

# REFORM OF VEHICLE IMMOBILISATION

**Lead department or agency:**

Home Office

**Other departments or agencies:**

Department for Transport

## Impact Assessment (IA)

IA No: HO0032

Date: 11/07/2011

Stage: Final

Source intervention: Domestic

Type of measure: Primary Legislation

## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**

Under the Private Security Industry (PSI) Act 2001 (the 2001 Act) anyone in England, Wales and Northern Ireland involved in immobilisation of vehicles elsewhere than on a road within the meaning of the Road Traffic Act 1988, with a view to charging a release fee (and related activities of blocking in and towing vehicles) must be licensed by the Security Industry Authority (SIA). However, vehicle immobilisation (VI) causes the public a number of problems, including the size of release fees, inadequate signage, immediate clamping, and unreasonableness, e.g. in demanding immediate cash payment and calling of a tow truck. Government intervention is necessary to prevent the continuation of these unreasonable practices by VI businesses. Regulation of the industry by individual licensing has been in place since 2005 but has not addressed these problems.

**What are the policy objectives and the intended effects?**

The policy objective is to prevent poor business practices by private parking enforcement companies on private land in line with the 2010 Coalition's Programme for Government which undertook to "tackle rogue private sector wheel clampers". The intended effects are to prevent the use of a measure which is widely seen as disproportionate and threatening, and which enables the person controlling car parking to demand an exorbitant release fee with very little means of appeal or redress. Clamping and towing with lawful authority, for example clamping by local authorities on highways, which is regulated by DfT, is not included within the scope of the Bill provisions.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**

Three options were considered

- (1) No action. This would leave allow poor business practices considered disproportionate and threatening to continue;
- (2) Implement VI business licensing provisions provided for in the Crime and Security Act 2010. There would be associated financial costs and licensing has proved unsuccessful in the past.
- (3) Ban vehicle immobilisation and towing without lawful authority in all cases, and extend police powers to remove cars from private land.

Option 3 is the preferred option to achieve the stated aims and objectives because other options would still permit clamping without authority, and/or possibly be open to continued poor business practice, and represent high costs and unknown future financial risks to the tax-payer. There are other legal methods of parking control which can be used, including parking tickets and the use of barriers.

**When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?**

It will be reviewed  
5 years after Royal Assent

**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?**

Not Applicable

**SELECT SIGNATORY Sign-off** For final stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. Signed by the responsible Minister*



Date: 13/09/11

## Summary: Analysis and Evidence

## Policy Option 2

**Description:** Implement VI business licensing provisions provided for in the Crime and Security Act 2010. There would be associated financial costs and licensing has proved unsuccessful in the past.

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: - 6.5

COSTS	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£2 million	£0.8 million	£8.7 million

### Description and scale of key monetised costs by 'main affected groups'

- Costs to the Home Office for developing business licensing and setting up an appeals system of £2m over two years.
- Costs to the 350 Vehicle Immobilisation (VI) businesses for implementing business licensing of £0.78 million per annum.

### Other key non-monetised costs by 'main affected groups'

- Costs associated with all businesses being required to handle complaints.
- Costs associated with some businesses needing to re-sign some business premises.

BENEFITS	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/A	£0.3 million	£2.2 million

### Description and scale of key monetised benefits by 'main affected groups'

- Requirement for all VI operatives to re-licence every year reduced to every three years. This would be a reduction in costs of £163 per year per operative or over £250,000 per year in total for all 1550 licence holders

### Other key non-monetised benefits by 'main affected groups'

- Regulation of VI businesses will make them accountable and subject to compulsory conditions which will reduce the potential for public harm and remove unacceptable business practice.
- Reduction in individual licence holders' time spent completing forms

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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#### Assumptions

- Assumes number of VI businesses is 350.
- Business licence fee income is calculated over a three year period.
- There would be other costs connected with consideration by businesses of complaints.
- Assumes around 1550 individual operatives would require three-yearly licences at £245.

#### Risks

<b>Direct impact on business (Equivalent Annual) (£m):</b>			<b>In scope of OIOO:</b>	<b>Measure qualifies as</b>	
<b>Costs: 0.8</b>	<b>Benefits: 0.26</b>	<b>Net: -0.54</b>	<b>YES</b>	<b>IN</b>	

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			E W & NI		
From what date will the policy be implemented?			N /A		
Which organisation(s) will enforce the policy?			N/A		
What is the total annual cost (£m) of enforcement for these organisations?			Unknown figure		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded:	Non-traded:	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs:	Benefits:	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro £2,200	< 20 N/A	Small £2,200	Medium N/A	Large N/A
Are any of these organisations exempt?	n/a	n/a	n/a	n/a	n/a

## Summary: Analysis and Evidence

## Policy Option 3

**Description: Preferred option.** Ban vehicle immobilisation and towing without lawful authority in all cases, and extend police powers to remove cars from private land.

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 3.4

COSTS	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/A	£24.1million	£207.4million

### Description and scale of key monetised costs by 'main affected groups'

Costs to the parking industry in lost fees due to using ticketing and other parking control methods, instead of clamping and towing. We estimate this at £24.13 million if driver liability is replaced with keeper liability.

### Other key non-monetised costs by 'main affected groups'

- Costs to landholders, business and parking firms required to change to other forms of parking control such as ticketing and barriers, these cannot be quantified due to a range of variable unknown factors such as size and number of sites, costs of equipment and running costs.
- There is no sufficient data to estimate the industry's income from towing away.
- Costs to police for enforcement; we do not envisage many prosecutions under the law as the new offence would be highly visible and therefore a "detectable" offence.
- Costs to police to execute extended powers; estimated to be low and they will pass on costs to the driver/keeper of the vehicle when carrying out their powers on a public road. However there is no data available on the current level of police resource spent on this.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/A	£24.5 million	£210.9 million

### Description and scale of key monetised benefits by 'main affected groups'

Benefits to business and the public are estimated to be equivalent to the costs to the parking industry, as a result of those whose vehicles are clamped or towed not having to pay clamping and towing release fees. On the basis of the above figures, the benefit to the public will amount to an estimated £24.13 million which will be transferred to the VI businesses who will incur it as a cost. In addition, vehicle immobilisers (about 1550<sup>1</sup> currently licensed by the SIA) will no longer have to pay £245 a year for a licence from the SIA, totalling around £380,000 a year, making a total of £24.5 million a year.

### Other key non-monetised benefits by 'main affected groups'

- Removes a disproportionate sanction of clamping or towing without lawful authority: Business and private motorists will benefit by not having vehicles held until fees are paid;
- Ends associated unreasonable practice of exorbitant fees and related issues such as inadequate signage, and clamping and towing away without a reasonable waiting period.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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<sup>1</sup> <http://www.sia.homeoffice.gov.uk/Pages/licensing-stats.aspx> (June 2011)

### Assumptions

- About 500,000 clampings take place annually on private land, with an average release fee of £112. Almost all clamp fees are paid. This suggests total release fees of the order of £54.9 million. Of this it is estimated that £30.75 million will be replaced by fees for ticketed or posted charges.

- Average ticket/postal charge fee = £75. About 74% recovered at present (excluding automated number plate recognition ticketing). This is expected to rise to about 82% with the change from driver liability to keeper liability. There will be unquantifiable costs to landholders, businesses and parking firms from the need to switch to new parking control methods.

- We expect few prosecutions for immobilising or towing without statutory authority.

