

Title: Proposal to introduce keeper liability for parking charges on private land Lead department or agency: DfT Other departments or agencies: Home Office	Impact Assessment (IA)
	IA No: DfT00079
	Date: 16/08/2011
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Currently, only a vehicle's driver is responsible for parking charges incurred on private land. This can make it impossible to enforce the charges if the registered keeper denies responsibility and will not provide the details of the driver. The problem is likely to increase when wheel clamping without lawful authority is banned.

Intervention is required to provide an effective enforcement regime, which in turn will facilitate effective parking controls for landowners and limit the negative economic impacts on business.

What are the policy objectives and the intended effects?

To help landowners control parking restrictions on their property and to ensure that the ban on wheel clamping without lawful authority will not have a disproportionate and unintended effect on landowners' ability to fairly enforce their rights. The intended effects of the introduction of keeper liability are that vehicle keepers will be reasonably held responsible for the use of their vehicle and there will be an improvement in the rate of compliance when payment requests are issued. The vehicle keeper will not be liable if the vehicle was stolen at the material time.

This assessment is incremental to the Home Office impact assessment on the Reform of Vehicle Immobilisation.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The following options were considered: Do nothing (base case).

- (1) Keeper Liability for parking charges incurred regardless of whether s/he was the driver at the material time as long the keeper has the option to name the driver in charge of the vehicle at the relevant time.
- (2) Make it a criminal offence for the keeper to refuse to name the driver in charge of the vehicle.

It is the Department's view that option (1) is the most appropriate option to achieve the stated aims and objectives. Option 2 was discarded because criminal sanctions were deemed to be a disproportionate sanction to a parking charge on private property, which is essentially a civil dispute between two private parties. Therefore, no summary and analysis page has been produced.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 1/2016

What is the basis for this review? PIR. **If applicable, set sunset clause date:** Month/Year

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Yes

SELECT SIGNATORY Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:



Date: 5 October 2011

Summary: Analysis and Evidence

Policy Option 1

Description:

Introduction of keeper liability for parking charges on private land

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: -£1.3m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NA	1	NA	NA
High	NA		NA	NA
Best Estimate	£0.8m		£0.6m	£5.4m

Description and scale of key monetised costs by 'main affected groups'

We do not believe that this change would increase costs to government. Parking companies would have a one-off cost to amend signs/paperwork and to set up an independent appeals service. There would also be annual costs thereafter to fund the independent appeals service.

Other key non-monetised costs by 'main affected groups'

A reduction in the number of complaints/appeals where the defence is that the keeper of the vehicle was not the driver at the time.
An increase in the number of tickets being paid. This has not been costed as the rate of increase is unknown.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NA	1	NA	NA
High	NA		NA	NA
Best Estimate	NA		£0.5m	£4.0m

Description and scale of key monetised benefits by 'main affected groups'

Reductions in administrative burdens on DVLA due to fewer claims being processed from the issue of parking charges (costs to DVLA are recovered via the fee charged for providing vehicle keeper information).

Other key non-monetised benefits by 'main affected groups'

There will be consistency between the enforcement regimes on the public road and private land. Motorists may have a clearer understanding of their responsibilities.
Enables landowners to effectively enforce parking charges.
A reduction in the number of cases taken to court, due to the introduction of an independent appeals service, which in turn would benefit the Criminal Justice System.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Assumptions: That vehicle immobilisation on private land will be banned. Clamping companies will adopt a ticketing regime and become members of the British Parking Association (BPA). Irresponsible companies are unlikely to meet the terms and conditions of BPA membership but may continue to issue tickets that are not enforceable. Keeper liability will increase the number parking charges being paid. There would be a 3% year on year reduction in the number of parking charges paid if keeper liability is not introduced. After five years, the rate of non-payment will not increase any further.

Sensitivities: Making keepers liable for the actions of what might be that of a third party (albeit one with permission and probably insured to use the vehicle) may be considered unfair and generate complaints.

Direct impact on business (Equivalent Annual) (£m):			In scope of OIOO?	Measure qualifies as
Costs: £0.086m	Benefits: NQ	Net: NQ but +	Yes	IN zero net costs

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England and Wales				
From what date will the policy be implemented?	2012				
Which organisation(s) will enforce the policy?	Parking Industry/Courts jointly				
What is the annual change in enforcement cost (£m)?	Negligible				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: NA		Non-traded: NA		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits:		
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	Yes	15
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	Yes	15
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	Yes	15
Justice system Justice Impact Test guidance	Yes	15
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	Informal consultation with the BPA
2	Home Office impact assessment on Reform of Vehicle Immobilisation
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	£0.8m	NA								
Annual recurring cost		£0.6m								
Total annual costs	£0.8m	£0.6	£0.6m							
Transition benefits	NA									
Annual recurring benefits	NA	£0.2m	£0.3m	£0.4m	£0.6m	£0.7m	£0.7m	£0.7m	£0.7m	£0.7m
Total annual benefits	NA	£0.2m	£0.3m	£0.4m	£0.6m	£0.7m	£0.7m	£0.7m	£0.7m	£0.7m

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Problem under consideration

Background

The Protection of Freedoms Bill's focus is on restoring freedoms and civil liberties, and reducing the burden of Government intrusion into the lives of individuals. Amongst other things, the Bill contains provisions to protect people from disproportionate enforcement action and in that context makes it an offence to immobilise, move or restrict the movement of a vehicle without lawful authority.

