



Parking: pavement and on-street

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This Note outlines the general legal position on pavement parking and the measures available to the police and local authorities to tackle it.

There is no national prohibition against on-street or 'pavement' parking except in relation to heavy commercial vehicles. Local authorities may act to tackle pavement parking in various ways, such as under legislation governing obstruction and dangerous parking; designating limited areas of 'no pavement parking' through a Traffic Regulation Order (TRO); or establishing a special parking area. However, this is a difficult area and there has always been a problem of enforcement of such legal remedies as do exist.

Information on other parking-related matters can be found on the [Roads Topical Page](#) of the Parliament website.

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1 Local authority powers

There is no national prohibition against on-street or 'pavement' parking except in relation to heavy commercial vehicles. These vehicles, defined as goods vehicles with an operating weight exceeding 7.5 tonnes, are prohibited from parking on verges, footpaths or the central reservations of roads under section 19 of the [Road Traffic Act 1988](#). Parking in breach of section 19 is a fixed penalty offence, although the section allows specific exceptions to the general prohibition including loading and unloading in specified circumstances and parking in an emergency to save life.

Some pavement parking will be seen as causing an obstruction and can be dealt with by the police or traffic wardens. However, in many areas local authorities have assumed control for decriminalised/civil parking enforcement under the [Road Traffic Act 1991](#) and the [Traffic Management Act 2004](#).¹ As part of this process they can designate 'Special Parking Areas' (SPAs) in which vehicles parked on street or on the pavement can be ticketed for contravening parking regulations (e.g. parking on a yellow line), rather than for causing an obstruction. Some local authorities, for example Worcester, Exeter and Hereford, took their own Private Act powers to ban pavement parking within their areas.

Government guidance is available for all local authorities on alternative, non-legislative measures to discourage pavement parking. This includes suggestions such as guardrails, the planting of trees and the placement of bollards on pavements. Such physical measures, whilst perhaps costly in the first instance, have the advantage of being self-policing and self-enforcing.²

1.1 Obstruction

Local authorities and the police have the power to remove a vehicle if it is illegally parked, causing an obstruction or has been abandoned. The power to remove vehicles is given to the police by sections 99-102 of the [Road Traffic Regulation Act 1984](#), as amended, and by the [Removal and Disposal of Vehicles Regulations 1986](#) (SI 1986/183), as amended, made under sections 99 and 101 of the 1984 Act. The powers of removal under section 99 include vehicles which are parked illegally, have broken down and those which cause obstruction, danger or potential danger. If therefore it can be shown that a vehicle is illegally parked, causing an obstruction or is abandoned, the local authority and the police may remove it under this legislation. It should be pointed out, however, that they do not *have* to remove a vehicle in any of these three cases, merely that they *may* do so.

A vehicle can only be illegally parked if there are parking restrictions operating in the area. In other cases one would have to show a vehicle was causing an obstruction. The police can remove vehicles which are causing an obstruction and there are a number of statutes and regulations which allow proceedings to be brought for obstructing the highway. These include:

- [Highways Act 1980](#), section 137 (wilfully obstructing the free passage of a highway);
- [Town Police Clauses Act 1847](#), section 28 (wilfully causing an obstruction in any public footpath or public thoroughfare); and

¹ the TMA repealed most of the parking provisions of the 1991 Act

² DfT, [Pavement parking](#) (Traffic Advisory Leaflet TAL 04/93), 1993

- *Road Vehicles (Construction and Use) Regulations 1986* (SI 1986/1078), regulation 103 (causing or permitting a motor vehicle or trailer to stand on a road so as to cause any unnecessary obstruction of the road).

There is a good deal of case law on the general issue of 'obstruction'. The meaning of 'unnecessary obstruction' is discussed in Sweet & Maxwell's *Encyclopaedia of Road Traffic Law and Practice*:

It appears that for an obstruction to be "unnecessary", there must be an unreasonable user of the road; and the question whether a user is unreasonable involves consideration of all the circumstances, including the length of time the obstruction continues, the place where it occurs, the purpose for which it is done and whether it does in fact cause an actual as opposed to a potential obstruction: *Evans v. Barker* [1971] R.T.R. 453; *Nelmes v. Rhys Howells Transport Ltd.* [1977] R.T.R. 266.

A vehicle left on a road for an unreasonable time may constitute an unnecessary obstruction: *Solomon v. Durbridge* (1956) 120 J.P. 231 (car parked for five hours on Victoria Embankment). But if the vehicle is left only for a reasonable time, then even if it amounts to an obstruction the defendant is not to be convicted of an offence under this regulation: *Evans v. Barker*, supra (car parked in Oswestry on market day between 2.45 p.m. and 4.00 p.m., 20 foot width of road left clear). Compare *Worth v. Brooks* [1959] Crim.L.R. 855, where the question was left open whether reasonable parking could be an unnecessary obstruction.

Where a large vehicle was parked between 7.30 p.m. and 9.00 p.m. in a cul-de-sac outside the defendant's home, the defendant's appeal was allowed because there was no evidence of any unreasonable user of the road: *Police v. O'Connor* [1957] Crim.L.R. 478. Similarly, where a car was parked in a bus bay for five minutes but no bus was actually obstructed, it was held that there was no evidence to justify a conviction under this regulation: *Brown v. Cardle*, 1983 S.L.T. 218; 1982 S.C.C.R. 495. But where a taxi brought traffic to a halt in a busy street for nearly a minute while attempting a U-turn, it was held that there was ample evidence upon which an obstruction could be found and the conviction stood despite the defendant's plea that his conduct had not been unreasonable: *Wall v. Williams* [1966] Crim.L.R. 50. (...)

