

Rudy Bright, Head of Parking
London Borough of Camden
Camden Town Hall
Judd Street
London
[WC1H 9JE](#)
Phone: 020-7278 4444
16th April 2008

Dear Mr. Bright

NOTICE TO LONDON BOROUGH OF CAMDEN TO SUSPEND CIVIL PARKING ENFORCEMENT FORTHWITH

TRAFFIC MANAGEMENT ORDERS

It had been brought to my attention that the London Borough of Camden's Traffic Management Orders have not been brought up to date to ensure compliance with the Traffic Management Act 2004 which came into force on 31st March 2008 repealing the provisions previously contained in the 1991 Road Traffic Act.

In a conversation regarding LB Camden's Traffic Management yesterday (15.04.08) with London Borough of Camden's Adriano Rally he stated that the Waiting and Loading Orders were not being amended. If that is the case then the TMO supplied to me previously by Adriano Rally contains the following extract:

TRAFFIC MANAGEMENT ORDER	
1993 / No.50	(As amended)
<hr/> THE CAMDEN (WAITING AND LOADING RESTRICTION) (Special Parking Area) ORDER 1993. <hr/>	
MADE ON 24th November 1993.	
COMING INTO FORCE ON 6th December 1993.	
<hr/> ARRANGEMENT OF ARTICLES <hr/>	
PART IV ADDITIONAL PROVISIONS	
Power to suspend the use of a motor cycle parking area	11
Duty to move on	12
Restrictions on methods of loading or unloading vehicles	13
Restriction on street trading	14
Restriction on advertising	15
<u>Manner of standing for excepted and exempted vehicles</u>	16
<u>Contraventions under the Road traffic Act 1991</u>	17
(b) there were added as Article 17 to that Order, the Article set out below:- (Added 07/27)	
<u>Contraventions under the Road traffic Act 1991</u>	
17.	If any vehicle whilst waiting in a restricted street does not comply with the provisions of this order a contravention shall be deemed to have occurred and a penalty charge shall be payable. A penalty charge notice showing the information required by the Road Traffic Act 1991 may then be issued by a parking attendant in accordance with the requirements of the Road Traffic Act 1991.
Dated this twenty-fourth day of November 1993.	
Jeremy Smith - Chief Executive	

That being the case an appellant requesting a copy of the Traffic Management Order would find that you were citing legislation no longer in force, and therefore LB Camden would have no legal authority to issue Penalty Charge Notices.

This seems at odds with The Camden (Parking Places) (Traffic Management Act Variation) Traffic Order 2008 which, by amending the current parking orders introduces Traffic Management Act 2004 powers and reference to Civil Enforcement Officers instead of Parking Attendants.

However, this does not come into force until 18th April 2008 instead of the required 31st March 2008 having the effect that there has been no valid Traffic Management Order in force to issue under TMA 2004.

Therefore, please confirm that ALL paid Penalty Charge Notices (31st March 2008 - present) issued before The Camden (Parking Places) (Traffic Management Act Variation) Traffic Order 2008 comes into force will be refunded, and confirm that all pending PCNs issued under the same Order will not be enforced.

With regard to waiting and loading restrictions can you also confirm that enforcement will be suspended until an Amendment Order is made to vary the existing Orders to take into account the changes brought in by the Traffic Management Act 2004 and references to the 1991 Road Traffic Act are removed.

To assist you in your decision to suspend enforcement (and to alert elected members and other interested parties as to the fact) I have included a number of extracts:



**Minutes of London Regional Group Meeting,
LB Camden; St Pancras Town Hall
Thursday, 10 January 2008 at 10.00 am**

- 18** Most importantly to ensure that all enforcement is based on legal documentation and signs – TMO's (TRO's), signs etc.
- 27** The recently circulated document can be shared with service providers, contractors etc. but is not on the DfT website. It will have an index and be checked for plain English.
- MW specifically referred to TMO's that refer to enforcement provisions – which is unnecessary. MW has discovered that many TMO's are written in a way that makes matters over complex. LAs are encouraged to review all their TROs.



