



BRIEFING PAPER

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Parking Places (Variation of Charges) Bill 2016-17

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Summary

The *Parking Places (Variation of Charges) Bill* (Bill 18 of 2016-17) is scheduled for its Second Reading debate on Friday 25 November 2016. This is a Private Member's Bill, brought forward by the Conservative MP David Tredinnick. The Bill has the support of the Government.

The aim of the Bill is essentially to make it easier for local authorities to lower their parking charges and to provide for local authorities to consult interested parties if they are seeking to increase the cost of parking charges.

The Bill amends provisions in the *Road Traffic Regulation Act 1984* and will in effect give the Secretary of State regulation-making powers to achieve the ends stated above.

The Bill applies to England only.

For more information on parking policy in England, see HC Library briefing papers: [Parking policy in England](#) (SN2235); and [Pavement and on-street parking in England](#) (SN1170).

1. Background

Since 1995 local authorities in England have had the ability to assume control for parking enforcement in their areas from the police. Almost all local authorities have now assumed these powers. This means that parking offences on the public highway are not dealt with by the police and the courts but by the civil authorities – the local authority and an independent traffic tribunal which hears appeals. The law on civil parking enforcement was revised and consolidated in 2004, and the current arrangements came into force in 2008.

Since 2013 the Government has introduced changes to the use of CCTV to enforce parking restrictions, a new 10 minutes' grace period, and a right to challenge local parking policies. It is currently consulting on cash payments and how parking enforcement works on private land.

1.1 Powers to vary parking charges

Sections 41 and 42 of the [Road Traffic Act 1991](#) introduced new powers for local authorities to vary car parking charges at both designated on-street parking places and in their off-street car parks. There was very little debate on these provisions when what became the 1991 Act was going through Parliament. The only debate came at Lords Report stage when the Government introduced the new clause on off-street car parks. The then Transport Minister, Lord Brabazon of Tara, said:

The amendment ... applies to variation of charges at off-street parking places. Local authorities making orders prescribing charges at off-street parking places will, in future, be able to vary those charges subsequently by the simpler public notice procedure —to be prescribed by regulations made by the Secretary of State and subject to the negative resolution procedure —instead of having to make a new parking places order.¹

The powers provided in the 1991 Act are contained in sections 35C (on-street) and 46A (off-street) of the [Road Traffic Regulation Act 1984](#), as amended.

Regulation 25 of the *Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996* (SI 1996/2489), as amended, made under these powers, provides for the same procedure regardless of whether charges are being raised or lowered. It requires that a local authority:

- Publish a notice of variation at least once in a newspaper circulating in the area in which the parking places to which the notice relates are situated at least 21 days before it is due to come into force.
- The notice of variation must specify the date when it is due to come into force; identify every parking place to which the notice relates; and specify the changes to charges payable for the use of the parking place(s);

¹ [HL Deb 10 June 1991, cc977-8](#)

- In the case of an **off-street** parking place, cause a copy of the notice to be displayed in the parking place on the date on which the notice is given and take “all reasonable steps” to ensure that it continues to be so displayed and remains in a legible condition until the date on which it comes into force; and if it thinks fit, cause additional copies to be so displayed in the parking place and in roads giving access to the parking place; and
- In the case of an **on-street** parking place, if the local authority thinks fit, cause copies of the notice to be displayed in prominent positions in the road in which the parking place is situated.

1.2 What can parking revenue be spent on?

In 2013-14 local authorities in England saw income of around £739 million from on-street parking and £599 million from off-street parking. Their net profit on parking charges was £660 million and income from on-street parking Penalty Charge Notices (PCNs) was £343 million.²

Local authorities can only spend parking income on certain things.

Section 55 of the [Road Traffic Regulation Act 1984](#), as amended, is the relevant legislation. It applies in England and Wales. It states that “a local authority shall keep an account of their income and expenditure in respect of parking places for which they are the local authority...”. This covers *all* income and expenditure, i.e. income from charges *and* fines.

Section 55(2) provides that the relevant council must make good any deficit from their General Fund (e.g. if they spend more on parking enforcement than they get in revenue).

