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BRIEFING PAPER

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Transport 2018: FAQ for MPs

By Louise Butcher

Contents:

Contents

Summary

This paper has been written specifically for Members of Parliament and their staff, though others may find it of general interest.

It is a compilation of regularly asked questions about transport-related issues. There is no intended link between articles other than that the topics are often asked by constituents of Members.

Please note that nothing in this paper should be considered as constituting legal advice. It is not intended to address the specific circumstances of any particular individual. A suitably qualified professional should be consulted if specific advice or information is required.

It covers commonly asked questions such as:

- Why is the bus pass for older people available for those aged 60 in Scotland and Wales but not in England?
- Is it legal to park across a driveway?
- Who sets speed limits and how can one be changed?
- Will diesel drivers face higher costs in the future?
- Can the local train station get funding for improvements?
- Why do rail fares keep going up? and
- How does one get compensation for a delayed or cancelled flight?

The House of Commons Library publishes a wide range of briefing papers covering all aspects of transport policy. They can be found on the Transport briefings page of the Parliament website.

1. What is this paper and who is it for?

This paper has been written **specifically for Members of Parliament and their staff**, though others may find it of general interest.

It is a compilation of regularly asked questions about transport-related issues. There is no intended link between articles other than that the topics are often asked by constituents of Members.

Please note that nothing in this paper should be considered as constituting legal advice. It is not intended to address the specific circumstances of any particular individual. A suitably qualified professional should be consulted if specific advice or information is required.

Transport policy largely emanates from the Department for Transport (DfT) and its agencies, non-departmental pubic bodies and other offshoots. This includes things like DVLA, Highways England, Network Rail, the Civil Aviation Authority and HS2 Ltd.

Other Government departments have responsibility for particular aspects of transport-related policy, such as the Ministry of Justice (penalties for road traffic and other offences); the Department for the Environment, Food and Rural Affairs (air quality, noise pollution and climate change); and Communities and Local Government (parking on private land).

In **Parliament** transport policy is largely scrutinised by the Transport Select Committee, though those policies covered by other departments may well attract attention from other committees. For example, in the 2015 Parliament expansion at Heathrow was an issue of concern for the Transport, Environmental Audit, EFRA and Treasury committees, who each considered different aspects of the plan. Separately, the Public Accounts Committee looks at issues across Government departments, largely based on reports by the National Audit Office (NAO).

1.1 A word on Brexit…

On 23 June 2016 the United Kingdom voted to leave the European Union. The Prime Minister, Theresa May, triggered Article 50 of the Treaty on European Union on 29 March 2017 to begin the process of exit.

The process for withdrawal is likely to take around two years, during which time there will be negotiations about what sort of relationship the UK and the EU will have in the future and how individual policy areas will be affected. Until that process has advanced somewhat it is impossible to say with any certainty what the effects of Brexit on transport policy, industry, services and operations will be.

Since the vote there have been a number of questions in Parliament about various aspects of transport policy and the impact of Brexit. The responses of Transport Ministers have invariably used a form of words

You can read more about Brexit and transport in HC Library briefing paper CBP 7633, *Brexit: how will it affect transport?*

to the effect that: "until we leave, EU law will continue to apply to the UK. The Department will continue to work alongside the Department for Exiting the European Union, which has the responsibility for leading the negotiations to leave the EU, and for the future relationship between the UK and EU".

What is EU competency in transport?

The EU's competences in transport are set out in the EU Treaties, which provide the basis for any actions the EU institutions take.

The EU can only act within the limits of the competences conferred on it by the Treaties, and where the Treaties do not confer competences on the EU they remain with the Member States.

There are three different types of competence. Transport is a 'shared' competency, meaning that either the EU or the Member States may act, but the Member States may be prevented from acting once the EU has done so.[1]

The development of the EU's Common Transport Policy (CTP) has resulted in the focusing of action in a number of policy areas, specifically:

- **Economic** – including the creation of a single market in transport services that facilitates the free movement of goods, services and people, and the creation of an integrated transport system;
- **Social** – including the promotion of high safety standards, security and passengers' and workers' rights;
- **Environmental** – including ensuring that the transport system works in a way that does not impact negatively on the environment (including reducing the impact of noise, pollution, harmful emissions and greenhouse gases);
- **Infrastructure** – including the creation of a trans-European transport network (TEN-T) connecting national networks together, making them interoperable and linking outside regions of the EU; and
- **External relations** – including developing relations with third countries and, in some cases, allowing the EU to act collectively at an international level.[2]

The specific provisions of the CTP are contained in Title VI of the Treaty on the Functioning of the European Union (TFEU) on Transport (Articles 90 to 100).

1.2 A word on devolution…

People often talk about the Conservative Government's 'drive to devolution' within England. Devolution has been one of the Government's key policy priorities since 2010 and ties in with several different policy areas, of which transport is one. 'Devolution deals' will see more transport decisions taken at the local level and less control of both policy and budgets from Whitehall. The first directly elected mayors and began work in 2017 and the first Sub-national Transport Body (STB) – Transport for the North – will be designated in 2018.

Because of increasing devolution, many transport issues which are frequently raised with MPs are really issues of local policy and practice for local transport authorities, sometimes working to a broader framework set by national government.

[1] HMG, *Call for Evidence on the Government's Review of the Balance of Competences between the United Kingdom and the European Union: Transport*, 14 May 2013, p5

[2] ibid., pp9-10

Separately, significant areas of transport policy are now devolved in Scotland, Wales and Northern Ireland. They have their own policies and legislation. The 2015 Parliament passed legislation extending the legislative competence of both the Scottish and Welsh Parliaments and Governments, including on transport policy.

This paper largely focuses on England except where a policy area is reserved to Westminster, in which case it clearly states which areas of the UK it covers.

You can read more about transport in Scotland, Wales and Northern Ireland in our briefing paper SN3156.

The research services of the respective devolved legislatures produce briefings on these issues and provide other advice and assistance:

- Scottish Parliament Information Centre (SPICe);
- Research Service of the National Assembly of Wales; and
- Research and Information Service (RaISe) for the Northern Ireland Assembly.

1.3 A word on statistics…

Transport Statistics Great Britain (TSGB) is the Department of Transport's main statistical compendium analysing trends in British transport. The Department of Transport publishes a wide range of statistical series on transportation, as do authorities in Wales, Scotland and Northern Ireland.

Road network statistics are gathered for Great Britain by the Department of Transport. The Welsh Government publishes further statistical series on road casualties and conditions. In Northern Ireland, the annual Report of the Chief Constable provides information on road incidents.

Walking and cycling statistics in England are based on the Active People Survey run by Sports England. Publications provided for Scotland are from the Scottish Parliament Information Service, the Scottish Parliament's equivalent to the House of Commons Library.

Railway statistics are produced primarily by the Office of Rail Regulation, Great Britain.

In Great Britain the Department of Transport provides annual and quarterly studies of bus fares and usage. The Department for Regional Development provides similar studies for Northern Ireland.

Aviation statistics on the usage of airports across the UK are published by the Civil Aviation Authority.

A range of international transport statistics are available online, the primary providers being the OECD, the World Bank and the World Health Organisation.

Further information, including links to sources, can be found in HC Library briefing paper SN3853 .

1.4 A word on cycling…

Please note that this paper does not have any FAQs on cycling. This is because they are covered in a separate briefing paper: SN1097.

It covers:

- What are the benefits of cycling?
- What's the Government doing to encourage cycling?
- Does cycling get enough funding?
- What are Cycling Cities & Towns and Cycling Ambition Cities?
- What is the 'Cycle to Work' scheme?
- What are the London Cycle Superhighways?
- What is 'best practice' in other countries?
- Is cycling safe?
- Should drivers be liable for accidents with cyclists?
- Do local authorities have enough powers to make the roads safe for cyclists?
- Should cyclists wear cycle helmets?
- Should cyclists be registered, have insurance and pay 'road tax'?
- Can cyclists ride their bikes on the pavement?
- What laws are there to tackle bad cycling?
- Do cyclists need to use lights and bells?
- Are cycles permitted on trains?

2. Buses

Bus policy is devolved in Scotland, Wales and Northern Ireland.

2.1 Who is responsible for buses?

Local bus services in England are delivered within a complex, deregulated arrangement, involving central government, local government, the Traffic Commissioners and bus operators:

- **Bus operators** have almost total freedom as to whether, how, where and when they run their services, providing they meet certain requirements in terms of relevant notice etc. These are generally called 'commercial services'.
- **Local authorities** can fund non-commercial, 'socially necessary' services under a tender agreement.
- **Government** in the form of the Department for Transport provides some specific funding – Bus Service Operators' Grant (BSOG), Better Bus Area funding (BBA) – and the general, non-hypothecated grant, including concessionary fares.
- Operators are licensed and to some extent regulated by the **Traffic Commissioners**.

With some relatively minor changes, this has been the arrangement since bus services were deregulated by the Conservative Government in the mid-1980s.

The main bus operators are Stagecoach; FirstGroup; Arriva; National Express; and Go-Ahead. In 2011 this so-called 'big five' accounted for 70% of the market by number of services registered. Ten 'mid-sized' operators accounted for a further 11% - split roughly evenly between municipal and private companies.[3]

There are 12 municipal bus companies in the UK – two in Scotland, two in Wales and eight in England.[4] All other municipal bus companies have been sold or merged over the past 30 years following the *Transport Act 1985*.

Since deregulation, local authorities' role in the provision of local bus services has been limited.[5] Except where they are involved in partnerships (and then only by agreement with the bus operator), they have little control over the level and structure of fares, integrated ticketing, the stability of the network, branding and marketing, and the overall integration of the bus network into wider transport policy.[6]

The *Bus Services Act 2017* gives local authorities, particularly Mayoral Combined Authorities, more power over bus services should they wish to use them. You can read more in HC Library briefing paper CBP 7545, *Bus Services Act 2017*.

[3] CC, *Local bus services market investigation*, 20 December 2011, para 3.1
[4] Blackpool Transport Services Ltd.; Cardiff Bus; Lothian Buses Ltd.; DGC Buses; Halton Borough Transport Ltd.; Ipswich Buses Ltd.; Newport Transport Ltd.; Nottingham City Transport Ltd.; Reading Buses; Rosso; Thamesdown Transport Ltd.; and Network Warrington
[5] KPMG, *Local Bus Market Study*, 26 January 2016, p8
[6] Ibid., pp8-9

2.2 Who regulates buses?

The Traffic Commissioners licence operators, register commercial services and monitor operator service punctuality.

One Traffic Commissioner is the Senior Traffic Commissioner (STC), a statutory appointment. The STC provides statutory guidance to colleagues to help secure consistency in licensing decisions and procedures without comprising judicial independence.[7]

The seven Traffic Commissioners are appointed by the Secretary of State for Transport[8] and have responsibility in their traffic area for:

- the licensing of the operators of heavy goods vehicles (HGVs) and of buses and coaches (Public Service Vehicles or PSVs) and consideration of regulatory action against non-compliant officers;
- the registration of local bus services outside London;
- issuing permits under sections 19 and 22 (voluntary and community buses) of the *Transport Act 1985*;
- regulating the conduct of vocational licence holders; and
- monitoring and regulation of operators' compliance with local bus service registrations.[9]

Commissioners are statutorily independent in all their licensing functions. When necessary, they hold regulatory public inquiries, and they consider the possibility of disciplinary action against PSV drivers at driver conduct hearings.

Each bus operator needs to apply for a PSV operator's licence from a Traffic Commissioner in the relevant area and must meet the statutory criteria for eligibility (good repute, financial standing, and competence).

In England and Wales, a bus operator can launch a new local bus service after providing details of the service including the route and timetable and giving 56 days' notice to the Traffic Commissioner, although there is the discretion to accept shorter notice periods. Similar notice must be given for changes or withdrawals of services. In Scotland, an additional 14 days' prior notice must be given to the local authority. Frequent services (i.e. those with a frequency of 10 minutes or less) do not have to register a timetable.

Traffic Commissioners have the power to take action if an operator no longer meets the conditions of its licence or does not operate services in line with the registration that it made. They also set punctuality standards against which the reliability of local bus services is measured.

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[7] STC, *Traffic commissioners: local bus services in England (outside London) and Wales*, 14 December 2015; the STC cannot issue guidance on wholly-devolved issues in Scotland or Wales

[8] in Scotland after consultation with Scottish Ministers

[9] op cit., *Local bus services market investigation*, para 2.59

2.3 Who can one contact with a question or complaint?

Transport Focus became the national statutory representative body for bus passengers in February 2010.[10]

In terms of making a complaint, representation should first be made to the relevant bus company (or Transport for London if the journey was on or involved a London bus). Depending on the nature of the complaint, things to bear in mind might include:

- what bus service you were travelling on;
- where you got on (or tried to get on);
- where you were travelling to (or hoping to travel to);
- the date;
- the time (be as precise as possible); and
- what went wrong.

Bus Users UK recommends that you "give the bus company as much information as you can and if you know the registration number of the bus, or the driver's number, then supply that too. If you purchased a ticket on the journey you are referring to, that may provide some of the detail you need".[11]

If the complaint is not resolved to the passenger's satisfaction they can then take their case to (depending on where they are in the UK), London TravelWatch, Bus Users UK (for the rest of England), Bus Users Wales, Bus Users Scotland or the Consumer Council for Northern Ireland.[12]

If a complaint cannot be resolved at this stage, Bus Users UK is a partner in the Bus Appeals Body, which can issue a decision about the complaint.

2.4 Who funds buses?

The main components of bus funding are: Bus Service Operators' Grant (BSOG), Better Bus Area funding and the general, non-hypothecated grant, including concessionary fares. The largest of these by far is the general grant.

'Subsidised services' are those that are not deemed commercially viable by private operators and have to be supported by local authorities if they are to continue. The viability of these services depends on local authorities having the funds to support them.

The background to the provision of these services is, as the National Audit Office (NAO) estimate, there was a 37% real-terms reduction in

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[10] under sections 73 and 74 of the *Local Transport Act 2008* and the *Passengers' Council (Non-Railway Functions) Order 2010* (SI 2010/439) made under it

[11] Bus Users UK, *How to make a complaint* [accessed 4 January 2018]

[12] the relevant contact details for all these bodies are listed on the Transport Focus website [accessed 4 January 2018]

central government funding to English local authorities between 2010/11 and 2014/15.[13]

It has therefore been for local authorities to decide where spending cuts or savings must be made across the whole spectrum of their services: as indicated above, many local authorities have chosen to cut subsidised bus services. It has long been the case that for many rural and isolated communities the bus is the only form of public transport, but those services are often 'unprofitable' and have suffered the brunt of local authority cuts to subsidised services over the past seven years. Linked to this is the fact that some routes are dependent on passengers who are also subsidised – through the concessionary bus pass for older and disabled people. Often there is a correlation between those rural and isolated communities and high numbers of subsidised passengers (particularly older people).[14]

The Campaign for Better Transport (CBT) has run a high profile campaign since 2010 to highlight cuts to local subsidised bus services.[15] A CBT survey showed that 46 per cent of local authorities reduced their expenditure on subsidised bus services during 2013/14; the Urban Transport Group predicted a reduction in annual expenditure of £500 million over the four years from 2010, allowing for inflation.[16]

While it is probably true that without overall central government cuts to local authority budgets most if not all of these services could have been saved, that is not necessarily the case. One can see this by looking at the question in reverse: if local authority budgets were to increase over the next Parliament, would that mean more subsidised bus services or would local authorities find other priorities on which to spend the new money?

The only *certain* way to improve and increase subsidised services would be for central government to allocate specific amounts of money for the purpose and to legally require that the money be spent on subsidised bus services. At a time when the Government is determined to devolve more power to local authorities to take their own decisions, the trend has been away from this sort of 'hypothecation', or 'telling councils what to spend their money on'.

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[13] NAO, *The Impact of Funding Reductions on Local Authorities*, 19 November 2014; due to differences in services and funding, direct comparison with the position of councils in each of the three nations is not possible (England, Scotland and Wales)

[14] for further information on the difficulties faced by those living in rural and isolated communities, see: Transport Committee, *Passenger transport in isolated communities* (fourth report of session 2014–15), HC 288, 22 July 2014

[15] CBT, *Save Our Buses* [accessed 4 January 2018]

[16] "Cuts to tendered bus services – is there another way?", *CBT blog*, 17 March 2015

2.5 Why is the bus pass for older people available for those aged 60 in Scotland and Wales but not in England?

Travel concession policy is devolved in the UK and there are separate bus concession schemes in England, Wales, Scotland and Northern Ireland.

Each jurisdiction decides its own eligibility age – in Scotland, Wales and NI this is 60, in England it is linked to the rising state pension age. This decision was taken by the last Labour Government, but has obviously been impacted by consequent decisions to increase the state pension age at a faster rate.

The costs associated with issuing passes at earlier ages are borne by the relevant administration – this also applies to those areas of England where you can receive a concession at the age of 60 (e.g. London).

