



An Bille um Theanntáil Feithiclí, 2014
Vehicle Clamping Bill 2014

Mar a tionscnaíodh

As initiated



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VEHICLE CLAMPING BILL 2014

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AN BILLE UM THEANNTÁIL FEITHICLÍ, 2014
VEHICLE CLAMPING BILL 2014

Bill

entitled

An Act to provide for the regulation of the immobilisation of vehicles and related activities in certain places and in this regard to confer functions on the National Transport Authority and to amend the Transport Act 1950, section 101B of the Road Traffic Act 1961, the Fishery Harbour Centres Act 1968, the Harbours Act 1996 and the Transport (Railway Infrastructure) Act 2001 and to provide for related matters. 5

Be it enacted by the Oireachtas as follows: 10

PART 1

PRELIMINARY AND GENERAL

Short title, commencement and collective citation

1. (1) This Act may be cited as the Vehicle Clamping Act 2014.
- (2) This Act comes into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions. 15
- (3) The collective citation “the Road Traffic Acts 1961 to 2014” includes *Part 5*.
- (4) The Fishery Harbour Centres Acts 1968 to 2006 and *section 33* may be cited together as the Fishery Harbour Centres Acts 1968 to 2014. 20
- (5) The Harbours Acts 1996 to 2009 and *section 34* may be cited together as the Harbours Acts 1996 to 2014.

Interpretation

2. In this Act— 25
 - “Act of 1961” means Road Traffic Act 1961;
 - “Act of 2005” means Railway Safety Act 2005;
 - “airport” means a State Airport (within the meaning of the State Airports Act 2004) or another airport for which the Minister may make bye-laws under section 15 of that Act;

“authorised person” means a person or a class of persons appointed under <i>section 22</i> ;	
“clamp” means a device or appliance designed or adapted for fixing to a vehicle for the purpose of preventing it from being driven or otherwise put in motion;	
“clamping” means fixing a clamp to a parked vehicle;	
“clamping activities” means—	5
(a) clamping,	
(b) removing a clamp from a vehicle,	
(c) relocating a vehicle, or	
(d) imposing charges—	
(i) as a condition for removing a clamp from a vehicle, or	10
(ii) in respect of the relocation of a vehicle;	
“clamping appeals officer” means a person designated by the NTA under <i>section 20</i> ;	
“clamping notice” means a notice affixed to a vehicle in accordance with <i>section 12</i> ;	
“clamping operator” means a person who is authorised by a parking controller to carry out clamping activities on behalf of the parking controller and includes an employee of a clamping operator or any other person engaged by a clamping operator to carry out such activities on his or her behalf and, in respect of clamping activities carried out under section 101B, includes a clamping officer (within the meaning of that section);	15
“clamping place” means a statutory clamping place or a non-statutory clamping place, or both, as the case may be;	20
“clamping regulations” means regulations made under <i>section 9</i> ;	
“clamp release charge” means a charge for the removal of a clamp fixed to an unlawfully or a wrongfully parked vehicle;	
“code of practice” means a code of practice established under <i>section 11(1)</i> ;	
“enactment” includes an instrument made under an enactment;	25
“fishery harbour centre” has the meaning assigned to it in the Fishery Harbour Centres Act 1968;	
“harbour” has the meaning assigned to it in the Harbours Act 1996;	
“local authority” has the meaning assigned to it in the Local Government Act 2001;	
“Minister” means Minister for Transport, Tourism and Sport;	30
“non-statutory clamping place” means a place, other than a statutory clamping place, where clamping activities are in operation;	
“NTA” means National Transport Authority;	
“park”, in relation to a vehicle, has the meaning assigned to it in section 3 of the Act of 1961;	35
“parking controller”, in relation to a clamping place, means the person who as regards	

that clamping place is responsible for enforcement of the law or rules applicable to parking in that place, but does not include a member of the Garda Síochána or a traffic warden authorised in that behalf;

“prescribe” means prescribe by regulations;

“public road” has the meaning assigned to it by section 3 of the Act of 1961; 5

“relevant charge” means a clamp release charge or a relocation charge or both;

“relocating”, in relation to a wrongfully or an unlawfully parked vehicle, means moving the vehicle from the place where it is parked (whether or not a clamp has been fixed to it before or after its relocation) to another place;

“relocation charge” means a charge for relocating an unlawfully or wrongfully parked vehicle to another place; 10

“section 101B” means section 101B (inserted by *section 30*) of the Act of 1961;

“signage regulations” means regulations made under *section 10*;

“statutory body” means, as the case may be, an airport, Coras Iompair Éireann, the Railway Procurement Agency, a harbour or a fishery harbour centre or a body established under statute having charge of a clamping place specified under *section 5*; 15

