

## Report of the Strategic Director of Place to the meeting of Executive to be held on 1 February 2022

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**Subject:**

**AY**

Adoption of Part 6 of the Traffic Management Act 2004 (Enforcement of Moving Traffic Offences)

### **Summary Statement:**

Regulations to enact the powers described under Part 6 of the Road Traffic Management Act 2004 relating to civil enforcement of moving traffic offences are to be considered by parliament early in 2022. These regulations will provide local authorities the ability to apply to the Department for Transport for a Designation Order to take on responsibility for certain types of moving traffic offences, mirroring the powers which have been available to London authorities.

This report seeks Executive's endorsement to progress with an application to the Department for Transport for the adoption of these powers at the earliest possible opportunity and sets out the potential scope of such powers, the pre-requisite arrangements necessary to secure a Designation Order, initial proposals for the operation of the enforcement of restrictions and the benefits to residents of such powers.

### **EQUALITY & DIVERSITY**

The public sector equality duty in Section 149 of the Equality Act 2010 applies to the Council in the exercise of this function.

An initial Equality Impact Assessment has been undertaken on the functions described in this report and has identified no impact on people who share a protected characteristic more than those who do not.

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**Portfolio:**

Regeneration, Planning & Transport

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**Overview & Scrutiny Area:**

Regeneration & Environment

## **1. SUMMARY**

- 1.1 Regulations to enact the powers described under Part 6 of the Road Traffic Management Act 2004 relating to civil enforcement of moving traffic offences are to be considered by parliament early in 2022. These regulations will provide local authorities the ability to apply to the Department for Transport for a Designation Order to take on responsibility for certain types of moving traffic offences, mirroring the powers which have been available to London authorities.
- 1.2 The Department for Transport placed a call for Expressions of Interest in the adoption of such powers by local authorities in November 2021 and, like its West Yorkshire partners, the Council expressed an interest in taking on these powers once the necessary Regulations had been approved by Parliament.
- 1.3 This report seeks Executive's endorsement to progress with an application to the Department for Transport for the adoption of these powers at the earliest possible opportunity and sets out the potential scope of such powers, the pre-requisite arrangements necessary to secure a Designation Order, initial proposals for the operation of the enforcement of restrictions and the benefits to residents of such powers.
- 1.4 Significant preparatory work, as set out in this report, is necessary to meet the Government's pre-requisite requirements for application for a Designation Order. It is anticipated that such work will take eight months to complete and includes identification and assessment of sites for enforcement, a public consultation exercise on the proposals and potential upgrades to restriction signing and road markings at enforcement sites. This work would require the Council to allocate an appropriate development budget for the introduction of MTE which could be recovered from future income of PCNs generated.

## **2. BACKGROUND**

- 2.1 A set of Regulations giving effect to the Part 6 of the Traffic Management Act 2004 ("the 2004 Act") are planned to be laid before Parliament in late January 2022. This section of the Act deals with the enforcement of moving traffic offences by local authorities outside of London. Subject to parliamentary approval these powers are expected to come into force by the end of March 2022. After this date, local authorities can apply to the Secretary of State for a Designation Order for locations within their district where they would like to adopt enforcement of moving traffic offences via camera or observation methods. Applications can be made to the Department for Transport (DfT) from the beginning of February 2022 with the first Designation Orders being confirmed by late-spring 2022.
- 2.2 The 2004 Act does not prescribe the list of traffic signs and road markings subject to moving traffic enforcement (MTE) under the Regulations on a selective basis, therefore all the prescribed signs and road markings will apply under the Designation Order, i.e. the Council could enforce contraventions of:
  - a) Yellow box junction markings;
  - b) Banned vehicle movements (No Entry, No Left/Right Turn etc);

- c) HGV bans;
- d) Motor vehicle prohibitions;
- e) One Way Streets; and
- f) Double white line markings.

The Council will have to clearly articulate which of these restrictions it is proposing to enforce at each proposed location as part of its justification for the introduction of civil enforcement of moving traffic offences. It is worth noting that the Part 6 powers do not enable enforcement of speed limits which would remain solely the responsibility of the West Yorkshire Camera Partnership and West Yorkshire Police.

