

PARKING (CODE OF PRACTICE) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Parking (Code of Practice) Bill as brought from the House of Commons on 26 November 2018 (HL Bill 146).

- These Explanatory Notes have been provided by the Ministry for Housing, Communities and Local Government, with the consent of Lord Hunt of the Wirral, the Member in charge of the Bill in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Bill requires the Secretary of State to prepare a code of practice containing guidance about the operation and management of private car parks. The code must contain guidance which promotes good practice in the operation and management of private car parks and guidance about appeals against parking charges imposed in relation to the use of private car parks. The Bill gives the Secretary of State the power to provide an independent appeals service. The Bill also provides for a levy on the parking industry to cover the costs of issuing, administering and investigating whether persons have failed to act in accordance with the code. The levy will also cover the running costs of the appeals service. It is intended that the appeals service will be free at the point of use for motorists, as is standard for the industry. The organisation that provides the appeals service will be able to charge parking operators per appeal, as is also already an industry standard. Details of the levy requirements will be set out in subsequent regulations and in any established contracts.
- 2 The Bill is made up of 12 clauses. It requires that the Secretary of State consult with private car parking operators, users and any other groups the Secretary of State considers appropriate before preparing a code. A proposed code must be laid before Parliament for 40 days. If there is no resolution of the House opposing it, it can be issued and come into force 21 days later. The Secretary of State must keep the code under review and may make alterations. Any alterations to the code must be consulted upon. The Secretary of State may delegate the function to investigate compliance with the code of conduct and to provide an appeals service to a third party, public or private. The Secretary of State will retain the function of laying the final or any amended code of practice.

Policy background

- 3 The Protection of Freedoms Act 2012 made the keeper or the hirer of a vehicle liable for any unpaid parking charges associated with their vehicle. Private parking operators seek keeper details from the Driver and Vehicle Licensing Agency (DVLA) to contact keepers over parking charges that have not been paid. The DVLA require parking companies requesting keeper details for parking enforcement purposes to be members of an accredited trade association (ATA). The British Parking Association and the International Parking Community are presently the only two parking ATAs.
- 4 Both parking ATAs require their members to comply with a code of practice setting out standards for operation, management and appeals associated with management of private car parks. At present the associations each publish a code of practice for their members, with different requirements for management and operation of private car parks and appeals against parking tickets. This has created some inconsistency across the sector, as different operators are held to different standards.
- 5 This Bill seeks to create a single code of practice that is applicable to every private parking operator. By providing a single code of practice, it aims to create clarity and consistency across the industry for both parking operators and motorists. It also aims to raise the standards of the industry by incorporating best practice as standard across the industry.
- 6 Operators or ATAs who fail to meet the standards of the code of practice may lose access to DVLA data, which would prevent them from enforcing unpaid parking charges.

Legal background

- 7 The private parking sector is largely governed by contract law. When parking in a privately – owned car park, the driver contracts with the landowner to park there for a set amount of time in exchange for payment. The terms and conditions of these contracts are usually set out in signs and posters on the private land.
- 8 Section 56 of and Schedule 4 (Recovery of Unpaid Parking Charges) to the Protection of Freedoms Act 2012 (the “2012 Act” or PoFA) allow landholders to pursue “keeper liability” in relation to the recovery of unpaid parking charges on private land providing certain conditions are met. It applies only to parking on relevant land; that is land other than a highway maintainable at the public expense, a parking place which is provided or controlled by a traffic authority and any land on which the parking is subject to statutory control.
- 9 If the conditions in paragraphs 5, 6, 11 and 12 of Schedule 4 are met and the vehicle was not stolen, the creditor has the right to recover any unpaid parking charges from the keeper of the vehicle.
- 10 Made under the Vehicle Excise and Registration Act 1994, the Road Vehicles (Registration and Licensing) Regulations 2002 (S.I. 2002/2742) provide the legal mechanism by which the DVLA, as an executive agency of the Department for Transport, is able to provide vehicle keeper data to parking companies.
- 11 Regulation 27(e) provides that particulars may be made available to “any person who can show to the satisfaction of the Secretary of State that he has reasonable cause for wanting the particulars to be made available to him”. The Government’s policy is that reasonable cause should relate to a vehicle or its use, following incidents where there may be liability on the part of the driver. It is considered reasonable cause to provide keeper information to private car parking companies as landowners would find it difficult to enforce their rights under contract law without it.