One of the commitments in the Coalition Manifesto is to ban rogue wheel clamping. After considering how best to put this in place, the Government has decided that it will ban all vehicle immobilisation and removal done without lawful authority (lawful authority is for example, by the police, local authorities and various government agencies). This ban means that the ways in which parking can be managed by anyone without lawful authority will be limited to barrier entry/exit and to the issuing of "tickets" to vehicles that have broken the terms and conditions of using the land. Barriers are feasible in only a limited range of circumstances and so this provision is required to enable parking to be effectively managed in the light of the ban on clamping.

This policy measure is required to help landowners enforce the terms and conditions of using land for parking following the ban on immobilisation and removal of vehicles without authority. It is also needed to help reduce the number of penalty charges not being paid, as vehicle keepers becoming increasingly aware that outside of the local authority framework it is the driver who is responsible for parking related charges. The parking industry believes that is resulting in 3% fewer penalty charges being paid each year.

The Government plans to implement this measure shortly after the Protection of Freedoms Bill receives Royal Assent in 2012.

Businesses need to control parking on their property to ensure that customers have reasonable access. There are four main ways for landowners to enforce parking terms and conditions:–

- entry/exit barriers;
- placing a "ticket" requesting payment on the vehicle when the terms and conditions are broken;
- sending a "ticket" to the registered keeper (i.e. parking charge identified using ANPR (Automatic Number Plate Readers) or CCTV (Closed Circuit Television)); and
- clamping and/or removing the vehicle.

Many landowners use a combination of methods. Whilst there are some who use clamping/removal as a first rather than an ultimate deterrent, and whose activities are what might properly be described as "rogue", the total ban on clamping and towing without lawful authority means that owners whose land is managed reasonably and fairly will require an effective deterrent against vehicles whose drivers evade the charges that everyone else pays.

Currently, under contract law it is only the vehicle's driver who is responsible for parking charges incurred on private land. So even if a landowner or a parking company contacts the registered keeper, that person might refuse to pay or to provide, or not know, the name of the driver.

The British Parking Association (BPA) has reported that about 31% of parking charges remain unpaid after the keeper has been pursued. In many of these cases the registered keeper claims not to have been the driver and will not, or cannot, give the name of that person. The BPA suggests that this problem is becoming more widespread as motorists' lobbies become increasingly aware of the tactic, and highlight it as a potential evasion of responsibility.

Many clampers are likely to turn instead to a 'ticketing' regime. This involves either placing a ticket on a vehicle at the time that the terms and conditions were broken and sending a follow-up letter if the ticket remains unpaid, or by issuing a ticket where the breach of terms and conditions was identified using CCTV/ANPR.

DVLA is required by law to provide the registered keeper's name and address to parking enforcement companies that can demonstrate 'reasonable cause' for their enquiry. As part of the process of verifying 'reasonable cause', enforcement companies are required to be members of an Accredited Trade Association (ATA). The only current ATA for the parking industry is the BPA.

BPA members must follow a Code of Practice, which includes a requirement for prominent signs at car parks that landowners consider sufficient to demonstrate that when parking a motorist has agreed to enter into a contract on the basis of the stated terms and conditions. These contracts have been upheld by the courts when they are shown to have been reasonable. The factors considered by the court will include the prominence and clarity of the signs and the amount of damages being claimed – motorists parking on such land are protected by consumer protection legislation. There is no consumer protection for a motorist who parks their vehicle on land where there are no signs indicating that parking is permitted.

The BPA has lobbied on behalf of the parking industry for a change in the law to make the current registered keeper automatically liable for any parking charge made on private land – in the same way that the keeper is responsible for parking offences and contraventions on public roads and public car parks.

Groups Affected

Landowners will be able to enforce fairly and effectively against the registered keeper of a vehicle. Landowners should also see an increase in their business as more drivers park responsibly and space is made available for legitimate customers.

Disabled drivers will benefit from a more effective restriction on people parking inappropriately in allocated spaces.

Vehicle keepers will be reasonably held responsible for the consequences arising from the use of his or her vehicle.

Vehicle keepers will not be responsible if the vehicle was stolen at the material time. They would have all the existing defences in the law of contract and consumer protection would remain available so that the keeper would not have to pay if the driver would not have to pay.

Rationale for intervention

The rationale for intervention is giving landowners the right to safeguard their property following the introduction of the ban on clamping without lawful authority. This would reduce the loss to their business and to balance the rights of the motorist and landowners. The aim is to reduce levels of unpaid charges when a parking ticket has been issued.

Scale of the Problem

The BPA has conducted a survey of its members and the analysis suggests that around 1.8 million parking charges are issued per year of which 31% go unpaid. This was broken down as:

0.6 million parking charges issued via ANPR cameras	–	60% paid, 40% not paid.
1.2 million parking charges issued via a ticket	–	74% paid, 26% not paid.

