Provisional guidance on bus lane (including tramway) enforcement in England outside London
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1. Introduction

1.1. This guidance has three main objectives:

   a) To inform English local authorities outside London about the scope for them to set up and operate the civil enforcement of bus lanes (which includes tramways) under the provisions of the Transport Act 2000.

   b) To advise them how to apply to the Secretary of State for the necessary powers. In this guidance, the “Secretary of State” means the Secretary of State for Transport.

   c) To advise them on how to set up and operate an effective and efficient enforcement regime.

1.2. One of the key prerequisites for a local authority wishing to introduce civil enforcement of penalties for bus lane contraventions is that the local authority should have acquired (or applied for) civil (formerly known as decriminalised) parking enforcement (CPE) powers. This is to ensure that authorities are taking a comprehensive approach to enforcement. An authority cannot be approved for bus lane enforcement unless an order has been made designating all or part of its area as a permitted or special parking zone. There is little point in enforcing moving contraventions in a bus lane if parking is not tackled at the same time, and decriminalised parking enforcement has proved the most effective way of dealing with stationary offences. The processing arrangements for penalty charges will be similar in both cases.

1.3. This guidance should therefore be read in conjunction with Local Authority Circular 1/95 Guidance on Decriminalised Parking Enforcement outside London, as the introduction of bus lane enforcement mirrors and complements this in many ways. Circular 1/95 will be superseded by Statutory Guidance under the Traffic Management Act 2004 (TMA 2004) towards the end of 2006. This Guidance on bus lane enforcement will be superseded by Statutory Guidance under the TMA 2004 in due course.

2. The policy context

2.1. The 1998 White Paper *A New Deal For Transport* set out the key themes for an integrated transport policy. It was renewed and further developed in the 2004 White Paper *The Future of Transport*. One of the aims emanating from this policy is to give people a choice in how they travel, reducing dependence on the private car.

2.2. Public transport has a vital role to play in meeting this objective, giving people an alternative to the car. The bus must be a central part of any public transport system. In many towns and cities, quality partnerships between operators and local authorities have improved standards of bus services leading to increased patronage. Operators have provided new vehicles, with high standards of comfort and accessibility, not only benefiting people with disabilities, but also making the bus easy to use for people with children or shopping. Local authorities have provided traffic management schemes, to make the bus quicker and more reliable by getting through the other traffic which so often hinders them.

2.3. The Bus Partnership Forum, which brings together representatives of the bus industry, central and local Government, strongly supports bus priorities, in particular through contributing to the resource pack *Bus Priority: The Way Forward* which has been distributed to all local traffic authorities.

2.4. The Forum has identified punctuality as a major factor affecting bus use and has developed the concept of Punctuality Improvement Partnerships whereby operators and local authorities work together to remove obstacles to punctual services. Even where bus priority measures exist, their effectiveness is often reduced because of poor enforcement. This in turn makes it harder for local authorities to justify further bus priority measures.

2.5. This Guidance looks at how the enforcement of bus priority measures can assist in achieving the overarching objective of encouraging bus use.

2.6. In order to facilitate a viable bus service it is often necessary to regulate traffic on the route. One of the important lessons learnt from the Red Routes in London is the importance of having the correct traffic regulations in place and enforced at all points along the route. There is no point in introducing traffic management measures if they are not going to be enforced and compliance with regulations will only be gained if they are consistently and fairly enforced. In recent times, due to competing pressures and priorities, the police have not been able to provide the necessary level of consistent enforcement. This has lead to a situation where some motorists regard
some regulatory traffic signs as advisory rather than compulsory. Drivers and riders whose vehicles are banned from using bus lanes and other restricted areas of carriageway, but use them at banned times nevertheless, can cause delay to buses and frustration and resentment among those drivers complying with the regulations.

2.7. It is recommended that before introducing the civil enforcement of bus lanes, local authorities carry out consultation with the public and with stakeholder groups about their proposals, to ensure that they are well thought through and in line with the requirements of the population that the authority serves. It is recommended that this is done even if the authority is already carrying out decriminalised parking enforcement, although it may not need to be as detailed as in an area where the population is not familiar with civil enforcement. Unlike parking, the police retain the power to carry out bus lane enforcement and so consultation with the police is particularly important. Regulations banning some or all motorised road users from bus lane should be clear, well-signed and easy to understand. Without these measures the resentment felt by some motorised members of the public towards bus lanes may increase and the policy fail to win public support.

THE TRANSPORT ACT 2000

2.8. Section 144 of the Transport Act 2000 provides the necessary powers to enable the Secretary of State by regulation to make provision for the imposition of penalty charges in respect of bus lane contraventions, and the payment of such penalty charges. These regulations, The Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005 and three supplementary instruments are now in place.

2.9. Section 144 includes the following key provisions that are relevant to authorities outside London:

a) only County Councils, Metropolitan District Councils and Unitary Authorities with decriminalised parking enforcement powers can be given approval to use these enforcement powers;

b) it defines, for the purpose of the Act, what constitutes a bus lane;

c) it provides for the setting, administering and application of penalty charge notices;

d) a penalty charge can be imposed only on the basis of a record produced by an appropriate device, which means an approved unattended camera enforcement system or approved equipment for recording the evidence from attended camera systems; and

e) there can be no double jeopardy for the same contravention between any criminal proceedings by police (including by a fixed penalty notice) and a bus lane contravention.