### Risks

Rogue clampers may move into rogue ticketing, not using DVLA data but placing a ticket on a vehicle;

<b>Direct impact on business (Equivalent Annual) (£m):</b>			<b>In scope of OIOO:</b>	<b>Measure qualifies as</b>
<b>Costs:</b> 25.0	<b>Benefits</b> 0.39	<b>Net:</b> -24.6	<b>YES</b>	<b>IN</b>

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?			2012		
Which organisation(s) will enforce the policy?			Police		
What is the total annual cost (£m) of enforcement for these organisations?			Not quantified		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>	<b>Non-traded:</b>	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			<b>Costs:</b> 100%	<b>Benefits:</b> 100%	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b> N/A	<b>&lt; 20</b> N/A	<b>Small</b> N/A	<b>Medium</b> N/A	<b>Large</b> N/A
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Does your policy option/proposal have an impact on...	Impact	Page ref within IA
<b>Statutory equality duties<sup>2</sup>?</b> <u>Equality and Human Rights Commission: General guidance</u>	Yes	21
<b>Economic impacts</b>		
<b>Competition?</b> <u>Competition Impact Assessment</u>	No	
<b>Small firms?</b> <u>Small Firms Impact Test</u>	Yes	20
<b>Environmental impacts</b>		
<b>Greenhouse gas assessment?</b> <u><a href="http://www.defra.gov.uk/environment/index.htm">http://www.defra.gov.uk/environment/index.htm</a></u>	No	
<b>Wider environmental issues?</b> <u>Guidance has been created on the Defra site</u>	No	
<b>Social impacts</b>		
<b>Health and well-being?</b> <u>Health: Health Impact Assessment</u>	No	
<b>Human rights?</b> <u>Ministry of Justice: Human Rights</u>	Yes	see Bill ECHR Memorandum
<b>Justice?</b>	Yes	23
<b>Rural proofing?</b> <u>Commission for Rural Communities</u>	No	
<b>Sustainability?</b> <u>Defra: Think sustainable</u>	No	

<sup>2</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, and Implementation).

No.	Legislation or publication
1	<a href="http://www.homeoffice.gov.uk/media-centre/press-releases/ban-on-wheel-clamping">News release of Ministerial announcement on 17 August 2010 - http://www.homeoffice.gov.uk/media-centre/press-releases/ban-on-wheel-clamping</a>
2	DfT/DVLA Impact assessment on proposal to introduce keeper liability for parking on private land
3	<a href="http://www.ialibrary.berr.gov.uk/uploaded/IA%20Wheel%20Clamping.pdf">2009 Consultation and January 2011 [interim] impact assessment http://www.ialibrary.berr.gov.uk/uploaded/IA%20Wheel%20Clamping.pdf</a>
4	<a href="#">March 2010 updated final impact assessment</a>
5	<a href="http://www.homeoffice.gov.uk/publications/about-us/legislation/freedom-bill/vehicle-immobilisation-ia">18/2/2011 Vehicle Immobilisation Impact Assessment http://www.homeoffice.gov.uk/publications/about-us/legislation/freedom-bill/vehicle-immobilisation-ia</a>

+ Add another row

Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
Transition costs	<b>N/A</b>									
Annual recurring cost	24.13	24.13	24.13	24.13	24.13	24.13	24.13	24.13	24.13	24.13
Total annual costs	24.13	24.13	24.13	24.13	24.13	24.13	24.13	24.13	24.13	24.13
Transition benefits	<b>N/A</b>									
Annual recurring benefits	24.5	24.5	24.5	24.5	24.5	24.5	24.5	24.5	24.5	24.5
Total annual benefits	24.5	24.5	24.5	24.5	24.5	24.5	24.5	24.5	24.5	24.5

\* For non-monetised benefits please see summary pages and main evidence base section

## Evidence Base (Summary sheets)

### A. Strategic Overview

#### A.1 Background

1. The Private Security Industry Act 2001 (the 2001 Act) requires anyone involved in immobilising vehicles on private land with a view to charging a release fee to be licensed. Since 2005 an individual has required a vehicle immobiliser's (VI) licence from the Security Industry Authority when undertaking any of the following activities (subject to the conditions for requiring a licence):
  - Involvement in immobilising and moving vehicles on private land with a view to charging a release fee;
  - Restriction of the movement of a vehicle by any means (including the immobilisation of a vehicle by attaching a device to it);
  - Release of a vehicle which has been so moved or restricted, where release is effected by returning the vehicle to the control of the person who was otherwise entitled to remove it, by removing any restriction on the movement of the vehicle by removing the device or by any other means; or
  - Demanding or collection of a charge as a condition of any such release of or for the removal of the device from a vehicle.
2. The licence requirement for VI activity applies only when:
  - It is proposed to impose a charge for the release of the vehicle;
  - The activities are carried out for the purpose of preventing or inhibiting the removal of a vehicle by a person otherwise entitled to do so; and
  - The activities are carried out in relation to a vehicle that is not on a road within the meaning of the Road Traffic Act 1988.
3. Holders of a VI licence must observe the following requirements:
  - A vehicle must not be clamped/blocked/towed if:
    - A valid disabled badge is displayed on the vehicle; or
    - It is an emergency service vehicle which is in use as such.
  - Any licence holder who collects a release fee must provide a receipt, which must include the following:
    - The location where the vehicle was clamped, blocked or towed.
    - Their own name and signature.
    - The licence number.
    - The date on which the vehicle was clamped, blocked or towed.
4. There are currently about 1550<sup>3</sup> VI licence holders and the SIA estimates there to be approximately 350 businesses operating in the VI field. These numbers fluctuate periodically but are correct as of June 2011.
5. Companies are not required to be licensed but any staff carrying out licensable activity must hold an individual license as outlined above.
6. There has been a continuing high level of complaints about wheel clamping and towing on private land to the Home Office, the SIA, the Department for Transport and Members of Parliament. The matters complained of are usually the responsibility of the parking business itself, not of the individual operative.
7. As a result of the level of concern about the practices of some vehicle immobilisation businesses the previous Government published, in April 2009, a consultation on options for improving the regulation of the clamping industry, including a voluntary code of practice and compulsory membership of a business licensing scheme for all clamping companies. Subsequently, the Crime and Security Act 2010, which received Royal Assent on 8 April 2010, included provisions for the licensing of businesses carrying out vehicle immobilisation activities and the setting up of a process for appealing against a release fee (sections 42 to 44 and Schedule 1). A final Impact Assessment was published in March 2010. These provisions have not been commenced.
8. The current Government's policy is to make all clamping and towing without lawful authority illegal. This will prevent the continuation of poor business practice on private land in line with the 2010 Coalition's Programme for Government, which undertook to "tackle rogue private sector wheel clampers." This will prevent the use of a measure which is widely seen as disproportionate and threatening, and which enables the person controlling car parking to demand an exorbitant release fee with very little means of appeal or redress. Clamping and towing with lawful authority, for example clamping by local authorities on highways, which is regulated by DfT,

<sup>3</sup> <http://www.sia.homeoffice.gov.uk/Pages/licensing-states.aspx> (June 2011)

is not included within the scope of the Bill provisions. A ban would be unambiguous and would be effective in stopping at source the practice of clamping and towing on private land and the associated unreasonable practices. The public would be in no doubt that it was illegal.

