



BRIEFING PAPER

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Parking policy in England

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Summary

This briefing paper summarises parking policy in England: civil parking enforcement on public highways; parking on private land; and parking on private roads.

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

In the past, parking enforcement on private land has been more complicated – and more controversial. Due to changes brought into force in October 2012 under the *Protection of Freedoms Act 2012*, private landowners have been able to claim parking charges against the keeper of a vehicle if evidence of the driver's identity cannot be found. Two independent appeals bodies, POPLA and the IAS, have been set up to hear cases, saving both landowners and vehicle owners/drivers the cost of going to court. These measures were introduced alongside the ban on wheel clamping on private land.

Since 2013 the Government has introduced changes to the use of CCTV to enforce parking restrictions, a new 10 minutes' grace period, and a right to challenge local parking policies. It has consulted on how parking enforcement works on private land but has not brought forward any changes. Sir Greg Knight's private member's bill to establish a statutory code of practice for private parking enforcement companies is currently progressing through Parliament. The Bill has all party support.

Information about parking in Scotland can be found on the [Transport Scotland website](#); information about Wales can be found on the [Welsh Government website](#); and information about Northern Ireland can be found on the [NI Direct website](#).

Information on other parking-related matters, such as traffic wardens, on-street or 'pavement' parking, parking for disabled people and wheel clamping can be found on the [Roads Briefings Page](#) of the Parliament website.

1. Civil parking enforcement, 2008-

As at January 2018, the Department for Transport indicated that only 21 local authorities in England (excluding London) have not taken up civil enforcement powers to enforce parking restrictions.^{1,2} Almost half of these are in the East of England.

Complete information on the civil parking regime in force in England from 31 March 2008 and the applicable guidance is available on the [Gov.uk](https://www.gov.uk) website.

1.1 Legislation

TMA 2004

The [Traffic Management Act 2004](#) (TMA) extended and rationalised the civil enforcement powers of local authorities for driving and parking contraventions. It provided a single body of primary legislation enabling civil enforcement of parking, bus lanes, specified moving traffic regulations and the London lorry ban. Part VI of the Act and regulations made under it have, for the most part, replaced the provisions in previous legislation, particularly the 1991 Act (see section 4, below).

The Labour Government consulted on decriminalising additional parking offences outside London in December 2002.³ Parking enforcement was one of a package of ancillary tasks which the Policing Bureaucracy Taskforce chaired by Sir David O'Dowd identified as suitable for transfer to local authorities, thereby allowing the police to concentrate on their core activities.⁴

Consequently, one of the main intentions of what became the TMA was to give authorities outside London the additional powers that had already been conferred on London authorities by various local London Acts, including:

- postal service of a penalty charge notice (PCN) where a parking attendant is prevented from fixing it to a vehicle or handing it to the driver;
- issue of a PCN on the basis of information provided by a camera;
- issue of a PCN for parking within the area of a pedestrian crossing;
- creation of a contravention to deal with double parking; and
- placing a 6-month time limit on the issue of a notice to an owner aimed at securing payment of a penalty charge if it has not been paid within 28 days of issue of the PCN.

The TMA also gives the Secretary of State a reserve power to direct a local authority outside London to apply for civil parking enforcement

¹ note that while parking policy generally is the responsibility of the Department for Transport, in March 2015, the responsibility for **policy relating to off-street parking** transferred within government, from DfT to the Department for Communities and Local Government

² DfT, [List of areas in England designated as a Civil Enforcement Area \(CEA\) for the purposes of enforcing parking contraventions](#), 9 January 2018

³ DfT, [Road Traffic Act 1991: Decriminalised parking enforcement, Proposals for Decriminalisation of Additional Parking Offences outside London](#), 6 December 2002

⁴ Home Office, [Policing Bureaucracy Taskforce: Change Proposals to Increase the Presence of Police in Communities](#), July 2002, p11

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(CPE) powers and to designate a special enforcement area (SEA). In these areas parking a vehicle such that no part of it is within 50 centimetres of the edge of the carriageway and parking at dropped footways would be prohibited.

During Committee stage of the Bill the Conservatives attempted to introduce an amendment to create a broad 'defence' against parking penalties that "a penalty charge shall not be imposed in respect of any description or conduct in which there is a reasonable excuse having regard to the circumstances at the time". It was defeated on division 10 votes to 6.⁵ The Conservatives also moved an amendment to change the power of the Secretary of State to *require* authorities to apply for civil enforcement powers to one where they may *invite* authorities to apply for such powers; this was defeated 8 votes to 5.⁶ The other parking-related matter on which the Conservatives put the matter to a vote was in relation to restricting those areas on which surplus income from parking could be spent. It was defeated 9 votes to 3.⁷ The Bill was wide-ranging and covered a number of issues in addition to parking; but taken together the Conservatives voted against the Bill, as a whole, on Third Reading.⁸ The Act received Royal Assent on 22 July 2004.

Regulations

The Government conducted a consultation on the draft regulations for Part VI of the TMA between July and September 2006,⁹ and on draft guidance between August and October 2007.¹⁰ A summary of responses to the 2006 consultation was published in July 2007. The main conclusions of the 2006 consultation were that:

- in areas where parking enforcement has been decriminalised, the police would not have the power to enforce as well;
- differential penalty charging should be introduced – the principle of differential charging is that there would be a different level of penalty charge depending on the contravention (e.g. £X for overstaying where parking is permitted but £1½ X for parking where it is never permitted);
- local authorities would be asked to produce well-publicised discretionary policies, for on-street enforcement officers, as to situations where they may not wish to issue a PCN, however discretion should rest in the back office to prevent potential abuse of or by civil enforcement officers;
- a 'persistent evader' would be defined as having three or more outstanding and unchallenged PCNs; and

⁵ [SC \(A\) Deb 5 February 2004, cc249-273](#)

⁶ [ibid., cc291-292](#)

⁷ [ibid., cc311-315](#)

⁸ the Bill was approved by 333 votes to 136; the Conservatives reasons were given by their then Transport Spokesman John Redwood in his summing up speech, see: [HC Deb 16 March 2004, cc257-260](#)

⁹ DfT, [Consultation on Part 6 of the Traffic Management Act \(TMA\) 2004](#), 12 July 2006

¹⁰ DfT, [Better parking - keeping traffic moving, operational guidance draft consultation](#), 8 August 2007

- government would ask the London Councils to make their persistent evader database available to local authorities that wish to use it.¹¹

Changes to appeals are given in section 1.5, below.

The draft *Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007* were debated in Delegated Legislation Committee on 19 November 2007.¹² These were only one of the raft of regulations which brought the new civil enforcement regime into force on 31 March 2008 and were the only regulations in that package that were subject to the affirmative procedure.¹³ In full, the implementing regulations were as follows:

- *Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007* ([SI 2007/3482](#));
- *Civil Enforcement of Parking Contraventions (England) General Regulations 2007* ([SI 2007/3483](#));
- *Removal And Disposal of Vehicles (Amendment) (England) Regulations 2007* ([SI 2007/3484](#));
- *Civil Enforcement Officers (Wearing of Uniforms) (England) Regulations 2007* ([SI 2007/3485](#));
- *Civil Enforcement of Parking Contraventions (Approved Devices) (England) Order 2007* ([SI 2007/3486](#)); and
- *Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007* ([SI 2007/3487](#))

All of these regulations came into force on 31 March 2008.

