

**SURREY COUNTY COUNCIL****CABINET****DATE: 29 MARCH 2022**

**REPORT OF CABINET MEMBER:** **MATT FURNISS, CABINET MEMBER FOR TRANSPORT AND INFRASTRUCTURE**

**LEAD OFFICER:** **KATIE STEWART – EXECUTIVE DIRECTOR FOR ENVIRONMENT, TRANSPORT AND INFRASTRUCTURE**

**SUBJECT:** **ADOPTION OF MOVING TRAFFIC ENFORCEMENT POWERS**

**ORGANISATION STRATEGY PRIORITY AREA:** **GROWING A SUSTAINABLE ECONOMY SO EVERYONE CAN BENEFIT, ENABLING A GREENER FUTURE AND EMPOWERING COMMUNITIES**

<b>Purpose of the Report:</b>
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This year, the Department for Transport (DfT) will allow councils in England and Wales to apply for new powers to carry out Moving Traffic Enforcement (MTE).

This means traffic enforcement cameras could be used to enforce a variety of highway restrictions on Surrey roads to help improve safety and reduce congestion. They could also be a key tool in the development of our new transport strategies (LTP4) aimed at improving infrastructure for buses, cycles and pedestrians.

This report sets out the background, benefits and issues associated with MTE and recommends that the Council applies for these new powers following the process prescribed by the DfT. It also recommends that we begin a procurement process to identify a supplier/enforcement contractor to operate and maintain the infrastructure required.

<b>Recommendations:</b>
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It is recommended that Cabinet agree:

1. To make an application to the DfT for powers to enforce moving traffic contraventions in accordance with Part 6 of the Traffic Management Act 2004;
2. To delegate the management of operational policy regarding camera site selection and operation to the Director for Highways and Transport in consultation with the Cabinet Member for Transport and Infrastructure and the divisional member;
3. To delegate the authority to approve future camera enforcement sites to the Director for Highways and Transport in consultation with the Cabinet Member for Transport and Infrastructure and the divisional member ensuring there is a cost neutral financial case, or if not other identified funding.
4. To approve the setting of PCNs to be issued with MTE at the higher level (£70) for moving traffic contraventions.

5. To agree to receive annual reports on the effectiveness of MTE by the Cabinet Member for Transport and Infrastructure.
6. To delegate authority to make decisions about the use of any surplus income to the Director for Highways and Transport in consultation with the Cabinet Member for Transport and Infrastructure.
7. To begin a procurement process to appoint a supplier for 'Civil Enforcement services' with the outcome being reported back to the Cabinet for approval prior to award.

#### **Reason For Recommendations:**

The recommendations above will enable the council to help achieve some of its Community Vision 2030 objectives, including that:

- Residents live in clean, safe and green communities, where people and organisations embrace their environmental responsibilities; and
- Journeys across the county are easier, more predictable and safer.

Specifically, traffic enforcement cameras provide an option to make travel and transportation schemes more effective and could be a key tool in helping deliver transportation and environmental objectives to reduce congestion and improve facilities for buses, cycles and pedestrians, particularly vulnerable road users.

#### **Executive Summary:**

##### **Background**

1. This year, the Department for Transport (DfT) will allow local highway authorities in England and Wales to apply for new powers to carry out Moving Traffic Enforcement (MTE).
2. The Government sees the new powers as a key tool in reducing congestion and improving air quality, while promoting the attractiveness of active travel, e.g. by keeping vehicles out of cycle lanes and other parts of the road where vehicles are prohibited. In addition, by enabling authorities to use such powers to keep junctions clear, the policy also aims to improve punctuality of bus services contributing to making sustainable travel a more attractive choice. Increasing compliance through targeted enforcement at problem locations, will also bring benefits to the experience of pedestrians including people with sensory impairments, older people, children, those looking after children, as well as carers.
3. This means that traffic enforcement cameras could be used to enforce a variety of highway restrictions on Surrey roads thereby increasing the effectiveness of measures developed in the new Surrey Transport Plan (STP) aimed at improving safety, reducing congestion and upgrading infrastructure for buses, cycles and pedestrians.

4. This report sets out the background, benefits and issues associated with MTE and recommends that we apply for these new powers following the process prescribed by the DfT.

