

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 3: Protection of property from disproportionate enforcement action

Schedule 4: Recovery of unpaid parking charges

218. *Paragraph 1* introduces the scheme as provided for in Schedule 4. The scheme provides that, subject to certain conditions being met, the keeper or the hirer of a vehicle may be made liable for any unpaid parking charge that has arisen as a result of either: the driver of the vehicle having entered into a contract with a landowner and/or another person authorised to require payment of parking charges on the land in question; or, through the driver of the vehicle committing a trespass or other tort on land where parking is prohibited. The scheme is based on the legal analysis that a driver of a vehicle by parking on private land either expressly or implicitly accepts the landowner's offer to park (or that of a parking company acting as the landowner's agent), or prohibition on parking and agrees to comply with any terms and conditions (including any parking charges and the associated enforcement mechanism for those charges) advertised on a notice board at the entrance to and within the land. The driver may commit a trespass by parking on private land without permission or, if the terms and conditions of any agreement which the driver has implicitly accepted are not adhered to, then the driver may be in breach of that agreement. In either situation, whether the existence of a contract can be established or, alternatively, if the driver can be shown to have committed a tort, the Schedule envisages a situation where the vehicle can be "ticketed" for charges due under the terms of that contract or for the pre-estimated damages resulting from the trespass.
219. Under the current law, parking providers wishing to enforce charges against drivers are able to obtain details of the vehicle keeper from the DVLA if they are able to show "reasonable cause" for wanting the information (so as to satisfy regulation 27(1)(e) of the Road Vehicles (Registration and Licensing) Regulations 2002 (SI 2002/2742)). A parking provider managing parking in accordance with industry best practice has reasonable cause to seek from the DVLA the keeper details of a vehicle in respect of parking related charges that have not been paid. The DVLA requires parking companies requesting keeper details for parking enforcement purposes to be members of an accredited trade association (the British Parking Association's Approved Operator Scheme is the only trade association currently so accredited). Whilst landowners and agents may seek to recover unpaid parking charges from vehicle keepers, as the law is currently understood to stand, any parking contract will be between the driver of a vehicle and the parking provider and any tort is committed by the driver of the vehicle. Accordingly, the keeper may not be liable in law for the charges incurred if he or she was not the driver at the time.
220. *Paragraphs 2* and *3* define various terms used in the Schedule. The scheme applies only to vehicles parked on "relevant land", the definition of which excludes a highway

maintainable at public expense and a parking place provided or controlled by a traffic authority. Other land where parking is governed by a statutory scheme including that contained in Part 6 of the Traffic Management Act 2004 (which includes provision for keeper liability) is also excluded from the scheme as set out in this Schedule.

221. *Paragraph 4* provides that the creditor has a right to recover unpaid parking charges from the keeper of the relevant vehicle if the conditions set out in *paragraphs 5, 6, 11 and 12* are satisfied. The creditor is not obliged to pursue unpaid parking charges through this scheme and may seek to do so through other means but they may not use the scheme provided for here to secure double recovery of unpaid parking charges (*paragraph 4(6)*), nor will they have the right to pursue the keeper, as opposed to the driver, of the vehicle where they have sufficient details of the driver's identity. The right to reclaim unpaid parking charges from the vehicle keeper does not apply in cases where the vehicle has been stolen before it was parked, (*paragraphs 4(2) to (3)*), or in certain circumstances where the vehicle in question was a hire vehicle (*paragraph 4(7)*). The creditor may not make a claim against the keeper of a vehicle for more than the amount of the unpaid parking related charges as they stood when the notice to the driver was issued (*paragraph 4(5)*).
222. *Paragraph 5* sets out the first condition which is that the creditor must have the right to enforce the requirement to pay unpaid parking charges against the driver of a vehicle but is unable to do so because the creditor does not know the name and current address of the driver.
223. *Paragraph 6* sets out the second condition which is that the creditor must have served the appropriate notices as set out in *paragraphs 7 and 8 or 9*. Paragraph 7 sets out the requirements for a valid a notice to the driver. This must either have been given to the person in charge of the vehicle or affixed to the vehicle whilst it was still located on the land and comply with the requirements of *paragraph 7(2)* which lists the matters that must be set out in the notice, including the total amount of the parking charges payable and the arrangements for the resolution of disputes and complaints that are available. In the event that the notice is not settled by the driver (within the 28 day window provided for under the Schedule), paragraph 8 sets out the requirements which must be followed in order to serve a subsequent notice on the keeper of the vehicle requiring either payment of the unpaid parking charges or the name and address of the driver of the vehicle at the relevant time. In the event that it is not possible to serve an initial notice on the driver of the vehicle (for example, if parking enforcement is carried out after the event via CCTV), paragraph 9 sets out the requirements which must be adhered to when serving a first notice directly to the keeper of the vehicle.
224. *Paragraph 10* contains a power for the Secretary of State (or the Welsh Ministers) to prescribe in regulations any requirements as to the evidence which must accompany a valid notice to the keeper.
225. *Paragraph 11* sets out the third condition (which applies only to registered vehicles) which is that the creditor has applied to the Secretary of State (in practice, the DVLA) for the name and address of the keeper and that information has been provided.
226. *Paragraph 12* contains a power for the Secretary of State (or the Welsh Ministers) to prescribe in regulations any requirements for the display of notices on relevant land. The fourth condition is that if any such requirements are prescribed, they must have been complied with prior to the period of parking in question.
227. *Paragraph 13* contains provisions which are relevant to vehicle-hire firms who may receive notices under the Schedule as registered keepers of hire vehicles for charges incurred when those vehicles are, or have been, on hire. Paragraph 13 provides that where the vehicle-hire firm provides the creditor with a statement confirming that the vehicle was hired at the relevant time, together with a copy of the hire agreement and a statement signed by the hirer confirming that the hirer agrees to be responsible for all parking charges incurred during the period of hire, it is the hirer of the vehicle who is

liable for the unpaid parking charges and not the vehicle-hire firm. *Paragraph 14* sets out the procedure and requirements for the creditor to then serve a further notice on the hirer of the vehicle requesting payment of the unpaid parking charges.

228. *Paragraph 15* provides that the scheme applies to Crown vehicles that are required to be registered with the DVLA and to the keeper of such vehicles. The scheme does not, however, apply to vehicles used for military purposes or that belong to visiting forces.
229. *Paragraph 16* confers a power on the Secretary of State (or the Welsh Ministers) to amend certain provisions in Schedule 4 by order (subject to the affirmative resolution procedure); the relevant provisions are the definition of “relevant land” in *paragraph 3(1)*, and any of the conditions to which the right to claim unpaid parking charges is subject. *Paragraph 17* provides that any regulations made by the Secretary of State (or the Welsh Ministers) under the Schedule are subject to the negative resolution procedure.