Territorial extent and application

- 12 The Bill extends to England and Wales and Scotland.
- 13 Clause 12(4) sets out the territorial extent of the Bill.
- 14 There is a convention that Westminster will not normally legislate with regards to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.
- 15 The Scottish Government have indicated that in their view the purpose of the Bill relates to devolved matters and accordingly a Legislative Consent Motion was passed on 5 June 2018. Officials have been engaging with their Scottish counterparts regarding the progress of the Bill.
- 16 In relation to Wales the contents of the Bill relate to areas which are not devolved to the Welsh Government. The legislation will apply to Wales. The legislative consent procedures are not engaged.
- 17 As the Bill is a Private Members’ Bill, the English votes provisions in the House of Commons Standing Orders do not apply.
- 18 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Parking code

- 19 Clause 1 places a requirement on the Secretary of State to prepare a Code of Practice for the private parking industry containing guidance about the operation and management of private parking facilities and guidance about appeals against private parking charges imposed by or on behalf of persons providing private parking facilities.

Clause 2: Parking: code procedure

- 20 Clause 2 places a duty upon the Secretary of State to consult on the content of the code with individuals and organisations representing the interests of parking management companies (e.g. the British Parking Association and the International Parking Community), those who use, or may use, private parking facilities and anybody else he believes would be appropriate to consult.
- 21 Clause 2 also requires a draft code to be laid before both Houses of Parliament 40 days before the Secretary of State may issue it, taking effect 21 days after it has been issued. Should either House resolve not to approve it within the 40 day period, the Secretary of State must lay a new code before the House.

Clause 3: Review and revision of parking code

- 22 Clause 3 places a requirement on the Secretary of State to review the code, and permits him or her to prepare an alteration or replacement code, subject to the same requirements in Clauses 1 and 2 (with the exception that Clause 2(3)(b) does not apply to an alteration).

Clause 4: Publication of parking code

- 23 Clause 4 requires the Secretary of State to publish the code once it has been approved by both Houses, and to publish either alterations or the altered code if amendments are made and approved.

Clause 5: Effect of parking code

- 24 Clause 5 sets out that it is not a criminal offence to fail to act in accordance with the code, but that the Secretary of State, in accordance with the DVLA, must consider such a failure when deciding whether to disclose any information under regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002 (S.I. 2002/2742) or whether they should be, or should continue to be, an accredited parking association.
- 25 Clause 5 also defines an accredited parking association as an organisation that represents the interests of parking operators, and who the Secretary of State considers appropriate to share information from the register of vehicles under section 21 of the Vehicle Excise and Registration Act 1994.

Clause 6: Delegation of Functions

- 26 Clause 6, as amended, allows the Secretary of State to delegate his or her functions referred to in Clauses 1 to 4 to a person. This includes functions relating to investigating whether persons have failed to act in accordance with the parking code.
- 27 Clause 6 prohibits any person the Secretary of State had entered into agreement with to lay a code or alteration before Parliament, and notes that should the person prepare a new code or alteration, then they must consult the Secretary of State and submit it to him or her for final approval before laying it before Parliament. It allows for payments to be made by the Secretary of State for performance of delegated functions.

Clause 7: Appeals

- 28 Clause 7 provides that, if the parking code recommends that all appeals against parking charges in private car parks are dealt with by a single independent person, the Secretary of State may enter into an agreement with such a person for that person to deal with appeals against parking charges and that they may charge fees to persons providing private parking facilities.

Clause 8: Levy for recovery of administration and investigation costs

- 29 Clause 8 authorises the Secretary of State to make regulations requiring accredited parking associations to pay a levy for the cost of discharging the Secretary of State's functions, investigating whether persons have failed to act in accordance with the parking code, and for establishment and administration of the appeals service. The regulations can include provision for determining the amount of levy payable, the times at which the levy is to be paid, the person or persons it is to be paid to, the manner in which it is paid, interest charges, debt recovery and the making of repayments.
- 30 Clause 8 also allows the regulations to include provision in relation to requiring information to be provided by an accredited car parking association in order to determine the levy, the accuracy of information, other requirements regarding specified information and the consequences of non-compliance, including giving the Secretary of State the right to consider whether DVLA information should be disclosed if levy information and payments are not provided, and whether a person should be, or should continue to be, an accredited parking association.

