
Cabinet Member

2 December 2021

Name of Cabinet Member:

Cabinet Member for Policing and Equalities - Councillor AS Khan

Director Approving Submission of the report:

Director of Transportation and Highways

Ward(s) affected:

All

Title:

Adoption of Delegated Powers to Tow-away Vehicles

Is this a key decision?

No - although the proposals affect more than two electoral wards, the impact is not expected to be significant.

Executive Summary:

The Council is responsible for civil parking enforcement of parking contraventions in Coventry. Civil parking enforcement operates under the Traffic Management Act 2004 (TMA 2004).

Whilst most drivers comply with parking regulations and park considerately, and they correctly tax their vehicles, some drivers deliberately and persistently park in contravention of restrictions, or park where they are causing obstructions to traffic, or don't register the vehicle with the DVLA, in attempts to avoid paying the fines they incur and any tax due.

The regulations made under the TMA 2004 allow local authorities to clamp or remove vehicles (tow away) that belong to persistent evaders and vehicles that are parked where they are causing an obstruction / hazard to traffic. Legislation also makes provision for the DVLA to devolve enforcement powers to Local Authorities and the Police to help tackle the problem of untaxed vehicles by removing them to a storage compound.

To date the Council hasn't adopted these powers and this has impacted on the effectiveness of some parking enforcement functions.

This report seeks approval to adopt the necessary powers to commence the removal of vehicles (tow-away) that are:

- Persistent evaders
- Causing obstruction to traffic where there are traffic management benefit of removing them.
- Untaxed

Recommendations:

The Cabinet Member for Policing and Equalities is recommended to:

1. Approve the adoption of existing delegated powers to include the removal of persistent evaders.
2. Approve the adoption of existing delegated powers to remove vehicles that are parked illegally and where the vehicle is causing an obstruction or hazard to other traffic.
3. Approve the use of DVLA 'devolved powers' to identify and remove untaxed vehicles from public streets and public car parks, including in instances where the vehicle doesn't meet the Council's abandonment criteria.

List of Appendices included:

None

Background papers:

None

Other useful documents:

None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Report title: Adoption of Delegated Powers to Tow-away Vehicles

1. Context (or background)

- 1.1 In August 2012, the Cabinet Member (City Services) approved a report to allow the removal of vehicles that are parked and causing an obstruction to planned highway maintenance work.

The TMA 2004 also makes provision for the removal of vehicles in other situations including persistent evaders and vehicles that are parked where they are causing an obstruction to the free flow of traffic. Many local authorities have already adopted vehicle removal powers although to date, Coventry hasn't.

- 1.2 The Department for Transport's (DfT) Operational Guidance recommends that the removal of vehicles should only take place where it gives clear traffic management benefits.

Where the enforcement authority adopts the powers, the authority is required to publish clear policies and procedures for Civil Enforcement Officers (CEOs) on when it is appropriate to remove offending vehicles.

- 1.3 Most motorists park their vehicles lawfully. Where parking offences do occur and a Penalty Charge Notice (PCN) is issued by one of the Council's CEOs, the majority of these are paid without the Council having to take further enforcement action.

However, some motorists contravene parking regulations deliberately and often and do not pay the fines they incur. This is usually because the vehicle isn't registered with the DVLA. Consequently, the usual PCN recovery process is frustrated and the debt isn't normally recovered. Ultimately, this will result in the debt being written-off - at great expense to the Council.

The TMA 2004 defines a vehicle that has three or more PCNs that have not been paid, represented against or appealed within the statutory timescales as a 'persistent evader'.

- 1.3.1 **Persistent Evaders** - The TMA (2004) provides the powers to local authorities to clamp or remove persistent evaders.

- 1.3.2 When a persistent evader is parked in contravention, it should be subject to the strongest possible enforcement by removing the vehicle to a secure pound once a PCN has been issued to it. The benefit of removing it is that it requires proof of ownership and a registered address before the vehicle is released from the pound.

