



BRITISH PARKING ASSOCIATION

BPA Approved Operator Scheme Code of Practice

Control and enforcement of parking on private land
and unregulated public car parks

Version 8 - January 2020



FOREWORD

I am delighted to introduce this latest version of the Code of Practice for parking on private land which has been updated following extensive consultation with stakeholders. The updated Code reflects recent changes in legislation and advances in technology which demonstrates our commitment to continuously raise standards across the profession.

These improvements help ensure that our members who operate parking on private land are always providing a consistent service for their customers.

I would like to thank everyone who contributed to improving the Code, in particular members of the Advisory Panel which includes representatives from both operators and consumer/motoring organisations.

John McArdle
BPA President

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A GENERAL CONDITIONS

I Glossary

A Parking Accredited Trade Association (ATA) A parking operator must be a member of an Accredited Trade Association (ATA) that is recognised by the DVLA to be able to request the Registered Keeper's details if they have 'reasonable cause'.

AOS The Approved Operator Scheme (AOS) is the BPA's Accredited Trade Association for people and organisations that undertake management of parking on private land. Members of the AOS must adhere to the BPA AOS Code of Practice.

ANPR Automatic Number Plate Recognition is a technology that uses specialist cameras, software and image processing to capture vehicle registration plates and converts the registration plate images into data. Photographs are taken at the entry and exit points of a car park showing when a vehicle arrives and when it leaves.

Code Means this Code of Practice.

Driver Is the person driving the vehicle at the time the alleged breach of the parking terms and conditions (contravention) occurred.

IAS Independent Appeals Service has a brand name of POPLA (Parking on Private Land Appeals) and is currently run by the Ombudsman Service.

ICO Means the Information Commissioner's Office.

Keeper liability Under Schedule 4 of the Protection of Freedoms Act (2012) a Registered Keeper may become liable to pay a parking charge if the driver is not known or the driver's details have not been provided by the keeper within the timescales outlined in Schedule 4 Protection of Freedoms Act (2012).

Notice to Driver A parking charge notice which has been issued to the driver. It is either affixed to the vehicle or issued via post (if the registered keeper has transferred liability to the driver). If the notice is utilising the Protection of Freedoms Act (2012) it must meet the conditions within Schedule 4 of the Protection of Freedoms Act (2012), in particular paragraph 7.

Notice to Hirer A parking charge notice which is addressed to the person or company which hired the vehicle at the time of the contravention. If you seek to rely on the Protection of Freedoms Act (2012) it must meet the conditions of Schedule 4 of the Protection of Freedoms Act (2012), in particular paragraph 14.

Notice to Keeper A parking charge notice which has been issued to the registered keeper. If the Protection of Freedoms Act (2012) is mentioned on the notice, the operator will be utilising the legislation and the notice must meet the conditions of Schedule 4, paragraph 8 (if the notice is issued after a Notice to Driver) or paragraph 9 (if this is the first notice issued).

Parking charge Parking charge means a charge arising when a driver who breaches the terms and conditions of parking on private land, agrees to a charge that is advertised in the parking contract; for example, for an overstay or trespasses by parking without permission. It does not mean the normal parking tariff fees for parking, which are outside the scope of the Code.

Parking charge notice (PCN) A document placed on a vehicle, or sent by post to the registered keeper or hirer, by the car park owner, operator or their agent when there is evidence to believe that the terms and conditions for parking on a site, as detailed on the terms and conditions signs, have been breached.

Parking contract The agreement between the driver and the owner or operator of a car park on private land. The contract is offered by the signage and accepted when the motorist remains on site.

Parking tariff The fee that allows a driver to pay for parking in a car park on private land.

POFA 2012 Schedule 4 of the Protection of Freedoms Act (2012).

Private car park Any car park that is on private land and is not subject to statutory control.

Relevant land This is defined in paragraph 3 of Schedule 4 of the Protection of Freedoms Act (2012).

Recovery charges Supplementary charges that an operator may add for a debt recovery process and/or solicitor fees and/or court fees to pursue a parking charge notice.

'We', 'Us', or 'Our' Means the British Parking Association.

'You' or 'Your' Means in relation to this Code, any Company or Organisation that is an AOS Member.

2 Introduction

2.1 The British Parking Association (BPA) is an independent body which represents, promotes and influences best practice in the parking sector throughout the UK and Europe. The BPA set up the Approved Operator Scheme (AOS) in 2007 specifically to represent those involved in managing and enforcing parking on private, unregulated land. The Code is owned and managed by the BPA on behalf of its AOS members.

2.2 In the Code, 'you' means the AOS member – a person or organisation carrying out parking control and enforcement on private land; 'we' means the BPA.

2.3 The aim of the AOS Code of Practice ('the Code') is to describe 'best practice' for people and organisations that carry out parking control and enforcement on private land. All members of the AOS have agreed to support and uphold the principles of the Code. To become a member, parking operators must confirm that they have systems and procedures in place to ensure compliance with the Code. Compliance with the Code should be part of the culture of the organisation.

The Code describes the objectives of these systems and procedures, and the standards of conduct and practice within which AOS members should work.

2.4 When there is relevant legislation and related guidance, this will define the overall standard of conduct for all AOS members. All AOS members must be aware of their legal obligations and implement the relevant legislation and guidance when operating their businesses. Examples of relevant law and guidance within this sector are:

- contract law
- tort of trespass
- data protection law
- consumer protection law
- Protection of Freedoms Act 2012 (POFA), including Schedule 4 (included as Appendix C to the Code)
- DVLA Guidelines for Accredited Trade Associations
- equalities law.

2.5 The Code explains in principle what we require from you and the sanctions you will incur if you do not meet these requirements. We also provide a consumer's guide to the AOS to give the consumer a summary of the AOS service and principles.

2.6 By creating the Code the parking industry has set out the minimum standards by which you will be judged by anyone coming into professional contact with you. Members of the public should be able to expect that you will keep to the law, and act in a professional, reasonable and diligent way.

2.7 All AOS members must make sure that the AOS logo is prominently displayed in all their car parks, and make it clear to the public that they are governed by the Code.

2.8 The Code comes into force from 6 January 2020. It replaces all previous codes.

2.9 The Code and its appendices cover the operation of parking on private, unregulated land. This includes:

- management and enforcement operations
- designing and using signs
- using ANPR and associated systems
- issuing and processing parking charge notices and other notices given to drivers and keepers of vehicles
- appropriate parking charges.

2.10 The Code covers private parking throughout the United Kingdom. However, at present, there is a difference in the law on private parking within the separate areas of the United Kingdom. This means that:

- in general, enforcement by clamping and removal is a criminal offence in England and Wales, except when carried out with lawful authority
- in general, enforcement by clamping and removal is unlawful in Scotland
- in Northern Ireland, clamping and removal is still a legally acceptable activity.

2.11 A key issue for any organisation or person managing a private parking operation is to make sure any parking charge notices (PCNs) issued are paid. To do this they may need to obtain the details of the registered keeper of the vehicle in question from the DVLA. Private parking operators must be members of an Accredited Trade Association (ATA) that is recognised by the DVLA to request this information. The BPA has ATA status and, as all members of the AOS have to be members of the BPA, AOS membership allows you to request information from DVLA records. The DVLA has been involved in the preparation of the Code.

2.12 In England and Wales the Protection of Freedoms Act 2012 has led to four major changes in unregulated parking enforcement on private land:

- the banning of clamping and removal in private car parks, where there is no lawful authority
- the repeal in England and Wales of the licensing regime for vehicle immobilisers, which was previously run by the Security Industry Authority
- keeper liability for payment of parking charges. This means that if the driver of the vehicle is not known then the registered keeper may be liable to pay any valid parking charges
- the setting up of IAS, an independent appeals service to review appeals against parking charges issued by AOS members. The BPA is responsible for developing and implementing IAS, and the start of keeper liability depends on IAS's implementation.

2.13 The Code does not cover on-street or off-street car parking control and enforcement led by local authorities and regulated by, for example:

- the Road Traffic Regulation Act 1984
- the Road Traffic Act 1991
- the Traffic Management Act 2004.

These are covered by detailed statutory control and regulation and can include:

- immobilisation
- removal of vehicles
- issuing penalty charge notices and excess charge notices.

2.14 Standards of conduct and practice for AOS members are laid out in the Code, but if there is any conflict the law will prevail.

2.15 Where parking on land is subject to Byelaws you must ensure that your practices are in accordance with them or that you don't operate a scheme that is prohibited by them. For the avoidance of doubt, land managed under Byelaws is not considered as 'Relevant Land' under POFA.

3 Code administration

3.1 The Code is prepared and maintained in consultation with the AOS membership and a wide range of appropriate advisory bodies.

3.2 The Code will be reviewed at appropriate intervals to make sure that it remains relevant. Changes that the AOS board considers to be minor will be made when appropriate. Changes that the AOS board considers to be major will have a consultation process. This will be carried out when the AOS board considers it is necessary.

3.3 There are a considerable number and range of stakeholders with an interest in the contents of the Code, and who have been involved in its preparation. They include:

- the BPA
- the DVLA
- other government departments
- landowners
- operators
- the general public
- drivers
- keepers
- IAS
- consumer groups.

3.4 You can download copies of the Code from the BPA website.

3.5 If you have any questions, comments or complaints about the Code and its application please see the contact details in Appendix D. This contact point is not for communications about a specific parking charge or issue, but only for ones about the content or application of the Code.

4 Conditions

4.1 Any organisation or person applying for BPA or AOS membership must:

- sign a declaration agreeing to keep to the Code and its principles
- agree to keep appropriate records to show full and effective compliance with the Code requirements and to allow a full review of these records by the BPA if we make a reasonable request
- pay the appropriate fees set by the BPA Council
- agree to follow the decisions of IAS, the independent appeals service.

If you do not sign your declaration and pay your fees, you will not be a member of the BPA.

4.2 To stay a member of the BPA you must keep to the conditions of the Code. If you do not keep to the conditions of the Code we may take disciplinary action against you.

4.3 Under the Code you must keep to all the requirements laid down by law. The Code reflects our understanding of the law at the date of publication. However, you are responsible for familiarising yourself with the law on any activities covered by the Code.

4.4 It is also a condition of the Code that, if you receive and process vehicle or registered keeper data, you must:

- be registered with the Information Commissioner
- keep to the Data Protection Act
- adhere strictly to any DVLA requirements relating to the data.

5 Warranty and disclaimers

5.1 We have, and will do our best to keep, Accredited Trade Association status with the DVLA.

5.2 You must tell us if you apply to the DVLA for an electronic facility to request data from the DVLA Vehicle Record, and use your membership of the BPA and compliance with the Code as evidence of your intention to keep to DVLA procedures.

5.3 You must also indemnify us against all claims that might arise from your obtaining data falsely or illegally, or misusing data.

5.4 We will not be liable for any direct or consequential losses that you, or any third party, incur as a result of:

- complying with the Code
- not complying with the Code
- being denied the facility to request vehicle information from the DVLA.

6 Monitoring compliance with the Code

- 6.1 You must confirm to us that you have systems and procedures in place to make sure that substantial compliance with the Code is embedded within the culture of your organisation.
- 6.2 Before you are allowed to claim that you are keeping to the Code, you must send us an Evidence of Compliance Statement. If you are a company, this must be signed by a director. When new members apply to join the AOS we will tell them what the contents of the evidence statement should be. We will do this through our normal communications channels, including our web site and by using email.
- 6.3 We will audit you at least once a year. The audit will be done by our compliance team or our appointed auditors to check that you are keeping to the terms of the Code. If we find any non-compliance issues you must put them right within an agreed time. We will also record any complaints we receive about our members.
- 6.4 We will investigate any complaints about alleged non-compliance with the Code. However, we are not set up to deal with disputes from the general public about parking or control. Nor are we a regulatory body. Therefore, the Code does not provide a way for drivers to challenge how a landowner or operator has applied parking control and enforcement on private land. Any challenge or appeal is a matter for the landowner's or operator's procedure, with the option of taking it to IAS, and/or the courts. We will not get involved in the arbitration of a dispute between an operator and an individual.
- 6.5 Non-compliance with the Code will be dealt with and monitored through a scheme of sanctions. We will issue sanction points depending on the severity of the non-compliance. If you reach twelve points on your 'membership licence' in any twelve month period, we may refer you to the BPA Council for disciplinary action. The referral may result in your membership with the AOS and the BPA being suspended or terminated.
- 6.6 If we find there has been a failure to comply with the Code, either during a complaint investigation or a compliance audit, you must make appropriate changes to your business operation to bring it into compliance. We will write to you asking for the changes to be made. This will be a formal request and we will give you a timescale for you to make the changes and send us evidence that you have done this. Depending on the nature and severity of the alleged Code breach, we may issue suspended Sanction Points and/or a formal letter of censure.
- 6.7 If you do not make the changes by the date given in the formal written request we will issue an appropriate sanction against your membership licence. If your licence reaches 12 points, we may suspend your membership of the AOS, and of the BPA.

- 6.8 If you do not comply with the Code you may be suspended or expelled immediately from the BPA. We would then start the disciplinary procedures set out in the BPA Code of Professional Conduct. This may happen when, in the opinion of the BPA Council, your failure to comply with the Code brings the BPA and its membership into disrepute.
- 6.9 We will inform the DVLA immediately if you are suspended or expelled from membership, or if your non-compliance with the Code is sufficiently serious.

7 Written authorisation of the landowner

- 7.1 If you do not own the land on which you are carrying out parking management, you must have the written authorisation of the landowner (or their appointed agent). The written confirmation must be given before you can start operating on the land in question and give you the authority to carry out all the aspects of car park management for the site that you are responsible for. In particular, it must say that the landowner (or their appointed agent) requires you to keep to the Code of Practice and that you have the authority to pursue outstanding parking charges.
- 7.2 If the operator wishes to take legal action on any outstanding parking charges, they must ensure that they have the written authority of the landowner (or their appointed agent) prior to legal action being taken.
- 7.3 The written authorisation must also set out:
 - the definition of the land on which you may operate, so that the boundaries of the land can be clearly defined
 - any conditions or restrictions on parking control and enforcement operations, including any restrictions on hours of operation
 - any conditions or restrictions on the types of vehicles that may, or may not, be subject to parking control and enforcement
 - who has the responsibility for putting up and maintaining signs
 - the definition of the services provided by each party to the agreement
- 7.4 Our compliance team are responsible for making sure that you follow the Code. If the team give you reasonable notice, you must allow our appointed manager to inspect the landowner's written authorisation.

8 Keeping and disclosing information

- 8.1 So that we can carry out our duties to operate the Code effectively, and to make sure that you keep to the Code, you must keep accurate records of all your operational sites. If our appointed manager asks, you must show them details of any particular site. We would normally ask to see the information only if there was a complaint or disciplinary action against an operator for not keeping to

the Code, or for audit purposes. An operator who does not provide the information within 14 days will be treated as being non-compliant with the Code.

8.2 Unless paragraph 8.3 applies, we will keep confidential all information which is provided in confidence to us by you. Only BPA staff involved in compliance monitoring will have access to the confidential information, and then only with the approval of a BPA Director.

8.3 Information will not be treated as confidential if:

- it was already in the public domain before it was provided to us
- it entered the public domain after this but not through any action of ours.

The information may be disclosed:

- if we are required to by a court order, or
- if, in the opinion of the Chief Executive of the BPA, not doing so might jeopardise the BPA's status as an Accredited Trade Association.

8.4 Given the increasing prominence of our Association and the introduction of the Private Parking (Code of Practice) Act, it's essential that we have robust evidence to inform our associated communications and lobbying activities. In particular, the appropriate use of aggregated membership data can support strong messages on why effective parking management is essential and challenge misinformed messages from others. It has been decided to introduce an AOS operator census programme via a confidential third party who will help us to collate and consolidate data on a half yearly basis. Operators will be liable for submission of all required data to the programme and any non-submittals will be considered as a breach of the Code and may result in Sanction Points being issued.

9 Professionalism

9.1 The Code is based on the understanding that operators and drivers should deal with each other in a respectful way.

This means that as a member of the AOS you must maintain a professional standard of behaviour in carrying out your operational duties. This includes making sure that:

- vehicles engaged in parking enforcement, such as ANPR vehicles, are marked clearly with appropriate livery or your business name, so that members of the public can see that you are the operator. Vehicles used only to transport parking enforcement staff do not need to be liveried.
- your front-line operational staff wear a uniform and carry a photo-identity card that is visible and available for inspection by drivers
- you deal with drivers and other members of the public in a professional way, avoiding using aggressive or threatening language.