## Background

5. The Traffic Management Act 2004 (TMA) introduced civil enforcement of traffic offences in England and Wales (as opposed to enforcement by the police under criminal law). Part 6 of the Act allows local authorities (who are the Traffic Authority) to apply for powers to enforce contraventions such as parking and moving traffic offences. Following its introduction, Surrey County Council decided to adopt Civil Parking Enforcement (CPE) powers which then transferred the responsibility for parking enforcement to us from the police in a phased transition between 2005 and 2008.
6. However, when it was introduced, Part 6 was not fully enacted by Parliament, and local authorities outside London have not been allowed to use cameras to enforce moving traffic offences (e.g. enforcement of banned turning movements, no entry restrictions, stopping in yellow box junctions etc), this responsibility remaining with the police.
7. The DfT have now announced that they will make new regulations during 2022 that would enable local highway authorities outside of London to use these powers. The process is subject to the Parliamentary timetable; however, the current expectation is that statutory operational guidance will be issued in March, followed by the new regulations coming into force in June. To be given these powers, authorities will need to apply to the DfT demonstrating they have selected potential enforcement sites following the prescribed process.
8. Local highway authorities were able to apply for these new powers from February 2022 onwards, and the DfT is aiming to start making Designation Orders providing the Part 6 powers to successful applicants in the second half of this year.
9. The DfT have issued preliminary guidance about these new powers, which can be used to enforce a range of highway restrictions (including yellow box markings, banned turning movements, parking in cycle lanes etc). A full list of restrictions covered by the new powers are set out in **Annex 1**. The rationale for providing these powers is that they are seen as a key tool in helping deliver transportation and environmental objectives to reduce congestion and improve facilities for buses, cycles and pedestrians, particularly vulnerable road users.
10. Only council areas already designated as civil enforcement areas for parking contraventions (such as Surrey) may be designated as areas for moving traffic enforcement.
11. The DfT are also taking this opportunity to rationalise existing bus lane enforcement legislation and bring it into line with the new MTE processes described in the report.

### How could it work in practice?

12. It is expected that the process will be very similar to moving traffic enforcement already being operated by London authorities and Cardiff City Council, and the DfT's early guidance has been based on experience in these areas. The method of enforcement is also similar to that of CPE which operates in Surrey and widely across the UK.
13. There are a wide range of offences that could be enforced under these powers (as shown in **Annex 1**), and potential locations could be anywhere on the highway network within the county (excluding motorways, trunk roads and private roads). In practice, only the video evidence provided by a type-approved camera (i.e. static or mobile in a vehicle) will be sufficient for enforcement purposes.
14. It is anticipated that the benefits of camera enforcement could be utilised for a number of purposes including:
  - **Road Safety Schemes** – in some cases it is not possible to use engineering measures alone to reduce casualties at specific locations and traffic enforcement cameras could be used to reinforce restrictions and prohibitions (e.g. banned turns etc)
  - **Environmental protection** – traffic cameras could be used to enforce HGV restrictions or other traffic prohibitions.
  - **Congestion reduction** – cameras could help make yellow box markings and some clearways more effective.
  - **Active travel schemes/cycle lanes** – in some cases camera enforcement maybe required to prevent parking and driving on cycle routes or in pedestrian areas.
  - **Liveable Streets and school zones** – enforcement cameras could be used to enforce new initiatives such as these but still facilitate legitimate access where required.
15. It is anticipated that there will be requests for enforcement cameras at a range of locations from SCC Highways and Transport Teams, Surrey Police, Members, residents, accessibility and cycle groups, amongst other stakeholders. In due course, the Council will be able to set out more detail about the criteria and methods by which a traffic enforcement camera could be requested as the policy is developed (and when the draft Statutory Guidance is published by the DfT from March).
16. In all circumstances, traffic cameras would only be used to enforce existing or new highway restrictions (and only those listed in **Annex 1**) on the highway that were backed up by a Traffic Regulation Order (TRO) where required. It should be noted the new enforcement powers do not include most parking offences or pavement parking.
17. The DfT have so far set out guidelines that local authorities must follow when deciding where to use traffic enforcement cameras. This is likely to become part of the statutory guidance for the use of MTE powers later in the year. Key requirements include:
  - A survey of the existing road layout particularly road signs and markings to determine if they are visible or potentially confusing to motorists. This should also determine whether the restriction can be readily adhered to.