2.10. It should be noted that bus lane offences are not decriminalised and that, where civil enforcement of bus lanes applies in an area, contraventions of bus lane orders may continue to be enforced as a criminal offence as well as through the civil procedure.

BUS LANE OFFENCES

2.11. Bus Lane Orders are made using powers under the Road Traffic Regulation Act 1984. Bus lanes are enforced using powers and procedures set out in the Road Traffic Offenders Act 1988. The Road Traffic Offenders (Additional Offences and Prescribed Devices) Order 1997 (SI 1997/384) amended section 20 of the Road Traffic Offenders Act 1988 by adding bus lane and bus only route offences to the existing speed and red light offences. The order also prescribed that bus lane cameras may be used to produce admissible evidence under this section.
3. Obtaining approval for the civil enforcement of bus lanes

3.1. It will be necessary for an Order to be laid before Parliament seeking their approval for a local authority to enforce bus lanes. The County Councils, Metropolitan District Councils and Unitary Authorities who already have civil parking enforcement powers have been given the power to enforce bus lanes by the Bus Lane Contraventions (Approved Local Authorities) (England) Order 2005.

3.2. English local authorities outside London who do not have civil parking enforcement power may not apply for the power to decriminalise the enforcement of bus lane contraventions in advance of seeking the power to enforce parking. This is because there is little point in enforcing moving contravention in a bus lane if parking in a bus lane is not being tackled at the same time. Civil parking enforcement has proved to be the most effective way of dealing with stationary offences.

3.3. It is anticipated that most authorities will seek the power to enforce bus lane contraventions when applying for civil parking enforcement powers. As part of that application they will need to say whether they wish to have the power to enforce bus lanes and if they do:

a) Give the date on which they wish to commence enforcement. The proposed date should be realistic, bearing in mind that at least 16 weeks is likely to elapse between the authority making its formal application and the commencement date;

b) Confirm that they have produced procedures for the operation of the system or systems they propose to use;

c) Confirm that the operations will be carried out in accordance with these procedures and in a secure environment;

d) Confirm that by the commencement date, all of the traffic regulation orders for the bus lanes and all signs associated with the bus lanes have been reviewed and confirmed by their Legal Department as compliant with the law and suitable for use in the civil enforcement of bus lane contraventions; and

e) Copies of correspondence with the police, ambulance service, fire service, other local authorities, DVLA and, where any part of one or more trunk roads would fall within the bus lane enforcement regime, the appropriate regional office of the Highways Agency, indicating whether they support the application, or any reservations they may have.
3.4. The Department for Transport will consider each application on its merits before deciding whether approval to implement the scheme should be granted. Local authorities need to be prepared to answer questions about their application and provide additional information in order to help process their application.
4. Scheme design

4.1. This chapter sets out the steps that should be taken to prepare for enforcing bus lane contraventions using CCTV cameras and/or by other approved devices. It also sets out a number of points that need to be addressed before enforcement can commence. It applies to those authorities listed in the Schedule to SI 2005/2755 as well as those seeking the approval of the Secretary of State to enforce bus lanes after 1 November 2005.

PUBLICITY

4.2. It is recommended that the local authority undertake a publicity campaign to inform the public of the start date for civil enforcement of bus lanes and to explain the objectives underlying the scheme. They should also consider giving the public fairly regular – perhaps once a year – information about the impact that enforcement has had on the reliability and regularity of buses in the relevant area, the effect that enforcement has had on the number of offences, and the use made of any surplus revenue.

FUNDING ISSUES

4.3. Each local authority operating bus lane enforcement will need to ensure that the operations are not only effective, in that they deliver transport objectives, but are carried out efficiently and economically. To help monitor this, the authority must set up a separate bus lane account in which they record expenditure on and income from bus lane enforcement.

4.4. Revenue raised from bus lane enforcement penalty charge notices should initially be used to recover the costs of setting up, operating and maintaining the bus lane enforcement scheme. Any surplus revenue raised should be spent in accordance with regulation 36 of the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005. The purposes set out are:

a) returning to the general fund any money provided to cover a deficit in the bus lane enforcement account in the four years immediately before the financial year in question;

b) meeting costs incurred, by the authority or some other person, to provide or operate public transport services or facilities; and

c) highway improvements in the authority’s area.
MONITORING AND EVALUATION

4.5. It is beneficial to evaluate carefully the effectiveness of the scheme in the early stages, typically after the first six months of operation, and then to review it periodically. The Department for Transport recommends that this is done as it will help demonstrate to the public and the media the impact of enforcement. Surveys should be undertaken before enforcement starts to assess its impact on the regularity and reliability of bus services, the passage of other traffic and the number of bus lane contraventions at each site. The impact on road safety should also be assessed. The “before” surveys should be carried out prior to any enforcement signs being erected. The surveys of contraventions should consist of continuous video surveys undertaken during the operational times of the bus lane on a minimum of three separate occasions at each of the sites. The results of the monitoring will help evaluate the effectiveness of enforcing bus lanes. If it shows that enforcement has improved traffic flow and/or road safety, this may help rebut any criticism of the introduction of civil enforcement.