## **Scotland**

9. VI and towing away were effectively banned in Scotland in 1992 by a decision of the Scottish courts (*Black v Carmichael* (The Times, 25 June, 1992 SCCR 709)). A number of officials in the Scottish Government have been consulted as well as ACPO Scotland concerning the effects of the judgment. They have no evidence that the ban on clamping and towing in Scotland has caused any serious problems. For example, the Scottish ACPO received only one letter from the public about this subject in the last ten years. ACPO Scotland informed that they were unable to find any major issues that had arisen from the ban on clamping in Scotland. The Scottish Government does not want the new legislation to extend to Scotland.
10. Since the UK Government's intention to ban clamping was announced, a small number of letters were addressed to the UK government about problems with enforcement of tickets in Scotland, where clamping is banned, and the relative effectiveness of parking control, supported by clamping, in England and Wales. While the evidence is largely anecdotal it may indeed be the case that parking enforcement is impeded to some extent in Scotland without clamping. However, no substantive evidence has been presented to suggest that the ban on clamping there has led to significant problems – a view supported by the response of the Scottish Government.

## **Northern Ireland**

11. The Northern Ireland Minister of Justice has decided that the ban should not apply in Northern Ireland as they do not have evidence of a problem with clamping and towing. However, the issue is currently being considered as part of the wider review on the future regulation of the private security industry in Northern Ireland.

## **Groups Affected**

12. The following groups would be affected:
  - Motorists: commercial and private motorists will benefit by not having vehicles held until fees are paid.
  - Car parking enforcement businesses may have to alter the nature of their business. They will no longer be able to use immobilisation or towing away without lawful authority and will not be able to use some of the equipment they possess such as clamps and tow trucks for that purpose. They will need to use other methods of parking control. We understand that most car parking companies are already involved in a range of parking control techniques. In evidence to the Public Bill Committee on the Protection of Freedoms Bill on Thursday 24 March 2011 Patrick Troy, Chief Executive of the British Parking Association (BPA) said that the BPA's membership includes ticketers and clampers in its approved operator scheme and that the vast majority of those members both clamp and ticket. There were 12 out of the approximately 150 members in the scheme who only clamp<sup>4</sup>.
  - Car parking enforcement workers: as for enforcement businesses.
  - Landholder and business community: shops and retail areas, offices, residential and industrial premises, medical and educational bodies, and others with responsibility for parking space or land management: will no longer be able to use immobilisation or towing away without lawful authority and will therefore have a reduced range of strategies for preventing vehicles parking and removing unwanted vehicles from their land.
  - Police: Their powers will be extended under section 99 of the Road Traffic Regulation Act 1984 to remove dangerously or obstructively parked vehicles from private land, in the same way as powers they already have on public roads. The extended police powers relating to towing vehicles away would be used only in exceptional circumstances at the discretion of the police. The police will not be expected to take on the role of parking enforcers for private landholders. The extended enforcement powers of the police to clamp and tow away vehicles in exceptional circumstances will be considered according to the circumstances of the individual case and the resources available at the time. The police will also charge for clamping and towing and will therefore look to cover their costs.
  - Police will also be responsible for enforcing the new offence of clamping and towing without lawful authority. We do not envisage many prosecutions under the law as the new offence would be highly visible

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<sup>4</sup> Source: (column 154) <http://www.publications.parliament.uk/pa/cm201011/cmpublic/protection/110324/pm/110324s01.htm>

and therefore a “detectable” offence. At the same time we expect the police to have fewer incidents to deal with as a result of confrontations over clamping.

13. The proposed changes will not affect clamping and towing which has lawful authority. Examples include:
- The ability of police forces to immobilise and/or remove vehicles on the public highway or in other circumstances;
  - The power of local authorities to immobilise and/or remove vehicles from the highway or their car parks, or to remove abandoned vehicles;
  - The power of certified bailiffs to immobilise or remove vehicles for unpaid Council tax or unpaid national taxes;
  - The power of the Driver and Vehicle Licensing Authority to immobilise and/or remove vehicles that have no road tax.
14. The ban will, however, apply to land managed by public sector organisations that is not within a local authority’s Civil Enforcement Area – e.g. universities, schools, hospitals, clinics, Defence land and many housing estates. Some of these use wheel clamping (possibly without charging a fee) to control unwanted parking on their site. These bodies may decide to use alternative parking control measures, some of which may incur additional cost, such as ticketing, additional gates or alternative enforcement methods such as CCTV surveillance with payment requests to vehicle keepers.
15. Although Local Authorities (LA) have the power to administer wheel clamping as a form of parking control, recent data would suggest that most LAs have moved away from clamping in recent years and found alternative methods of enforcement. In 2009/10, of the 32 London boroughs within the Greater London district only seven used wheel clamping as a form of parking control, showing a 50% decline from 2005/06 where fourteen LA’s were using the measure. Due to this decline the number of wheel clamping incidents by LA’s in London has decreased from 97,000 in 2005/06 to just over 10,000 in 2009/10. Furthermore of the 10,054 wheel clamping incidents that did occur within the London Boroughs 8,833 (88%) were isolated to the London Borough of Kensington and Chelsea.<sup>5</sup> We do not know the reason for the recent decline of wheel clamping incidents but anecdotal information is that this could be attributed to many factors including the unpopularity of the measure and its counterproductive nature.
16. The data available regarding wheel clamping outside of the London boroughs is scarce, however in 2008/09 only six local authorities outside London adopted wheel clamping as their approach to parking enforcement amounting to a total of around 12,500 clamping incidents.

### **A.3 Consultation**

#### **Public Consultation**

17. Before determining the preferred policy option, account was taken of responses to a formal consultation which took place in April 2009<sup>6</sup> regarding options for regulating wheel clamping. That consultation did not include banning as an option, but of 561 respondents over 100 volunteered that they wanted a ban.<sup>7</sup> The Government also invited the public to suggest ideas for restoring liberties and repealing unnecessary laws through the Your Freedom website. Banning wheel clamping was one of the suggestions made by a substantial number of those who provided follow up comments expressed their agreement.<sup>8</sup>
18. Informal consultation has also taken place with the police, who would be required to enforce a ban, as well as stakeholders who would have to change their practices such as members of the British Parking Association, parking enforcement companies and landholders. Since the intention to introduce a ban on wheel clamping and towing has been announced a YouGov poll of 787 people found that 87% of them supported the proposal to ban wheel clamping.<sup>9</sup>

#### **B. Rationale**

19. Fundamentally, vehicle immobilisation or towing allows the immobiliser to deprive the motorist of their vehicle, or at least the use of it, until the motorist pays a fee. The removal of a vehicle by a private individual without lawful authority for a parking contravention on private land is disproportionate. It enables one person to, in effect, seize another’s assets in order to enforce a demand for payment which is likely to be far less value than the asset, without legal authority other than whatever contract may have been established by the act of parking.

<sup>5</sup> [http://www.trafficpenaltytribunal.gov.uk/downloads/Annual\\_Statistics\\_of\\_the\\_Traffic\\_Penalty\\_Tribunal\\_0809.pdf](http://www.trafficpenaltytribunal.gov.uk/downloads/Annual_Statistics_of_the_Traffic_Penalty_Tribunal_0809.pdf)

<sup>6</sup> Source: <http://www.homeoffice.gov.uk/documents/cons-2009-vehicle-immobilisation/vehicle-immobilisation-cons12835.pdf?view=Binary>

<sup>7</sup> Source: <http://www.ialibrary.bis.gov.uk/uploaded/IA%20Wheel%20Clamping.pdf>

<sup>8</sup> Source: Source: <http://webarchive.nationalarchives.gov.uk/20100824180635/http://yourfreedom.hmg.gov.uk/>

<sup>9</sup> Source: <http://today.yougov.co.uk/sites/today.yougov.co.uk/files/YG-Archives-Pol-Sun-clamping-170810.pdf>

20. Immobilisation and towing also allow poor business practice within the process. The main complaints concern:

- Inadequate signage, including small size and poor visibility;
- The high level of some release fees;
- Demanding immediate cash payment;
- Immediate clamping or towing away; and/or
- Lack of an effective means of contesting a charge.