“statutory clamping place” means—

- (a) a public road where clamping activities are carried out in accordance with section 101B,
- (b) an airport where clamping activities are carried out under bye-laws made under section 15(3)(o) of the State Airports Act 2004, 20
- (c) land belonging to or occupied by Coras Iompair Éireann where clamping activities are carried out under bye-laws made under section 22(1)(ee)(ii) (inserted by *section 32(c)*) of the Transport Act 1950,
- (d) a fishery harbour centre where clamping activities are carried out under bye-laws made under section 4(2)(aa) (inserted by *section 35(a)*) of the Fishery Harbour Centres Act 1968, 25
- (e) a harbour where clamping activities are carried out under bye-laws made under section 42(1A)(b) (inserted by *section 34(c)*) of the Harbours Act 1996,
- (f) a place where clamping activities are carried out under section 66A (inserted by section 134 of the Act of 2005) of the Transport (Railway Infrastructure) Act 2001, and 30
- (g) such other places as may be specified by the Minister under *section 5* where clamping activities are carried out under an enactment;

“traffic warden” has the meaning assigned to it in the Local Authorities (Traffic Wardens) Act 1975; 35

“unlawful”, in relation to a vehicle parked in a statutory clamping place, means a vehicle that is parked in contravention of an enactment;

“vehicle” means a mechanically propelled vehicle (within the meaning of section 3 of the

Act of 1961) a trailer or semi-trailer or a combination of two or more of them;

“website”, in relation to the NTA, means a website maintained by the NTA on the internet;

“wrongful”, in relation to a vehicle parked in a clamping place, means—

- (a) where the clamping place is a non-statutory clamping place, the vehicle is parked in contravention of the terms and conditions or restrictions or prohibitions applicable to parking in the place concerned, or 5
- (b) where the clamping place is a statutory clamping place under the control of a statutory body, the charge imposed for parking the vehicle, permitted to be fixed under an enactment, is not paid and the failure to pay the charge does not constitute a contravention of an enactment. 10

Laying of regulations and orders

3. Every regulation made under this Act or order made under *section 5* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the next 21 days on which that House sits after the regulation or order is laid before it, the regulation or order is annulled, but without prejudice to the validity of anything previously done under it. 15

Matters relating to regulations made by NTA

4. (1) Where the NTA proposes to make regulations under this Act (other than under *section 14*), it shall— 20
- (a) consult with the Minister and, where the proposed regulations relate to a statutory clamping place, the body having responsibility for that place, and
 - (b) publish on its website, as well as in one national newspaper circulating within the State, a draft of the proposed regulations stating that representations may be made in writing to the NTA before a specified date (which shall not be less than 21 days from the date of publication on the website) and consider any representations made to it. 25
- (2) The NTA, after consulting in accordance with *subsection (1)(a)*, and having considered any representations made under *subsection (1)(b)*, regarding regulations it proposes to make under this Act, may make the regulations, with or without modification. 30
- (3) Where regulations are made by the NTA under this Act, the NTA shall publish on its website—
- (a) a copy of the regulations or a notice of their making with a description of them, and 35
 - (b) reference to the statutory instrument number assigned to them.
- (4) The validity of any regulations made under this Act shall not be affected by any non-compliance with *subsection (1)(b)* or (3).

- (5) The NTA may make regulations prescribing any matter referred to in this Act as prescribed or to be prescribed.

Specification of statutory clamping places – order of Minister

5. In addition to the places specified in *section 2*, the Minister may, after consultation with the NTA and any other person he or she considers relevant, by order specify other places, where the carrying out of clamping activities is authorised under an enactment, which are to be statutory clamping places. 5

PART 2

REGULATION OF CLAMPING ACTIVITIES IN CLAMPING PLACES

Function of NTA to regulate clamping, etc. 10

6. The functions of the NTA shall include the regulation of clamping activities in clamping places in accordance with this Act and the matters relating to appeals specified in *Part 3*.

Ministerial policy directions

7. (1) The Minister may, from time to time, give policy directions in writing to the NTA regarding its functions under this Act and the NTA shall comply with any such direction. 15
- (2) Notice of any direction given under *subsection (1)* and details of it shall be—
- (a) laid before each House of the Oireachtas, as soon as may be, after it has been given, and
 - (b) published in *Iris Oifigiúil* and on the website of the Department of Transport, Tourism and Sport, not later than 21 days of it being given. 20

Clamping activities to be in accordance with Act

8. Where clamping activities are carried out in a clamping place, then, without prejudice to the legality or otherwise of those activities, they shall be carried out in accordance with this Act, clamping and signage regulations and maximum charges provided or prescribed under *section 14*. 25

