

# **CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary on Sections*

#### **Part 2: Vehicles**

#### **Nuisance Parking**

#### *Section 3 Exposing vehicles for sale on a road*

32. Some garages and other businesses which sell cars at times park them for long periods on the road. This can be a nuisance to local residents. Section 3 makes it an offence for a person to park motor vehicles on a road or roads, where the vehicles are parked merely in order to be sold. There must be *two or more* vehicles *within 500 metres of each other* for the offence to be committed.
33. The provision is not aimed at individuals selling cars privately, so a person will not be convicted if he can prove that he was not acting for the purposes of a business (see *subsection (2)*). *Subsection (3)* sets out the penalties.
34. A ‘road’ is as defined in section 142 of the [Road Traffic Regulation Act 1984 \(c.27\)](#) as any length of highway or of any other road to which the public has access. Whether a piece of land is a road or not is a matter of fact. The main feature of a road is that the general public has a right to use it as a means of getting from A to B. The definition includes all highways (all the land to which the public has a right to pass along for the purpose of legitimate travelling and includes both the carriageway and footpath) and also access roads through estates that are owned by organisations such as Housing Associations or by the residents who live there. A car park for example would not normally come within the definition of a road as its function is to enable people to leave their vehicles.
35. Under *subsection (4)* ‘motor vehicle’ has the same meaning as in the [Refuse Disposal \(Amenity\) Act 1978 \(c.3\)](#) which is “a mechanically propelled vehicle intended or adapted for use on roads, whether or not it is in a fit state for such use, and includes any trailer intended or adapted for use as an attachment to such a vehicle, any chassis or body, with or without wheels, appearing to have formed part of such a vehicle or trailer and anything attached to such a vehicle or trailer”.

#### *Section 4 Repairing vehicles on a road*

36. This section addresses the nuisance caused by people repairing their vehicles on the street. This can take up valuable parking space for long periods, looks unsightly and can be directly damaging to the local environment (for example where oil is spilled or

leaked). Section 4 makes it an offence to carry out "restricted works" to vehicles on a road.

37. There are two exceptions. The first is where a person proves he was not repairing the vehicle in the course of a business (*subsection (3)(a)*). But this is only available where the works did not give "reasonable cause for annoyance" to persons in the vicinity. So even a person carrying out repairs otherwise than for a business can be convicted if the works gave cause for annoyance.
38. The second exception is where the repairs arose from a breakdown or accident and were carried out promptly or were otherwise authorised (*subsection (5)*).
39. The definitions of 'road' and 'vehicle' are the same as in the previous section (see paragraph 34 above).

### ***Section 6 Power to issue fixed penalty notice***

40. *Subsection (1)* enables any person authorised by a local authority to issue a fixed penalty notice for the offences of exposing vehicles for sale or repairing a vehicle on the road, offering the offender an opportunity to discharge any liability for the offence. *Subsection (8)* fixes the amount of the penalty at £100 which can be amended by order under *subsection (9)*. Under *subsection (10)* the local authority to which a fixed penalty is payable may provide for treating it as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify.

### ***Section 7 Fixed penalty notices: power to require name and address***

41. *Subsection (1)* provides an authorised officer of a local authority with the power to require the name and address of an offender if the officer proposes to give him a penalty notice. *Subsection (2)* makes it an offence to fail to provide the information asked for or to give inaccurate information.

### ***Section 8 Use of fixed penalty receipts***

42. *Subsections (2) and (3)* enable local authorities to use the receipts from fixed penalty notices issued pursuant to section 6 for the purposes of their functions under the Refuse Disposal (Amenity) Act 1978, under sections 99 to 102 of the Road Traffic Regulation Act 1984, functions relating to the enforcement of sections 3 and 4, and for other functions as are specified in regulations.
43. *Subsections (4) to (7)* make further provisions relating to the spending of fixed penalty receipts.
44. *Subsection (8)* allows regulations governing the spending by English local authorities of fixed penalties received pursuant to section 6 to be linked to categories of local authority (categorised in an order made pursuant to section 99(4) of the Local Government Act 2003). This is achieved by treating the regulation-making powers in section 8 as though they were included in section 100(2) of the Local Government Act 2003. For example, a local authority categorised as 'excellent' might be allowed (by virtue of regulations under *subsection (2)(d)*) to use its receipts for any of its functions.

## **Abandoned vehicles**

### ***Section 10 Offence of abandoning a vehicle: fixed penalty notices***

45. This section inserts after section 2 of the Refuse Disposal (Amenity) Act 1978 (which makes it an offence to abandon a motor vehicle) three new sections - 2A, 2B and 2C.
46. Section 2A gives an authorised officer of a local authority the power to issue a fixed penalty notice in respect of an offence of abandoning a vehicle, offering the offender the opportunity to discharge any liability for the offence.

47. The sum is set at £200 by *subsection (8)* which can be amended by order as set out in *subsection (9)*. Under *subsection (10)* the local authority to which a fixed penalty is payable may provide for treating it as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify.
48. Section 2B enables an authorised officer of a local authority to require the name and address of the person to whom he proposes to issue a fixed penalty notice. A person commits an offence if he gives false or inaccurate details.
49. Section 2C enables local authorities to use the receipts from these penalties for the purposes of their functions under the Refuse Disposal (Amenity) Act 1978, and sections 99 to 102 of the Road Traffic Regulation Act 1984, functions relating to the enforcement of sections 3 and 4 and for other functions as are specified in regulations (*subsections (2) and (3)*). *Subsections (4) to (7)* make further provisions relating to the spending of fixed penalty receipts.
50. *Subsection (8)* of section 2C makes similar provision as described above for *subsection (8)* of section 8.