9.2 Within that context, we believe that drivers ought to:

- accept that a landowner has the right to set out the terms on which drivers can enter their land
- accept that an authorised operator has the right to manage the parking on a landowner's behalf
- take reasonable steps to read the signs and any other appropriate information at a site
- drive safely and act responsibly while using a private car park
- act responsibly towards the staff managing a private car park
- give you the opportunity to answer any questions
- use the appeals procedures in an honest and fair way.

9.3 You must respect the needs of the emergency services to carry out their duties without your taking enforcement action against them. This means that you must not issue parking charge notices to:

- liveried vehicles being used for operational fire, police or ambulance purposes
- vehicles being used by a doctor or other health worker (such as a midwife or district nurse) who is on an emergency call at the address under control, and the vehicle is displaying a BMA badge or authorised Health Emergency badge.

9.4 Effective from 2 January 2018, the practice of offering financial incentives relating to the quantity of parking charge notices in new and existing employee contracts is prohibited.

9.5 You must not use predatory or misleading tactics to lure drivers into incurring parking charges. Such instances will be viewed as a serious and sanctionable instance of non-compliance and may go to the Professional Conduct Panel.

9.6 The process known as 'soft ticketing' is expressly forbidden. To confirm, 'soft ticketing' occurs where operators place a 'notice' on a vehicle which asks the motorist to check online or by telephone to see if their vehicle has committed a parking contravention. The implementation of such a scheme will be viewed as a serious and potentially sanctionable breach of the Code.

9.7 At a time when the private parking sector is under intense scrutiny from Government, it is imperative that correspondence from MPs (and similar VIPs) is dealt with promptly with definitive and comprehensive responses given. When such correspondence is received, we expect you to acknowledge the communication within 10 days and respond within 28 days. If the complaint will take longer than 28 days to resolve, we expect you to update the MP of this. Failure to achieve these deadlines may be considered a Sanctionable Breach of the Code.

10 Learning and Qualifications

- 10.1 You must ensure your staff and agents are competent to carry out the tasks they are employed to do.
- 10.2 You must provide good quality appropriate education and training to all staff for the general job specific and legal (for example, health and safety) elements of their role. We may require you to evidence how you do this during an audit.
- 10.3 You will keep your employees' education and training records for a minimum of 3 years and make them available to the BPA during an audit or on request.

11 Insurance

- 11.1 Unless you are a public sector organisation, you must have enough public liability insurance (at least £5M) to meet reasonable claims for damage or expenses. You must also carry full employers' liability insurance (at least £10M). You must allow us to inspect your current certificates of insurance, to show that you are meeting this requirement.
- 11.2 If you are a public sector organisation you must provide an equivalent level of cover as in paragraph 11.1, in case there is a claim. You must be able to show, if we ask, how you are able to provide an equivalent level of cover.

12 Requesting registered keeper details

- 12.1 Any BPA member involved in managing, controlling and enforcing parking on unregulated private land must be a member of the AOS to request information from the DVLA's vehicle records.
- 12.2 When you apply to the DVLA you must confirm you are a member of the BPA and the AOS (quoting your BPA membership number). You also have to confirm that you will keep to the Code, the Data Protection Act and any other legislation that applies. Under the Data Protection Act you will have to register as a data controller with the Information Commissioner.
- 12.3 You must use data from the DVLA only to carry out the parking control and enforcement activity for which you requested the data. You must not act as an agent to get data from the DVLA on behalf of a third party (for example a landowner or agent), unless that third party becomes a member of the AOS and meets all the compliance conditions. If you do not keep to the Code requirement this could lead to your membership of the AOS and of the BPA being suspended or terminated.
- 12.4 It is entirely up to the DVLA whether they allow you to request vehicle keeper information. Also, the DVLA apply terms and conditions to that access, and these may change. We will not get involved in disputes concerning the availability of DVLA data or services, except when we are acting in our general role as the recognised authority representing the parking industry as a whole.

13 Consideration and Grace Periods

- 13.1 The driver must have the chance to consider the Terms and Conditions before entering into the 'parking contract' with you. If, having had that opportunity, the driver decides not to park but chooses to leave the car park, you must provide them with a reasonable consideration period to leave, before the driver can be bound by your parking contract. The amount of time in these instances will vary dependant on site size and type but it must be a minimum of 5 minutes.
- 13.2 The reference to a consideration period in 13.1 shall not apply where a parking event takes place.
- 13.3 Where a parking location is one where a limited period of parking is permitted, or where drivers contract to park for a defined period and pay for that service in advance (Pay & Display), this would be considered as a parking event and a Grace Period of at least 10 minutes must be added to the end of a parking event before you issue a PCN.
- 13.4 Unauthorised motorists will not be entitled to the minimum time period of 5 minutes for a consideration period in spaces designated for specific users e.g Blue Badge holders, pick up/drop off or where parking is prohibited such as hatched areas in front of emergency exits, or on entry and exit ramps etc.
- 13.5 You must tell us the specific consideration/grace period at a site if our compliance team or our agents ask what it is.
- 13.6 Neither a consideration period or a grace period are periods of free parking and there is no requirement for you to offer an additional allowance on top of a consideration or grace period.

14 Misrepresentation of authority

- 14.1 You must give clear information to the public about what parking activities are allowed and what is unauthorised. You must not misrepresent to the public that your parking control and enforcement work is carried out under the statutory powers of the police or any other public authority. You will be breaching the Code if you suggest to the public that you are providing parking enforcement under statutory authority.
- 14.2 You must not use terms which imply that parking is being managed, controlled and enforced under statutory authority. This includes using terms such as 'fine', 'penalty', 'penalty charge notice' or 'excess charge notice'.
- 14.3 The abbreviation 'PCN' is also used to mean a 'penalty charge notice' in the regulated environment. Unless you have previously defined a PCN as a 'parking charge notice' on your signs and notices, you must avoid using the term 'PCN' to avoid confusing drivers about the nature of your parking enforcement.

15 Third party sub-contractors and 'self-ticketing'

- 15.1 You may use sub-contractors to carry out individual tasks to help you in your parking management and enforcement responsibilities. If you do this, you are responsible for making sure the sub-contractor keeps to the Code as if you were carrying out the tasks. If the sub-contractor does not keep to the Code, this failure will be treated as an act of non-compliance by you.
- 15.2 Self-Ticketing can be defined as any PCN issued or information gathered that results in a PCN being issued by a party who is not directly employed by the parking operator – for example a representative of the landowner.
- 15.2a You are responsible for making sure the customer keeps to the Code. You must provide your customer with an up-to-date copy of the Code and get their signed confirmation that they have read the Code and agree to keep to it.
- 15.3 You must tell promptly if you intend to provide self-ticketing services. If we or our agent ask you, you must show us the evidence that the customer has agreed to keep to the Code.
- 15.4 Self-tickers must be registered with the BPA before they are able to issue a Parking Charge or their operator can request keeper data relating to a parking incident.
- 15.5 All operators offering self-ticketing will be required to register the organisations that they look after with the BPA and supply photographs of the locations that they manage, showing the signage in place within their registration documentation.
- 15.6 All self-ticketing sites should be visited by the operator prior to any enforcement action being taken, unless there is an exemption by the ATA.
- 15.7 Operators will be required to self-report any, and every, breach of the Code by self-tickers to the BPA Compliance Team who in turn will investigate and may take necessary disciplinary action. Failure to do this may be seen as a sanctionable breach of the Code.
- 15.8 The practice of offering financial incentives relating to the quantity of parking charge notices directly to the person who issues a parking charge notice or gathers evidence for one, in a self ticketing or similar arrangement is prohibited.
- 15.9 Operators are required to ensure that the self-ticketing organisations that they have responsibility for, undertake appropriate training.

16 Disabled motorists

- 16.1 The Equality Act 2010 says that providers of services to the public must make 'reasonable adjustments' to remove barriers which may discriminate against disabled people.

- 16.2 'Reasonable adjustments' to prevent discrimination are likely to include larger 'disabled' parking spaces near to the entrance or amenities for disabled people whose mobility is impaired. It also could include lowered payment machines and other ways to pay if payment is required: for example, paying by phone. You and your staff also need to realise that some disabled people may take a long time to get to the payment machine.
- 16.3 Operators of off-street car parks do not have to recognise the Blue Badge scheme. But many choose to do so to meet their obligations under the Equality Act. Although a Blue Badge is not issued to all disabled people it is issued to those with mobility problems. So it is a good way for parking operators to identify people who need special parking provision.
- 16.4 You are at risk of a claim under the Equality Act if you do not discourage abuse of the 'disabled' spaces. This means that you need to make sure the spaces are regularly checked to be sure they are not being used by people who do not have a disability.

17 Keying Errors

- 17.1 Technology is being used more and more by parking providers as an aid to car park management. Irrespective of whether a parking facility is off-street or on-street, the increased use of technology will often require a motorist to correctly enter their vehicle registration at a pay and display machine, parking kiosk or at a validation terminal inside the location in instances where parking is offered at a reduced rate or free of charge.
- 17.2 There is also an increase in the use of mobile phone apps to pay for parking. Just as in the case of fixed or stationary parking payment terminals, mobile phone parking apps also require a motorist to correctly enter their car registration number.
- 17.3 No one wants to receive a parking charge for making a mistake when entering their vehicle registration number into a Pay and Display machine or parking validation terminal, when they have paid for the parking event. Motorists, car park operators, service providers and equipment manufacturers all have a responsibility in ensuring that obvious and inadvertent errors do not lead to unjustified charges.
- 17.4 The Code recognises that keying errors can be grouped into 2 main areas;

A) Minor Keying Errors

Examples of a minor keying error could include:

- 0 instead of o.
- l instead of L.
- I instead of l
- Up to one letter wrong, removed, or swapped
- Up to one number wrong, removed, or swapped
- Numbers and/or letters in the wrong order (but where the correct registration is still recognisable)

These are minor errors where up to one character has been entered incorrectly, or where the registration has been entered in the wrong order. If a typing error such as this leads to a PCN being issued and the motorist appeals, the PCN must be cancelled at the first stage of appeal.

B) Major Keying Errors

Examples of a major keying error could include:

- Motorist entered their spouse's car registration
- Motorist entered something completely unrelated to their registration
- Motorist made multiple keying errors (beyond one character being entered incorrectly)
- Motorist has only entered a small part of their VRM, for example the first three digits

In these instances we would expect that such errors are dealt with appropriately at the first appeal stage, especially if it can be proven that the motorist has paid for the parking event or that the motorist attempted to enter their VRM or were a legitimate user of the car park (eg a hospital patient or a patron of a restaurant).

It is appreciated that in issuing a PCN in these instances, the operator will have incurred charges including but not limited to the DVLA fee and other processing costs therefore we believe that it is reasonable to seek to recover some of these costs by making a modest charge to the motorist of no more than £20 for a 14-day period from when the keying error was identified before reverting to the charge amount at the point of appeal.

B OPERATIONAL REQUIREMENTS IN ENGLAND AND WALES

18 Introduction to the operational requirements

18.1 Sections 18 to 25 below apply to England and Wales only. They take into account the changes to private parking management following the Protection of Freedoms Act 2012 (POFA 2012).

Schedule 4 to POFA 2012 is set out in Appendix C of the Code.

19 Signs

19.1 A driver who uses your private car park with your permission does so under a licence or contract with you. If they park without your permission this will usually be an act of trespass. In all cases, the driver's use of your land will be governed by your terms and conditions, which the driver should be made aware of from the start. You must use signs to make it easy for them to find out what your terms and conditions are.

19.2 **Entrance signs** play an important part in establishing a parking contract and deterring trespassers. Therefore, as well as the signs you must have telling drivers about the terms and conditions for parking, you must also have a standard form of entrance sign at the entrance to the parking area. Entrance signs must tell drivers that the car park is managed and that there are terms and conditions they must be aware of. Entrance signs must follow some minimum general principles and be in a standard format. The size of the sign must take into account the expected speed of vehicles approaching the car park, and it is recommended that you follow Department for Transport guidance on this. See Appendix B for an example of an entrance sign and more information about their use.

A standard form of entrance sign must be placed at the entrance to the parking area. There may be reasons why this is impractical, for example:

- when there is no clearly defined car park entrance
- when the car park is very small
- at forecourts in front of shops and petrol filling stations
- at parking areas where general parking is not permitted

19.3 **Specific parking-terms signage** tells drivers what your terms and conditions are, including your parking charges. You must place signs containing the specific parking terms throughout the site, so that drivers are given the chance to read them at the time of parking or leaving their vehicle. Keep a record of where all the signs are. Signs must be conspicuous and legible, and written in intelligible language, so that they are easy to see, read

and understand. Signs showing your detailed terms and conditions must be at least 450mm x 450mm.

19.4 If you intend to use the keeper liability provisions in Schedule 4 of POFA 2012, your signs must give 'adequate notice'. This includes:

- specifying the sum payable for unauthorised parking
- adequately bringing the charges to the attention of drivers, and
- following any applicable government signage regulations.

See paragraphs 2(2), 2(3) and 12 of the Schedule.

19.5 The wording you include on your specific parking terms signage is your decision. However, you should try to use plain and intelligible language in all your signs and information.

19.6 If you provide a telephone line to respond to complaints, challenges and appeals from motorists relating to the terms and conditions of parking they have entered into, these calls must not be charged above the basic rate.

19.7 You should display the BPA's AOS logos at all sites. This will help the public to see that you are a legitimate operator, and show that the site is run properly.

19.8 Important: you may have to give other information on signs and notices under companies and consumer protection law and other legislation.

19.9 So that disabled motorists can decide whether they want to use the site, there must be at least one sign containing the terms and conditions for parking that can be viewed without needing to leave the vehicle. Ideally this sign must be close to any parking bays set aside for disabled motorists.

19.10 Where there is a change in the terms and conditions that materially affects the motorist then you must make these terms and conditions clear on your signage. Where such changes impose liability where none previously existed then you must consider a transition to allow regular visitors to the site to adjust and familiarise themselves with the changes. Best practice would be the installation of additional/ temporary signage at the entrance and throughout the site making it clear that new terms and conditions apply. This will ensure such that regular visitors who may be familiar with the previous terms become aware of the new ones.

20 Charges, and terms and conditions

20.1 When you issue a parking charge notice the charges you make have to be reasonable. This section explains what reasonable charges are.

20.2 In the Code 'parking charges' means charges arising from enforcement under three different circumstances:

- when a motorist breaks the terms and conditions of a parking contract
- when a motorist trespasses by parking without permission
- agreed charges that are advertised in the contract; for example, for an overstay.

It does not mean the normal tariff fees for parking. These are a matter for the landowner and operator and are outside the scope of the Code. Your terms and conditions will include your normal tariffs for parking, plus any parking charges if the driver breaks the contract or commits a trespass.

20.3 If the driver breaks the contract, for example by not paying the tariff fee or by staying longer than the time paid for, or if they trespass on your land, they may be liable for parking charges. These charges must be shown clearly and fully to the driver on the signs which contain your terms and conditions.

20.4 If you want to enforce a parking charge notice under the keeper liability provisions of POFA 2012 you will need to show how you brought the requirement to pay parking charges to the attention of drivers. See paragraphs 2 (2) and (3) of Schedule 4.

20.5 If the parking charge that the driver is being asked to pay is for a breach of contract or act of trespass, this charge must be proportionate and commercially justifiable. We would not expect this amount to be more than £100. If the charge is more than this, operators must be able to justify the amount in advance.

20.6 If your parking charge is based upon a contractually agreed sum, that charge should not be punitive or unreasonable. If it is more than the amount in Clause 19.5 and is not justified in advance, it could lead to an investigation by Trading Standards or another appropriate authority.

20.7 If prompt payment is made (defined as 14 days from the issue of the parking charge notice) you must offer a reduced payment to reflect your reduced costs in collecting the charge. This reduction in cost must be by at least 40% of the full charge.

20.8 If you are asked, you must be able to justify the level of parking charges to the AOS Board, a member of our compliance team or to their specified agent.

20.9 You must warn drivers that if they delay payment beyond a payment period of 28 days and you need to take court action or use debt recovery methods to recover a debt, there may be extra 'recovery' charges for debt recovery action. However, you do not need to say how much these recovery charges are in advance, on your signs or notices.

20.10 If an Operator seeks to use extracts from the 'ParkingEye v Beavis' judgement laid down by the Supreme Court, the judgement must be referenced and that extracts from it must be properly quoted. Best practice would be adding the website link to the summary of the judgement, when making reference to it.

21 Parking charge notices

21.1 When a vehicle is parked in a private car park, the normal rule is that the driver is responsible for paying the tariff fee (if any) for parking, for following the terms and conditions which apply, and for paying any parking charges.

Because of the difficulties of identifying who drivers are and where they live, the law in England and Wales now allows car park owners and operators to recover unpaid parking charges from registered vehicle keepers, or, where relevant, from vehicle hirers.

