



Consultation Document

The Road User Charging Scheme (Enforcement)(England) Regulations

Response from:

British Vehicle Rental and Leasing Association

River Lodge

Badminton Court

Amersham

BUCKS HP7 0DD

Tel: +44 1494 434747

Fax: +44 1494 434499

E-mail: info@bvrla.co.uk

Web: www.bvrla.co.uk



Response to Department for Transport

Executive Summary

We welcome the opportunity to comment on the Department for Transport's proposals to enable charging authorities (as defined in Part III TA 2000) to take civil enforcement action against drivers who fail to pay a road user charge under a scheme established under the Transport Act 2000.

We note the proposals relate only to the enforcement of road user charging schemes made by traffic authorities under Part III TA 2000 and would not apply to the enforcement of road tolls levied under any other legislation.

The BVRLA has a particular interest in the consultation as our members are the registered keepers but not the day to day operators of over 2.75 million cars, vans and trucks which are operated on UK roads.

These vehicles whilst being operated by our members' customers from time to time will incur parking charges, penalty charge notices and congestion charge fines etc, which the customer will either not pay or not be aware of due to the fact that the charge is enforced by a camera. In these circumstances, our members as the registered keeper of their vehicles will be sent the fine or charge. It is estimated that our members receive over a million fines or similar each year which they pass on to their customers.

Our members when handling these fines will, where the legislation permits, provide details of the customer to the authority who issued the fine who can then contact the customer who committed the offence. This well established principle of transferring liability ensures that the person who committed the offence is held responsible and is deterred from committing an offence again. It also ensures the person who allegedly committed the offence has the right to appeal against the fine in line with the principles of natural justice and the Human Rights Act.

Unfortunately, due to the various different regulations which cover charges, enforcement notices and fines etc. our members are forced to deal with each one in a different way. We have included a high level overview of the different fine regimes and how our members are able to treat these fines at Annex A. This makes fine administration both costly and complicated for our members and the enforcement authority and is an area we are constantly trying to improve.

The BVRLA estimates that the cost of handling fines under the current various enforcement regimes is around £6 million per annum



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Given the above, we have a particular interest in how the legislation is written to enforce a road user charge scheme. We would urge the department to ensure the following key principles are followed to cover rental/leasing vehicles within the proposed regulation:

1. The ability for any penalty charge issued under the Road User Charging Schemes (Enforcement) (England) regulations to be transferred to the customer regardless of the length of the agreement between our member and their customer.
2. The ability for any penalty charge to be issued on an electronic basis.
3. The ability for customer details to be provided to a charging authority on an electronic basis.
4. No requirement for evidence to be provided, for example copy rental/lease agreements, within the regulation. A simple declaration to accompany customer details should suffice.

We believe the above approach will help ensure that charging authorities are able to cost effectively and efficiently enforce their road user charging schemes, by getting to the offender quickly, a fair process for all parties which is in line with the principles of the red tape challenge as it will remove burdens on businesses. Our estimates are that the costs of £6 million per annum which our members are incurring could be halved if an electronic solution was introduced.

We would welcome the views of the department as to how we can take forward proposals for tickets and representations to be made on an electronic basis.

Other legislative defects

We would like to take this opportunity to also lobby for the other defects we have mentioned to be amended. This includes the legislation for bus lanes in London and the London congestion charge scheme.

The bus lane legislation relates to the London Local Authorities Act 1996; which seems to have been inadvertently amended, which, as a result has meant that our rental members are prevented from lawfully transferring liability onto the hirer of the vehicle. As a result, this also denies the hirer the rightful opportunity to make a formal representation to the issuing authority.



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This problem was highlighted to the department in 2001 and since this date we have received positive reassuring statements that the Regulation would be amended. This is clearly an unsatisfactory state of affairs, not only is there a deterrence for the hirer from entering a bus lane, but the aggregated cost of our members being held responsible for the infringement is now mounting to £2.1 million per annum; this is clearly unacceptable.