- A determination of compliance levels observed or recorded at the location. This could come from a number of sources including accident data, police records or surveys. It would not be necessary or cost effective to install a potentially expensive camera in a location if compliance levels were already generally good.
  - A minimum six week public consultation about the placement and use of each proposed enforcement camera will also be required in advance. This could also pick up feedback and observations from the public/highway users about traffic behaviour at the location and might indicate alternative solutions would be preferable.
18. For new schemes, it is quite possible that an enforcement camera could be installed because it may be integral to making a restriction effective. For example, a new pedestrian zone that had exceptions for loading and deliveries could be regulated by a camera at the entry point. The use of a camera would be part of the initial scheme consultation process, along with the TROs.
  19. When an enforcement camera is installed, camera warning signs would also be placed alongside the regulatory restriction signing to improve compliance. Publicity and awareness campaigns should also be planned to suit the circumstances of the situation.
  20. This public engagement is intended to communicate the rationale for, and benefits of, moving traffic enforcement to residents and businesses to promote understanding, acceptance and compliance.
  21. In addition, it is expected that the DfT will stipulate that warning notices must be sent for a period of six months from the installation of a camera, when motorists commit an offence for the first time. Subsequent offences by the same vehicle/keeper would receive a Penalty Charge Notice (PCN).
  22. All camera equipment will need to be type-approved and comply with standards set by the Vehicle Certification Agency. There will also be some practical limitations with their placement, particularly in rural areas because of the need for a mains power supply.

### **The application process**

23. In order to allow local highway authorities outside London to take on Part 6 powers the DfT will pass new legislation through Parliament, and as mentioned previously, this is likely to happen between March and June 2022. Guidance about the application process for local authorities has been published by the DfT and is as follows:

*Application for Part 6 power will be made in the form of an application letter to the DfT confirming it has the authority of the council. The letter will also confirm the authority has:*

- a) *Consulted the appropriate Chief Officer of Police;*

- b) Carried out a minimum six-week public consultation on the detail of planned civil enforcement of moving traffic contraventions. Consultations should include the types of restrictions to be enforced and the location(s) in question;*
- c) Considered all objections raised and has taken such steps the Council considers reasonable to resolve any disputes;*
- d) Carried out effective public communication and engagement as the Council considers appropriate, for example using local press and social media, and that this will continue up to the start of enforcement and for a reasonable period thereafter;*
- e) Ensured all moving traffic restrictions to be enforced will be underpinned by accurate Traffic Regulation Orders, and indicated by lawful traffic signs and road markings;*
- f) Ensured all the relevant equipment has been certified by the Vehicle Certification Agency specifically for moving traffic contraventions.*
- g) As part of ensuring that TROs and traffic signs are accurate and lawful, applicant local authorities are encouraged to take the opportunity to identify and remove any signs that are either obsolete or no longer necessary, whether or not relating directly to the restriction being enforced.*

24. It will only be possible to submit our application when the Council has completed the steps outlined above. The DfT have confirmed that our application would only need to relate to one or two sites where we initially propose to place enforcement cameras. They will review our application and, if approved, will make a Designation Order that will provide the Council with Part 6 powers. Once the Designation Order has been made, it will be possible to install additional enforcement cameras without further reference to the DfT subject to following steps a) to g) above for each location.

### **Site Selection**

- 25. An officer working group has been set up to evaluate the Council's priorities for the deployment of traffic enforcement cameras. Members of the group cover a range of areas including road safety, traffic management & streetworks, local highways, transport planning, passenger transport and parking. The group will be expanded to include officers from the environment team.
- 26. Considering the variety of potential restrictions that could be enforced with cameras, the highest immediate priority is likely to be those related to road safety or congestion alleviation.
- 27. An initial evaluation of 'Road Safety Working Group' accident cluster sites across the county indicated that there are not currently any of these locations that would benefit from a traffic enforcement camera, although this could change over time as accident data is analysed and remedial schemes developed. Going forward, traffic enforcement cameras could be considered as part of a range of options that are available to improve road safety. (There is a distinction between traffic enforcement cameras and safety cameras which are used for speed enforcement and at traffic signals to improve red light compliance, both widely used as casualty reduction devices)
- 28. In terms of congestion alleviation, one of the main benefits of traffic enforcement cameras is that they can be used in conjunction with yellow box markings to help keep

junctions clear and prevent blocking and so holding up traffic flows. Consequently, we are in the process of evaluating the effectiveness of yellow box junctions at the busiest and most congested parts of the highway network in Surrey.