The Department published a press notice in February 2008 detailing how the new system would work:

The new framework - which comes into force at the end of March - makes it clear that councils should not use parking enforcement as a tool for raising revenue, and should not set targets for the number of tickets issued. Councils are also encouraged to allow officers to use more discretion over when a ticket is issued - including using verbal warnings for minor contraventions - and are strongly advised to only use wheel-clamping against those who persistently evade their penalty charges.

From 31 March councils outside London will also be able to issue lower penalties for less serious parking offences and all local authorities will have to include details of procedures for appeals on tickets. Independent parking adjudicators will also get more power, including the right to ask local authorities to reconsider penalty charges where motorists have mitigating circumstances (...)

The new framework also makes it clear that Local Authorities should:

¹¹ DfT, [Better parking – keeping traffic moving: report on public consultation](#), 24 July 2007

¹² [DL Deb 19 November 2007](#)

¹³ the requirement to debate them was only added at the recommendation of the Delegated Powers and Regulatory Reform Committee; inserted into the Bill at a late stage by a government amendment in the House of Lords, see: [HL Deb 4 May 2004, c215GC](#)

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- Publish and promote their parking enforcement policies, including penalty charge levels, openly and clearly.
- Regularly appraise their parking policies and consult drivers and businesses to ensure the system is working.
- Ensure that parking attendants have clear evidence that vehicle was parked in contravention before issuing a penalty charge notice.
- Make sure parking attendants and back office staff have the proper skills, training and resources to give the public a fair, consistent and professional service.
- Only use CCTV to enforce parking rules - which will be allowed for the first time outside London from 31 March - where it is impractical or dangerous for a parking attendant to operate.¹⁴

In July 2008 the government published a further consultation on sections 85 and 86 of the TMA – which give local authorities the power to issue penalty charge notices (PCNs) to motorists who park alongside dropped kerbs, or more than 50 cm from the kerb, respectively – without the use of traffic signs and road markings.¹⁵ In May 2009 the then Labour Government confirmed its intention to proceed with these powers for local authorities.¹⁶ It was brought into force by the *Local Authorities' Traffic Orders (Procedure) (England and Wales) (Amendment) (England) Regulations 2009* ([SI 2009/1116](#)) from 1 June 2009.

1.2 Guidance

The relevant statutory and operational guidance to local authorities was updated and reissued in March 2015:

- The **statutory guidance** sets out the policy framework for civil parking enforcement. It explains how to approach, carry out and review parking enforcement.¹⁷
- The **operational guidance** sets out the government policy framework by which local councils should be setting their parking policies; tells local councils of changes resulting from the introduction of the TMA; and advises enforcement authorities of the procedures to follow with regard to enforcing parking restrictions.¹⁸

1.3 Further reforms, 2013-17

In December 2013 the Department for Transport launched a consultation, seeking views on views on local authority parking

¹⁴ DfT press notice, "[Councils told to make parking fairer, clearer and more open](#)", 28 February 2008

¹⁵ DfT, "[Consultation on prohibition of double parking and parking at dropped footways](#)", 29 July 2008

¹⁶ DfT press notice, "[Making it easier to tackle inconsiderate and dangerous parking](#)", 5 May 2009

¹⁷ DfT, *The Secretary of State's Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions*, 25 March 2015

¹⁸ DfT, *Operational Guidance to Local Authorities: Parking Policy and Enforcement*, 25 March 2015

strategies and on various ideas to ‘change the balance’ of how parking is enforced “with the aim of ensuring that parking strategies complement and enhance the attractiveness of our high streets and town centres”.¹⁹ This followed earlier comments by the Communities and Local Government Secretary, Eric Pickles, that motorists should be allowed to stop on yellow lines in town centres to ‘pop into the shops’ and that councils should provide more parking spaces in town centres.²⁰

In June 2014 the DfT announced a number of changes to parking legislation and guidance, the most notable of which were:

- a ban on councils using **CCTV ‘spy cars’** alone to enforce on-street parking; use of CCTV would in future be limited to issuing tickets by post to critical routes such as schools, bus lanes, bus stops and red routes where public transport must be kept moving for safety reasons;
- introducing mandatory **10 minute ‘grace periods’** at the end of on-street paid for and free parking; and
- giving local residents and firms the ability to make their council **review parking**, including the provision of parking, parking charges and the use of yellow lines.²¹

Enforcement with approved devices

Section 53 of the [Deregulation Act 2015](#) provides the Secretary of State with an enabling power that allows for the prohibition of CCTV or ‘other devices’ in connection with parking enforcement. Some CCTV uses ANPR technology.

The *Civil Enforcement of Parking Contraventions (England) General (Amendment No. 2) Regulations 2015* ([SI 2015/1001](#)), made under section 53, came into force on 1 April 2015. They tighten the circumstances in which CCTV may be used as the sole evidence for issuing an on-street parking ticket but they do not prohibit the use of CCTV for on-street parking enforcement entirely.

The Government’s revised parking guidance to local authorities sets out how this should work in practice:

Traffic Management Act 2004 Regulations give limited powers to authorities throughout England to issue penalty charge notices for contraventions detected solely with a camera and associated recording equipment (approved device). Any such device must be certified by the Secretary of State. Once certified they may be called an ‘approved device’. To comply with certification the system must be used in accordance with the Guidelines issued by the Vehicles Certification Agency.

From 1 April 2015 penalty charge notices must not be served by post on the basis of evidence from an approved device other than when vehicles are parked on:

- a bus lane;

¹⁹ DfT, [Consultation on local authority parking](#), December 2013

²⁰ see, e.g. “Eric Pickles: Wardens should stop giving motorists ‘popping into shops’ parking tickets”, *The Daily Telegraph*, 17 March 2014

²¹ DfT press notice, “Government bans use of CCTV ‘spy cars’ for on-street parking”, 23 June 2014; and DfT, [Response to consultation on local authority parking](#), June 2014

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- a bus stop clearway or bus stand clearway;
- a Keep Clear zigzag area outside schools; or
- a red route.

Where approved devices may be used, the Secretary of State recommends that approved devices are used only where enforcement is difficult or sensitive and enforcement by a civil parking officer is not practical.

It is recommended that the authority sends a copy of the record of the contravention (in the form of a still image or images) with the penalty charge notice.