Realising Excellence in Civil Parking Enforcement
A Guide to the interpretation of Traffic Management Act 2004 PT6
and associated Regulations and Guidance.

Frequently Asked Questions:

Q. Do I have to change my TROs (TMO in London)?

A. Ordinarily this should not be necessary as most changes are being introduced by statute and these will have transition arrangements included.

Where Councils have made reference to matters such as the level of the penalty charge, then it may be desirable to amend TROs to remove these references. If this is the case, then a single amendment order should suffice. **Any reference to the 1991 Act or to parking attendants should be changed or, if possible, removed**

Q. What should I do with my existing TROs?

A. It is important to review all TRO to ensure that they remain compliant with the requirements of the TMA 2004. **All references to RTRA 1991, parking attendants and the like should be removed.**

TRO and Parking Places Orders should not concern themselves with the methods and consequences of enforcement but accurately describe the regulations or controls being imposed only. The civil enforcement of those regulations and controls is set out in RTA 1991 and now TMA 2004

Comment: Best practice suggests that it is unwise to include in any TRO matters which are set out or varied by statute. TROs should concern themselves only with local terms and conditions. This reduces the need to update TROs when statutes change.

Q. Is there a benefit in reviewing my TROs now or can I wait until after 31st March?

A. **You must ensure that your TROs do not contain information which may cause conflicts with the new penalties and enforcement situation introduced by TMA 2004.** You may have an opportunity to take advantage of the 'fast track' provisions of the Traffic Orders Procedure Regulations 1996 for these minor and consequential amendments which do not alter the substance of the TRO.

Q. What does Operational Guidance say about reviewing TROs, signage and road markings?

A. **Comment:** There should be a regular programme of review and appraisal. It may be necessary to undertake an initial and thorough review if this has not previously been normal practice.

Furthermore, Transport Minister Rosie Winterton was recently quoted as saying that there were '*no excuses for local authorities not being ready. They have had two years to prepare.*'

Further information on what authorities should do in relation to their obligations with regard to their Traffic Orders and signs and lines is

contained in the Operational and Statutory Guidance to the Traffic Management Act 2004.

Extracts are shown below from :

[Operational Guidance to Local Authorities:
Parking Policy and Enforcement TMA 2004](#)

Chapter 13.10

“authorities should identify the changes needed to comply with the Traffic Management Act 2004.”

Annex F

F1 *“The foundation of an effective parking enforcement regime is lawful and up-to-date Traffic Regulation Orders”*

F32 *“ The review (of TRO / TMOs) should check whether the restrictions indicated by the signs and the road markings are the same as indicated by the Order.”*

F33 *“Parking controls that are not backed by valid TROs / TMOs may be unenforceable and it is likely that any appeals against PCNs will succeed where TROs / TMOs are not valid.”*

[Statutory Guidance to Local Authorities on the Civil Enforcement of
Parking Contraventions](#)

(III) Issues to consider before starting to use CPE powers

“all TROs, traffic signs and road markings are in compliance with legal requirements and the traffic signs and road markings are consonant with the orders”

32 *“ ... Flawed orders may be unenforceable and can damage both the aims of CPE and the public perception of how it is managed.”*

What an authority should do before taking on parking enforcement power

- 13.10** As part of their appraisal of TROs, authorities should identify the technical changes needed to comply with the Traffic Management Act 2004. For example, amendments will be needed to reflect the switch from traffic offence provisions to the new system of penalty charges and civil liabilities. Existing on-street and off-street parking orders will need to be amended to reflect the removal of 'initial' and 'excess' parking periods. Ideally this changeover should be when CPE comes into force. If this is not possible, authorities may include a provision, valid for no more than three months from the introduction of CPE, so that CEOs can serve a penalty charge when the excess charge flag or display is showing. They may need to make similar provision in off-street car park orders where parking meters are used. This will give them time to replace obsolete 'excess charge' indicators on parking meters.