So in any individual case it would be for the local council to look at what the cost would be of extending the bus pass to the over 60s, it may well be that there is simply no money available for this.

To give some idea of the costs involved, in 2016/17 (the latest data available), there were 9.81 million passes held across England,[17] and the reported cost of the scheme was £1.17 billion.[18] This gives us an average figure for the cost of one bus pass as roughly £119. Obviously the costs would rise if the eligibility age across England were brought down to 60.

You can read more about concessionary bus fares in HC Library briefing paper SN1499, *Concessionary bus fares*.

2.6 How much would it cost to provide free bus travel to young people?

As explained in section 2.5, above, the average cost of an older/disabled person's bus pass in England is roughly £119. The latest ONS population estimates state that there were 1.9 million young people aged 16-18 years old in England.[19] Multiplying this by the £119 stated above gives an estimate of the cost of extending concessionary travel to 16-18 year olds of roughly £227 million per year.

This figure should be understood as an order of magnitude estimate, rather than a precise and detailed calculation. Clearly, young people will have different patterns of travel and behaviour than older/disabled people, meaning that the number of journeys per pass may be very different.

Thirteen out of 89 Travel Concession Authorities in England already grant some form of concessionary travel to young people, although in some cases this will be to 16-17 year olds, or only those in full-time education.[20] These schemes are funded entirely by the local councils

[17] DfT Table BUS 0820
[18] DfT Table BUS 0811
[19] ONS, *Population Estimates for UK, England and Wales, Scotland and Northern Ireland: mid-2016* [mid-2016 estimates, published June 2017]
[20] DfT Table BUS 841

who provide them. The cost of these discretionary passes is excluded from the calculations above, although the fact that some passes are granted means that the overall cost to the public purse may be a little less than the £227 million estimated above.

2.7 A local company has cancelled or changed a bus service, can they do this?

As stated in section 2.1, in England and Wales, a bus operator can launch a new local bus service after providing details of the service including the route and timetable and giving 56 days' notice to the Traffic Commissioner, although there is the discretion to accept shorter notice periods. Similar notice must be given for changes or withdrawals of services. In Scotland, an additional 14 days' prior notice must be given to the local authority. Frequent services (i.e. those with a frequency of 10 minutes or less) do not have to register a timetable.

The Senior Traffic Commissioner also advises that although there is no legal requirement to do so, it is good practice to put a notice in the vehicles used to provide the service advising passengers that the service is being changed or withdrawn.[21]

Providing these legal requirements are met, a Commissioner cannot stop the change or withdrawal.

2.8 Is there any legislation on the behaviour of bus passengers?

Regulations 6 and 8 of the *Public service vehicles (conduct of drivers, inspectors, conductors and passengers) regulations 1990* (SI 1990/1020), as amended, are the extent of legislation of passenger behaviour. They include that no passenger on a vehicle:

- shall put at risk or unreasonably impede or cause discomfort to any person travelling on or entering or leaving the vehicle, or a driver, inspector, conductor or employee of the operator when doing his work on the vehicle; or
- remain on the vehicle, when directed to leave by the driver, inspector or conductor because they have been "causing a nuisance" or playing or operating any musical instrument or sound reproducing equipment to the annoyance of any person on the vehicle or in a manner which is likely to cause annoyance to any person on the vehicle.

Any passenger on a vehicle who is reasonably suspected by the driver, inspector or conductor of the vehicle of contravening any provision shall give his name and address to the driver, inspector or conductor on demand and may be removed from the vehicle.

In addition, all bus companies have 'conditions of carriage', i.e. what you agree to when you board their vehicles. For example, one of the big

[21] STC, *Operating registered local bus services in England (except London) and Wales: Guide for Operators*, PSV353A, revised 2016, p13

bus companies, Go Ahead, has extensive conditions as to passenger behaviour. It states:

> Please consider others travelling and, if you do not follow these points, you may not be allowed to travel or, if you are already travelling, you may even be asked to leave our vehicles. We rarely ever have to do this so please don't spoil our good record. If you are in breach of these conditions, you will be required to give your name and address to one of our members of staff, a police officer or a community support officer and will not be allowed to continue on your journey: you will not be entitled to a refund if you are in breach of these Conditions. Whilst you may behave appropriately, we cannot be held responsible for the conduct of those passengers who do not comply with these Conditions.[22]

In London there is a Young Person's Behaviour Code – linking a young person's right to concessionary travel with their behaviour. Other local authorities have similar schemes.[23]

2.9 Are there any standards for school buses?

In England there are no special standards for 'school buses'. However, all passenger carrying vehicles (PSVs) like buses and coaches are subject to an annual vehicle standards check (i.e. the equivalent of the MoT). Any mechanical or other problems should be picked up then. The inspection manual shows the detail into which these tests go, including everything you would expect in terms of safety (brakes, tyres, seat belts, chassis, etc.).

Wales legislated for standards on dedicated school buses in 2011, see: *Safety on Learner Transport (Wales) Measure 2011*.

Ultimately, the Traffic Commissioners are responsible for enforcing PSV standards. The Commissioners require that all vehicles be maintained in a roadworthy condition when operated under an operator's licence, this does not just include the annual service but daily 'walk around' checks. More information on this is available in the DVSA's *Guide to maintaining roadworthiness*.

If one thinks that a vehicle is on the road otherwise than in a roadworthy condition they should raise the matter with the local Traffic Commissioner.

One might also expect that whoever let a contract for a school bus service (the school or the local authority) would have an interest in ensuring that the vehicles being used as part of that contract are safe and properly maintained and to that end could require this as part of the contract.

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[22] Metrobus, *Conditions of Carriage* [accessed 4 January 2018]; note this is from the company's Metrobus brand, operating in the Surrey/Sussex area]

[23] in Wales, see the *All Wales Travel Behaviour Code*, 6 February 2013

2.10 Is there a limit on the number of people who can stand in a bus?

The maximum standing requirements, as set out in Regulation 6 of the *Public Service Vehicles (Carrying Capacity) Regulations 1984* (SI 1984/1406), as amended, are specified in individual bus certificates and displayed in vehicles.

No standing is permitted on vehicles with a seating capacity for less than 13 passengers; with a gangway any part of the height of which is less than 1.77 metres; or half-decked vehicles.

Anyone standing must be carried in accordance with the relevant Regulation 7 of the 1984 Regulations. This provides that:

> No person shall drive, or cause or permit to be driven, on a road a vehicle if the number of standing passengers exceeds the maximum specified …
>
> No person shall stand on—
>
> a) the upper deck or on any step leading to the upper deck of any double-decked vehicle,
>
> b) any part of a gangway of a vehicle forward of the rearmost part of the driver's seat; or
>
> c) any part of a vehicle in which the operator has indicated by a notice, the letters on which are at least 10 millimetres tall and in a colour contrasting with the colour of their background, that no standing shall occur.

Any evidence that a bus operator is acting other than in accordance with these requirements should be reported to the relevant Traffic Commissioner, who is responsible for enforcing bus operator licenses.

2.11 Is there any guidance regarding the location of a bus stop?

Local authorities are responsible for the provision of the infrastructure to assist the smooth running of bus services and this includes the erection and upkeep of bus stops as well as any signs on the road.

The relevant guidance remains chapter 8 of the Department for Transport (then the DETR)'s guide to traffic management, *Keeping Buses Moving*, published in 1997. This sets out a series of principles for the siting of bus stops, such as:

- There are advantages to be gained for operators, the highway authority and the police in agreeing sites for bus stops. Where agreement cannot be reached, the Traffic Commissioner is often asked to arbitrate.
- In town centres it is important that bus stops are located conveniently for the main shopping and business areas, and preferably nearer to those areas than major car parks. This makes services more convenient for passengers, particularly elderly and disabled people.

- The safety of passengers is most important, both while waiting at stops and whilst walking to and from them. For these reasons it is preferable that passengers do not have to cross major traffic flows to reach their destination. If this is unavoidable, bus stops should be located close to pedestrian crossing facilities.
- Where space is extremely limited a bus stop may be located in the controlled area of a pedestrian crossing (indicated by zig-zag lines) on the leaving side of the crossing, but not in the approach.

The guidance should be read alongside chapter 6.5 of the DfT's 2007 *Manual for Streets*. This contains additional guidance such as:

- First and foremost, the siting of bus stops should be based on trying to ensure they can be easily accessed on foot. Their precise location will depend on other issues, such as the need to avoid noise nuisance, visibility requirements, and the convenience of pedestrians and cyclists.
- Bus stops should be placed near junctions so that they can be accessed by more than one route on foot, or near specific passenger destinations (schools, shops, etc.) but not so close as to cause problems at the junction.
- Consideration should be given to providing cycle parking at bus stops with significant catchment areas.
- Footways at bus stops should be wide enough for waiting passengers while still allowing for pedestrian movement along the footway. This may require local widening at the stop.
- Buses can help to control the speed of traffic at peak times by preventing cars from overtaking. This is also helpful for the safety of passengers crossing after leaving the bus.

2.12 What are the rules on bus accessibility?

The accessibility requirements for buses and are set out in the *Public Service Vehicles Accessibility Regulations 2000* (SI 2000/1970) (PSVAR), as amended, which came into force in August 2000.[24] Under this legislation, all buses had to be accessible by 1 January 2017.

EU Regulation 181/2011/EU on the rights of bus and coach passengers came into force in March 2013. Chapter III relates to disabled passengers and Persons with Reduced Mobility (PRMs). The UK legislated to provide certain exemptions from the requirements of the Regulation, including from the requirement under Article 16(2) for disability awareness training for personnel of carriers and terminal managing bodies.[25] This exemption would apply for five years. In

[24] Following consultations in 1997 and 1999: DETR, *Disability Discrimination Act 1995: the government's proposals for buses and coaches*, December 1997; and: DETR, *The public service accessibility regulations 1999 (and others) - a statutory consultation*, September 1999

[25] via *Rights of Passengers in Bus and Coach Transport (Exemptions) Regulations 2013* (SI 2013/228); later repealed and replaced by the *Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013* (SI 2013/1865); following a consultation: DfT, *Public Consultation on how EU Regulation 181/2011 concerning the rights of passengers in bus and coach transport will be applied in Great Britain*, July 2012

debates on the *Bus Services Act 2017* the Transport Minister, Andrew Jones, confirmed that disability awareness training would be a legal requirement from 1 March 2018 and that "even after we have left the European Union, our policy objective of ensuring that bus drivers are equipped with the knowledge and skills to assist disabled passengers will not change. That obligation will not be removed".[26]

Use of wheelchair spaces on buses: FirstGroup Plc v Paulley [2017] UKSC 4

There has long been concern amongst disability rights groups about the requirements for wheelchair spaces on buses to be vacated if occupied and the circumstances under which, for example, a driver should require someone with a child's buggy or pram to fold it and/or remove it from the wheelchair space.

Doug Paulley took his case against FirstGroup on this issue to the Supreme Court. In its judgement of 18 January 2017 the court held that FirstGroup's rules for their drivers failed to do enough to ensure that wheelchair spaces on buses are reserved for wheelchair users.

The basic legal principle is that, under section 29(7) and 20 of the *Equality Act 2010*, service providers must make "reasonable adjustments" for disabled service users. This can include adjustments to physical features of buildings/vehicles (e.g. the provision of a wheelchair space on a bus) and adjustments to policies and procedures (e.g. the rules determining what drivers must do to ensure those spaces are usable by disabled passengers).

In *FirstGroup v Paulley* the Supreme Court held that FirstGroup's rules for drivers failed to make sufficient adjustments for the needs of disabled service users. The rule being challenged was one which, broadly, required drivers to ask a person occupying the space to move for the wheelchair user, but to do nothing more if the person refused. The Court held that this fell just short of what the law required. The law requires that the policy should stipulate that drivers must ask the occupant to move, and if they don't, to ask them again, be more insistent and judge what further action (e.g. stopping the bus) should be required on a case-by-case basis.

2.13 Do all buses have to be fitted with audio-visual equipment?

Not yet, though the Government has made a commitment to introduce this requirement.

Section 17 of the *Bus Services Act 2017* sets out an accessible information requirement which would ultimately require bus operators to provide accessible information, using both audible and visible media, on board local bus services in England, Scotland and Wales.[27] A scoping note gives further information, specifically who would be obliged to comply, what information they would be obliged to provide and in what format. It also speculates that the order-making power which would bring this into force could also include exemptions for small operators.

The Government's initial anticipated timetable for introduction was to launch a consultation in spring 2017 (sometime after the June General Election), with a view to publishing finalised secondary legislation in April 2018.[28] However, no consultation has been published. The Draft

[26] PBC Deb 16 March 2017, c107
[27] HL Deb 24 October 2016, c54
[28] DfT, *Accessible information regulations – scoping note*, 12 October 2016

Accessibility Action Plan, published in August 2017, stated that the Government would "work with disabled people, the bus industry and the devolved administrations, on the Regulations and guidance which will implement the Accessible Information Requirement on local bus services throughout Great Britain, helping disabled passengers to travel by bus with confidence".[29] A response to a PQ in December 2017 gave no further information on a timetable for implementation.[30]

The introduction of this requirement followed an effective external lobbying campaign and extensive debate. It reflects the successful Talking Buses campaign, supported by Guide Dogs for the Blind and others, to persuade the Government to require bus operators to fit audio-visual equipment to all buses. The Government had long been reluctant to mandate this sort of thing, instead preferring to let the market provide a solution.[31]

2.14 Is money available for greener buses?

The low emission bus scheme was initially announced in April 2014 and details of the scheme were published in March 2015.[32] It is a competition-based scheme, with £30 million made available between 2016 and 2019 for local authorities and operators in England and Wales. The scheme builds on the Green Bus Fund, which ran from 2009 to 2013 and delivered around 1,250 low emission buses in England.[33]

The scheme aims to increase the uptake of ULEV buses (which will thus reduce the need for fuel subsidy support in the form of Bus Service Operators' Grant);[34] improve local air quality; and attract investment to the UK.[35]

In November 2016 the Government announced that it would make available a further £150 million for cleaner buses and taxis.[36] In August 2017 it announced that local authorities and bus companies in Bristol, York, Brighton, Surrey, Denbighshire and Wiltshire have been awarded funding totalling £11 million under the scheme to help them buy 153 cleaner buses.[37]

The Government has produced a low carbon bus calculator to help bus operators and local authorities calculate the likely benefits on investing in a low carbon emission bus.

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[29] DfT, *Accessibility Action Plan Consultation*, 24 August 2017, Action 4, p22
[30] Bus Services: Disability: Written question - HL3488, 4 December 2017
[31] HC Deb 11 June 2015, c1309
[32] OLEV/DfT press notice, "Ultra low emission vehicles in the UK: measures to support use and development, 2015 to 2020", 29 April 2014
[33] OLEV, *Low Emission Bus Scheme: Guidance for participants*, March 2015, p4; more information on the Green Bus Fund can be found in section 3 of HC Library briefing paper SN1522
[34] more information on BSOG can be found in section 2 of HC Library briefing paper SN1522
[35] ibid., p4
[36] DfT press notice, "Government pledges £290 million boost for low emission vehicles", 29 November 2016
[37] DfT press notice, "Cleaner journeys as government commits £11 million to greener buses", 28 August 2017

Further to the passage of the *Bus Services Act 2017* some areas may wish to take up powers therein to require operators to introduce lower emission vehicles. In addition, as a consequence of the Government's Air Quality Plan, more areas may introduce low emission or 'clean air' zones, which will incentivise the same sort of switch by charging dirtier buses to enter relevant zones.

3. Parking

Parking policy is almost entirely devolved in Scotland, Wales and Northern Ireland.

Information on parking policy and related issues can be found in three HC Library briefing papers: SN2235, *Parking policy in England*; SN1170, *Pavement and on-street parking in England*; and SN1360, *Blue Badges and parking for disabled people in England*.

3.1 How do you appeal a parking ticket?

The Penalty Charge Notice (PCN) that one receives **from a council** should have full details of the appeals process. Appeal in the first instance is *always* to the entity that issued the ticket. If this is rejected in the last instance you can appeal to the relevant independent appeals body. These are:

- Traffic Penalty Tribunal (England & Wales, excluding London)
- London Tribunals
- Scottish Parking Appeals Service
- Traffic Penalty Tribunal Northern Ireland

The Parking Charge Notice (PCN) that one receives from a **parking enforcement company working on behalf of a private landowner** should also have full details of the appeals process. Appeal in the first instance is *always* to the entity that issued the ticket. If this is rejected in the last instance you can appeal to the relevant independent appeals body. These are:

- Parking on Private Land Appeals
- Independent Appeals Service

The decisions of these bodies are not binding on appellants, only on defendants (i.e. the parking enforcement companies). However, if the appeals body finds on behalf of the parking enforcement company and the appellant refuses to pay, the company may take that person to civil court to enforce the debt and the decision can be used in evidence.