21. Successive governments have received a very high level of complaints from motorists<sup>10</sup> who feel that they have been clamped unfairly, often without even knowing that they have parked where they should not, and they are often charged exorbitant amounts to have their cars released. There has been extensive lobbying from private individuals, MPs and motoring organisations, including the AA (which supports a ban<sup>11</sup>) and the RAC.

22. The Coalition Agreement, published on 20 May 2010, contained a commitment to tackle rogue private sector wheel-clampers. The government is concerned about the issue of loss of use of the vehicle where it is clamped (or otherwise immobilised) as well as the poor business practices associated with this disproportionate measure. Alternative methods of regulating or restricting the activity, such as business licensing with a mandatory Code of Practice may be effective in curbing the poor business practices but effectiveness would be dependent on the level of enforcement activity and unscrupulous companies might be content to breach the Code for short-term profit.

23. Nor is it effective to include conditions regulating business practices in the licences of individual workers, since these practices are beyond their control. Six years of licensing by the SIA of individual clampers has not helped in solving the unreasonable practices demonstrated by the clampers as the SIA are restricted in their powers to address these problems.

### C. Objectives

24. The objective is to address the continued concern that vehicle immobilisation businesses are engaging in indefensible practices, particularly charging excessive release fees and using insufficient or misleading signage, and to end a practice which constitutes a disproportionate sanction exercised by private individuals without specific lawful authority.

### D. Options

#### 1. Maintain status quo;

No additional costs and no additional benefits but unacceptable since it would leave unreasonable practices continuing.

#### 2. Implement VI business licensing provisions provided for in Crime and Security Act 2010<sup>12</sup>;

Business licensing would not address the fundamental issue that motorist would be deprived of their vehicles until they pay a release fee which is in most cases disproportionate to the "offence" and is contrary to the findings of the consultations and polls referred to in Section A3. Furthermore, this option includes significant costs. The appeals system would need to be established, underwritten initially by the public purse although, in time, the appeals system could be self-funded.

#### 3. Ban vehicle immobilisation and towing without lawful authority in all cases;

This is the preferred option. A ban would be unambiguous and would be effective in stopping at source the practice of clamping and towing on private land and the associated unreasonable practices. The public would be in no doubt that it was illegal.

### E. Appraisal (Cost and Benefits)

#### General Assumptions and Data

- It is difficult to estimate all costs as the data remains limited and uncertain.
  - Average clamp release fee = £112. This is the mean average of fees reported by members of the industry in response to the consultation carried out by the Home Office in 2009. It has been up rated to 2011 prices in line with the GDP deflator.
  - Virtually all clamp release fees are paid: we have assumed 98%.

<sup>10</sup> <http://www.ialibrary.berr.gov.uk/uploaded/IA%20wheel%20clamping.pdf>

<sup>11</sup> [http://www.theaa.com/public\\_affairs/news/wheel-clamping-new-law-calls-time.html](http://www.theaa.com/public_affairs/news/wheel-clamping-new-law-calls-time.html)

<sup>12</sup> <http://www.ialibrary.berr.gov.uk/uploaded/IA%20Wheel%20Clamping.pdf>

- Average ticket/postal charge fee = £75. Based on recommended maximum in the BPA's Code of Practice for their Approved Operator Scheme (AOS), allowing for 50% discount for prompt payment.
- The Department for Transport has informed us that this is likely to rise to 82% if driver liability was changed to keeper liability (based on information from the DVLA on rates of recovery for road parking charges).
- About half a million clampings take place annually on private land without specific lawful authority.<sup>13</sup> It is assumed that for practical purposes all of these clamps would be replaced by ticketed or postal charges.
- There are in the region of 300-350 VI businesses in England and Wales (SIA estimate).
- Other fees are collected in respect of towing away and storage of vehicles. There is insufficient data on these activities to estimate the total amounts involved. However, the BPA's AOS Code of Practice recommends maximum fees of £250 for vehicle removal and £35 a day for storage.

25. "OIOO" (One In One Out) refers to direct costs and benefits to business and the third sector resulting from the proposed policy. "Excluding OIOO" refers to indirect costs to business, the third sector and any costs to the public sector and individuals.

### **Option 2 – Implement VI business licensing provisions provided for in Crime and Security Act 2010:**

#### **Costs (excluding OIOO)**

26. The set-up and development costs to the Home Office of business, licensing and an appeals system are estimated to be approximately £2 million over two years, based on consultation with the local authority parking adjudication bodies and the Security Industry Authority (SIA) (see tables below).

**Table – Appeals System Setup Costs Over Two Years**

	Low Estimate £s	High Estimate £s
IT costs	500,00	600,000
Recruiting Staff and Adjudicators	55,000	110,000
Training Staff and Adjudicators	69,000	202,000
Project Management	72,000	173,000
Contribution to other set-up costs	60,000	268,000
Accommodation		150,000
<b>Total</b>	<b>756,000</b>	<b>1,503,000</b>

27. The figures in Table 1 were established in consultation with local authority parking adjudication bodies (tribunals) – Parking and Traffic Appeals Service<sup>14</sup> (for London) and Traffic Penalty Tribunal<sup>15</sup> (for outside London). The figures represent setup costs over a two year period. For the purpose of estimating the overall cost of implementing Option 2 it has been assumed that the actual costs over a two year period would be the mean figure of the high and low estimates; £1.1 million.

28. The running costs would need to be funded by the industry through revenue generated by appeals. Should the operational costs exceed the value of revenue gained the burden would be likely to fall on the Home Office to cover the financial deficit. This is because the Appeals Tribunals who would administer and hear the appeals were reluctant to do so unless the Home Office provided them with such an assurance.

29. Further work would need to establish how far the extra work could be undertaken by the tribunals within existing resources, how far they would need to add marginal extra resources and at what point they would need to make a step change in costs, for example when the point would be reached where they can no longer stay within existing accommodation.

**Table 2 – Business Licensing Development and Setup Costs**

	Estimate £s
Project Management Staffing Costs	384,975
Governance, Legal and Marketing Staffing	180,591

<sup>13</sup> Source: Opinium Research commissioned by Liverpool Victoria Insurance. The fieldwork period was between 4-11 August 2009 using a sample size of 524 people who had been wheel-clamped. The sampling strategy and response rate is unknown to the Home Office.

<sup>14</sup> <http://www.parkingandtrafficappeals.gov.uk/>

<sup>15</sup> <http://www.patrol-uk.info/site/index.php>

Costs	
Marketing, IT and Training Costs	368,000
Total	933,566

30. The figures in Table 2 were established in consultation with the SIA who have been responsible for the development of Business Licensing. The figures account for the estimated total development and setup costs. It was anticipated that development and setup of business licensing would take two years to complete.

31. Taking the mean estimate of about £1.1 million for setting up the appeals system and the estimated total costs for development and setup costs for business licensing of about £900,000, the overall costs excluding OIOO would be approximately £2 million over two years.

#### Costs (OIOO)

- VI businesses required to obtain business licences and adhere to mandatory code. Costs of business licensing previously estimated at just under £2,220 per year (2011 value) per VI business (£777,000 per year for 350 businesses);
- Cost to the parking industry of funding and participating in the appeals system. (As noted above, because of the possibility that funding of the appeals system by the industry could fail this would represent a significant unknown risk in terms of possible costs to Government because any potential shortfall would, in the first instance, fall to the Government).
- **Total quantifiable annual equivalent OIOO costs are £0.8m**

#### Total Costs

32. Initial costs to the Government of business licensing and appeals system, and costs to industry of annual licence fees estimated to be around £8.7m in PV terms over 10 years. In addition, there would be running costs of appeals system, which would depend on the rate of appeals and would represent a risk of requiring Government funding as noted above.