Clause 9: Regulations

- 31 Clause 9 sets out that regulations under this Bill should be made by statutory instrument (SI) and outlines what regulations made under Clause 8(1) may do (make different provisions for different purposes, contain incidental, supplemental, consequential or transitional provision or savings and provide for a person to exercise a discretion in dealing with any matter). Regulations made under Clause 8(1) are subject to the negative procedure.

Clause 10: Interpretation

- 32 Clause 10 deals with interpretation, notably:
- that "private parking facilities" means facilities for the parking of vehicles on relevant land,
 - that "parking charge" means the same as in Schedule 4 of the 2012 Act, with modifications for Scotland,
 - that "relevant land" means the same as in Schedule 4 of the 2012 Act, with modifications for Scotland and
 - "public authority" means any authority under Section 6 of the Human Rights Act 1998 other than a court or tribunal,
 - as well as other terms defined by the Act.

Clause 11: Application to the Crown

- 33 This clause states that the Bill will apply to and bind Crown land in the same way that it applies to any other land.

Clause 12: Commencement, extent and short title

- 34 Clause 12 outlines that Clause 9 and Clause 12 come into force on the day on which the Bill is passed. The remaining provisions come into force on such day as the Secretary of State may by regulations appoint.
- 35 Clause 12 specifies the territorial extent and the short title.

Commencement

- 36 Clause 12 covers extent and commencement. The legislation extends to England and Wales and Scotland. Clause 9 and Clause 12 come into force on the day on which the Act is passed. The remaining provisions come into force on such day as the Secretary of State may by regulations appoint.

Financial implications of the Bill

- 37 In and of itself, the draft primary legislation does not have any impacts on business or consumers. Impacts will arise as a result of the code of practice when produced and the levy, which will be made through regulations. An impact assessment will be completed for the proposed secondary legislation.
- 38 The direct costs of the Bill will be met through the levy. The detailed content and application of the levy will impact on the associated costs and impact. We estimate that the total cost of the levy will be c. £100,000 in the first year, and c. £12,000 in following years (subject to the extent of the revisions required to the code each year). These sums are comprised of:
- a. Costs of £75-95,000 for a public authority to produce and review a code of practice,
 - b. Costs of £12-20,000 for initial accreditation of the parking associations,
 - c. Annual re-accreditation fees of £4-8,000.
- 39 There may be cost implications for parking operators, who may be required to adapt their facilities in order to meet requirements of the code of practice. It is expected that the code will mainly be formed through combining the regulations from the British Parking Association's and International Parking Community's existing codes of practice to create a single unified code. As the vast majority of members of accredited parking trade associations already follow these guidelines, the financial implications are expected to be minimal, as they will not have to alter their practice in order to comply with the new code. Until the code of practice has been produced and agreed, the Government cannot fully assess these costs.
- 40 Private parking operators currently spend over £2 million per year on appeals against private parking charges they have issued. Operators use one of two appeals services, with an average charge of £29.25 per appeal. In 2016, 80,298 appeals were made against private parking charges, with a total cost of £2,348,716.50.
- 41 A single appeals service, if required in the parking code of practice as created by the Bill, would not seek to significantly increase the charges per individual appeal. Overall the total cost of running an appeal service office per annum would be expected to be in the region of £2-3.2 million. Costs to industry would be expected to remain at similar levels, and the service would be self-funding through the charge made to an operator for each appeal against them. A full impact assessment will be carried out at the time of the introduction of the regulations.

Parliamentary approval for financial costs or for charges imposed

- 42 A Ways and Means Resolution was passed on 17 July 2018.

Compatibility with the European Convention on Human Rights

- 43 In the Government's view, the Bill is compatible with the European Convention on Human Rights.

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Annex A – Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	Yes	No	Yes
Clause 2	Yes	Yes	Yes	No	Yes
Clause 3	Yes	Yes	Yes	No	Yes
Clause 4	Yes	Yes	Yes	No	Yes
Clause 5	Yes	Yes	Yes	No	Yes, except for 5(2) – (4)
Clause 6	Yes	Yes	Yes	No	Yes
Clause 7	Yes	Yes	Yes	No	Yes
Clause 8	Yes	Yes	Yes	No	Yes, excepting 7(2)(g)(i)
Clause 9	Yes	Yes	Yes	No	Yes
Clause 10	Yes	Yes	Yes	No	Yes
Clause 11	Yes	Yes	Yes	No	Yes
Clause 12	Yes	Yes	Yes	No	Yes

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