



Department
for Transport

Guidance on Section 56 and Schedule 4 of the Protection of Freedoms Act 2012: Recovery of Unpaid Parking Charges

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Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
Website www.dft.gov.uk
General email enquiries FAX9643@dft.gsi.gov.uk

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Foreword

This is a general guide to Section 56 (which gives effect to Schedule 4) of the Protection of Freedoms Act 2012, concerning the recovery of unpaid parking charges on private land in England and Wales.

This is not a legal document and does not give legal advice. It should be read alongside Schedule 4 and the Explanatory notes (see www.legislation.gov.uk/ukpga/2012/9/contents/enacted).

Any questions on how to apply the law in individual cases should be referred to an independent legal advisor.

Executive summary

1. The Protection of Freedoms Act 2012 makes a number of changes to the law related to parking on private land. It bans vehicle immobilisation and/or removal without lawful authority, and provides private landholders with additional powers to pursue the registered keeper of a vehicle for unpaid parking charges providing certain conditions are met. This guidance summarises the main provisions in the Act concerning the recovery of unpaid parking charges.

1. Definition of “landholder”

- 1.1** Where a private landowner chooses to offer or restrict parking on his/her land, he or she may make arrangements for an agent to manage and operate the land, including charging drivers for breaking parking conditions. This guide uses the term “landholder” to mean either a private landowner or an agent (or agents) properly authorised by the landowner to manage and enforce parking on the land in question.

2. Accredited Trade Associations

- 2.1** Landholders who are members of a Government Accredited Trade Association (ATA) may ask the Driver and Vehicle Licensing Agency (DVLA) for details of the vehicle keeper. DVLA decide whether to release data under reasonable cause provisions (see www.dft.gov.uk/dvla/data.aspx). Currently the only DVLA accredited trade association for parking companies is the British Parking Association's Approved Operator Scheme (AOS).

3. Background/purpose of the policy

- 3.1** The Protection of Freedoms Act 2012 makes a number of changes to the law related to parking. It bans private sector wheel-clamping and vehicle removal where there is no lawful authority to do so, and, as a balance to that, provides landholders with extra powers to manage parking on their land once the ban comes into force. It does this by allowing landholders, in certain circumstances, to hold the registered keeper of a vehicle liable for unpaid parking charges if the registered keeper refuses or is unable to name the driver at the time the parking charge was incurred. The relevant parts of the Act are:
- Section 54, which makes it an offence to clamp, remove or otherwise immobilise a vehicle without lawful authority in England and Wales, from 1 October 2012;
 - Section 55, which gives the Secretary of State a power to make regulations allowing named authorities (such as the police), to remove vehicles from private land; and
 - Section 56 and Schedule 4, which allows landholders to pursue “keeper liability” in relation to the recovery of unpaid parking charges on private land providing certain conditions are met.
- 3.2** From 1 October 2012 only organisations with legal powers to clamp or remove vehicles (such as the Police, Government agencies and local authorities), will be able to do so. Most private organisations, including private landowners and their agents (ie "landholders"), will not be able to clamp or tow vehicles. However in a few cases, such as at airports, ports and some railway car parks, byelaws may still give private landholders powers to clamp or tow vehicles.
- 3.3** Consequently after 1 October 2012 many private landholders will rely primarily on ‘ticketing’ to enforce parking conditions on their land. This could be by placing a parking ticket on a vehicle, giving it to the driver or sending a ticket to the vehicle’s registered keeper in the post.
- 3.4** Before the Protection of Freedoms Act a private landholder could only seek liability against a vehicle driver to recover unpaid parking charges, and therefore needed to be able to identify who was the driver of the vehicle that incurred the parking charge. A landholder could make a request to DVLA for details of the registered keeper but there was no requirement for the registered keeper either to say who was driving the vehicle or to accept liability him or herself. This allowed both the vehicle driver and the registered keeper to avoid liability and meant that

landholders, on certain occasions, found it difficult to manage parking by ticketing alone.

3.5 Schedule 4 of the Protection of Freedoms Act addresses this situation. It allows, providing certain conditions are met, the landholder to pursue the registered keeper of a vehicle for unpaid parking charges if the registered keeper refuses or is unable to identify the driver at the time the parking charge was incurred. This is often referred to as “keeper liability”. However the registered keeper cannot be liable for any unpaid parking charges if he or she identifies the driver of the vehicle at the time the parking charge was incurred.