Where enforcement authorities are using camera enforcement in the circumstances set out [above], the enforcement policy needs to be well publicised and indicated with conspicuously placed, lawful traffic signs.²²

10 minutes' grace period

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 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 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.²³

Right to challenge parking policies

In March 2015 the Department for Communities and Local Government (CLG) issued statutory guidance under section 18 of the TMA. It applies to local traffic authorities in England, which must have regard to the guidance when exercising their network management duty under the

²² op cit., [The Secretary of State's Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions](#), pp18-19

²³ ibid., p19

TMA. The guidance describes in more detail a new mechanism to use petitions to give local residents, community groups and businesses the ability to challenge parking policies, and advises local authorities on best practice.

The guidance explains the rationale behind this policy:

The current processes for considering and implementing parking strategies are not easily understood or accessed by local residents or businesses. The timeframe for reviewing policies is not linked to, or required to respond to, changes in local circumstances. This creates a perception that people have no say on parking in their area, or power to challenge decisions on parking policy. The Government wants to make it easier for local residents and firms to challenge unfair, disproportionate or unreasonable parking policies. This could include the provision of parking, parking charges or the use of yellow lines.

The Government believes that introducing a right to challenge parking policies will strengthen local democracy and local accountability. The introduction of direct democratic participation through the right to petition and initiate a local resident review will strengthen the rights of local taxpayers, and encourage citizen participation in local decision-making. Given elected councillors, not officers, will make the final decision on the review, in turn, this will strengthen local representative democracy. We hope the end result should be to remove unnecessary or excessive parking restrictions and unfair parking practices, to the benefit of the local economy and local shops.²⁴

Cash payments

In March 2015 CLG published a discussion paper and call for evidence on a number of issues related to both public and private parking. Private land is dealt with in section 2, below, but for public land, it sought views on whether there should be an obligation for local authorities to offer the ability to pay for parking by cash within a reasonable distance of where they have parking (for example via ticket machines or via local shops).²⁵

The consultation closed in May 2015, at time of writing the outcome has yet to be published.²⁶

Powers to vary parking charges

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

²⁴ CLG, [Right to challenge parking policies - Traffic Management Act 2004: Network Management Duty Guidance](#), 6 March 2015, p4

²⁵ CLG, [Parking reform: tackling unfair practices - Discussion paper and call for evidence](#), 28 March 2015, p6

²⁶ A summary of responses was published in May 2016: 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]

The amendment ... applies to variation of charges at off-street parking places. Local authorities making orders prescribing charges at off-street parking places will, in future, be able to vary those charges subsequently by the simpler public notice procedure—to be prescribed by regulations made by the Secretary of State and subject to the negative resolution procedure—instead of having to make a new parking places order.²⁷

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

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

- Publish a notice of variation at least once in a newspaper circulating in the area in which the parking places to which the notice relates are situated at least 21 days before it is due to come into force.
- The notice of variation must specify the date when it is due to come into force; identify every parking place to which the notice relates; and specify the changes to charges payable for the use of the parking place(s);
- In the case of an **off-street** parking place, cause a copy of the notice to be displayed in the parking place on the date on which the notice is given and take “all reasonable steps” to ensure that it continues to be so displayed and remains in a legible condition until the date on which it comes into force; and if it thinks fit, cause additional copies to be so displayed in the parking place and in roads giving access to the parking place; and
- In the case of an **on-street** parking place, if the local authority thinks fit, cause copies of the notice to be displayed in prominent positions in the road in which the parking place is situated.

In 2016 Conservative MP David Tredinnick brought forward a private member’s bill to make it easier for local authorities to lower parking charges. The Bill was supported by the Government and came into force on 27 June 2017 as the [Parking Places \(Variation of Charges\) Act 2017](#).

The aim of the Act is to make it easier for local authorities to lower their parking charges “to promote the economic vitality of town centres; allowing local authorities to react more quickly to market changes; putting them on an even footing with the private sector; and promote parking flexibility, by allowing local authorities at short notice to provide free or discounted parking to support town centre events”. It is also intended to provide for local authorities to consult interested parties if they are seeking to increase the cost of parking charges, “to ensure the impacts on the towns are fully considered”.²⁸

²⁷ [HL Deb 10 June 1991, cc977-8](#)

²⁸ [Bill 18-EN, 2016-17](#), para 3

1.4 What can parking revenue be spent 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.²⁹

Local authorities can only spend parking income on certain things.

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

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

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

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

²⁹ 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

- 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".³⁰

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.**³¹

³⁰ "[Barnet residents win high court fight against parking permit price-hike](#)", *The Guardian*, 22 July 2013

³¹ [Attfield, R \(on the application of\) v London Borough of Barnet \[2013\] EWHC 2089 \(Admin\)](#), 22 July 2013, paras 38 & 54 [emphasis added]

1.5 Enforcement and appeals

Enforcement of parking regulations is a matter for the police, their traffic wardens, the local authorities³² and their parking attendants (called 'civil enforcement officers' since 31 March 2008). The degree to which each is responsible for enforcing the regulations will depend on the area and on whether the relevant local authority has taken responsibility for all the non-endorsable parking.

Civil offences

Where local authorities assumed responsibility for on-street parking under the 1991 Act, penalty charge notices (PCNs) were issued by local authority-employed parking attendants and the income was retained by the authority. The offence was no longer a criminal offence but a civil one. Penalty charges are ultimately enforceable through the civil courts as civil debt. In the first instance, a driver disputing a PCN should object to the local council who issued it. If he is not happy with the result, he can go to the independent traffic adjudicator.

When parking offences became a civil rather than a criminal offence, an appeals procedure was set up to deal with them. In the first instance, individuals receive a Penalty Charge Notice (PCN) from the local authority, followed by a 'Notice to Owner' (NtO) form from the council explaining their liability for payment of the PCN. If an individual chooses to challenge the NtO and their representation is rejected they then receive a letter known formally as a 'Notice of Rejection of Representations'. At this point they have a right to appeal to the independent [Traffic Penalty Tribunal \(TPT\)](#) or the [Environment and Traffic Adjudicators for London](#). The rest of this section summarises the procedure outside London (though it is almost identical in London).

With their Notice of Rejection of Representations the council must send a TPT 'Notice of Appeal' form. One may either pay the charge or use this form to make an appeal within 28 days. If it is later than 28 days there must be an explanation why. There are several legal grounds of appeal, falling into two broad categories:

- **the PCN was issued incorrectly** (e.g. the alleged parking contravention did not occur; the penalty charge exceeded the relevant amount; the Traffic Regulation Order was invalid; there was procedural impropriety on the part of the council); and
- **the appellant is not liable to pay the penalty** (e.g. he did not own the vehicle when the alleged contravention occurred; the owner is a vehicle hire firm (only in certain circumstances); the vehicle was taken without the owner's consent; the penalty has already been paid).³³

There is a further category of 'compelling reasons':

If the adjudicator agrees that you have compelling reasons why the penalty should not be paid, they may make a

³² 'local authorities' is taken here to mean unitary authorities, county councils, metropolitan district councils and London Boroughs; although in practice some of these may have an agency agreement with city or district councils to act on their behalf on traffic matters

³³ TPT, [Grounds of appeal - Parking Penalty Charge Notices](#) [accessed 22 January 2018]

recommendation to the council that they cancel the penalty. If the council choose not to do this they must explain why. The adjudicator **cannot** cancel a penalty based on compelling reasons.³⁴

Changes were made to the appeals process under the new system that came into effect in 2008, but they did not affect the adjudication process. There were two major changes in the *Representations and Appeals Regulations* (see above) compared to the pre-2008 legislation:

- “procedural impropriety”, that is to say a failure by the enforcement authority to observe any of the detailed statutory requirements for imposing a penalty charge, was made a ground for representations and for appealing to an adjudicator; and
- an adjudicator may refer a case back to the enforcement authority for reconsideration, where the finding is that none of the grounds of appeal apply but that there are compelling reasons for remitting a charge.