21.2 Schedule 4 of POFA 2012 creates the new legal basis to claim unpaid parking charges from vehicle keepers and hirers. As long as the strict conditions of Schedule 4 are met, you may claim payment from the keeper or the hirer of the vehicle rather than from the driver. To do this you need to follow the procedures set out in the Schedule. You can do this whether the parking originally took place under the terms of a contract or was an act of trespass.

21.3 You can find more information on the procedures in Schedule 4 of POFA, which is set out in full in Appendix C of the Code.

21.4 The parking charge notice is the document you:

- give to drivers, or attach to their vehicle windscreen, to tell them they have broken your terms and conditions and are now liable for parking charges, or
- send to vehicle keepers asking them to pay the parking charges, if you do not have the driver's details, or
- send to vehicle hirers, asking them to pay the parking charges, if you discover that the vehicle was rented.

POFA 2012 refers to the 'Notice to Driver', the 'Notice to Keeper' and the 'Notice to Hirer'. All are types of parking charge notice.

21.4a A notice sent by post is to be presumed, unless the contrary is proved, to have been delivered and so "given" on the second working day after the day on which it is posted; and for this purpose "working day" means any day other than a Saturday, Sunday or a public holiday.

21.5a When issuing a parking charge notice you may use photographs as evidence that a vehicle was parked in an unauthorised way. The photographs must refer to and confirm the incident which you claim was unauthorised. A date and time stamp should be included on the

photograph. All photographs used for evidence should be clear and legible and must not be retouched or digitally altered.

21.5b In deciding whether a payment ticket has been visibly displayed on a vehicle you must do a thorough visual check of the dashboard and windows.

21.5c You should not use wording on your plastic PCN envelopes which implies that you are acting under statutory authority. For example phrases such as 'It is an offence to remove...', should be avoided.

Notices to Drivers

21.6 To be an effective 'Notice to Driver' under POFA 2012, your parking charge notice must meet the requirements of Schedule 4. In particular:

- paragraph 7 (2) lists the contents you must include in the Notice to Driver
- paragraph 7(4) sets out how and when the Notice to Driver is to be delivered, including the requirement that the notice must be given before the vehicle has been removed from the car park and while it is stationary
- paragraph 7(5) defines what information must be provided about arrangements to resolve disputes and complaints, including arrangements about an independent appeal.

21.7 As well as meeting the POFA 2012 statutory requirements to be a Notice to Driver, your parking charge notice must tell drivers that you may be requesting information from the DVLA as to the registered keeper of the vehicle, and the 'reasonable cause' you have for making that request.

Notices to Keepers

21.8 If you have issued a parking charge notice to a driver in your car park but had no response, you may wish to take the next step to recover the charge.

21.9 Or, if you were unable to issue a parking charge notice while the driver was present, perhaps because you use ANPR or camera equipment to monitor the car park, you may want to issue a parking charge notice by post.

21.10 In either case, you will need to try to identify who was driving the vehicle and make contact with them. You do this by first seeking the keeper details from the DVLA. Having received the keeper details from the DVLA you will need to issue a 'Notice to Keeper'.

21.11 The Notice to Keeper serves three purposes:

- it invites the keeper to pay the unpaid parking charge
- if the keeper was not the driver it invites the keeper to tell you who the driver was, and

- it starts the 28-day time period after which the keeper may become liable to pay the unpaid parking charge.

21.12 An effective 'Notice to Keeper' within the meaning of POFA 2012, must meet the requirements of Schedule 4 of the Act. In particular:

- paragraphs 6 (1) (a) and 8 (2), if you have already given an effective Notice to Driver at the time of the parking event
- paragraphs 6 (1) (b) and 9, if you have not given an effective Notice to Driver.

21.13 You should see the relevant part of Schedule 4 of POFA 2012 to make sure you know:

- what contents you need to include in the Notice to Keeper (paragraph 8(2) or 9(2))
- the methods of serving the Notice to Keeper (paragraph 8(4) or 9(4))
- the deadlines by which the Notice to Keeper must be served, which differ depending on whether or not a Notice to Driver was issued first (paragraphs 8(5) or 9(5))
- the evidence (if any) you must include with the Notice to Keeper (paragraph 10).

21.14 When you serve a Notice to Keeper, you must also include information telling the keeper the 'reasonable cause' you had for asking the DVLA for their details.

21.15 If the keeper replies to your Notice to Keeper within 28 days and gives enough details about the driver, you must then pursue the driver for the unpaid parking charge.

21.16 If the keeper does not reply within 28 days, or refuses to give enough details about the driver, under Schedule 4 of POFA 2012 you are able to pursue the keeper for the unpaid parking charge.

Notices to Hirers

21.17 Following the issue of a Notice to Keeper, you may find that the vehicle was hired at the time of the parking contravention for which you are seeking a parking charge. Instead of recovering payment from the keeper, you will need to try to recover it from the hirer, by issuing a Notice to Hirer.

21.18 Schedule 4, paragraphs 13 and 14, of POFA 2012 sets out the strict terms under which the hirer may become liable instead of the keeper. These include that:

- you are given a signed statement from the vehicle-hire firm within 28 days of the Notice to Keeper, along with a copy of the hire agreement and a copy of a statement of liability signed by the hirer, and
- these statements contain the details set out in paragraph 13 of Schedule 4.

- 21.19 Your Notice to Hirer must satisfy the detailed requirements of paragraph 14, including:
- the contents you need to include in the Notice to Hirer – paragraph 14(5)
 - the documents you must send with it – paragraphs 13(2) and 14(2)
 - the methods of serving the Notice to Hirer – paragraph 14(6)
 - the deadlines by which the Notice to Hirer must be served – paragraphs 14(2) and 14(3).

Local Authorities and unregulated parking

21.20 We believe that where possible parking enforcement should take place within the legal framework provided by such legislation as the Traffic Management Act or other road traffic regulations. If you are enforcing as a local authority, you should try to enforce in this way.

21.21 If this is not possible for whatever reason, you may use the rules of the Code to manage your unregulated parking enforcement in the following way:

- You may **not** use this section of the Code, PoFA 2012 or IAS to manage your unregulated car parks if you are enforcing using the principles of the law of contract.
- You may use the section of the Code for Scotland and Northern Ireland if you are enforcing using the principles of the law of contract in any part of the UK.
- You may use this section of the Code, PoFA 2012 and IAS if you are able to use the principles of the Tort of Trespass.

21.22 In order to request information from the DVLA's vehicle keeper records for unregulated parking events, you must use an entirely separate system to that which you use for requests under regulated authority. You must also be aware of the charge that will be made by DVLA for these requests.

21.23 When you join the AOS, you must tell us which regime you intend to enforce under.

22 Automatic number plate recognition (ANPR)

General principles

22.1 You may use ANPR camera technology to manage, control and enforce parking in private car parks, as long as you do this in a reasonable, consistent and transparent manner. Your signs at the car park must tell drivers that you are using this technology and what you will use the data captured by ANPR cameras for.

22.2 Quality checks: before you issue a parking charge notice you must carry out a manual quality check of the ANPR images to reduce errors and make sure that it is appropriate to take action.

22.3 You must keep any ANPR equipment you use in your car parks in good working order. You need to make sure the data you are collecting is accurate, securely held and cannot be tampered with. The processes that you use to manage your ANPR system may be audited by our compliance team or our agents.

22.4 It is also a condition of the Code that, if you receive and process vehicle or registered keeper data, you must:

- be registered with the Information Commissioner
- keep to the Data Protection Act
- follow the DVLA requirements concerning the data
- follow the guidelines from the Information Commissioner's Office on the use of CCTV and ANPR cameras, and on keeping and sharing personal data such as vehicle registration marks.

22.5 We have an expectation that when Operators are using cameras to manage parking, they will sign up to the Surveillance Camera Commissioner's Code of Practice and adopt the Guiding Principles which are detailed in Appendix F of the Code.

Making use of Keeper Liability provisions

22.6 If you want to make use of the Keeper Liability provisions in Schedule 4 of POFA 2012 and you have not issued and delivered a parking charge notice to the driver in the car park where the parking event took place, your Notice to Keeper must meet the strict requirements and timetable set out in the Schedule (in particular paragraph 9).

Not making use of Keeper Liability provisions

22.7 To give drivers early notice of your claim, you should apply to the DVLA for the keeper details promptly. Usually this would be applying to the DVLA no more than 28 days after the unauthorised parking event. When applying for Keeper Details you must ensure that you adhere to the DVLA's guidelines and requirements.

22.8 While we have an expectation that operators will seek to use the POFA legislation, it is appreciated that there will be occasions where this might not be possible. If a non-POFA Notice to Keeper is being issued it must be sent out as soon as possible and no later than 7 months after the original parking event.

22.9 You must post the parking charge notice to the keeper as soon as possible. Your target is to send the parking charge notice to the keeper of the vehicle no more than 14 days after receiving the keeper data from the DVLA.

22.10 Your letter to the keeper should point out the details of the unauthorised parking event and ask for payment or

request details of the driver. If you are not making use of the keeper liability provisions of POFA or you are unable to achieve the deadlines specified therein, your letter must not reference POFA or state that the keeper is liable.

- 22.11 It is the driver's responsibility to pay the parking charge notice. If you receive information from the keeper which identifies the driver, and the driver is someone else, you must serve the parking charge notice by post on the driver.
- 22.12 Parking charge notices served by post must offer the same payment discount arrangements as tickets placed on vehicles, while allowing extra time for the postal service.

23 Complaints, challenges and appeals

General principles

- 23.1 Under the Code you must have procedures for dealing fairly, efficiently and promptly with any communication from the motorist. The procedures must give drivers and keepers the chance to appeal a Parking Charge Notice. If a motorist pays a Parking Charge Notice and then appeals, you do not have to consider the appeal unless you opt to do so.
- 23.2 Whenever you issue a parking charge notice motorists must first use your procedures for resolving appeals, before being able to refer them to an independent appeal service. You must tell motorists at what stage the independent appeals service becomes available.
- 23.3 If the motorist asks for it, you must make available any photographic evidence you have.

Operator Procedures

- 23.4 If a driver or keeper appeals a parking charge you must review the case and decide whether to:
- uphold the parking charge and explain why it was issued and should therefore be paid, or
 - reduce or cancel the charge and take no further management action other than informing the driver.
- 23.5 If the motorist is due a refund of any fees, you must include that payment – or written confirmation that you have made the payment – with your reply.
- 23.6 When you receive a appeal about the issue of a parking charge, you must stop work on processing the charge immediately. You must not increase the charge until you have replied to the appeal.
- 23.7 We consider it a reasonable timescale to allow 28 days from the issue of the parking charge notice (in whatever format you send it) to allow the driver, keeper or hirer to appeal the enforcement action. A keeper cannot make

an appeal concerning the same incident if the driver has already appealed.

- 23.8 You must acknowledge or reply to the appeal within 14 days of receiving it. If at first you only acknowledge the appeal, or your reply does not fully resolve it, normally we would expect you to seek the additional information you require from the motorist and accept or reject the appeal in writing not more than 35 days after the information required to resolve it has been received from the motorist. It is acknowledged that in exceptional circumstances, an investigation into a appeal may take longer than 35 days after such information has been received and in these instances the motorist must be advised accordingly and given a date by which they can expect a resolution. If this date cannot be achieved then the motorist must be written to again and a revised resolution date agreed. We may require you to demonstrate that you are keeping to these times
- 23.9 You must not ask the motorist to send payment of the parking charge with their appeal.
- 23.9a It must be made clear on any notices issued or on an appeal rejection letter that the motorist has to choose either to pay or to appeal (this also includes appealing to the IAS) – they can't do both.
- 23.10 You may not ask the motorist to send a stamped addressed envelope with the appeal for you to use to send your decision.
- 23.11 A parking charge may be appealed by a vehicle keeper on the grounds that the vehicle was stolen or on hire or lease at the time the unauthorised parking took place. If the rental or lease customer's details have been provided to you by the hire or lease company, along with the documents required under paragraph 13(2) of Schedule 4 of the Protection of Freedoms Act (2012), you should pursue your claim instead with their customer.
- 23.12 If you reject an appeal you must:
- tell the motorist how to make an appeal to IAS. This includes providing a template 'notice of appeal' form or a link to the appropriate website for lodging an appeal and a valid 10-digit verification code. Even if the verification code is automatically printed on an enclosed appeal form, it must still be in a prominent position on the first page of the rejection letter.
 - give the motorist a reasonable amount of time to pay the charge before restarting the collection process. We recommend that you allow at least 35 days from the date you rejected the challenge.
- 23.12a If an appeal is being considered by the IAS, the debt recovery process must not be commenced/ recommenced until the outcome of the case is known. We would expect operators to have systems in place to ensure that this does not happen.

23.12b Within all Appeal Rejection Letters, and in order to comply with the EU ADR Directive, the following wording should be used;

- You have now reached the end of our internal appeals procedure. [Insert standard operator text to appeal to IAS, including 28 day time limit for doing so, the IAS verification code and the IAS website address]
- By law we are also required to inform you that Ombudsman Services (www.ombudsman-services.org/) provides an alternative dispute resolution service that would be competent to deal with your appeal. However, we have not chosen to participate in their alternative dispute resolution service. As such should you wish to appeal then you must do so to IAS, as explained above.

23.13 You must keep evidence of all appeals you receive and the action you take to resolve them. You must keep a full audit trail of all actions, which can be manual or generated by a processing system. You must allow us access to this when we are investigating a complaint. You must keep documents (or scanned copies) for at least two years from the date of the appeal.

IAS (Independent Appeals Service)

23.14 Drivers and keepers may appeal against a parking charge to IAS but a keeper cannot make an appeal concerning the same incident if the driver has already appealed.

23.15 IAS operates under its own set of processes which include:

- its remit and jurisdiction
- the processes for lodging and defending an appeal
- the timetable for the appeals processes
- the grounds for appeal
- the burden and standard of proof required by the parties to the appeal
- the degree to which both parties are bound by its decisions
- details of its annual report.

23.16a You must keep to the processes and other requirements of IAS, as set out on their website and elsewhere.

23.16b Witness statements were introduced as an alternative to the provision of a full/redacted landowner contract within an independent appeal evidence pack and as such these statements must be signed by a representative of the landowner or his agent, and not by a member of the operator's staff.

23.16c The independent appeal evidence must be sent or made available to the motorist on the same day as the independent appeal service receive it and the evidence pack to the motorist must be the same as the one provided to the IAS. Failure to do this may be considered a Sanctionable Breach of the Code.

23.17 If IAS decides that you have failed to demonstrate that a parking charge should be upheld, in whole or in part, you must follow its decision.

23.18 You may not continue with a claim for debt-recovery against a driver, keeper or hirer if IAS has decided against you and grants the appeal.

23.19 If IAS directs you to reconsider a decision you have made to reject a appeal, you must do so and tell them the outcome.

23.20 If IAS rejects the appeal you may continue to recover the parking charge.

23.21 The deadline for payment following an IAS decision in favour of the Operator is 28 days.

24 Recovering unpaid parking charges

24.1a Appendix E of the Code sets out a parking charge notice flow chart for recovering unpaid parking charges and for appeals.

24.1b Where a Parking Charge becomes overdue and before Court Proceedings have commenced, a reasonable sum (which covers the cost of recovering debt) may be added for the debt recovery fees. This sum must not exceed £70 unless prior approval from the BPA has been granted.

24.1c Before serving a Letter Before Claim and prior to the issue of proceedings, Operators must, if no responses have been received to the NTD/NTK/reminder letters, take reasonable endeavours to ensure that the contact details for the person you are writing to are correct.

24.1d We have an expectation that members of the BPA's Approved Operator Scheme who manage Debt Recovery follow the principles of the Financial Conduct Authority (FCA) and in particular the outcomes listed in their 'Fair Treatment of Customers' schedule. We would expect members to be able to evidence how they deliver these outcomes during audit.

24.1e In its written communication with motorist a statement that free debt counselling and/or legal advice is made available to motorists and how the motorist can find out more. It is especially important that such information is provided on any letters before action or if it is believed that the customer may be vulnerable.

Recovery after serving the Notice to Keeper

24.2 Section 20 of the Code describes the process to alert a vehicle keeper about an unpaid parking charge notice and their potential liability to pay it, using the Notice to Keeper process.

24.3 Under POFA 2012, you can gain the right to recover unpaid charges from keepers only if particular conditions have been met. Once the conditions are met you may use your right to recover, after the end of the period of 28 days beginning with the day on which the Notice to Keeper was given. You should read paragraph 4 of Schedule 4 of POFA 2012 to understand what these conditions are. Note in particular that if:

- the vehicle was stolen at the time of the parking event, or
- the vehicle keeper has sold on the vehicle to another registered keeper

you will not be able to pursue the vehicle keeper under the POFA 2012 provisions. However, if the keeper did not give you details about the driver or hirer, or if the driver or hirer refuses to acknowledge their liability, you would be able to pursue the registered keeper.