There is a lot of advice and information on the Internet telling people not to pay parking penalty notices because they are legally unenforceable. Note that this is not the advice which has long been given by Citizens Advice, both in England and Scotland.

Any individual's decision as to whether to pay, challenge or ignore a parking ticket received on private land is entirely a matter for them and one for which they may wish to seek legal advice.[38]

3.2 Does anyone regulate parking?

No. However, in order to do business parking enforcement companies have to belong to an Accredited Trade Association (ATA). Without membership of an ATA's Approved Operators Scheme (AOS) parking companies cannot access the DVLA database and therefore are

[38] information on sources of legal assistance can be found in HC Library briefing paper SN3207

unable to send out PCNs or pursue any vehicle keeper to whom one has been issued. There are two ATAs:

- British Parking Association (BPA)
- International Parking Community (IPC)

Each ATA has a Code of Practice to which it expects its approved operators to adhere - this covers things like advised maximum charges and signage.

Parking companies should indicate on their website which ATA they belong to – both the BPA and IPC also publish lists of their AOS members on their websites. If you find a discrepancy or believe a parking company is in breach of its ATA's Code of Practice you can report them to the ATA.

3.3 Can the DVLA sell drivers' information to parking companies?

Yes. The DVLA is specifically permitted to release data to parking enforcement companies (and other private companies). The issue was the subject of a debate in Westminster Hall in March 2017.[39]

Regulation 27 of the *Road Vehicles (Registration and Licensing) Regulations 2002* (SI 2002/2742), as amended, states that the Secretary of State (in practice the DVLA) may provide, free of charge, information from the vehicle register to the police and to local authorities for use in connection with an offence. It may also be made available, for a fee, to "any person who can show to the satisfaction of the Secretary of State that he has reasonable cause for wanting the particulars to be made available to him".

The RAC Foundation has analysed data about the frequency of this type of activity, see, e.g. "Parking firms issuing some 1,200% more tickets than decade ago", 20 November 2017

'Reasonable cause' is not defined in the legislation and takes precedence over the provisions of the *Data Protection Act 1998*. The DVLA states that: "the purpose for which the information can be requested and how it may be used i.e. driver testing, road traffic enforcement and sentencing must be clear. The release of driver data is more limited than vehicle information, due to the nature of the information held".[40]

DVLA makes a charge of £2.50 per transaction. In a 2014 report the Transport Select Committee concluded that the Agency loses money on this.[41]

Before information is released the DVLA must consider the reasons for the request and how the information will be used. Failure to provide the necessary evidence or incomplete application forms is likely to result in an application being rejected. 'Necessary information' is given in the application guidelines. If one is running a parking enforcement company then one must apply for data with a V888/3 form. This states that:

[39] HC Deb 21 March 2017 cc253-76WH
[40] DVLA, *Release of information from DVLA's registers*, May 2015, p3
[41] Transport Committee, *Government motoring agencies - the user perspective* (sixth report of session 2014-15), HC 287, 7 October 2014, para 43

> The information you ask for should only be used in a fair and responsible way and for the purpose for which it is requested. If we get a legitimate complaint about information obtained unlawfully we will pass it to the Information Commissioner to consider prosecution. If we have evidence that information has been obtained or used inappropriately, we can refuse all future requests.[42]

Following its most recent audit of the DVLA's procedures for releasing data to private parking companies, published in June 2016, the Information Commissioner's Office found that there was a high level of assurance that processes were in place to mitigate the risks of non-compliance with data protection requirements.[43]

Since August 2009 the release of any vehicle owner information by the DVLA has been limited to members of an ATA (in the case of parking this either the BPA or the IPC). So a parking company must be a member of the BPA or IPC, but if they are not using the data in the correct way then the DVLA can ban them anyway.

3.4 Is there a cap on parking penalty charges?

There is a maximum charge on **public roads** of £60 to £70 when paid on time, but it can be as high as £105 for a higher level penalty charge paid after the service of a charge certificate. In London the maximum permitted charge is £130.

On **private land** the ATAs state that a charge should not be more than £100. The 2015 Supreme Court decision in *Parking Eye v Beavis* found that an £85 charge for overstaying in a private car park was 'fair, reasonable and enforceable'.

3.5 Do local authorities make a profit from parking? What can they spend the money on?

RAC Foundation research found that in 2016/17 the 353 local authorities in England generated a combined 'profit' of £819 million from their on- and off-street parking activities; a 10% increase on the previous year.[44]

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

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[42] DVLA, *V888/3 form*, section 5 notes [accessed 4 January 2018]
[43] ICO, *Executive summary of the Driver and Vehicle Licensing Agency audit report*, 1 June 2016
[44] the figures were calculated by taking income from parking charges and penalty notices and then deducting running costs; see: RAC Foundation press notice, "English council parking profits up ten percent", 27 November 2017

covers *all* income and expenditure, i.e. income from charges *and* penalties.

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 previous 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,

   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".[45]

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 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**.[46]

3.6 Is there a '10 minutes' grace period'?

Yes. The *Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2015* (SI 2015/561) brought the 10 minutes' grace period into effect from 6 April 2015. The Government's revised parking guidance to English local authorities sets out how this should work in practice:

> Parking policy should be designed to enable people to access the community and carry on their business as easily as possible. Whilst it is important to undertake enforcement, to prevent abuse of parking facilities to the detriment of the majority, enforcement should be sensitive, fair and proportionate. This would not be the case if a driver received a penalty for returning to their vehicle only moments after the expiry of a period of permitted parking. Therefore, from 6 April 2015, the law requires that a penalty charge must not be issued to a vehicle which has stayed parked in a parking place on a road or in a local authority car park beyond

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

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

> the permitted parking period for a period of time not exceeding 10 minutes. The grace period applies to on-street and off-street parking places provided under traffic orders, whether the period of parking is paid for or free. Any penalty charge issued before expiry of the 10 minute grace period would be illegal, unless the vehicle itself is parked unlawfully (e.g. where the motorist has not paid any required parking fee or displayed a parking ticket where required).
>
> It is important that all civil enforcement officers understand that grace periods only apply to designated parking places where a person is permitted to park. A road with a restriction (e.g. single yellow line) or prohibition (e.g. double yellow line) is not a designated' parking place either during - or outside of - the period of the restriction or prohibition.[47]

3.7 Is 'pavement parking' legal?

There are issues with the terminology in this area, so it is important to understand what is being referred to when this term is used:

- 'Pavement parking' is parking where one or more wheels of a vehicle are on the pavement
- 'On-street' parking is any other parking at the side of the road

There is no national prohibition against either on-street or pavement parking except in the latter case in London and more widely in relation to heavy commercial vehicles.

However, it is an offence to drive onto the pavement, whether with intention to park or not. Because this is a criminal offence, as opposed to the vast majority of civil parking offences, it is enforceable by the police, not the local authority. There have long been concerns about the extent to which this is enforced. Recent campaigns have focused on introducing a specific 'decriminalised' pavement parking offence so that local authorities can enforce it.

Local authorities and the police may act to tackle on-street and pavement parking in various ways, such as under legislation governing obstruction and dangerous parking, designating limited areas of 'no pavement parking' through a Traffic Regulation Order (TRO), or establishing a special parking area.

[47] DfT, *The Secretary of State's Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions*, 25 March 2015, p19

Private Member's Bill and aftermath, 2015-18

Simon Hoare MP sponsored the *Pavement Parking (Protection of Vulnerable Pedestrians) Bill 2015-16*, which received Second Reading on 4 December 2015. The Bill provided a framework for local authorities in England and Wales to consult on and subsequently to ban pavement parking across wide areas, subject to certain exemptions to be set out by the Secretary of State in secondary legislation and guidance.

At the end of the debate Mr Hoare withdrew his Bill, having secured from the Minister a commitment to convene a roundtable in 2016 to discuss footway parking issues, and to undertake some work to "examine more closely the legal and financial implications of an alternative regime, and the likely impacts on local authorities".[48]

The roundtable took place in March 2016,[49] during which the process for putting in place TROs was identified as a major factor affecting the enforcement of pavement parking. The minister said that he was "considering how best to address the general improvement of the TRO-making process".[50] In April 2017 he said that he planned "to launch a survey in Summer 2017 in order to gather evidence about the current situation, the costs and timescales for processing TROs, and information about options for change".[51] The survey was put back to Autumn 2017 and has not yet been published.[52]

3.8 Is wheel clamping legal?

Generally, no.

It is banned on private land and can only be used in very limited circumstances by councils and other bodies such as the DVLA. Full details are given in HC Library briefing paper SN1490, *Parking: wheel clamping*.

3.9 Is it legal to park across a driveway?

It will depend on the individual circumstances.

The two possibilities are summarised below: in the former case it would be something to pursue with the local authority, in the latter with the local police service.

- If **the local authority has parking restrictions in place** on the road in question (lines, signs, a residents parking scheme etc.) then a civil offence has been committed. It is an offence to park at a dropped footway where there are parking restrictions in place under section 86 of the *Traffic Management Act 2004.* Local authorities can ticket vehicles and remove persistent offenders.

If **there are no local authority restrictions in place** then a criminal offence of obstruction *may* have been committed. The police can remove vehicles which are causing an obstruction and there are a number of statutes and regulations which allow proceedings to be

[48] HC Deb 4 December 2015, cc659-60
[49] Parking: Pedestrian Areas: Written question - 37550, 26 May 2016
[50] Parking: Pedestrian Areas: Written question – 49804, 26 October 2016
[51] Parking: Pedestrian Areas: Written question – 71396, 24 April 2017
[52] Parking: Pedestrian Areas: Written question – 4827, 20 July 2017

brought for obstructing the highway.[53] This depends very much on the individual circumstances in any case. The 'Ask the Police' website states: "Policy may vary from force to force and council to council; some may only attend if your car is blocked in and you cannot get out".[54]

3.10 Can one appeal if the council has refused them a Blue Badge?

There is no appeal against a decision by a local authority to refuse someone a Blue Badge. If one has new evidence to report to the local authority they may grant a new hearing but they are under no obligation to do so. The Secretary of State for Transport (or Scottish or Welsh Ministers) would not get involved with any sort of appeal.

In assessing whether someone is eligible for a Blue Badge in England local authorities must have heed to the relevant guidance from the Department for Transport: *Blue Badge Scheme local authority guidance (England)*.

3.11 How can one get a disabled parking space outside their house?

Decisions as to whether and where to make disabled parking spaces are for local authorities. There are two types of space available to them:

- Statutory, which requires a local order and can be expensive, as they are enforced by the local authority and people can be ticketed for parking in them illegally; and
- Advisory, which are not enforceable.

There is no requirement as to the provision of parking in the *Equality Act 2010*. However, public bodies must not, in the exercise of their functions, "do anything that constitutes discrimination, harassment or victimisation" (section 29(6)). Further, section 149 of the same Act provides that a public authority must, in the exercise of its functions "have due regard to the need to" among other things, "advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it". This involves having due regard to the need to "take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it". Whether this applies or not in any individual case will be a matter for legal advice.

The Equality Advisory and Support Service (EASS) can advise individuals on the application of the 2010 Act.

[53] set out in HC Library briefing paper SN1170
[54] Ask the Police, *Q440: Someone has parked his or her car and it is blocking my driveway ...* [accessed 4 January 2018]

3.12 What should one do if a parking authority has secured a court order to enforce payment? (i.e. the bailiffs are coming)

Once things get to this stage it stops being an issue of parking law and becomes imperative to deal with the immediate problem of debt enforcement officers (bailiffs).

Brief information on individuals' rights when bailiffs visit their home and the rules bailiffs must adhere to is given on the relevant page of the Gov.uk website.

A number of changes introduced in April 2014 provide consumer protections, including ensuring that vulnerable people get assistance and advice and that bailiffs are trained to recognise when they are dealing with someone vulnerable. More detailed information about bailiffs and what they can and cannot do when collecting debts is provided on the Citizens Advice website.

3.13 Is the Government going to ban 'parking cowboys'?

DCLG took over responsibility for this area of policy from DfT early in 2015. It issued a consultation in March 2015 on whether there are problems with how parking on private land is regulated and/or the behaviour of private parking enforcement companies and what steps the Government should take to address these problems.[55]

The Government published a summary of responses to the consultation in May 2016, but no indication of whether or how it intended to proceed.[56]

The 2015 Supreme Court decision on *Parking Eye v Beavis*, which found that an £85 charge for overstaying in a private car park was 'fair, reasonable and enforceable' prompted renewed calls for parking on private land to be regulated in much the same was as it is on public land, with maximum charges and statutory requirements as to signage etc.

Sir Greg Knight (Con., East Yorks.), who came 11th in the ballot for Private Member's Bills for the 2017-19 Session of Parliament,[57] has indicated his intention to present a Bill to establish a statutory code of practice for private parking enforcement companies.[58] The *Parking (Code of Practice) Bill 2017-19* received First Reading in July 2017; Second Reading in the Commons is scheduled for 2 February 2018.

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[55] CLG, *Parking reform: tackling unfair practices - Discussion paper and call for evidence*, 28 March 2015

[56] CLG, *Parking reform: tackling unfair practices, Discussion paper and call for evidence - Summary of Responses*, 11 May 2016 [published on the BPA website, not the Gov.uk website]

[57] UK Parliament, *Private Members' Bill Ballot: 29 June 2017* [accessed 4 January 2018]

[58] Sir Greg Knight MP press notice, "Greg To Take on Rogue Parking Companies", 1 August 2017

The Minister for Local Government, Marcus Jones, has said that DCLG is "considering reforms of the private parking sector and we are keen to ensure motorists get fair treatment from private parking companies. We welcome the Rt Hon Sir Greg Knight's Private Member's Bill that seeks to create an independent code of practice for private parking companies. We look forward to reading Sir Greg's recommendations".[59]

3.14 How can one get rid of a nuisance or abandoned vehicle?

Local authorities have powers to remove abandoned vehicles – these tend to be vehicles which are not taxed or insured and have been left in one place for a considerable amount of time.

Section 3 of the *Refuse Disposal (Amenity) Act 1978* , as amended, sets out local authorities duties to remove abandoned vehicles. This is supported by Defra's basic guidance, which says the following:

> **Duty to remove abandoned vehicles**
>
> Councils must remove abandoned vehicles from both:
>
> - land in the open air
> - roads (including private roads)
>
> When removing vehicles from occupied land, councils can't charge occupiers. Councils must give landowners or occupiers 15 days' notice and can only remove vehicles with their permission … Authorities don't have to remove abandoned vehicles if the cost of moving them to the nearest highway is unreasonably high (for example, if special machinery is needed), unless the vehicle is on a carriageway.

There is also a second route: DVLA (or a local authority acting on their behalf) has the power to remove untaxed vehicles. You can use the registration numbers of the vehicles to check online if they are taxed and if not, report them to DVLA.

3.15 How can parking be enforced on a private or 'unadopted' road?

Private (or 'unadopted') roads are, by definition, roads which are not maintainable at the public expense. The responsibility for the upkeep and management of these roads rests with the people whose properties 'front' onto them (called frontagers).

There can be complex laws about what is and is not permitted in terms of parking on a private road, depending on the nature of the road and what rights or easements might have been granted over it.

Most parking 'offences' relate to the public highway; some private or unadopted roads are also a highway, but most are not.

[59] Parking: Private Sector: Written question – 7201, 12 September 2017

It is not possible to give advice which will fit specific circumstances. Anyone affected should seek professional legal advice; they could also try Citizens' Advice in the first instance.

There is a useful reference book which covers the law in this area: Andrew Barsby's *Private Roads: The Legal Framework* (5th ed.), 2013.

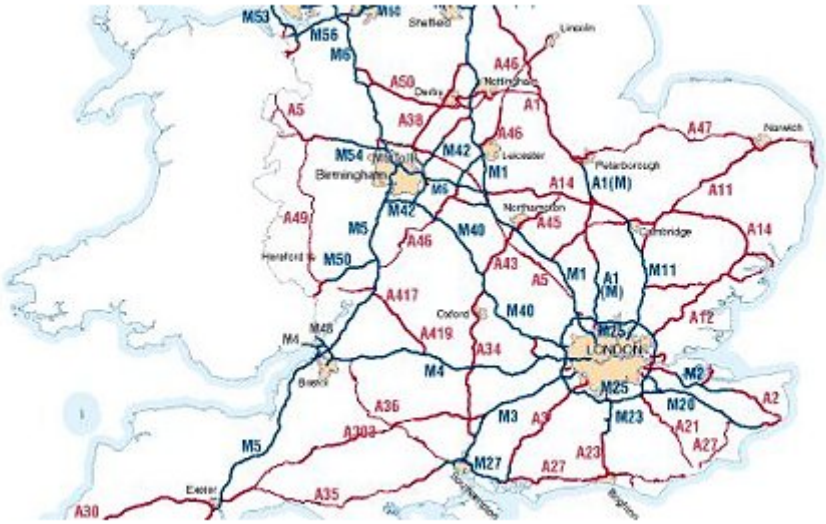
4. Roads and driving

Policy about roads, drivers and driving is devolved in Northern Ireland. Across Scotland and Wales there is some devolution.