As indicated in section 1.3, above, in 2013 the Government consulted on a number of changes to the appeals process. In 2014 it announced its intention to:

- widen the powers of parking adjudicators (e.g. to include the ability for an Adjudicator to direct an authority to stop issuing tickets or direct the authority to change the signage, where there is a persistent problem);
- change the guidance on costs to make it clearer what provisions there are available to the public; and
- assess the impacts of introducing a 25% discount to motorists who lose an appeal at tribunal level on a trial basis.³⁵

The statutory guidance, updated in March 2015, includes information on the circumstances in which costs may be awarded.³⁶

Criminal offences

Some parking offences are endorsable, such as where parked vehicles cause safety hazards, or are parked in the approach to a zebra crossing. Maximum penalties range from a £1,000 fine to three penalty points and the option to disqualify.

These offences are also subject to the fixed penalty notice system (FPN). The police are responsible for enforcing the criminal law and only police officers and traffic wardens can enforce criminal offences. The level of FPNs is set by the Home Secretary and the fines are paid into court. The recipient must pay the penalty to the court within 28 days or request a court hearing if the issue of the notice is disputed.

The procedure for issuing fixed penalty notices is contained in the [Road Traffic Offenders Act 1988](#), as amended. In England such notices can be given on the spot when the driver is present (section 54); attached to the car in the absence of the driver (section 62); or a conditional offer of a fixed penalty may be sent to the alleged offender for offences such as

³⁴ *ibid.* [emphasis in original]

³⁵ *op cit.*, [Response to consultation on local authority parking](#), pp10-12

³⁶ *op cit.*, [The Secretary of State's Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions](#), p31, para 10.24

those caught by speed cameras where a policeman is not personally involved (section 75).

Under section 54(1), a police constable may issue an FPN in England and Wales, subject to certain conditions – if the constable "has reason to believe that a person he finds is committing or has on that occasion committed a fixed penalty offence". The conditions are that the person produces and surrenders his licence, and that the offence would not render the person liable to disqualification. An FPN is, in effect, a temporary stay of prosecution and allows an individual to agree to a fixed penalty and subsequent immunity from prosecution for the offence. An individual will have 21 days' grace to decide. A person may choose to elect for a hearing during this period, in which case proceedings would be brought against them in due course. At the court hearing they will be convicted or acquitted as in any other criminal case.

2. Private land and car parks

2.1 Legal position since 1 October 2012

Section 56 and Schedule 4 to the [Protection of Freedoms Act 2012](#) represented a significant change to the law on parking on private land. It enables private landowners to recover parking charges from the keepers of vehicles parked on their land where they have in effect entered a contract regarding the conditions upon which they have come onto that land to park.³⁷ What this means is that where one owns a car park on private land, maintained by a member of an Accredited Trade Association (ATA), and abiding by the requirements of that Association (i.e. erecting the proper signs, applying maximum charging rules, having a proper complaints and appeals procedure), once can recover parking charges from the owner ('keeper') of an illegally parked vehicle, if the driver does not pay.³⁸

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

Where this marks a change from previous practice is that formerly a landowner only had recourse to the courts if they made a charge for parking on their land but did not enforce it with clamping. The changes outlined in the 2012 Act allow vehicle owners and drivers to challenge charges and landowners to recover parking charges without having to go to court, a process which can be time consuming and costly.

As mentioned in section 1.3, above, in March 2015 CLG issued a consultation on further changes to the rules on parking on private land. It sought views on whether there are problems with how parking on private land is regulated and/or the behaviour of private parking companies and what steps the Government should take to rectify these problems. In particular it was thinking of things like:

- Practices which could be in breach of consumer protection laws, such as companies setting excessive parking charges, or levying excessive penalties for overstaying which are dressed up as official "parking fines".
- Practices that undermine the principle underlying the formation of a contract, including unclear or missing signage, or a lack of transparency on charges and/or fines.
- Failure to treat drivers fairly when they have incurred a penalty, including the failure to provide information, consider appeals fairly and the aggressive use of bailiffs.³⁹

³⁷ for information on the debates surrounding the introduction of the new arrangements, see section 4.4 of HC Library briefing paper [RP11/54](#)

³⁸ these conditions are set out in the ATAs' operational guidance to members of their Approved Operator Schemes (AOS): BPA, [BPA Approved Operator Scheme Code of Practice \(Version 5\)](#), October 2014; and IPC, [Code of Practice \(2nd ed.\)](#) [accessed 12 August 2015]

³⁹ op cit., [Parking reform: tackling unfair practices - Discussion paper and call for evidence](#), p5

The Government published a summary of responses to the consultation in May 2016, but no indication of whether or how it intended to proceed.⁴⁰

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 way as it is on public land, with maximum charges and statutory requirements as to signage etc.

2.2 Parking (Code of Practice) Bill 2017-19

Sir Greg Knight (Con., East Yorks.), who came 11th in the ballot for Private Member's Bills for the 2017-19 Session of Parliament,⁴¹ indicated his intention to present a Bill to establish a statutory code of practice for private parking enforcement companies.⁴²

The [Parking \(Code of Practice\) Bill 2017-19](#) received First Reading in July 2017. It has been through Commons Second Reading and Committee stage and is awaiting Report stage, currently scheduled for 23 November 2018, [when](#) it is second on the list.

What the Bill does

The purpose of the Bill is to:

... require[] the Secretary of State to prepare a code of practice containing guidance about the operation and management of private car parks. The code must contain guidance which promotes good practice in the operation and management of private car parks and guidance about appeals against parking charges imposed in relation to the use of private car parks. The Bill also provides for a levy on the parking industry to cover the costs of issuing, administering and investigating whether persons have failed to act in accordance with the code. Details of the levy requirements will be set out in regulations.

