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Consultation Response Pro-forma

Respondent details:

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<p>* If you are replying on behalf of an organisation, please explain who you represent and size of organisation:</p> <p>We are a partnership of public and private organisations whose aim is to improve the delivery of services to and from central London. Our membership, numbering approximately one hundred, includes seven central London Boroughs, Central London Partnership, Transport for London, London businesses and freight operators serving central London. Please note that some of our members may have responded to the consultation separately.</p>	

Q1: Does the Guidance cover all the issues needed?			
Please tick the appropriate box			
Yes	<input type="checkbox"/>	No	v
If you ticked no, please explain what else you think should be covered.			
<p>Enforcement authorities generally have longer timescales in which to act or pay up, than commercial vehicle operators. They are allowed up to six months to send out a notice to owner (nto) which requires a response within 28 days if the operator wishes to avoid further penalty. Operators have 28 days to appeal following a notice of rejection whilst enforcement authorities have 35 days to reach a decision if an appeal is referred back to them by the adjudicator. There is an inherent imbalance in this process in favour of the enforcement authority which is in direct contradiction to the policy objective of acting fairly, accurately and expeditiously. There should be clear and equitable timescales incumbent on all parties for which enforcement authorities should ensure that they are adequately resourced.</p> <p>--</p> <p>Authorities should be able to identify offences committed by commercial vehicles as opposed to offences committed by private vehicles by use of a software marker. They should also be able to geo-code offences to identify parking "hot spots". These would enable them to better meet the network management duties imposed on them by the Traffic Management Act as they could identify areas where greater management of freight and servicing activity is required.</p> <p>--</p> <p>There should be greater reference to the use of CCTV and the management and</p>			

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processing of PCN's issued via camera. This is a growing method of enforcement that raises different issues from Civil Enforcement Officer (CEO) issued PCNs. Evidence generated from approved devices has been successfully challenged therefore enforcement authorities need to develop processes and procedures to minimise future challenges of photographic / camera evidence.

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Greater emphasis should be made on the contribution that Freight Quality Partnerships (FQPs) can make towards consultation and monitoring. They can communicate with sections of the freight industry that local authorities are unable to reach. Having contact with various sectors of the freight economy FQPs have an overview of parking issues within and between enforcement authorities that will assist with improving the quality of civil enforcement.

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The Loading and unloading section should make specific reference informing CEOs that some operators require vehicles to be secured for security or temperature control purposes whilst loading and unloading takes place. For example, with brewery delivery vehicles, up to 25% of the delivery time may be spent inside the building with the vehicle secured.

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There is an inconsistent and confusing approach by enforcement authorities regarding informal representations. The guidance should make it mandatory for these to be formally incorporated into the authorities' appeals process. Clear information on how to proceed should be contained in the PCN to assist the recipient in pursuing their case.

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With the increase in home delivery services, CEOs should have specific instructions for dealing with loading / unloading in residential areas, especially where deliveries are made to residential blocks. Local authorities should be required to provide and publish guidance to operators as how best to manage loading / unloading in each residential locality.

Q2: Does the Guidance cover issues that are not needed?

Please tick the appropriate box

Yes

No

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If you ticked yes, please explain what you think does not need to be covered.

The term Civil Enforcement Officer and the abbreviation CEO have differing common meanings outside of this context. An alternative term should be sought.

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S 137 appears to be in contravention with the 'Jane Packer Flowers and Others' adjudication in two ways. S 137 states that 'The activity of loading or unloading must be **continuous** while the vehicle is parked in restricted areas. It is therefore important to clarify to CEOs that loading/unloading includes taking goods into a premises (**but not putting them away**), waiting for them to be checked, getting delivery or collection documents signed and returning to the vehicle'.

1. The Packer Flowers adjudication (page 8, final paragraph) states that

'It must be stressed that the lack of any delivery /unloading activity at the vehicle does NOT

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automatically mean that delivery/unloading is not taking place - see above. Nor is it correct to follow a policy that "it was not seen therefore it could not have happened". **Local Authorities often state that "loading or unloading must be continuous" implying that there must be an uninterrupted movement of the goods to or from the vehicle for the exemption to apply. I can find no authority in these terms for this proposition - indeed in Macleod v Wojkowska it was put forward in argument by the Crown and rejected by the decision of the court.** It is, of course correct to say that the exemption only applies whilst the unloading/delivery is taking place but as I have set out above these words cover rather more than simply moving the goods.

2. The Packer Flowers adjudication (page 7, paragraph 2) states that

'These two cases clearly show that in the context of an exemption for loading/unloading taking the goods into/out of the premises is covered and **in some circumstances the putting away of the goods may also be covered.** It seems to me that a fortiori this would apply even more in the case of a delivery/collection exemption'.

To maintain compliance with the Packer Flowers adjudication and to avoid further legal challenge it is suggested that the first sentence referring to 'continuous' is deleted from s137, and that the words 'but not putting them away' are removed from the second sentence.

Q3: Are there any factual inaccuracies?

Please tick the appropriate box

Yes

No

If you ticked yes, please state what these are.

No response on this point.

Q4: What else should back office and managerial training cover?

The emphasis of any training should be on the quality of decision making. PCNs that are successfully appealed involve a waste of scarce resource on both the part of the enforcement authority and the commercial vehicle operator. The ratio of successfully appealed PCNs to total PCN's issued should form part of the annual reporting framework. Reducing these to zero should be the aim of every enforcement authority.

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Reference should be made to consistency in PCN issuing and back office decision making. Members report differing PCN codes and back office decisions for regular daily deliveries. This is important as it raises questions in the mind of vehicle operators about the integrity of the enforcement system.

Q5: Does anyone have any experience of using the Rehabilitation of Offenders Act 1974 to get a Criminal records Bureau check?

Please tick the appropriate box

Yes

No

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If you ticked yes, please explain about your experience.

No response on this point.

Q6: Can any further advice be given about training for vehicle immobiliser and removal teams?

No response on this point.

Q7: What example can be given of where two contraventions take place at the same time?

No response on this point.

Q8: Should the Guidance warn about overpayment of PCNs with cheques associated with money laundering?

Please tick the appropriate box

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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Please add any other comments below.

No response on this point.

Q9: Should authorities be asked to remove all "excess charge" indicators before CPE comes into force?

Please tick the appropriate box

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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Please add any other comments below .

No response on this point.

Q10: Is there anything else that authorities will need to do to prepare for CPE?

Please tick the appropriate box

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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If you ticked yes, please explain what you think these things are.

No response on this point.

Q11: Who, in addition to LAs, the TEC and adjudicators, will need to run two systems for a while after the enactment of the Part 6 provisions on parking?

No response on this point.