The number of tickets not being paid is likely to rise as people become increasingly aware that they can simply refuse to identify the driver. This will hinder the ability of landowners to control unwanted and unauthorised parking on their property and could result in a number of small businesses not being able to continue trading.

The BPA has indicated that over the last year the number of individuals that pay the parking charge is decreasing by about 3% because of increased awareness. Intervention is necessary at this stage to address this trend and to allow landowners to continue to effectively enforce parking without the need for clamps.

In addition, the BPA believe that 2-5% of tickets issued end up in court. The introduction of the independent appeals service would reduce this.

Policy objective

The policy objective is to ensure that landowners and parking control companies are able to effectively enforce parking charges against those who park on their property in a way that is fair and proportionate for the motorist.

Success would constitute an improvement in payment rates by those parking without authorisation or in contravention of the terms and conditions displayed.

Description of options considered (including do nothing)

Do nothing

Landowners and parking companies would continue to be hampered in their efforts to enforce effectively. The ban on wheel clamping could result in the issue of 500,000 extra tickets (Home Office estimate on the number of extra tickets issued following the wheel clamping ban – Impact Assessment on Wheel Clamping Reform).

Option 1 – Introduce Keeper Liability

This is the only option for which we have provided a fuller summary of the likely costs and benefits.

The proposal is:

- To make the registered keeper of a vehicle automatically liable for the consequences of parking that vehicle on private land, unless he/she provides details of a person actually responsible for that parking transgression.
- All the existing defences in the law of both contract and consumer protection would remain available, so the keeper would not have to pay the charge if the driver would not have had to.
- There will be arrangements for registered keepers (and others) to be able to challenge a ticket.
- The registered keeper will not be liable if the vehicle was stolen at the material time.
- The car park operator / landowner cannot automatically succeed if he pursues the parking charge in court, merely because the keeper does not know what the circumstances were at the time and so is unable to defend the claim adequately. The car park operator / landowner will not merely have to assert the contract; he will also have to satisfy the court with evidence that the various factors required to make up a valid and enforceable contract for the amount sought existed at the time. For instance, that the signs were adequate and visible, and that they created the contractual terms asserted.

Option 2 – Make it an offence for the registered keeper not to provide information as to the identity of the driver at the time of the parking contravention

This option would not allow the vehicle keeper to say they did not know who was driving the vehicle at the time that the parking charge was incurred. This is the system currently in place for enforcement of speeding offences etc. captured on camera, and it is a criminal offence for the keeper of a vehicle not to name the person responsible for the offence. If they do not name the responsible person, liability also transfers to the keeper. This would assist the parking industry to enforce parking charges for breach of contract for parking, where the keeper refuses to name the driver.

The creation of such an offence would be quite distinct from similar provisions such as those for the enforcement of speeding fines. Those provisions are built upon underlying criminal offences while for parking on private land the contravention in question would simply be a breach of contract.

This would also prove controversial and would be a disproportionate sanction to a parking charge on private property, which is essentially a civil dispute between two private parties. There would also be the question of enforcing such offences - the police would be unlikely to regard enforcement as a priority and it would impose an unwelcome burden on the courts.

Furthermore, it was not clear who should take responsibility for its enforcement. It would not fall within the natural remit of any of the Department of Transport's agencies and it was highly unlikely that the police would be able to divert their resources for what is an essentially private purpose. To impose the burden on local authorities would seem inappropriate when they would not stand to benefit in any way from the underlying activity.

The civil courts currently deal with any disputes with regard to parking on private land would not be able to enforce a criminal offence. It was a real possibility that the Ministry of Justice, through its new civil sanctions gateway, would block the creation of a new offence.

It was not clear what this would add to a system of keeper liability and that it does not add much in terms of effective enforcement.

For these reasons the Government does not consider this to be an appropriate area for the criminal law and as such did not pursue the option any further than discussions between government departments. This option was rejected based on the arguments of criminal versus civil law considerations and not any costs/benefits analysis. Therefore, no analysis of costs were conducted therefore a summary and evidence page has not been completed.

Non-regulatory measures

Further publicity, information or guidance to address the level of unpaid charges is considered unlikely to be effective. Motorists exploiting the current legislative position to their advantage are unlikely to respond differently on a voluntary basis. The costs to business would be similar to those for the 'do nothing' scenario.

Consultation

The Department for Transport has consulted informally with the British Parking Association (BPA). The BPA is the largest professional association in Europe representing organisations in the parking and traffic management industry. These organisations are many and varied, and operate in a variety of different ways. They include manufacturers, car park operators, local authorities, health authorities, airports, railway companies, shopping centres and theme parks. The BPA currently has over 700 corporate members (of which 148 are members of an ATA and so authorised to obtain vehicle keeper information from DVLA), split about equally between the public and private sectors. The BPA has asked for the same parking enforcement regime as that operated by local authorities on public roads - in particular, the introduction of keeper liability for parking charges on private land.

Dialogue with the BPA has highlighted the following issues.

The BPA has questioned the need to delay the introduction of keeper liability until an independent complaints body is operating nationally.

This is reasonable, and necessary to achieve parity between the local authority and private enforcement regimes. When a motorist receives a local authority penalty charge notice they can appeal to an independent parking adjudicator. Although a motorist can challenge a private parking charge in the courts or ask Trading Standards to consider whether the claim was fair, this can be daunting and people may often feel that they are obliged to pay.