### ***Section 11 Notice of removal of vehicles***

51. This section amends section 3 of the Refuse Disposal (Amenity) Act 1978.
52. Previously under section 3(2) of the Refuse Disposal (Amenity) Act 1978, if a vehicle that appeared to be abandoned was found on private land, a notice had to be served on the occupier of the land; if the occupier did not respond, the local authority had to wait 15 days before removing the vehicle. When the vehicle was on a private driveway, there was no practical problem as the occupier was in a position to confirm whether or not it was abandoned. However, if the vehicle was on a private road, it was difficult to identify the occupier; in those circumstances, some form of notice was often left on the vehicle to alert the owner. The notice at times attracted instances of anti-social behaviour such as vandalism and arson.
53. *Subsection (2)* removes the requirement to serve a notice on the occupier of land where the vehicle is on a 'road'. The definition of 'road' is as described in paragraph 34, and could include roads that pass through housing estates managed by registered social landlords and other local authority housing estates. This enables vehicles to be removed immediately from any road to which the public has access.
54. Section 3(5) of the Refuse Disposal (Amenity) Act 1978 required a local authority to affix a notice to a vehicle 24 hours prior to removal where it was considered to be in such a condition that it ought to be destroyed. There was no definition of what this meant but it could have included vehicles that had parts missing or were burnt out. The 24-hour notice at times attracted instances of anti-social behaviour such as vandalism and arson.
55. *Subsection (3)* revokes section 3(5) of the Refuse Disposal (Amenity) Act 1978. It enables local authorities to immediately remove any vehicle in such a condition if they think it has been abandoned.

### ***Section 12 Disposal of abandoned vehicles***

56. **Section 12** relates to the steps a local authority must take before they can dispose of an abandoned vehicle.
57. Under section 4 of the Refuse Disposal (Amenity) Act 1978, prior to section 12 of this Act coming into force, a vehicle could only be destroyed immediately after removal where it had been removed under section 3(5) (being that it was in such a condition that it ought to be destroyed) and did not display a current licence. Where a current licence was displayed, this had to expire before destruction could take place. In other cases the local authority had to take steps to ascertain who the owner was and, if found, to serve a notice telling him of the vehicle's removal. If no owner could be found, or the

owner failed to respond to the notice within 7 days, the vehicle could then be disposed of unless it displayed a current licence. Again, if a licence was displayed, the authority had to wait for its expiry before destruction.

58. Waiting for the expiration of the licence led to further storage costs being incurred by local authorities where the vehicle was only fit for destruction or the owner either could not be traced or had chosen not to collect it.
59. **Section 12** amends section 4 of the Refuse Disposal (Amenity) Act 1978 by removing the requirement to wait for the expiration of a valid licence. This has the effect of allowing any vehicle that is only fit for destruction to be destroyed immediately. In other cases, if the owner either cannot be traced or fails to respond to a notice the vehicle can then be disposed of.
60. This section also amends section 4 by allowing immediate disposal where neither a registration mark (plate) is shown or current licence displayed. Without that information, it is considered unreasonable to expect the authority to trace the owner (either of these would provide a way to check the DVLA register or make enquiries in other countries). This section allows these vehicles to be disposed of immediately.

### ***Section 13 Guidance***

61. This section obliges authorities to have regard to guidance given by the “appropriate person” when exercising their functions in relation to the removal and disposal of vehicles.

### ***Section 14 Abandoned vehicles: supplementary***

62. This section provides a definition of "appropriate person" for the purposes of the powers conferred by sections 10 to 13. The effect is that the powers are conferred on the Secretary of State in relation to England, and the National Assembly for Wales in relation to Wales.
63. *Subsection (2)* amends section 10(5) of the Refuse Disposal (Amenity) Act 1978 so that any orders or regulations made by the National Assembly for Wales under new sections 2A and 2C are to be made by statutory instrument by negative resolution.

### **Vehicles illegally parked etc**

#### ***Section 15 Notices of Removal; section 16 Disposal; section 17 Guidance***

64. These sections make similar changes to the Road Traffic Regulation Act 1984 (“the 1984 Act”) to those to the Refuse Disposal (Amenity) Act 1978 described above.
65. **Section 15** amends section 99 of the 1984 Act. It inserts the words “other than a road” after the word “land” in subsection (3). This has the effect of removing the requirement to serve the occupier of land with a notice where that land is a road. It also removes the requirement to attach a notice on a vehicle that is considered in such a condition that it ought to be destroyed by omitting subsection (4). This mirrors the amendments made by section 11 to the Refuse Disposal (Amenity) Act 1978 for the same reasons. The 1984 Act has similar provisions for dealing with abandoned vehicles as are contained in the Refuse Disposal (Amenity) Act 1978 but there is only a power for local authorities to act, not a duty as under section 3 of the 1978 Act.
66. **Section 16** amends section 101 of the 1984 Act. It makes various amendments to subsection (3) that mirror the amendments made by section 12. It allows for the removal of vehicles that do not display either a valid licence or a registration mark (plate) and also removes the requirement to wait for the expiration of a valid licence before the vehicle can be disposed of.

*These notes refer to the Clean Neighbourhoods and Environment  
Act 2005 (c.16) which received Royal Assent on 7 April 2005*

67. **Section 17** inserts into section 103 of the 1984 Act the requirement for local authorities exercising functions under sections 99 to 103 of the Act to have regard to any guidance issued by the Secretary of State or the National Assembly for Wales as the case may be.