#### Benefits (OIOO)

- Reduction of individual operatives' licensing requirement from licence (cost £245 per licence) annually to licence every three years. This would be a reduction in costs of £163 per year per operative or £252,650 per year in total for all (1550) licence holders.
- **Total quantifiable annual equivalent OIOO benefits are £0.26m**

#### Total Benefits

33. £2.2m PV benefits over 10 years plus other unquantified benefits listed above.

The NPV of Option 2 is around £-6.5m over ten years.

**The quantifiable net annual equivalence for OIOO represents a cost of £0.54m**

#### Option 3 – Ban vehicle immobilisation and towing without lawful authority;

#### Costs (Excluding OIOO)

- Costs to landholders, businesses and parking control firms of changing from clamping and towing to other methods. Some will decide to invest in other parking control systems, e.g. installing barriers, fences, Automatic Number Plate Recognition and/or new ticketing regimes. Changes to signage would be needed.
- These costs are not quantifiable given the unknown number of sites which would require control methods and investment, and the wide variation in costs depending on factors such as the size of the site, the type and cost of any new equipment required and the running costs of parking control methods.
- The cost of changes to signage for landholders, businesses and parking control firms cannot be accurately quantified due to a series of unknown variables. The data on the number of car parks using wheel clamping as a parking enforcement policy is unknown and the number of signs per car park is also unknown. Furthermore the necessity for landholders, businesses and parking control firms to purchase entirely new signs is questionable as some may choose to adopt more cost effective procedures such as simple amendments of text on existing signs using stickers or paint.
- A search of the internet gives an indication of equipment costs. This suggests that:

- Simple bollards cost under £50; more robust removable bollards start at around £100, with automatic bollards starting in the region of £1,400.
  - Raising and lowering barriers start at something over £1,000.
  - To these figures should be added fitting costs.
- Notwithstanding the wide variety of equipment at the disposal of enforcement companies such as bollards and barriers, these figures cannot be used to determine total costs for equipment because it is not possible to quantify the number and size of sites and therefore not possible to estimate an upper and lower bound.
  - The powers of the police will be extended to enable them to move cars that are parked dangerously or obstructively on private land in the same way as they can do on public roads under Section 99 of the Road Traffic Regulation Act 1984. This enables the Secretary of State to provide in regulations for the removal of vehicles that are illegally, obstructively or dangerously parked or broken down (defined in Section 142 of that Act (as amended) as ‘any length of highway or of any other road to which the public has access’,). It also gives the same powers for vehicles that have been abandoned on a road or “any land in open air” which covers private land. The current regulations give the police and local authorities the power to remove vehicles in any of the aforementioned categories.
  - Enforcement by the police. In exercising these powers, the police are entitled to pass on the costs incurred in moving the vehicle to the vehicle’s owner. We are extending this power, including the right to charge the owner for the cost incurred, to cars parked dangerously or obstructively on private land. “The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations 2008<sup>16</sup>” govern the charges that the police may levy for removing vehicles as; £80 for release of vehicle from immobilisation device (under The Road Safety (under the Immobilisation, Removal and Disposal of Vehicles) Regulations 2009) and £150 for removal of vehicle up to 3.5 tonnes (not substantially damaged) (under the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations 2008). At present the police do not have any issues getting contractors to work at these rates so presumably the rates are viable for them. ACPO have confirmed that the cost for the recovery and storage of the vehicles recovered under these powers is met by the owners or their insurance company. West Midlands Police have sent us further details of their use of the existing powers, including confirmation that the police do not personally tow vehicles, but that all vehicles are recovered by garages contracted to West Midlands Police and are removed to their premises.
  - The extended police powers relating to towing vehicles away are expected to be used only in exceptional circumstances at the discretion of the police. The police will not be expected to take on the role of parking enforcers for private land. We have consulted ACPO who have welcomed the intention that the power would be exercisable at the discretion of the police and not a duty, with police forces responding in the light of the circumstances of the incident and available resources. However it would be likely that police forces would consider attending only where, in their view, there is a risk of harm. ACPO have recommended that steps be taken to ensure that the public are informed of the clamping ban and aware that the police would not attend routinely to resolve civil parking disputes. Officials will work with ACPO and other stakeholders such as Citizens Advice to produce guidance for the public disseminated through appropriate channels such as the DirectGov website.
  - We do not envisage these extended powers placing a large burden on the police, with any increase in work being offset by the repealing of existing offences in relation to unlicensed clampers, and a reduction in the burden imposed through investigating cases of disputes between motorists and licensed clampers where the motorist is unhappy to have been clamped and refuses to pay the clamp removal fee. In evidence to the Public Bill Committee on 22 March 2011 Chris Sims, Chief Constable for the West Midlands, Association of Chief Police Officers stated that “thus far, the powers have been inadequate to deal with the problem [of wheel clamping], so we welcome the legislation.”<sup>17</sup>
  - We are unable to quantify the costs which might arise to the police as a result of enforcement of the ban, as there is no data available on the current level of police resource spend on this. Furthermore, it is not possible to estimate the number of incidents where the police take action but there are expected to be a few, since illegal clamping or towing will be very visible.
  - Cost of extended police powers. The charges that are incurred by the police will be recovered upon release of the removed vehicle. These charges are intended to cover what the police pay their removal contractors, set at a level which enables contractors to meet their costs. These costs are determined by many variables including: contractors’ overheads such as equipment; staffing and training costs; the number of removals they carry out on behalf of the police and how much they seek to make in profit.

<sup>16</sup> [http://www.avrouk.com/upload/docs/649/uksi\\_20082095\\_en.pdf](http://www.avrouk.com/upload/docs/649/uksi_20082095_en.pdf)

<sup>17</sup> <http://www.publications.parliament.uk/pa/cm201011/cmpublic/protection/110322/am/110322s01.htm>

## Costs (OIOO)

- Costs to the parking industry in lost fees due to using ticketing and other parking control methods where payment is more difficult to enforce than clamping and towing. It is estimated that the loss of fees, based on rates of non-payment, would be in the region of £24.13 million per year if liability on private land is amended from driver liability to keeper liability. This is because;
  - 500,000 instances of clamping occur each year and 98% result in payment of an average release fee of £112. Revenue generated by clamping is therefore £54,880,000.
  - It is assumed that ticketing will replace clamping in all 500,000 instances and 82% of tickets will be paid at an average cost of £75. Revenue that will be generated by ticketing is therefore estimated to be £30,750,000.
  - The total annual cost to the parking industry of banning wheel clamping and replacing that practise with ticketing would be £54,880,000 - £30,750,000 = £24,130,000.
- The proposal would also affect towing away without lawful authority, for which a release fee is charged. There would be a reduction in fees charged for storage of towed vehicles. We do not have sufficient data to enable us to estimate the amounts involved.
- Costs to the parking industry of not being able to continue with business on its previous basis, and of replacing clamping and towing with other methods of parking control, and of retraining staff where necessary, are not fully quantifiable due to a range of factors including size of sites, variable cost of equipment and variable running costs. Evidence from the 2009 consultation showed that, of the parking control businesses that replied, over 80% also carried out ticketing. Therefore, for the majority of such businesses they will already have training practices and some equipment in place to respond to the proposed legislative changes. In evidence to the Bill Committee on 24 March Patrick Troy, Chief Executive of the British Parking Association, said that the vast majority of BPA members affected already do both – that is, clamp and ticket. Only twelve out of the 150 or so members of the BPA's Approved Operator Scheme only clamp.
- Wheel-clamping operatives might not be able to use some of their equipment and need to find alternative uses or ways to dispose of it. Clamps can be used by owners to secure their vehicles, trailers and caravans. They are widely advertised on the internet. For example, a search on a major internet auction website produced over 1,300 results. Some work will also continue for bodies with statutory powers to clamp, for example local authorities. Due to a lack of further data these costs have not been quantified.
- **Total quantifiable annual equivalent OIOO costs are £25.0m**

## Total Costs

The main costs would be

- £207.7m in present values (PV) over ten years due to a loss of revenue for the industry;
- Those to the parking industry of more cases of difficult enforcement of unpaid ticket or postal charges;
- To those land owners and managers who change their parking control systems as a result of the ban.

