

Dear Roger,

Just to clarify, we will also be updating the Traffic Signs Manual on the restrictions associated with with-flow mandatory cycle lanes.

Kind regards,
Ryan

**Ryan McGowan | Policy Adviser, Traffic & Technology Division, Department for Transport
Zone 3/27**

From: Ryan McGowan
Sent: 09 January 2019 17:25
To: Roger Geffen
Cc: Guy Boulby; Anna McCarthy
Subject: RE: Parking in mandatory cycle lanes

Dear Roger,

Apologies for my delay in responding again – I just needed to double check this with my colleagues as I joined the Department after TSRGD 2016 was introduced.

To clarify, local authorities will be able to use cameras to enforce against *parking* in mandatory cycle lanes, but the separate offence of *driving* in mandatory cycle lanes will remain with the police as a criminal offence.

Rule 140 of the Highway Code is unclear, and we are considering whether it should be revised as part of the review of the Highway Code. We're also aware that the Traffic Signs Manual may be unclear on the restrictions associated with mandatory cycle lanes as well.

You are correct in that TSRGD 2016 did effectively abolish the need for a Traffic Regulation Order to give effect to a new mandatory cycle lane. In other words, legally-enforceable mandatory cycle lanes can be introduced without TROs, as the markings alone now constitute the legal restriction. This change was made before I joined the Department, but I understand that the purpose of this was to make it quicker and easier for local authorities to introduce mandatory cycle lanes. It also eliminates an incentive for local authorities to introduce merely advisory cycle lanes simply to avoid the cost and bureaucracy that were associated with making TROs for mandatory cycle lanes.

With regards to TSRGD 2002, the Department's view is that 'used' meant driven and that 'encroached' meant the active movement of a vehicle into the restricted lane; and that the restrictions associated with mandatory cycle lanes have not changed, aside from the aforementioned elimination of the TRO requirement.

The Department has no current plans to amend TSRGD 2016 (with respect to cycle lanes) or to commence the provisions in the Traffic Management Act 2004 that would enable local authorities to undertake civil enforcement of moving traffic offences.

Kind regards,
Ryan

**Ryan McGowan | Policy Adviser, Traffic & Technology Division, Department for Transport
Zone 3/27**

From: Roger Geffen
Sent: 24 December 2018 13:55
To: Ryan McGowan
Cc: Guy Boulby
Subject: FW: Parking in mandatory cycle lanes

Dear Ryan

Many thanks for your response. Cycling UK certainly welcomes the decision by Ministers to allow local authorities to use fixed and mobile cameras to enforce mandatory cycle lanes (MCLs) and other moving traffic offences.

I am puzzled though to learn that MCL markings only give rise to moving traffic offence, not a parking offence. [Highway Code rule 140](#) states that “You **MUST NOT** drive or park in a cycle lane marked by a solid white line during its times of operation”. The use of “MUST NOT” certainly suggests that parking in a MCL is indeed an offence.

I note though that [schedule 9 part 7 paragraph 12\(2\)](#) of the Traffic Signs Regulations and General Directions (TSRGD) 2016 defines the white line denoting a MCL (marking to diagram 1049B, shown at item 7 in [this table](#)) as “convey[ing] the requirement that a vehicle, other than a pedal cycle, must not be **driven, or ridden**, in the cycle lane during the cycle lane’s hours of operation (which may be all the time).”

From paragraph 3.48 of the [circular explaining TSRGD 2016](#), it appears that this paragraph 12 was included to avoid the need for local authorities to make traffic regulation orders (TROs) in order to introduce mandatory cycle lanes – as there was no equivalent paragraph in TSRGD 2002. Am I right that paragraph 12 is effectively a national ‘blanket TRO’ for MCLs introduced since then?