Clamping regulations

9. (1) For the purposes of the proper management of clamping activities in the public interest, the NTA may make regulations (“clamping regulations”) in relation to clamping places prescribing all or any of the following: 30
- (a) the period of time which shall expire after the detection of the wrongful or unlawful parking of a vehicle in a clamping place, before—
 - (i) a clamp may be fixed to the vehicle, and
 - (ii) a vehicle may be relocated;

- (b) the period of time within which a clamp shall be removed from a vehicle after payment of a clamp release charge and, where the vehicle has been relocated, after payment of a relocation charge;
 - (c) the restriction of the imposition of charges in addition to the maximum charge prescribed or provided for under *section 14*; 5
 - (d) access, in a non-statutory clamping place, to a vehicle, which has been relocated, by or on behalf of its owner, in order to recover it;
 - (e) requirements in relation to the type of clamp that may be used;
 - (f) where evidence of unlawful or wrongful parking is gathered by means of photographs, video or other recording methods, the manner of such gathering; 10
 - (g) the means of identification to be carried, displayed and presented by a clamping operator (other than a member of the Garda Síochána or a traffic warden), including identity cards or any other means that may be specified;
 - (h) other than in relation to a vehicle being used by, or at the request of, a member of the Garda Síochána, the means of identification and markings to be displayed on vehicles used in relation to carrying out clamping activities; 15
 - (i) the form of a clamping notice (other than for a vehicle clamped under section 101B);
 - (j) the manner in which payment of a clamp release charge or relocation charge may be made; 20
 - (k) the records to be kept in respect of clamping activities;
 - (l) the information to be provided to the NTA or an authorised person—
 - (i) by a parking controller, in relation to clamping places under his or her control (including clamping activities taking place there), and
 - (ii) by a clamping operator, in relation to clamping activities he or she or his or her employees carry out; 25
 - (m) where information is provided by electronic or other means to the public regarding clamping activities in a clamping place, the form and content of that information.
- (2) The NTA, in making clamping regulations, may set different requirements and conditions in respect of— 30
- (a) statutory and non-statutory clamping places,
 - (b) different clamping places, and
 - (c) different circumstances and different areas.
- (3) Regulations made under *paragraph (a), (b), (e) or (f) of subsection (1)* do not apply to a vehicle clamped or relocated by, or at the direction of, a member of the Garda Síochána. 35
- (4) A person who fails to comply with or contravenes a provision of clamping regulations, which is stated in the regulations to be a penal provision, commits an

offence and is liable on summary conviction to a class C fine.

- (5) The NTA shall not make clamping regulations which—
- (a) relate to statutory clamping places, or
 - (b) contain a provision which is stated in the regulations to be a penal provision, without the consent of the Minister.
- 5

Signage

- 10.** (1) A parking controller in relation to a clamping place, other than a public road, for which he or she is the parking controller shall ensure that—
- (a) he or she provides in prominent places (in accordance with any signage regulations, for the time being in force, which apply to the clamping place) signs which indicate clearly that clamping activities are in operation in that place and are visible to a person accessing the place with a vehicle, 10
 - (b) the signs specify—
 - (i) the clamp release charge (if any),
 - (ii) the relocation charge (if any), and 15
 - (iii) any additional charges (if any) that may be payable in respect of a vehicle which has been clamped,
 - and
 - (c) any code of practice relating to signage, for the time being in place, which applies to the clamping place is complied with. 20
- (2) The NTA may make regulations (“signage regulations”) with respect to signage to be provided and displayed in or at a clamping place, other than a public road, with regard to all or any of the following:
- (a) the location of signs, including—
 - (i) at, or in the vicinity of, an entrance to a place, 25
 - (ii) within or throughout a place;
 - (b) the information (including its form) to be displayed on signs;
 - (c) the dimensions, colour and design of signs;
 - (d) the symbols to be displayed on signs; and
 - (e) the number of signs to be provided. 30
- (3) In making signage regulations, the NTA may set different requirements and conditions in respect of—
- (a) statutory and non-statutory places,
 - (b) different clamping places, and
 - (c) different circumstances and different areas. 35

- (4) A parking controller who fails to comply with *subsection (1)* (other than *paragraph (c)*) commits an offence and is liable on summary conviction to a class C fine.
- (5) Where a sign is provided in accordance with signage regulations displaying the clamp release charge or the relocation charge which applies in a clamping place and the parking controller for that place or any clamping operator carrying out clamping activities in that place imposes a clamp release charge or relocation charge greater than the charge displayed, he or she commits an offence and is liable on summary conviction to a class B fine. 5
- (6) It shall not be a defence in any proceedings for an offence in relation to unlawful parking for the accused to show that this section has not been complied with by the parking controller concerned. 10
- (7) The NTA shall not make signage regulations without the consent of the Minister.