With this regulation, compare s.28 of the *Town Police Clauses Act, 1847* (so far as it concerns wilfully causing an obstruction in a public thoroughfare) and s.137 of the *Highways Act, 1980* (wilfully obstructing the free passage along a highway). Under both sections it has been held that to constitute an offence there must be proof of an unreasonable user of the highway: *Gill v. Canon and Nield* [1917] 2 K.B. 674. *Nagy v. Weston* [1965] 1 W.L.R. 280; [1965] 1 All E.R. 78.

In many areas the police will use section 137 of the *Highways Act 1980*. If a householder's passage along the highway is impeded by a parked car and he cannot get on or off the highway because a car is parked in or in front of his drive, many police forces will consider there is an obstruction and will ticket the car or possibly ticket and remove it.

1.2 Traffic Regulation Orders (TROs)

A highway authority can ban parking in a specific area by way of a Traffic Regulation Order (TRO) made under Parts I and IV of the [Road Traffic Regulation Act 1984](#), as amended. Section 2 of the 1984 Act sets out what TROs may be used for and it includes almost anything prohibiting, restricting or regulating the use of a road by traffic or pedestrians, including parking. The procedure to be adopted by a local authority for making orders is set out in the *Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations*

1996 (SI 1996/2489); and the *Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999* (SI 1999/614), as amended. It basically involves consultation on, and publication of, proposals and the consideration of objections. It is not a simple thing to do and a local authority is unlikely to make a TRO unless it has a significant problem and substantial local support. It should be noted that TROs can only be used for specific roads and not to give a general parking prohibition.

1.3 Parking restrictions

There are two types of on-street parking controls:

- 'Prohibited' parking is where there are yellow lines or clearway restrictions in operation and it is an offence to park on the adjacent pavement or verge; and
- 'Permitted' parking is where there are meter bays or resident bays.

Decriminalised parking enforcement (DPE) was introduced in England (outside London) in 1995. Under this system parking offences became civil rather than criminal offences and local authorities took responsibility for parking in their areas. On 31 March 2008 this was renamed civil parking enforcement (CPE) and some changes were made to the enforcement and appeals process. A general outline of the decriminalised/civil parking regime is given in HC Library standard note [SN/BT/2235](#).

In areas where the local authorities have taken over responsibility for parking, cars parked on the pavement can be ticketed as contravening the parking regulations rather than for causing an obstruction.

2 Clean Neighbourhoods and Environment Act 2005

Part 2 of the [Clean Neighbourhoods and Environment Act 2005](#) introduced two new offences to prevent individuals parking vehicles on the street in order to sell them or in order to carry out repairs in the course of a business.

Under section 3 it is an offence for a person to park motor vehicles on a street, where the vehicles are parked merely in order to be sold. There must be two or more vehicles on the same street for the offence to be committed. The provision is not aimed at an individual selling a car privately; he has to be acting as part of a business. Under section 4 of the 2005 Act it is an offence to carry out 'restricted works' to vehicles on a road.³ Again, it does not apply to someone who can show he was not repairing the vehicle in the course of a business – although this is so only as long as it does not cause annoyance to persons in the area. A second exception is where the repairs arose from a breakdown or accident and are carried out promptly. The penalty for both offences is a fine not exceeding level 3 on the standard scale (£1,000) which can be delivered in the form of a fixed penalty notice.

3 Previous efforts to legislate

Governments have in the past consulted on ways to combat pavement parking and have sought to alter the law. In 1974 Parliament provided for a national ban on pavement parking in urban areas in section 7 of the [Road Traffic Act 1974](#) (this inserted new section 36B into the *Road Traffic Act 1972*). If implemented, this would have prohibited all parking on verges, central reservations and footways on 'urban roads'. The Secretary of State could have

³ 'restricted works' are works for "the repair, maintenance, servicing, improvement or dismantling of a motor vehicle" or "the installation, replacement or renewal of any such part or accessory"

exempted certain classes of vehicles and individual local authorities could have made Orders within their own areas to exempt from the national ban certain streets at all times or during certain periods. However, full implementation required that the ban had to be brought in by Parliamentary Order and this never occurred. Successive transport ministers argued that there were difficulties for local authorities and the police in finding the resources to carry out the necessary policing and enforcement work. In 1979 the then government decided to defer implementation indefinitely.

In December 1986 the Department of Transport sought comments on a discussion paper, *Pavement Parking - Curbing an Abuse*. The paper looked at the reasons for pavement parking and the problems it caused. It put forward four options for tackling the problem:

- more private legislation by local authorities;
- more TROs by individual local authorities;
- implementation of the 1974 Act's national ban; or
- amendment to the 1974 Act to permit local authorities who wished to introduce the ban to do so using the TRO procedure.

In July 1988 the Transport Minister, Peter Bottomley, said he had received over 450 responses to the paper and that he would be announcing the outcome of the review "as soon as possible",⁴ but nothing happened. When the 1972 Act was repealed in 1988, section 36B (the 'national ban' mentioned above) became, without any amendment, section 19A of the *Road Traffic Act 1988* and the matter rested there. Regulations to put into effect the national ban were not brought forward because of the potentially enormous costs to local authorities and police of securing proper policing and enforcement of such a blanket ban. It was finally repealed by section 83 and Schedule 8 of the [Road Traffic Act 1991](#).

⁴ [HC Deb 28 July 1988, c595W](#)