ANNEX F

Appraising Traffic Regulation Orders (TROs) and Traffic Management Orders (TMOs)

- F1** The foundation of an effective parking enforcement regime is lawful and up-to-date Traffic Regulation Orders (TROs). In London, these are called Traffic Management Orders (TMOs) and can be made for a slightly wider range of purposes. The Road Traffic Regulation Act 1984 gives local traffic authorities wide powers to make TROs or TMOs on the roads for which they are responsible. The Secretary of State has similar powers for trunk roads.

Procedure for making permanent and experimental TRO/TMOs

- F23** The procedures for making permanent and experimental TROs/TMOs (that is, including those made under sections 1,6,9, 32 and 45 of the RTRA) are set out in the Local Authorities' Traffic Orders (Procedures) (England and Wales) Regulations 1996.

Publicity

- F25** Before making a permanent order, the traffic authority **must** publicise the proposals by publishing them as follows:
- a notice of intention to make the order in the local press and by such other means it considers appropriate (for example, roadside notices and letters to premises);
 - a period of at least 21 days must be allowed for objections to the consultation and notice to be made.

Review of TRO/TMOs before adoption of CPE powers

- F32** The traffic authority should review all existing TRO/TMOs before adopting CPE powers and consider how they should change to meet its parking policy objectives. The review should check whether the restrictions indicated by the signs and road markings are the same as those authorised by the order. The Secretary of State **will not** sign an Order granting CPE until the local authority has confirmed in writing that:
- it has completely reviewed the Traffic Regulation Orders (TROs), traffic signs and road markings within its entire proposed Civil Enforcement Area/Special Enforcement Area in order to highlight any deficiencies;
 - it has rectified any deficiencies highlighted as part of this review;
 - as a result of this work all TROs, traffic signs and road markings within the entire proposed CEA/SEA conform to the legislation, are consistent with one another and are in a good state of repair; and
 - this requirement extends to **all** TROs, traffic signs and road markings with no exceptions and therefore includes existing, new and replacement TROs, traffic signs and road markings.
- F33** Parking controls that are not backed by valid TRO/TMOs may be unenforceable and it is likely that any appeals against PCNs will succeed where TRO/TMOs are not valid.

Other changes to TRO/TMOs required before taking on CPE power

- F36** As part of their review of TRO/TMOs, local authorities should also identify the technical changes which would be needed to comply with the Traffic Management Act 2004. For example, amendments will be needed to reflect the switch from traffic offence provisions to the new system of penalty charges and civil liabilities. Existing on-street and off-street parking orders will need to be amended to reflect the removal of 'initial' and 'excess' parking periods.
- F39** Attention is drawn to regulations 21 of The Local Authorities' Traffic Orders (Procedures) (England and Wales) Regulations 1996, which dis-applies most of the normal consultation and making procedures for:
- 'consolidation' orders to re-enact existing provisions without any changes of substance other than those listed in Part 1 of Schedule 4 to the regulations; and
 - 'minor' orders in this context, also listed in Schedule 4.
- F40** The definition of 'minor' order is not being amended as a consequence of the Traffic Management Act and its subsidiary legislation. This is because TROs/TMOs should not contain matters covered by national legislation.

(III) Issues to consider before starting to use CPE powers

17. The detailed Operational Guidance sets out how an enforcement authority can apply for designation as a CPE area⁶. The key criteria on which DfT will be need to be satisfied are that
- the authority has reviewed its existing parking policies and analysed how CPE will contribute to overall transport objectives;
 - the authority has consulted as required and taken account of their views in finalising the application;
 - proposed penalty charges are proportionate to the scale of the traffic management issues facing the enforcement authority;
 - there is consistency with neighbouring schemes so that motorists and others affected can understand how it works; and
 - all Traffic Regulation Orders (TROs), traffic signs and road markings are in compliance with legal requirements and the traffic signs and road markings are consonant with the orders.
20. Any Special Parking Area that existed before commencement of the TMA 2004 automatically becomes an SEA¹⁰ but authorities should ensure that the public are aware of the new restrictions before starting enforcement.