3.6 In order to enforce a parking ticket a landholder first has to be able to show that a contract to park existed between the driver and the landholder, and that the terms and conditions of that contract have been broken by the driver (see “How is a parking contract formed?”).

4. On what type of land does Schedule 4 apply?

- 4.1** The provisions in Schedule 4 are intended to apply only on private land in England and Wales. Public highways are excluded as well as any parking places on public land which are either provided or controlled by a local authority (or other government body). Any land which already has statutory controls in relation to the parking of vehicles (such as byelaws applying to airports, ports and some railway station car parks) is also excluded.

5. Establishing liability for parking charges

- 5.1** A registered keeper can only be found liable for unpaid parking charges when certain requirements are met. These requirements seek to balance the rights of the motorist and the landholder and are clearly set out in Schedule 4.
- 5.2** For Schedule 4 to apply the driver of a vehicle must first be liable for unpaid parking charges. There are broadly two situations where a driver could become liable for parking charges:
- a. where a driver has entered into a contract to park on private land and failed to comply with the terms and conditions of that contract; or
 - b. where a driver has trespassed on private land where signs showing charges for unauthorised parking are displayed.
- 5.3** Where a driver is liable for an unpaid parking charge, and the landholder does not know who the driver is, Schedule 4 describes what the landholder must do to pass liability on to the registered keeper. It does not create any new form of liability for parking charges or provide a route to claim parking charges which were not lawfully due in the first place.

6. Ticketing

- 6.1** When a parking contravention is detected, a landholder may place a ticket on a vehicle or give it to the driver at the time of the contravention. In these circumstances the landholder must wait 28 days after which, if there is no response, he/she may submit a request to the Driver and Vehicle Licensing Agency (DVLA) for details of the vehicle's registered keeper. He/she may then write to the registered keeper to seek details of the driver or payment of the parking charge.
- 6.2** Where a contravention is detected remotely (such as by cameras), the landholder may request registered keeper data from the DVLA immediately and must write to the registered keeper within 14 days seeking details of the driver or payment of the parking charge.
- 6.3** Schedule 4 sets out what a notice to the driver (ie a "ticket") must say. As a minimum the notice has to say:
- when and how the parking offence took place;
 - how much is due;
 - what any discount is for prompt payment of the charge;
 - how and to whom payment may be made;
 - the time and date when the notice was issued; and
 - what the arrangements are for the resolution of disputes or complaints - this includes any internal arrangements offered by the parking operator as well as any independent appeals process.
- 6.4** If a notice to the driver is ignored by the driver, Schedule 4 describes what a notice sent by post to the vehicle keeper must contain and how it must be served. The contents of the notice to the keeper are essentially the same as a notice to the driver, but must invite the registered keeper either to pay the unpaid parking charges or, if the registered keeper was not the driver of the vehicle at the time of the parking contravention, give the landholder the name of the driver and a current address for service.
- 6.5** The landholder can only request registered keeper details from the DVLA, and not obtain this information by any other means in order for Schedule 4 to apply.

7. How is a parking contract formed?

- 7.1** Contracts for parking on private land can arise in a number of ways. However normally a car park will have signs setting out the terms and conditions upon which parking is offered. Drivers can then decide whether or not to accept those terms and conditions. In most cases a driver who parks in a car park with clear signage setting out the terms and conditions will be deemed to have accepted the terms and conditions and therefore entered into a contract to park with the landholder.
- 7.2** Parking contracts, like any contract, must be made in accordance with the general law – for example, consumer protection law would be relevant to establishing whether or not the signs at a car park were sufficient, and the terms and conditions were fair. If it can be shown that a contractual term was unfair, it follows that the term cannot be relied upon to enforce a parking charge (see Q6 FAQ).

8. Trespass

- 8.1** A driver can be liable to pay a charge for parking on land where parking is not invited and they are trespassing. For Schedule 4 to apply to trespass situations the landholder needs, as a minimum, to place clear signs stating that parking is not permitted and setting out the charge that will be sought for unauthorised parking (i.e. damages for trespass). For example “No parking – charge £50 for unauthorised parking”. Charges sought for trespass must be appropriate (see Q1 of FAQ).