The Bill is made up of 11 clauses. It requires that the Secretary of State consult with private car parking operators, users and any other groups the Secretary of State considers appropriate before preparing a code. A proposed code must be laid before parliament for 40 days for approval. If no objections are raised, it can be issued and come into force 21 days later. The Secretary of State must keep the code under review and can make alterations. Any alterations to the code must be consulted upon. The Secretary of State may delegate their functions to a public authority.⁴³

The Bill has all-party support. The Government initially indicated its support for the Bill in January 2018.⁴⁴ At Second Reading on 2 February

⁴⁰ 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]

⁴¹ UK Parliament, [Private Members' Bill Ballot: 29 June 2017](#) [accessed 22 January 2018]

⁴² Sir Greg Knight MP press notice, "[Greg To Take on Rogue Parking Companies](#)", 1 August 2017

⁴³ [Parking \(Code of Practice\) Bill: Explanatory Notes](#), 25 January 2018, paras 1-2

⁴⁴ DHCLG press notice, "[Boost for drivers as government backs clamp down on rogue parking firms](#)", 28 January 2018

the Minister, Rishi Sunak, said that the Bill “rightly seeks to address an issue that comes up time and again”.⁴⁵ He went on:

Clearly we must take action to put an end to the indefensible behaviour we have heard described today ... and the Bill is an opportunity to do just that. Specifically, it will enable the Government to introduce a new single code of practice to cover the whole industry, which will give drivers the confidence to know that they will be treated in a fair and consistent way.

... an operator that fails to comply with the code will lose its access to DVLA data. That is a severe penalty, making it effectively impossible to enforce a ticket. Further, if a trade association has been found to be breaching the code of practice, its status as an official trade association will be revoked immediately. Any costs arising from the code, including its enforcement, will be covered by a new levy on the industry, which the Bill also provides for.

The Government have started to develop the new code in partnership with stakeholders, and I welcome the fact that the director of the RAC Foundation, Steve Gooding, is chairing an industry advisory panel. I put on record my thanks to him and the other panel members for the work they are doing. I look forward to receiving their latest submission.⁴⁶

Yvonne Fovargue, speaking for Labour, said that the Party supported the “much-needed Bill”.⁴⁷

What the Code will do

The Bill was considered in Committee on 19 July. It was agreed to and passed without amendment. During the proceedings Sir Greg explained what is likely to be in the Code established by the Bill:

There will be obligations on the operators of private car parks in the code, which will include the type of “equipment and technology used”, “clear signage”,

“clear and accessible displays of the terms and conditions”,

and the requirement that there be a transaction period and a grace period.

We need to ensure that a motorist has a choice before committing him or herself to park in a particular car park. With the advent of CCTV cameras, in some cases what happens is that a vehicle registration plate is recorded upon the motorist entering the car park. The motorist then sees the terms that apply to the car park and decides not to park there, but gets a ticket because the car was seen going in and coming out. That cannot be right. There must be a grace period of five or 10 minutes—perhaps even longer in a multi-storey car park—which would allow the motorist to change his or her mind.⁴⁸

At Committee stage the Minister, Rishi Sunak, further explained:

By standardising tickets, complaints processes, fees and lots of other things, the code of practice will offer us the opportunity to educate the British public when the Bill has passed. From that point forward, one will be able to say to the people of the United Kingdom, “This is what tickets should look like. These are the

⁴⁵ [HC Deb 2 February 2018, c1167](#)

⁴⁶ *Ibid.*, c1168

⁴⁷ *Ibid.*, c1160

⁴⁸ [PBC Deb 19 July 2018, c5](#)

various things that you should expect to see on them”— whether that is a kitemark or something else. In that way, through consumer education, we will hopefully ensure that they will be able to check for some kind of mark or language that would not be on rogue parking tickets. By bringing everything together in a standard way, that education process can happen in a way that it cannot today. I hope that that will deal with most of those issues.⁴⁹

Wales and Scotland

The Bill extends to England, Wales and Scotland. At Committee stage the Minister, Rishi Sunak, said:

On the devolved Administrations, I am pleased to tell Committee members that the Welsh and Scottish Governments are represented on the working group that has been engaged in developing the code of practice, and are in extensive dialogue with the team in my Department, to ensure uniformity of execution of the Bill and to confirm that all the various matters have been put in place as required.

I have an update for the Committee. The explanatory notes are out-of-date with regard to the legislative consent motion. Originally, the advice from the Scottish Government was that that would not be required, but that advice changed and they believe that they require it. That motion has now been passed, so I am pleased to say that the Bill will have force in Wales and Scotland, and that all legal requirements have been satisfied in that regard.⁵⁰

2.3 Appeals

There are two independent adjudicators: [Parking on Private Land Appeals \(POPLA\)](#), which began work in October 2012, and the [Independent Appeals Service \(IAS\)](#), which began work in June 2014. Both adjudicators work in a very similar way to the adjudicators that deal with local authority appeals (see section 1.5, above).

In terms of the volume of cases, POPLA reported that in the twelve months to 30 September 2017, 62,844 appeals were registered; a total of 36,326 appeals were decided, of which 8,814 were allowed and 27,512 were refused.⁵¹ A further 23,277 were not contested by the operator. POPLA considered this a high number (over a third of all appeals) and has looked at how it could be brought down.⁵²

Anyone who receives a ticket on private land should, in the first instance, formally appeal to the company that issued the ticket citing their grounds for appeal and providing supporting evidence where possible. If the parking company rejects the appeal one can then appeal to POPLA or the IAS. If the adjudicator finds for the appellant the company is compelled to cancel the parking charge. However, if the adjudicator finds for the parking company, the appellant can still refuse to pay. The parking company would have to take the appellant to court to obtain the fine and any associated costs. The parking company may

⁴⁹ Ibid., cc13-14

⁵⁰ Ibid., c13

⁵¹ POPLA, [Annual Report 2017](#), p2 [accessed 22 January 2018]

⁵² Ibid., p17

use a favourable judgement from the adjudicator in any such proceedings.

*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.*⁵³

2.4 Access to DVLA information

The only parking enforcement companies that can apply to the DVLA for driver information are those which are members of an Accredited Trade Association (ATA). There are only two of these for parking: the [British Parking Association \(BPA\)](#) and the [Independent Parking Community \(IPC\)](#).

The older (and bigger) is BPA. As of January 2018 there were 110 members of its Approved Operator Scheme (AOS).⁵⁴ The IPC has only been an ATA since June 2014 and is therefore smaller, though it has grown quickly. As of January 2018 there were 89 members of its AOS.⁵⁵

The DVLA is specifically permitted to release data to parking enforcement companies (and other private companies). 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".

'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".⁵⁶

DVLA makes a charge of £2.50 per transaction, on which it loses money. The Transport Select Committee explained in its October 2014 report into the Government's motoring agencies:

There are widely-held concerns that the DVLA profits from the sale of the data it holds on drivers. The Government's motoring agencies set their fees at a level that will cover their costs (the VCA is required to make a small operating surplus). The DVLA told us it is currently making a loss from charging for the provision of information to parking companies. It charges £2.50 for each enquiry. It costs the DVLA £2.84 to process each request. The difference between income and cost for this service last year was

⁵³ information on sources of legal assistance can be found in HC Library briefing paper [SN3207](#)

⁵⁴ BPA, [Current AOS Members](#) [accessed 22 January 2018]

⁵⁵ IPC, [Accredited Operator Scheme: AOS Members](#) [accessed 22 January 2018]

⁵⁶ DVLA, [Release of information from DVLA's registers](#), INF 266, July 2017, p3

a shortfall of around £700,000, which represents 0.1% of the DVLA's total costs.⁵⁷

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:

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.⁵⁸

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.