29. In April 2021, we introduced a lane rental scheme which operates by imposing a financial penalty for carrying out roadworks on the busiest parts of the highway network at the busiest times of day. Further information [is available here](#). The extent of the lane rental scheme (and the roads where it applies) is clearly defined and was therefore used as the basis for a search area. Junctions with yellow box markings in the area were identified and then, using CCTV coverage where possible, surveys will be undertaken to determine the effectiveness of yellow box markings. These compliance surveys will help indicate where to focus further investigation into the possible use of enforcement cameras.
30. The survey and investigation work is likely to be completed in March, after which time officers will start preparations for a 6 week public engagement and consultation process about any proposed sites.
31. In terms of the public engagement campaign, this will involve as a minimum, SCC web pages, social media and press releases. This will be developed with our Communications and Engagement Team.
32. It is recommended that the Director for Highways and Transport is delegated the authority in consultation with the Cabinet Member for Transport and Infrastructure, and Local Members to agree the sites that are selected by the investigation and put forward in the Council's camera enforcement application.
33. Subject to a successful application to the DfT in May and approval later this year, the Council will then be able to evaluate further sites following the process set out above. These would be put forward from a range of sources as described above, and the Council's policy on MTE will develop over the coming year and beyond as experience grows.

### **Procurement Route**

34. It is proposed to deliver MTE with the assistance of a contractor who will supply, maintain and operate the majority of the enforcement functions. The Council will, however, need to set up a back office to deal with appeals and representations as well as other responsibilities set out in the statutory guidance.

<b>Consultation:</b>
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35. The development of the proposals in the report has involved internal stakeholders and teams involved with managing the highway network.
36. Surrey Police have been fully briefed and support the Council's application for Part 6 powers. They consider that from a road safety perspective, increased enforcement of offences should be beneficial and when supported by a credible process, could act as a further deterrent to poor driving behaviour. The police are keen to ensure we work

cooperatively together maintaining effective communications with each other and the public about these new responsibilities.

37. Going forward, Surrey Police will be a key consultee in the identification and placement of enforcement cameras as well as in the communications and publicity arrangements associated with their use.
38. The specific consultation process for the placement and use of traffic enforcement cameras outlined above will be carried prior to any installation as defined by the statutory guidance.
39. The Communities, Environment and Highways Select Committee have considered the proposals on the 8 March 2022 and resolved to:
  - Support the draft recommendations to Cabinet outlined in the report.
  - Asks the Cabinet Member/Service to consider arranging an all Member Seminar on this topic (Adoption of Moving Traffic Enforcement Powers) covering the changes, practical implications, selected sites, associated process and Members' role.
  - Requests Cabinet Member to write to the relevant Government Minister for further details about pavement parking.

#### **Risk Management and Implications:**

40. There is a significant risk of reputational damage if enforcement cameras are not used proportionately and in the right circumstances to help improve road safety and reduce congestion. Public perception of the Council could suffer if cameras are seen as revenue raising devices.
41. It will therefore be critical to ensure each camera is deployed in appropriate circumstances following the Council's own procedures and the statutory guidance prescribed by the DfT covering usage. Key steps in the camera placement decision making process outlined above will help achieve this. As part of this process, the Council will need to:
  - Ensure there is a case for and sufficient data to justify a camera in terms of improving safety or poor compliance with an existing restriction.
  - Audit the existing road layout to ensure existing signing and lining is clear and road users are not confused by conflicting information
  - Check any existing or new traffic orders to make sure they are up to date and sensible exemptions are allowed (eg access arrangements), and take reasonable steps to notify SatNav companies of the restrictions.
  - Carry out a minimum 6-week public consultation, along with an awareness and engagement exercise about the specific siting of a proposed camera and the problem it is intended to fix.
  - Evaluate the feedback from such consultation to identify issues with the usage of the road space that may be contributing to the problem and Rectify If Possible And Evaluate Again.