9. Access to DVLA registered keeper records

- 9.1** Where a landholder does not know the name and address of the driver, they can ask the DVLA for details of the registered keeper in order to write to him or her. DVLA decide whether to release data under reasonable cause provisions (for more information on this see www.dft.gov.uk/dvla/data.aspx).
- 9.2** Where DVLA provide details of the registered keeper to the landholder, he or she may write to the registered keeper for payment or the driver's details so that the landholder can pursue the unpaid parking charge. If the driver's details are provided by the registered keeper, then the landholder must pursue the driver for the unpaid parking charge, and the registered keeper cannot be liable for the charge.
- 9.3** The registered keeper has 28 days after receiving a notice from the landholder in which to provide the driver's details, pay the parking charge, or appeal against the ticket. If the registered keeper fails to do any of these things the landholder may begin proceedings to recover the parking charge from the registered keeper (see Q1 FAQ).

10. Stolen vehicles

- 10.1** The registered keeper cannot be pursued for unpaid parking charges that have been incurred when the vehicle has been stolen. However it is the responsibility of the registered keeper to produce evidence to satisfy the landholder, an adjudicator, or ultimately a court, that the vehicle was stolen (e.g. by producing evidence that the theft has been reported to the Police), at the time the vehicle incurred the parking charge.

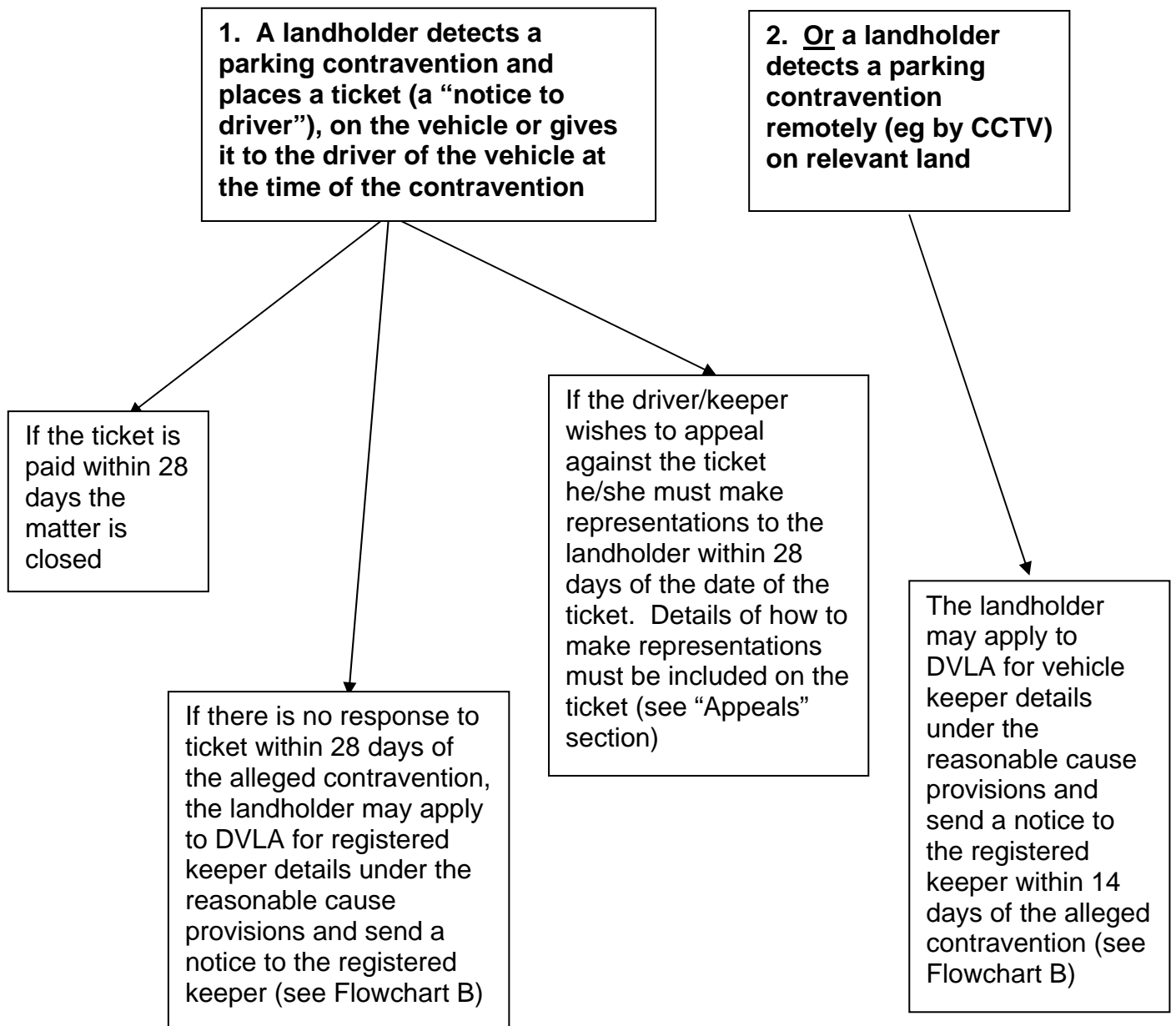
11. Parking signs in car parks

- 11.1** Schedule 4 contains a reserve power for the Secretary of State to make regulations if necessary to prescribe signage requirements in private car parks. The recommended signage requirements for companies which are members of an Accredited Trade Association (ATA), are set out in the ATA's Code of Practice (currently the British Parking Association's Approved Operator Scheme Code of Practice). The power to prescribe signage in Government regulations will be used if the ATA Code of Practice requirements prove to be insufficient.