- 2.3 MTE powers are intended to allow local authorities to proactively enforce contraventions of restrictions at known problem sites rather than requiring enforcement of all contraventions throughout the district. The application guidance is explicit that only problem areas can be targeted after assessment of the site and the implementation of other reasonable measures has been considered, delivered or discounted; this survey and assessment would be carried out via the Council's traffic engineering teams.
- 2.4 Enforcement of restrictions would then rely on observation of the contravention via CCTV or type approved enforcement cameras. As this arrangement closely mirrors the operational arrangement already existing for bus lane enforcement it is envisaged that Parking Services take operational responsibility for enforcement. Identification of sites for MTE will be designated to the Traffic Manager who will be responsible for ensuring that the Part 6 powers are used in conjunction with the Part 2 powers (Network Management Duty) to ensure the safe operation of the highway.
- 2.5 Extensive upgrades to the Council's on-street fibre network and cameras has already taken place through the delivery of the Clean Air Zone and this uniquely places Bradford in the position of being able to rapidly deploy enforcement cameras (or utilise its CAZ camera network) to provide coverage of the outer ring road and many of the city centre junctions which frequently experience contraventions of traffic restrictions. More widely throughout the district utilisation of the Council's fibre optic network backbone allows sites to be added to the enforcement network over a longer timeframe at significantly reduced cost.
- 2.6 To make the formal application to the Secretary of State for a Designation Order the Council will be required to provide evidence that it has:
  - a) Consulted the appropriate Chief Officer of the Police;
  - b) Carried out a minimum six-week public consultation on the detail of planned civil enforcement of moving traffic contraventions setting out the types of restriction to be enforced and the locations of enforcement within the district and that this has continued up to the start of enforcement and for a reasonable period thereafter;
  - c) Considered all objections raised through consultation and has taken such steps as the Council considers reasonable to resolve any disputes;
  - d) Ensured all moving traffic restrictions to be enforced are underpinned by accurate Traffic Regulation Orders, and indicated by lawful traffic signs and road markings; and

- e) Ensure all the relevant equipment has been certified by the Vehicle Certification Agency specifically for use in enforcement of moving traffic contraventions.

### **3. OTHER CONSIDERATIONS**

- 3.1 Once local authorities have been granted a Designation Order for MTE any future expansion of the initial list of enforcement sites does not need to be subject of a separate application to the DfT for modification of the Designation Order. However, before any future enforcement sites can be added to the enforcement network Statutory Guidance will require local authorities to take the same steps as those set out in the application process before MTE can commence. The Council therefore have the opportunity to expand their enforcement network in the future should other sites where contravention of regulations be identified by the Council's Traffic Manager.
- 3.2 Statutory Guidance will also require local authorities to promote compliance by helping motorists understand the seriousness of moving traffic contraventions, for a period of six months following implementation of MTE, at each particular camera location. During this period first time contraventions of a moving traffic offence must be dealt with by issuing a warning notice rather than PCN. The warning notice should set out the six-month period and advise that any further moving traffic contravention during this period, at the same location, will result in the issue of a PCN. This arrangement would need to operate at any future sites added to the network after the initial Designation Order has been approved.
- 3.3 As part of the preparatory work for the application a public consultation on the Council's intention to make an application to the DfT must be undertaken for a minimum period of six weeks'. This consultation should include details of the types of restrictions to be enforced and the location(s) in question where the Council will be enforcing these. The consultation will not be about seeking views on the principle of moving traffic enforcement or whether or not people agree with the Council making an application for such powers, rather for communicating the rationale for, and benefits of, moving traffic enforcement to residents and businesses and allowing them the opportunity to raise any concerns.

### **4. FINANCIAL & RESOURCE APPRAISAL**

- 4.1 Development of proposals to support an application to the Secretary of State for a Designation Order requires additional financial resources to cover such initial expenditure as:
  - a) Professional technical resources to undertake assessments of potential enforcement sites,
  - b) Funding to update any Traffic Regulation Orders or replace inaccurate, poorly maintained lawful traffic signs and road markings,
  - c) Pre-enforcement monitoring surveys of identified sites, and
  - d) An effective communication and engagement campaign.