The second defect relates to the Road User Charging Regulations. Following the introduction of the London Congestion Charging in February 2003, it became apparent to all parties concerned that there was a clear error in the drafting of these Regulations. Unlike the treatment of other road traffic offences, these Regulations prevent a leasing company from transferring liability onto the hirer where the agreement is for more than six months in duration. Instead, our members have to either absorb the penalty charge, or if they can, recharge the penalty charge to their customer and deny the customer the opportunity to make a representation.

Following a detailed consultation in 2004, the other key stakeholder, Transport for London had agreed that the amendments need to be ratified as a matter of urgency. We are still waiting for the changes. The cost of this defect is now rising to in excess of £4 million per annum; another grossly unacceptable level of unnecessary cost for our industry to absorb.

We would welcome the views of the department as to whether these amendments could be made through this statutory instrument.

Powers exercised in Respect of Vehicles

We also note the regulations allow a charging authority to seize and possibly dispose of a vehicle which has three or more outstanding penalty charge notices against it, similar to the persistent offender database which is in place for the London congestion charging scheme.

For our rental members it is highly probable that one of their vehicles could end up with three or more outstanding penalty charge notices but they could be three different customers. It is therefore wholly unfair for a rental vehicle to be seized in these circumstances especially if it is on hire to an innocent customer. We would therefore suggest that once a transfer of liability is successful the vehicle registration does not go on the database.



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Where a vehicle is due to be disposed of we would wish to ensure that the regulations require the charging authority to conduct a check for outstanding vehicle finance with the provenance check providers such as HPI or Experian and notify the finance provider if there is outstanding finance. We feel that our members legal interest needs to be protected, especially as they are the innocent party who has lawfully transferred liability on to the hirer. In such circumstances, it seems wholly inappropriate and unlawful for an asset that does not belong to the persistent offender to be disposed of as prescribed under these regulations.

Specific Comments

1. *Do you agree, in principle, with this proposal to enable enforcement against drivers who do not pay the road user charge, for schemes that operate under the Transport Act 2000? If not, could you say why?*

Yes, however, as mentioned the regulations need to take into account the fact that the registered keeper and operator/offender are not the same in the situation where a vehicle is subject to a valid lease or hire agreement. It is therefore imperative that the regulations allow for rental or leasing companies to transfer liability to the customer. The regulations as currently drafted do not allow our members whose agreements are more than six months in duration to transfer fines to the customer due to a historic definition of hire agreement which is being used. We would suggest that the draft regulations be amended to refer to the definition of hire agreement as per the Protection of Freedoms Act 2004 which states:

- (6) In this paragraph and paragraph 14—
 - (a) “hire agreement” means an agreement which—
 - (i) provides for a vehicle to be let to a person (“the hirer”) for a period of any duration (whether or not the period is capable of extension by agreement between the parties); and
 - (ii) is not a hire-purchase agreement within the meaning of the Consumer Credit Act 1974;

If this definition is not adopted the regulations will not achieve their objective of allowing a charging authority to enforce against an offender who does pay a road user charge. There would also be a restriction on the human rights of a customer who has a vehicle on lease or rent for more than six months as they will not have a right of appeal against a penalty charge.



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2. *Do the proposals to be put into effect by the Regulations provide a charging authority with sufficient powers to enforce a road user charging scheme? If not, could you say why?*

As we have mentioned above provided the definition of hire agreement is amended a charge authority would be in a position to have sufficient powers to enforce a road user charging scheme.

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3. *The proposals will enable a charging authority to immobilise, store or dispose of a vehicle when there are three or more outstanding penalty charges. Is this an appropriate number of outstanding charges before vehicle enforcement can take place? If not, could you say why?*

We believe that three is sufficient, however, as we have mentioned we believe it is imperative that any persistent offenders database recognises that a rental vehicle will have multiple customers and that a vehicle may have outstanding finance against it. We therefore request that the department ensures that only where there are three or more outstanding penalty charge notices to the same individual and vehicle is it possible for the vehicle to be subject to further enforcement action and possible seizure.

In addition, where a vehicle is due to be disposed of we would wish to ensure that the regulations require the charging authority to conduct a check for outstanding vehicle finance with the provenance check providers such as HPI or Experian and notify the finance provider if there is outstanding finance.