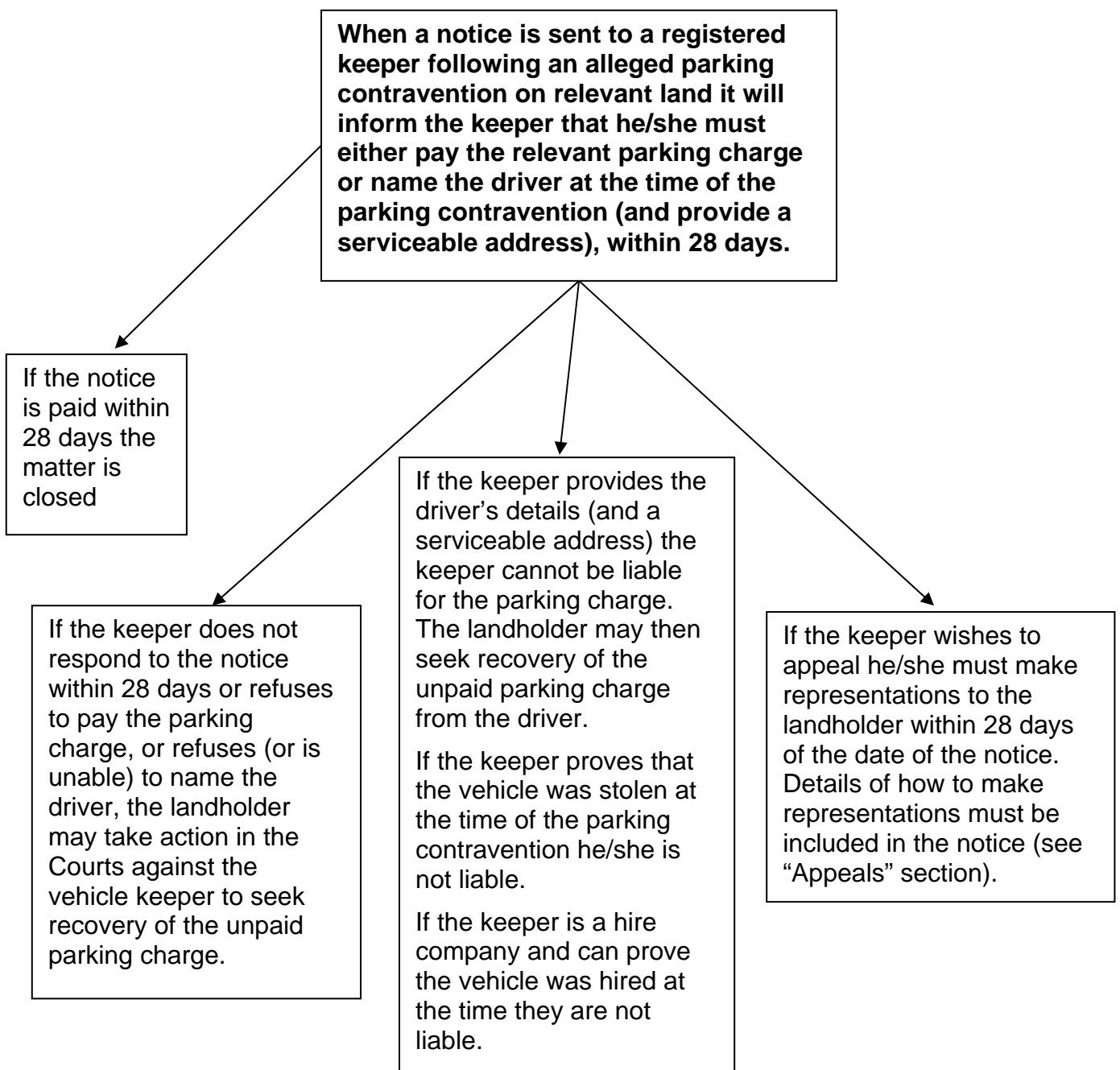
12. Hire vehicles

- 12.1** A person or organisation hiring a vehicle from a hire company is responsible for any parking charges during the hire period if they have signed an agreement with the hire company accepting liability. In those circumstances the hire company cannot be liable for unpaid parking charges during