Codes of practice

- 11. (1) The NTA may establish a code of practice—
 - (a) providing practical guidance to parking controllers and clamping operators regarding compliance with this Act or regulations made under it, and 15
 - (b) establishing standards in relation to the general behaviour, performance of duties and conduct of—
 - (i) parking controllers in supervising the operations of clamping operators, and
 - (ii) clamping operators in carrying out clamping activities. 20
- (2) A code of practice shall be published by the NTA—
 - (a) on the website of the NTA in such a form or manner as the NTA thinks appropriate, and
 - (b) in printed form available on request on payment of such reasonable fee (if any) as the NTA decides, 25
 and the published code shall specify the date from which it has effect.
- (3) The NTA shall consult with the Minister when preparing a draft of a code of practice or any amendments to a code of practice.
- (4) Before establishing a code of practice or amending a code of practice, the NTA—
 - (a) shall publish on its website a draft of the proposed code or amendment and allow persons a specified period, being not less than 21 days after the date of publication, to make written representations to the NTA in relation to the draft code or draft amendment, as the case may be, and 30
 - (b) may, having considered any representations received, establish the draft code or make the amendment, with or without modification. 35
- (5) *Subsection (6)* applies in proceedings for an offence under this Act where there was a relevant code of practice in effect at the time of the commission of the alleged offence.
- (6) Where it is shown in any proceedings that an act or omission of the accused

constituted an element of an offence and such act or omission was—

- (a) a failure to observe a relevant code of practice referred to in *subsection (5)*, or
- (b) in compliance with a code of practice,

the failure or compliance is admissible in evidence.

- (7) A copy of a code of practice which has endorsed on it a certificate purporting to be signed by an officer of the NTA, authorised by the NTA in that behalf, stating that the copy is a true copy of the code of practice may, without proof of the signature of the person signing the certificate or that he or she is authorised to sign the certificate, be produced in every court and in all proceedings under this Act and is evidence, unless the contrary is shown, of the code of practice. 5 10

Clamping notice

- 12. (1) When fixing a clamp to a vehicle in a clamping place, the clamping operator or person fixing the clamp to the vehicle shall also affix to the vehicle a notice (“clamping notice”) which shall—
 - (a) indicate the reason for the clamp being fixed to the vehicle, 15
 - (b) indicate—
 - (i) that a clamp has been fixed to the vehicle, and
 - (ii) the time and date when—
 - (I) the wrongful or unlawful parking of the vehicle was detected, and
 - (II) the clamp was fixed to the vehicle, 20
 - (c) give a warning that an attempt should not be made to drive the vehicle or otherwise put it in motion until the clamp is removed,
 - (d) specify the steps to be taken to secure the removal of the clamp, and
 - (e) give details of the appeals process under *Part 3*.
- (2) This section does not apply to a vehicle to which an immobilisation device has been fixed under section 101B. 25

Prohibition on clamping and relocating certain vehicles

- 13. (1) A clamp shall not be fixed—
 - (a) in a clamping place, to—
 - (i) an ambulance (provided by a pre-hospital emergency care service provider recognised by the Pre-Hospital Emergency Care Council), 30
 - (ii) a fire brigade vehicle of a fire authority (within the meaning of the Fire Services Act 1981), or
 - (iii) any vehicle used by a member of the Garda Síochána or the Defence Forces in the performance of his or her duties, 35
- or

(b)	in a statutory clamping place, to a vehicle on which there is displayed a disabled person’s parking permit, for the time being in force, unless the car park controller or clamping operator has reasonable grounds for believing that the vehicle is not parked for the convenience of the person to whom the permit was granted.	
(2)	A vehicle referred to in <i>subsection (1)(a)</i> shall not be relocated.	5
(3)	In this section “disabled person’s parking permit” means a permit granted under article 43 (inserted by the Road Traffic (Traffic and Parking) (Amendment) Regulations 2011 (S.I. No. 239 of 2011)) of the Road Traffic (Traffic and Parking) Regulations 1997 (S.I. No. 182 of 1997).	
	Maximum clamp release and relocation charges – non-statutory clamping places	10
14.	(1) The NTA may prescribe the maximum charges that may be imposed in non-statutory clamping places in respect of—	
	(a) the removal of a clamp from a wrongfully parked vehicle, and	
	(b) the relocation of a wrongfully parked vehicle.	
(2)	Where no charge stands prescribed under <i>paragraph (a)</i> or <i>(b)</i> of <i>subsection (1)</i> the maximum charge that may be imposed in a non-statutory clamping place—	15
	(a) in respect of a clamp release charge, is €100, and	
	(b) in respect of a relocation charge, is €50.	
(3)	When making regulations under <i>subsection (1)</i> , the NTA may specify different maximum charges for—	20
	(a) different non-statutory clamping places,	
	(b) non-statutory clamping places in different areas, and	
	(c) different circumstances.	
(4)	Where the NTA proposes to specify a maximum charge under this section the NTA shall—	25
	(a) publish a notice on its website, as well as in one national newspaper published and circulating within the State—	
	(i) indicating the proposed maximum charge, and	
	(ii) stating that representations in relation to the proposal may be made in writing to the NTA before a specified date (which shall be not less than 21 days from the date of publication on the website of the notice),	30
	and	
	(b) consider any representations made under <i>paragraph (a)(ii)</i> .	
(5)	The validity of any regulation made under this section shall not be affected by non-compliance with <i>subsection (4)</i> .	35
(6)	A person who imposes, or attempts to impose, a clamp release charge or a relocation charge that is greater than the maximum charge standing prescribed under <i>subsection (1)</i> or specified in <i>subsection (2)</i> , commits an offence and is liable on summary	