In March 2015 the then Roads Minister, Robert Goodwill, explained a parking company's duties and the impact removal of their membership could have on their operations:

The parking operator needs to demonstrate compliance with the code of practice of its accredited trade association to retain its membership. The ATA exists to investigate and ensure that, where appropriate, remedial action is taken. It is for the ATA to decide whether the operator needs to be placed on notice with additional scrutiny, follow-up audits and checks to monitor future actions closely. In more serious cases, a decision may be taken to terminate an operator's membership of the ATA. A company can still manage parking on private land, but if it is no longer a member of the ATA the Driver and Vehicle Licensing Agency will not provide contact details to enable breaches to be pursued. That has a serious consequence for a company's survival, and it is an incentive for it to behave responsibly.⁵⁹

There was a debate on the DVLA and private parking companies in March 2017. At the end of the debate the then Transport Minister, Andrew Jones, said:

Let me reassure the House on how we control the data. We have had lots of debates in this House about the right to privacy of our personal data. The trade associations have a code of practice, which includes access to DVLA data being tightly controlled. Companies with an electronic facility to request DVLA data have to sign up to a detailed contract that lays out the requirements on the use and security of data. The DVLA undertakes remote checks on parking companies.

In addition, the Government Internal Audit Agency carries out detailed audit visits on the DVLA's behalf and undertakes more in-

⁵⁷ Transport Committee, *Government motoring agencies - the user perspective* (sixth report of session 2014-15), HC 287, 7 October 2014, para 43

⁵⁸ DVLA, *V888/3 form*, section 5 notes [accessed 12 August 2015]

⁵⁹ [HC Deb 16 March 2015, c619](#)

depth checking of individual cases to provide further assurance that requests have been submitted for genuine reasons and there is reliable evidence to back up the request. Non-compliance can result in sanctions, including the removal of the right to data.

The DVLA's controls around the disclosure of data to parking companies were subject to a detailed data protection audit by the Information Commissioner's Office last year. I can confirm that the Information Commissioner awarded the DVLA the highest rating for the controls it has in place surrounding the disclosure of data.⁶⁰

As set out in section 2.2, above, if the current Bill becomes law there will be a statutory Code of Practice to which all private parking enforcement companies will have to adhere in order to ensure continued access to the DVLA database.

GDPR

The [General Data Protection Regulation](#) (GDPR) took effect in the UK from 25 May 2018. We do not know what actual impact GDPR implementation will have on the way DVLA stores and releases data, though statements from DVLA seem to indicate that there will be no or little material change.

One of the purposes of the [Data Protection Act 2018](#) is to set out how the UK will apply the derogations (flexibilities) allowed under the GDPR. The Act repeals the previous data protection legislation (i.e. the [Data Protection Act 1998](#)). There was no substantive discussion of the DVLA during the passage of the Act.

As set out above, the DVLA is specifically permitted to release data to parking enforcement companies (and other private companies) under Regulations made in 2002 under the 1998 Act. We might then expect the 2002 Regulations to be updated following the repeal of the 1998 Act, but we do not yet know.

In response to an FOI request in October 2017 the DVLA addressed the question of GDPR as follows:

With the introduction of the New General Data Protection Regulations in May 2018 can you please confirm that there will be a mechanism to comply with this new law and stop the illegal sale of my confidential data.

All data sharing undertaken by the DVLA is carried out in accordance with the principles of the Data Protection Act (DPA). The most recent audit by the Information Commissioner's Office judged the DVLA's procedures to offer high assurance that processes to mitigate the risks of non-compliance with the DPA are in place. DVLA can confirm that appropriate procedures to ensure the same level of assurance will be in place to meet the requirements of the new General Data Protection Regulation in May 2018.⁶¹

The DVLA's 2018-19 Business Plan states:

⁶⁰ [HC Deb 21 March 2017, cc274-5WH](#)

⁶¹ [DVLA FOI response FOIR6295](#), 16 October 2017 [emphasis in original]

The General Data Protection Regulation (GDPR) will come into force on 25 May 2018, introducing new standards in data protection and allowing greater visibility and control over personal information. In line with our commitments in our Strategic Plan 2017-20, we will continue to offer customers the assurances they need that the data we hold is secure and processed in line with GDPR requirements. The new Data Protection Act will come into force alongside GDPR, introducing the UK's domestic legislation to update the data protection rules for law enforcement bodies.⁶²

2.5 Amount of charge levied

In terms of the level of charges, there is no statutory definition of a 'reasonable' or 'proportionate' charge on private land. However, as a requirement of membership of an AOS of an ATA all parking companies are required to follow the guidance issued by the ATA. Both the BPA and IPC's guidance states that a charge (i.e. fine) should not be more than £100.⁶³ To compare, charge/fines on public roads/land, set out in legislation, are generally £60 to £70, but 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 £130.⁶⁴

However, what constitutes a 'reasonable' or 'proportionate' charge is in dispute. For example, in February 2015 the RAC Foundation published a legal opinion drawn up for them by John de Waal QC, a barrister at Hardwicke. This took the view that a charge of £100 or more was likely to be several times more than compensation for a genuine loss and would not therefore be enforceable by the courts. However, it also stated crucially that this argument would have to be tested in court to be enforceable.⁶⁵

As indicated above, the 2015 Supreme Court decision on [Parking Eye v Beavis](#) found that an £85 charge for overstaying in a private car park was 'fair, reasonable and enforceable'.

⁶² DVLA, [Business Plan: Driver & Vehicle Licensing Agency 2018-19](#), March 2018, p13

⁶³ op cit., [BPA Approved Operator Scheme Code of Practice \(Version 5\)](#), para 19.5; and [Code of Practice \(2nd ed.\)](#), p33

⁶⁴ *Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007 (SI 2007/3487)*, Schedule

⁶⁵ RAC Foundation press notice, "[Private parking. public concern](#)", 20 February 2015

3. Private roads

This issue of parking on private roads is a tricky area because there are different definitions of a 'private road' and the extent to which one can enforce sanctions on a road will depend on what type of road it is.

*Constituents facing parking problems on private roads should consult a legal professional.*⁶⁶

By statutory definition a private or unadopted street is a road not maintainable at public expense.⁶⁷ However, a private road is not necessarily a road to which the public does not have access. Nor is it a road exempt from the law. There is no statutory definition of a highway, only a common law one. That definition is quite clear: a "highway is a way over which all members of the public have the right to pass and repass. Their use of the way must be as of right, not on sufferance or by licence".⁶⁸ Some private roads are highways, but not all, and the position is not always easy to determine.