the period of hire if they provide a copy of the relevant hire agreement documents to the landholder within 28 days of receiving a notice to keeper in the post.

13. Flowchart A: Possible actions after a contravention is detected



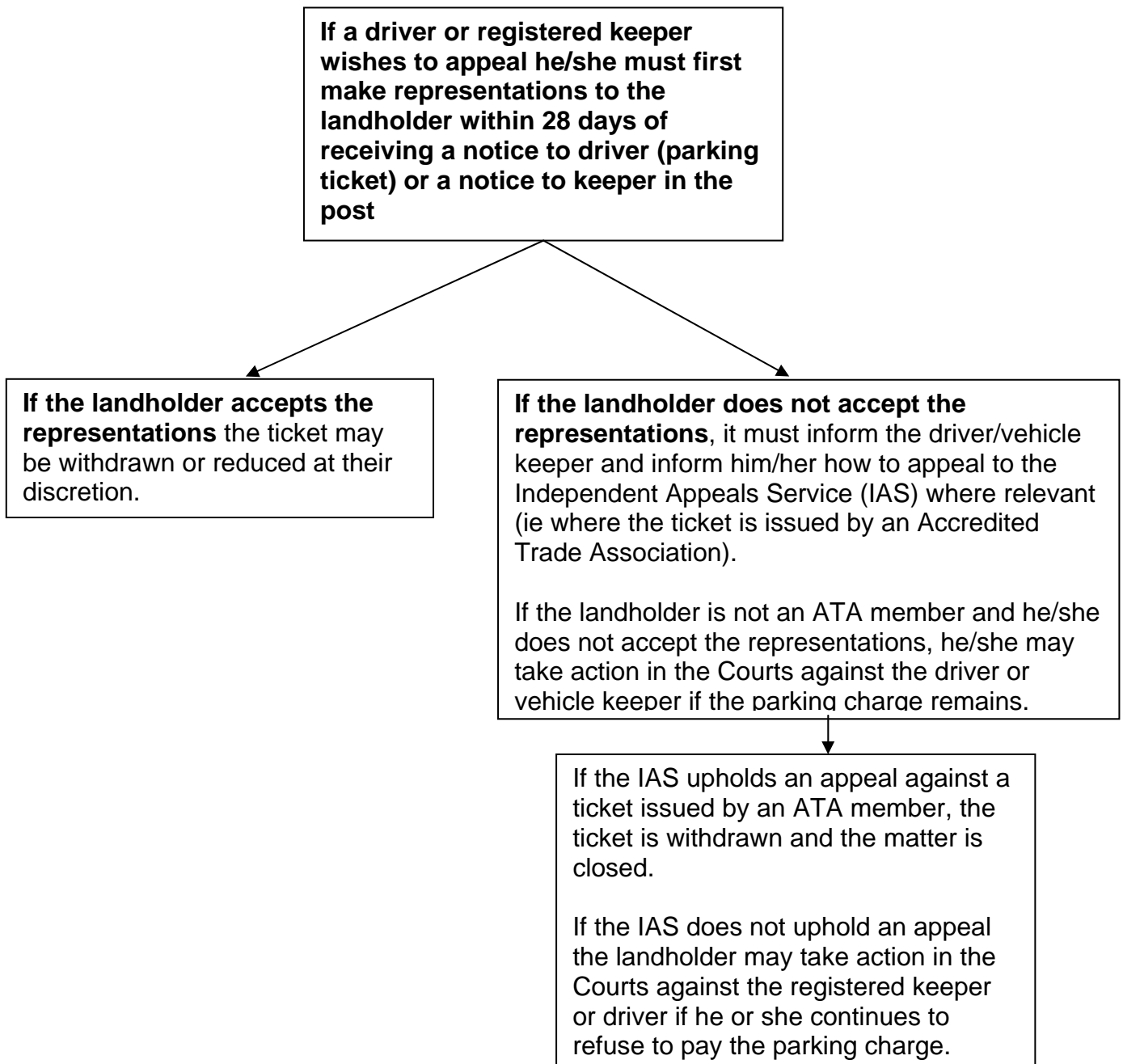
14. Flowchart B: Possible actions after a notice is sent to the registered keeper