The TMA 2004 states that a persistent evader can be removed immediately after a PCN has been issued if it is parked where parking is prohibited, e.g. on double yellow or double red lines.

However, if the vehicle is parked in a designated parking place where parking is permitted, the TMA 2004 prohibits the removal until at least 15 minutes after a PCN has been issued.

- 1.3.3 During the period April to September 2021, 184 vehicles qualified as a Persistent Evader in Coventry.

The vehicle with the highest number of PCNs recorded against it received 27 PCNs during this period and the associated debt currently amounts to £3,020. As the vehicle details are not registered with the DVLA, the Council is currently unable to recover the debt through the normal channels and processes.

1.3.4 The table below shows the current number of persistent evaders in Coventry for the year 2021 / 2022 together with the number of PCNs that remain unrecovered and the amount owed. This debt will ultimately be written-off if the owners remain untraceable:

PCNs outstanding	Number of vehicles	Total PCNs outstanding	Amount owed
3 or more	184	875	£94,339
5 or more	64	476	£54,341
10 or more	11	150	£16,355

1.3.5 Adopting the powers to remove persistent evaders will deter drivers from parking with impunity in locations where parking isn't permitted and discourage them from not paying for parking where a payment is required. It will also ensure that the Council's PCN recovery processes are more effective.

1.3.6 The fees associated with the removal and storage of vehicles are prescribed by the Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2008 (SI 2007/2095). These fees are payable by the vehicle owner when the vehicle is reclaimed. The fees cover the costs incurred by the removal contractor.

1.3.7 Like all PCNs, vehicle removals can attract an appeal from the owner of the vehicle and these appeals will be treated in the same way as any other. If the appeal is successful, all monies paid in respect of the removal and storage of the vehicle will be reimbursed in full.

1.3.8 The proposed procedure for the removal of persistent evaders will comprise the following:

- Each case will be considered on its own merit including the inconvenience that the removal of the vehicle will cause to the driver (e.g. vulnerability of the driver, whether any young children are present, mobility impairments, further traffic congestion that may ensue as a result of lifting and removing the offending vehicle).
- The Parking Manager or their appointed deputy will have delegated authority for making the decision as to whether the offending vehicle will be removed.
- The Council will take immediate action to have the vehicle removed once a PCN has been issued albeit that if it is parked in a permitted parking place it will not be towed away until a period of at least 15 minutes has elapsed.
- The CEO must remain on site throughout the process and liaise with the authorising officer regarding the vehicle removal.

The authorising officer will contact the removal contractor and the vehicle will subsequently be removed to the storage pound.

- Upon collection, the owner will be required to provide proof of ownership including their full name and address so that the Council's Parking Services can pursue any unpaid penalty notices through the normal process.
- The owner will be required to pay the penalty charge together with any storage and release fees in full before the vehicle is released and returned to the owner.

1.4 **Obstructive / hazardous parking** - Aside from persistent evaders, some vehicles park illegally on the public highway where they cause a hazard, obstruction or a serious traffic problem. Issuing a PCN to the vehicle doesn't remove the problem.

1.4.1 The Council has the powers to immobilise or remove a vehicle if it is causing a hazard or obstruction to traffic where a parking offence has occurred and a PCN has been issued.

There are certain circumstances where enforcement can only be by the police, e.g. for causing an unnecessary obstruction of a road or leaving a vehicle in a dangerous position where there are no yellow lines or signs prohibiting parking.

1.4.2 Where a vehicle is parked where parking is prohibited, e.g. on double red or double yellow lines, the local authority can remove it as soon as possible after a PCN has been issued in order to improve traffic flow and road safety.

However, if the vehicle is parked where parking is permitted, the TMA 2004 states that the vehicle must not be removed until at least 30 minutes have elapsed after the PCN is issued, [unless it is a persistent evader where the time limit is 15 minutes].