REPORTING

4.6. The local authority carrying out the enforcement must submit at the end of each financial year to the Department for Transport, by post or by e-mail, a report of the actual costs and revenues from the bus lane enforcement account. The report must include the following information:

a) Total income and total expenditure on the authority’s bus lane enforcement account;

b) The total surplus or deficit on the bus lane enforcement account; and

c) Any action taken with respect to the surplus or deficit (i.e. amounts transferred to or from the bus lane enforcement account and where transferred to or from). The information should enable the Secretary of State to see the purposes to which any surplus has been put.

4.7. The report should be sent to:

The Department for Transport
Traffic Management Division
Zone 3/21
Great Minster House
LONDON
SW1P 4DR

Or e-mailed to: buslane.enforcement@dft.gsi.gov.uk
MODIFICATIONS TO BUS LANE TRAFFIC REGULATION ORDERS

4.8. Local authorities are advised to review all their Traffic Regulation Orders (TROs) that deal with bus lanes before commencing enforcement and allow themselves adequate time to make any amendments necessary. The Legal Department should be asked to confirm whether the TROs are compliant with the law and suitable for use in the civil enforcement of bus lane contraventions. The authority should ensure that TROs are current, changes to the road layout or other factors have not invalidated them and that the layout is practical. In particular, it should be possible for all motorised road users to negotiate junctions safely without entering the bus lane. They should satisfy themselves that contraventions can be adequately proved by means of approved camera evidence and amend their TROs so that the offence is “to be” in a bus lane rather than “to enter and proceed”. There should be consultation on any amendments to the TRO. This will help ensure that enforcement is more robust and provide greater transparency in the issuing and assessment of contraventions. If cases reach the adjudicator, s/he may well look at the Traffic Regulation Orders in detail.

SITE VISIT

4.9. It should be noted that a representative from the National Parking Adjudication Service (NPAS) may wish to visit and inspect the security controlled areas.

SIGNING

4.10. Local Authorities should check that signs comply with the Traffic Signs Regulations and General Directions, are up to date, consistent with the Traffic Regulation Orders and are properly and visibly mounted. This will avoid challenges on the grounds of inadequate, inconsistent or defective signing. Drivers and riders need to be alerted to the fact that cameras are being used to enforce bus lanes and before enforcement can commence, camera enforcement signs should be erected in each of the areas to be covered by the system to advise motorists that camera enforcement is in place and to encourage compliance. Signs informing road users about camera enforcement must conform to diagrams 878 and 879 in the Traffic Signs Regulations and General Directions 2002. The Department’s working drawings for diagrams 878 and 879, including the bus lane camera variants, can be found on the DfT website at www.dft.gov.uk/stellent/groups/dft_roads/documents/divisionhomepage/032478.hcsp

WARNING PENALTY CHARGE NOTICES

4.11. It is recommended that for a limited period (about two weeks) after cameras are installed and fully operational, authorities should not send a PCN to motorists contravening the bus lane regulations but write to them explaining the changes to enforcement procedures and that in the future such contravention will result in a penalty charge. This will allow those who regularly contravene to change their habits.
4.12. Authorities may also wish to consider whether, in the interests of good public relations, a warning letter rather than a PCN should be issued the first time that a vehicle is detected contravening bus lane regulations irrespective of when civil enforcement was introduced.
5. Choice of devices for camera enforcement

TYPE OF APPROVED DEVICE

5.1. Approved devices for the purposes of regulations under Section 144 of the Transport Act 2000 must be of a type which falls within any of the three descriptions given in the Bus Lanes (Approved Devices) (England) Order 2005:

a) A device of a description specified in an order made by the Secretary of State (Home Secretary) under section 20(9) of the Road Traffic Offenders Act 1988 (prescribed devices for the purposes of speeding and other offences);

b) A device certified by a person authorised in that behalf by the Secretary of State (for Transport), as meeting the criteria specified in paragraphs 2 to 6 of the schedule to the Bus Lanes (Approved Devices) (England) Order 2005; or

c) A device that does not meet the criteria referred to in paragraph b) above but which was used before the coming into force of the Order for the purposes of bus lane enforcement under Part II (bus lanes) of the London LocalAuthorities Act 1996.

Further explanation of these three types of devices is given below.

Home Office Type Approved Devices

5.2. Camera equipment that has been subject to Home Office approval procedures is more akin to type approved static speed camera systems that are already in widespread use across England. These are remote devices where the primary evidence is recorded automatically by the system that can later be downloaded and used to support the issue of a penalty charge notice, so there is no real time observation.

5.3. Systems have been developed via the Home Office approval route and more may be developed in the future for bus lane enforcement. Bus enforcement systems have, in the past, been developed for use by the police with subsequent convictions processed via the criminal route. Although these systems may be used for the processing of civil offences they are not mandatory. These systems may be suitable for installation at the roadside or for installation on a particular type of bus or tramcar travelling along a bus lane.
5.4. Any such system device will be deemed to be an approved device under Clause 144 of the *Transport Act 2000* if it has been granted Home Office Type Approval for the specific purpose for bus lane enforcement. In such cases, the device shall only be deemed approved for use within the limitations and constraints of the terms of the Home Office Type Approval.