15. Appeals

- 15.1** Normally a landholder will give the driver or registered keeper an opportunity to make representations about a disputed ticket. This is the case for all parking companies that are members of an Accredited Trade Association (ATA).
- 15.2** From 1 October 2012 all members of an ATA are also required to offer free access to an Independent Appeals Service (IAS), which shall be available if the person receiving the ticket wishes to appeal after making representations to the landholder.
- 15.3** Landholders who are not members of an ATA are not required to subscribe to an appeals process, so any disputes or appeals will normally be dealt with by the Courts if they cannot be resolved informally between the parties.
- 15.4** Where tickets are issued by members of an ATA, a driver or registered keeper who wishes to make representations must do so within 28 days to avoid the landholder escalating the matter. All tickets issued by members of an ATA must contain details of the arrangements for the resolution of disputes or complaints that are available.
- 15.5** A driver or registered keeper is required to make representations to the ATA member in the first instance. The ATA member can then consider those representations and decide whether or not to cancel the ticket or reduce the charges. If the driver or registered keeper is not satisfied with the decision of the ATA he/she may appeal to the Independent Appeals Service.
- 15.6** If the Independent Appeals Service upholds a driver's or a registered keeper's appeal, the landholder will be required to cancel the ticket as directed by the appeals service. If the appeals service rejects an appeal the landholder may then choose to take court action to recover the amount outstanding if the driver or registered keeper still refuses to pay the parking charge.
- 15.7** The following flowchart illustrates the main appeal stages (the appeals procedures are not laid out in Schedule 4).
- 15.8** The Independent Appeals Service is called "Parking on Private Land Appeals" (POPLA), and the website address is www.POPLA.org.uk.

Example of appeals process (not part of Schedule 4)



16. Frequently Asked Questions

1. What are the main laws relating to parking on private land in England and Wales, and the charges that can apply?

A driver who is invited to park on private land and pay a fee does so under a contract with the landholder. Any terms and conditions which either party wishes to enforce against the other are therefore be subject to the laws of contract. Where a car parks on land where parking is not invited, the laws relating to trespass may apply.

A parking contract must set out the terms that apply, including the fees payable. It must also clearly set out the charges that apply if the terms of the contract are broken – for example, by parking for longer than the time paid for.

Charges for breaking a parking contract must be reasonable and a genuine pre-estimate of loss. This means charges must compensate the landholder only for the loss they are likely to suffer because the parking contract has been broken. For example, to cover the unpaid charges and the administrative costs associated with issuing the ticket to recover the charges. Charges may not be set at higher levels than necessary to recover business losses and the intention should not be to penalise the driver.

If the terms and conditions of parking contracts seek to impose charges for different types of breaches (eg for straddling two bays compared to overstaying in one bay), or for the same breaches in different car parks, consideration should be given to whether the level of loss is likely to vary accordingly.

Schedule 4 also provides for parking charges in England and Wales to be recoverable from the registered keeper where a person trespasses on private land by parking a vehicle on the land without permission. In those circumstances a landholder must be able to show he or she has suffered a loss and justify the damages they are seeking to recover for the trespass.

2. What appeals arrangements will be available and how will they work?

See “Appeals” section.