(IV) 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**¹¹ 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 levels¹². 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 State¹³.

¹¹ TMA, Schedule 9 paragraphs 5 (Greater London) and 9 (outside Greater London).

¹² *Ibid.*

¹³ S.I. 2007/3487 (for outside London) and Section 284 of the Greater London Authority Act 1999 (for inside London).

¹⁴ S.I. 2007/3487, Schedule, Paragraph 1.

¹⁵ S.I. 2007/3487, Schedule, Table 1

¹⁶ S.I. 2007/3487, Schedule, Table 2

¹⁷ S.I. 2007/3487, Schedule, Table 4

(VI) Appraising CPE

31. The appraisal should take account of:
- existing and predicted levels of demand for parking;
 - the availability and pricing of on- and off-street parking places;
 - the justification for, and accuracy of, existing traffic orders;
 - the adequacy, accuracy and quality of traffic signing and road markings which restrict or permit parking within or outside a Controlled Parking Zone;
 - the level of enforcement necessary for compliance;
 - the levels of penalty charges;
 - the need to resource the operation effectively and ensure that all parking staff are appropriately trained; and
 - impact on traffic flow, i.e. traffic or congestion outcomes.
32. The appraisal should ensure that parking policies still apply at the right place and time. It is particularly important to check that the policies are properly underpinned by TROs that are valid, up-to-date and properly indicated with traffic signs and road markings. A parking contravention is often a breach of a provision of a TRO, which **must** have been made under the correct section of the Road Traffic Regulation Act 1984 (RTRA)¹⁸. Flawed orders may be unenforceable, and can damage both the aims of CPE and the public perception of how it is managed.

TRAFFIC SIGNS

In addition to the points raised above there are further matters which determine whether or not a Traffic Management Order is in force and this is dependent on the compliance of the traffic signs and road markings with the legal requirements, namely the Traffic Signs Regulations and General Directions 2002.

PARKING SPACES

It is my belief that the London Borough of Camden are aware that many of the borough's parking spaces (resident's bays, permit bays, meter bays, pay and display bays, loading bays etc) are unlawfully marked hybrids (ie. a combination of TSRGD 2002 Diagrams 1028.3/1028.4 and Diagram 1032). As such they cannot be enforced. It is my understanding that a small number of corrections of such bays have taken place (usually as a result of a motorist being aware that the restriction is unenforceable) and therefore enforcement should be suspended until the bay is marked in accordance with the legal requirements.

Please make available a full list of the areas of parking spaces currently identified as non-compliant, as due diligence would have required a review in advance of the introduction the new Camden (Parking Places) (Traffic Management Act Variation) Traffic Order 2008.

It would be hardly appropriate making an amendment to the parking places order if the parking places themselves were not checked in advance.

CONTROLLED PARKING ZONE ENTRY SIGNS

Furthermore, the Department for Transport have confirmed that the signs shown below (e-mail communications with the DFT also included) have not been specially authorised by the Secretary of State.

The London Borough of Camden will also be aware that such a sign is not prescribed in the TSRGD 2002 and is unlawful.

Therefore, please confirm that enforcement of the restrictions affected by the unlawful CPZ entry signs will be suspended until they are removed and replaced.

However, in advance of this please provide a full list and location plan of every 'combined 20mph / CPZ sign' currently located within the London Borough of Camden's boundaries.