## Benefits (excluding OIOO)

- Removes a disproportionate sanction carried out without lawful authority: business and private motorists will benefit by not having vehicles held until fees are paid.
- Ends association abuse of exorbitant fees and related issues such as inadequate signage, and over-hasty clamping and towing away.
- Average fees should fall equivalent to the reduction in fees paid from those for a clamp (average £112) to those for a ticket (£75 on average); the saving to the public is estimated at £24.5 million per year.
- The public will benefit from a saving of £24.1 million per year on clamping and towing fines. This saving will be transferred to the VI businesses who will incur it as a cost.

## Benefits (OIOO)

- Individual licensed vehicle immobilisers of whom there are at present 1550 will no longer need to pay £245 a year for a licence to clamp and tow on private land. This represents a saving of around £380,000 per year.
- **Total quantifiable annual equivalent benefits are £0.39m**

## Total Benefits

34. The benefits will be primarily to the public in terms of reduced inconvenience through loss of use of their vehicle and reduced charges. In addition, VIs would no longer pay a licence fee, therefore the PV benefit (over 10 years) is estimated to be around £210.9m.

Given these estimates, the net present value (NPV) for Option 3 is around £3.3m over ten years.

**The quantifiable net annual equivalence for OIOO represents a cost of £24.6m**

The Table below gives a summary of OIOO costs and benefits for Option 2 and Option 3.

Option Number	Costs	Benefits	Net Figure
2	<ul style="list-style-type: none"> <li>Costs to VI businesses to obtain a business licence are estimated at just under <b>£2,220 per year per VI business</b></li> </ul> <p><b>Total Quantifiable annual equivalent OIOO costs are £0.8m</b></p>	<ul style="list-style-type: none"> <li>Reduction of individual operatives' licensing requirement would see a reduction in costs of <b>£163 per year per operative or £252,650 per year</b> in total for all (1550) licence holders.</li> </ul> <p><b>Total quantifiable annual equivalent OIOO benefits are £0.26m</b></p>	<p><b>Total quantifiable net annual equivalent for OIOO represents a cost of £0.54m</b></p>
3	<ul style="list-style-type: none"> <li>Costs to the parking industry in lost fees are in the region of <b>£24.13 million</b> per year.</li> <li>There would be a reduction in fees charged for storage of towed vehicles. <b>We do not have sufficient data to enable us to estimate the amounts involved.</b></li> <li>Costs to the parking industry of replacing clamping and towing and of retraining staff where necessary <b>are not fully quantifiable.</b></li> <li>Wheel-clamping operatives finding alternative ways to use their equipment or ways to dispose of it. <b>Due to a lack of further data these costs have not been quantified.</b></li> </ul> <p><b>Total quantifiable annual equivalent OIOO costs are £25.0m</b></p>	<ul style="list-style-type: none"> <li>Individual licensed vehicle immobilisers will no longer need to pay £245 a year for a licence. <b>This represents a saving of around £380,000 per year.</b></li> </ul> <p><b>Total quantifiable annual equivalent benefits are £0.39m</b></p>	<p><b>The quantifiable net annual equivalence for OIOO represents a cost of £24.6m</b></p>

**F. Risks**

**Option 1 – No action (maintain status quo or introduce a voluntary scheme)**

35. Poor business practice would continue unchecked. Rogue clampers could become increasingly audacious in the absence of clear legal restraint.

**Option 2 – Implement VI business licensing provisions provided for in Crime and Security Act 2010**

36. Setting a maximum fee risks some businesses raising their fee to the maximum: Equally, some businesses would be required to reduce their current fee.

Some businesses may move from clamping to ticketing which is largely unregulated: The Home Office and DfT would need to keep this risk under review.

The appeals mechanism may be unable to cope with the volume of demand or proves too expensive to operate (creating liability for Government): Build in strong regulatory framework for consideration of complaints by businesses.

### **Option 3 – Ban vehicle immobilisation and towing without lawful authority**

37. There are a number of risks associated with a ban:

- Occupiers and managers of land may find it more difficult to deter unwanted parking so easily:
  - Mitigation – use other appropriate methods, which remain lawful. It is accepted that the loss of immobilisation and towing without lawful authority will be an inconvenience to some but as noted above we believe that these methods are no longer acceptable.
  - The landholder will be able to ask the police to use the extended section 99 power to remove vehicles. We understand from consultation with the Chief Association of Police Officers that the police are unlikely to intervene unless, in their view, there is a risk of harm, and that any response must be subject to the circumstances of the incident and available resources.
- Risk of wheel clamping after the ban. Some individuals may take a chance on illegal clamping however as far as is known, clamping by unlicensed individuals is not a problem at present. The wheel clamping sector is currently believed by the Security Industry Authority to be highly compliant with the current licensing requirement. There are very few prosecutions for unlicensed wheel clamping. This may be because it is a highly visible activity and there are sufficient gains to be made without the risks of working without a licence:
  - We do not believe this is a major risk but appropriate police enforcement is key to making the ban work.
  - There is a risk, which is hard to quantify, that after the ban the use of clamping and towing (or at least the threat of them) continues illegally but the police are unable to devote sufficient resources to the offence.
  - In his evidence to the Commons Committee on 22 March, Chief Constable Chris Sims representing ACPO was asked if he had any data on how many call-outs there have been by the police to private road clamping incidents. He did not have any data, but stated that he was aware that some areas “...certainly has a real problem. This is nasty and aggressive behaviour...I would welcome a chance to deal with it properly.”
- VI businesses move from clamping to ticketing. Ticketing has two problem areas at present:
- (a) Ticketing is regulated only where the parking operator uses keeper data obtained from the DVLA for the purpose of enforcement and must therefore be a member of an Approved Trade Association (which at present means in effect that they must adhere to the BPA's Approved Operator Scheme). There is a risk of more ticketing operators who do not use DVLA data (and are not members of an ATA) charging unreasonable fees:
  - Existing consumer legislation and the powers available to trading standards officers already apply where a provider/consumer relationship has been established. The Department of Business Innovation and Skills have commented that if a motorist parks in a car park and buys a ticket then it is likely that there will be a contract between the car parking provider and the motorist. In this case some or all of the parts of the information in the notice, at the entrance or elsewhere, setting out the terms under which parking services are offered may become terms of the contract. If the motorist contends that a term is unfair, then the Unfair Terms in Consumer Contract Regulations 1999 may be relevant. The Office of Fair Trading and local authority trading standards services could require the unfair term to be changed or ultimately bring enforcement action by way of injunction to prevent continued use of the unfair term.
  - If a consumer is not clearly informed, for example in a sign that is clearly visible and/or on the ticket that is issued, of the fact that they may be ticketed etc, and in what circumstances they may then be subjected to a high penalty charge, or is in any other way misled as to the circumstances when they will be clamped or ticketed, then it is likely that this will be a breach of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). Misleading or aggressive demands for payment of release/penalty fees may also breach the CPRs.