A high level programme of activities for the development of the application evidence has been prepared in order to identify financial and resource requirements of the development the Designation Order application. Key programme milestone dates

based upon this programme are shown in the table below:

<b>Programme Activity</b>	<b>Milestone Completion Date</b>
Site Identification, survey and assessment work	11 April 2022
6 Week Public Consultation on adopting Part 6 Powers	18 April 2022 - 27 May 2022
Chief Police Officer Consultation	23 May 2022
Lining and signing maintenance works and installation of enforcement camera infrastructure	12 August 2022
Submission of Application for Designation Order	15 August 2022
Designation Order confirmation & Start of Enforcement	7 November 2022
Initial 6-Months' Enforcement Exemption Period Ends	9 May 2023

Resources to carry out the initial Site Identification, survey and assessment work can be provided from within existing staff resources with subsequent activities resourced through the use of a combination of internal and external resources as needed. Resources from the Neighbourhoods Service (Parking Services) would be co-opted to the development project to ensure that arrangements for enforcement of restrictions can be appropriately developed prior to the submission of the application for a Designation Order.

4.2 To fund the preparatory work for the Designation Order, the initial roll out of enforcement cameras and maintenance of signs and lines at enforcement sites an estimated budget of £324,000 has currently been identified. The operation of Part 6 Enforcement will be self-financing in future years' providing a net surplus of revenue from Penalty Charge Notice ('PCN') fines which are generated. Under legislation this income must be invested in accordance with the provisions set out in Section 55 of the Road Traffic Regulation Act 1984. Repayment of the identified establishment budget is expected to be possible within the first 18 months of operation of the scheme (allowing for the six-month grace period set out in paragraph 3.2 above). The permitted areas for utilisation of the PCN income include (in order of priority):

- a) The costs of implementation, operation and development of the scheme;
- b) Provision and maintenance of off-street parking;
- c) Costs incurred for public transport purposes;
- d) Road improvements;
- e) Environmental improvements;
- f) Other Authority Business.

## **5. RISK MANAGEMENT & GOVERNANCE ISSUES**

5.1 Work on the preparation of the application to the DfT will be overseen by a dedicated Project Board comprising officers from Highways Services and Parking Services that will meet on a monthly basis reporting to the Highways Services Manager.

5.2 A detailed risk and issues log will be developed as part of the pre-application work stage considering risks at an application level as well as at a site-by-site level. This log will be maintained both throughout the development of the application and initial stages of enforcement of restrictions.

## **6. LEGAL APPRAISAL**

- 6.1 The work identified in this report can be implemented through the Council's role as Highway and Traffic Authority.
- 6.2 The forthcoming Regulations will bring together the existing civil enforcement regimes for parking and bus lane contraventions alongside the new moving traffic enforcement powers. All local authorities already undertaking civil enforcement of parking contraventions and bus lane contraventions will therefore need to ensure that their IT systems reflect the regulations below in their Penalty Charge Notices (PCNs) and other statutory notices with effect from 31 March 2022. PCNs and other statutory notices sent to members of the public after this date should not make reference to the old 2007 regulations.
- a) The Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022.
  - b) The Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022.

Statutory response times in respect of representations and appeals against bus lane PCNs will be aligned with those existing for civil parking enforcement.

## **7. OTHER IMPLICATIONS**

### **Sustainability Implications**

- 7.1 There are no apparent sustainability implications arising from matters considered in this report.

### **Greenhouse Gas Emissions**

- 7.2 None arising from the contents of this report.

### **Community Safety Implications**

- 7.3 As the Highway Authority the Council has a statutory duty to protect the rights of its citizens to the safe use and enjoyment of the highway.
- 7.4 Inconsiderate driving which contravenes signed restrictions on the network can interfere with this enjoyment to varying degrees depending on the user impacted by the action of the transgressor and the nature of the restriction being contravened. At its most extreme contravention of measures designed to keep users of the network safe can lead to serious injury, or death, of a road user. By adopting the MTE powers the Council has the opportunity to ensure that the temptation to contravene restrictions set out in paragraph 2.2 above is reduced and hence the safety of the network is improved for all users, including children and the most vulnerable users.