conviction to a class B fine.

- (7) Where a sign is provided in a clamping place displaying a clamp release charge or relocation charge which is greater than the maximum charge standing prescribed under *subsection (1)* or specified in *subsection (2)*, the parking controller for that place commits an offence and is liable on summary conviction to a class B fine. 5

Consultation by statutory bodies, etc., when fixing clamp release or relocation charges

15. (1) Where, after the commencement of this section, a statutory body proposes to fix clamp release charges or relocation charges in respect of unlawfully or wrongfully parked vehicles on land or property it owns, leases or which is under its control, the body shall consult with the NTA regarding such proposal, and shall have regard to any recommendation of the NTA, before fixing such charges. 10
- (2) Where a statutory body imposes clamp release charges or relocation charges in respect of unlawfully or wrongfully parked vehicles on land or property it owns, leases or which is under its control, and such charges are in force immediately before the commencement of this section, the NTA may make recommendations regarding the charges and the body concerned shall have regard to any such recommendations. 15

Removal of clamp or release of vehicle

16. (1) Where in a clamping place a clamp has been fixed to a vehicle, the clamp shall be removed within such time period as may be specified in clamping regulations, or, where no such period has been specified, as soon as is reasonably practicable after payment of the clamp release charge or its waiver. 20
- (2) Where in a clamping place a vehicle is relocated to a place where the owner of the vehicle cannot gain access to the vehicle, the vehicle shall be released within such period as may be specified in clamping regulations or, where no such period has been specified, as soon as is reasonably practicable after payment of the relocation charge or its waiver. 25
- (3) If a clamp referred to in *subsection (1)* is removed from the vehicle to which it is fixed or a relocated vehicle referred to in *subsection (2)* is released, otherwise than in accordance with the subsection concerned, the parking controller or clamping operator concerned shall ensure that the relevant charge and any additional charges are refunded without delay to the person who paid them. 30
- (4) Where the owner of a vehicle that is parked and to which a clamp has been fixed or is relocated shows to the satisfaction of the parking controller or clamping operator concerned that the vehicle was so parked while being used by a person other than the owner and that such use was not authorised by the owner, the controller or operator shall waive the relevant charge and he or she shall remove or cause the removal of the clamp from the vehicle. 35
- (5) This section does not apply to a vehicle to which an immobilisation device has been fixed under section 101B.

PART 3

COMPLAINTS AND APPEALS

Complaints procedure

17. (1) The NTA may set up a procedure to consider complaints from members of the public (“complaints procedure”) in respect of— 5
- (a) the discharge of responsibilities by parking controllers,
 - (b) the conduct, behaviour and identification of clamping operators, and
 - (c) the identification of vehicles used by clamping operators (including logos, stickers and advertisements on such vehicles).
- (2) The complaints procedure may be amended by the NTA. 10
- (3) The complaints procedure shall, as far as practicable, be user-friendly and accessible.
- (4) The NTA shall publish details of the complaints procedure on its website and in printed form available on request on payment of such reasonable fee (if any) as the NTA decides.
- (5) Matters relating to the complaints procedure may be contained in a code of practice. 15

Right of appeal

18. A person whose vehicle has been clamped in a clamping place or relocated within or from a clamping place may appeal the decision to clamp or relocate the vehicle—
- (a) in the first instance, to the parking controller in accordance with the procedures set out in *section 19*, and 20
 - (b) where the person is not satisfied with the determination of the parking controller, to a clamping appeals officer in accordance with the procedures set out in *section 21*.