4.1 Who is responsible for the motorway network?

The Strategic Road Network (SRN) comprises approximately 4,300 miles of motorways and major 'trunk' A-roads in England, and it is managed by Highways England (HE).[60]

Further information on the SRN can be found in HC Library briefing paper SN1448, *Strategic Road Network (SRN)*.



The length of the SRN represents only around two per cent of the total length of England's road network, but it carries roughly one-third of the total motor vehicle traffic in England.[61] The SRN expands as new roads and capacity are added and contracts as other roads are 'de-trunked' (i.e. devolved to local highways authorities).[62]

4.2 How can one get a local road scheme off the ground?

There are now various bodies – which differ according to where one lives – which would be responsible for developing road schemes and various pots of funding that can be accessed for local transport schemes.[63]

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[60] trunk roads in Wales and Scotland are managed by the Welsh Government and Traffic Scotland (on behalf of Transport Scotland), respectively

[61] DfT, *Use of the Strategic Road Network*, 14 August 2014

[62] on coming into office in 1997 the Labour Government thought that approximately 40 per cent of the then trunk road network could be devolved in this way [DETR, *A new deal for trunk roads in England*, July 1998, section 2.3]; by 2006 a little over 2,100 miles of the SRN had been de-trunked [HC Deb 27 November 2006, c274W]; a list of de-trunking orders made between 2004 and 2014 is available at HL Deb 1 July 2014, cc248-52WA

[63] in Mayoral Combined Authorities and London the process would be driven by the Mayor and the transport authority (e.g. Transport for Greater Manchester, Transport for London etc.)

As transport schemes are usually capital projects, the bulk of available funding comes through Local Enterprise Partnerships (LEPs); though local authorities would still be expected to make the case for and contribute funds to any particularly local schemes. Any scheme that one wanted to get off the ground would need a feasibility study and a business case; the likelihood of a local authority or a LEP taking up a particular scheme will probably be founded in their wider strategic and local transport plans, for which they will have done a great deal of survey and assessment work.

Local road projects usually do not involve Highways England, except where a scheme intersects or abuts onto the Strategic Road Network (see 4.1, above).

4.3 Do local authorities have to provide street lighting?

No. The relevant legislation is section 97 of the *Highways Act 1980*, as amended, which gives highway authorities the *power* to provide lighting for the highways for which they are responsible, but does not *require* them to do so. It states:

> **97 Lighting of highways.**
>
> (1) The Minister and every local highway authority may provide lighting for the purposes of any highway or proposed highway for which they are or will be the highway authority, and may for that purpose—
>
> (a) contract with any persons for the supply of gas, electricity or other means of lighting; and
>
> (b) construct and maintain such lamps, posts and other works as they consider necessary.
>
> (2) A highway authority may alter or remove any works constructed by them under this section or vested in them under Part III of the Local Government Act 1966 or section 270 below.
>
> (3) A highway authority shall pay compensation to any person who sustains damage by reason of the execution of works under this section.
>
> (4) Section 45 of the Public Health Act 1961 (attachment of street lamps to buildings) and section 81 of that Act (summary recovery of damages for negligence) apply to a highway authority who are not a council of a kind therein mentioned as they apply to such a council.

4.4 Who sets speed limits and how can one be changed?

Essentially, it is up to local highway authorities to decide on the most appropriate limits for their roads. They have extensive powers of review and variation. Groups and individuals should approach their local authority if they wish to see a change to a particular speed limit, but local authorities are not obliged to make any changes and may resist doing so for a number of reasons.

Further information on the setting, review and enforcement of speed limits can be found in HC Library briefing paper SN468, *Roads: Speed limits*

In built up areas the general speed limit is 30mph; on single carriageway roads it is 60 mph and on dual carriageways, 70 mph. However, highway authorities have the power to vary the speed limits on the roads they control – for example in urban areas, particularly around schools, there has been a growing trend for local highway authorities to reduce the limit to 20 mph. Similarly single and dual carriageways often have a lower limit than that indicated above – particularly as they approach heavily populated areas.

In January 2013 the Department for Transport published revised guidelines to local highway authorities on the setting of speed limits. Broadly this reiterated pre-existing policy, emphasising the options available to local authorities to introduce 20 mph limits in urban areas and to assess speed limits in rural areas based on safety criteria. It also launched a new speed limit appraisal tool for local authorities. At the same time the police speed enforcement guidelines were republished. These remain in force.

Speed limits are enforced by road traffic police and automated detection devices such as speed cameras. Penalties can range from a Fixed Penalty Notice of £100 and three points on the licence to a £1,000 fine and a disqualification. Drivers may be offered the alternative of a speed awareness course. Some have called for a more pro-active approach to speed management and enforcement, with the use of Intelligent Speed Adaptation or speed limiters for vehicles.

Since 2010 Conservative-led governments have debated whether the speed limits on motorways should be increased to 80 mph, but there was no formal consultation on this and it is not now Government policy.

4.5 How are speed cameras funded and where does the money go?

Income from speeding fines caught on camera is paid to the Treasury and goes towards general expenditure. There is no hypothecation.

Further information on speed cameras can be found in HC Library briefing paper SN350, *Roads: speed cameras*

Initially, fine income generated from cameras went to central government where it was 'netted off' and paid back to local authorities (in partnership with the police) to pay for speed cameras. This changed in 2007 when the Labour Government determined that speed cameras should form part of a wider road safety strategy and as such it broke the link between fine income from cameras and budgetary allocations: after 2007 local authorities were given a road safety capital allocation, out of which they were expected to fund cameras if they wished. After

2010 the current government went further and abolished the capital grant, so any spending on cameras must now come out of the general local authority budget.

Both Labour and the Coalition made the same argument for changing the funding basis – that speed cameras should be looked at in the round as a road safety tool – which is why they moved away from directly funding them under the system initially set up in the late 1990s.

4.6 Where can speed cameras be put and must they be visible?

The relevant guidance is DfT Circular 01/2007, *Use of speed and red-light cameras for traffic enforcement: guidance on deployment, visibility and signing*, dated 31 January 2007. **This remains the guidance currently in force**.

It states:

> **Visibility**
>
> Depending upon the enforcement method used, speed camera housings (including tripod-mounted cameras) or the camera operator or the mobile enforcement vehicle should be clearly visible from the driver's viewpoint at the following minimum visibility distances:
>
> - 60 metres where the speed limit is 40 mph or less;
> - 100 metres at all other speed limits.
>
> On every occasion before commencing enforcement at a camera site, the enforcement officer should check that the visibility guidance is met.
>
> **Conspicuity**
>
> Fixed speed camera housings located within an area of street or highway lighting should be coloured yellow either by painting both the front and back of the housing or covering both the front and back of the housing with retroreflective sheeting. In an area not covered by street or highway lighting, the speed camera housing should be treated with yellow retroreflective sheeting. The recommended paint colour is No.363 Bold Yellow of BS381C:1996. The retroreflective sheeting should meet the requirements of BSEN 128991:2001 or suitable microprismatic sheeting conforming to BS8408 or an equivalent Standard of European Economic Area State.
>
> […]
>
> This camera signing, visibility and conspicuity guidance has no bearing on the enforcement of offences. Noncompliance with this guidance does not provide any mitigation of, or defence for, an alleged offence committed under current UK law. [pages 7-8]

The Government announced that all grey-painted speed cameras on the strategic road network, managed by Highways England, would be painted yellow by October 2016.[64]

[64] Speed Limits: Cameras: Written question – 45389, 12 September 2016; and Speed Limits: Cameras: Written question – 45966, 15 September 2016

4.7 What funding is available to tackle potholes?

Local highway authorities are expected to fund repairs largely out of their general cash pot, though there are smaller pots of cash available through various DfT schemes.

English local authority net current expenditure[65] on highways and roads maintenance (including structural and routine maintenance and winter service but excluding street lighting) totalled £1.55 billion in 2016/17.[66]

In 2016/17, English local authorities have a core spending power[67] of £43.56 billion through which to provide services including road maintenance.[68] From April 2016 a new incentive-based element for highways maintenance funding was introduced by the DfT. By financial year 2018/19 it will represent a quarter of all funding available to local authorities.[69]

The Government also provides a capital grant called the Highways Maintenance Block grant. This will provide over £2.5 billion to local authorities between 2015/16 and 2017/18, with a provisional allocation of £2.175 for 2018/19 to 2020/21.[70]

In the June 2013 spending round the Government committed a further £10 billion to tackle the roads maintenance backlog by 2020/21 – £6 billion of which would go to local authorities.[71] The Government announced how this funding would be allocated in December 2014.[72]

Other available funding includes:

- **Pothole funds**: In June 2014 the Government announced plans to help fill more than three million potholes by allocating local councils in England £168 million of funding from a dedicated Pothole Repair Fund. As a condition of receiving the money local authorities would be required to publish quarterly progress updates on how many potholes had been repaired.[73] In Budget 2016 the Government published details of a new £250 million Pothole Action Fund. DfT consequently announced in April 2016 the allocation of £50 million of this funding to over 100 councils

Further information on road maintenance can be found in HC Library briefing paper SN739, *Local road maintenance, repairs and street works in England*

[65] **current expenditure** is the cost of running local authority services within the financial year. This includes the costs of staffing, heating, lighting and cleaning, together with expenditure on goods and services consumed within the year. This expenditure is offset by income from sales, fees and charges and other (non-grant) income, which gives **net current expenditure**

[66] CLG, *Local authority revenue expenditure and financing England: 2016 to 2017 individual local authority data - outturn*, 16 November 2017 [RO2 – highways and transport services]

[67] the sum of council tax; formula grant; non ring-fenced specific grants; and NHS funding for spend on social care that also benefits health

[68] CLG, *Core spending power: final local government finance settlement 2017 to 2018*, 27 March 2017

[69] for more information, see: DfT, *Highways maintenance funding: incentive element, 2016 to 2017*, 10 May 2016

[70] DfT, *Highways maintenance funding allocations: 2015/16 to 2020/21*, 23 December 2014

[71] HMG, *Investing in Britain's Future*, Cm 8669, June 2013, p17

[72] DfT press notice, "£6 billion funding to tackle potholes and improve local roads", 23 December 2014

[73] DfT press notice, "Councils given £168 million to fix local roads", 20 June 2014

in England to repair nearly one million potholes over the following 12 months.[74] A further 75 million was disbursed for 2017 and additional funding of £46 million announced in December 2017.[75]

- **Local highways maintenance challenge fund**: In December 2014 the Government announced that it was making £575 million available through a new challenge fund to help repair and maintain local highway infrastructure such as junctions, bridges and street lighting.[76] The first £275 million allocation to 28 local authorities was announced in March 2015.[77] A further £151 million was announced in December 2017.[78]

4.8 Is the local authority liable for accidents or damage on the highway?

These are complex matters and anyone affected should seek professional legal advice.

Briefly, highway authorities have a legal duty to maintain the highway under section 41 of the *Highways Act 1980*, as amended. Further, there are standards of repair that they must follow. For local highway authorities these are set out in *Well-maintained Highways: Code of Practice for Highway Maintenance Management*, published in July 2005 by the UK Roads Liaison Group (UKRLG) and updated regularly since then. It is not a statutory document but is published with the backing of central and local government. The standards for Highways England are set out in the *Network Management Manual (NMM)*, particularly Part 3 (routine service), updated in July 2009.

Highway authorities are strongly encouraged to develop and publish Highway Asset Management Plans (HAMPs), which are considered "fundamental to demonstrating the value of highway maintenance in delivering the wider objectives of corporate strategy, transport policy and value for money". A HAMP will include things like an asset register (or inventory); levels of service; long term maintenance strategies; identification of future funding requirements to maintain required level of service; and development of co-ordinated forward programmes for highway maintenance, operation and improvement.

There are two defences available to a highway authority faced with claims under section 41 of the 1980 Act for failure to maintain the highway: a common law defence and a statutory defence as provided for in section 58 of the 1980 Act.[79]

Briefly, section 58(1) of the 1980 Act provides the highway authority with a complete defence if it can *prove* that it had taken such care as was reasonably required to ensure that the part of the highway to which the action relates was not dangerous to traffic ('traffic' being

[74] DfT press notice, "Cash for councils to fill almost 1 million potholes", 7 April 2016
[75] DfT press notice, "£200 million funding boost for England's roads", 14 December 2017
[76] op cit., "£6 billion funding to tackle potholes and improve local roads"; and: DfT, *Local highways maintenance challenge fund: how to apply*, 23 December 2014
[77] DfT press notice, "£275 million to improve local roads", 24 March 2015
[78] Op cit., "£200 million funding boost for England's roads"
[79] set out in more detail in section 1.4 of HC Library briefing paper SN739

defined in section 329(1) of the 1980 Act to include pedestrians and animals). In assessing whether such care had been taken in any particular case, the court must have regard to the matters specified in section 58(2), not all of which will be relevant in every case.

Generally speaking, a highway authority is expected to take reasonable care of the highway and should have procedures laid down for inspection and repair (see HAMPs, above). In essence, a judge must be satisfied that a council did all that was reasonably required to avoid there being any danger to pedestrians and motorists if a council is to succeed in using the special defence provided by section 58.

4.9 Can one get compensation for loss of business from road works?

The general rule is that there is no compensation if a business is affected by road works. Successive governments have taken the view that businesses should not have the right in law to any particular given level of passing trade, and that traders must take the risk of loss due to temporary disruption of traffic flows along with all the other various risks of running a business.

There is more information in HC Library briefing paper SN200, *Roads: compensation for loss of business from road works*.

4.10 Who is responsible for an unadopted road?

The question as to what a local highway authority can do with regards to private or 'unadopted' roads is a very complex one and depends on the legal status of the road in question (i.e. whether it is a road or a highway, whether there is a public right of way or a private right of way etc.) and depending on which of these apply the answer will be different.

Further information on unadopted roads can be found in HC Library briefing paper SN402, *Roads: unadopted*.

The general principle is that local highway authorities have no *duties* with regard to private roads, though they do have some *powers*, which they can use at their discretion. The duty to maintain the road lies with the frontagers (i.e. the people who live on the road).

Local authorities can 'adopt' roads under the *Highways Act 1980*, but as this makes them financially liable for their maintenance there is a general reluctance to do so unless the road is made up to an acceptable condition. Financial considerations may also play a part.

It is not possible to give advice which will fit specific circumstances. Anyone affected should seek professional legal advice; they could also try Citizens' Advice in the first instance.

There is a useful reference book which covers the law in this area: Andrew Barsby's *Private Roads: The Legal Framework* (5th ed.), 2013.

4.11 What law allows local authorities to implement road charges?

The Labour Government legislated more than a decade and a half ago to allow local authorities to establish local road charging schemes in their areas: these were aimed at combating congestion and tackling poor air quality. However, use of these powers has been limited to a small scheme in Durham and, more recently, limited emissions-targeted schemes in places like Brighton and Nottingham.

Further information on local road charges can be found in HC Library briefing paper SN1171, *Local road charges*.

The only congestion scheme in the UK is the one in London; plans to introduce such a scheme in Cambridge, Edinburgh and Manchester collapsed in the mid-2000s, in two cases following substantial defeats in local referenda.

However, poor air quality in many urban areas has led to a resurgence of interest in local road charges, specifically by introducing 'low emission' or 'clean air' zones in five cities: Birmingham, Leeds, Nottingham, Southampton and Derby. The Government published its most recent Clean Air Zone Framework in May 2017.[80] It has also indicated that more cities may be required to have a CAZ in the future.

London has had a low emission zone since 2008, which has been gradually strengthened, and there are plans to make this an 'ultra' low emission zone by 2019.

Local road charges can be introduced in England, Wales and Scotland. There is no legislative authority for such charges in Northern Ireland.

- In **England** under Part III and Schedule 12 of the *Transport Act 2000*, or the *Greater London Authority Act 1999*, both as amended, charges can be introduced by county councils; metropolitan district councils; Transport for London; a London borough council or the Common Council of the City of London; and Passenger Transport Executives (PTEs)/Integrated Transport Authorities (ITAs). Devolution arrangements in England mean that in practice the relevant authority in some areas could be the elected mayor and/or relevant authority (e.g. Transport for Greater Manchester).
- In **Wales** charges can be introduced under the same legislation as in England by county councils and metropolitan district councils.
- In **Scotland** charges can be introduced by councils constituted under section 2 of the *Local Government etc. (Scotland) Act 1994*.

4.12 Is there a legal minimum width for a road?

There are no laws or regulations, as such, for specifying 'legal' road widths. However there are design documents that provide guidance and advice. The width of a road depends on the volume, type and mix of

[80] Defra, *Air quality: clean air zone framework for England*, 5 May 2017

traffic expected as well as other issues so there is not a straight forward answer.