I note this because [TSRGD 2002 section 4](#) defined cycle lanes as follows:

“cycle lane” means a part of the carriageway of a road which—
(a) starts with the marking shown in diagram 1009; and
(b) is separated from the rest of the carriageway—
*(i) if it may not be **used** by vehicles other than pedal cycles, by the marking shown in diagram 1049; or*
(ii) if it may be used by vehicles other than pedal cycles, by the marking shown in diagram 1004 or 1004.1;

[Again, emphasis added].

The definition of MCLs created by sub-paragraph (b)(i) clearly accords more closely with Rule 140 of the Highway Code. It also appears to bear out the advice given in [chapter 3 of the Traffic Signs Manual](#) (TSM), dating from 2008. Paragraph 17.6 states that the with-flow cycle lane sign (sign to diagram 959.1) is “a regulatory sign that prohibits motor vehicles from encroaching on the cycle lane” [again, emphasis added]. Similarly, paragraph 16.5 of [TSM chapter 5](#) (2003) says that “Mandatory cycle lanes are parts of the carriageway which other vehicles must not enter except to pick up or set down passengers, or in case of emergency.”

It therefore appears that the previous regulation preventing vehicles other than pedal cycles from ‘using’ mandatory cycle lanes during their hours of operation ([TSRGD 2004 section 4](#)) was relaxed to ‘driving or riding’ in them only in 2016, through the paragraph in TSRGD 2016 referenced above. Could you confirm whether this is in fact the case?

If so, a number of further questions arise.

The first one is why was this done?

The second is why was this change not mentioned in the [TSRGD 2016 Circular](#)'s explanation of changes made? As previously noted, this Circular explains (at paragraph 3.48) that changes had been made to remove the requirement for local authorities to make TROs in order to introduce MCLs. It also states (at paragraph 12.16) that the width requirements for MCL white lines had been changed. However it says nothing about any change to the regulatory meaning of that white line.

The third is more complex. If the aforementioned paragraph 12(2) has been included in TSRGD Schedule 9 to avoid the need for LAs to make TROs (i.e. if it is effectively a national 'blanket TRO' for all MCLs introduced after it came into effect), it surely follows that MCLs introduced before TSRGD 2016 came into effect will still be subject to locally-made TROs – and these presumably still prohibit vehicles other than pedal cycles from 'using' MCLs (or 'encroaching' into them, or similar wording), not just from 'driving or riding' in them.

If I am right on all this, then my third question is also a request. Will the Department will amend TSRGD paragraph 12(2) so that new MCLs have a regulatory meaning which is consistent with pre-existing MCLs, with rule 140 of the Highway Code and with the paragraphs of TSM chapters 3 and 5 cited above? It is surely unsatisfactory that older and newer MCLs effectively have different regulatory meanings.

My fourth is to suggest and request that Part VI of the Traffic Management Act (TMA) 2004 should still be brought into effect, so that local authorities can carry out enforcement of the restrictions which prevent other vehicles from being parked (as well as driven or ridden), at least for MCLs created since TSRGD 2016 came into force – and hopefully also for newer ones (as would be the case if you also agree to my first request). This would achieve a host of wider traffic management benefits, enabling local authorities to comply more effectively with their Network Management Duties under the TMA and thus to deliver safety and other benefits to cyclists and other road users. Could I honestly ask, is there any reason for not doing this?

Your email explains that the Department's preferred approach is instead to advise local authorities to introduce 'yellow line' TROs if they wish their MCLs to be subject to civil enforcement. Without this, you say local authorities would be unable to take enforcement action when motor vehicles are found parked in MCLs, for the following reasons:

- Firstly, a vehicle found parked in a part-time MCL could have been legally driven there outside of its hours of operation; and
- Secondly, even in the case of a full-time (24/7) MCL, the vehicle could have been driven there by someone else, or pushed.