From: "Neil Herron" <neil.herron@btconnect.com>
To: <john.munns@dft.gsi.gov.uk.readnotify.com>
Sent: 08 November 2007 12:32
Attach: DSC00387.JPG
Subject: Special Authorisation for Camden's CPZ Signs

John Munns
Department for Transport
Great Minster House
76 Marsham Street
London
SW1P 4DR

Fax: 020 7944 9643

8th November 2007

Dear Mr. Munns,

Can you please confirm whether the London Borough of Camden have requested, or been granted, Special Authorisation for the use of the combined 20mph / CPZ signs which appear to indicate that both restrictions are time controlled.

Yours sincerely,

Neil Herron

Parking Appeals Ltd.
Communications House
26 York Street
London
W1 6PZ



From: "John Munns" <John.Munns@dft.gsi.gov.uk>
To: "Neil Herron" <neil.herron@btconnect.com>
Sent: 08 November 2007 13:22
Subject: Re: Special Authorisation for Camden's CPZ Signs

We keep the L B Camden Parking authorisation file in the office and I can confirm no such sign has ever been authorised . Road safety division (who deal with speed limit signs) also confirm that they have not authorised such signs . I do not have any application to authorise such signs .

However on seeing the design I believe I had seen it very briefly before and expressed disapproval but do not recall anymore detail.

At this juncture it is perhaps necessary to remind you of the following:

Signs Must Be As Prescribed

The Government states that:

“The use on Public highways of non-prescribed signs which have not been authorised by, or on behalf of, the Secretary of State, is illegal. Authorities who so use unauthorised signs act beyond their powers.”

The Department for Transport states that:

“an authority provided with de-criminalised parking powers (and now civil enforcement powers) would be advised not to enforce defective lines and signs as they would invalidate the ticket issued”

Road Traffic Regulation Act 1984

§64

In this Act “traffic sign” means any object or device (whether fixed or portable) for conveying, to traffic on roads or any specified class of traffic, warnings, information, requirements, restrictions or prohibitions of any description—
specified by regulations made by the Ministers acting jointly, or
authorised by the Secretary of State, and any line or mark on a road for so conveying such warnings, information, requirements, restrictions or prohibitions.

Traffic signs shall be of the size, colour and type prescribed by regulations made as mentioned in subsection (1)(a) above except where the Secretary of State authorises the erection or retention of a sign of another character; and for the purposes of this subsection illumination, whether by lighting or by the use of reflectors or reflecting material, or the absence of such illumination, shall be part of the type or character of the sign.

The duty of a highway authority is clearly set out in section 65 of the Road Traffic Regulation Act:

§65

Subject to and in conformity with such general directions as may be given by the Ministers acting jointly, or such other directions as may be given by the Secretary of State, a highway authority may cause or permit traffic signs to be placed on or near any road in their area.
This section has a legislative margin noted stating – Powers and duties of highway authorities as to placing of traffic signs.

The Local Authorities’ Traffic Orders (Procedure) (England & Wales) Regulations 1996 S.I. No. 2489

Traffic signs

18.—(1) Where an order relating to any road has been made, the order making authority shall take such steps as are necessary to secure—

- (a) before the order comes into force, the placing on or near the road of such **traffic signs** in such positions as the order making authority may consider requisite for securing that adequate information as to the effect of the order is made available to persons using the road;
- (b) the maintenance of such signs for so long as the order remains in force; and

The Traffic Signs Regulations and General Directions 2002 S.I. No. 3113 (and 1994) at Regulation 11 also directs what a traffic sign can be:

Regulation 11 Traffic Signs Regulations and General Directions 2002.

Signs, markings and signals to be of the sizes, colours and types shown in diagrams.

(1) Subject to the provisions of these Regulations, a sign for conveying information or a warning, requirement, restriction, prohibition or speed limit of the description specified under a diagram in

Schedules 1 to 7, Part II of Schedule 10 and Schedule 12 to traffic on roads shall be of the size, colour and type shown in the diagram.

Traffic Signs Manual

Chapter 1 Traffic Signs Manual - Use of Non-prescribed 'Illegal' signs.