Appeal procedures – parking controller

19. (1) A parking controller shall put procedures in place to enable a person whose vehicle has been clamped or relocated to appeal to the parking controller against that decision. 25
- (2) The procedures referred to in *subsection (1)* shall provide for the following:
- (a) the grounds for an appeal;
 - (b) the person to whom an appeal may be made; 30
 - (c) the form, including electronic, in which the appeal may be made;
 - (d) the documentation to be submitted with an appeal;
 - (e) the time period within which a person may lodge an appeal.
- (3) An appeal shall be considered by a parking controller within 21 days of the date on which the appeal is lodged. 35

- (4) A parking controller shall make available in printed form on request and free of charge to a person referred to in *section 18* the procedures in place for the purposes of making an appeal.
- (5) The determination of an appeal shall be given in writing.
- (6) Where a parking controller determines in favour of the appellant in an appeal, any charges made in respect of the clamping activity concerned shall be refunded to the appellant by the person in favour of whom the charge was paid. 5
- (7) The NTA may make regulations to provide for the matters referred to in *subsection (2)*.
- (8) A parking controller who fails to comply with this section or regulations made under *subsection (7)* commits an offence and is liable on summary conviction to a class B fine. 10
- (9) In this section “appeal” means an appeal made to a parking controller.

Clamping appeals officers

- 20. (1) The NTA shall designate in writing one or more than one person to be a clamping appeals officer for such period as the NTA may determine. 15
- (2) A person designated under *subsection (1)* may be such member of staff of the NTA, or such other person, as the NTA considers appropriate.
- (3) A clamping appeals officer shall, subject to *section 21(2)* and (3), be independent in the performance of his or her functions under this section. 20

Hearing of appeals – clamping appeals officer

- 21. (1) An appeal may be made to a clamping appeals officer by a person, not later than 30 days after receipt of the determination of appeal by the parking controller concerned, and shall state the grounds of appeal.
- (2) The NTA may prescribe procedures for hearing and determining appeals under *subsection (1)* in relation to— 25
 - (a) the form in which the appeal shall be lodged, including electronic form,
 - (b) fees (if any) for the lodging of an appeal,
 - (c) the making of submissions, whether oral or written, to the clamping appeals officer, 30
 - (d) requests for further information by the clamping appeals officer, and
 - (e) examination by the clamping appeals officer of the appellant and any other person the appeals officer considers appropriate.
- (3) A clamping appeals officer shall make a determination in writing on an appeal under *subsection (1)* as soon as is practicable in all the circumstances of the case, which may be a determination to— 35
 - (a) confirm the decision the subject of the appeal, with or without variation, or

- (b) allow the appeal and revoke the decision.
- (4) A clamping appeals officer shall—
 - (a) send a copy of his or her determination of an appeal under *subsection (1)* to the appellant together with his or her reasons for the determination, and
 - (b) send a copy of any determination under this section to the parking controller concerned. 5
- (5) Where the determination of a clamping appeals officer is to revoke the decision, the parking controller concerned shall refund to the appellant—
 - (a) any fees or charges that were paid by or on behalf of the appellant in respect of the clamping activity concerned, and 10
 - (b) such costs incurred by the appellant in bringing the appeal as the clamping appeals officer may direct in the determination.
- (6) A clamping appeals officer shall not hear an appeal under *subsection (1)* where proceedings have been brought against the appellant or another person for an alleged offence for unlawful parking in respect of which the vehicle concerned was clamped or relocated, but may hear the appeal upon the withdrawal or conclusion of those proceedings. Where those proceedings are heard but are dismissed or unsuccessful, the clamp release charge or relocation charge shall be reimbursed. 15

PART 4

ENFORCEMENT AND PROCEEDINGS 20

Powers of authorised persons

- 22.** (1) The NTA may appoint in writing persons or a class of persons to be authorised persons for the purposes of this Part.
- (2) A person appointed as an authorised person under *subsection (1)* shall, on his or her appointment, be furnished by the NTA with a warrant of his or her appointment and when exercising a power conferred on an authorised person under this section shall, if requested by any person affected, produce the warrant to that person for inspection. 25
 - (3) An authorised person, for the purposes of ensuring compliance with this Act, may—
 - (a) subject to *subsection (4)*, at any reasonable time, enter any place where any clamping activity is being carried on or the premises of a clamping operator or parking controller, search the place or premises and examine any signs located there and any records or documents found there, 30
 - (b) require a person in charge of the premises or place to produce to him or her any record or documents (and in the case of such record or document stored in non-legible form, produce to him or her a copy in legible form) relating to clamping activities which are in the person’s power and control and to give the authorised person such information as he or she may reasonably require for the purpose of enforcing this Act, 35

- (c) inspect and take extracts from or make copies of such records or documents (including in the case of information in a non-legible form, an extract from or copy of such information in permanent legible form),
 - (d) remove and retain such records or documents for a reasonable period for future inspection, and 5
 - (e) take photographic or video evidence.
- (4) An authorised person shall not enter, except with the consent of the occupier or under a search warrant under *section 23*, a private dwelling for the purposes of this Act.