5.5. Home Office Type Approval is not required for systems where the contravention is viewed in real time by a police officer or CCTV operator controlling the camera from a control room and recording the image there. The primary evidence of the offence is provided by a witness statement from the police officer or CCTV operator. The police officer or CCTV operator records the images and this recording provides supporting evidence in the event of an appeal against the penalty charge notice. Section 144 of the *Transport Act 2000* permits the imposition of a penalty charge only on the basis of a record produced by an approved device. In future, therefore, the device used to record the CCTV images of the offence for the civil enforcement of bus lanes using attended CCTV systems will have to be approved.

**Devices certified by the Secretary of State for Transport**

5.6. All devices within this category have to meet the criteria specified in paragraphs 2 to 6 of the Schedule to the *Bus Lane (Approved Devices) (England) Order 2005* (Annex 1 to this guidance). These criteria are intended to apply to fully automatic systems and to the devices that record the contraventions in systems that require the presence of a CCTV operator.

5.7. Further guidance is given in "Civil Traffic Enforcement - Certification of Approved Devices". That replaces paragraphs marked "withdrawn" below and is on the Department's web site at: http://www.dft.gov.uk/pgr/roads/tpm/tmaportal/tmafeatures/tmapart6/certapproveddevices.pdf

5.8. The device and the procedures for its operation have to be capable of ensuring that sufficient evidence is obtained to show that an infringement of bus lane regulations by other than an approved vehicle has occurred and that the integrity of the evidence is preserved during any transmission, manipulation and storage of this evidence.

5.9. Withdrawn

5.10. Withdrawn

5.12. Withdrawn

5.13. Withdrawn

5.14. Withdrawn
5.15. Withdrawn

5.16. Withdrawn

5.17. Withdrawn

5.18. Withdrawn

5.19. Withdrawn

5.20. Withdrawn

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2 Up to date information about these documents is available from TfL, Transport Policing and Enforcement Directorate, Smith Square, London SW1P 3HQ
Devices used for bus lane enforcement in London prior to the Bus Lanes (Approved Devices) (England) Order 2005

5.21. Any devices used in London for bus lane enforcement prior to the commencement of the above Order are deemed to be approved. The approved devices are listed in Annex 4. In practice this applies only to the recording devices used in systems which are operated by a CCTV operator as all the automatic enforcement systems used in London have Home Office approval. A local authority undertaking enforcement that has not previously used the recording device will have to ensure that it has produced appropriate procedures for the operation of its system before using the recording device.

PROCEDURES FOR THE OPERATION OF BUS LANE ENFORCEMENT SYSTEMS

5.22. Each local authority undertaking enforcement must put in place procedures to ensure that the systems are operated in such a manner as to preserve the integrity of the evidence and to ensure that it is handled and stored in a secure environment. The procedures should be designed to satisfy the community over the competence and honesty of the system and its operators, to reassure the community over the privacy of private areas and domestic buildings and to comply with the requirements of the Data Protection Act 1998.

5.23. A Code of Practice has been produced by the Association of London Government (ALG) covering the operation of CCTV enforcement cameras in order to ensure consistency of enforcement across London. This Code of Practice would provide a guide to authorities outside London as to the procedures required for the effective operation of systems that are used by CCTV operators for bus lane enforcement. Copies of this Code of Practice are available from ALG (www.alg.gov.uk).

5.24. Advice on the requirements of the Data Protection Act 1998 and any subsequent amendments can be obtained from the Information Commissioner’s website www.informationcommissioner.gov.uk

5.25. The CCTV User Group (www.cctvusergroup.com) also provides general advice and model documents to members on the use of all types of CCTV systems. These model documents include CCTV User Group Code of Practice and Model Procedures Manual.

5.26. Procedures for the operation of automatic Bus Lane Enforcement systems should be developed by the authority in consultation with the manufacturer of the approved device.
6. Penalty charge notices (PCNs)

THE PENALTY CHARGE NOTICE

6.1. The penalty charge notice (PCN) has two basic components. One component is the section recording that a bus lane contravention has been committed. For bus lane enforcement, unlike decriminalised parking, there is only one offence which is “being in a bus lane”. The other component informs the motorist of the steps to be taken to pay the penalty charge due.

Standard information to be collected when issuing a PCN

6.2. To ensure the collection of all the information required for a PCN to be enforced, including the need to satisfy the adjudicator where a case goes to adjudication, the PCN must state:

a) Vehicle registration number;

b) Date and time of the alleged contravention;

c) Why the authority think a PCN is payable;

d) * The amount of the penalty payable;

e) * That the PCN must be paid before the end of the 28 day period4;

f) * That if the PCN is paid before the end of the period of 14 days beginning with the date of service of the notice, the penalty charge will be discounted by 50%;

g) * That representations may be made to the authority against the imposition of the penalty charge but that any representations made outside the 28 day period may be disregarded;

h) * The grounds on which appeals may be made;

i) * The postal address to which representations are to be sent;

j) * e-mail address or FAX number to which representations may alternatively be sent;

k) * That if at the end of the 28 day period no representations have been made and the PCN has not been paid, the authority may increase the penalty charge by 50% and take steps to enforce payment of the increased charge;

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4 The 28 day period, in relation a PCN, means the period of 28 days beginning with the date of service of the notice (see paragraph 75)
l) * The manner in which the penalty charge may be paid;

m) * That if representations are rejected, an appeal may be made on any of the statutory grounds to the National Parking Adjudication Service in respect of a penalty charge; and

n) * That the recipient may write and ask the authority to let him and his representative (if any) see, free of charge during normal office hours at an office of the local authority, the record of the contravention produced by the approved device which resulted in the imposition of the PCN; or to provide the recipient, free of charge, the still images from the record that the authority believes establishes the contravention.