24.4 Once you have become able to use your rights to recover from the keeper under POFA 2012 you must do so in line with the following steps in the Code. These steps are based on industry good practice, not on the law.

a Notification letter

- You should send a notification letter to the keeper. This letter should say that the keeper is now liable to pay the charge, and that the keeper should pay the amount due within a set time.
- You must wait until at least 28 days after you sent the Notice to Keeper before sending the notification letter.
- The notification letter does not have to follow a specific format but should confirm that the amount is due and how it should be paid.

b Final reminder

- If you do not receive a challenge or appeal, and the parking charge is unpaid, you may send a final reminder.
- You must wait until at least 14 days after you sent the notification letter before sending a final reminder.
- You should make it clear in the final reminder how to make the payment and what you will do next if you do not receive payment.

c Court action or charge recovery

- When you have sent the final reminder, you must wait at least 14 days before taking further action, such as starting court action or debt recovery against the keeper.

24.5 **After serving the Notice to Driver**

There may be occasions when you issued a parking charge notice and handed it to the driver or attached it to the vehicle, and you know the driver's name and current address. If so, you should pursue your claim for payment against the driver, not the keeper, if the driver fails to pay.

25 **Vehicle immobilisation and removal**

25.1 Under Section 54 of POFA 2012 it became a criminal offence to, without lawful authority:

- immobilise a vehicle by attaching an immobilising device, such as a wheel clamp, or
- move or restrict the movement of a vehicle by any means, intending to prevent or inhibit its removal by, among others, the driver.

25.2 The Act does not criminalise vehicle immobilisation or removal if a person is acting with 'lawful authority'. The explanatory notes to the legislation show that this includes local authorities enforcing road traffic contraventions or removing abandoned vehicles from private land, and the police removing dangerously parked vehicles.

25.3 Section 55 of POFA 2012 gives the Secretary of State powers to make regulations allowing the police, local authorities and others (for example, private parking operators) to move vehicles that are illegally or dangerously parked, or causing an obstruction on any land (including private land). The Secretary of State is also empowered to make regulations about removing abandoned vehicles from any land, including, for example, private land. At present no such regulations have been made.

25.4 You should read the wording in POFA 2012 to understand the new criminal offences and avoid breaking the law.

C OPERATIONAL REQUIREMENTS IN SCOTLAND AND NORTHERN IRELAND

26 Introduction to the operational requirements

26.1 Sections 26 to 32 below apply to Scotland and Northern Ireland.

27 Signs

27.1 A driver who uses your private car park with your permission does so under a licence or contract with you. If they park without your permission this may be an act of trespass. In all cases, the driver's use of your land will be governed by your terms and conditions, which the driver should be made aware of from the start. You must use signs to make it easy for them to find out what your terms and conditions are.

27.2 Entrance signs play an important part in establishing a parking contract and deterring trespassers. Therefore, as well as the signs you must have telling drivers about the terms and conditions for parking, you must also have a standard form of entrance sign at the entrance to the parking area. Entrance signs must tell drivers that the car park is managed and that there are terms and conditions they must be aware of. Entrance signs must follow some minimum general principles and be in a standard format. The size of the sign must take into account the expected speed of vehicles approaching the car park, and it is recommended that you follow Department for Transport guidance on this. See Appendix B for an example of an entrance sign and more information about their use.

A standard form of entrance sign must be placed at the entrance to the parking area. There may be reasons why this is impractical, for example:

- when there is no clearly defined car park entrance
- when the car park is very small
- at forecourts in front of shops and petrol filling stations
- at parking areas where general parking is not permitted

27.3 Specific parking-terms signage tells drivers what your terms and conditions are, including your parking charges. You must place signs containing the specific parking terms throughout the site, so that drivers are given the chance to read them at the time of parking or leaving their vehicle. Keep a record of where all the signs are. Signs must be conspicuous and legible, and written in intelligible language, so that they are easy to see, read and understand. Signs showing your detailed terms and conditions must be at least 450mm x 450mm.

27.4 Your signs must give 'adequate notice'. This includes:

- specifying the sum payable for unauthorised parking
- adequately bringing the charges to the attention of drivers, and
- following any applicable government signage regulations.

27.5 The wording you include on your specific parking terms signage is your decision. However, you should try to use plain and intelligible language in all your signs and information.

27.6 If you provide a telephone line to respond to complaints, challenges and appeals from motorists relating to the terms and conditions of parking they have entered into, these calls must not be charged above the basic rate.

27.7 You should display the BPA's AOS logos at all sites. This will help the public to see that you are a legitimate operator, and show that the site is run properly.

27.8 Important: you may have to give other information on signs and notices under companies and consumer protection law and other legislation.

27.9 So that disabled motorists can decide whether they want to use the site, there must be at least one sign containing the terms and conditions for parking that can be viewed without needing to leave the vehicle. Ideally this sign must be close to any parking bays set aside for disabled motorists.

27.10 Where there is a change in the terms and conditions that materially affects the motorist then you must make these terms and conditions clear on your signage. Where such changes impose liability where none previously existed then you must consider a transition to allow regular visitors to the site to adjust and familiarise themselves with the changes. Best practice would be the installation of additional/ temporary signage at the entrance and throughout the site making it clear that new terms and conditions apply. This will ensure such that regular visitors who may be familiar with the previous terms become aware of the new ones.

28 Charges, and terms and conditions

28.1 When you issue a parking charge notice the charges you make have to be reasonable. This section explains what reasonable charges are.

28.2 In the Code 'parking charges' means charges arising from enforcement under three different circumstances:

- when a motorist breaks the terms and conditions of a parking contract
- when a motorist trespasses by parking without permission
- agreed charges that are advertised in the contract; for example, for an overstay.

It does not mean the normal tariff fees for parking. These are a matter for the landowner and operator and are outside the scope of the Code. Your terms and conditions will include your normal tariffs for parking, plus any parking charges if the driver breaks the contract or commits a trespass.

28.3 If the driver breaks the contract, for example by not paying the tariff fee or by staying longer than the time paid for, or if they trespass on your land, they may be liable for parking charges. These charges must be shown clearly and fully to the driver on the signs which contain your terms and conditions.

28.4 If the parking charge that the driver is being asked to pay is for a breach of contract or act of trespass, this charge must be proportionate and commercially justifiable. We would not expect this amount to be more than £100. If the charge is more than this, operators must be able to justify the amount in advance.

28.5 If your parking charge is based upon a contractually agreed sum, that charge should not be punitive or unreasonable. If it is more than the amount in Clause 28.4 and is not justified in advance, it could lead to an investigation by Trading Standards or another appropriate authority.

28.6 If prompt payment is made (defined as 14 days from the issue of the parking charge notice) you must offer a reduced payment to reflect your reduced costs in collecting the charge. This reduction in cost must be by at least 40% of the full charge.

28.7 If you are asked, you must be able to justify the level of parking charges to the AOS Board, a member of our compliance team or to their specified agent.

28.8 You must warn drivers that if they delay payment beyond a payment period of 28 days and you need to take court action or use debt recovery methods to recover a debt, there may be extra 'recovery' charges for debt recovery action. However, you do not need to say how much these recovery charges are in advance, on your signs or notices.

28.9 If an Operator seeks to use extracts from the 'ParkingEye v Beavis' judgement laid down by the Supreme Court, the judgement must be referenced and that extracts from it must be properly quoted. Best practice would be adding the website link to the summary of the judgement, when making reference to it.

29 Parking charge notices

29.1 The parking charge notice is the document you:

- give to drivers, or attach to their vehicle windscreen, to tell them they have broken your terms and conditions and are now liable for parking charges, or
- send to vehicle keepers, asking them to pay the parking charges, if you do not have the driver's details, or
- send to vehicle hirers, asking them to pay the parking charges, if you discover that the vehicle was rented.

29.2 When issuing a parking charge notice you may use photographs as evidence that a vehicle was parked in an unauthorised way. The photographs must refer to and confirm the incident which you claim was unauthorised. A date and time stamp should be included on the photograph. All photographs used for evidence should be clear and legible and must not be retouched or digitally altered.

29.3 In deciding whether a payment ticket has been visibly displayed on a vehicle you must do a thorough visual check of the dashboard and windows.

29.4 You should not use wording on your plastic PCN envelopes which implies that you are acting under statutory authority. For example phrases such as 'It is an offence to remove....', should be avoided.

Notices to Drivers

The notice must:

- specify the vehicle, the land on which it was parked and the period of parking to which the notice relates;
- inform the driver of the requirement to pay parking charges in respect of the specified period of parking and describe those charges, the circumstances in which the requirement arose (including the means by which it was brought to the attention of drivers) and the other facts that made those charges payable;
- inform the driver that the parking charges relating to the specified period of parking have not been paid in full and specify the total amount of the unpaid parking charges relating to that period
- inform the driver of any discount offered for prompt payment and the arrangements for the resolution of disputes or complaints that are available
- identify the creditor and specify how and to whom payment may be made
- specify the time when the notice is given and the date.

29.5 Your parking charge notice must tell drivers that you may be requesting information from the DVLA as to the registered keeper of the vehicle, and the 'reasonable cause' you have for making that request.

Notices to Keepers

29.6 If you have issued a parking charge notice to a driver in your car park but had no response, you may wish to take the next step to recover the charge.

29.7 Or, if you were unable to issue a parking charge notice while the driver was present, perhaps because you use ANPR or camera equipment to monitor the car park, you may want to issue a parking charge notice by post.

29.8 In either case, you will need to try to identify who was driving the vehicle and make contact with them. You do this by first seeking the keeper details from the DVLA. Having received the keeper details from the DVLA you will need to issue a 'Notice to Keeper'.

29.9 The Notice to Keeper serves two purposes:

- it invites the keeper to pay the unpaid parking charge
- if the keeper was not the driver it invites the keeper to tell you who the driver was.

29.10 Where a Notice to Driver has been issued the Notice to Keeper must:

- specify the vehicle, the land on which it was parked and the period of parking to which the notice relates;
- inform the keeper that the driver is required to pay parking charges in respect of the specified period of parking and that the parking charges have not been paid in full;
- state that a notice to driver relating to the specified period of parking has been given
- describe the parking charges due from the driver as at the end of that period, the circumstances in which the requirement to pay them arose (including the means by which the requirement was brought to the attention of drivers) and the other facts that made them payable;
- specify the total amount of those parking charges that are unpaid
- if the unpaid parking charges specified in that notice to driver have been paid in part, specify the amount that remains unpaid
- state that the creditor does not know both the name of the driver and a current address for service for the driver and invite the keeper:
 - to pay the unpaid parking charges; or
 - if the keeper was not the driver of the vehicle, to notify the creditor of the name of the driver and a current address for service for the driver and to pass the notice on to the driver
- inform the keeper of the arrangements for the resolution of disputes or complaints that are available;
- identify the creditor and specify how and to whom payment or notification to the creditor may be made;
- specify the date on which the notice is sent

Where a Notice to Driver has not been issued the Notice to Keeper must:

- specify the vehicle, the land on which it was parked and the period of parking to which the notice relates
- inform the keeper that the driver is required to pay parking charges in respect of the specified period of parking and that the parking charges have not been paid in full;
- describe the parking charges due from the driver as at the end of that period, the circumstances in which the requirement to pay them arose (including the means by which the requirement was brought to the attention of drivers) and the other facts that made them payable;
- specify the total amount of those parking charges that are unpaid
- state that the creditor does not know both the name of the driver and a current address for service for the driver and invite the keeper:
 - to pay the unpaid parking charges; or
 - if the keeper was not the driver of the vehicle, to notify the creditor of the name of the driver and a current address for service for the driver and to pass the notice on to the driver
- inform the keeper of any discount offered for prompt payment and the arrangements for the resolution of disputes or complaints that are available;
- identify the creditor and specify how and to whom payment or notification to the creditor may be made;
- specify the date on which the notice is sent

29.11 When you serve a Notice to Keeper, you must also include information telling the keeper the 'reasonable cause' you had for asking the DVLA for their details.

29.12 If the keeper replies to your Notice to Keeper and gives enough details about the driver, you must then pursue the driver for the unpaid parking charge.

Notices to Hirers

29.13 Following the issue of a Notice to Keeper, you may find that the vehicle was hired at the time of the parking contravention for which you are seeking a parking charge. Instead of recovering payment from the keeper, you will need to try to recover it from the hirer, by issuing a Notice to Hirer:

Local Authorities and unregulated parking

29.14 We believe that where possible parking enforcement should take place within the legal framework provided by relevant legislation and road traffic regulations. If you are enforcing as a local authority, you should try to enforce in this way.

29.15 In order to request information from the DVLA's vehicle keeper records for unregulated parking events, you must use an entirely separate system to that which you use for requests under regulated authority. You must also be aware of the charge that will be made by DVLA for these requests.

29.16 When you join the AOS, you must tell us which regime you intend to enforce under.

30 Automatic number plate recognition (ANPR)

General principles

30.1 You may use ANPR camera technology to manage, control and enforce parking in private car parks, as long as you do this in a reasonable, consistent and transparent manner. Your signs at the car park must tell drivers that you are using this technology and what you will use the data captured by ANPR cameras for.

Quality checks

30.2 Before you issue a parking charge notice you must carry out a manual quality check of the ANPR images to reduce errors and make sure that it is appropriate to take action.

30.3 You must keep any ANPR equipment you use in your car parks in good working order. You need to make sure the data you are collecting is accurate, securely held and cannot be tampered with. The processes that you use to manage your ANPR system may be audited by our compliance team or our agents.

30.4 It is also a condition of the Code that, if you receive and process vehicle or registered keeper data, you must:

- be registered with the Information Commissioner
- keep to the Data Protection Act
- follow the DVLA requirements concerning the data
- follow the guidelines from the Information Commissioner's Office on the use of CCTV and ANPR cameras, and on keeping and sharing personal data such as vehicle registration marks.

30.5 We have an expectation that when Operators are using cameras to manage parking, they will sign up to the Surveillance Camera Commissioner's Code of Practice and adopt the Guiding Principles which are detailed in Appendix F of the Code.

30.6 To give drivers early notice of your claim, you should apply to the DVLA for the keeper details promptly. Usually this would be applying to the DVLA no more than 28 days after the unauthorised parking event. When applying for Keeper Details you must ensure that you adhere to the DVLA's guidelines and requirements.

30.7 Where a Notice to Keeper is being issued it must be sent out as soon as possible and no later than 7 months after the original parking event.

30.8 You must post the parking charge notice to the keeper as soon as possible. Your target is to send the parking charge notice to the keeper of the vehicle no more than 14 days after receiving the keeper data from the DVLA.

30.9 Your letter to the keeper should point out the details of the unauthorised parking event and ask for payment or request details of the driver.

30.10 It is the driver's responsibility to pay the parking charge notice. If you receive information from the keeper which identifies the driver, and the driver is someone else, you must serve the parking charge notice by post on the driver.

30.11 Parking charge notices served by post must offer the same payment discount arrangements as tickets placed on vehicles, while allowing extra time for the postal service.

31 Complaints, challenges and appeals

General principles

31.1 Under the Code you must have procedures for dealing fairly, efficiently and promptly with any communication from the motorist. The procedures must give drivers and keepers the chance to appeal a Parking Charge Notice. If a motorist pays a Parking Charge Notice and then appeals, you do not have to consider the appeal unless you opt to do so.

31.2 Whenever you issue a parking charge notice, motorists must first use your procedures for resolving appeals, before being able to refer them to an independent appeal service. You must tell motorists at what stage the independent appeals service becomes available.

31.3 If the motorist asks for it, you must make available any photographic evidence you have.

Operator Procedures

31.4 If a driver or keeper appeals a parking charge you must review the case and decide whether to:

- uphold the parking charge and explain why it was issued and should therefore be paid, or
- reduce or cancel the charge and take no further management action other than informing the driver.

31.5 If the motorist is due a refund of any fees, you must include that payment – or written confirmation that you have made the payment – with your reply.

31.6 When you receive an appeal about the issue of a parking charge, you must stop work on processing the charge immediately. You must not increase the charge until you have replied to the appeal.

31.7 We consider it a reasonable timescale to allow 28 days from the issue of the parking charge notice (in whatever

format you send it) to allow the driver, keeper or hirer to appeal the enforcement action. A keeper cannot make an appeal concerning the same incident if the driver has already appealed.