- (b) The existing law places the liability for the private land with the vehicle driver rather than with the keeper. This is an obstacle to legitimate enforcement:
  - The DfT and DVLA are working on proposals, to be published in a separate impact assessment, with the objective of ensuring that landholders and parking control companies are able to enforce parking penalty charges effectively against those who park on their property. This is also needed to ensure that the introduction of the wheel clamping ban on private land will not have a disproportionate and unintended effect on landholders' ability to fairly enforce rights to their property. The intended effect is that the keeper of a vehicle will be held responsible for the consequences arising from the use of his or her vehicle.

## **Enforcement**

38. Enforcement of the offence provisions will be the responsibility of the police. We do not expect many prosecutions under the law. This would follow the pattern in the past under the Private Security Industry Act 2001. The clamping related offences under the 2001 Act consists of working as a vehicle immobiliser without a licence (s.3(2)(j)), and allowing an unlicensed VI to work on one's land (s.6). There have been four prosecutions under section 6 and one conviction since 2005, with none in the last two years. We do not have figures for numbers of prosecutions under s.3 (2) (j), however all the evidence suggests that there are few, if any. There were 790 prosecutions and 513 convictions in total under the Act during 2005-2009.<sup>18</sup> Furthermore, the new offence would be highly visible and therefore a "detectable" offence.

## **Police Response**

39. We have consulted the Association of Chief Police Officers about the plan to extend police powers. They welcomed the intention that the power would be exercisable at the discretion of the people and not a duty. ACPO indicated that they would expect police forces to respond in the light of the circumstances of the incident and available resources but that it was likely that police forces would consider attending only where, in their view there is a risk of harm. They recommended that steps be taken to ensure that the public are aware that the police would not attend routinely to resolve civil parking disputes. Making this clear would be key to ensuring that the public's expectations are not raised inappropriately.
40. We have agreed to work with ACPO to ensure that the public are informed of the effect of the clamping ban. Officials will work with ACPO and other stakeholders such as Citizens Advice to produce guidance for the public. This will be disseminated through appropriate channels such as the DirectGov website.

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<sup>18</sup> Source: Justice Statistical Analytical Services in the Ministry of Justice – [Ref: IOS 488-10]

## H. Summary and Recommendations

### Preferred Option

41. Option 3 is the preferred option. In line with the Coalition Agreement, the government has decided to ban wheel clamping without lawful authority. As noted above, immobilisation and towing enable one person to deprive another of an important and valuable possession in order to enforce a demand for payment which is likely to be far less value than the asset. This act is carried out without legal authority other than the contract established through the act of parking. Option 3 will end poor business practices by firms and their employees who charge excessive fees; use unclear signage and carry out unnecessary towing. Ending these poor business practices would also have been the objective of business licensing but, as noted previously, the effectiveness of the regime would be dependent on the level of enforcement activity, with some companies possibly content to breach the Code for short-term profit. Once the ban is implemented, parking companies (and anyone else) will not be able to clamp or tow away a motorist's car on private land without lawful authority as they will be committing a criminal offence if they do so.
42. The preferred option strikes a fair balance between the rights of vehicle owners/drivers and the rights of parking management businesses, workers and landholders. The position will be as it is in Scotland and parking management will continue to have a full range of parking control methods other than clamping and towing.
43. Legislation is necessary because non-legislative approaches would invariably mean working with the industry to arrive at some sort of voluntary agreement. While we fully accept that the wheel clamping industry contains many reputable firms there are many ruthless ones who would not be prepared voluntarily to see their activities curtailed in any way.
- The table below outlines the costs and benefits of the proposed changes

**Table H**

Option	Costs	Benefits
Option 2	£2 million over two years (set-up costs to Home Office £777,000 per year to parking industry for business licence fees)	£252,650 per year in reduction in VI licence renewal requirement from every year to every three years.
	Costs to (not quantified) unquantified running costs of appeals system.	Benefits to (not quantified) Ends unreasonable practices of exorbitant fees and related issues such as inadequate signage, and over-hasty clamping and towing away.
<b>Total</b>	£777,000 p/a plus £2 million over two years	£252,650 p/a
Option 3	£24.1 million p/a	£24.5 million p/a
	Cost to (not quantified) Costs to the parking industry of switching from clamping and towing to other methods of parking control, including retraining staff, where necessary; Costs to landholders and businesses of replacing clamping and towing with other methods.	Benefits to (not quantified) Removes a disproportionate sanction of clamping or towing without lawful authority; Business and private motorist will benefit by not having vehicles held until fees are paid; Ends associated unreasonable practices of exorbitant fees and related issues such as inadequate signage and over-hasty clamping and towing away.
<b>Total</b>	£24.1 million p/a	£24.5 million p/a

44. The poor business practices associated with clamping and towing without lawful authority cannot be rectified by simply regulating these activities. Business licensing would be an expensive and complicated solution to the problem and ministers are not convinced that it would be effective in curbing the abuses. An appeals system (which like the licensing system would need to be funded by the industry) would create an unquantifiable risk to the Government if it did not prove financially self-supporting.
45. Moreover business licensing would not address the issue of the inherent unacceptability in the view of ministers of clamping and towing away without lawful authority.

### I. Implementation

The Government plans to implement these changes as soon as possible after the Protection of Freedoms Bill receives Royal Assent.

### J. Monitoring and Evaluation

The effectiveness of the new regime would be monitored by an internal review after five years. This would look at reports of any problem which has arisen and the nature/number of complaints.



## Annex 1: Post Implementation Review (PIR) Plan

**Basis of the review:** [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

**Commitment to review five years after introduction.**

**Review objective:** [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

**The review would consider the effects of the ban, the advantages and disadvantages with the benefit of experience, and how well the parking industry, business and landholders adapted.**

**Review approach and rationale:** [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

**Review of available evidence such as correspondence; scan of stakeholders views, Parliamentary debates and Questions.**

**Baseline:** [The current (baseline) position against which the change introduced by the legislation can be measured]

**Position prior to ban.**

**Success criteria:** [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

**Ban will have eradicated poor business practices of parking control by clamping and towing away without lawful authority.**

**Monitoring information arrangements:** [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]

**Ensure that adequate records of correspondence and other documentation (e.g. Hansard references, prss articles) are kept.**

**Reasons for not planning a PIR:** [If there is no plan to do a PIR please provide reasons here]

**N/A**

## Annex 2. Specific Impact Tests

### Statutory Equality Duties

#### Equality Impact Assessment

##### **Introduction**

We do not believe the banning of wheel clamping and towing on private land adversely affects any of the equality strands in terms of the industry. However, we do consider that this policy will have positive consequences for equality in terms of the wider public, especially with regard to the disability and gender strands.

The prime beneficiaries of the policy will be the public especially in terms of reduced inconvenience through loss of use of their vehicle as well as reduced charges.

##### **Disability**

It is important to begin by making clear that the ban will **not** change existing legislation on disabled parking on public roads/land.

Under the Road Traffic Regulation Act 1984 local authorities have powers to designate, by order, a parking place reserved for a disabled badge holder. If a disabled person's parking bay has been designated, it would be an offence to park a vehicle which is not displaying a badge in that bay. In practice, the offender is likely to receive a penalty charge notice or fixed penalty notice, issued by Civil Enforcement Officers or Traffic Wardens, for being illegally parked. However the offender could be prosecuted under section 47 of the 1984 Act, the penalty for which is a fine of up to £1000. Furthermore it is currently illegal to clamp or tow a car parked in a disabled bay where a blue badge is displayed.