## Financial and Value For Money Implications

42. The DfT has determined two bands for the level of penalty charge payable for moving traffic contraventions, in the same way that there are two bands for parking contraventions. Band 1 would see the charge at £60 (reduced to £30 if paid within 21 days) and band 2 at £70 (reduced to £35 if paid within 21 days). In Surrey, parking charges are set according to band 2 and so it is recommended that we adopt the same band (£70) for moving traffic contraventions, as it would send out the wrong message to suggest that a moving traffic contravention, such as driving the wrong way along a one way street, is less serious than, for example, parking on a single yellow line. Representations can be made against a PCN to the enforcing council and there will be an adjudication service to arbitrate when there is a dispute in a very similar way that CPE operates.
43. Depending on the location and type of restriction to be enforced, traffic enforcement cameras can cost between £15,000 and £25,000 and up to £700 per month to operate and maintain. There are additional costs associated with dealing with representations against PCNs and adjudication. Some types of restriction might also require more than one camera for effective enforcement.
44. Ideally, traffic enforcement cameras will be self-financing (i.e. the fines will cover the costs associated with operating them), but this will not always be the case. The Council will therefore need to ensure that our site selection policy also considers the business case for the installation and particularly, the financial implications involved.
45. For example, at a site with very poor compliance levels, a camera could potentially be justified and is likely to cover its costs from the fines issued. In time, if compliance improved, the cameras could be moved elsewhere or rotated between different sites as necessary thereby reducing overall costs. In other cases, where a camera is considered necessary but unlikely to be self-financing, alternate funding will need to be secured.
46. It is proposed that the Council carries out a procurement process to obtain a supplier of civil enforcement services, this would include supply and maintenance of cameras as well as some back office functions. The council will need to employ additional staff to deal with other functions that cannot be delegated to a contractor, such as considering appeals and participating in the adjudication process.
47. Overall, the Council would aim to manage this new function on a cost neutral basis with the income from penalties covering all costs. Any surplus income generated as a result of MTE will, by law, need to be allocated towards transport or environmental improvement schemes, in a similar way to parking enforcement surplus.

## Section 151 Officer Commentary

48. Although significant progress has been made to improve the Council's financial position, the medium term financial outlook beyond 2022/23 remains uncertain. With no clarity on central government funding in the medium term, our working assumption is that financial resources will continue to be constrained, as they have been for the majority of the past

decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority in order to ensure stable provision of services in the medium term.

49. The exact cost of the moving traffic enforcement scheme will depend on several factors including the outcome of the procurement process and the scale and location of enforcement measures, however at this stage the cost of implementing and operating the scheme is expected to be met through penalty income and from existing approved budgets. A full financial assessment of the scheme will be undertaken alongside development of the Council's MTE policy and the procurement process, and performance will be monitored through the life of the scheme. Enforcement measures will only be introduced where across the scheme there is a positive financial business case, or alternative funding has been identified. Although the purpose of the scheme is not to generate a surplus, should one arise it would be used in accordance with relevant legislation. As such, the Section 151 Officer supports the recommendations.

**Legal Implications – Monitoring Officer**

50. Part 6 of the Traffic Management Act 2004 (“TMA”) provides for civil penalties for road traffic contraventions. Section 72 of the TMA allows regulations to be made for or in connection with the imposition of penalty charges for road traffic contraventions subject to civil enforcement. New regulations will come into force on 31<sup>st</sup> May 2022 which, together with additional new representations and appeals regulations provide for the civil enforcement of, inter alia, bus lane contraventions and moving traffic contraventions in England but outside Greater London.

**Equalities and Diversity**

51. A full Equality Impact Assessment is not considered necessary for this policy because it does not impact any protected characteristic groups.

**Other Implications:**

52. The potential implications for the following council priorities and policy areas have been considered. Where the impact is potentially significant a summary of the issues is set out in detail below.

<b>Area assessed:</b>	<b>Direct Implications:</b>
Corporate Parenting/Looked After Children	No significant implications arising from this report
Safeguarding responsibilities for vulnerable children and adults	No significant implications arising from this report
Environmental sustainability	See below.
Compliance against net-zero emissions target and future climate compatibility/resilience	No significant implications arising from this report but see below identification of environmental benefits arising from the opportunity to enforce restrictions that could improve air quality - See below.
Public Health	No significant implications arising from this report.

## Environmental Sustainability Implications

53. The new powers are a key tool in reducing congestion and improving air quality, while promoting the attractiveness of active travel e.g. by keeping vehicles out of cycle lanes and other parts of the road where vehicles are prohibited. Having the powers to keep junctions clear will improve punctuality of bus services contributing to making sustainable travel a more attractive choice. Increasing compliance through targeted enforcement at problem locations, will also bring benefits to the experience of pedestrians including people with sensory impairments, older people, children, those looking after children, as well as carers.

## What Happens Next:

54. Subject to Cabinet agreement, officers will continue with the preparation to make an application to the DfT for MTE powers as set out above at the earliest opportunity. A procurement process will also begin that will need further Cabinet approval prior to award of contract.
55. The Council's policy regarding MTE will be developed in line with the statutory guidance to be published this year as well as feedback from Members.

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### Contact Officer:

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### Consulted:

Surrey Police

### Annexes:

Annex 1: List of Traffic Signs Subject to Moving Traffic Enforcement

### Sources/background papers:

Traffic Management Act 2004

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