4. *Do you agree with the proposed maximum penalty charge levels to be put into effect by the Regulations? If not, could you say why?*

We support the proposed maximum penalty charge levels.

5. *Do the proposals to be put into effect by the Regulations provide a registered keeper or keeper with sufficient powers to appeal to an adjudicator against a charging authority's decision? If not, could you say why?*

No as we have mentioned at question 1, the current definition of hire agreement will not allow the keeper of the vehicle who has a rental or lease vehicle on an agreement for more than six months in duration to appeal to an adjudicator. If the regulation is amended to use the definition of hire agreement we have mentioned at question 1 then this would ensure the regulations achieve the stated objective.

6. *A registered keeper or keeper must pay all charges before being permitted to make representation (or appealing) against the immobilisation, removal or disposal of the vehicle. Should the payment of a lesser amount be permitted to entitle the person to make representations?*

Yes, we would suggest that 50% is a sufficient amount to be paid rather than the total amount to enable a person to make a representation. This seems a fair approach for those people who have inadvertently ended up with a vehicle being immobilised or removed.

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7. *Do you foresee any unintended consequences for traffic authorities of the proposals to be put into effect by the Regulations? Please outline these consequences in more detail.*

If the regulations do not allow electronic issuance of penalty charge notices to rental or leasing companies there will be a great deal of unnecessary administration for traffic authorities who will need to issue penalty charge notices to our members only to receive them back with the customer's details on them and then they will need to reprint them and issue them again to the customer. This labour intensive paper process could be reduced by traffic authorities working with rental or leasing companies to issue details of fines incurred electronically to rental and leasing companies who would then in turn responds back on an electronic basis with details of the customer. We are happy to discuss this concept in more detail with the department and to work with the department on encouraging traffic authorities to take this approach.

Closing Comments

The BVRLA welcomes the opportunity to continue its constructive dialogue with the department and hope it recognises the importance of ensure the definitions used in the regulations do not restrict a motorists right to appeal.

Leasing Members

In general, vehicle leasing is an arrangement where the user simply hires the use of the vehicle and assumes operational responsibility for a predetermined period and mileage at fixed monthly rental from the owner (the leasing company). Legal ownership is, in the majority of cases, retained by the leasing company.

Short Term Rental Members

Rental Members offer hourly, daily, weekly and monthly rental of vehicles to corporate customers and consumers. As explained above, rental members are the owners of the vehicle.



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Response from: British Vehicle Rental and Leasing Association
Address: River Lodge
Badminton Court
AMERSHAM
Bucks HP7 0DD

Contact: Mr Jay Parmar, legal and policy director

Phone: +44 1494 545706

Fax: +44 1494 434499

Email: jay@bvrla.co.uk

Bona-fides **BVRLA, the industry and its members**

- The BVRLA is the trade body for companies engaged in the leasing and rental of cars and commercial vehicles. Its members provide rental, leasing and fleet management services to corporate users and consumers. They operate a combined fleet of 2.75 million cars, vans and trucks, buying nearly half of all new vehicles sold in the UK.
- Through its members and their customers, the BVRLA represents the interests of more than two million business car drivers and the millions of people who use a rental vehicle each year. As well as lobbying the Government on key issues affecting the sector, the BVRLA regulates the industry through a mandatory code of conduct.
www.bvrla.co.uk

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Annex A

Overview of different penalty charge regimes

The offence	Transferrable to the customer	Legislation
Parking local authority	Yes	Traffic Management Act 2004
Private parking	Only if the driver details are known and a full copy of the contract are provided	Protection of Freedoms Act 2012
London congestion charging	Only if the agreement is less than six months in duration	Road User Charging (Charges and Penalty Charges) (London) Regulations 2003
Bus lanes inside London	Only if the agreement is more than six months in durations	Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005
Bus lanes outside London	Yes	London Local Authorities Act 1996 (as amended)
Moving traffic offences	Yes	Traffic Management Act 2004
Speeding	Yes	Road Traffic Act 1988