

August 2013

## UNAUTHORISED PARKING ON PRIVATE LAND

### Introduction

1. There are a number of bodies with statutory powers to immobilise or remove vehicles on land that is not a public place. These include principal authorities in car parks they provide or manage, the police when enforcing road traffic contraventions or otherwise removing vehicles that are illegally, obstructively or dangerously parked; the police and principal authorities when exercising their powers to remove abandoned vehicles from private land. The Driver and Vehicle Licensing Authority ('DVLA') has similar powers in respect of vehicles that have no road tax. The Department for Transport's Vehicle and Operator Services Agency has powers in respect of vehicles that are not roadworthy. The police and principal authorities have powers to remove vehicles forming part of an unauthorised traveller encampment. In addition, bailiffs have a mix of statutory and common law powers to immobilise and tow away vehicles for the purposes of enforcing debts (including those arising out of unpaid taxes and court fines).
2. The Protection of Freedoms Act 2012 ('the 2012 Act') governs the measures that individuals and other bodies in respect of enforcing parking restrictions on land in their ownership or occupation. Parish councils, and in Wales, community councils are therefore subject to the provisions of the 2012 Act.
3. Section 54(1) of the 2012 Act makes it an offence to immobilise (e.g. by wheel clamping), restrict (e.g. by blocking or obstructing) or remove (e.g. by towing away) a motor vehicle if the intention is to stop the user driving it away. A motor vehicle is defined in s. 54(6) as a mechanically propelled vehicle (e.g. a motor cycle) or a vehicle designed or adapted for towing by a mechanically propelled vehicle (e.g. a caravan or trailer).
4. The actual or implied consent of the vehicle user is not a defence (section 54(2)). By parking in an off-street car park provided by parish or community council, the driver of the motor vehicle has accepted the opportunity to park there. He may also have

given his express or implied consent to observe the advertised terms and conditions of parking (including the parking charges and the associated enforcement mechanism for those charges). However the actual or implied consent of the motor vehicle user does not confer lawful authority on the council to immobilise, restrict or remove the vehicle (section 54(3)). In other words, a council could not argue that user of the motor vehicle agreed to a wheel clamping or being blocked in, etc.

5. On conviction of an offence committed under section 54(1), a person is liable for a fine of up to £5,000 if convicted in the Magistrates' Court or an unlimited fine if convicted in the Crown Court (section 54(5)).
6. It is not an offence for a council to restrict the movement of a motor vehicle by means of a fixed barrier (section 54(3)). For example, use of a permanent barrier at the exit to a car park that rises only when the parking fee is paid is lawful
7. The 2012 Act does not prevent an occupier of land from moving a vehicle which appears to be an obstruction, abandoned or broken down on their land. However the vehicle must not be moved so as to prevent the driver using it. .
8. Schedule 4 of the 2012 Act allows an occupier of land to issue Fixed Penalty Notices for unauthorised parking on their land. There are provisions for the enforcement of these parking fines against either the driver or the registered keeper of the vehicle. The notice requirements are detailed and this power does not apply to a car park provided by a traffic authority which includes a parish council in England or a community council in Wales.

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
18	Power of Local Councils to provide parking places	Explains how local councils can make arrangements for parking in their area.
53	Protection of common land	Explains how local councils can protect common land from damage including by unauthorised parking.