As a result, the BPA is establishing an independent arbitration mechanism. Keeper liability will not be introduced until a sustainable complaints body is established throughout the country.

Other than making changes to their paperwork and processes, the BPA considers that keeper liability will have a positive impact on 'ticketing' enforcers. Benefits will include:

- a reduction in the number of complaints/appeals where the defence is that the keeper of the vehicle was not the driver at the time;
- a reduction in the number of cases taken to court, which in turn would benefit the Ministry of Justice;

Both these scenarios are expensive and time consuming. Businesses will benefit from better compliance and an increased proportion of tickets paid when parking transgressions do take place, instead of incurring costs on debt recovery.

The BPA considers that keeper liability will make people think more carefully before parking in an unauthorised space, as it will be more difficult to escape the consequences of unauthorised parking. The consumer websites, advising people how they might evade their responsibilities will no longer be correct. The only remaining issue of concern to the BPA after the ban on clamping without lawful authority relate to the difficulty of enforcing against unregistered or foreign vehicles.

Costs and Benefits (including administrative burden)

Option 1 – [Keeper Liability]

Benefits

If keeper liability is to be introduced it will:

- ***aid companies in being able to enforce parking on their land, which is their legal right.*** At present keepers are able to claim that they were not driving the vehicle at the time of the alleged contraventions and it is very difficult for the parking company to prove otherwise.
- ***create consistency in the rules for on and off street parking throughout the UK.*** It would be fairer for motorists as they would have a better understanding of their responsibilities and liability as the keeper. Where parking on public land is concerned the vehicle keeper is already liable and this seems to be successful.
- ***be a positive move against those who park without authorisation.*** This change could reduce the number of inconsiderate motorists.
- ***companies that currently clamp may move to ticketing rather than go out of business.*** Greater confidence in ability to collect charges due.

The introduction of keeper liability will contribute to the achievement of this aim by creating some consistency between parking on-street and in local authority run car parks and in car parks on private land. It should also improve motorists' awareness of their obligations as the registered keeper. Keeper liability for parking offences on the public road is accepted as fair by the motoring public. It should also improve compliance when it is necessary to issue a parking charge.

The overall effect of keeper liability will be to provide greater consistency between the enforcement of parking restrictions on private and public land. This consistency will give motorists a clearer understanding of their obligations, thereby helping landlords to enforce the rights. Whilst there will be a minimal impact on current levels of administrative burden, there will be significant, but equitable, economic redistribution from businesses benefiting from the current high levels of non-compliance towards compliant motorists and the businesses where those motorists will henceforth be able to park.

Policy Costs

The BPA has said that of the 1.8 million parking charges currently issued each year around 2-5% (36,000 to 90,000) of cases are taken to civil court per year. Court costs are not expected to increase

and have not been forecast because keeper liability will not be brought into force until an independent appeals service is operating throughout the country.

The vehicle keeper can apply for adjudication where a request to the parking company to cancel enforcement action has resulted in that company rejecting that request. However, should the vehicle keeper not agree with the decision of the appeals body, they can take the matter for further legal remedy through the civil court. The judge may take the adjudicators decision into account when reviewing the case.

The adjudicator will act fairly between the parking company and the vehicle keeper and will carry out the adjudication by reference to the ATA code of practice, relevant contract law and consumer protection legislation.

Therefore it is DfT, MoJ and BPA view that this independent body will reduce the number of cases taken to the civil court.

The Ministry of Justice agree that the introduction of keeper liability will not have any adverse affect and therefore no increased costs.

There will also be a cost for companies to amend forms and standard letters, staff retraining and updating signage. For the purpose of this impact assessment it has been assumed that each of the 148 members of the BPA ATA will incur a one-off cost of around £5,000. This figure has been taken from the Impact Assessment produced for a consultation exercise on the proposal to require all car parking companies to be a member of an Accredited Trade Association produced in July 2009.

This is based on £2,000 for one-off costs associated with the replacement of stationery and car park signs. (The £2,000 cost was a DVLA estimate used because of the broad range of potential methods that could be used to update stationery and signs. E.g. some businesses may decide to replace metal signs whereas some may simply add a sticker to provide/replace relevant information. Some businesses may have to destroy and reproduce updated stationery, whereas other company's stationery will be printed only when needed, which means simply updating an electronic version of a document. This assumed estimate was tested during the 2009 consultation exercise during which consultees were asked to comment on the reasonableness of the analysis of the costs/benefits. Out of the 14 responses received, just one suggested that the costs were lower than those proposed in the IA.)

Each company will also incur one-off training costs estimated to on the basis of 6 hours for 25 staff as follows: 150 hours at £18.40 (hourly rate) = £2,760.

The BPA has advised that if each company decided to use ticketing and keeper liability to pursue parking charges then they will need to undertake these actions.

Therefore, companies will incur a total one-off expenditure of:

$£5,000 \times 148 \text{ (members)} = £740k.$

Any reduction in parking charges issued as a result of the policy may lead to a reduction in the revenues that enforcement companies usually receive under current legislation. Whilst this represents a cost to business, the overall cost impact of the policy is neutral, as this would correspond to an equal benefit for car keepers who would otherwise park on private land and be penalised in the absence of this intervention.