31.8 You must acknowledge or reply to the appeal within 14 days of receiving it. If at first you only acknowledge the appeal, or your reply does not fully resolve it, normally we would expect you to seek the additional information you require from the motorist and accept or reject the appeal in writing not more than 35 days after the information required to resolve it has been received from the motorist. It is acknowledged that in exceptional circumstances, an investigation into a appeal may take longer than 35 days after such information has been received and in these instances the motorist must be advised accordingly and given a date by which they can expect a resolution. If this date cannot be achieved then the motorist must be written to again and a revised resolution date agreed. We may require you to demonstrate that you are keeping to these times

31.9 You must not ask the motorist to send payment of the parking charge with their appeal.

31.9a It must be made clear on any notices issued or on an appeal rejection letter that the motorist has to choose either to pay or to appeal (this also includes appealing to the IAS) – they can't do both.

31.10 You may not ask the motorist to send a stamped addressed envelope with the appeal for you to use to send your decision.

31.11 A parking charge may be appealed by a vehicle keeper on the grounds that the vehicle was stolen or on hire or lease at the time the unauthorised parking took place. If the rental or lease customer's details have been provided to you by the hire or lease company, you should pursue your claim instead with their customer.

31.12 If you reject an appeal you must:

- tell the driver how to make an appeal to IAS. This includes providing a template 'notice of appeal' form or a link to the appropriate website for lodging an appeal and a valid 10-digit verification code. Even if the verification code is automatically printed on an enclosed appeal form, it must still be in a prominent position on the first page of the rejection letter.
- give the motorist a reasonable amount of time to pay the charge before restarting the collection process. We recommend that you allow at least 35 days from the date you rejected the challenge.

31.12a If an appeal is being considered by the IAS, the debt recovery process must not be commenced/recommenced until the outcome of the case is known. We would expect operators to have systems in place to ensure that this does not happen.

31.12b Within all Appeal Rejection Letters, and in order to comply with the EU ADR Directive, the following wording should be used;

- You have now reached the end of our internal appeals procedure. [Insert standard operator text to appeal to IAS, including 28 day time limit for doing so, the IAS verification code and the IAS website address]
- By law we are also required to inform you that Ombudsman Services (www.ombudsman-services.org/) provides an alternative dispute resolution service that would be competent to deal with your appeal. However, we have not chosen to participate in their alternative dispute resolution service. As such should you wish to appeal then you must do so to IAS, as explained above.

31.13 You must keep evidence of all appeals you receive and the action you take to resolve them. You must keep a full audit trail of all actions, which can be manual or generated by a processing system. You must allow us access to this when we are investigating a complaint. You must keep documents (or scanned copies) for at least two years from the date of the appeal.

IAS (Independent Appeals Service)

31.14 Only drivers may appeal against a parking charge to IAS.

31.15 IAS operates under its own set of processes which include:

- its remit and jurisdiction
- the processes for lodging and defending an appeal
- the timetable for the appeals processes
- the grounds for appeal
- the burden and standard of proof required by the parties to the appeal
- the degree to which both parties are bound by its decisions
- details of its annual report.

31.16a You must keep to the processes and other requirements of IAS, as set out on their website and elsewhere.

31.16b Witness statements were introduced as an alternative to the provision of a full/redacted landowner contract within an independent appeal evidence pack and as such these statements must be signed by a representative of the landowner or his agent, and not by a member of the operator's staff.

31.16c The independent appeal evidence must be sent or made available to the motorist on the same day as the independent appeal service receive it and the evidence pack to the motorist must be the same as the one provided to the IAS. Failure to do this may be considered a Sanctionable Breach of the Code.

- 31.17 If IAS decides that you have failed to demonstrate that a parking charge should be upheld, in whole or in part, you must follow its decision.
- 31.18 You may not continue with a claim for debt-recovery against a driver if IAS has decided against you and grants the appeal.
- 31.19 If IAS directs you to reconsider a decision you have made to reject an appeal, you must do so and tell them the outcome.
- 31.20 If IAS rejects the appeal you may continue to recover the parking charge.
- 31.21 The deadline for payment following an IAS decision in favour of the Operator is 28 days.

32 Recovering unpaid parking charges

- 32.1a Where a Parking Charge becomes overdue and before Court Proceedings have commenced, a reasonable sum (which covers the cost of recovering debt) may be added for the debt recovery fees. This sum must not exceed £70 unless prior approval from the BPA has been granted.
- 32.1b Before serving a Letter Before Claim and prior to the issue of proceedings, Operators must, if no responses have been received to the NTD/NTK/reminder letters, take reasonable endeavours to ensure that the person being written to is the correct party.
- 32.1c We have an expectation that members of the BPA's Approved Operator Scheme who manage Debt Recovery follow the principles of the Financial Conduct Authority (FCA) and in particular the outcomes listed in their 'Fair Treatment of Customers' schedule. We would expect members to be able to evidence how they deliver these outcomes during audit.
- 32.1d In its written communication with motorist a statement that free debt counselling and/or legal advice is made available to motorists and how the motorist can find out more. It is especially important that such information is provided on any letters before action or if it is believed that the customer may be vulnerable.

32.2 After serving the Notice to Driver

There may be occasions when you issued a parking charge notice and handed it to the driver or attached it to the vehicle, and you know the driver's name and current address. If so, you should pursue your claim for payment against the driver, not the keeper, if the driver fails to pay.

APPENDICES

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APPENDIX A

VEHICLE IMMOBILISATION AND REMOVAL IN NORTHERN IRELAND AND WHERE LAWFUL AUTHORITY APPLIES

A1 Immobilisation and removal – general principles

- A1.1 There are other instances where there is lawful authority for immobilisation or relocation for example Railway Byelaws.
- A1.2 Immobilising and removing vehicles is an accepted deterrent in Northern Ireland when parking on private land is restricted or forbidden. Vehicles that park where they are forbidden to park, or are parked in breach of the conditions for using the land, may be immobilised, relocated within the land or removed.
- A1.3 You must put up signs saying that vehicles may be immobilised or removed. This is so that a driver is given enough warning, and willingly accepts the risk of their vehicle's immobilisation or removal.
- A1.4 If a vehicle is immobilised or removed by mistake you must immediately release or return the vehicle without taking payment. If it is agreed, after payment has been made, that there has been a mistake you must make a full refund as soon as possible and at the latest within two working days. If it is practicable, refunds should be given immediately. In every case you should aim to put the mistake right promptly.

A2 When immobilisation or removal must not be used

- A2.1 The following vehicles must not be immobilised or removed:
- liveried vehicles being used for operational fire, police or ambulance purposes
 - vehicles that have had an immobilisation device removed less than 30 minutes before and which are in the same position
 - vehicles being used by a doctor or other health worker (such as a midwife or district nurse) who is on an emergency call at the address under control and the vehicle is displaying a BMA badge or authorised Health Emergency badge
 - vehicles that are displaying a valid disabled (blue) badge.
- A2.2 Vehicles whose drivers have paid legitimately for parking but have overstayed the 'paid-for' time, and are not committing any other breach of the regulations, may

not be immobilised unless they have stayed beyond a reasonable 'grace period'. The grace period should be at least 15 minutes beyond the time their permitted parking period expired.

- A2.3 Drivers of vehicles displaying a disabled persons (blue) badge, issued by a local authority or other government body, are not automatically entitled to concessions when parking on private land. It is important that valid disabled blue badge holders comply fully with the government's Blue Badge Scheme advisory leaflet 'Parking concessions for disabled and blind people' produced by the DfT.

A3 Removing vehicles

- A3.1 Vehicles breaching private land or car park conditions may be removed to a pound without the owner's consent. However, you must first have considered whether immobilisation would be more appropriate in the circumstances. See the examples in A3.2 below.
- A3.2 Removal of the vehicle may be appropriate if one of the following applies:
- The vehicle driver has parked without authority at that location three or more times.
 - The landowner has told the operator in writing to remove unauthorised vehicles.
 - The safety of the public, or of other authorised users of the site, is at risk because of the unauthorised parking; for example, because the vehicle is causing an obstruction or is a safety hazard, or is blocking a fire exit or access used by emergency vehicles.
 - There is no opportunity to relocate the vehicle to somewhere else on the site.
- A3.3 If a landowner requires you to remove vehicles because parking at that location is forbidden, you must make sure this is included clearly in your written contract with them.

A4 Types of immobilisation device

- A4.1 All immobilisation devices used must be fit for purpose and be designed to minimise the risk of damage to the vehicle.

A5 Vehicle pounds and storage areas

A5.1 You may use a remote pound or storage area for the safekeeping of vehicles which have been removed. Vehicle pounds must be secure. You may not remove vehicles to locations which are not secure, such as the public highway, or to car parks which members of the public have general access to.

A5.2 You may only remove a vehicle to a pound that is within a reasonable distance and journey time from the land that the vehicle was removed from. In selecting a particular pound for storing a vehicle, you must take into account the needs of drivers to recover their vehicles without undue inconvenience. We recommend that you do not remove vehicles to pounds more than one hour away by car, in normal traffic conditions, from the land the vehicle is removed from.

A6 Repositioning within the site

A6.1 If a vehicle, including a vehicle displaying a valid disabled (blue) badge, has been:

- left so that it is causing an obstruction or is a safety hazard, or
- parked so that it is obstructing a fire exit or access used by emergency vehicles, or
- parked in a specially reserved bay (for example, a disabled badge holder bay) without displaying an appropriate permit

the vehicle may be repositioned within the site rather than removed from the site.

A6.2 You must use appropriate care and skill when repositioning a vehicle, so as not to cause damage, and must use equipment that is designed for the purpose. Repositioning should be to the nearest safe parking space within the site.

A6.3 If a repositioned vehicle is later immobilised you must keep to all the requirements in the Code that cover immobilisation. You may not reposition a vehicle to a place where parking is restricted or forbidden, and then immobilise it because it is now parked in an unauthorised location.

A6.4 If a vehicle appears to be abandoned, you should tell the landowner or agent and advise them to take appropriate action. Dealing with abandoned vehicles is outside the scope of the Code.

A7 Release times

A7.1 Drivers whose vehicles have been immobilised or removed must be able to recover their vehicles at all reasonable times. Operators should aim to make an immobilised vehicle available to the owner as soon as

they have paid. The target time for this is within one hour of payment, and no more than two hours of payment, unless the vehicle is in a car park or car pound that is closed.

A7.2 If a pound is run by, or for, a local authority as part of its statutory civil parking enforcement duties, then the statutory rules covering the availability of that pound and payment services will override the Code in those respects.

A7.3 Sometimes operatives who remove the clamp from a vehicle will also receive the release fee on site. If so, they should attend the clamped vehicle to accept the fee, give a receipt, and de-clamp the vehicle within two hours of the motorist stating their intent to pay. If the motorist is a vulnerable person, for example a single woman, an elderly or disabled person or a parent with a young child, they should be given priority for releasing – especially during the hours of darkness.

A7.4 If services to release a vehicle are not available 24 hours a day, this must be clearly stated at the time of parking on the warning signs.

A8 Signs and information

A8.1 A driver who uses your private car park with your permission does so under a licence or contract with you. If they park without your permission this will usually be an act of trespass. In all cases, the driver's use of your land will be governed by your terms and conditions, which the driver should be made aware of from the start. You must use signs to make it easy for them to find out what your terms and conditions are.

A8.2 **Entrance signs**, located at the entrance to the car park, must tell drivers that the car park is managed and that there are terms and conditions which they must be aware of. Entrance signs must meet minimum general principles and be in a standard format. The size of the sign must take into account the anticipated speed of vehicles approaching the car park, and follow Department for Transport guidance. Industry-accepted sign designs and guidance on how to use the signs are in Appendix B.

A8.3 **Specific parking terms signage** tells drivers what your terms and conditions are, including your parking charges. You must place signs containing the specific parking terms throughout the site, so that drivers are given the chance to read them at the time of parking or leaving their vehicle. Keep a record of where all the signs are. Signs must be conspicuous and legible, and written in intelligible language, so that they are easy to see, read and understand. Signs showing your detailed terms and conditions must be at least 450mm x 450mm.

- A8.4 If a driver is parking with your permission, they must have the opportunity to read the terms and conditions before they enter into the contract with you. If, having had that opportunity, they decide not to park but choose to leave the car park, you must provide them with a reasonable grace period to leave, as they will not be bound by your parking contract.
- A8.5 The wording you include on your specific parking terms signage is your decision. The AOS team at the BPA are happy to give advice and guidance on wording that you should or should not use.
- A8.6 You should display the BPA and AOS logos on all sites. This will help the public to see that you are a legitimate operator, and show that the site is run properly.
- A8.7 Important: you may have to give other information on signs and notices under companies and consumer protection law and other legislation
- A8.8 So that disabled motorists can decide whether they want to use the site, there should be at least one sign containing the terms and conditions for parking that can be viewed without needing to leave the vehicle. Ideally this sign should be close to any parking bays set aside for disabled motorists.

A9 Photographs

- A9.1 You must have a system in place to take photographs of vehicles to be immobilised or removed. A date and time stamp should be included in the photograph. If you do not have a system to photograph vehicles this will be a breach of the Code.
- A9.2 We strongly recommend that you photograph all vehicles that are to be immobilised, and you must do so for vehicles that are to be removed. The photographs should show the vehicle's position relative to the sign(s) warning drivers their vehicles may be immobilised or removed. The photographs must refer to and confirm the specific unauthorised parking event and should include a correct date and time stamp.
- A9.3 Do not alter digital photographs with the intent to defraud. If you want to enhance a photograph, you must keep a copy of the original.
- A9.4 If photographs were taken and a driver of an immobilised or removed vehicle asks to see them, you must provide a copy of the photographs within 14 days.

A10 Charges

- A10.1 The fees charged for removing an immobilisation device, retrieving a removed vehicle or storing a vehicle must be reasonable and not excessive.

- A10.2 We recommend that you do not charge more than the following fees (these fees will be reviewed every April by the AOS Board):

Release fee following immobilisation.

- £125 (private cars or private light-goods vehicles)
- £180 (medium-goods vehicles)
- £250 (HGV/PCV)

Vehicle removal: £250

Vehicle storage: £35 a day.

- A10.3 If you immobilise a vehicle and then within three hours remove it to a pound, you should not charge more than the fee for removal plus the fee for storage. We believe you would be acting unreasonably if you were also to charge an immobilisation fee in these circumstances.

- A10.4 All fees advertised on signs and literature must include VAT if you charge it. They must also show any extra charge for paying by credit or debit card.

All Payments

- A11.1 You must accept payments in any reasonable form. However, the use and acceptance of cash is discouraged and should be used as a method of 'last resort' and after all other payment options have been considered.

It is recommended that the operative removing the clamp does not also collect payment. However, there may be occasions when they have to accept cash or cheques. In these cases, they must give the motorist an auditable receipt which meets the requirements set out in the Code. For reasons of personal safety and security, and for simplicity of processing, the preferred method of payment for clamping release is by credit or debit card taken by phone. This will allow the driver to remain in or with the vehicle until it is released.

- A11.2 If a vehicle is removed and held in a pound, you should provide a payment facility at the pound. If this is impractical you must make other reasonable arrangements to accept payments for the release of vehicles.
- A11.3 As an alternative to A11.2 you may return the vehicle to the driver and receive the payment on handing over the vehicle. You cannot charge extra for this service, unless the signs at the site and your other literature say you will and the driver agrees at the time of payment.
- A11.4 You must give receipts for payments.
- A11.5 The receipts must include the following information:

- a the registered company name and number of the operator and, if the operator is using a trading name other than its registered company name, a geographical address where documents can be served

- b the land line phone number of the operator
- c the vehicle registration mark (VRM) of the vehicle immobilised
- d the name of the person the receipt is given to
- e the name, SIA number and signature of the operative issuing the receipt
- f the full amount paid and the method of payment (for example, cash, cheque, credit card and so on)
- g the operator's VAT number, if the operator is registered for VAT
- h the date and time of the payment
- i how to challenge or appeal against the vehicle's being immobilised or removed. You should at least provide an email and postal address for this purpose.
- j the place where the vehicle was immobilised or removed from
- k a serial or reference number unique to that receipt.

You may also need to give other information on receipts under the Companies Act 2006 and other legislation.

challenge or appeal in writing within 35 days of receiving it. If the challenge or appeal is accepted and the driver is due a refund of any fees you must include that payment, or written confirmation that you have made the payment, with your reply.

- A12.5 You may not ask the driver to send payment of the charge with their challenge or appeal.
- A12.6 You may not ask the driver to send a stamped addressed envelope with the challenge or appeal, for you to use to send your decision.
- A12.7 You must keep evidence of all challenges you receive and the action you take to resolve them. You must keep a full audit trail of all actions, which can be manual or generated by a processing system. You must allow us access to this when we are investigating a complaint. You must keep documents (or scanned copies) for at least two years from the date of the challenge.