Search warrant

23. (1) If a judge of the District Court is satisfied by information on oath of an authorised person that there are reasonable grounds for believing that— 10
- (a) evidence of or relating to the commission or intended commission of an offence under this Act is to be found on land or a premises, or
 - (b) a record related to anything to which *paragraph (a)* refers is or may be on the land or premises, 15
- then the judge may issue a search warrant in relation to that land or those premises.
- (2) A search warrant under this section shall be expressed and operate to authorise a named authorised person, accompanied by such authorised persons or members of the Garda Síochána as the named authorised person thinks necessary, at any time, within one month from the date of issue of the warrant, on production, if so requested, of the warrant, to enter, using reasonable force if necessary, the land or premises named in the warrant and to exercise all or any of the functions conferred on an authorised person under this Act. 20

Prohibition on obstruction of authorised person

24. A person who— 25
- (a) obstructs or impedes an authorised person exercising a function of an authorised person under this Part,
 - (b) fails to comply with a requirement of an authorised person under this Part, or
 - (c) gives information to an authorised person which he or she knows to be false or misleading, 30
- commits an offence and is liable on summary conviction to a class A fine.

Compliance

25. (1) The NTA may require—
- (a) a parking controller or a clamping operator to provide information regarding his or her compliance with this Act, clamping regulations, or a code of practice, or 35
 - (b) a parking controller to provide information regarding his or her compliance with signage regulations or requirements relating to the appeal procedure under

section 19,

and such information shall be given to the NTA within such reasonable period as the NTA requests.

- (2) Where a parking controller or clamping operator fails to give the NTA information in accordance with *subsection (1)*, the NTA may direct the parking controller or clamping operator to give the information in accordance with the direction. The parking controller or clamping operator may make representations to the NTA regarding the direction not later than 21 days after the direction is given or such further period as the NTA allows. 5
- (3) Where the NTA is of the opinion that— 10
- (a) a parking controller or a clamping operator is not complying with this Act, regulations made under this Act or a code of practice, or
- (b) a clamping operator is not complying with subsection (8)(d) of section 101B,
- the NTA may direct the parking controller or clamping operator to comply in accordance with the direction and the period of time specified in it. The parking controller or clamping operator may make representations to the NTA regarding the direction not later than 21 days after the direction is given or such further period as the NTA allows. 15
- (4) Where the NTA, having considered any representations made to it under *subsection (2)* or *(3)*, considers that the information required has not been given to it or the compliance with a provision of this Act, any regulation under this Act or a code of practice has not been made in accordance with the direction, it may inform the person concerned that it intends to apply to the Circuit Court for an order directing compliance, and may, not earlier than 7 days after informing the person, apply to the judge of the Circuit Court within whose circuit the person carries on business as a parking controller or clamping operator for an order directing the person to provide the information required or comply with the provision of this Act, the regulation concerned under this Act or the code of practice, as the case may be. 20 25
- (5) The judge on hearing an application under *subsection (4)* may make such order as he or she sees fit. 30
- (6) The decision of a judge on an application under *subsection (4)* is final, other than an appeal from the decision on a point of law, which lies to the High Court.

Service of directions and notices

26. (1) A direction or notification under this Act shall be addressed to the person concerned by name and may be served on or given to the person— 35
- (a) by giving a copy to the person, his or her employee, servant or agent, or in the case of a partnership, by delivery of a copy to any of the partners,
- (b) by leaving a copy at the address where the person ordinarily resides, where he or she carries on business, or, where an address for service of directions or notifications has been furnished by the person to the NTA, at that address, 40
- (c) by sending a copy by post to the address at which the person ordinarily resides or

carries on business, in the case of a body corporate or unincorporated body to the registered office of the body or, where an address for service has been furnished by the person to the NTA, to that address,

- (d) by sending a copy by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the person ordinarily resides or carries on business or, if an electronic address or facsimile number address for the service of a direction or notification has been furnished by the person to the NTA, that electronic address or facsimile machine, but only if—
 - (i) the recipient's facility for the reception of electronic mail generates a message confirming the successful receipt of the electronic mail, or
 - (ii) the sender's facsimile machine generates a message confirming the successful transmission of the total number of pages of the notice or notification.
- (2) For the purposes of this section, a company within the meaning of the Companies Acts is considered to be ordinarily resident at its registered office and every other body corporate or unincorporated body is considered to be ordinarily resident at its principal office or place of business.

Proceedings

- 27. Proceedings for an offence under this Act may be brought and prosecuted summarily by the NTA.

Payment of costs on conviction

- 28. (1) Where a person is convicted of an offence under this Act, the court shall, unless it is satisfied that there are special and substantial reasons for not doing so, order the person to pay the costs and expenses, measured by the court, incurred by the prosecuting authority in relation to the investigation, detection and prosecution of the offence.
- (2) Costs and expenses referred to in *subsection (1)* may include costs and expenses incurred in relation to either or both—
 - (a) legal representation at court, and
 - (b) the remuneration and expenses of employees of, or other persons engaged by, the NTA.