The Government has made it a condition of bringing Schedule 4 into force that an independent appeals service (IAS) must first be brought into force covering all tickets issued on private land by members of an Accredited Trade Association. The independent appeals service is called Parking on Private Land Appeals (POPLA), and begins operating on 1 October 2012. POPLA operates on the following basis:

- It is completely independent;
- It covers all tickets issued on relevant land in England and Wales by ATA members;
- It is provided free to motorists;
- Its decisions are binding on the industry (but not on drivers and registered keepers); and
- It is entirely sector funded.

In considering appeals, POPLA is able to consider whether a landholder who is a member of an appropriate ATA has behaved reasonably. This includes whether any parking charges are based on a genuine pre-estimate of loss. POPLA can also consider whether the landholder has complied with the ATA's Code of Practice, and inform the ATA of any suspected breaches so they may take appropriate action.

POPLA may also refer cases back to the landholder where it considers the landholder has failed to take reasonable account of evidence of reasonable mitigating circumstances which has been presented by the driver or registered keeper.

The requirement to fund and abide by the decisions of POPLA is written into the ATA's Code of Practice. Compliance with the Code of practice is a condition of membership, which is a necessary requirement for being able to request data from the DVLA's registered keeper records.

POPLA does not apply to tickets issued by individuals or organisations that are not members of an ATA. Tickets issued by non-ATA members who do not obtain registered keeper data from DVLA cannot use the keeper liability provisions in Schedule 4.

The POPLA website is at www.POPLA.org.uk.

3. Will landholders who are not members of an Accredited Trade Association be able to pursue registered keepers to get driver details?

They will only be able to do so if they meet all the conditions required by Schedule 4 and they are able to demonstrate reasonable cause to satisfy the DVLA that there is sufficient reason to release the registered keeper details. The DVLA considers applications from non-accredited companies or individuals to release registered keeper details individually on a case-by-case basis.

DVLA may release data on the basis of reasonable cause under the Road Vehicles (Registration and Licensing) Regulations 2002 (regulation 27). Information on DVLA's data release policy is available on the DVLA website at www.dft.gov.uk/dvla/data.aspx.

4. Can local authorities use the provisions in Schedule 4?

No. Local authorities already have powers to enforce parking, both on and off road, under the Traffic Management Act 2004 (TMA). Schedule 4 does not

apply on the public highway or to any parking places provided or controlled by local authorities. However it may apply in limited circumstances where vehicles trespass on local authority land where no parking places are provided.

5. Can a landholder request the registered keeper's details from DVLA on the basis of evidence provided by Automatic Number Plate Recognition (ANPR) cameras, Closed Circuit Television (CCTV) and other technologies?

Yes, subject to conditions. The ATA Code of Practice requires that members who receive and process vehicle or registered vehicle data must:

- be registered with the Information Commissioner as a Data Controller under the Data Protection Act 1998;
- Comply with the Data Protection Act; and
- Keep to any DVLA conditions covering the data.

Landholders that are not members of an appropriate ATA would have to demonstrate reasonable cause on a case-by-case basis in order to request DVLA data.

6. What protection does consumer protection legislation provide in relation to parking on private land?

Consumer protection legislation provides protections to consumers in a number of ways, including protections from misleading information and unfair contract terms. For example, where signs for motorists in a car park are misleading, or other misleading information is given (for example tickets which look like local authority tickets), or necessary information is not provided, there may be a breach of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). Local authority trading standards services (TSS) and the Office of Fair Trading (OFT) can take enforcement action where they consider the regulations have or may have been breached.

If any terms provided by the landholder as part of the parking contract are deemed unfair by a court they cannot be relied upon against a consumer. TSS, OFT and consumers themselves can challenge unfair terms through the courts under the Unfair Terms in Consumer Contracts Regulations 1999.

If it is unclear whether parking is offered the motorist should not park there as s/he may be trespassing.

Maximum penalties for a criminal conviction under the Consumer Protection from Unfair Trading Regulations are currently:

- a. on summary conviction (i.e. in the magistrates' court) a £5,000 fine; or
- b. on conviction on indictment (in the Crown court), to a fine or imprisonment for a term not exceeding two years or both.

7. Why should the registered keeper be held to be liable if he/she was not responsible for incurring the charge?

Schedule 4 gives the registered keeper the choice of naming the driver at the time the parking rules were broken or paying the charge him or herself. Without this provision the enforcement of parking on private land could be unmanageable as both registered keepers and drivers could avoid liability and therefore disregard any parking conditions.