A11.6 If payment is made by phone or online, you must provide a receipt within seven days or hand it to the driver when releasing the vehicle. This may be in an electronic form such as email.

A12 Appeals and challenges against immobilising actions

A12.1 Under the Code you must have procedures for dealing fairly, efficiently and promptly with complaints, challenges or appeals. The procedures must give keepers and drivers the chance to challenge:

- having their vehicle immobilised (clamped)
- having their vehicle removed.

A12.2 If a driver challenges having their vehicle immobilised or removed, you must explain before or at the time of release why it was done. This explanation should include any information that applies including:

- in what way their parking had been unauthorised
- where the relevant warning signs had been, and
- how to challenge having their vehicle immobilised or removed.

A12.3 If the driver continues to challenge having their vehicle immobilised or removed, you should invite them to send in a written challenge or appeal. Staff working on immobilising or removing vehicles must have a leaflet ready to give to a driver which explains how to challenge or appeal against the decision to immobilise or remove a vehicle.

A12.4 If a driver makes a written challenge or appeal, following their vehicle being immobilised or removed, you or your representative must acknowledge the challenge or appeal within 14 days of receiving it. If you only acknowledge the challenge or appeal you must accept or reject the

APPENDIX B

ENTRANCE SIGNS

A standard form of entrance sign must be placed at the entrance to the parking area.

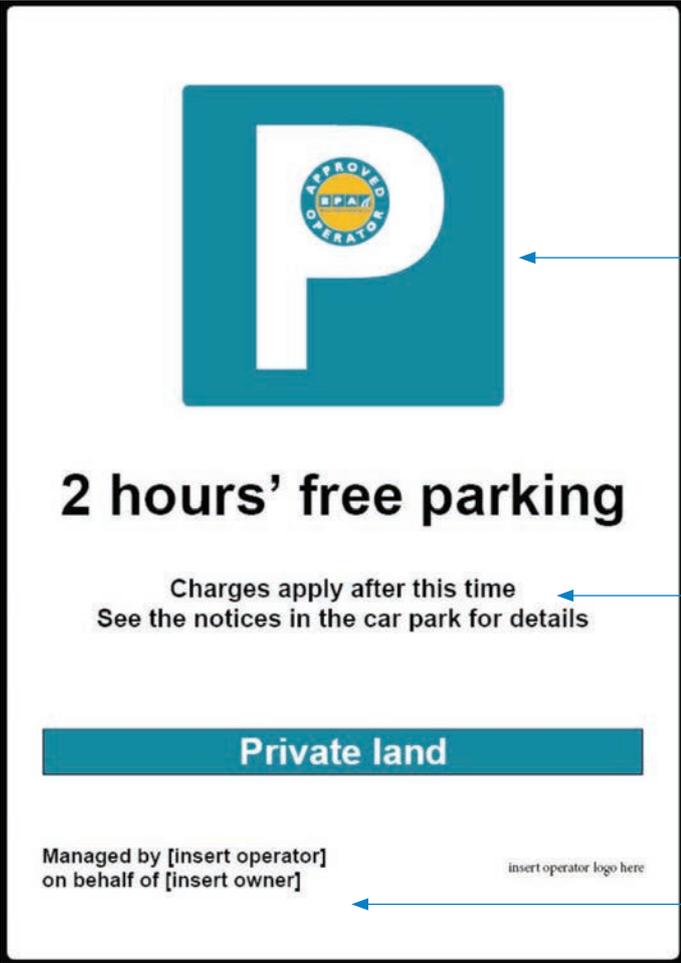
There may be reasons why this is impractical:

- when there is no clearly defined car park entrance
- when the car park is very small
- at forecourts in front of shops and petrol filling stations
- at parking areas where general parking is not permitted.

If you think there are other circumstances where it is impractical or undesirable to have an entrance sign, you must tell us in advance and get our approval to amend the sign or not have one.

Ideally the AOS logo should be incorporated on the entrance sign as it will show motorists that the site is managed by an organisation who have signed up to a recognised Code of Practice. However exemptions will be considered by the BPA Compliance Team if a legitimate reason is given.

You should try to keep to the following design principles:



This blue rectangle with the 'P' symbol can be left out if public parking is not invited and it is trespass you are managing.

If you do not have the 'P' symbol, you may move the AOS roundel to the bottom of the sign alongside the operator's name.

You must always mention that terms and conditions apply and say where to find more details about them.

"Managed by" is **required**
"On behalf of" is **optional**

The sign may be portrait or landscape in layout, depending on where it is placed.

Signs at the entrance to the parking area should clearly show the type of parking; and if, when and how any payment should be made. Ideally the AOS logo should be incorporated to indicate that the parking is managed under a Code of Practice.

We consider it to be good practice that the landowner's name is on the sign, but we understand that in some cases the owner may not want to be mentioned. You may also place your 'private parking' banner above your company details and below your terms and conditions.

If one of the following standard wordings applies to your parking area you should use it. If not, you may alter the wording to fit the situation. Words in square brackets may be left out.

There must be at least one item from Group 1. But no more than three items from Group 1 should appear before, and more prominently than, text from Group 2. You must always mention that terms and conditions apply and say where drivers can find more details – this will usually be on the other notices in the parking area.

If there are different payment terms for blue badge holders, you should also show these. The words 'blue badge holders' should generally be replaced by the blue badge symbol (exactly as shown in the Traffic Signs Regulations Guidance Document, not a local version).

Group 1

Pay and display [except/free for blue badge holders]
 [x minutes/hour's/hours'] free parking [for [business name] customers only]
 Pay on exit
 Pay [on foot/at machine] when leaving
 Parking for [business name] customers only
 Permit holders only

Group 2

Charges apply [after this][after x minutes/hours]
 Private land
 Terms and conditions apply
 See the notice[s] [in the car park] for details

Text size

The capital height for Group 1 text will depend on the approach speed of traffic. Group 2 text should be at least 50% of this size. All other text should be smaller than 50% of the Group 1 text size. However, the name of the car park or parking area, or a brief welcome message (if included), may be larger.

Situation	Typical approach speed (mph)	Minimum capital height for Group 1 text (mm)
Barrier control	under 10	50
Parking area entered immediately by turning off a 30 mph road	15	60
Car park entered from higher-speed road or using a length of access road	25	90
Service areas on motorways and dual carriageways	40	120

The sign should be placed so that it is readable by drivers without their needing to look away from the road ahead. Any text on the sign not intended to be read from a moving vehicle can be of a much smaller size.

Contrast and illumination

There must be enough colour contrast between the text and its background, each of which should be a single solid colour. The best way to achieve this is to have black text on a white background, or white text on a black background.

Signs should be readable and understandable at all times, including during the hours of darkness or at dusk if and when parking enforcement activity takes place at those times. This can be achieved in a variety of ways such as by direct lighting or by using the lighting for the parking area. If the sign itself is not directly or indirectly lit, we suggest that it should be made of a retro-reflective material similar to that used on public roads and described in the Traffic Signs Manual. Dark-coloured areas do not need to be reflective.

APPENDIX C

SCHEDULE 4 OF THE PROTECTION OF FREEDOMS ACT 2012 RECOVERY OF UNPAID PARKING CHARGES

NOT COVERED BY THE PLAIN ENGLISH APPROVED LOGO

Introductory

1 (1) This Schedule applies where:

- (a) the driver of a vehicle is required by virtue of a relevant obligation to pay parking charges in respect of the parking of the vehicle on relevant land; and
- (b) those charges have not been paid in full.

(2) It is immaterial for the purposes of this Schedule whether or not the vehicle was permitted to be parked (or to remain parked) on the land.

2 (1) In this Schedule:

“the appropriate national authority” means:

- (a) in relation to relevant land in England, the Secretary of State;

and

- (b) in relation to relevant land in Wales, the Welsh Ministers;

“the creditor” means a person who is for the time being entitled to recover unpaid parking charges from the driver of the vehicle;

“current address for service” means:

- (a) in the case of the keeper, an address which is either:
 - (i) an address at which documents relating to civil proceedings could properly be served on the person concerned under Civil Procedure Rules; or
 - (ii) the keeper’s registered address (if there is one); or
- (b) in the case of the driver, an address at which the driver for the time being resides or can conveniently be contacted;

“driver” includes, where more than one person is engaged in the driving of the vehicle, any person so engaged;

“keeper” means the person by whom the vehicle is kept at the time the vehicle was parked, which in the case of a registered vehicle is to be presumed, unless the contrary is proved, to be the registered keeper;

“notice to driver” means a notice given in accordance with paragraph 7;

“notice to keeper” means a notice given in accordance with paragraph 8 or 9 (as the case may be);

“parking charge”:

- (a) in the case of a relevant obligation arising under the terms of a relevant contract, means a sum in the nature of a fee or charge, and
- (b) in the case of a relevant obligation arising as a result of a trespass or other tort, means a sum in the nature of damages, however the sum in question is described;

“registered address” means, in relation to the keeper of a registered vehicle, the address described in paragraph 11(3)(b) (as provided by the Secretary of State in response to the application for the keeper’s details required by paragraph 11);

“registered keeper”, in relation to a registered vehicle, means the person in whose name the vehicle is registered;

“registered vehicle” means a vehicle which is for the time being registered under the Vehicle Excise and Registration Act 1994;

“relevant contract” means a contract (including a contract arising only when the vehicle was parked on the relevant land) between the driver and a person who is:

- (a) the owner or occupier of the land; or
- (b) authorised, under or by virtue of arrangements made by the owner or occupier of the land, to enter into a contract with the driver requiring the payment of parking charges in respect of the parking of the vehicle on the land;

“relevant land” has the meaning given by paragraph 3;

“relevant obligation” means:

(a) an obligation arising under the terms of a relevant contract;

or

(b) an obligation arising, in any circumstances where there is no relevant contract, as a result of a trespass or other tort committed by parking the vehicle on the relevant land;

“vehicle” means a mechanically-propelled vehicle or a vehicle designed or adapted for towing by a mechanically-propelled vehicle.

(2) The reference in the definition of “parking charge” to a sum in the nature of damages is to a sum of which adequate notice was given to drivers of vehicles (when the vehicle was parked on the relevant land).

(3) For the purposes of sub-paragraph (2) “adequate notice” means notice given by:

- (a) the display of one or more notices in accordance with any applicable requirements prescribed in regulations under paragraph 12 for, or for purposes including, the purposes of sub-paragraph (2); or
- (b) where no such requirements apply, the display of one or more notices which:
 - (i) specify the sum as the charge for unauthorised parking; and
 - (ii) are adequate to bring the charge to the notice of drivers who park vehicles on the relevant land.

3 (1) In this Schedule “relevant land” means any land (including land above or below ground level) other than:

- (a) a highway maintainable at the public expense (within the meaning of section 329(1) of the Highways Act 1980);
- (b) a parking place which is provided or controlled by a traffic authority;
- (c) any land (not falling within paragraph (a) or (b)) on which the parking of a vehicle is subject to statutory control.

(2) In sub-paragraph (1)(b):

“parking place” has the meaning given by section 32(4)(b) of the Road Traffic Regulation Act 1984;

“traffic authority” means each of the following:

- (a) the Secretary of State;
- (b) the Welsh Ministers;
- (c) Transport for London;
- (d) the Common Council of the City of London;
- (e) the council of a county, county borough, London borough or district;
- (f) a parish or community council;

(g) the Council of the Isles of Scilly.

(3) For the purposes of sub-paragraph (1)(c) the parking of a vehicle on land is “subject to statutory control” if any statutory provision imposes a liability (whether criminal or civil, and whether in the form of a fee or charge or a penalty of any kind) in respect of the parking on that land of vehicles generally or of vehicles of a description that includes the vehicle in question.

(4) In sub-paragraph (3) “statutory provision” means any provision (apart from this Schedule) contained in:

- (a) any Act (including a local or private Act), whenever passed; or
- (b) any subordinate legislation, whenever made, and for this purpose “subordinate legislation” means an Order in Council or any order, regulations, byelaws or other legislative instrument.

Right to claim unpaid parking charges from keeper of vehicle

4 (1) The creditor has the right to recover any unpaid parking charges from the keeper of the vehicle.

(2) The right under this paragraph applies only if:

- (a) the conditions specified in paragraphs 5, 6, 11 and 12 (so far as applicable) are met; and
- (b) the vehicle was not a stolen vehicle at the beginning of the period of parking to which the unpaid parking charges relate.

(3) For the purposes of the condition in sub-paragraph (2)(b), the vehicle is to be presumed not to be a stolen vehicle at the material time, unless the contrary is proved.

(4) The right under this paragraph may only be exercised after the end of the period of 28 days beginning with the day on which the notice to keeper is given.

(5) The maximum sum which may be recovered from the keeper by virtue of the right conferred by this paragraph is the amount specified in the notice to keeper under paragraph 8(2)(c) or (d) or, as the case may be, 9(2)(d) (less any payments towards the unpaid parking charges which are received after the time so specified).

(6) Nothing in this paragraph affects any other remedy the creditor may have against the keeper of the vehicle or any other person in respect of any unpaid parking charges (but this is not to be read as permitting double recovery).

(7) The right under this paragraph is subject to paragraph 13 (which provides for the right not to apply in certain circumstances in the case of a hire vehicle).

Conditions that must be met for purposes of paragraph 4

- 5 (1) The first condition is that the creditor:
- (a) has the right to enforce against the driver of the vehicle the requirement to pay the unpaid parking charges; but
 - (b) is unable to take steps to enforce that requirement against the driver because the creditor does not know both the name of the driver and a current address for service for the driver.
- (2) Sub-paragraph (1)(b) ceases to apply if (at any time after the end of the period of 28 days beginning with the day on which the notice to keeper is given) the creditor begins proceedings to recover the unpaid parking charges from the keeper.
- (e) identify the creditor and specify how and to whom payment may be made;
- (f) specify the time when the notice is given and the date.
- (3) The notice must relate only to a single period of parking specified under subparagraph (2)(a) (but this does not prevent the giving of separate notices each specifying different parts of a single period of parking).
- (4) The notice must be given:
- (a) before the vehicle is removed from the relevant land after the end of the period of parking to which the notice relates, and
 - (b) while the vehicle is stationary, by affixing it to the vehicle or by handing it to a person appearing to be in charge of the vehicle.
- (5) In sub-paragraph (2)(d) the reference to arrangements for the resolution of disputes or complaints includes:
- (a) any procedures offered by the creditor for dealing informally with representations by the driver about the notice or any matter contained in it; and
 - (b) any arrangements under which disputes or complaints (however described) may be referred by the driver to independent adjudication or arbitration.
- 6 (1) The second condition is that the creditor (or a person acting for or on behalf of the creditor):
- (a) has given a notice to driver in accordance with paragraph 7, followed by a notice to keeper in accordance with paragraph 8; or
 - (b) has given a notice to keeper in accordance with paragraph 9.
- (2) If a notice to driver has been given, any subsequent notice to keeper must be given in accordance with paragraph 8.
- (1) A notice which is to be relied on as a notice to driver for the purposes of paragraph 6(1)(a) is given in accordance with this paragraph if the following requirements are met.
- (2) The notice must:
- (a) specify the vehicle, the relevant land on which it was parked and the period of parking to which the notice relates;
 - (b) inform the driver of the requirement to pay parking charges in respect of the specified period of parking and describe those charges, the circumstances in which the requirement arose (including the means by which it was brought to the attention of drivers) and the other facts that made those charges payable;
 - (c) inform the driver that the parking charges relating to the specified period of parking have not been paid in full and specify the total amount of the unpaid parking charges relating to that period, as at a time which is:
 - (i) specified in the notice; and
 - (ii) no later than the time specified under paragraph (f);
 - (d) inform the driver of any discount offered for prompt payment and the arrangements for the resolution of disputes or complaints that are available;
- 8 (1) A notice which is to be relied on as a notice to keeper for the purposes of paragraph 6(1)(a) is given in accordance with this paragraph if the following requirements are met.
- (2) The notice must:
- (a) specify the vehicle, the relevant land on which it was parked and the period of parking to which the notice relates;
 - (b) inform the keeper that the driver is required to pay parking charges in respect of the specified period of parking and that the parking charges have not been paid in full;
 - (c) state that a notice to driver relating to the specified period of parking has been given and repeat the information in that notice as required by paragraph 7(2)(b), (c) and (f);
 - (d) if the unpaid parking charges specified in that notice to driver as required by paragraph 7(2)(c) have been paid in part, specify the amount that remains unpaid, as at a time which is:
 - (i) specified in the notice to keeper; and
 - (ii) no later than the end of the day before the day on which the notice is either sent by post or, as the case may be, handed to or left at a current address for service for the keeper (see subparagraph (4));