In response, I'd note that these points would presumably apply only to newer MCLs (i.e. those created since the introduction of TSRGD 2016), not older ones. Even part-time parking regulations apply regardless of when the vehicle had initially been parked, a point which would presumably be equally for older MCLs as for yellow-lines. Meanwhile your second point fails to make sense even as a reason why LAs should have to introduce parking restrictions to enable civil enforcement of newer MCLs (let alone older ones), as your objections would still be valid once yellow lines had been introduced. Even then, finding a vehicle parked at a forbidden time in a MCL (or anywhere else with yellow lines) is evidence of that an offence has been committed, without providing evidence of who committed it. As for your suggestion that a parked vehicle could have been 'pushed', I'm pretty sure this would still amount in law to being 'driven'. I have to say Ryan, this really does seem to be an extraordinarily convoluted mess!

I therefore question what would be the benefit of requiring local authorities to make yellow-line TROs in order that their MCLs could be subject to civil enforcement. This is particularly the case for MCLs which were introduced prior to TSRGD 2016. Would it not be simpler to bring into effect Part

VI, thereby saving local authorities an awful lot of time and effort making TROs for existing MCLs, as well as the need for a lot of additional visual clutter in the form of double-yellow lines. May I reiterate: is there any good reason for not doing so?

In conclusion, Cycling UK would still strongly urge DfT firstly to bring Part VI of TMA 2004 into effect, and would additionally urge DfT to amend the TSRGD definition of an MCL white line, so that it accords with Highway Code Rule 140, with the TSM paragraphs cited above, and with the TROs that presumably apply to MCLs introduced prior to 2016.

I look forward to your responses, particularly to these concluding requests.

With all best wishes for a wonderful Christmas and a very happy New Year.

Yours sincerely

Roger Geffen
Policy Director
Cycling UK

From: Ryan McGowan
Sent: 19 December 2018 22:38
To: Roger Geffen
Subject: Parking in mandatory cycle lanes

Dear Roger,

Please accept my sincere apologies again for my delay in getting back to you. Unfortunately things are a little hectic for me at the moment as I'm also leading the Department's pavement parking review, which is due to finish by the end of this year.

Before I go any further, I'm obliged to emphasise that I am not a lawyer and nothing I say below should be taken as legal advice or offered as such to anyone else. What follows is merely the Department's view of the current situation.

As a starting point, I should clarify that the so-called 'Part 6 powers' in the Traffic Management Act 2004 which relate to parking enforcement have already been commenced; including in relation to the offence of parking on a cycle track. A commencement order has already been applied to these provisions and no further order is needed.

As you have already noted, however, cycle tracks and cycle lanes are separate matters. Whereas parking on a cycle track is an offence under s.21 of the Road Traffic Act 1988, and now enforceable by local authorities under the Traffic Management Act 2004, there are different laws and rules governing advisory and mandatory cycle lanes.

Advisory cycle lanes, as you know, have no status in enforcement terms and I will say nothing more about them here.

Mandatory cycle lanes are different. It is an offence to drive in a mandatory cycle lane, but not necessarily to park in one. I'm keenly aware that this might seem strange, given that the only way to park in a mandatory cycle lane is to drive in one; but this is because mandatory cycle lane markings create a *moving traffic offence* rather than a *parking offence*. I am simplifying the terminology a little, although the point stands. These are separate offences and one does not necessarily prove the other.

A vehicle found parked in a mandatory cycle lane does not necessarily establish that the driver has committed an offence. There are several reasons for this. One is that some mandatory cycle lanes operate part-time (eg. 7am-7pm), and it is not an offence to drive in one outside the lane's hours of operation; so a vehicle found parked in a mandatory cycle lane, could, in theory have driven into it outside the hours of operation. Even where the cycle lane operates 24/7, it may still be difficult to prove that an offence has been committed. Similar issues arise with footway parking – it is an offence to drive on a footway but, outside London, not specifically an offence to park on one; we are aware that the police are unlikely to pursue a prosecution for driving on a footway solely on the basis of having found their vehicle parked there, partly because someone else could have driven the vehicle there, it could have been pushed there, etc...