6.3. It will be helpful if the PCN also states:

a) The date of service of the PCN;

b) * Name of the authority;

c) * Powers under which the PCN is issued;

d) Make of the vehicle;

e) Colour of the vehicle;

f) Detailed location of bus lane and vehicle;

g) The PCN Number;

h) * Contravention code;

i) Details of how the offence was detected (e.g. by CCTV camera);

j) * Details of where penalty charges may be paid;

k) * Contact details for payment;

l) * Procedures for failure to make payment;

m) * Contact details for queries about the PCN, how representations can be made, how the appeals system works and how and when an appeal can be made;

n) * The evidence the local authority will require when recipients make representations; and

o) * That representations may be disregarded by the authority if made after the end of the 28 period.

Authorities may find it helpful to pre-print the items marked above with an * on the PCN.

6.4. Authorities may also wish to consider issuing with the PCN the photographic evidence of the alleged contravention as this may help reduce the number of inquiries and unsuccessful representations. An alternative would be to provide a website where photographic evidence can be viewed for a period of time, but the authority will need to consider the social exclusion implications of this approach.
NOTICE PROCESSING

6.5. Modifications to the local authority notice processing system will be made by the GLA to accommodate contraventions. The contravention code for bus lane offences is 34 and the suffix 'j' should be used to denote that the contravention was detected by camera.

HOW TO GENERATE UNIQUE PCN NUMBERS

6.6. In order to avoid confusion all PCNs will need to be uniquely numbered, including PCNs issued by different authorities. To avoid the same number being used by different authorities, the first two characters of each number should be unique to a particular authority. The local authority can use the same prefix for bus lane contraventions as for parking contraventions and should ask the Traffic Enforcement Centre to select a code for them by contacting:

The Manager
Traffic Enforcement Centre
Northampton County Court
Northampton
St Katherine’s House
21-27 St Katherine’s Street
Northampton
NN1 2LH

telephone: 08457 045045007
e-mail: customerservice.tec@courtservice.gsi.gov.uk,

6.7. The next seven digits uniquely identify the PCN within the area of a particular authority. This means that each authority can have up to 9,999,999 unique numbers before having to start again. The authority does not need to select a third fixed prefix to identify bus lane contraventions from parking contraventions and it is for the authority to decide if they wish to allocate a range of numbers for bus lane contraventions.

6.8. The final character of each PCN number will be a check digit designed to validate the PCN number (for example by detecting typing errors when PCN numbers are being processed). The Traffic Enforcement Centre can advise on the formula the local authority should use to calculate the digit check.

LEVEL OF PENALTY CHARGES

6.9. An authority must choose the level of PCN charges to be levied from the options approved by the Secretary of State. The choice should be made on the basis of how best to deliver the objectives of the bus lane strategy and achieve a high degree of compliance. Penalty charges should be set at a level that is consistent with this while attempting to meet the objective of producing a system that becomes self financing within a reasonable time. A wide range of charges, either between authorities or
within an individual authority’s area would not be appropriate. The level chosen should be published in at least one local newspaper, along with the circumstances in which a PCN will be imposed and the date (at least 15 days from the publication of the notice in the newspaper) from which PCNs will be imposed for bus lane contraventions. It is recommended that information about the PCN level chosen continues to be easily available to the public. The levels of penalty charges should correspond to one of the levels in Table 1 below.

Table 1 Penalty Charge Notice Levels

<table>
<thead>
<tr>
<th>Level of PCN</th>
<th>Paid within 14 days of service of PCN</th>
<th>Paid after service of charge certificate</th>
</tr>
</thead>
<tbody>
<tr>
<td>£40</td>
<td>£20</td>
<td>£60</td>
</tr>
<tr>
<td>£50</td>
<td>£25</td>
<td>£75</td>
</tr>
<tr>
<td>£60</td>
<td>£30</td>
<td>£90</td>
</tr>
</tbody>
</table>

Figures as at September 2005. PCN levels may be changed from time to time. The DfT website sets out current levels.

Changes to a local authority’s level of penalty charges

6.10. A local authority may change the penalty charge level without seeking the approval of the Secretary of State as long as the new charge level is one which is specified by the Secretary of State and the change is published more than 15 days before coming into effect in at least one local newspaper.

Incentivising prompt payment

6.11. To incentivise prompt payment, an authority must incorporate into their penalty regime a 50% discount for those who pay the PCN within 14 days of its service, similar to that used in decriminalised parking enforcement.

6.12. To further incentivise payment, an authority may serve a charge certificate 28 days after the PCN was served if no representations have been made and the PCN has not been paid. When the charge certificate is served the penalty charge will increase by 50%.

