

# PROTECTION OF FREEDOMS ACT 2012

---

## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

#### **Part 3: Protection of property from disproportionate enforcement action**

#### *Chapter 2 of Part 3: Vehicles left on land*

#### *Section 54: Offence of immobilising etc. vehicles*

211. *Subsection (1)* makes it a criminal offence to immobilise a motor vehicle by attaching to the vehicle, or to a part of the vehicle, an immobilising device (typically a wheel clamp), or to move (for example, by towing away) or to restrict the movement of a vehicle (for example, by using another vehicle to prevent it being driven away). To be guilty of the offence, a person must undertake one of these actions with the intention of preventing or inhibiting a person entitled to move the vehicle concerned from moving the vehicle. Consequently, a person who moved an obstructively parked vehicle a short distance intending to regain access to his or her property would not be committing the offence in circumstances where he or she did not intend to prevent the driver of the vehicle from subsequently retrieving it. Similarly, the required intention would not be present in the case of a person applying a wheel clamp to his or her own vehicle to prevent theft. The offence does not apply where a person is acting with lawful authority when immobilising, moving or restricting the movement of a vehicle. There are a number of bodies with statutory powers to immobilise or remove vehicles in specified circumstances, including: local authorities when enforcing road traffic contraventions on the public highway or local authority managed car parks; the police when enforcing road traffic contraventions or otherwise removing vehicles that are illegally, obstructively or dangerously parked; the police and local authorities when exercising their powers to remove abandoned vehicles from public and private land; the Department for Transport's Driver and Vehicle Licensing Authority ("DVLA") in respect of vehicles that have no road tax; the Vehicle and Operator Services Agency in respect of vehicles that are not roadworthy; and the police and local authorities when exercising their 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).
212. *Subsection (2)* provides that any consent, whether express or implied, given by a person entitled to remove the vehicle to the immobilisation, movement, or restriction of movement, does not constitute lawful authority for the purposes of subsection (1). A driver of a vehicle, by parking in a commercially run car park, may have impliedly accepted the landowner's offer to park (or that of the parking company acting as the landowner's agent). He or she may also, depending on what is advertised at the car park, have impliedly agreed to comply with the terms and conditions advertised, including the parking charges and the associated enforcement mechanism for those charges. However, by virtue of this subsection, the operation of the law of contract as it applies

to commercially run private car parks does not confer lawful authority on the landowner or operator of a car park to clamp or tow away a vehicle parked there.

213. Subsection (2) is subject to the exception in *subsection (3)* the effect of which is to exclude from the ambit of the offence the case of a driver who has given express or implied consent (for example, when entering a privately operated car park) to the movement of his or her vehicle being restricted by a fixed barrier. Accordingly, no offence would be committed where a driver was prevented from leaving a car park because the vehicle's exit was blocked by a fixed barrier which remained in place because the driver had not paid the requisite parking charges (provided the barrier was present when the vehicle was parked, whether or not it only subsequently restricted movement, for example by being lowered into place).
214. *Subsection (4)* contains an exception so that anyone entitled to remove a vehicle cannot commit the subsection (1) offence in respect of that vehicle. This would apply where the owner of a vehicle retrieves a vehicle being used by another person (for example, a car hire company recovering an unreturned vehicle in respect of which the car hire agreement had expired).
215. *Subsection (5)* sets out the maximum penalty for the offence, namely on summary conviction a fine not exceeding the statutory maximum (currently £5,000) and on conviction on indictment an unlimited fine.

#### ***Section 55: Extension of powers to remove vehicles from land***

216. This section amends section 99 of the Road Traffic Regulation Act 1984 so as to extend the power to make regulations for the police and others to remove vehicles in certain circumstances. Section 99 of the Act enables the Secretary of State to provide in regulations for the removal of vehicles that are illegally, obstructively or dangerously parked or broken down on a road. A road is defined for these purposes as 'any length of highway or any other road to which the public has access, and includes bridges over which a road passes' (section 142 of the Road Traffic Regulation Act 1984). Section 99 of the Road Traffic Regulation Act also enables regulations to be made governing the removal of vehicles that have been abandoned on a road or 'on any land in the open air'. The current regulations made under section 99 include the Removal and Disposal of Vehicles Regulations 1986 ([SI 1986/183](#)), as amended. These regulations give the police, local authorities and others the power (not a duty) to remove vehicles in the circumstances described in section 99. The effect of the amendments to section 99 will be to enable regulations to be made which confer a power on the police, local authorities or others to remove vehicles that are illegally, dangerously or obstructively parked on any land (*subsections (2) and (3)*). The power to remove abandoned vehicles is similarly extended so that it is no longer restricted to vehicles abandoned 'on any land in the open air', so ensuring that the power could cover places such as an underground car park.

#### ***Section 56: Recovery of unpaid parking charges***

217. *Section 56* gives effect to Schedule 4 which makes provision in certain circumstances for the recovery of unpaid parking related charges from the keeper or the hirer of a vehicle.