The provision of disabled bays on private land is not mandatory. If a non-disabled motorist has parked in a bay reserved for disabled people in a private car park, for example a supermarket, an employee of the store can ask the driver to move their car from the reserved space, but they cannot legally insist on it. Under current SIA licensing criteria vehicle immobilisers are not allowed to clamp, block or tow any vehicle displaying a valid disabled badge.

However, charges and conditions of use in privately owned off-street car parks must be visible on a prominent sign at the entrance to the land. These may constitute a contract between the car park owner and the motorist. Enforcement of disabled persons' parking bays is therefore a matter for the individual owner or operator of the car park.

For disabled users or passengers who do not fall under the criteria required for blue badge registration the clamping and towing ban would serve to ensure they are not left in a position that would leave them more vulnerable. For example should a person who has difficulty walking park on private land against the conditions set out they may return to find their car has been towed leaving them in a very difficult position. The ban will ensure situations like these do not arise any longer.

##### **Gender**

With regard to gender and more vulnerable groups we consider that the policy will have a positive impact. We consider that women and other vulnerable groups are currently more adversely affected by clamping since the loss of use of their vehicle due to clamping or removal, especially at night, potentially places such persons at risk

Although the evidence is anecdotal there have been several cases in the press to bear this out such as an 18 year old woman who was left alone all night on the streets of Birmingham after paying to park in a pay and display car park having been nine minutes late back to her

vehicle. She had no means to pay the release fee. The £390 charge to get the car back was eventually paid the next day.

Other such cases include clampers in Doncaster threatening to hold a mother's three-year-old daughter ransom until she collected £60 from a bank;

A similar case reported in the press highlighted a situation where a private wheel clamping company threatened to tow away a woman's car with her children still inside unless she paid an on the spot fine of £450<sup>19</sup>.

## **Economic Impacts**

### Small Firms Impact Test

Although the ban is likely to have a significant impact on sole practitioners or small businesses in the parking management industry, they will be able to continue in the industry if they choose to adopt other parking management techniques, for example by moving into other forms of parking enforcement, such as ticketing and barriers. Indeed many already use such other parking management approaches.

The impact of the ban is justified in terms of achieving a fair balance between the interests of protecting motorists from deprivation of their vehicles and the poor business practices of some rogue clampers, as well as the interests of landholders and the parking management industry.

Research undertaken and published by the previous Government in 2009/10 indicated that there are between 200 and 250 companies working in wheel clamping, which between them employ around 1,800 people. The mean number of people employed by a business is 7, with only 3 companies employing more than 10 people. Furthermore, in evidence to the Bill Committee on 24 March Patrick Troy, Chief Executive of the British Parking Association, said that the vast majority of BPA members affected already do both - that is, clamp and ticket. Only 12 out of the 150 or so members of the BPA's Approved Operator Scheme only clamp. Given the large proportion of micro-businesses in the industry, exempting them from the ban on clamping and towing would effectively defeat this measure. It would continue to leave the motoring public open to the poor business practices they currently face from rogue clampers.

Larger parking management firms also use immobilisation and removal but usually as a back-up to other parking management methods.

### Consultation with small businesses

Before reaching the preferred policy decision, the Government took into account responses received to a formal consultation carried out by the previous Government in April 2009 on the options for regulating wheel clamping companies. Although this consultation did not include banning as an option, out of 561 respondents over 100 nevertheless said they wanted a ban. The Government also consulted the public on issues of concern through the Your Freedom website in July. Banning wheel clamping was one of the issues highlighted.

### Impact of regulation on sole practitioners and small businesses

The great majority of vehicle immobilisation businesses are small. Most VI businesses are in the micro or small categories. There are a small number of medium or large businesses in the VI sector but the number of employees working in VI is in the micro-small numbers. Some will already be using other parking management approaches and techniques. The ban is likely to have a significant impact on sole practitioners or small businesses but we believe that that they will be able to continue in the parking management industry if they choose to adopt other parking management approaches and techniques. We also consider that the impact is justified in terms of achieving a fair balance between the interests of protecting motorists from

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<sup>19</sup> Source : [www.citywire.co.uk/money/cowboy-clampers-pay-450-or-we-will-tow-the-kids-away/a5000090](http://www.citywire.co.uk/money/cowboy-clampers-pay-450-or-we-will-tow-the-kids-away/a5000090)

deprivation of their vehicles and the poor business practice of some of these firms and the interests of landholders and the parking management industry.

Note: Micro businesses – fewer than 10 FTE, Small businesses – fewer than 50 FTE, Medium businesses – fewer than 250 FTE, Large businesses – 250 FTE or more.

## **Competition Assessment**

### Market structure

This section considers whether regulation will have a significant impact upon the market structure of vehicle immobilisation.

### Will the proposal limit the number or range of suppliers?

The ban may result in some vehicle immobilisers and businesses leaving the sector as they will not be able or willing to make the change to parking control without immobilisation and removal. However, we believe that the ban will remove from the industry those businesses which are in it simply in order to use clamping and towing away to charge exorbitant amounts, rather than as serious parking control suppliers.

### Will the proposal limit the ability of suppliers to compete?

It is possible that the ban will limit the ability or willingness of some businesses to compete, particularly those businesses which are in the industry simply in order to use clamping and towing away to charge exorbitant amounts. Costs apply equally across all businesses but some may not be able or willing to invest in new methods. While many vehicle immobilisers would probably prefer to continue to pay for a licence and be free to provide these services if their customers request it, they will be on a level playing field where there is no requirement to hold a licence

### Will the proposal reduce the supplier's incentive to compete vigorously?

There is no evidence that this will happen. It should rather help those who do not engage in unreasonable practices by removing the opportunity for the minority of bad practitioners to benefit from abuses such as inflated charging.

## **Social Impacts**

### Justice

The impact on the Justice System has been assessed as minimal.

Our proposals create one new criminal offence (in order to ban VI and towing on private land without statutory authority). The penalty provision as drafted only allows for a fine so we are not introducing any new prison costs.

The offences relating to wheel clamping under the Private Security Industry Act 2001 will become redundant and will be repealed. These are:

- section 3(2)(j) (offence of immobilising or towing vehicles without a licence); and,
- section 6 (Offence of using unlicensed wheel-clampers).

The unimplemented provisions in sections 42-44 of the Crime and Security Act 2010 relating to licensing of vehicle immobilisation businesses, including penalty provisions contained therein, will also be repealed.

We are not creating any new right of appeal change to the rules or sentencing guidelines

We consider that the number of new prosecutions will be minimal, given the small numbers of persons and businesses involved and the fact that any offence against a ban would be highly visible.

Under the 2001 Act there were no prosecutions in 2008 or 2009 for the offence of using unlicensed wheel clampers (Private Security Industry Act 2001 S.6(1)(4)).

In 2009 there were 103 prosecutions in all under the 2001 Act in E&W. We cannot break these down to show VI cases but it is significant that VI operatives make up less than 1 per cent of operatives in sectors which are licensable under the Act - currently just 2,000 out of 350,000 operatives licensed by the SIA.

The Ministry of Justice has confirmed that the JIT for making it an offence to wheel-clamp (or immobilise in any other way) or tow away a vehicle, unless possessing lawful authority for the action has been assessed as having a negligible impact on the justice system.

### **Human Rights Impact Test**

Please refer to the Protection of Freedoms Bill ECHR memorandum at;  
<http://www.homeoffice.gov.uk/publications/about-us/legislation/freedom-bill/human-rights-memorandum>