- (e) state that the creditor does not know both the name of the driver and a current address for service for the driver and invite the keeper:
 - (i) to pay the unpaid parking charges; or
 - (ii) if the keeper was not the driver of the vehicle, to notify the creditor of the name of the driver and a current address for service for the driver and to pass the notice on to the driver;
 - (f) warn the keeper that if, at the end of the period of 28 days beginning with the day after that on which the notice to keeper is given:
 - (i) the amount of the unpaid parking charges (as specified under paragraph (c) or (d)) has not been paid in full, and
 - (ii) the creditor does not know both the name of the driver and a current address for service for the driver; the creditor will (if all the applicable conditions under this Schedule are met) have the right to recover from the keeper so much of that amount as remains unpaid;
 - (g) inform the keeper of any discount offered for prompt payment and the arrangements for the resolution of disputes or complaints that are available;
 - (h) identify the creditor and specify how and to whom payment or notification to the creditor may be made;
 - (i) specify the date on which the notice is sent (if it is sent by post) or given (in any other case).
- (3) The notice must relate only to a single period of parking specified under subparagraph (2)(a) (but this does not prevent the giving of separate notices which each specify different parts of a single period of parking).
- (4) The notice must be given by:
- (a) handing it to the keeper; or leaving it at a current address for service for the keeper; within the relevant period; or
 - (b) sending it by post to a current address for service for the keeper so that it is delivered to that address within the relevant period.
- (5) The relevant period for the purposes of subparagraph (4) is the period of 28 days following the period of 28 days beginning with the day after that on which the notice to driver was given.
- (6) A notice sent by post is to be presumed, unless the contrary is proved, to have been delivered (and so “given” for the purposes of subparagraph (4)) on the second working day after the day on which it is posted; and for this purpose “working day” means any day other than a Saturday, Sunday or a public holiday in England and Wales
- (7) When the notice is given it must be accompanied by any evidence prescribed under paragraph 10.
- (8) In sub-paragraph (2)(g) the reference to arrangements for the resolution of disputes or complaints includes:
- (a) any procedures offered by the creditor for dealing informally with representations by the keeper about the notice or any matter contained in it; and
 - (b) any arrangements under which disputes or complaints (however described) may be referred by the keeper to independent adjudication or arbitration.
- 9 (1) A notice which is to be relied on as a notice to keeper for the purposes of paragraph 6(1)(b) is given in accordance with this paragraph if the following requirements are met.
- (2) The notice must:
- (a) specify the vehicle, the relevant land on which it was parked and the period of parking to which the notice relates;
 - (b) inform the keeper that the driver is required to pay parking charges in respect of the specified period of parking and that the parking charges have not been paid in full;
 - (c) describe the parking charges due from the driver as at the end of that period, the circumstances in which the requirement to pay them arose (including the means by which the requirement was brought to the attention of drivers) and the other facts that made them payable;
 - (d) specify the total amount of those parking charges that are unpaid, as at a time which is:
 - (i) specified in the notice; and
 - (ii) no later than the end of the day before the day on which the notice is either sent by post or, as the case may be, handed to or left at a current address for service for the keeper (see subparagraph (4));
- (e) state that the creditor does not know both the name of the driver and a current address for service for the driver and invite the keeper:
- (i) to pay the unpaid parking charges; or
 - (ii) if the keeper was not the driver of the vehicle, to notify the creditor of the name of the driver and a current address for service for the driver and to pass the notice on to the driver;
- (f) warn the keeper that if, after the period of 28 days beginning with the day after that on which the notice is given:

- (i) the amount of the unpaid parking charges specified under paragraph (d) has not been paid in full, and
- (ii) the creditor does not know both the name of the driver and a current address for service for the driver; the creditor will (if all the applicable conditions under this Schedule are met) have the right to recover from the keeper so much of that amount as remains unpaid;
- (g) inform the keeper of any discount offered for prompt payment and the arrangements for the resolution of disputes or complaints that are available;
- (h) identify the creditor and specify how and to whom payment or notification to the creditor may be made;
- (i) specify the date on which the notice is sent (where it is sent by post) or given (in any other case).

(3) The notice must relate only to a single period of parking specified under subparagraph (2)(a) (but this does not prevent the giving of separate notices which each specify different parts of a single period of parking).

(4) The notice must be given by:

- (a) handing it to the keeper, or leaving it at a current address for service for the keeper, within the relevant period; or
- (b) sending it by post to a current address for service for the keeper so that it is delivered to that address within the relevant period.

(5) The relevant period for the purposes of sub-paragraph (4) is the period of 14 days beginning with the day after that on which the specified period of parking ended.

(6) A notice sent by post is to be presumed, unless the contrary is proved, to have been delivered (and so “given” for the purposes of sub-paragraph (4)) on the second working day after the day on which it is posted; and for this purpose “working day” means any day other than a Saturday, Sunday or a public holiday in England and Wales.

(7) When the notice is given it must be accompanied by any evidence prescribed under paragraph 10.

(8) In sub-paragraph (2)(g) the reference to arrangements for the resolution of disputes or complaints includes:

- (a) any procedures offered by the creditor for dealing informally with representations by the keeper about the notice or any matter contained in it; and
- (b) any arrangements under which disputes or complaints (however described) may be referred by the keeper to independent adjudication or arbitration.

must accompany a notice which is to be relied on as a notice to keeper for the purposes of paragraph 6(1)(a) or paragraph 6(1)(b) (as the case may be).

(2) The regulations may in particular make provision as to:

- (a) the means by which any prescribed evidence is to be generated or otherwise produced (which may include a requirement to use equipment of a kind approved for the purpose by a person specified in the regulations); or
- (b) the circumstances in which any evidence is, or is not, required to accompany a notice to keeper.

(3) The regulations may:

- (a) include incidental, supplementary, transitional, transitory or saving provision;
- (b) make different provision for different purposes.

11 (1) The third condition is that:

- (a) the creditor (or a person acting for or on behalf of the creditor) has made an application for the keeper’s details in relation to the period of parking to which the unpaid parking charges relate;
- (b) the application was made during the relevant period for the purposes of paragraph 8(4) (where a notice to driver has been given) or 9(4) (where no notice to driver has been given);
- (c) the information sought by the application is provided by the Secretary of State to the applicant.

(2) The third condition only applies if the vehicle is a registered vehicle.

(3) In this paragraph “application for the keeper’s details” means an application for the following information to be provided to the applicant by virtue of regulations made under section 22(1)(c) of the Vehicle Excise and Registration Act 1994:

- (a) the name of the registered keeper of the vehicle during the period of parking to which the unpaid parking charges relate; and
- (b) the address of that person as it appears on the register (or, if that person has ceased to be the registered keeper, as it last appeared on the register).

12 (1) The fourth condition is that any applicable requirements prescribed under this paragraph were met at the beginning of the period of parking to which the unpaid parking charges relate.

(2) The appropriate national authority may by regulations made by statutory instrument prescribe requirements as to the display of notices on relevant land where parking charges may be incurred in respect of the parking of vehicles on the land.

10 (1) The appropriate national authority may by regulations made by statutory instrument prescribe evidence which

(3) The provision made under sub-paragraph (2) may, in particular, include provision:

- (a) requiring notices of more than one kind to be displayed on any relevant land;
- (b) as to the content or form of any notices required to be displayed; and
- (c) as to the location of any notices required to be displayed.

(4) Regulations under this paragraph may:

- (a) include incidental, supplementary, transitional, transitory or saving provision;
- (b) make different provision for different areas or purposes.

Hire vehicles

13 (1) This paragraph applies in the case of parking charges incurred in respect of the parking of a vehicle on relevant land if:

- (a) the vehicle was at the time of parking hired to any person under a hire agreement with a vehicle-hire firm; and
- (b) the keeper has been given a notice to keeper within the relevant period for the purposes of paragraph 8(4) or 9(4) (as the case may be).

(2) The creditor may not exercise the right under paragraph 4 to recover from the keeper any unpaid parking charges specified in the notice to keeper if, within the period of 28 days beginning with the day after that on which that notice was given, the creditor is given:

- (a) a statement signed by or on behalf of the vehicle-hire firm to the effect that at the material time the vehicle was hired to a named person under a hire agreement;
- (b) a copy of the hire agreement; and
- (c) a copy of a statement of liability signed by the hirer under that hire agreement.

(3) The statement of liability required by sub-paragraph (2)(c) must:

- (a) contain a statement by the hirer to the effect that the hirer acknowledges responsibility for any parking charges that may be incurred with respect to the vehicle while it is hired to the hirer;
- (b) include an address given by the hirer (whether a residential, business or other address) as one at which documents may be given to the hirer; (and it is immaterial whether the statement mentioned in paragraph (a) relates also to other charges or penalties of any kind).

(4) A statement required by sub-paragraph (2)(a) or (c) must be in such form (if any) as may be prescribed by the appropriate national authority by regulations made by statutory instrument.

(5) The documents mentioned in sub-paragraph (2) must be given by:

- (a) handing them to the creditor;
- (b) leaving them at any address which is specified in the notice to keeper as an address at which documents may be given to the creditor or to which payments may be sent; or
- (c) sending them by post to such an address so that they are delivered to that address within the period mentioned in that sub-paragraph.

(6) In this paragraph and paragraph 14:

- (a) "hire agreement" means an agreement which:
 - (i) provides for a vehicle to be let to a person ("the hirer") for a period of any duration (whether or not the period is capable of extension by agreement between the parties); and
 - (ii) is not a hire-purchase agreement within the meaning of the Consumer Credit Act 1974;
- (b) any reference to the currency of a hire agreement includes a reference to any period during which, with the consent of the vehicle-hire firm, the hirer continues in possession of the vehicle as hirer, after the expiry of any period specified in the agreement but otherwise on terms and conditions specified in it; and
- (c) "vehicle-hire firm" means any person engaged in the hiring of vehicles in the course of a business.

14 (1) If:

- (a) the creditor is by virtue of paragraph 13(2) unable to exercise the right to recover from the keeper any unpaid parking charges mentioned in the notice to keeper; and
- (b) the conditions mentioned in sub-paragraph (2) below are met, the creditor may recover those charges (so far as they remain unpaid) from the hirer.

(2) The conditions are that:

- (a) the creditor has within the relevant period given the hirer a notice in accordance with sub-paragraph (5) (a "notice to hirer"), together with a copy of the documents mentioned in paragraph 13(2) and the notice to keeper;
- (b) a period of 21 days beginning with the day on which the notice to hirer was given has elapsed; and

- (c) the vehicle was not a stolen vehicle at the beginning of the period of parking to which the unpaid parking charges relate.

(3) In sub-paragraph (2)(a) “the relevant period” is the period of 21 days beginning with the day after that on which the documents required by paragraph 13(2) are given to the creditor.

(4) For the purposes of sub-paragraph (2)(c) a vehicle is to be presumed not to be a stolen vehicle at the material time, unless the contrary is proved.

(5) The notice to hirer must:

- (a) inform the hirer that by virtue of this paragraph any unpaid parking charges (being parking charges specified in the notice to keeper) may be recovered from the hirer;
- (b) refer the hirer to the information contained in the notice to keeper;
- (c) warn the hirer that if, after the period of 21 days beginning with the day after that on which the notice to hirer is given, the amount of unpaid parking charges referred to in the notice to keeper under paragraph 8(2)(f) or 9(2)(f) (as the case may be) has not been paid in full, the creditor will (if any applicable requirements are met) have the right to recover from the hirer so much of that amount as remains unpaid;
- (d) inform the hirer of any discount offered for prompt payment and the arrangements for the resolution of disputes or complaints that are available;
- (e) identify the creditor and specify how and to whom payment may be made; and
- (f) specify the date on which the notice is sent (if it is sent by post) or given (in any other case).

(6) The documents mentioned in sub-paragraph (2)(a) must be given by:

- (a) handing them to the hirer;
- (b) leaving them at an address which is either:
 - (i) an address specified in the statement of liability mentioned in paragraph 13(2)(c) as an address at which documents may be given to the hirer; or
 - (ii) an address at which documents relating to civil proceedings could properly be served on the hirer under Civil Procedure Rules; or
- (c) sending them by post to such an address so that they are delivered to that address within the relevant period for the purposes of subparagraph (2)(a).

(7) In sub-paragraph (5)(d) the reference to arrangements for the resolution of disputes or complaints includes:

- (a) any procedures offered by the creditor for dealing informally with representations by the hirer about the notice or any matter contained in it; and
- (b) any arrangements under which disputes or complaints (however described) may be referred by the hirer to independent adjudication or arbitration.

Application to Crown vehicles etc

15 (1) The provisions of this Schedule apply to:

- (a) vehicles in the public service of the Crown that are required to be registered under the Vehicle Excise and Registration Act 1994 (other than a vehicle exempted by sub-paragraph (2)), and
- (b) any person in the public service of the Crown who is the keeper of a vehicle falling within paragraph (a).

(2) But this Schedule does not apply in relation to a vehicle that:

- (a) at the relevant time is used or appropriated for use for naval, military or air force purposes, or
- (b) belongs to any visiting forces (within the meaning of the Visiting Forces Act 1952) or is at the relevant time used or appropriated for use by such forces.

Power to amend Schedule

16 (1) The appropriate national authority may by order made by statutory instrument amend this Schedule for the purpose of:

- (a) amending the definition of “relevant land” in paragraph 3;
- (b) adding to, removing or amending any of the conditions to which the right conferred by paragraph 4 is for the time being subject.

(2) The power to amend this Schedule for the purpose mentioned in subparagraph (1)(b) includes, in particular, power to add to, remove or amend:

- (a) any provisions that are applicable for the purposes of a condition;
- and
- (b) any powers of the appropriate national authority to prescribe anything for the purposes of a condition by regulations made by statutory instrument.

(3) An order under this paragraph may:

- (a) include incidental, supplementary, transitional, transitory or saving provision;
- (b) make different provision for different purposes.

Parliamentary procedure

- 17 (1) A statutory instrument containing regulations under any provision of this Schedule is subject to annulment by:
- (a) a resolution of either House of Parliament (in the case of regulations made by the Secretary of State); or
 - (b) a resolution of the National Assembly for Wales (in the case of regulations made by the Welsh Ministers).
- (2) A statutory instrument containing an order made under paragraph 16:
- (a) in the case of an order of the Secretary of State, is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament;
 - (b) in the case of an order of the Welsh Ministers, is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

APPENDIX D

CONTACT DETAILS

BPA Office and Customer Services

British Parking Association
Chelsea House
8-14 The Broadway
Haywards Heath
West Sussex
RH16 3AH

Tel: +44(0) 1444 447300
Fax: +44(0) 1444 454105
Email: AOS@britishparking.co.uk

Complaints form regarding breaches of the Code: <https://portal.britishparking.co.uk/compliance/LogComplaint>