- The design rules for **Highways England roads** are set out in the *Design Manual for Roads and Bridges*. Volume 1, Section 6, Part 2 sets out the dimensional requirements for the highway cross-sections for all-purpose and motorway trunk roads, both at and away from structures. It also gives requirements for headroom at structures.
- The design rules for **local authority roads** are set out in the *Manual for Streets*. Chapter 7 sets out carriageway widths; Chapter 5 sets out urban design principles including at Figure 5.3 typical widths for different types of street.

The Government's 2012 guidance states:

> There are wide disparities in the road networks in different parts of England. It is not helpful to adopt a single standard for selecting different classes of road in every part of the country. Classifications must be set in a way that reflects the road network in their local area.
>
> Any standards must therefore be relative:
>
> - An A road will generally be among the widest, most direct roads in an area, and will be of the greatest significance to through traffic
> - A B road will still be of significance to traffic (including through traffic), but less so than an A road
> - A Classified Unnumbered road will be of lower significance and be of primarily local importance, but will perform a more important function than an unclassified road
> - An Unclassified road will generally have very low significance to traffic, and be of only very local importance.
>
> This may not appear to provide much certainty in the abstract, but when applied to an actual road network it should be reasonably clear how these principles will relate to local traffic movement.[81]

4.13 Can local authorities ban lorries from residential streets?

Yes. Highway authorities can place temporary, experimental or permanent restrictions on traffic within their areas by way of a Traffic Regulation Order (TRO). One of the most popular uses for TROs is restricting the movements of HGVs in residential areas. The relevant legislation is contained in the *Road Traffic Regulation Act 1984*, as amended.

Section 2(4) of the 1984 Act allows TROs to restrict the use of 'heavy commercial vehicles'. The definition of a heavy commercial vehicle is given in section 138(1) of the Act as any goods vehicle which has an operating weight exceeding 7.5 tonnes.

[81] DfT, *Guidance on road classification and the primary route network*, January 2012, pp13-14

TROs can be complex and expensive to draw up and implement, so local authorities are usually keen for there to be a sound case for acting and widespread support for any proposed scheme.

4.14 Are the police and/or the council allowed to charge for parades?

Unless a parade (of whatever nature, a street party, a Remembrance Day event or something else) is planned for an already pedestrianised route, a road or roads will have to be closed for the event in the interests of safety. This requires the local authority to make an Order to that effect. Many local authorities charge for such an Order to cover the costs of enforcing the event.

There are essentially two basic powers which local authorities can use to close roads for the purposes of parades, street parties etc.: temporary Traffic Regulation Orders (TROs) and section 21 of the *Town Police Clauses Act 1847*. Over recent years there have been a number of cases (e.g. around the time of the Royal Wedding in April 2011 and during the Olympics and the Diamond Jubilee in summer 2012) where local authorities have switched from using the 1847 Act to the 1984 Act. The changes seem often to have been made because local police forces are unable to provide the support that is required under the 1847 Act to enforce the closure.

This has caused some concern due to the fact that there is a specific power for local authorities to charge for a road closure made via a TRO but not one made under the 1847 Act. Schedule 2 to the *Local Authorities (Transport Charges) Regulations 1998* (SI 1998/948), as amended, states that a charge for any kind of TRO may be made to the organisers of the event for which the road is closed. There is no prescribed limit on the amount of charge.

Further information on TROs can be found in HC Library briefing paper SN6013, *Roads: Traffic Regulation Orders (TROs)*.

4.15 What can one do if one has an issue with a driving licence?

Sometimes people get into a dispute with DVLA over a correspondence issue. This covers things like applying for a replacement licence and notifying DVLA of a change in circumstances. Individuals sometimes say that they have received a fine or been caused some other sort of trouble (legal or otherwise) which they say is the fault of DVLA for not sending them notification of a requirement; failing to respond to letters, emails or phone calls; or not responding within a relevant timeframe.

DVLA has always taken a singular view of these issues, to whit: the onus is always on the individual to ensure that they are compliant with the law. This means that they should always be aware of any relevant timeframes and should chase DVLA if they are in danger of being in breach of any sort of law due to a process delay.

DVLA does have service standards which it must meet: if it did not, it would have to explain to the Secretary of State and might find itself

Driver licensing rules in the UK ultimately derive from the EU. It is as yet unclear what the impact of Brexit might be on driver licensing and testing: it seems likely that the UK would adopt a system compatible with that across the EU in order to retain the benefits of mutual recognition.

facing questions from a Parliamentary select committee inquiry. These standards are set out in the agency's annual report.

4.16 What should one be aware of if driving with a medical condition?

Drivers are legally obliged to inform the DVLA of any changes to their health that they think might affect their legal ability to drive. Third parties, such as doctors and family members, can also make representations to the Agency if they feel someone's health is posing a danger to their driving ability.

Annex III of the Third European Driving Licence Directive (Directive 2006/126/EC), Part III of the *Road Traffic Act 1988* and Part VI of the *Motor Vehicles (Driving Licences) Regulations 1999* (SI 1999/2864), as amended, both as amended, provide the legal framework for standards of physical and mental fitness to drive a vehicle.

The rules as they apply to the range of conditions and illnesses are set out in the DVLA's guide on assessing fitness to drive. The guidelines therein "represent the interpretation and application of the law in relation to fitness to drive following advice from the Secretary of State's Honorary Medical Advisory Panels. The Panels consist of doctors eminent in the respective fields of Cardiology, Neurology, Diabetes, Vision, Alcohol/Substance Abuse and Psychiatry, together with lay members".[82] The Panels meet twice yearly and the standards are reviewed and updated.

Under section 99 of the 1988 Act the Secretary of State may limit the duration of a licence granted to a person suffering from a relevant or prospective disability to between one and three years.

Drivers who have their driving entitlement revoked or refused on medical grounds have the right to appeal to the Magistrate's Court under section 100 of the 1988 Act.

Further information on driving with a medical condition can be found in HC Library briefing paper SN387, *Driving with a medical condition*.

4.17 Are doctors legally obliged to inform DVLA if a patient might be in breach of the legal medical requirements to drive?

DVLA explains the policy in some detail in the preamble to its *Assessing fitness to drive: guide for medical professionals*, last updated in January 2018. Circumstances may arise in which a person cannot or will not notify the DVLA. It may be necessary for a doctor, optometrist or other healthcare professional to consider notifying the DVLA under such circumstances if there is concern for road safety, which would be for both the individual and the wider public. The General Medical Council (GMC) and The College of Optometrists offer clear guidance about notifying the DVLA when the person cannot or will not exercise their own legal duty to do so. The DVLA quotes from the former and gives a link to the latter.

[82] DVLA, *Assessing fitness to drive: a guide for medical professionals*, 1 January 2018, p3

It emphasises that the obligation on professionals to notify the DVLA when fitness to drive requires notification but an individual cannot or will not notify the DVLA themselves "may pose a challenge to issues of consent and the relationship between patient and healthcare professional".

4.18 What is being done about DVLA scams?

There are a number of websites which offer to deal with DVLA-related services on your behalf, but they charge a fee for doing so, even when it is free if you deal directly with DVLA.

HC Library briefing paper SN6826, *Websites charging for government services,* explains the issues in further detail.

The Government is aware of the issue and intermittently runs ads designed to warn people about it.

You can report a misleading website to the relevant search engine by following guidance from the Government Digital Service.

5. Vehicles

Policy about motor vehicles is largely devolved in Northern Ireland. Across Scotland and Wales there is some limited devolution, but most areas remain reserved.

5.1 Will diesel drivers face higher costs in the future?

There has been much in the press of late about diesel vehicles and there have been calls for the Government to do something – particularly about older vehicles, which is where the real issue is. Suggestions have varied from an increase in fuel duty on diesel, to changes to the car tax (VED) system, to the introduction of a scrappage scheme, whereby owners of older diesel vehicles would be offered a financial incentive to switch their old diesel for a new vehicle of some sort.

The Government made some changes to VED for diesels in the Autumn 2017 Budget, but these only affect new vehicles.[83] The motor industry has introduced a number of scrappage scheme but there is not as yet any Government-supported scheme. The July 2017 Air Quality Plan indicated that the Government was generally cool on the idea of a scrappage scheme and would need to be convinced of its merits:

> … it is clear that a number of issues remain with … mitigation options and in particular with scrappage schemes – analysis of previous schemes has shown poor value for the taxpayer and that they are open to a degree of fraud … The government welcomes views from stakeholders in the forthcoming consultation on whether it is possible to overcome these issues, alongside any wider options that should be considered. All proposals considered for government support would need to demonstrate that support can be targeted to those who need it most and that any scheme could be delivered effectively with minimal risk of fraud or abuse. Proposals considered would also need to demonstrate that they offer clear value for taxpayer's money. Finally, given all measures will be funded by relevant taxes on new diesel cars alongside existing departmental budgets, proposals put forward would need to be fair to the taxpayers who would fund any measures.[84]

Further information on diesel scrappage can be found in HC Library briefing paper CBP 8091, *Vehicle scrappage schemes*.

Separately, any changes to parking rules for particular vehicles (e.g. the Westminster diesel parking surcharge) are matters for local authorities.

5.2 Is there funding available for electric vehicles?

Yes. Since 2009 UK governments of all parties have sought to provide a framework in which electric vehicles, or 'ultra low emission vehicles' (ULEVs) can grow. The decarbonisation of both private cars and goods and passenger carrying vehicles is seen as critical to helping the UK

[83] For full details see section 2.2 of HC Library briefing paper CBP 1482
[84] Defra, *UK plan for tackling roadside nitrogen dioxide concentrations: detailed plan*, 31 July 2017, para 119, see also the box on p38

achieve its climate change obligations and to improving air quality, particularly in cities such as London.

The present Government believes that infrastructure is best planned and delivered locally by public authorities, businesses and individuals and provides various grants for those purposes. It makes available separate vehicle grants for private cars, taxis and buses. It also delivers locally-focused packages of funding in partnership with the motor industry as part of the 'Go Ultra Low' cities scheme.

Available funding and grants are as follows:

- Plug-in car and van grants;
- Low emission bus scheme;
- Ultra low emission taxi scheme;
- Motorcycle and scooter scheme;
- Homecharge scheme;
- 'Go Ultra Low' cities scheme;
- R&D funding;
- Public sector/local authority schemes;
- Workplace charging scheme; and
- Train station grant.

Further details on the various grant schemes can be found in HC Library briefing paper CBP 7480, *Electric vehicles and infrastructure*.

The Government is currently legislating via the *Automated and Electric Vehicles Bill 2017-19* to allow it to regulate if necessary in the coming years and to improve the consumer experience of electric vehicle charging infrastructure, to ensure provision at key strategic locations like Motorway Service Areas (MSAs), and to require that charge points have 'smart' capability.[85]

5.3 What can be done about dazzling car headlights?

This is a frequently raised concern, partly because of the daytime running lights (DRL) that many new cars are now fitted with and also because of the increased use of light sources such as xenon and halogen which tend to emit a bright blue-ish light.

The legislation on this is complex and highly technical. UK domestic vehicle lighting regulations refer back to global rules (called UNECE Regulations) which are then written into both EU and UK law:

- Regulation 1 (in three parts) sets out the requirements as to the exact placement, strength and beam of any headlights;
- there is a separate Regulation 98 that deals with gas-discharge light sources (like very bright xenon).

If it were a serious problem, the UK Government could put something in its domestic construction and use regulations requiring that headlight

[85] For further information see HC Library briefing paper CBP 8118

deflectors be fitted to all vehicles with xenon/halogen headlights which are brighter than standard lamps. However, unless there is a proven safety issue, the Government might argue that vehicles are already constructed to be able to dip headlamps where necessary and that any new, compulsory, requirement would impose an unnecessary burden on motorists.

5.4 Can VW owners get compensation?

Not at present. The Government continues to press on this but so far there has been no movement from VW UK.

In September 2015 the US Environmental Protection Agency (EPA) issued a notice of violation of the Clean Air Act that alleged Volkswagen and Audi diesel cars from model years 2009–2015 included software that circumvents EPA emissions standards for certain air pollutants (so called 'defeat devices'). VW admitted that the relevant engine software affected 11 million vehicles worldwide, including nearly 1.2 million registered in the UK.

VW has taken contrasting approaches in providing redress to customers in Europe and the US which has led to anger over the fairness of its response. Though compensation has been paid to US customers VW has resisted paying compensation to UK customers on the grounds that they have suffered no material loss.

Over the course of the 2015 Parliament the Transport Select Committee questioned the Government and VW several times, pushing them on this issue of compensation to UK customers. The most recent session took place on 20 February 2017, when Paul Willis, MD of VW UK reiterated the company line on the payment of compensation:

> My position on compensation, and our company's position, is absolutely consistent and clear. You cannot compare the situation in Europe with what you are referring to—I think you are referring to the United States. For example, after the technical fixes, there is no change to the vehicles in terms of fuel consumption and there is no change in any of the key relevant objective criteria, so the vehicles are more or less the way they were before the technical fix. Indeed, one of the discussion points we had previously at the Committee was the effect on residual value. From all the data that I analyse, and indeed all the data on residual values I see from people who are expert and independent, there is absolutely no evidence that there has been any degradation in residual value. What I come back to is that there is no loss. Compensation is a legal question in the end. There is no legal basis for compensation […] No one will be able to say that we misled customers in any way. I am absolutely clear on that. We have never ever sold cars on the basis of nitrogen oxide emission levels. In our view, we have not misled customers in any way.[86] [Qq34 & 82]

At the same session, the Transport Minister, John Hayes, said: "I have continued to press for additional compensation […] I continue to press Volkswagen on compensation. They should pay some compensation to customers who have been affected in this way. As I said, I am zealously

[86] Transport Committee, *Oral evidence: Volkswagen emissions*, HC 1021, 20 February 2017, Qq34 & 82

determined to pursue Volkswagen".[87] Mr Hayes was pressed again on the point. This was the exchange:

> *Clive Efford*: We hear that there are 23,000 premature deaths due to air quality—9,300 in London alone. In your opening statement, you were quite clear that there had been deception—that they had altered their vehicles to give more favourable emission readings—and that compensation was due. It cannot be that the Government just sit back and say, "There's nothing we can do."
>
> *John Hayes*: My commitment to this is, as I described it, zealous. I have the absolute determination to do all that we can to make Volkswagen do the right thing. I will leave no stone unturned in that respect.[88]

Most recently, in December 2017, the Transport Committee published correspondence with VW and the Government and the Chair of the Committee, Lilian Greenwood said that on "assistance for consumers there seems to be no real update or meaningful progress".[89]

5.5 What can be done about noisy vehicle exhausts?

Exhausts have to conform to the *Road Vehicles (Construction & Use) Regulations 1986* (SI 1986/1078), as amended, which apply the rules as set out in the relevant Consolidated 1970 EU Directive:

- Regulation 54 states that every motor vehicle is required to be fitted with a silencer, which must be maintained in good and efficient working order and must not be altered;
- Regulation 55 sets out the exhaust noise limits for motor vehicles;
- Regulation 57 and Schedule 7A set out the exhaust noise limits for motorcycles; and
- Regulation 61 states that every vehicle shall be constructed and maintained so as not to emit any avoidable smoke or avoidable visible vapour.

The police can prosecute under the Regulations (it is an offence to breach the regulations under section 42 of the *Road Traffic Act 1988* and is subject to a maximum fine of £4,000).

Noise levels are also part of the MOT test – this is generally how compliance with the law is monitored (e.g. see section 7.1 of the MOT Manual).

[87] ibid., Qq166 & 170
[88] ibid., Q203
[89] Transport Committee press notice, "Volkswagen emissions: Transport Committee drive for redress continues", 22 December 2017

Noise limits

Essentially, new cars are now required to meet Europe-wide noise limits. These have been progressively reduced from 82 decibels (dB (A)) in 1978 to the current limit of 74 dB (A) established in 1996. Off-road vehicles are allowed to be 1dB (A) louder, as are direct-injection diesels.

A new EU regulation was introduced from July 2016, Regulation (EU) No 540/2014, which will phase in tighter noise limits over 10 years, together with a revised, more representative test procedure. By 2026 the limit for most new passenger cars will be 68 dB(A).

