

PROTECTION OF FREEDOMS BILL

Fact Sheet – Part 3: Protection of Property from Disproportionate Enforcement Action

Chapter 1: Powers of Entry

Chapter 1 of Part 3 contains provisions to restrict powers conferred on State officials to enter into domestic, commercial and others premises. It is estimated that there are some 1,200 separate powers of entry contained in both primary and secondary legislation.

Repealing etc. unnecessary or inappropriate powers of entry

This Chapter enables the responsible Minister to repeal unnecessary or inappropriate powers of entry and any associated powers (these may be powers to search and inspect the premises or to seize or take copies of documents). Schedule 2 to the Bill contains 15 powers of entry that have been identified for immediate repeal. These include section 108 of the Environment Act 1995 which enable local authorities enter domestic property in order to inspect household waste.

Adding safeguards to powers of entry

This Chapter also enables the responsible Minister to add safeguards to the operation of powers of entry (and associated powers). The clauses here set out a non exhaustive list of possible safeguards, these might include restricting the type of premises that may be entered (for example to exclude a private dwelling), or introducing a requirement that a power of entry is subject to judicial authorisation.

Rewriting powers of entry

There are a number of powers which deal with similar issues but are narrow in their focus and application. This is particularly true for powers related to agriculture which provide for powers of entry in relation to specific animals or diseases. This Chapter enables the responsible Minister to rewrite powers of entry (and associated powers) either to consolidate them, creating fewer powers, or strengthening safeguards in order to make them more proportionate, or both. Whilst the outcome of rewriting the power may vary the safeguards attached to it, the combined effect of the changes must be to add to the level of protection afforded by the safeguards (when taken together).

Duty to review existing powers of entry

This Chapter also requires each Cabinet Minister to review the powers of entry within their policy responsibilities and report to Parliament on the outcome of the review within two years of Royal Assent of the Bill. These reviews will need to consider whether any of the powers of entry (or associated powers) concerned should be repealed, rewritten or made subject to further safeguards.

Code of Practice in relation to powers of entry

Lastly, this Chapter also requires the Home Secretary to produce a statutory code of practice on the exercise of powers of entry and associated powers. Those State officials to whom the code of practice applies will be required to have regard to the code. To avoid overlapping guidance, the intention is not to apply the code to those powers of entry already covered by statutory guidance, for example police powers of entry under the Police and Criminal Evidence Act (PACE) 1984. Similar provision is made to enable the Welsh Ministers to issue a code of practice in respect of devolved powers of entry in Wales.

Chapter 2 – Ban on wheel clamping without lawful authority

A Government ban on wheel clamping, towing or blocking in without lawful authority in England and Wales is now in force (as of 1 October 2012). These provisions, in section 54 of the Protection of Freedoms Act 2012, end abuses by rogue clamping firms who have preyed on motorists by charging excessive release fees, displaying unclear signage and resorting too readily to the towing away of vehicles.

It is now an offence to clamp, tow, block in or otherwise immobilise a vehicle without lawful authority in England and Wales.

A ban on clamping has been in place in Scotland since 1992.

The Northern Ireland Minister of Justice has conducted a public consultation on the future regulation of the private security industry in Northern Ireland which asked whether clamping, towing or blocking in should be banned on private land in Northern Ireland. Until such time as Northern Ireland decides to introduce a ban, it will not apply to Northern Ireland and Security Industry Authority licensing will continue for Northern Ireland vehicle immobiliser operators.

To be guilty of the offence, the person immobilising or moving the vehicle must intend to prevent or inhibit the removal of the vehicle by its driver or owner, whether or not there is any intent to demand a fee for release of the vehicle. The maximum penalty for the offence is an unlimited fine on conviction in the crown court; or a fine of up to the statutory maximum [currently £5,000] in the Magistrates' court.

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

Lawful authority

The term “lawful authority” means where specific legislation or express powers are in force, which allow for vehicles to be legally immobilised or removed. Examples of lawful authority include where statutory powers exist such as Road Traffic Regulations which allow local authorities or the police to clamp or tow vehicles on public roads. Certificated bailiffs retain their powers to immobilise or remove vehicles. Certain statutory authorities also retain the ability to clamp and tow, such as the Driver and Vehicle Licensing Agency (DVLA) and Vehicle and Operator Services Agency (VOSA), who will continue to clamp or tow vehicles which are un-roadworthy or have not had their vehicle tax paid.

There are other organisations and public bodies which can establish 'lawful authority' through Acts of Parliament and local byelaws including airports, ports and harbours, strategic river crossings, as well as some railway stations and common land.

Clear signage outlining where parking is permitted and including the terms and conditions of parking should be displayed.

Bodies with lawful authority to clamp and tow may continue to contract out this work to private companies.

The terms and conditions of use in privately owned off-street car parks do not normally in themselves establish lawful authority. They are a contract between the car park owner and the motorist.

Independent legal advice should be sought, e.g. from a solicitor, if there is any uncertainty as to the status of land and whether lawful authority exists to control parking on that land using clamping or towing as a means of enforcement.