Administrative Burdens

An independent appeals process must be in place nationally for off road parking charges or keeper liability will not be introduced. This will mirror the situation for on road parking offences and contraventions where an appeals process is in place. The principles and processes of an independent complaints body for off road parking charges have been trialled successfully via the Approved Operator Scheme (AOS) Independent Appeals Service.

The BPA has told us that they have evaluated a range of potential business models for an Independent Appeals Service based on the number of tickets currently issued, plus the 500k extra tickets expected to be issued following the ban on vehicle immobilisation without authority (Home Office Impact Assessment

on Reform of Vehicle Immobilisation). The BPA believes that the initial set up costs for the preferred service would be £0.1m. This covers the costs associated with the design of the service, legal advice, website design, software configuration, etc.

The BPA estimates that fixed running costs for the service are expected to be around £0.15m. This covers managing and marketing/operator liaison, bookkeeping and administration, premises, travel, utilities, internet, website hosting, software licences, professional fees (audit, legal etc).

The BPA believes that adjudication costs could be up to £0.417m. This estimate is based on 1% of the tickets issued each year resulting in an appeal. It is believed that 30% of these would be heard by an adjudicator and 70% by an assessor. The cost can be broken down as follows:

30% of 23k = 6,900 appeals for an adjudicator @ £30 per appeal = £207k

70% of 23k = 16,100 appeals for assessors @ 10 per working day = 6 assessors @ £35k each = £210k

TOTAL COSTS

Companies will incur a total one-off expenditure of £0.8m (to amend forms and standard letters, staff retraining, updating signage and the set up costs for an Independent Appeals Service).

Annually recurring costs of £0.6m (to fund an independent appeals process).

(Any cost to business will be more than offset through the increase in the number of tickets being paid. This however cannot be presented as a direct benefit to business as fines/penalties cannot be considered in economic appraisals.)

Policy Benefits

It is assumed that the introduction of keeper liability will provide a direct benefit for business, relating primarily to the enforcement of parking charges. This in turn will lead to a reduction in the cost of ensuring that car parks can cater for customers. There may be a direct benefit for those customers being able to park near the businesses of their choice.

However, we cannot make any meaningful estimate of these benefits because we are unable to establish how much someone who parks on the landlords premises would actually spend in their establishment. Someone would spend more money in a supermarket, for example, than a small business in the middle of town e.g. coffee shop. We believe that businesses will benefit from customers being able to park on their land and therefore we have presented these as non-monetised benefits.

This said, there are a number of likely monetary re-distributions between various sectors of the economy that might give rise to a fairer parking environment in which businesses will be able to operate. These transfers are between individual business, and from 'offending' motorists to landlords and the enforcement companies acting on their behalf. These are demonstrated in the following distributional analysis.

Distributional analysis

Assumptions
➤ 2.3m parking charges to be issued each year
➤ 74% pay the parking charge when a ticket is placed on the vehicle
➤ 60% pay when a ticket is issued via ANPR/CCTV
➤ 26% don't pay the parking charge when a ticket is placed on the vehicle
➤ 40% don't pay when a ticket is issued via ANPR/CCTV

- 3% year on year reduction in the number of parking charges paid without keeper liability
- 5 year cap on the 3% year on year reduction
- 82% of parking offences are paid under local authority control
- £75 the average cost of a parking charge

Analysis by the BPA suggests that 1.8 million parking charges are issued annually. The Home Office estimate that the number of extra tickets placed on vehicles following the ban on clamping without lawful authority will increase by 500,000. This assessment is based, therefore, on an assumption that 2.3m parking charges will be issued in 2012 (1.7m tickets placed on vehicles and 0.6m issued via ANPR/CCTV).

The BPA has told us that 69% of parking charges are paid and 31% are not paid.

Data provided in the Civil Parking Enforcement Statistics release of January 2011 shows that enforcement of parking regulations by local authorities in England is resulting in 82% of parking charge notices are paid.

If keeper liability is not introduced and the rate of non-payment continued as expected then we would see a 3% year on year decrease in the number of parking charges that are paid. Therefore, the benefits of the policy will increase year on year by 3% in year 1, 6% in year 2, 9% in year 3, 12% in year 4 and so on as this trend is reversed. The 3% year on year decrease in payments cannot continue forever. Therefore, for the purpose of this assessment a conservative five year cap has been assumed.

The average ticket/postal charge fee is £75. This is based on recommended maximum in the BPA's Code of Practice for their Approved Operator Scheme, allowing for 50% discount for prompt payment.

In year 1 the benefit will be around £5.2m.

In year 2 the benefit will be around £10.4m.

In year 3 the benefit will be around £15.5m.

In year 4 the benefit will be around £20.7m.

The money paid by motorists (on average about £75 per case) has not been presented as a direct benefit/cost for the purposes of this assessment and therefore is not presented on the summary sheet because fines/penalties are not considered in economic appraisals. It is presented only as a transfer between the motoring public to the parking enforcement industry.