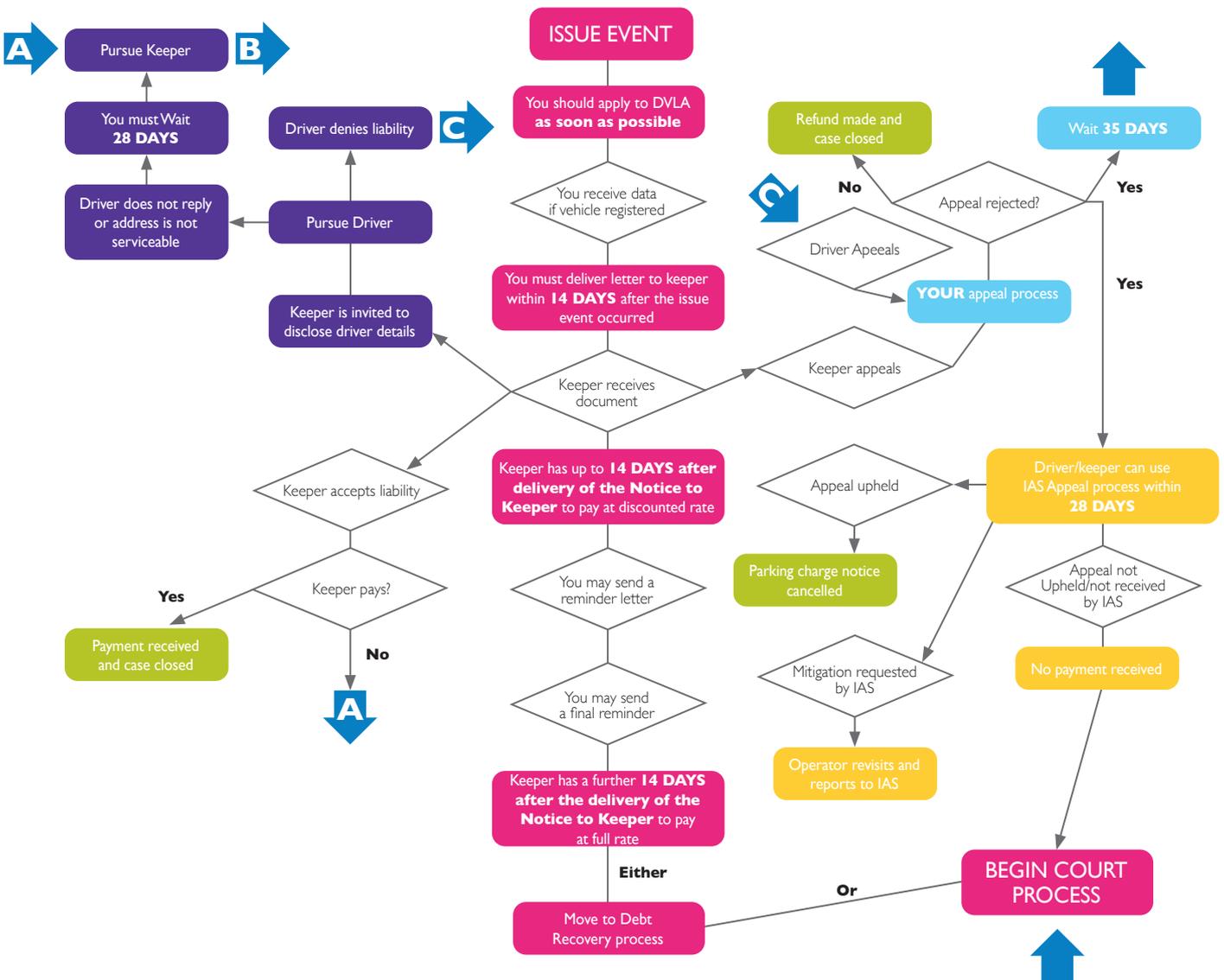
APPENDIX E

PARKING CHARGE NOTICE FLOW CHART FOR RECOVERY OF UNPAID PARKING CHARGE NOTICES AND APPEALS UNDER POFA 2012

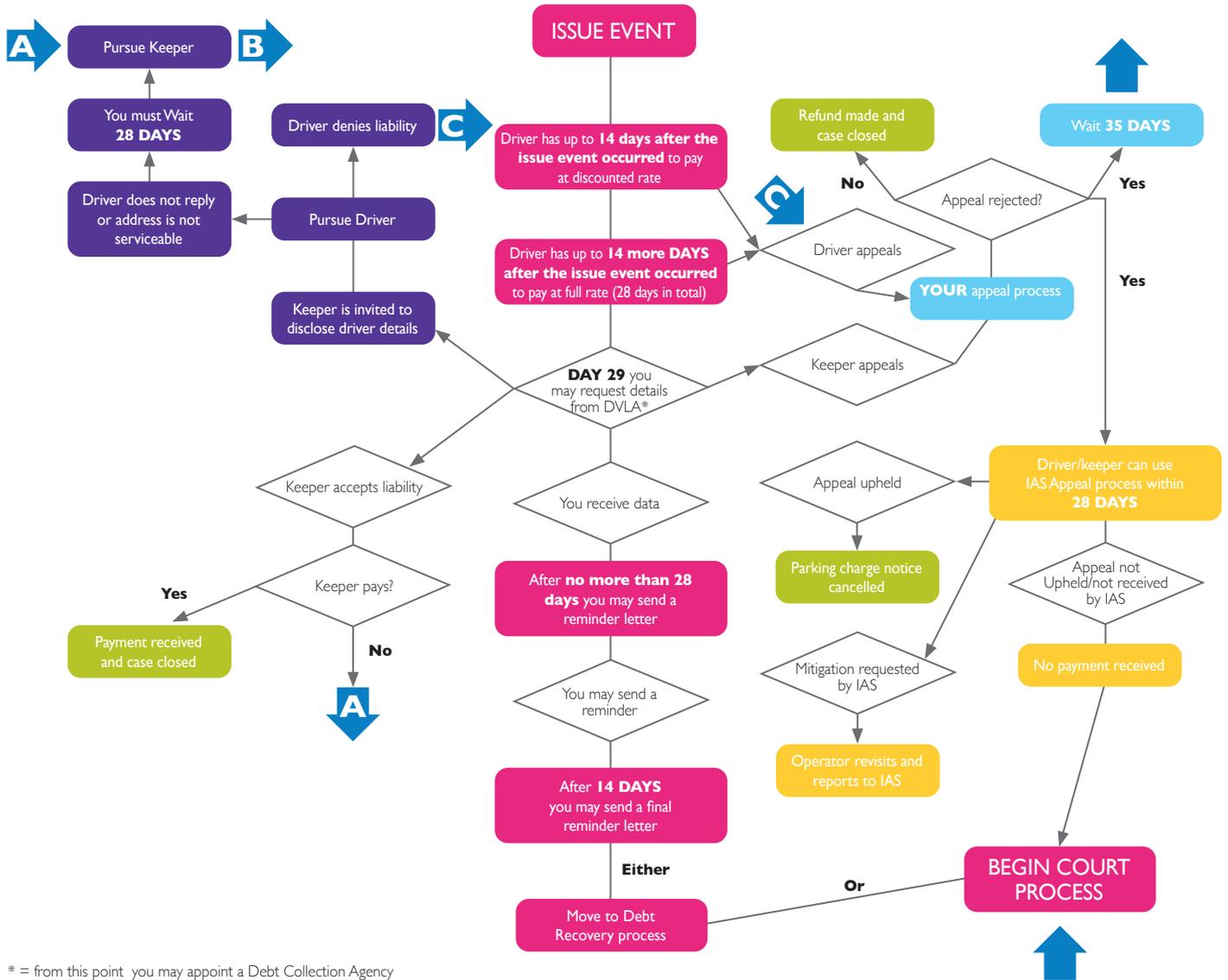
Notes to Flowcharts:

1. If full and final payment is received, or a payment that is accepted by the operator is received at any point in the process, the process ends.
 2. Where a ticket is issued by hand, the Debt Recovery process may begin at any point beyond day 29.
 3. If the Registered Keeper of the vehicle is a hire company, the hire company may release the details of the hirer of the vehicle under the terms of PoFA 2012.
- a. If you have the name and current address for service of papers on the hirer, you must pursue the hirer.
 - b. If the hirer of the vehicle refuses to admit liability, then Schedule 4 does not enable you to pursue the hire company. However Schedule 4 also makes the hirer statutorily liable for the parking charges unless the hirer can prove that the vehicle was stolen.
 - c. If the hirer of the vehicle offers the name of another driver, the driver should be pursued. After all, ultimately it is the driver who has breached the terms of your car park.

Ticket posted to keeper/issued by ANPR



Ticket issued by hand/to driver of the vehicle



* = from this point you may appoint a Debt Collection Agency

APPENDIX F

SURVEILLANCE CAMERA COMMISSIONER'S CODE OF PRACTICE - A GUIDE TO THE 12 PRINCIPLES

How well does your organisation comply with the 12 guiding principles of the surveillance camera code of practice?
Here are some questions you should consider to help you check if you comply.

1	<ul style="list-style-type: none">• What's your system for?• Do you review its use?
2	<ul style="list-style-type: none">• Have you carried out a privacy impact assessment?• Do you publish your privacy impact assessment?
3	<ul style="list-style-type: none">• Do you have signage in place to say surveillance is taking place?• Is there a published point of contact for people to raise queries or complaints with?
4	<ul style="list-style-type: none">• Who's responsible for your system?• Are your staff aware of their responsibilities?
5	<ul style="list-style-type: none">• Do you have clear policies and procedures in place?• Do your staff know what your policies and procedures are?
6	<ul style="list-style-type: none">• How long do you keep images/information?• How do you make sure images/information is deleted once they're no longer needed?• Do you have a policy on who has access to the stored information?
7	<ul style="list-style-type: none">• Do you have a policy on disclosure of information?
8	<ul style="list-style-type: none">• Do you follow any recognised operational or technical standards?
9	<ul style="list-style-type: none">• Do you make sure that the images captured by your system are caught securely?• Are only authorised people given access to the images?
10	<ul style="list-style-type: none">• Do you evaluate your system regularly to make sure it's still required?• Could there be an alternative solution to a surveillance camera system?
11	<ul style="list-style-type: none">• Can the criminal justice system use the images and information produced by your surveillance camera system?• Do you have a policy on data storage, security and deletion?
12	<ul style="list-style-type: none">• Do you use any specialist technology such as ANPR, facial recognition, Body Worn Video (BWW) or remotely operated vehicles (Drones)?• Do you have a policy in place to ensure that the information contained on your database is accurate and up to date?

Contact the Surveillance Camera Commissioner

2 Marsham Street
1st Floor, Peel
London
SW1P 4DF

Email: scc@sccommissioner.gsi.gov.uk

More information:
www.gov.uk/surveillance-camera-commissioner

APPENDIX G

RAILWAY BYELAWS

I General Conditions

- 1.1 The 'General Conditions' from the BPA Code of Practice apply and Members will be audited against these.
- 1.2 The only exception to this is Clause 14 of the 'General Conditions'. Operators are required to reference the Statutory Authority that they are managing the land under.
- 1.3 The specific Byelaws of the Railway Byelaws that apply to parking are;

14. Traffic signs, causing obstructions and parking

(1) No person in charge of any motor vehicle, bicycle or other conveyance shall use it on any part of the railway in contravention of any traffic sign.

(2) No person in charge of any motor vehicle, bicycle or other conveyance shall leave or place it on any part of the railway:

(i) in any manner or place where it may cause an obstruction or hindrance to an Operator or any person using the railway; or

(ii) otherwise than in accordance with any instructions issued by or on behalf of an Operator or an authorised person.

(3) No person in charge of any motor vehicle, bicycle or other conveyance shall park it on any part of the railway where charges are made for parking by an Operator or an authorised person without paying the appropriate charge at the appropriate time in accordance with instructions given by an Operator or an authorised person at that place.

(4) In England and Wales

(i) The owner of any motor vehicle, bicycle or other conveyance used, left or placed in breach of Byelaw 14(1) to 14(3) may be liable to pay a penalty as displayed in that area.

(ii) Without prejudice to Byelaw 14(4)(i), any motor vehicle, bicycle or other conveyance used, left or placed in breach of Byelaw 14(1) to 14(3) may be clamped, removed, and stored, by or under the direction of an Operator or authorised person.

The owner of the motor vehicle, bicycle or other conveyance shall be liable to an Operator or an authorised person for the costs incurred in clamping, removing and storing it provided that there is in that area a notice advising that any vehicle parked contrary to these Byelaws may be clamped, removed and stored by an Operator or an authorised person and that

the costs incurred by an Operator or an authorised person for this may be recovered from the vehicle's owner.

(iv) The power of clamping and removal provided in Byelaw

14(4)(ii) above shall not be exercisable in any area where passenger parking is permitted unless there is on display in that area a notice advising that any vehicle parked contrary to these Byelaws may be clamped and/or removed by an Operator or an authorised person.

(5) In Scotland

Any motor vehicle, bicycle or other conveyance used, left or placed in breach of this Byelaw in Scotland may be removed by or under the direction of a constable.

2 Signage

- 2.1 Requirements for signage on Railway Land are specifically referenced in Byelaws 14 (1), 14 (2) (ii) and 14 (4) (iii)
- 2.2 Parking operators are required to follow the principles outlined in Section 18 of the Operational Requirements in England & Wales.

3 Who can the Operator pursue?

- 3.1 The Byelaws 14 (4) are specific that the owner of a vehicle "may be liable for a penalty as displayed in that area". Therefore, if pursuing for breach of Byelaws, the parking operator can only pursue the owner of the vehicle.
- 3.2 The owner may or may not be the person who was driving at the time. Another person driving the vehicle does not affect the owner's liability for a penalty.
- 3.3 The "owner", in relation to a vehicle, means the person by whom the vehicle is kept, which in the case of a vehicle registered under the Vehicle Excise and Registration Act 1994 (c. 22) is presumed (unless the contrary is proved) to be the person in whose name the vehicle is registered.
- 3.4 Parking operators can pursue the owner of a vehicle for breach of Byelaws by affixing a penalty to the windscreen of a vehicle for the attention of the vehicle owner. They may also seek keeper information from the Driver and Vehicle Licensing Authority (DVLA) in order to send a notice to owner through the post. If the DVLA determines that the parking operator has reasonable cause to seek the information, they may provide it to the parking operator:

4 Timescales for the Issue of Notices

- 4.1 The Railway Byelaws set out no timescales for the issue of a penalty for breach of Byelaws. However, the parking operator is timed out of prosecuting the motorist through the Magistrates Court for breach of Byelaws after six months pursuant to section 127(1) of the Magistrates Court Act 1980.
- 4.2 The Code considers a lack of timescales unreasonable to motorists. If a driver or an owner did not receive notification of a parking charge or penalty until several months after an incident of alleged improper parking, they may have little or no memory of the event and their ability to appeal will be hampered.
- 4.3 POFA 2012 sets out timescales for the issuing of parking charge notices. While POFA 2012 does not apply on Railway Land, the standards have been put in place for situations similar to those in question. As those standards are used across the industry, and both parking operators and motorists are familiar with the standards, it is reasonable that these standards are utilised as a guide when considering appeals against penalties issued on Railway Land.
- 4.3.1 Affixed to vehicle: this should be given by affixing it to the vehicle at the time the alleged breach of Byelaws is identified.
- 4.3.2 Issued via post following a penalty notice affixed to vehicle: this should be given in the period of 28 days following the period of 28 days beginning with the day after that on which the initial penalty notice was affixed to the vehicle.
- 4.3.3 Issued via post without a penalty notice having previously being affixed to vehicle: this should be issued in the period of 14 days beginning with the day after that on which the specified period of parking ended.
- 4.4 It is presumed that a penalty notice sent by post, unless the contrary is proved, to have been delivered on the second working day after the day on which it is posted; and for this purpose "working day" means any day other than a Saturday, Sunday or a public holiday in England and Wales.
- 4.4.1 Under the Interpretation Act 1978 Section 7 - References to service by post. Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

5 Content of a Penalty Notice

- 5.1 POFA 2012 provides specific instructions on the information that should be contained within a parking charge notice. This information allows drivers and keepers to understand the allegation against them, the situation in which they find themselves, and their options. There are no such requirements for penalties for breach of Byelaws or parking charges where the parking operator is not seeking to pursue the keeper using the provisions within POFA 2012.
- 5.2 However, we consider it important that any Penalty Notices issued clearly communicate the circumstances to owners and drivers so they know their options and can make an informed decision on what to do next.
- 5.3 A Penalty Notice must:
- Say it is a Penalty Notice (this can be abbreviated to PN providing the phrase Penalty Notice is used first)
 - Be dated
 - Specify the alleged contravention including the time and date, site, and period of parking
 - Confirm how the Byelaws were brought to the motorist's attention
 - Confirm the law under which it has been issued
 - Be issued to the vehicle owner (Registered Keeper assumed to owner unless proved otherwise)
 - Confirm potential consequences of non-payment, including prosecution
 - Confirm the amount of the penalty – which should be the same as the penalty shown in the car park
 - Inform the owner of any discount offered
 - Explain how to pay and who to pay
 - Confirm the appeal procedure
- 5.4 A penalty notice must not:
- Mention POFA 2012 (as this is not relevant and will confuse the owner about the situation in which they find themselves)
 - Mention ParkingEye Vs Beavis (as this is not relevant and will confuse the owner about the situation in which they find themselves)
 - Use the words "parking charge", "parking charge notice", "Penalty Charge Notice" or "PCN" (as this is not relevant and will confuse the owner about the situation in which they find themselves)
 - Refer to keeper or driver liability (as this is not relevant and will confuse the owner about the situation in which they find themselves)
 - Say anything untrue or misleading

6 Appeals

- 6.1 When handling appeals parking operators are required to follow the principles outlined in Section 22 of the Operational Requirements in England & Wales.
- 6.2 Operators can make alternative arrangements to POPLA for the independent assessment appeals but these will require approval by the BPA before implementation.

7 Recovering Unpaid Charges

- 7.1 When seeking to recover unpaid charges, parking operators are required to follow the principles outlined in Section 23 of the Operational Requirements in England & Wales.
- 7.2 The parking operator is timed out of prosecuting the motorist for breach of Byelaws via a Magistrates Court after six months.

8 Clamping and Removal

- 8.1 Clause 14 (3) of the Railway Byelaws permit Clamping and Removal.
- 8.2 If an operator plans to enforce in this way they are required to follow the principles outlined in Appendix A – Vehicle Immobilisation and Removal in Northern Ireland.

NOTES

NOTES



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