6.13. In areas where there are known to be difficulties with the reliability of the postal system, it is recommended that local authorities use their discretion to extend payment periods where it seems reasonable to do so.
ISSUING PENALTY CHARGE NOTICES

6.14. The PCN for bus lane contraventions cannot be placed on the vehicle at the time the alleged contravention occurred. Therefore, in order to issue a PCN, the local authority will first need to know the name and address of the person who was the registered keeper of the vehicle. DVLA’s non fee-paying enquiry section:

Vehicle Customer Service,
DGFW,
DVLA,
Longview Road,
Swansea SA6 7JL

deal with manual requests from local authorities for keeper information using form VQ4. Authorities may already have electronic links with Swansea for parking enforcement but it will be necessary to amend the existing terms and conditions of agreements to record the fact that the link will be used for bus lane enforcement as well. Please contact John Evans on 01792 783452 or john.evans@dvla.gsi.gov.uk.

6.15. For each PCN, the local authority will need to provide DVLA with the vehicle registration and the date of the contravention within 14 days of the detection date of the contravention. It is recommended that information requests are dispatched electronically to DVLA, who will endeavour to process the information within 48 hours and provide by return the following information:

a) Vehicle registration mark; and

b) Name and address of registered keeper on the date of the contravention.

6.17. The PCN should be sent in the first instance to the registered keeper of the vehicle involved in the contravention. It is the registered keeper who is normally responsible for its payment but this is not the case in two circumstances. The first is if the vehicle was, at the time of the contravention, subject to a hiring agreement and the person hiring it (or someone authorised to sign on his behalf) had signed a statement of liability in respect of any penalty charge incurred while he hired the vehicle. The second is if the vehicle involved was, at the time of the contravention, kept by a vehicle trader but its registered keeper is a person other than the vehicle trader. In either of these circumstances, it is expected that the registered keeper will make representations against the issue of the PCN and as part of these representations give the authority the details of where to contact the person liable to pay the PCN.

6.18. The information received from DVLA will need to be checked in order to identify vehicles which are registered in the name of a corporate body. For a notice to be served correctly, it will need to be sent specifically to the secretary or clerk of the corporate body, and it is unlikely that DVLA will have a record of their name(s). Where a vehicle is registered in the name of a partnership, the notice can be served on any of the partners at the address which carries out the business. A sole trader is in the same position as any individual, whether or not he or she carries on business under
a business name or his or her own name and the notice can be sent to the person’s home or to the business address.

SERVING OF PENALTY CHARGE NOTICES

6.19. The PCN must be served before the end of the period of 28 days beginning with the detection date unless the authority has made an application to DVLA for relevant particulars regarding the owner of the vehicle and these particulars have not been supplied before the end of the 28 day period beginning with the detection date. In this event, the authority shall continue to be entitled to serve a PCN for a further period of 6 months after the end of the 28 day period beginning with the detection date. It is recommended that the authority keeps a record of the date on which a request was made to and answered by DVLA to enable them to demonstrate that PCNs are being served speedily and efficiently. The late serving of PCNs will not reflect well on the authority. In London, authorities have set themselves a voluntary target of 14 days from the date of the contravention.

6.20. The PCN shall be served by sending it to the person to whom it is addressed by first class post. It shall be presumed that the service of a notice by first class post is effected on the last day of the period of 3 consecutive working days beginning with the first day of posting, or, if it is not posted on a working day, the first working day after the date of posting.

CHARGE CERTIFICATES

6.21. If a PCN has been served and not paid before the end of the relevant period the local authority may serve a charge certificate on the person who received the PCN to say that the amount due has increased by 50%. The relevant period is 28 days if no representations have been received and the PCN not paid, representation has been rejected but no appeal made or when an unsuccessful appeal has been made. It is 14 days if an appeal has been withdrawn.

6.22. An authority may, if the county court so orders, recover the PCN as if it were payable under a county court order.

6.23. A county court has the power to cancel a charge certificate on the giving of a statutory declaration by the person against whom the order is made.
7. Representations and appeals

7.1. A system has been established that enables a motorist who has received a PCN to make representations to the local authority that issued it and then appeal to the National Parking Adjudication Service if s/he considers that the PCN has been wrongly issued. This will help reassure the public that the civil enforcement of bus lanes is as fair as possible. Local authorities need to ensure that staff dealing with this aspect of enforcement are properly trained and resourced, particularly with support from legal advisors.

WRITTEN REPRESENTATIONS

7.2. The grounds on which the recipient of a PCN can make statutory representations to a local authority are the same as those on which an appeal may be made and are set out in the regulations. They are:

a) the alleged contravention did not occur;

b) the alleged contravention is the subject of criminal proceedings or a fixed penalty notice as defined by section 52 of the Road Traffic Offences Act 1988;

c) the recipient had never been the owner of the vehicle, had ceased to be its owner on the date of the alleged contravention or became its owner after the date of the alleged contravention;

d) although the recipient had hired the vehicle in question there was, at the time of the alleged contravention, no hiring agreement and he, or a person authorised to do so on his behalf, had not signed a statement of liability in respect of penalty charges incurred during the period of the hiring agreement;

e) the recipient was the vehicle owner but on the date of the alleged contravention the vehicle was subject to a hiring agreement, was kept by a vehicle trader, or that control of the vehicle had been taken without the consent of the owner; or

f) the penalty charge exceeded the amount applicable in the circumstances of the case.