If fewer people park inconsiderately because of keeper liability, it will mean that more parking spaces will be available for legitimate customers. This will provide an economic benefit for those businesses, although it will also mean that people will no longer have to move to another car park – and spend their money elsewhere. To a great extent, therefore, there is no additional benefit to the overall UK economy, just a reduction in the current transfer between different businesses that might be considered unfair.

Administrative Savings

Keeper liability will stop motorists evading their reasonable responsibility for the use of their vehicle and enable private landowners to have a means to effectively enforce parking without the need for clamps. It will also increase awareness that responsibility for parking a vehicle ultimately rests with the registered keeper, which may also encourage increased effectiveness of enforcement through parking charges, and deter the commission of parking charges in the first place.

There is the potential for an administrative saving if effective enforcement via keeper liability succeeds in reversing the 3% year on year increase in the number of parking charges that are not paid. This is because each of those parking charges could potentially result in a request for keeper data from DVLA.

We expect 2.3m tickets to be issued following the introduction of the wheelclamping ban; 1.7m tickets will be placed on vehicles and 0.6m issued via ANPR/CCTV.

Under the current enforcement regime 0.7m tickets will be paid within 28-days (i.e. 40% of the 1.7m tickets placed on vehicles) and therefore would not require the keeper details from DVLA. The remaining 1.6m tickets issued (i.e. 60% of the 1.7m tickets placed on vehicles and 100% of the 0.6m tickets issued via ANPR/CCTV) would require keeper details from DVLA.

It costs DVLA £2.50 for each request for vehicle keeper information. This cost is recovered from the fee DVLA charges for providing the information. Current costs for obtaining keeper information would be 1.6m (tickets) x £2.50 = £4.0m pa. This is the figure that will be used to estimate administrative savings.

Without keeper liability, it is expected that those paying the parking charge would reduce by 3% each year. This could increase the number of enquiries DVLA receives by the same amount.

In year 1 the number of tickets issued would remain at 2.3m. 0.629m tickets will be paid within 28-days (i.e. 37% of the 1.7m tickets placed on vehicles) and therefore would not require the keeper details from DVLA. The remaining 1.671m tickets issued (i.e. 63% of the 1.7m tickets placed on vehicles and 100% of the 0.6m tickets issued via ANPR/CCTV) would require keeper details from DVLA.

It costs £2.50 for each request for vehicle keeper information. The costs in year 1 for obtaining keeper information would be 1.671m (tickets) x £2.50 = £4.1775m pa. This represents an increase of £0.2m.

In year 3 the number of tickets issued would remain at 2.3m. 0.527m tickets will be paid within 28-days (i.e. 31% of the 1.7m tickets placed on vehicles) and therefore would not require the keeper details from DVLA. The remaining 1.773m tickets issued (i.e. 69% of the 1.7m tickets placed on vehicles and 100% of the 0.6m tickets issued via ANPR/CCTV) would require keeper details from DVLA.

It costs £2.50 for each request for vehicle keeper information. The costs in year 3 for obtaining keeper information would be 1.773m (tickets) x £2.50 = £4.4m pa. This represents an increase of £0.4m.

In year 5 the number of tickets issued would remain at 2.3m. 0.425m tickets will be paid within 28-days (i.e. 25% of the 1.7m tickets placed on vehicles) and therefore would not require the keeper details from DVLA. The remaining 1.875m tickets issued (i.e. 75% of the 1.7m tickets placed on vehicles and 100% of the 0.6m tickets issued via ANPR/CCTV) would require keeper details from DVLA.

It costs £2.50 for each request for vehicle keeper information. The costs in year 5 for obtaining keeper information would be 1.875m (tickets) x £2.50 = £4.6875m pa. This represents an increase of £0.7m.

TOTAL BENEFITS

The only monetised benefits relate to the reduced administrative burden on DVLA.

The parking industry will see an increase in the number of parking charges collected of between £5.2m and £15.5m in the first 3 years of keeper liability. However, this has not been presented as a direct benefit for the purposes of this assessment and therefore is not presented on the summary sheet because fines/penalties are not considered in economic appraisals. It is presented only as a transfer between the motoring public to the parking enforcement industry.

The parking industry would also benefit from an increase in the number of charges being paid without having to obtain keeper information from DVLA. This has not been estimated as the rate of increased compliance can not be assessed.

Risks and assumptions

Courts

There may be a slight increase in cases taken to court to begin with as the public may not be aware of keeper liability. However, the BPA suggest that the number of cases taken to court should decrease as motorists become aware that they will be responsible for paying the parking charge, where ticketing is concerned and following the introduction of an independent complaints body.

Impact: Low
Likelihood: Low

Exemptions

There would be issues with the liability resting with the keeper in cases where vehicles have been stolen, exported or where DVLA has not been notified about a change of keeper. Some of these will be covered in the legislation and there will be a need for clear guidance in the Code of Practice on what should happen in these circumstances.

Impact: Low
Likelihood: Low

Enforcement

Enforcement will be undertaken by the parking operators. The BPA will establish a permanent independent complaints body to which motorists might appeal. This is currently at the pilot stage and the BPA plans for it to be established across the country during 2012. The keeper liability provisions will not come into force until this body is established.

