regulations may not confer power to stop vehicles.
- (5) The regulations may provide that, if it appears to the enforcement authority that both the operator of a vehicle and the person in control of the vehicle are liable to a penalty charge, they may give notice to the operator requiring him to provide them with the name and address of the person who was in control of the vehicle at the time of the alleged contravention.
- (6) The regulations may include provision creating criminal offences to be triable summarily and punishable with a fine not exceeding level 5 on the standard scale or such lower amount as may be specified

### The Civil Enforcement of Parking Contraventions (England) General Regulations 2007

#### Penalty charge notices — service by post

- 10.—**(1) An enforcement authority may serve a penalty charge notice by post where—
- (a) on the basis of a record produced by an approved device, the authority has reason to believe that a penalty charge is payable with respect to a vehicle which is stationary in a civil enforcement area;
  - (b) a civil enforcement officer attempted to serve a penalty charge notice in accordance with regulation 9 but was prevented from doing so by some person; or
  - (c) a civil enforcement officer had begun to prepare a penalty charge notice for service in accordance with regulation 9, but the vehicle concerned was driven away from the place in which it was stationary before the civil enforcement officer had finished preparing the penalty charge notice or had served it in accordance with regulation 9,
- and references in these Regulations to a “regulation 10 penalty charge notice” are to a penalty charge notice served by virtue of this paragraph.

(2) For the purposes of paragraph (1)(c), a civil enforcement officer who observes conduct which appears to constitute a parking contravention shall not thereby be taken to have begun to prepare a penalty charge notice.

(3) A regulation 10 penalty charge notice shall be served on the person appearing to the enforcement authority to be the owner of the vehicle involved in the contravention in consequence of which the penalty charge is payable.

(4) Subject to paragraph (6), a regulation 10 penalty charge notice may not be served later than the expiration of the period of 28 days beginning with the date on which, according to a record produced by an approved device, or information given by a civil enforcement officer, the contravention to which the penalty charge notice relates occurred (in these Regulations called “the 28-day period”).

## SCHEDULE

### PENALTY CHARGES NOTICES

#### **Contents of a regulation 10 penalty charge notice**

2. A regulation 10 penalty charge notice, in addition to the matters required to be included in it by regulation 3(4) of the Representations and Appeals Regulations, must state—

(a) the date of the notice, which must be the date on which it is posted;

(b) the matters specified in paragraphs 1(b), (c), (d), (f) and (i);

(c) the grounds on which the enforcement authority believes that a penalty charge is payable;

(d) that the penalty charge must be paid not later than the last day of the period of 28 days beginning with the date on which the penalty charge notice is served;

(e) that if the penalty charge is paid not later than the applicable date, the penalty charge will be reduced by the amount of any applicable discount;

(f) that if after the last day of the period referred to in subparagraph (d)—

(i) no representations have been made in accordance with regulation 4 of the Representations and Appeals Regulations; and

(ii) the penalty charge has not been paid,

the enforcement authority may increase the penalty charge by the amount of any applicable surcharge and take steps to enforce payment of the charge as so increased;

(g) the amount of the increased penalty charge; and

(h) that the penalty charge notice is being served by post for whichever of the following reasons applies—

(i) that the penalty charge notice is being served by post on the basis of a record produced by an approved device;

(ii) that it is being so served, because a civil enforcement officer attempted to serve a penalty charge notice by affixing it to the vehicle or giving it to the person in charge of the vehicle but was prevented from doing so by some person; or

(iii)that it is being so served because a civil enforcement officer had begun to prepare a penalty charge notice for service in accordance with regulation 9, but the vehicle was driven away from the place in which it was stationary before the civil enforcement officer had finished preparing the penalty charge notice or had served it in accordance with regulation 9.

**3.** In paragraph 2 for the purposes of subparagraph (e) the “applicable date” is—

(a)in the case of a penalty charge notice served by virtue of regulation 10(1)(a) (on the basis of a record produced by an approved device), the last day of the period of 21 days beginning with the date on which the notice was served;

(b)in any other case, the last day of the period of 14 days beginning with that date.