7.3. It is recommended that local authorities accept representations sent electronically as well as on paper. Representations received more than 28 days after the PCN is issued may be disregarded but it is recommended that authorities use their discretion about timing if there are known to be difficulties with the reliability of
the postal system. Representations can be made on one or more of the grounds set out in the regulations and these grounds should be printed on the PCN. Local authorities have the discretion to cancel PCNs where the contravention occurred but there are mitigating circumstances.

7.4. If the representation says that the person receiving the PCN was not the owner of the vehicle when the alleged contravention took place, the representation should include the name and address of the person who owned the vehicle at the time. Authorities may find it helpful to seek proof of change of ownership to prevent difficulties later in the process. If the representation says that at the time of the alleged contravention the vehicle was kept by a vehicle trader, the representation should include the name and address of the vehicle trader.

7.5. The local authority must consider these representations and any supporting evidence provided. When replying to the representation, they must give their response to each of the grounds on which it has been made. An authority has the discretion to cancel a PCN at any stage in the process if the statutory grounds for representation and appeal are not met but it seems reasonable to take this course of action. It is possible that one of the grounds put forward will be that the driver/rider enters the bus lane in order to avoid an on-coming vehicle. The camera specification states that an image should be provided to show the context of the alleged contravention, which should enable such cases to be verified. If any of the statutory grounds are accepted, the local authority must cancel the PCN and serve notice on the recipient that this has been done. If the accepted ground is that the vehicle was kept by a vehicle trader at the time of the alleged contravention, the vehicle trader shall be deemed to be the owner for the purpose of issuing the PCN.

7.6. If none of the grounds are accepted and the local authority does not consider it appropriate to use its discretion to cancel the PCN, it must serve a notice of rejection setting out:

a) the reason(s) for the rejection;
b) that an appeal may be made to an adjudicator within the appeal period;
c) the grounds on which an appeal can be made;
d) the appeals procedure in general;
e) that the adjudicator has the power to award costs;
f) the circumstances in which the power to award costs is likely to be exercised; and
g) if the PCN is not paid or an appeal made before the end of the 28 day appeal period the authority may increase the penalty charge by 50% and take steps to enforce payment.

7.7. The grounds on which an appeal can be made are the same as the grounds on which representations can be made.
7.8. If the PCN is cancelled because the recipient was not the owner of the vehicle at the time that the alleged contravention took place or the vehicle was hired, the local authority may serve a further PCN on anyone other than the original recipient. This is likely to be the new keeper or the hirer. The reissued PCN should refer to “the date on which the PCN was cancelled” rather than “the detection date” so that the appropriate time is allowed for discounts, representations, the issuing of charge notices and/or appeals. If the reissued PCN also gives the date on which the alleged contravention took place it will be easier for the recipient to understand.

BUS LANE ADJUDICATOR

7.9. An approved local authority, acting in accordance with the requirements set out in paragraph 90, must appoint at least one person to act as a bus lane adjudicator, one person to act as the proper officer and one or more persons to act as the deputy of the proper officer for the purposes of the civil enforcement of bus lanes. They must also provide, or make arrangements for the provision of, accommodation and administrative staff and facilities for the adjudicators and determine the places at which adjudicators are to sit.

Joint Committees

7.10. Where two or more approved local authorities are to take on the civil enforcement of bus lane regulations, the appointment and provisions of facilities for the bus lane adjudicator must be discharged through a joint committee set up in pursuance of arrangements entered into under section 101(5) of the Local Government Act 1972. All English local authorities outside London who plan to decriminalise the enforcement of bus lanes must be members of the joint committee.

7.11. The participating authorities should decide how to apportion between them the expenses of the joint committee. If agreement cannot be reached, this may be determined by an arbitrator nominated by the Chartered Institute of Arbitrators. The Secretary of State may also issue directions about this.

7.12. Each bus lane adjudicator shall make an annual report to the joint committee and the joint committee shall then make and publish an annual report to the Secretary of State about how the bus lane adjudicators have discharged their functions.

Appeals to the bus lane adjudicator

7.13. A person who has received a PCN may appeal to the adjudicator if representations have been made to and rejected by the relevant local authority. An appeal must be made in writing and signed by the appellant or his agent. It must give the name and address of the appellant and may give an address for correspondence. It must also give the name of the authority that imposed the PCN and the date and reference number of the PCN. It may include any additional representations on the grounds for appeal.
7.14. The notice of appeal must be delivered to the office of the bus lane adjudicator within 28 days of the local authority serving the notice of rejection. The adjudicator has the discretion to accept appeals after the 28 period and so the appellant must explain the delay if he wants an out of time appeal to be considered. The appeal will be acknowledged by the adjudicator’s proper officer and, if it is in order, the proper officer will record the details, send a copy of the appeal to the local authority, and inform the appellant and the authority of the adjudicator’s decision if the appeal has been made after the appeal period.