5.6 What is being done to stop satnavs directing HGVs down inappropriate routes?

There is no legislation on this. The Government's view has long been that greater and better data-sharing between highway authorities, mapping providers and satnav companies is the best way forward and that there should be cooperative methods for data exchange, helping to provide satnav users with up-to-date information when making their journey.[90]

The most recent statement on this in Parliament was by the then Transport Minister, Andrew Jones, in October 2016:

> In the last Parliament the Department brought together satnav manufacturers, mapping companies, local authorities and other industry organisations in a Satnav Summit. We continue to work with these parties to improve the information satnavs provide to road users, and enable better co-operation and information-sharing between local highway authorities and the industry, through joint working. Earlier this year Highways England published a Traffic Information Strategy setting out how they will work with local highway authorities to integrate journey planning across the network, improve communication with road users and make traffic data and information available to third parties to enable these companies to develop products and services for customers. Furthermore, the Department is investing £3 million to create a national digital road map, developed by Ordnance Survey and launching this year, which will enable better integration and sharing of data on roads between local authorities and service providers.[91]

5.7 What are the rules about using a mobility scooter?

The Government issued a consultation on changes to mobility scooters in 2010. It said it would:

1. consider the idea of changing the legal definition from 'invalid vehicles' and would seek a suitable legislative opportunity in Parliament to make such a change;

[90] further details are given in the HC Library short briefing CDP 2016-0069, written for a debate on this issue held on 22 March 2016

[91] Large Goods Vehicles: Driver Information Systems: Written question – 47701, 17 October 2016

2. increase the permitted unladen weight of Class 2 powered wheelchairs to a maximum of 150 kgs, and would amend the regulations accordingly;
3. revise guidance for users;
4. look at ways in which training and assessment can be promoted more widely while remaining voluntary;
5. further consider the issue of eyesight testing in respect of Class 3 vehicle users; and
6. look again at the available evidence regarding insurance needs.

The revised **guidance** (3) was most recently updated in March 2015 and is available on the Gov.uk website: DfT, *Mobility scooters and powered wheelchairs on the road – some guidance for users*.

On **training** and assessment (4) the guidance states:

> If you are using a mobility vehicle for the first time, or if it is a while since you have driven on the road, you are strongly advised to get some training to ensure that you can steer and control the vehicle properly, especially on uneven surfaces. Your assessment should have involved checking your eyesight, reaction time, balance and posture, ability to sit for long periods, concentration and ability to get on and off the vehicle. You may also want to consider having a regular review of your driving skills […] For details of training courses, please contact your local authority or local police force … Some transport operators also provide training if you are intending to take your vehicle on a bus or train.[92]

Finally, on **insurance**, there is an unsettled question as to whether mobility scooters will have to have insurance as a consequence of the ECJ Vnuk Judgement. The Government recently consulted on this, and has yet to publish the outcome. On mobility scooters it stated:

> An example of [an] impact … is the potential effect on the users of mobility scooters if we were to impose an insurance requirement. We are keen that people who use both mobility scooters and powered wheelchairs remain safe, mobile and independent. We recommend that they get insurance for their own benefit, but we appreciate a legal requirement to do so – to the levels mandated in the Directive – is likely to be financially onerous.[93]

[92] DfT, *Mobility scooters and powered wheelchairs on the road – some guidance for users*, March 2015, p10

[93] DfT, *Motor insurance: consideration of the 'Vnuk judgment'*, 20 December 2016, para 3.12

5.8 Can councils limit minicab numbers?

No, not at the moment. Local authorities in England and Wales currently have the power to restrict the number of taxis but *not* private hire vehicles (PHVs or minicabs) licensed in their area. This power can only be exercised where it can be shown that there is no significant unmet demand for taxis in the area. There is no power to limit the number of taxis or PHVs working in London.

Further information on restricting taxi and PHV numbers can be found in HC Library briefing paper CBP 2005, *Taxi and private hire vehicle licensing in England*.

Those who want to see local authorities given powers to restrict PHV numbers argue that the market, particularly in London, is over-saturated and enables bigger operators to use their pricing to drive out smaller operators. So what might look like consumer choice in the beginning ends up in a monopoly in which one or two large operators can raise prices with impunity.

There are other reasons why some have called for a cap. For example, the APPG on taxis cited grounds of increased congestion and pollution in London. To address this, its July 2017 report called for TfL and the Mayor of London to have the power to cap PHV numbers (and for the same powers to be available to other mayors and Combined Authorities should they request it).[94]

In its December 2017 report the Urban Transport Group (UTG) went into some detail about the impacts of higher PHV numbers on congestion and air quality. On congestion it stated that:

> Depending on local circumstances taxis and PHVs can both contribute to congestion, by increasing the numbers of vehicles on already congested streets, but also help to alleviate congestion, through supporting the public transport network and reducing the need for individuals to own and use private cars.[95]

And on air quality and carbon emissions it stated:

> The evidence on the extent to which growth in PHV traffic … is contributing to congestion is still emerging. The impacts are also likely to be different in different cities. Some [operators] argue that they primarily benefit travellers outside peak times and for journeys where public transport is not so readily available. Others have argued that, taking the long view, increased access to taxis, PHVs and new business models for shared mobility, could help to reduce car ownership and increase public transport use, which would have benefits for congestion…
>
> However a number of city authorities, which have experienced rapid growth in PHV traffic, have expressed concern about the impact on congestion.
>
> [For example] KMPG argue that the large increase in the number of PHVs in London has increased congestion … In London, one in four vehicles entering the congestion charging zone is now a taxi or PHV … Taxis and PHVs in London have historically been exempt from congestion charging in the city, however some, including the

[94] APPG on Taxis, *Lessons from London: the Future of the UK taxi trade*, July 2017, pp13-14

[95] UTG, *Taxi! Issues and Options for City Region Taxi and Private Hire Vehicle Policy*, 1 December 2017, para 4.5

taxi trade, have argued that PHVs should now be subject to the charge.[96]

UTG concluded that: "Given the rapid growth in PH[V] numbers over recent years, and associated challenges such as congestion, allowing authorities to place appropriate limits on the numbers of PH[V] licences issued would give greater potential to manage growth in the sector and contribute to wider policy goals".[97]

Not everyone agrees with this analysis. In their October 2016 report on the taxi industry for the IEA, Kristian Niemietz and Diego Zuluaga argued that there "was never a sound justification" for quantity restrictions and that not only should there be no restrictions imposed on PHVs but that taxi caps should be abolished.[98]

5.9 Is cross-border working of minicabs legal?

Yes, but many are unhappy about it and would like to see a change in the law.

There are long-standing questions about the cross-border working of PHVs: the extent to which it exists, its desirability, how local authorities can properly enforce it and whether the law should be changed to prevent it.

In its 2014 report, the Law Commission explained that in England and Wales[99] under current law, a licensed PHV driver can undertake journeys starting or ending anywhere in England and Wales and that operators are allowed to accept jobs where the pick-up and drop off are both outside the operator's licensing district.[100]

The Law Commission had very different views about what should be done with regards PHV cross-border working than the taxi industry and others who have reported on this issue since.

Drivers, vehicles and operators must be licensed in the same area and operators can only invite and accept bookings within that licensing area. The Commission argued that "this hampers them expanding their business to have offices in neighbouring areas, and is increasingly difficult to police given the rise in internet bookings".[101] The Commission therefore recommended 'freeing up' cross-border working for PHV services.[102] This was accompanied by recommendations about changes to enforcement powers.[103]

Further information on PHV cross-border working, can be found in HC Library briefing paper SN2005, *Taxi and private hire vehicle licensing in England*.

[96] Ibid., paras 4.7-4.9
[97] Ibid., para 6.4
[98] IEA, *Hire Authority: Turning statutory regulation into private regulation for the UK's taxi industry* (IEA Discussion Paper No.76), October 2016, p9
[99] In Scotland it is an offence for PHVs to pick up passengers outside their licensed area
[100] Law Commission, *Taxi and Private Hire Services* (Law Com No 347), May 2014, para 7.52
[101] Ibid., para 1.23
[102] Ibid., para 1.24
[103] Ibid., para 13.86; the Commission commented that in consultation "this suggestion proved controversial, but a majority of consultees were in favour" [para 13.88]

The APPG on taxis disagreed with this approach. In its July 2017 report, it said that the Government should legislate to create a statutory definition of 'cross border hiring' whereby a journey must "begin or end in the licensing authority where the licence was issued" and that this should be supported by statutory England-wide guidance setting out minimum licensing standards.[104]

In its December 2017 report the Urban Transport Group argued that local licensing officers should be able to undertake enforcement action against any taxi or PHV operating within their authority area, no matter where the vehicle is licensed and, in the longer term:

> **Introducing a requirement that taxis and PH journeys start or end in the area for which the driver and vehicle are licensed**, in order to reduce problematic cross-border hiring (requested by TfL as part of the taxi and PH action plan, TfL, 2016c). Under the current legislation, cross-border hiring creates challenges for enforcement, as well as undermining the local licensing regime which may have more stringent vehicle and driver licensing requirements.[105]

These calls are supported by unions and the taxi industry.[106]

In a July 2017 debate on the APPG's report, the Minister, John Hayes, said that the DfT had set up a working group to consider any regulatory issues and remedies. He further said that: "There is a strong case for considering the cross-border issues; they are not straightforward … but we must consider them closely". The group will report in the New Year.[107]

5.10 Do taxis have to be accessible?

Where taxis or PHVs are accessible they must obey the relevant rules. The law changed on 6 April 2017 so that from that date taxi and PHV drivers are obliged by law to:

- transport wheelchair users in their wheelchair;
- provide passengers in wheelchairs with appropriate assistance; and
- charge wheelchair users the same as non-wheelchair users

Taxi drivers face a fine of up to £1,000 if they refuse to transport wheelchair users or attempt to charge them extra.[108]

Further information on taxi and PHV accessibility, can be found in HC Library briefing paper SN2005, *Taxi and private hire vehicle licensing in England*.

[104] Op cit., *Lessons from London: the Future of the UK taxi trade*, recc 1, p5
[105] Op cit., *Taxi! Issues and Options for City Region Taxi and Private Hire Vehicle Policy*, para 6.4 [emphasis in original]
[106] See, e.g. "Uber exploiting loophole to 'spread tentacles' across UK, union says", *The Guardian*, 17 February 2017; "Unite and TfL meet to talk cross border mayhem", *Cab Trade News*, 23 February 2017; and a number of articles on the National Taxi Association website
[107] HC Deb 18 July 2017, cc271-2WH and Taxis: Written question – 108783, 24 October 2017
[108] DfT press notice, "Law change provides equal treatment for disabled taxi users", 6 April 2017

There have long been laws about accepting assistance dogs in vehicles.[109]

5.11 Do I need insurance for a vehicle I do not drive?

Section 22 of the *Road Safety Act 2006* amended the *Road Traffic Act 1988* to create a new offence of keeping a vehicle that is uninsured. This means that any vehicle for use on the public roads must be insured. It came into force on 4 February 2011 under the *Road Safety Act 2006 (Commencement No. 6) Order 2011* (SI 2011/19) and the *Motor Vehicles (Insurance Requirements) Regulations 2011* (SI 2011/20). If prosecuted, the maximum penalty is a level 3 fine – currently £1,000.

Continuous Insurance Enforcement requires that if you're the registered keeper of a vehicle, it must be insured at all times. However, there is an exception to the requirement if you have made a SORN for the vehicle; or you have kept your vehicle kept off-road since before SORN came into force on 31 January 1998.

A May 2011 press notice from the DfT explained the regime as follows:

> The DVLA will work in partnership with the Motor Insurers' Bureau to identify uninsured vehicles. Motorists will receive a letter telling them that their vehicle appears to be uninsured and warning them that they will be fined unless they take action. If the keeper fails to insure the vehicle they will be given a £100 fine. If the vehicle remains uninsured - regardless of whether the fine is paid – further action will be taken. If the vehicle is on public land it could then be clamped, seized and destroyed. Alternatively court action could be taken, with the offender facing a fine of up to £1,000.Seized vehicles would only be released when the keeper provided evidence that the registered keeper is no longer committing an offence of having no insurance and the person proposing to drive the vehicle away is insured to do so.[110]

It also clearly reiterated: "Vehicles with a valid Statutory Off Road Notice (SORN) will not be required to be insured".

[109] for more information see HC Library briefing paper CBP 7668
[110] DfT press notice, "Motorists warned to get insured ahead of crackdown", 23 May 2011

6. Railways

Policy about railways is devolved in Northern Ireland. Across Scotland and Wales there is some devolution, but other areas remain reserved.

6.1 Who is responsible for rail?

Following privatisation in 1993, British Rail was divided into two main parts: one part being the national rail infrastructure (track, signalling, bridges, tunnels, stations and depots) and the second being the operating companies whose trains run on that network.

The **infrastructure** is owned, maintained and operated by Network Rail, with the exception of the HS1 route through Kent, which is maintained and operated by a private company as part of a concession agreement. Rail infrastructure projects are planned on a five-yearly basis as part of the industry-wide Periodic Review. The industry is currently in the process of deciding on investment projects for the period 2019-24 (Control Period 6). This will be finalised by the end of 2018.

Network Rail us **regulated** by the Office of Rail and Road (ORR), which is also the safety regulator.

Rail services are run by privately-owned train operating companies (TOCs) and freight operating companies (FOCs). Passenger services are let as multi-year franchises by the DfT except in London and Merseyside where they are let as concession agreements by the relevant local body. There are a limited number of 'open access' operators on the network, who run rail services outside of the franchising process by securing timetable slots from the regulator. Intra-Scotland and –Wales services are devolved. Northern Ireland has an entirely separate, publicly-owned railway system.

The **trains** (rolling stock) are owned by private rolling stock leasing companies (ROSCOs) and leased to the TOCs.

Railway **stations** are owned by the network operator, most being leased to the TOC that is the main user of that station. Network Rail retains the operation of the main passenger terminals.

There are two **passenger users' groups** which speak for the passenger, undertake research on their views, and can assist with complaints. They are Transport Focus and London TravelWatch.

The Association of Community Rail Partnerships (ACorP) is a federation of over 60 **community rail** partnerships and rail promotion groups, which brings together railway companies, local authorities and the wider community to promote and develop local rail services. They are funded mainly by local authorities and the local train operator.

The Rail Delivery Group (RDG) represents the industry and develops policy on its behalf.

The Commons Library has a large number of papers available on every aspect of the rail industry. They can all be accessed on the Railways briefings page of the Parliament website.

6.2 Who can one contact with a question or complaint?

Rail passenger rights and responsibilities when travelling by rail in Great Britain are set out in the *National Rail Conditions of Travel* and the individual Passengers' Charters of the train operating companies (TOCs) that run services on the GB rail network.[111] The NRCT were most recently revised in October 2016 as a consequence of the *Consumer Rights Act 2015* coming into force for rail passengers.

There are two stages to making a complaint about your rail service: the first is to complain direct to the train operator (TOC) and if their response is unsatisfactory, only then to contact the relevant passenger watchdog.

It should be clear from your ticket, the train and/or signs at the stations you are travelling between, which TOC one is travelling with. Many companies will accept complaints by telephone but for the complainant's own reference, it is usually better to put it in writing. The complainant should make sure to keep a copy of any complaint submitted via a website.

If a passenger is not satisfied with the response received from the TOC, the passenger can contact the appropriate rail passenger watchdog which can consider the best way to take the matter further. This is called an appeal complaint.

Representative bodies

Transport Focus is the official, independent voice of all rail passengers. It is a single GB-wide organisation which replaced the previous Rail Passengers Council and regional Rail Passengers Committees in July 2005. Its function is to get the best deal for Britain's rail passengers. It conducts research such as the annual National Passenger Survey and campaigns. It also takes up second tier complaints for passengers who have had an unsatisfactory response from train operators.

London TravelWatch (formerly London Transport Users Committee) is the representative of London's transport users and was set up under the *Great London Authority Act 1999*. Complaints can be made to London TravelWatch about rail services, on the National Rail Network in or around London, in writing or online.

These organisations cannot become involved in individual cases unless someone has been in touch with the TOC concerned first. If a passenger is unhappy with the outcome of a complaint or feels that the TOC did not handle it appropriately, then the watchdog may be able to help. Often, they will make representations to mediate with the TOC on behalf of the passenger.

The watchdog will assess whether it feels that the complaint was handled fairly and appropriately. Their assessment will take into account the rail industry's statutory obligations and guidelines. If they feel the

[111] TOCs are required to publish and abide by the terms of their Passengers' Charters by virtue of Schedule 1.4, Paragraph 4 of the National Rail Franchise Terms

TOC could do more for the passenger then they will make further representation on their behalf. They generally undertake to keep the complainant informed throughout and to contact them with details of their findings.

6.3 How does one get compensation for a delayed or cancelled journey?

The question of what rail passengers are entitled to in the event of delays and/or cancellations has come sharply into focus over the past year due to delays and overcrowding on routes into busy London stations.

There are two types of industry scheme for compensating passengers for a delay to their journey: traditional Passengers' Charter schemes, based on the arrangements set out in Condition 42 of the NRCC; and the newer 'delay/repay' scheme. At February 2014 the proportion of franchised TOCs offering each scheme was about 50-50.[112] By 2015/16 more than two thirds of train companies were paying delay/repay. Total payments to passengers under all schemes for 2015/16 totalled almost £45 million, of which more than half was paid by the two long distance operators on the East and West Coast main lines.[113]

What is the Passengers' Charter scheme?

Under the NRCC passengers may be eligible for compensation if they arrive more than 60 minutes late at their destination (with some train companies, more than 30 minutes late) – although this will depend on whether the cause of delay is within the train company's control.