Most of the offences committed under the [Highways Act 1980](#), as amended, are designed to punish those who endanger or interfere with users of a 'highway' or who damage or obstruct a 'highway'. A few offences go further in that they apply not just to highways but to all 'streets' as defined in the Act. Interfering with a right of way is a civil wrong, namely a nuisance. A person whose land has the benefit of a right of way may take action against any person interfering with his right, whether the owner of the road or a person who also enjoys a right of way, or someone unconnected with the road. For example, a right to take action might arise if the parking of cars in a narrow private road persistently interfered with the exercise of a right of way, such as in the case of *Horne and Horne v. Ball* [1995] *CLY* 1841 in which the court had to deal with deliberate obstruction, accompanied by verbal abuse over a long period.⁶⁹

In terms of parking, there is no general right to park in a private road except for the owner of the road. In practice parking may be permitted or tolerated by the owner (in which case there is a licence to park) and in some cases a legal right may have been granted by the owner. Parking in a private road without permission or a legal right to do so is trespassing, and is a civil wrong for which redress can be obtained. The wrong is done to the owner of the road. He can bring legal proceedings to obtain compensation, though the amount of harm done would typically be small and the compensation therefore very modest. The owner is also entitled to insist that trespassing ceases, and could if need be obtain an injunction against the person concerned.

Whether or not someone is trespassing by parking in a private road, if they obstruct the road and so interfere with its use by those with private

⁶⁶ information on sources of legal assistance can be found in HC Library briefing paper [SN3207](#)

⁶⁷ for more information on unadopted roads, see HC Library briefing paper [SN402](#)

⁶⁸ Sweet & Maxwell, *Encyclopaedia of Highway Law and Practice*, March 2002, para 2-335

⁶⁹ Andrew Barsby, *Private Roads: The Legal Framework* (5th ed.), 2013, para 5.47

rights of way, a different civil wrong (nuisance) is committed. In this case, the civil wrong would be against the person whose land has the benefit of the right of way, probably the owners of the properties. The same would also be true if a parked car obstructed access to a private road. In a case of nuisance the civil courts may grant compensation and other remedies, such as an injunction.

In some particular circumstances a criminal offence may be committed. Under section 34 of the [*Road Traffic Act 1988*](#), as amended, it is an offence to drive a motor vehicle without authority on land which is not a road (i.e. a road that is not a highway, or to which the public has access) save where a person goes no further than 15 yards from a public road, and does so in order to park. On a private road to which the public does not have access, drivers who come onto the road without authority are committing an offence unless they do so in order to park and go no further than 15 yards from a public road. If they park within 15 yards of a public road, they will merely be trespassing, not committing an offence.

4. Decriminalised parking enforcement, 1991-2008

4.1 Overview

In the late 1980s the Conservative Government considered ways to alleviate congestion on London's roads. One of the main proposals was the creation of a 'priority route network' for buses, which would require an improved system of parking controls and enforcement.⁷⁰ The Government took the view that stopping, loading and unloading controls would need to be strictly enforced and a police or traffic warden presence on the streets would be the most effective deterrent against illegal parking.⁷¹

A Department of Transport study suggested that improved compliance with parking controls over the whole of London could produce economic benefits of between £100 million and £200 million per year with a ten per cent improvement in journey times in the central area.⁷² Another study suggested that a 25 per cent reduction in the number of illegally parked cars at the kerbside could lead to average speeds increasing by around ten per cent.⁷³

A Working Party on Parking Enforcement was set up in November 1987 to examine the operation of parking enforcement. The Working Party reported in March 1989. It concluded that police resources should not be diverted from other work to parking enforcement. Further, while there was a certain value in requiring offenders to contribute towards enforcement costs, the pursuit of revenue to cover costs must not be allowed to interfere with the main objective of securing compliance with parking restrictions and thereby reducing traffic congestion. The Working Party also agreed that there was scope for local authorities to provide some of the additional resources required for effective parking enforcement through an extension of their then limited enforcement role.⁷⁴

There was, however, a difference of view as to the extent to which the local authority role should be expanded. The police were not convinced that the problem was so severe that radical changes were necessary, but they accepted that the level of illegal parking in London exceeded the capacity of the police to prevent it. Local authorities proposed that primary responsibility for parking enforcement, both in controlled parking places and on yellow lines, should pass to them. The Working Party agreed that local authorities should assume responsibility for enforcement of all non-endorsable parking.⁷⁵ On that basis all parking

⁷⁰ information on the priority route network, also known as the London 'Red Routes', can be found in HC Library briefing paper [SN32](#)

⁷¹ Department of Transport, *Traffic in London*, December 1989, para 7.5

⁷² Home Office, *Report of Parking enforcement working party*, March 1989, Annex E [HC DEP 5007]

⁷³ unpublished work by the Transport Research Laboratory, 1988

⁷⁴ *op cit.*, *Report of Parking enforcement working party*

⁷⁵ 'endorsable offences' are those which incur penalty points on the driving licence, called 'endorsements'

offences other than the most serious would be decriminalised and enforced by civil charges. There would be a new administrative structure and a new enforcement body to replace the existing police and court structures. Revenues from the new parking charges would finance enforcement. The Government rejected this proposal on the grounds that it ought not to be possible to mitigate an unlawful act and, further, that local authorities should not be able to use the income generated by fines and penalties to enforce permitted parking controls.⁷⁶

The Government did accept, however, that the existing arrangements needed improving: local authorities would assume greater responsibilities for permitted parking, retaining more of the revenue, which could be used to finance enforcement and contribute to better parking facilities.⁷⁷ The proposals were described in a July 1990 consultation paper.⁷⁸ At Second Reading of the *Road Traffic Bill 1990-91* the then Secretary of State for Transport, Malcolm Rifkind, indicated that the aim of the legislation was to reduce traffic congestion and bring environmental benefits, no mention was made of maximising income.⁷⁹ Initially this part of the Bill only applied to London. During Committee Stage in the House of Lords the government agreed to consider the legal and policy issues involved in extending the provisions to areas elsewhere. On Report, Lord Brabazon of Tara introduced an amendment that referred to county councils and metropolitan councils in England and county councils and district councils in Wales.⁸⁰ At Third Reading, he extended the provisions for the new local authority parking regime to local authorities in Scotland.⁸¹

The [Road Traffic Act 1991](#) helped local authorities who wished to control parking in their areas more effectively by:

- introducing decriminalised parking offences;
- allowing local authorities to take on the enforcement of yellow lines;
- enabling enforcement action to be better tailored to the nature of the offence (e.g. removal of vehicles which are causing obstruction and clamping for failure to pay); and
- allowing income from enforcement action to accrue to the local authority and not to the Exchequer.

Formerly, local authority parking attendants could only deal with collecting parking meter charges and issuing excess charge notices: all other permitted parking offences come into the area of criminal law so had to be administered by the police and their traffic wardens. By removing all permitted parking from the criminal law and making it a civil matter, it was possible to allow local authority parking attendants to administer it.