Part 3. Legal Aspects and Responsibilities for Signs

1.18 The use on Public highways of non-prescribed signs which have not been authorised by, or on behalf of, the Secretary of State, is illegal and Authorities who so use unauthorised signs act beyond their powers. Additionally, an unauthorised sign in the highway is an obstruction. The possible consequences of erecting or permitting the erection of obstructions may be severe and those responsible could lay themselves open to a claim for damages.....

1.20 Authorities should consider requiring the removal of any object or device erected privately on land adjacent to their roads which has the apparent or express intention of guiding, warning or directing road users. In addition, private advertisements should not resemble or incorporate prescribed traffic signs on their symbols. United Kingdom signs are Crown copyright and may not be reproduced without permission. In no circumstances will the Department permit the use of traffic signs on advertisements at roadside locations. When prescribed traffic signs are used illegally action should be taken to secure their removal.

Davies v Heatley [1971] R.T.R. 145

The Court found that if a sign has not been placed in accordance to statute and regulation, even if a sign is clearly recognisable to a reasonable man as being a sign of that kind if it does conform to regulations then no offence (or contravention) is committed

MacLeod v Hamilton [1965]

The Court found that if signs to indicate the effect of a "no waiting" order have not been erected or signs have been erected not conforming to regulations then no offence against the no waiting order is committed.

Therefore, and as a matter of urgency, please acknowledge receipt of this communication and confirm that ALL parking enforcement will be suspended immediately and action taken to remove unlawful signs and ensure that all Traffic Management Orders are brought into line to reflect the necessary legislative requirements.

If you intend to bring The Camden (Parking Places) (Traffic Management Act Variation) Traffic Order 2008 into force on 18th April 2008 as advertised please be aware that you can only do so where the restrictions are correctly signed, otherwise it will be temporarily out of force.

The Local Authorities' Traffic Orders (Procedure) (England & Wales) Regulations 1996 S.I. No. 2489

Traffic signs

18.—(1) Where an order relating to any road has been made, the order making authority shall take such steps as are necessary to secure—

(a) before the order comes into force, the placing on or near the road of such **traffic signs** in such positions as the order making authority may consider requisite for securing that adequate information as to the effect of the order is made available to persons using the road;

(b) the maintenance of such signs for so long as the order remains in force; and

Please confirm also that you will forward a copy of this communication to the following:

- The Leader of the Council of the London Borough of Camden
- All elected members of the London Borough of Camden
- Chief Executive of the London Borough of Camden
- Treasurer of the London Borough of Camden
- Head of the Legal Department of the London Borough of Camden
- Chief Executive NCP Services Ltd. and the Contracts Manager responsible for the enforcement of the London Borough of Camden's Civil Enforcement area

So that they are all fully aware of the implications of enforcing restrictions which do not comply with the law.

I have copied this communication in to other interested parties.

Please acknowledge receipt and confirm that action to suspend enforcement will be immediate and refunds will be made for all Penalty Charge Notices paid 31st March 2008 – present as a matter of urgency.

I appreciate the issue of restitution regarding matters arising from your non-compliant CPZ entry signs and unlawful bays will take a little longer to achieve.

I look forward to your response.

Yours sincerely,

Neil Herron

Parking Appeals Ltd.
26 York Street
London
W1U 6PZ

cc. Rosie Winteron, Minister of State for Transport
cc. Theresa Villiers, Conservative Shadow Minister for Transport
cc. Norman Baker, Lib Dem Shadow Minister for Transport
cc. Marilyn Waldron, Department for Transport
cc. John Munns, Department for Transport

cc. Oliver Mishcon, Barrister
cc. Franklin Price, Jeffrey Green Russell Solicitors
cc. Lord Lucas, Chairman London Motorists Action Group
cc. Mike Bracey, Brewery Logistics Group
cc. Edmund King, President AA
cc. John Crosk, Tradeteam
cc. Ian Collins, London Tonight / Talksport
cc. David Williams, London Evening Standard
cc. all elected members, London Borough of Camden