To ensure that effective enforcement action can be taken against vehicles parking in mandatory cycle lanes, local authorities must therefore use Traffic Regulation Orders to impose standard parking restrictions (eg. single or double yellow lines) which they can enforce using civil parking enforcement powers. Where a mandatory cycle lane operates part-time, I suspect they will use single yellows and time the restricted hours to the hours of the lane, where a lane is 24/7 I suppose that they are more likely to use double yellows; but they are free to do what they want and there is nothing to stop them putting double yellows in a cycle lane which only operates for one hour on each Thursday.

One disadvantage of the civil enforcement system has been that the regulations applying to local authority parking enforcement prohibit the use of camera enforcement in all but a few circumstances, such as for school zig-zag markings and bus stop clearways. This has meant that even where the local authority has introduced double yellows along all of its mandatory cycle lanes, enforcement has relied entirely on patrolling civil enforcement officers physically encountering contravening vehicles and affixing Penalty Charge Notices (PCNs) to those vehicles by hand. With a limited pool of on-foot officers on patrol at any given time, this can make it difficult for an authority to sustain comprehensive and responsive enforcement across the length and breadth of its cycle lane network.

Ministers have therefore now decided to change the regulations governing local authority camera traffic enforcement in order to allow local authorities to use cameras (including both fixed CCTV posts and patrolling camera cars) to enforce parking restrictions in mandatory cycle lanes. Our hope is that this will enable local authorities to deploy a greatly enhanced level of enforcement against vehicles obstructing mandatory cycle lanes and in turn establish a much greater level of deterrence against blocking a cycle lane in the first place.

Unfortunately, as you have noted, this does still depend on the presence of parking restrictions (eg. yellow lines) within that cycle lane, and we will be clarifying this to local authorities.

I realise this isn't the answer you were quite hoping for, but I hope it makes sense. I'm happy to answer any questions you may have.

Kind regards,
Ryan

 Department for Transport

Ryan McGowan
Policy Adviser

Zone 3/27, Great Minster House
33 Horseferry Road, London, SW1P 4DR

[Follow us on twitter @transportgovuk](#)

From: Roger Geffen
Sent: 11 December 2018 12:08
To: Ryan McGowan
Cc: Guy Boulby
Subject: Parking in mandatory cycle lanes

Dear Ryan

I am emailing following a meeting I had last week with Guy Boulby from DfT's cycling and walking policy team (copied in). During that meeting I questioned the commitment in the [CWIS Safety Review response](#) that DfT would "Clarify to local councils the powers they have to prohibit parking in cycle lanes through civil parking enforcement powers". I expressed puzzlement given that, unless I'm badly mistaken, English local authorities outside London still have no such powers. He suggested you may be able to clarify the situation.

My understanding is that the relevant powers were created in Part 6 of the Traffic Management Act 2004 (see [section 73](#) and [Schedule 7, Part 1, clause 4\(2\)\(h\)](#)) but have never been brought into effect. Consequently, the rules prohibiting parking in mandatory cycle lanes during their hours of operation can only be enforced by police officers, not local authorities. This is of no use in practice, as the police no longer employ parking wardens, since they no longer have any responsibilities for enforcing any other parking restrictions.

Does DfT now intend to bring forward the relevant Statutory Instrument to bring Part 6 of TMA 2004 fully into effect?

I hope you can assure me that DfT is not planning instead to advise local authorities that they can introduce new Traffic Regulation Orders (TROs) to create double yellow line restrictions. That would effectively be an acknowledgement that the money LAs have previously spent on obtaining TROs and painting in solid white lines was to no avail – and that they now need a second TRO, and additional yellow paint, if they want their mandatory cycle lanes to be enforceable. This would be a hugely inefficient solution, when the right one is simply to bring forward the Statutory Instrument needed to bring TMA 2004 Part 6 fully into effect.

I hope you can assure me that this is indeed what DfT has in mind?

Yours sincerely

Roger Geffen
Policy Director
Cycling UK