Summary and preferred option with description of implementation plan

In summary, it has been decided that the preferred option is to introduce keeper liability. This will allow landowners (and their agents) to have greater control over the land they manage and to exercise their legal rights.

This analysis has not identified significant monetised benefits arising from keeper liability. However, there will be favourable outcomes as a result of a fairer parking enforcement regime and reasonable economic transfers from non-compliant motorists to business and their enforcement agent. The cost of introducing keeper liability is low.

OIOO

When wheel clamping without lawful authority is banned, landowners will need an alternative enforcement regime that is effective in controlling parking restrictions on their land and limiting any negative economic impacts on business that may result from uncontrolled parking.

The ban means that the ways in which parking can be managed by landowners without lawful authority will be limited to barrier entry/exit and to the issuing of 'tickets' to vehicles that have broken the terms and conditions of using the land. As barriers are only feasible in limited circumstances, the introduction of keeper liability will increase the private land owners ability to enforce parking charges incurred on their land as it will require the vehicle keeper to give the name and address of the driver at the time of the parking contravention or pay the parking charge him/her self. This will deliver greater compliance by enhancing the enforcement regime by removing the loophole that currently allows vehicle keepers to refuse to name the driver and avoid liability themselves.

There will be some direct costs to businesses that are not part of the enforcement action. These are the costs on parking companies regarding signage and training. As estimated above there will be a one off costs of £740k (£86,000 equivalent annual cost) for the whole industry (£5,000 one off costs per member).

Industry is strongly in favour of this change and they have lobbied for it for a number of years. We therefore estimate that the benefits of this proposal, although non monetised, will outweigh the costs; otherwise industry would not see it as a beneficial proposal.

In addition, we have analysed the required change in income needed to outweigh the cost of the proposal. If the average ticket/postal charge fee for a parking contravention on private land is £75, (based on a recommended maximum of £150 in the BPA's Code of Practice for their Approved Operator Scheme, allowing for 50% discount for prompt payment), then payment of around 67 additional tickets would need to be collected by each parking company over the appraisal period of ten years to recoup the £5,000 cost imposed by keeper liability. This does not take into account any additional costs of collecting payment for these additional tickets, but these are assumed to be a relatively small proportion of the income. We cannot estimate how many extra tickets will be issued a year, but it is expected that the average will be well above 7 tickets per company per year.

It is, therefore, estimated that this measure is an In with Zero net costs to business under the OIOO rule.

Implementation

The Government plans to implement these changes as soon as the independent complaints body is operating across the country. We anticipate that this will be in 2012.

Initial Screening Tests

Statutory Equality Duties Impact Test

Race Equality

There will be no impact on race equality

Disability Equality

There are no disability related issues in these proposals. A number of disabled people will be entitled to a Blue Badge which enables them to park in certain circumstances where other motorists might not be able to park, and to park in spaces designated for the holders of Blue Badges only. The provisions will enable landowners to take enforcement action against the keeper of a vehicle in certain circumstances that include – for instance - using a bay reserved for blue badge holders without displaying a valid Blue Badge. The proposals will, therefore, indirectly benefit some disabled people by helping to safeguard the parking facilities designated for Blue Badge holders.

Gender Equality

There will be no impact on gender equality.

Small Firms Impact Test

We have consulted the BPA to establish the impact on the parking industry. The main findings were they:

- welcome the principle of introducing keeper liability but would want this to form part of the wider regulation to more effectively control the enforcement of parking on private property.
- indicate there will be some increased costs to the companies that already issue a ticket as it is likely that the content of the ticket and signage will need to be amended to reflect a change in legislation. Staff would also need to be trained to ensure they are aware of the change in legislation.
- comment that in overall terms keeper liability applied to all circumstances will increase compliance with conditions laid down by landowners and will assist landowners to better manage their land in the absence of the ability to clamp and remove.

If Keeper Liability did not apply to small firms, it is believed they would be hindered in their ability to deal with inappropriately parked vehicles.

Human Rights Impact Test

Please refer to the Protection of Freedoms Bill ECHR Memorandum.

Justice Impact Test

The initial screening of this test indicates there would be no adverse effects. A copy of the test can be found at annex A.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];</p> <p>The basis of the review is to evaluate the success of introducing keeper liability on private land and to verify that the policy objectives have been met.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>The objective of the review is to establish the impact that keeper liability has had in reducing the number of parking charges issued for unauthorised parking on private land.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>The review approach will be a monitoring framework. Information on the number of unpaid parking charges will be monitored in the period between implementation and PIR.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>At the time of writing, the BPA believe that 33% of parking charges go unpaid. Prior to implementation of this policy, the BPA have agreed to put monitoring measures in place to establish a more accurate figure of unpaid charges. These will form the baseline of the review.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>Success will be judged on whether the introduction of keeper liability has reduced the number of unpaid parking charges.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>Currently, there are no monitoring arrangements in place. The BPA has agreed to introduce a monitoring regime and will work with the DfT to ensure that that it will be fit for purpose.</p>
<p>Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]</p>



Before you complete this form, please read the Justice Impact Guidance. It is available at: <http://www.justice.gov.uk/guidance/justice-impact-test.htm>.