7.15. The local authority should, within 7 days of receipt of the copy of the notice of appeal, send to the proper officer copies of the charge notice concerned, any representations made and the notice of rejection. The additional information normally supplied for an appeal which constitutes the evidence of the local authority should be sent as soon as is reasonably possible.

7.16. If the proper officer considers that the appeal is not in order he will write to the applicant and explain why the appeal cannot be considered.

7.17. Any party to the appeal may, at any time before the determination of the appeal, send further information to the adjudicator about the case. The adjudicator may, through the proper officer, seek further signed information from any party about the appeal. If the party is the appellant, the proper officer will copy any further information received to the authority. If the party is the local authority, they shall copy it to the appellant themselves.

7.18. In the Regulations “a hearing” means “an oral hearing”. What is sometimes referred to as a “postal hearing” is not a hearing. If an adjudicator decides to proceed without a hearing s/he must and inform the parties of this and consider all the representations before reaching a decision. The adjudicator can only make such a decision if 4 weeks has elapsed since the acknowledgement of the appeal was sent and neither party has requested a hearing or both parties have agreed that a hearing is not necessary. If either party has specifically requested a hearing, the adjudicator may only make a decision about the appeal without a hearing if the request for a hearing is withdrawn or both parties agree that it is no longer necessary.

The Hearing

7.19. The proper officer will arrange the date, time and place of any hearing and advise all parties of this 21 days or more in advance. The proper officer must give 7 days notice to all parties if the adjudicator changes the date, time and place of the hearing.

7.20. The adjudicator may require the attendance of a person to give evidence or produce documents at a hearing but that person may apply to the adjudicator to vary or set this aside. It is an offence to fail to do this without a reasonable excuse.
7.21. Hearings are normally held in public. The local authority may be represented by a solicitor, counsel, or any other person. Parties are entitled to give evidence, call witnesses, question witnesses and address the adjudicator. If a party to the case does not appear at the hearing, the adjudicator may make a decision about the appeal in his absence.

7.22. Evidence from a recording device may be used as evidence at an appeal, so it is important that contraventions are recorded on approved devices.

7.23. The adjudicator will give the decision and the reasons for it orally at the end of a hearing. The proper officer will record the decision in the register and send a copy of the register to each party. If an appeal is allowed, the adjudicator may give the local authority directions which it is their duty to comply with.

7.24. The adjudicator has the power to review, revoke or vary decisions if subsequent information suggests this is appropriate as long as the application to do this, stating the grounds in full, is received up to 14 days after the date on which the register entry is served on the appellant and the local authority.

7.25. Costs are not normally awarded but the adjudicator may do this in unusual circumstance. Costs may be awarded against a party (including the appellant) if the adjudicator considers that they have acted frivolously, vexatiously or unreasonably during the appeal. The adjudicator may award costs against the authority if he considers that the decision appealed against was wholly unreasonable.
Annex 1. The specified criteria

1. In this Schedule “the equipment” means equipment comprising a device.

2. The equipment includes a camera which is:
   a) securely mounted on a bus or other vehicle or at the roadside or on a building, structure or other erection;
   b) so mounted in a position that will enable vehicles in a bus lane or selected area of bus lane to be surveyed by it;
   c) capable of producing;
   d) a close-up legible image of the registration plate of any vehicle in the bus lane or, as the case may be, the selected area;
   e) a wider angle image of the carriageway such as will enable information to be provided about any circumstances which may have caused the vehicle to be in the bus lane or the selected area; and
   f) connected by secure data links to a recording system.

3. The equipment includes a recording system in which:
   a) recordings are made automatically of the output from the camera or cameras surveying the bus lane or selected area;
   b) recordings are made:
      i. using videotape which records at a minimum rate of 5 frames per second; or
      ii. using a secure digital recording method which records at a minimum of 5 frames per second;
   c) each frame is timed (in hours, minutes and seconds), dated and sequentially numbered automatically, using a visual counter which resets to zero when the recording system is initially activated and increments for each frame;
   d) the location of the bus lane or selected area being surveyed is shown; and
   e) where any part of the equipment is controlled manually, two simultaneous recordings are made of the camera output viewed by the operator.
4. The equipment is:
   a) synchronised with the ‘Rugby’ atomic clock or another independent national standard clock; and
   b) accurate within plus or minus 10 seconds over a 14-day period and is re-synchronised at least once during that period.

5. Where the equipment includes a facility to print a still image:
   a) of any frame recorded on the videotape; or
   b) from a digital record.

   any printed image is endorsed with the time and date when the frame was captured and its unique number.

   Where the equipment includes a facility for simultaneous voice-over recording, it incorporates a time mark from the clock with which the recording system is synchronised, denoting contemporaneous recording with the vision track.
Annex 2.  (Withdrawn)
Provisional guidance on bus lane (including tramway) enforcement in England outside London
Annex 3.  (Withdrawn)
Provisional guidance on bus lane (including tramway) enforcement in England outside London
Annex 4. Devices used in London

Peek Guardian Freelane road side camera system*
Peek Guardian Freelane Mark 2 road side camera system*
JAI- BUS-ter bus mounted camera system*
JAI StreetWatch ® 1 analogue attended camera system
JAI StreetWatch ® 11 analogue or digital attended camera system

The systems marked with an * have Home Office Type Approval
Notes