1.4.3 In the case of a vehicle that is parked where it is causing an obstruction and safety hazard to other traffic or could impede emergency vehicles, the recommended process will be:

- Each case will be considered on its merits including the inconvenience that the removal of the vehicle will cause to the driver (e.g. vulnerability of the driver, whether any young children are present, mobility impairments, further traffic congestion that may ensue as a result of lifting and removing the offending vehicle).
- The Parking Manager or their appointed deputy will have delegated authority (i.e. the authorising officer) for making the decision as to whether an offending vehicle will be removed. In reaching the decision the following factors will be considered:
 - If the vehicle is parked where it is prohibited from stopping (e.g. on the red route, pedestrian crossing, yellow zig-zags outside of schools, clearways etc.) during the times that the restriction is enforceable, then the vehicle will be removed as soon as it is practical to do so once a PCN has been issued.
 - If the vehicle is parked where parking is permitted but the vehicle is parked inconsiderately and causing a serious obstruction, then the vehicle will not be removed until a period of 30 minutes has elapsed following a PCN being issued to it.
- The CEO will remain on site throughout the process and liaise with the authorising officer regarding the removal of the vehicle.
- The authorising officer will contact the removal contractor and the vehicle will subsequently be removed to the storage pound at the contractor's premises.
- If the driver returns to the vehicle during the removal process, the process will be stopped unless the vehicle is a persistent evader.
- Upon collection, the owner will be required to provide proof of ownership including their full name and address.

- The owner will be required to pay in full the penalty charge together with any storage and release fee to the contractor before the vehicle is released and returned to the owner.

1.5 **Untaxed vehicles** - There are also occasions where it hasn't been possible to collect payment for parking penalties because the vehicle is not registered, or is not correctly registered, with the DVLA. This may be because the owner is confident that they can avoid paying any penalty charges.

1.5.1 It is against the law to own and use an untaxed vehicle unless it is officially declared permanently off the road and not being driven. To do this, the owner must fill out a Statutory Off-Road Notification (SORN) and send it to the DVLA.

1.5.2 The number of untaxed vehicles has increased dramatically since the tax disc was abolished in October 2014. The DVLA estimate that there are as many as 28,000 untaxed vehicles in Coventry. These vehicles are often uninsured or not roadworthy and are sometimes involved in serious crimes or other anti-social behaviour.

Issuing a PCN to an untaxed vehicle that is illegally parked isn't a deterrent as the owner will usually be untraceable through the usual systems. Consequently, any PCNs are ultimately written off.

1.5.3 The Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997, makes provision for the DVLA to devolve enforcement powers to Local Authorities and the Police to locate and remove any untaxed vehicles within the city.

1.5.4 The devolved powers will also assist the Council's Street Enforcement Team with their work around dealing with abandoned vehicles where a vehicle doesn't meet or trigger the criteria for abandonment but is showing as untaxed. Thereby, giving the Council the ability to have the vehicles removed from the highway by the contractor for non-payment of road tax.

1.5.5 Once the vehicle has been removed and impounded, the owner must provide proof of ownership and evidence that it has been taxed and MOT'd. They must also pay the cost of the PCN together with the release and storage fees before the vehicle is released. This information ensures that the Council has the correct details to pursue any other unpaid penalties.

If the owner fails to contact the Council within prescribed timescales following removal of the vehicle, it can be scrapped or disposed of at auction. The owner is entitled to any proceeds from the sale less the cost of any outstanding charges for removal, storage, disposal and the penalty charge on the proviso that they apply within one year of the date on which the vehicle was sold or scrapped.

The removal of vehicles is in accordance with instructions issued by the Council's authorising officers and is carried out by an appointed contractor working on behalf of the Council.

1.6 To date, the Council hasn't adopted the powers to remove vehicles where the vehicle is a persistent evader, or illegally parked and causing obstruction to traffic, or untaxed with the DVLA.

This report seeks the necessary approvals to adopt the powers and develop the operational procedures that will help to reduce the amount of nuisance vehicles on the streets.

This will have the added benefits of improving road safety in Coventry and the effectiveness of parking enforcement and PCN recovery.