In the case of a single ticket, compensation will be at least 20% of the price of the ticket; for season tickets compensation is provided in the form of an 'automatic' reduction in the price of an annual season ticket at renewal, where relevant performance targets have not been met.[114]

What is delay/repay?

Delay/repay compensation kicks in at 30 minutes delay. The amount of compensation payable increases with the length of delay – 50% of the relevant ticket (or portion of ticket) at 30 minutes and 100% at 60 minutes. It is a 'no fault' scheme – compensation is payable regardless of the cause of the delay.

Season ticket holders must claim compensation for individual delays in the same way as other ticket holders.[115]

It is the stated policy of the Department for Transport to move all franchised operators to the delay/repay scheme as new franchises are let

[112] ORR, *Passenger compensation and refund rights for delays and cancellations*, February 2014, p10
[113] DfT, *Train operating companies: passenger's charter compensation*, 17 November 2016
[114] ibid., Annex 1
[115] ibid., Annex 1

or opportunities arise within existing franchises (i.e. via a Direct Award).[116]

This now includes delay/repay 15. In a written statement to Parliament on 13 October 2016, after much speculation and long running campaigns from MPs and passenger groups, the Rail Minister, Paul Maynard, announced that delay/repay 15 (DR15) would be introduced "within months" on Govia Thameslink Railway (GTR) services, including Southern, and then rolled out across the network starting with the new South Western, West Midlands and South Eastern franchises.[117]

Under DR15 passengers will be able to claim 25% of the cost of the single fare for delays between 15 and 29 minutes. The existing compensation thresholds will apply for delays from 30 minutes with passengers able to apply for compensation through the train operating company.[118]

Both schemes have traditionally provided compensation in the form of rail travel vouchers on the basis of a given period of delay but there are important differences between the two, such as: the length of the delay at which compensation is triggered; the amount of compensation payable; and circumstances in which compensation may not be paid.[119] In July 2015 the Rail Delivery Group (RDG), which represents the industry including all the relevant train operators, announced that compensation would in future be available in cash instead of rail vouchers, but only on request.[120] As a result of the implementation of the *Consumer Rights Act 2015*, passengers are now entitled to receive repayment by the same method that they used to pay for the ticket, unless they agree to a different method of repayment.[121]

A number of operators now have 'smart cards' upon which compensation and refunds can be automatically loaded. For example, c2c refund their smartcard customers straight onto the card after two minutes' delay; Virgin refunds straight back into bank accounts for advance tickets booked through virgintrains.com.

6.4 How can you get a local rail scheme off the ground?

There are now various bodies – which differ according to where one lives – which would be responsible for developing rail schemes and various pots of funding that can be accessed for local transport schemes.[122]

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[116] ibid., p10 and HC Deb 30 June 2014, cc364-5W
[117] HC Deb 13 October 2016, c18WS
[118] DfT press notice, "Government announces improved compensation scheme for rail passengers", 13 October 2016
[119] ibid., p10
[120] RDG press notice, "Rail passengers to benefit from new compensation arrangements", 19 July 2015
[121] National Rail Enquiries, *Consumer Rights Act – Customer FAQs* [archived 20 June 2017]
[122] in Mayoral Combined Authorities and London the process would be driven by the Mayor and the local transport authority (e.g. Transport for Greater Manchester, Transport for London etc.)

As transport schemes are usually capital projects, the bulk of available funding comes through Local Enterprise Partnerships (LEPs); though local authorities would still be expected to make the case for and contribute funds to any particularly local schemes. Any scheme that one wanted to get off the ground would need a feasibility study and a business case; the likelihood of a local authority or a LEP taking up a particular scheme will probably be founded in their wider strategic and local transport plans, for which they will have done a great deal of survey and assessment work.

In addition, for rail projects Network Rail would have to be persuaded of the value of any scheme and include it in its forward planning programme. It has its own Governance for Railway Investment Projects (GRIP) programme which describes how it manages and controls infrastructure projects from inception to operation.[123]

6.5 How reliable is the local rail service?

There are three main measures of performance used across the rail industry, set out below. All data is available from the Network Rail website (most recent data) and the ORR Data Portal (detailed data going back several years, by individual TOC and sub-operator level).

- The **public performance measure (PPM)** shows the percentage of trains which arrive at their terminating station on time. PPM combines figures for punctuality and reliability into a single performance measure. It is the industry standard measurement of performance (it does not distinguish between extreme lateness and a brief delay).[124]
- **Right-time performance** measures the percentage of trains arriving at their terminating station early or within 59 seconds of schedule. Network Rail cautions that "the process for gathering data of this accuracy is currently not 100% reliable and the industry is working on improving the quality of this information to make right-time data more reliable".
- In terms of **Cancellation and significant lateness (CaSL)**, a train is counted as being cancelled if it is cancelled at origin or en route; the originating station is changed; or it is diverted. A train is counted as being *significantly* late if it arrives at its terminating station 30 minutes or more late.

In addition, the annual National Rail Passenger Survey (NRPS) gives a network-wide picture of passengers' satisfaction with rail travel across 30 separate aspects.

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[123] NR, *The GRIP process* [accessed 9 May 2017]

[124] the Government is planning to replace PPM with a new measure by 2019, see: *Government Response to the Committee's Sixth Report of Session 2016–17* (Seventh Special Report of Session 2016–17), HC 905, 17 January 2017, para 12

6.6 Can the local train station get funding for improvements?

There are a number of funds available to station operators (usually the main train company which operates through the station) for improvements of one sort or another.

The main ones are Access for All scheme (AfA), the National Stations Improvement Programme (NSIP), the Station Commercial Project Facility (SCPF) and the New Stations Fund. Other funding may be available from the Local Enterprise Partnership, including growth funding or money made in settlement of a City or Devolution Deal.

There are separate schemes in Scotland, for more information see the Scottish Government website.

The major source of funding for improvements to railway stations to make them more accessible is the 'Access for All' fund, announced by the Labour Government in 2006[125] and supported by all Governments since then. The initial announcement said that the Government would spend £370 million on station improvements to 2015: the bulk of the funding would go to improving access to and within stations and to all platforms which would improve the accessible route and make the stations step-free, while the remainder would be made available to small schemes at less busy or rural stations where small improvements could go a long way to improving access.[126] This later developed into three tiers:

- small schemes (later allocated directly to train companies to decide how to spend it);
- mid-tier (which only ran between 2011 and 2014); and
- major schemes (decided by NR as part of its future planning programme).

In December 2014 the Coalition Government said that by the end of 2019, more than £520 million will have been spent on delivering step-free routes at more than 215 stations across the country, while a further 1,100 stations will have benefited from smaller-scale improvements.[127] By the end of 2015 Access for All completed more than 150 step-free routes at rail stations against a target of 125 and more than 1,200 stations received smaller-scale improvements.[128]

However, the updated Network Rail enhancements programme, published in December 2016, stated that the amount of money to be spent by 2019 had been reduced from £135 million (including a £32 million rollover) to £87.1 million in 2012/13 prices, with the remainder of the original fund value now planned to be spent between 2020 and

[125] DfT, *Railways for All*, March 2006
[126] HC Deb 23 March 2006, cc39-40WS
[127] DfT press notice, "Accessibility improvements for more stations after funding boost", 16 December 2014
[128] HCWPQ 13709, 4 November 2015

2024.[129] Further, it said that a number of schemes would be reviewed.[130] There have been calls for this funding to be restored.[131]

The National Stations Improvement Programme (NSIP) is a joint scheme between Network Rail and train operating companies to deliver better stations across England and Wales. The scheme began in 2008 with £180 million pledged to improve over 150 medium-sized stations by 2014. A further £70 million was made available by the Coalition Government to assist a further 200+ medium-sized stations. The funding is for things such as passenger information and facilities.

The scheme is accompanied by funding from third parties. Over £62 million of third-party funding was raised to help deliver more extensive improvements for passengers between 2009 and 2014. Third parties have raised an additional £52 million for 2014 to 2019.

The Station Commercial Project Facility (SCPF) is intended to enable the funding of projects that improve station environments and the passenger experience, while reducing the cost of the railway to taxpayers. Train companies and local authorities have applied for two rounds of funding, subject to meeting the qualifying project criteria.

The first round, which ran between 2009 and 2014 supported the delivery of 47 projects around the country including new car parks, station redevelopments and ticket gating. The second round, for 2014-19 was announced in March 2016. There were eight successful projects, worth over £16 million.

The New Stations Fund is intended to help towards the cost of building new stations across England and Wales. The fund, worth £20 million, is distributed through a competition, giving all promoters of new stations meeting the conditions an equal opportunity of securing a funding contribution. The first competition ran in 2013 with funding for five stations. The second round ran between August and November 2016; bidders were required to have available a portion of match funding of the project cost. In July 2017 the Government announced that five new stations would be funded from the scheme, in County Durham, Cheshire, Reading, Ceredigion and Bristol.[132]

6.7 Who is responsible for fare increases?

Around 45 per cent of fares are subject to regulation (by the Secretary of State in England, Welsh Minister in Wales and Scottish Ministers in Scotland). Regulated fares are set by a formula based on the RPI figure for the previous July, and for many years there was a degree of flexibility (called the 'fares basket' or 'flex'). All other fares are set commercially by train operators.

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[129] Network Rail, *Enhancements Delivery Plan Update*, December 2016, p139
[130] ibid., p162
[131] See, e.g. Transport for All press notice, "50 organisations demand the DfT to restore vital Access for All rail projects", 17 October 2017
[132] DfT press notice, "New station boost for passengers thanks to £16 million government investment", 28 July 2017

The regulated fare increase in England for 2018 is 3.6% (based on an RPI +/-0 formula); the total fare increase was 3.4%. This disguises variations across different routes. A statistical overview of rail fare changes since privatisation can be found in HC Library briefing paper *Public Transport Fares* (CBP7470), 18 January 2016.

Since 1 January 2004 regulated fares have fallen into two categories, known as 'protected fares' and 'commuter fares':

- **Protected fares** include saver returns, standard returns and weekly season tickets; and
- **Commuter fares** include season tickets to, from and within the London Travelcard zones; standard singles and returns for journeys wholly within the London Travelcard zones; and standard singles and standard returns to any station in the Travelcard zones from a defined London suburban area, roughly 35-50 miles from London.[133]

All other fares are unregulated and TOCs are free to determine these fares according to market forces. Unregulated fares include:

- all first class fares;
- 'advance purchase' fares;
- tickets (other than Travelcards) which include through-travel to London destinations served by other public transport;
- tickets which include a non-rail element (e.g. leisure park admission);
- saver tickets, for journeys where there was no saver fare in 2003; and
- weekly season tickets, for journeys where there was no weekly season fare in 2003.

Although a particular fare may be unregulated, in certain cases the regulated fare acts as a ceiling – for example, an unregulated Supersaver fare cannot logically exceed the price of the regulated and less restrictive Saver fare.

6.8 Why do rail fares keep going up?

The key driver of higher fares over the past decade or so has been a policy decision by consecutive governments to shift the burden of funding the railways from the taxpayer to the passenger.

This began in 2004 when the regulated fare cap was changed from RPI-1 to RPI+1.[134] In its 2007 rail White Paper the Labour Government explained that "historically there has been considerable (and often year-on-year) variation in levels of subsidy, from 50 per cent of rail funding in 1992/93 to just 15 per cent in 1995/96, reflecting the sales of assets as part of the privatisation process".[135] However, after privatisation there was a consistent increase in the proportion of rail costs funded by the

[133] SRA, *Fares review conclusions*, June 2003, appendix C
[134] op cit., *Fares review conclusions*, appendix C
[135] DfT, *Delivering a Sustainable Railway*, Cm 7176, July 2007, p126

taxpayer, and a pattern of 25–35 per cent subsidy in the second half of the 1990s became 40–50 per cent after 2000. By 2005/06 taxpayers were paying a higher proportion than fare payers. The White Paper stated that "this is clearly not sustainable"[136] and said that between 2009 and 2014 'cost efficiencies' would "allow the subsidy requirement to return closer to historic levels":

> It has been the taxpayer who for the past several years has funded expenditure increases … As Network Rail brings costs back under control, it is right that the demands on taxpayers should also ease.
>
> The balance of the investment programme is met from debt funding. Since the costs of servicing this debt will accrue over the entire asset life of the enhancement, there is an element of 'beneficiary pays' to this approach. It would not be appropriate to expect today's taxpayers and fare payers to bear the entirety of the up-front costs of new trains and new infrastructure which will benefit future generations […]
>
> The increasing ability of the rail industry to operate without a high level of dependency on the taxpayer is welcome. However, it is important to note that very few railways in the world operate wholly without subsidy. It is unlikely that Britain's railway will be an exception to this rule.[137]

In its 2012 command paper the Coalition Government stated its intention to bring down taxpayer and fare payer funding for the railway: "we will reduce and then put an end to above-inflation rises in average regulated fares, as well as relieving pressure on taxpayer funding".[138] However, information published by the regulator in February 2017 showed that passengers' relative contribution has decreased over the past year. In 2010-11 passengers contributed 55.6% of rail industry income; this rose to a peak of 65% in 2014-15 before falling to 51% in 2015-16.[139]

Further, some train companies at specific times for specific purposes have been allowed to increase their fares by more than the overall RPI cap. For example, Northern Rail had an agreement with West Yorkshire PTE allowing it to increase regulated fares by RPI+8 from 2007, with a fares basket of 3%; and Southeastern was permitted to increase regulated fares by RPI+3 between 2007 and 2010, with a fares basket of 1%.[140] Conversely, the Competition and Markets Authority (CMA) recently stepped in and capped *unregulated* fares on three routes which form part of the Northern rail franchise (Leeds to Sheffield, Wakefield to Sheffield and Chester to Manchester). This was related to concerns about a substantial lessening of competition.[141]

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[136] ibid., p126
[137] ibid., pp127-9
[138] DfT, *Reforming our Railways: Putting the Customer First*, Cm 8313, March 2012, p12
[139] ORR, *UK Rail Industry Financial Information 2015-16*, 22 February 2017, p8; for the older figures, see: ORR, *GB rail industry financial information 2014-15*, 9 March 2016, p14; and ORR press notice, "Rail regulator publishes industry financials report for 2013-14", 16 February 2015
[140] in SET's case to pay for domestic services on HS1: ORR, *Fares* [archived 1 September 2014]; and HC Deb 1 May 2012, c1376W
[141] CMA press notice, "CMA looks to cap fares on three rail routes", 2 November 2016

A final reason as to why fares are high and continue to go up is the inherent cost of running and improving the railway. Some argue that there are higher costs associated with the 'fractured' structure of the rail industry in Britain and that a better integrated system (usually in the public sector) would bring the overall costs down and allow for fare reductions. This is explored in more detail in section 5 of HC Library briefing paper *Transport 2015* (CBP7177), 14 May 2015.

6.9 What can be done about noise from the railway?

Often there are complaints about railway noise near people's houses (e.g. freight trains idling at night).

Generally speaking, it is for local authorities to deal with noise pollution.[142] There is no entitlement to compensation from everyday use of a road or railway; though one might be able to get compensation (in the form of insulation) if noise increases in the long term due to a new or altered railway line, particularly if it affects the value of one's property.

Anyone affected can also try contacting the relevant train company/ies – for freight their names will be obvious from the vehicles as there are only five companies: DB Cargo UK; Freightliner; GB Railfreight; Colas Rail and Direct Rail Services. In particular, if there is an issue with driver behaviour (idling, using the horn etc.) this could be something which the freight company might address.

As stated above, local authorities deal with noise pollution. While there is no statutory limit for railway noise, both Network Rail (the infrastructure owner) and train operators are subject to the statutory nuisance provisions of the *Environmental Protection Act 1990*, as amended, which are enforced by district councils. Under section 79 of the 1990 Act it is the duty of district councils occasionally to inspect their areas to detect any statutory nuisances and to take such steps as are reasonably practicable to investigate any complaint made by a local resident. Section 80 of the Act provides for serving abatement notices where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur. In addition a Magistrates Court may act under section 82, following a complaint by any person aggrieved by a statutory nuisance.

This is a grey area and there is little case law. Some local authorities seem to have been advised by their lawyers that section 122(3) of the *Railways Act 1993*, as amended, means that they cannot serve an abatement notice on Network Rail as it provides a statutory defence.

Section 122 provides railway companies with *some* defence when they are working as a statutory authority, but it is not open ended. The Department for Transport's view has generally been that a local authority can use the 1990 Act and take a train company (or any other

[142] if one is unhappy with a local authority's decision on something, it can be raised with the Local Government Ombudsman

relevant 'statutory authority') to court. It would have to show that the noise generated was greater that might be reasonably thought necessary in order for the company to carry out its statutory functions. Section 122 allows a train company (or any other statutory authority) to carry on working in the middle of the night and to say that the noise is a necessary part of that work etc. but it does not allow it to cause more disturbance than is necessary.