Alternative options for other landholders including private car park operators and private residential parking officials:

- Ticket the vehicle, including use of ANPR/CCTV cameras for ticketing purposes. Signage outlining the terms and conditions need to be clearly displayed at the car park. If the ticket is not paid you might, under certain circumstances, be able to obtain the name and address of the keeper from the DVLA. (See link below for Department for Transport (DfT) guidance on recovery of unpaid parking charges).
- Use a fixed barrier to restrict the movement of a vehicle. This is lawful where the barrier was present when the vehicle was parked, and where it was prominent enough for the driver to have been aware of it and to ensure they could reasonably have understood it is for the purpose of controlling access and/or exit from the parking area (see section on fixed barriers below).
- Carefully move the vehicle (at your own risk and expense), providing the intention is simply to regain access to the land and provided it does not cause an obstruction and you do not intend to prevent or inhibit the vehicle's driver or owner from removing it. If in moving the vehicle there is any damage caused to the vehicle, the person who moved the vehicle may be liable for damages (i.e. the landholder or the parking enforcement company employed to move the vehicle).
- Enter into an agreement with the local authority for them to have a controlling interest in the land and enforce parking under the Road Traffic Regulation Act 1984 (www.legislation.gov.uk/ukpga/1984/27/contents), or the Traffic Management Act 2004 (www.legislation.gov.uk/ukpga/2004/18/contents).
- Take civil action in a court of law if you can identify the registered keeper.
- Report the matter to the police if you believe a vehicle has been parked dangerously or has caused an obstruction.

Alternative options for individuals and small businesses:

- Leave a note on the vehicle asking the person not to do it again or, if you can identify the owner, give warning that civil action in a court of law may be taken.

- Contract a parking control company to manage parking on your land.
- Use a barrier to prevent access and keep it shut and locked. This is lawful where the barrier was present when the vehicle was parked, and where it was prominent enough for the driver to have been aware of it and to ensure they could reasonably have understood it is for the purpose of controlling access and/or exit from the parking area (see section on fixed barriers below).
- Report the matter to the police if you believe a vehicle has been parked dangerously or has caused an obstruction for example blocking a building's fire exit (see section below on extension of police powers).

Guidance for Motorists

- Motorists should always check the terms for parking on land before attempting to park, even for a brief period.
- Where there is no prominent sign setting out the terms and conditions for parking, it is likely that there is no protection and you should not park there as you are probably trespassing.
- If the landholder has lawful authority to clamp or tow and there is clear signage outlining where parking is permitted, including the terms and conditions, then the penalties displayed (including clamping and towing) will apply.
- If there is a prominent sign setting out the terms and conditions of parking, the motorist is protected by existing consumer protection legislation. For example, where signs in a car park are misleading, there may be a breach of the Consumer Protection Regulations. Local authority trading standards services and the Office of Fair Trading can take enforcement action.
- If you are clamped illegally i.e. the landholder does not have lawful authority to clamp, this is now a criminal offence and a matter for the police.

Fixed Barriers

The exemption for barriers in section 54(3) of the 2012 Act does not mean that clamping and towing will remain lawful if a barrier is fitted. Rather, it means that, as now, the landholder will be able to use a barrier to restrict the movement of a vehicle if the barrier was present when the vehicle was parked, and where it was clear or prominent enough for the driver to have been aware of it.

Section 54(3) is also clear that the exemption for fixed barriers only applies where the driver expressly or impliedly consents to the movement of his vehicle being restricted by a fixed barrier, and that the barrier was present when the vehicle was parked. Therefore the barrier would either have to be visible and so would have to have been seen by the driver, or signage outlining the terms and conditions would need to be clearly displayed, otherwise the driver would not have given their express or implied consent. This is because a person cannot impliedly consent to something that he or she is totally unaware of. Implied consent would also include situations where the driver ought to have been aware of a sign or barrier because it was clear and prominent, even if they did not in fact see it.

Extension of police powers

Section 55 gave the Secretary of State the power to extend existing police powers contained in section 99 of the Road Traffic Regulation Act 1984, to remove vehicles from land in the same way as they can do on public roads. This also came into force on 1 October 2012.

The extension of police powers does not constitute a duty on the police to remove vehicles. It is intended that this power will only be used where the police consider a vehicle to be parked dangerously or obstructively. It is expected that police forces will respond in light of the circumstances of the incident and available resources.

The police are not expected to take on the role of parking enforcers for private land.

Recovery of unpaid parking charges

Section 56 and schedule 4 of the Protection of Freedoms Act 2012 contain provisions which allow the landholder to hold a vehicle keeper liable for unpaid parking charges if they refuse or are unable to name the driver at the time the charges were incurred.

Further information on the arrangements for the recovery of unpaid parking charges, can be found on the DfT website by following the link below:

<http://assets.dft.gov.uk/publications/guidance-unpaid-parking-charges/guidance-unpaid-parking-charges.pdf>

Home Office and Department of Transport