2 Options considered and recommended proposal

The Cabinet Member for Policing and Equalities is recommended to:

- Approve the adoption of existing delegated powers to include the removal of persistent evaders.
- Approve the adoption of existing delegated powers to remove vehicles that are parked illegally and are causing an obstruction or hazard to other traffic.
- Approve the use of ‘devolved powers’ in conjunction with the DVLA to identify and remove untaxed vehicles from public streets and car parks, including in instances where the vehicle doesn’t meet the Council’s abandonment criteria.

The main alternative option would be to do nothing and continue ‘as is’ and not remove vehicles that meet either of the stipulated criteria.

By continuing to do nothing, there is a potential reputational risk that the Council is not fulfilling its duty under the TMA 2004 by ensuring the streets remain safe to use and that emergency vehicles are not prevented from attending sites in a timely manner.

Officers do not recommend this as it would mean that a small minority of motorists would continue to ignore parking restrictions with impunity, to the dissatisfaction of law-abiding motorists at a continuing cost to the Council.

3. Results of consultation undertaken

None

4. Timetable for implementing this decision

The timescales for implementation will be developed subject to approval of the recommendations within this report and the procurement and appointment of a suitable vehicle removal contractor.

5. Comments from Director of Finance and Director of Law and Governance

5.1 Financial implications

The table below shows the value of unpaid PCNs that were written off by the Council during the past three years due to vehicles not being correctly registered with the DVLA, including persistent evaders:

Year	Number of PCNs written off due to DVLA ‘no trace’	Value of PCNs written off
2020 – 2021	3,027	£93,518
2019 – 2020	6,987	£366,025
2018 – 2019	9,302	£427,767

It is expected that the adoption of powers to remove persistent evaders will significantly improve PCN collection rates as it will enable the Council / DVLA to obtain the correct address details of many existing persistent evaders. However, it is difficult to accurately predict how much additional income will be generated.

The fees relating to removal, storage and disposal will be paid directly by the driver when vehicles are released and there will be no cost implications to the Council.

5.2 Legal implications

The proposed adoption of the powers complies with the statutory provisions of the TMA 2004, which governs the enforcement of parking contraventions. It has also been developed in accordance with the Operational Guidance to Local Authorities: Parking Policy and Enforcement issued by the Department for Transport (DFT) in March 2008, revised November 2010 and March 2015.

The introduction of powers to remove vehicles for those parked in contravention of traffic orders does not need advertising or amendment of any associated Traffic Regulation Orders as there is no requirement to prescribe how the Council wishes to enforce so long as the method complies with all relevant legislation.

6 Other implications

6.1 How will this contribute to the Council Plan (www.coventry.gov.uk/councilplan/)?

The proposals to remove persistent evaders, untaxed vehicles and vehicles that are parked where they are causing an obstruction will support the Council's aim of ensuring that citizens, especially children and young people, are safe. It also supports the objective of reducing crime and the potential for anti-social behaviour.

6.2 How is risk being managed?

There are no significant risks associated with the adoption of the powers. The overall costs to the Council are negligible and any additional costs can be managed within the budget available.

6.3 What is the impact on the organisation?

None

6.4 Equality Impact Assessment / EIA

This report is solely about proposals to remove vehicles that have been parked in contravention of a parking restriction or are parked inconsiderately causing a hazard / obstruction to road users or are untaxed.

Operational procedures will be developed prior to the adoption of the powers. The procedures will require that each individual case is assessed and considered prior to the removal of the vehicle.

Vehicles displaying a Blue Badge will not be removed. In exceptional circumstances, for example, where a vehicle displaying a Blue Badge is causing a safety hazard, the vehicle should be relocated to a safe place nearby and where possible, within sight of the original location.

6.5 Implications for (or impact on) climate change and the environment

There are no notable or significant impacts on climate change or the environment as a result of the introduction of the proposals.

6.6 Implications for partner organisations?

No specific implications have been identified at this stage.

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Members: Councillor AS Khan	Cabinet Member for Policing and Equalities		19/11/2021	22/11/2021

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