In terms of **compensation**, the *Land Compensation Act 1973*, as amended, provides, in sections 1 and 9, for compensation to be payable where the value of a property is adversely affected by physical factors caused by the use of new or altered public works including roads and railways. The *Noise Insulation (Railways and Other Guided Systems) Regulations 1996* (SI 1996/428), as amended, were made under section 20 of the 1973 Act. They create a duty in the case of new lines and additional tracks constructed alongside existing lines, to provide insulation, or a grant for the costs of carrying out insulation works, when noise exceeds 68dB L_{Aeq} 18h during the day and 63dB L_{Aeq} 6h at night. The Regulations also include discretionary powers to provide grants for homes affected by altered lines or the noise of construction work.

Noise mapping

The EU Environmental Noise Directive (2002/49/EC) requires noise levels to be assessed from road traffic, railways, major airports and industry. The Directive was implemented in the UK by the *Environmental Noise (England) Regulations 2006* (SI 2006/2238).

Regulation 7 requires the Secretary of State to make strategic noise maps for agglomerations, major roads, major railways and major airports on a five-yearly basis.

Anyone in England can use the Government's noise mapping tools to see what noise levels are generated by rail, road and industry near their home.

Finally, on the technical specifications for the **maximum noise of train horns**, there are two standards:

- Section 10.2 (beginning p4) of Railway Group Standard GERT8000 TW1 gives domestic rules; and
- Table 6 in the Annex (pp11-12) to the EU Technical Standard of Interoperability (TSI) for noise (CR NOI TSI) gives European rules (in EU rules the maximum volume of the horn is defined in relation to the maximum permissible noise inside the driver's cab).

6.10 What are the rights of disabled travellers on the railway?

Directive 2008/164/EC applies Europe-wide standards of rail accessibility and Regulation 1371/2007/EC sets out rail passenger rights and obligations. Domestic law is scattered across primary and secondary legislation.

All licensed train and station operators are required to establish and comply with a **Disabled People's Protection Policy (DPPP)** which sets out how they will protect the interests of disabled users of their trains and stations. DPPPs are prescribed by the rail regulator (ORR) in Condition 5 of the passenger and station licences issued under section 8 of the *Railways Act 1993*, as amended.[143] ORR has published guidance to train companies on how to write their DPPPs.[144]

All **rail vehicles** must be accessible by 1 January 2020.[145] The relevant legislation is EU Directive 2008/164/EC, which applied Europe-wide standards of rail accessibility from 1 July 2008.[146]

Train operators must state in their DPPP what their policy is regarding the **carriage of mobility scooters** for people with reduced mobility on their trains. Operators are expected to make the reasoning behind their policy clear in the DPPP, particularly with regard to any policy excluding the carriage of some or all mobility scooters. Where operators do carry scooters on trains, the rail regulator (ORR) recommends that operators clearly indicate whether passengers are required to transfer to a seat, rather than remain seated on their scooter while on board the train.[147] There is a variety of practice in terms of which operators will carry scooters and under what conditions.[148]

European Regulation 1371/2007/EC on rail passenger rights and obligations came into force on 4 December 2009. Chapter V of the Regulation contains the provisions related to disabled people or 'Persons with Reduced Mobility (PRMs)'.[149] Articles 22, 23 and 24 relate to the provision of **assistance at stations and on board trains**.

Passenger Assist is a service provided by train companies to disabled passengers and others who require assistance with any part of their train journey. Staff can help with planning a journey, booking tickets and making reservations; they can also provide assistance at stations and on board trains. The service is free and available to anyone who needs assistance due to a disability, temporary impairment, or older age. No railcard is required. Information can be found at local stations or on the individual train company websites.[150]

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[143] model licences can be viewed on the ORR website
[144] ORR, *How to Write Your Disabled People's Protection Policy: A Guide for Train and Station Operators*, November 2009
[145] for discussion on the end date, see: HC Deb 29 November 2004, 18WS; op. cit., *Draft Disability Discrimination Bill*, para 167; and HL Deb 13 January 2005, cc116-117GC
[146] the UK Government consulted on this in: DfT, *Consultation on Draft Rail Vehicle Accessibility (Interoperable Rail System) Regulations*, 29 February 2008
[147] ORR, *Passengers with disabilities* [accessed 6 April 2016]
[148] Transport Focus, *Can I take my mobility scooter onto the train?* [accessed 6 April 2016]
[149] both defined in Article 3(15) as: "any person whose mobility when using transport is reduced due to any physical disability (sensory or locomotory, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his or her particular needs of the service made available to all passengers
[150] further details and contact information on the National Rail Enquiries website [accessed 15 May 2017]

In May 2015 rail companies launched a six-month trial of 'turn up and go' at 36 London stations. In October 2015 the Rail Minister, Claire Perry, said that if the trial was successful the Government would consider whether the service could be made permanent at the trial stations and whether it could be expanded further across the network.[151]

In November 2017 the rail regulator reported that in 2016-17, 1.2 million requests for assistance were booked by passengers to help them complete their journeys, a rise of 4.4% compared to 2015-16, while the overall number of passengers seeking travel assistance was likely to be considerably higher than this figure as many passengers will have travelled without booking assistance in advance but will have received assistance. The regulator conducted a large-scale research exercise, which found that there is a lack of awareness of Assisted Travel and a significant untapped demand for the services. However, those who use the service view it positively.[152]

[151] HCWPQ 11013, 19 October 2015; further details in: National Rail, *London turn up and go* [accessed 12 April 2016]

[152] ORR, *Improving Assisted Travel: a consultation*, 15 November 2017, executive summary; supporting documentation available on the ORR website

7. Air travel and airports

Policy about air travel and airports is largely reserved.

7.1 Who can one contact with a question or complaint?

Details of how to make a complaint about a flight or an experience at an airport are given on the CAA website. In the first instance you must complain to the relevant airline. The CAA recommends providing as much detail as possible and that in case anything should go wrong with a claim, it is useful to have a record of any communications.

Representation for UK air passengers has been through a number of institutional changes. The most recent changes came about as a result of the EU Alternative Dispute Resolution (ADR) Directive (Directive 2013/11/EU), which requires schemes to be available to help settle any dispute that cannot be resolved through a business's own complaint handling procedure.

There are presently three alternative dispute resolution (ADR) bodies; more may emerge in time. The three bodies currently in existence are:

- Consumer Dispute Resolution Ltd (members include Ryanair and FlyBe);
- CEDR Services Limited (members include BA, Thompson, Thomas Cook and easyJet); and
- NetNeutrals EU Ltd.[153]

Other ADRs exist, which have been approved by other EU Member State authorities. Information on these bodies and the airlines that have signed up to them can be found on the Civil Aviation Authority website.

ADR decisions are binding on airlines if the appellant (the customer) agrees to the determination.

ADRs can make a maximum fee of £25 to complainants. This must be refunded if the ADR finds in their favour.

The ADRs are overseen by the Civil Aviation Authority (CAA). Until such a time as a critical mass of airlines have signed up to ADRs the CAA will continue handling disputes with those airlines which are not members of ADRs. To encourage the move to ADRs the CAA is charging airlines a hefty fee to deal with every case referred to them. The CAA has made it clear that it will continue to offer this service to the public until such as time as airlines representing a sufficient percentage of passengers are signed up to ADRs.[154]

Complaints about a tour operator or travel agent should be taken up with a trade association such as the Association of British Travel Agents

[153] for details on all the ADRs, including their fees, terms and conditions, see: CAA, *CAA approved ADR entities*, July 2016

[154] CAA press notice, "CAA confirms plans for creation of "aviation ombudsman"", 15 April 2015 [notes to editors]

(ABTA) or the Association of Independent Tour Operators (AITO). These associations have codes of conduct for their members. ABTA and AITO also offer arbitration procedures through which customers can pursue complaints. The tour operator's brochure or travel agent's invoice should indicate if they are members of an association.

7.2 How does one get compensation for a delayed or cancelled flight?

EU and domestic rules regarding air passenger rights and compensation have a long, complex history and remain subject to court judgements that are in some cases being appealed. For more information see HC Library briefing paper SN233, *Air Passenger Compensation*.

Full details of passenger rights under EU Regulation 261/2004/EC are available on the CAA website and in their Know Your Rights leaflet.

The law on passenger compensation in the event of denied boarding, cancellation or delay has been in effect for a decade, yet there remains some confusion as to exactly what an airline must do for passengers when they encounter a problem. Some of this confusion is due to various legal challenges and uncertainty as to the enforcement of their outcomes. The EU Regulation as a whole does not apply to flights coming from outside the EU on a non-EU airline.

In summary, the Regulation prescribes what airlines must provide their passengers in the event that a flight is delayed or cancelled. This applies even if the information is not contained in the airline's terms and conditions. It only applies in the following circumstances:

- If the flight is **departing** from a designated country (regardless of which airline operates it); or
- If the flight is **arriving** in a designated country, but departing from elsewhere, *only* if the airline is based in one of these countries.[155]

A list of designated countries is available here; essentially it is all EU countries, Iceland, Norway and Switzerland.

An airline is not obliged to pay compensation if it can prove that a delay or cancellation was caused by '**extraordinary circumstances**'. This is defined in paras 14 and 15 of the preamble to the 2004 Regulation. What constitutes 'extraordinary circumstances' has been subject to legal challenge.

As stated in section 7.1, in the first instance an application or compensation in the event of delay or compensation should be made to the airline concerned. If an application is rejected one can contact the relevant ADR body, or the CAA if the airline does not belong to an ADR.

Also, if one paid for an airline ticket using a credit card, then it may be worthwhile contacting the credit card provider to see if there is any additional compensation available under section 75 of the *Consumer Credit Act 1974*.

[155] CAA, *How to deal with flight disruption* [accessed 11 January 2018]

7.3 Who can help with a noise or flight path issue?

Affected individuals often want action taken against noisy and/or low flying aircraft or helicopters.

Further information on aviation noise and nuisance can be found in HC Library briefing paper SN4059, *Nuisance from helicopters and light aircraft*

In some cases, if it is possible to work out where the nuisance is coming from, one could make representations to the relevant airport, aerodrome, airfield, or heliport which is being used by the aircraft. They have powers to deal with noise and to change departure schedules. But what action they might take is a matter for them.

If one has reason to suspect that an aircraft or helicopter is in breach of the Rules of the Air, breaking the law or posing a safety risk, one can raise this with the CAA as the relevant enforcement authority. It states that it can investigate two matters, low flying and unsafe flying:

> **Low flying**
> In general, unless they are landing or taking off, an aircraft should be 1,000 ft over a built up area or otherwise 500ft from people, buildings etc. It's extremely difficult to judge aircraft height above the ground and distance from objects but if you have evidence of the height/distance, such as photographs, we can investigate. To enable us to trace the aircraft concerned you would ideally have its registration. For UK aircraft this is normally G- followed by four letters and is on the side and wing of the aircraft.
>
> **Unsafe flying**
> We can investigate incidents of unsafe flying. You need to provide evidence of the incident and to enable us to track the aircraft concerned you would ideally have its registration. For UK aircraft this is normally G- followed by four letters and is on the side and wing of the aircraft. Examples include unapproved and dangerous low aerobatics or a helicopter landing in a place that puts people or property in danger (helicopters are allowed to land away from airfields providing they can do so safely and they have the landowners' permission).[156]

If you think you have witnessed a breach of aviation law, the CAA advises reporting the incident using its online tool.

CAA advises that in order to investigate it requires sufficient evidence (such as the aircraft registration). Once it has conducted an initial review it will contact the complainant to explain what action it intends to take. Normally this will be within 20 working days.

For issues related to **drones** or unmanned aircraft contact the police on 101.

7.4 What happens next with Heathrow expansion?

In October 2016 the Conservative Government announced that it would support a planning application by Heathrow for a third runway and a sixth terminal, to the north west of the existing site. This is in line with

[156] CAA, *Report a potential breach of aviation law* [accessed 11 January 2018]

the recommendation of the Airports Commission, which reported in July 2015.

Consequently, the Government published for consultation in February 2017 a draft National Policy Statement (NPS) for airports; a revised draft NPS was published in October 2017 following the 2017 General Election. The draft NPS is subject to parliamentary scrutiny and will require approval by both Houses of Parliament. The Transport Select Committee is currently in the process of scrutinising the draft NPS.

Once the NPS is approved Heathrow may proceed with a planning application, in the form of a Development Consent Order (DCO). The DCO application decision making process is heavily regulated in the 2008 Act with tight timescales for each part of the procedure. *From accepting an application to making a decision, the whole process should last in the region of 15 months.* The process however, is front-loaded with a number of pre-application consultation requirements, which, depending on the complexity of the project, can take a number of years to carry out.

Further details of the process can be found in section 9 of HC Library briefing paper SN1136 on Heathrow expansion.

7.5 Is the Government going to regulate drones?

Yes. In December 2016 the Government published a consultation on drone use, including plans for:

- mandatory registration of new drones;
- tougher penalties for illegal flying near no-fly zones and new signs for no-fly zones at sensitive sites such as airports and prisons; and
- making drones electronically identifiable so the owner's details can be passed to police if they are spotted breaking the law.[157]

The consultation closed on 15 March 2017 and in November 2017 the Government announced its intention to implement the changes listed above in a draft Drones Bill, to be published in spring 2018.[158]

For nuisance issues related to drones or unmanned aircraft contact the police on 101.

Further information on drones can be found in HC Library briefing paper CBP 7734, *Civilian drones*.

[157] DfT press notice, "New proposed measures for drones in the UK", 21 December 2016 and DfT, *Unlocking the UK's high tech economy: consultation on the safe use of drones in the UK*, 21 December 2016, pp23-25

[158] DfT press notice, "New powers for police to address illegal and unsafe use of drones", 26 November 2017

8. Ports, canals and shipping

Shipping policy is largely reserved. Responsibility for ports and harbours and inland waterways is largely devolved across Scotland, Wales and Northern Ireland.

8.1 Who can one complain to about a cruise ship or ferry?

If an individual has a complaint, they should first raise it with the operator. If it cannot be resolved in this way, the complaint may then be referred to the appropriate complaint handling body.

A passenger should make their complaint initially to the ferry or cruise operator responsible for the service within two months from the date the disruption was experienced. The ferry or cruise operator must then respond to the passenger within one month from receiving the complaint, explaining whether the complaint has been accepted, rejected or is still being considered. The passenger should receive a final reply no later than two months after receipt of the complaint.

The carrier or operator will refer complaints to the relevant voluntary complaint handling body in cases where it has not been possible to resolve the complaint with the complainant. Also, if the passenger is unsatisfied with the response from an operator, they may wish to contact the relevant voluntary complaint handling bodies.

In England and Wales outside London cruise and ferry passengers can seek assistance from ABTA . London TravelWatch has responsibility for services operated and licensed by Transport for London. The Consumer Council for Northern Ireland and the Scottish Government have also agreed to take up similar roles in their respective areas.

It is expected most complaints will be resolved at one of those two stages. However if this is not possible, the complaint may then be investigated by the national enforcement body, who will consider whether there has been a breach of the relevant EU Regulation. The Maritime and Coastguard Agency (MCA) is the national enforcement body for the whole of the UK.[159]

8.2 What can be done about an unsatisfactory harbour authority?

Harbours and ports are by and large independent entities (either privately or municipally owned or 'trust ports').[160] Responsibility for ports policy is devolved across the UK and no government involves itself in the day-to-day running of ports.

Any complaint about a harbour master or the harbour board should first be brought to the attention of the harbour authority who should

[159] for details on the MCA's role, see: MCA, *MGN 504 Maritime Passenger Rights- National Enforcement Body*, 20 May 2014
[160] a list of ports and their ownership status can be found at Ports.org.uk

respond within a 'reasonable timeframe' (this should be something like 21 working days).

If the complainant is unhappy with the authority's response they can bring the complaint to the attention of the relevant Government department (DfT in England). Although governments have no power to intervene in any dispute, they can make representations to the authority and ask for an explanation of the authority's actions.

In the rare situation where a government perceives that there has been a serious breach of the guidance, there does exist the power for it to remove the authority under section 15A of the *Harbours Act 1964*, as amended.

Trust ports

Trust ports must have regard to the relevant guidance: *Modernising Trust Ports (second edition)*. If an individual believes that the harbour authority is in breach of the guidance, there is a complaints procedure, as outlined on page 11.

8.3 Can private marinas raise mooring fees?

Moorings on private land are not subject to legislation (whether national or local) or byelaws. It is therefore entirely a commercial matter for the private company/individual who owns the land as to who they let moorings to, how much they charge, the conditions of use for the mooring and on what grounds such can be rescinded. This would be set out in a contract agreed between and signed by the relevant parties.

In 2006, following a consultation about the security of tenure for residential boat owners, the Labour Government said that there was "no overall consensus on the way forward" and that it would develop best practice guidance and a model agreement for mooring operators to use, rather than legislate.[161]

The Residential Boat Owners Association may be able to provide advice in individual cases.

[161] HC Deb 27 June 2006, cc66-70WH and CLG, *Summary of responses to the consultation paper on Security of Tenure for Residential Boats*, May 2006

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