### **Human Rights Act**

- 7.5 There are no direct Human Rights implications arising from the contents of this report.

## **Trade Union**

- 7.6 Introduction of the additional MTE powers into the Council is not anticipated to raise any trade union issues. However, if changes are required to existing staff structures, or job profiles, as a result of the adoption of these powers consultation with staff and unions affected would take place.

## **Ward Implications**

- 7.7 Adoption of the MTE powers will initially be limited to areas where appropriate communications network already exists and existing cameras can either be repurposed or new cameras installed with little advance work. As such the areas which will be amongst the first to benefit from the MTE powers will be limited to those wards which have an existing fibre or wireless mesh network in existence. However, it is recognised that the problem of moving traffic contraventions is district wide and therefore it would be a longer-term aim that all areas of the district would be able to benefit from these powers.
- 7.8 Individual ward councillors will be consulted on any proposed locations with persistent moving traffic contraventions which may benefit from moving traffic enforcement as work on site identification progresses. Members will also be invited to recommend additional sites for consideration based upon their local knowledge of driving behaviour in their wards.

## **Implications for Children and Young People**

- 7.9 There are no corporate parenting issues arising as a consequence of this report.

## **Issues Arising from Privacy Impact Assessment**

- 7.10 As the Council already enforce violations of bus lanes through the use of ANPR and CCTV cameras the enforcement of moving traffic violations proposed under Part 6 does not require an additional privacy impact assessment as the nature of data captured and its processing follow the exact same process as set out in the current PIA for bus lane enforcement.

## **8. NOT FOR PUBLICATION DOCUMENTS**

- 8.1 None.

## **9. OPTIONS**

- 9.1 Executive could choose to support the recommendations set out within this report in relation to the adoption of MTE powers which would allow an application to be made to the DfT at the earliest opportunity.
- 9.2 Alternatively, Executive may wish not to proceed with the application for these powers at this time.

## **10. RECOMMENDATIONS**

- 10.1 That Executive endorse the preparation of an application to the Department of Transport for the preparation of a Designation Order to confer the powers under Part 6 of the Traffic Management Act 2004.
- 10.2 That Executive approve consultation of initial details for enforcement of moving traffic contraventions in accordance with the timescales set out within this report and the Application Guidance.
- 10.3 That authority be delegated to the Strategic Director of Place, in consultation with the Portfolio Holder, to:
- a) manage the development of the initial list of sites and types of restriction which are to be subject to MTE as appropriate.
  - b) as may be required, secure the procurement of specialist external services having regard to the Council's Contract Standing Orders and national procurement legislation in order to support the development of the application to the DfT for a Designation Order and to support the introduction of MTE in Bradford.
  - c) to make any necessary modifications to the initial proposals consulted upon in order to resolve objections raised and resolve any disputes.
  - d) make submission of an application for preparation of a Designation Order for Bradford having being satisfied that all necessary pre-requisite requirements of the DfT Advice Note have been complied with.
  - e) approve any and all future expansion proposals of the enforcement network which may be recommended by the Council's Traffic Manager subject to demonstration that all necessary pre-requisite requirements of the DfT Advice Note have been complied with.
- 10.4 That Executive note the need for a development budget for the preparation of the application for the Designation Order and the arrangements which are permitted under Section 55 of the Road Traffic Regulation Act 1984 for the recovery of this initial budget following introduction of moving traffic enforcement powers.
- 10.5 That authority be delegated to the Strategic Director of Place and Director of Finance, in consultation with the Portfolio Holder, to agree annually the allocation of proceeds from the issue of PCNs in accordance with the hierarchy set out in Section 55 of the Road Traffic Regulation Act 1984.

## **11. APPENDICES**

- 11.1 None.

## **12. BACKGROUND PAPERS**

- 12.1 Q&A for Local Authorities on Part 6 Powers, Traffic & Technology Division, Department



for Transport, December 2021.

- 12.2 Advice Note on Apply for a Designation Order for Civil Enforcement of Moving Traffic Contraventions, Traffic & Technology Division, Department for Transport, August 2021.