Please answer as many questions as possible on this form before you contact Ministry of Justice (MoJ). If exact figures are not yet known, please provide your best estimates.

Forward the completed questionnaire, with any Impact Assessment, to MoJ's Financial Planning, Resources and Analysis Team at: justiceimpact@justice.gsi.gov.uk.

1. Your contact details

Name	Jason Donovan
Department / office / business area	DfT/DVLA/Corporate Affairs Directorate
Telephone number	01792 786860
Email address	jason.donovan@dvla.gsi.gov.uk
By when would you like a response?	10/11/2010

2. General information

In brief, what is your proposal?

To make the vehicle keeper liable for all parking charges incurred on private land regardless of who was the driver at the time of the contravention.

What is your proposal intended to achieve, over what geographical area (e.g. England, England and Wales) and in what timescale?

<p>The provision will cover England and Wales Its objective is:</p> <ul style="list-style-type: none"> - to ensure that landowners are able to effectively enforce against unauthorised parking on their private land; - to close the current loophole whereby motorists can escape payment by refusing to name the driver of a vehicle at a point in time; - to provide consistency between the regimes for parking on-street and off-street. <p>The intended effects of the policy are to ensure that there is an effective and efficient means to enforce parking on private land once the clamping ban is implemented.</p>

What public commitments have been given and to whom?

None.

What are the options under consideration?

Three options were considered:

Option One: Introduce keeper liability for charges incurred regardless of whether the keeper was in fact the driver at the time of the parking contravention

Option Two: Make it an offence for a registered vehicle keeper not to name the driver in charge of the vehicle at the time of a parking contravention

Option Three: Do nothing

After consideration, it is our view that option one is the most appropriate option to achieve the stated aims and objectives.

How does the proposal change what happens now? Who will be affected and in what numbers?

Currently, the vehicle keeper is not liable for a parking contravention on private land unless s/he was also the driver at the relevant time. This means that often the landowner/company concerned is unable to identify the responsible party and makes it difficult to enforce charges for parking charges effectively. The industry tells us that motorists are increasingly failing to pay "tickets" because they know that they cannot be pursued. Currently, the vehicle could be clamped the next time that it parks on that land – but the ban will remove that power.

We believe that about 2.3 million* "tickets" will be issued following the ban to wheel clamping.
(* previously estimated at 3 million tickets)

3. Criminal Offences and Civil Penalties and Sanctions

Are you creating new civil sanctions, fixed penalties or civil orders with criminal sanctions or creating or amending criminal offences?

A new civil sanction.

Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed with MoJ.

Protection of Freedoms Bill.

4. Courts and/or Tribunals

Increasing Business for the Courts and Tribunals

Do you expect there to be an impact on HM Courts Service or on Tribunals Service (or both) through the creation of or an increase in applications/cases? Please provide an estimate.

No.

Would you expect fewer cases to come to HM Courts Service or Tribunals Service as a result of the proposal? Please provide an estimate of the number of cases.

Yes. Although there are no figures available, consultation with the parking industry suggest that the introduction of making the vehicle keeper liable for parking charges on private land will reduce the number of civil actions taken to court.

Appeal Rights

Does your proposal create a new right of appeal or route to judicial review? If so, how will these be handled (i.e. by the courts/tribunals)?

No.

Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with Tribunal Service?

No.

Alternative Dispute Resolution

Has the use of alternative dispute resolution (ADR) procedures (including mediation) been considered? If not, why not?

The British Parking Association and its members are currently putting in place an independent complaints body to which a motorist may go if the landowner has not abided by the terms and conditions set out on the sign at the entrance to the land. This is currently at the pilot stage and we hope that it will be available nationally next year. The keeper liability for unpaid charges will not be brought into force until this complaints body is operating throughout the country.

HMCS Enforcement

Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties?

Yes. Will require enforcement via the court service if not paid. However, that is already a requirement of the current arrangements.

Court and Tribunal Procedural Rules, Sentencing and Penalty Guidelines

Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

No.

Will the proposals require sentencing and/or penalty guidelines to be amended?

No.

Section Four – Legal Aid

Is your proposal likely to have an impact on the Legal Aid fund?

No.

If legal aid may be affected, will (i) criminal, or (ii) civil and family, or (iii) asylum legal aid be affected?

If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

Section Five – Prisons and Offender Management Services

Will the proposals result in an increase in the number of offenders being committed to custody (including on remand) or probation? If so, please provide an estimate.

No.

Will the proposals result in an increase in the length of custodial sentences? If so, please provide details.

No.

Will the proposals create a new custodial sentence? If so, please provide details.

No.

What do you expect the impact of the proposals on probation services to be?

None.

Your completed questionnaire will be considered by MoJ to establish whether the proposals will have an impact on the aspects of the justice system for which MoJ has responsibility. If there are considered to be no impacts arising from your proposals, MoJ will agree this with you and you must record this in the Impact Assessment accompanying your proposals. However, if MoJ identifies a potential impact, MoJ will contact you to discuss and agree an estimate of costs including funding arrangements for the additional costs.

If you have any queries about this form, please e-mail justiceimpact@justice.gsi.gov.uk or telephone Peter Bake on 020 3334 4343.