⁷⁶ *op cit.*, *Traffic in London*, para 7.17

⁷⁷ *ibid.*, para 7.18

⁷⁸ DoT, *Traffic in London: further development of the "Traffic in London" initiatives*, July 1990, paras 3.2, 3.3 and 3.7

⁷⁹ [HC Deb 10 December 1990, c689 and c691](#)

⁸⁰ [HL Deb 10 June 1991, cc 978-980GC](#)

⁸¹ [HL Deb 24 June 1991, cc 454-456](#)

Where local authorities assumed responsibility for on-street parking under the 1991 Act, penalty charge notices (PCNs) were issued by local authority-employed parking attendants and the income was retained by the authority. Local authorities were able to keep the fees from parking meters, charges associated with wheel clamping and vehicle removal, and the money from any PCNs. Penalty charges are ultimately enforceable through the civil courts as civil debt.

When the 1991 Act was passed, the Conservative Government did not consider that it would be appropriate to give local authorities responsibility for 'prohibited' parking. Thus endorsable offences and those relating to obstruction, which were still subject to criminal sanctions, continued to be the responsibility of the police. The powers of the police-appointed traffic wardens were extended so they could take responsibility for enforcing the law on endorsable offences. The money from penalties associated with this group of offences would continue to go to central government.

In May 1995 it was announced that local authorities outside London could start to apply to take over parking enforcement from the police.⁸² Despite the introduction of the decriminalised parking enforcement (DPE) schemes in London being regarded as a success, the initial take up of the new powers outside London was low. The Labour Government took steps to encourage better take-up, including:

- a £100,000 allocation in September 1998 towards the cost of setting up a new permanent adjudication service for areas outside London; and
- raising of the upper limit of the penalty charge notices to £60 in 2001.

Local authorities who wished to establish DPE in their areas had to apply to the Secretary of State for Transport. They were expected to meet the minimum requirements laid down in the *Guidance on Decriminalised Parking Enforcement outside London*.⁸³

The Guidance on decriminalised parking enforcement outside London, issued in 1995, set out the financial objectives of decriminalised parking as follows:

Each local authority operating the new system of decriminalised parking enforcement should ensure that it is run efficiently and economically. Each authority should also aim to make the new system overall at least self-financing as soon as practicable. In assessing its performance against this objective, a local authority may take into account costs and revenues from its off-street parking operations. However, the attainment of this objective should not be at the expense of safety and traffic management objectives of decriminalised parking enforcement, or be achieved by setting unreasonable levels of penalty and other charges.⁸⁴

⁸² DoT press notice, "Decriminalised parking enforcement to be extended outside London", 11 May 1995 [PN 95/143]

⁸³ DoT, [Guidance on decriminalised parking enforcement outside London](#) (local authority circular 1/95), 1995

⁸⁴ *ibid.*, para 4.1

4.2 Parking in London

The 1991 Act set up a Parking Committee for London to co-ordinate the introduction of the new DPE scheme; the Committee consisted of one councillor from each London Borough. Its functions were to set the level of fines that local councils could charge, operate the adjudication service, ensure consistent treatment of motorists across London and maintain 'persistent evader' records in order that London's most inconsiderate parkers could be targeted by all councils. An independent adjudicator was appointed by the Committee to consider appeals from motorists not satisfied with a local authority's actions.⁸⁵

The new system began in July 1993 when the London Borough of Wandsworth became the first London local authority to take on the new parking enforcement powers. Although all London Boroughs had to take responsibility for parking regulation at meters and in bays in their areas by 4 July 1994, they had the choice as to whether or not to apply to the Secretary of State to enforce non-endorseable yellow line offences.⁸⁶

The scope of civil enforcement of traffic offences was extended by the [London Local Authorities Act 1996](#) which gave London authorities the power to issue penalty charges in respect of vehicles driven illegally in bus lanes. These powers were first exercised in 1999. Powers in the [London Local Authorities and Transport for London Act 2003](#) enabled civil enforcement of certain moving traffic regulations, such as use of box junctions.

4.3 Criticisms

In its June 2006 report on parking policy and enforcement the Transport Select Committee called for a 'fairer and more coherent approach' to parking across England and Wales. In summary, the report made the following points:

Failure to comply with parking restrictions disrupts traffic, increases road congestion, heightens levels of danger, results in injuries, and delays public transport schedules.

Fifty million estimated illegal parking acts take place each year in London with a cost of £270 million a year in additional delays and accidents. The scale and cost of illegal parking throughout Britain is not known but is clearly significant. The police have failed to enforce parking regulations in Britain properly for decades as other policing priorities have taken precedence. The result is that illegal parking is widespread.

It is fifteen years since local authorities were given the power to take over control of parking enforcement from the police. Transferring responsibility for parking enforcement to local government has succeeded in raising the levels of enforcement and compliance. In 2003, local authority parking attendants issued 7,123,000 Penalty Charge Notices in the then 75 local authorities and 33 London boroughs where decriminalised

⁸⁵ for more information see section 1.5, above

⁸⁶ the relevant guidance was: DoT, [Traffic management and parking guidance for London](#) (local authority circular 5/92), August 1992, as amended in 1998

parking enforcement powers were in operation. By contrast, the police issued 1,043,000 Fixed Penalty Notices in the remaining 313 authorities.

To retain two parallel parking systems is irrational, and it is high time to move to a single country-wide system of decriminalised parking enforcement. There must be one system of parking, not two.

Despite its success, serious flaws remain in the decriminalised parking system. For example, 20 per cent of the 7.1 million Penalty Charge Notices issued in England in 2003 were cancelled; local authorities do not always make the process for challenging Penalty Charge Notices clear; and local authorities' duty to use discretion in considering challenges is not always properly discharged. This poor local authority administration causes frustration and anger, wastes resources, and brings the decriminalised parking regime into disrepute. These problems need to be put right by a cooperative effort led by the Government.

In addition to the *main* task of introducing a unified system of parking enforcement in Britain, we have found that the following action is required:

- Clear performance standards in applying parking restrictions must be established
- It must be made clearer to drivers what regulations are in force and how compliance is to be achieved
- Appropriate recruitment, remuneration and training is needed to ensure a professional parking service throughout the country
- The process for challenging penalty charge notices must be made much more transparent
- The impact of the parking adjudication service must be increased and its profile heightened
- Scrutiny of local authority parking departments is woefully inadequate and needs to be strengthened
- Local authorities must develop parking strategies which meet local objectives fully, focusing particularly on congestion, road safety and accessibility.⁸⁷

There were also various reports about the inconsistency of enforcement across the country.⁸⁸ A further report in March 2008 stated that more than 60 per cent of appeals against parking tickets heard by the appeals body were successful, but fewer than one per cent of drivers who received notices appealed.⁸⁹

⁸⁷ Transport Committee, *Parking Policy and Enforcement* (seventh report of session 2005-06), HC 748, 14 June 2006, pp3-4

⁸⁸ e.g. "Aggrieved motorists 5, Meter readers 0", *The Times*, 8 May 2007; and "[Postcode lottery as up to eight in ten parking fines overturned on appeal](#)", *The Sunday Telegraph*, 28 October 2007

⁸⁹ "Drivers given more help to fight councils over parking tickets", *The Times*, 31 March 2008

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