Section 55(3) provides that any surplus can be carried over into the next year. Section 55(2) and 55(4) set out what a surplus may be spent on: “...any surplus shall be applied for all or any of the purposes specified [...] and, in so far as it is not so applied, shall be appropriated to the carrying out of some specific project falling within those purposes and carried forward until applied to carrying it out”. Those purposes are:

- 1 where the council has previously used money from the General Fund to plug a deficit in parking operations, to pay back that money (applies to the previous 4 years);
- 2 meeting all or any part of the cost of the provision and maintenance by the local authority (or another local authority where appropriate) of off-street parking accommodation, whether in the open or under cover;
- 3 if it appears to the local authority that the provision in their area of further off-street parking accommodation is unnecessary or undesirable, the following purposes:
 - a. meeting costs incurred, whether by the local authority or by some other person, in the provision or operation of, or of facilities for, public passenger transport services,

² DfT/CLG, [Local Authority Income from Sales, Fees and Charges on Parking Charges, 2013-14](#), March 2015

- b. the purposes of a highway or road improvement project in the local authority's area,
- c. in the case of a London authority, meeting costs incurred by the authority in respect of the maintenance of roads maintained at the public expense by them,
- d. the purposes of environmental improvement in the local authority's area,
- e. in the case of such local authorities as may be prescribed, any other purposes for which the authority may lawfully incur expenditure

There was a judgement in 2013 (*Attfield v Barnet*) which clarified the position where local authorities seek to use their powers to charge local residents for parking explicitly in order to raise surplus revenue for other transport purposes funded by the General Fund.

In layman's terms, Mrs Justice Lang said that a council cannot set out with the objective of raising parking charges in order to generate a surplus to fund other transport schemes. David Attfield, who brought the case against Barnet, admitted that he was able to win the case because the council was open about the fact that it was increasing charges to provide additional revenues. In an article in *The Guardian* after the verdict, he indicated that other action groups around the country may have a tough time proving that the council is using the revenue raised for measures other than administering the system: "No other council would admit this. Our council was unique because it did. Barnet Council were very open. They simply wanted to raise £1.5m and had to reverse-engineer the charges to raise that".³

The judgement concluded with Mrs Justice Lang finding as follows, on the basis of her reading of section 55:

It is a general principle of administrative law that a public body must exercise a statutory power for the purpose for which the power was conferred by Parliament, and not for any unauthorised purpose. An unauthorised purpose may be laudable in its own right, yet still unlawful. The issue is not whether or not the public body has acted in the public interest, but whether it has acted in accordance with the purpose for which the statutory power was conferred. Where a statutory power is exercised both for the purpose for which it was conferred and for some other purpose, the public body will have acted unlawfully unless the authorised purpose was its dominant purpose. [...]

In conclusion, I accept the Claimant's submission that **the 1984 Act is not a fiscal measure and does not authorise the authority to use its powers to charge local residents for parking in order to raise surplus revenue for other transport purposes funded by the General Fund**. I have already concluded that the Defendant's purpose in increasing the charges for resident parking permits and visitor vouchers on 14th February 2011 was to generate additional income to meet projected expenditure for road maintenance and improvement, concessionary fares and other road transport costs. The intention

³ ["Barnet residents win high court fight against parking permit price-hike"](#), *The Guardian*, 22 July 2013

was to transfer the surplus on the Special Parking Account to the General Fund at year end, to defray other road transport expenditure and reduce the need to raise income from other sources, such as fines, charges and council tax. **This purpose was not authorised under the RTRA 1984 and therefore the decision was unlawful.**⁴

⁴ [Attfield, R \(on the application of\) v London Borough of Barnet \[2013\] EWHC 2089 \(Admin\)](#), 22 July 2013, paras 38 & 54 [emphasis added]

2. The Bill

The [Parking Places \(Variation of Charges\) Bill 2016-17](#) was presented to Parliament on Wednesday 29 June 2016 and is scheduled for its Second Reading debate on Friday 25 November 2016. This is a Private Member's Bill, brought forward by the Conservative MP David Tredinnick. The Bill has the support of the Government.

The aim of the Bill is essentially to make it easier for local authorities to **lower their parking charges** "to promote the economic vitality of town centres; allowing local authorities to react more quickly to market changes; putting them on an even footing with the private sector; and promote parking flexibility, by allowing local authorities at short notice to provide free or discounted parking to support town centre events". It is also intended to provide for local authorities to consult interested parties if they are seeking to **increase the cost of parking charges**, "to ensure the impacts on the towns are fully considered".⁵

The Bill would achieve this through **clauses 1 and 2** by amending sections 35C and 46A of the 1984 Act to include the provisions that the Secretary of State may amend the 1996 Regulations with regards to consultation requirements in relation to the variation of charges for both off-street parking places and designated parking places.

Any regulations made under these provisions would be subject to the Negative Procedure, meaning that they would automatically become law without debate unless there is an objection from either House.

The Bill extends to England and Wales but applies only in England.

There has been no public comment on the Bill.

⁵ [Bill 18-EN, 2016-17](#), para 3

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