Offence – body corporate

- 29. (1) Where an offence under this Act is committed by a body corporate and is proven to have been so committed with the consent, connivance or approval of or to have been attributable to the wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, commits an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

- (2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

PART 5

5

CLAMPING ON PUBLIC ROADS

Amendment of section 101B of Act of 1961 – immobilisation of unlawfully parked vehicles

30. The following is substituted for section 101B (inserted by section 9 of the Dublin Transport Authority (Dissolution) Act 1987) of the Act of 1961:

“**101B.** (1) In this section— 10

‘clamping officer’ means—

- (a) a member of the Garda Síochána,
- (b) a traffic warden (within the meaning of the Local Authorities (Traffic Wardens) Act 1975), or
- (c) a person or a class of persons authorised by a local authority under subsection (2); 15

‘immobilisation device’ means any device or appliance designed or adapted for fixing to a vehicle for the purpose of preventing it from being driven or otherwise put in motion;

‘prescribed charge’ means the amount of the charge prescribed under subsection (7)(a) and includes, where a vehicle is moved to another place for the purpose of fixing an immobilisation device to it, the costs involved in the removal of the vehicle; 20

‘vehicle’ means a mechanically propelled vehicle, a trailer or semi-trailer or a combination of two or more of them. 25

- (2) A local authority may authorise a person or a class of persons for the purposes of this section to fix immobilisation devices to vehicles within its functional area.
- (3) Where a clamping officer finds on a public road a vehicle that is parked in contravention of any regulation made under section 35 or 30 by-law made under section 36 or 36A of the Road Traffic Act 1994, he or she or a person acting under his or her direction may—
 - (a) fix an immobilisation device to the vehicle while it remains in the place where he or she finds it, or
 - (b) move it from the place where he or she finds it (whether or not he or she has fixed an immobilisation device to it) to another place and fix an immobilisation device to it in that other place. 35
- (4) When fixing an immobilisation device to a vehicle, a clamping officer

- shall also affix to the vehicle a notice in the prescribed form—
- (a) indicating the reason for the device being fixed to the vehicle,
 - (b) indicating—
 - (i) that the device has been fixed to the vehicle, and
 - (ii) the time and date when—
 - (I) the contravention referred to in subsection (3) in relation to the vehicle was detected, and
 - (II) the device was fixed to the vehicle,
 - (c) warning that an attempt should not be made to drive the vehicle or otherwise put it in motion until the device is removed,
 - (d) specifying the steps to be taken to secure such removal, and
 - (e) giving details of the appeals process under *Part 3* of the *Vehicle Clamping Act 2014*.
- (5) Subject to subsection (8), an immobilisation device that has been fixed to a vehicle under this section may be removed only by a clamping officer or a person acting under his or her direction.
- (6) Where an immobilisation device is fixed to a vehicle in accordance with this section a fixed charge notice under section 103 of this Act or section 35 of the Road Traffic Act 2010 need not be served on a person, or affixed to the vehicle concerned, in respect of the contravention unless it is contemplated that proceedings for an offence in relation to the contravention might be brought.
- (7) The Minister may, after consultation with the Minister for Justice and Equality and the National Transport Authority, prescribe—
- (a) the amount of the charge to be paid for the removal of an immobilisation device under subsection (8) and different charges may be prescribed in different circumstances,
 - (b) the form of a notice under subsection (4),
 - (c) the manner in which and the person to whom such charge shall be paid.
- (8) (a) An immobilisation device fixed to a vehicle under this section shall be removed only—
- (i) if the person seeking its removal shows to the satisfaction of any clamping officer that he or she is the owner of the vehicle or is authorised by its owner to seek such removal and pays the prescribed charge,
 - (ii) for the purpose of the removal of the vehicle under section 97, or
 - (iii) for the purpose of moving the vehicle under subsection (3).

- (b) Where the owner of a vehicle that is parked and to which an immobilisation device has been fixed under this section shows to the satisfaction of any clamping officer that the vehicle was so parked while being used by a person other than the owner and that such use was not authorised by the owner, the clamping officer shall waive the prescribed charge and he or she or a person acting under his or her direction shall remove the immobilisation device from the vehicle. 5
- (c) An immobilisation device fixed to a vehicle under this section shall be removed from the vehicle— 10
- (i) where regulations under *section 9* of the *Vehicle Clamping Act 2014* prescribe the period of time within which an immobilisation device shall be removed from a vehicle, after payment of the prescribed charge or its waiver, within that period after such payment or waiver, or 15
- (ii) where no such period is prescribed, as soon as is reasonably practicable after payment of the prescribed charge or its waiver.
- (d) Where an immobilisation device is removed from a vehicle otherwise than in accordance with paragraph (c), the clamping operator concerned (within the meaning of *section 2* of the *Vehicle Clamping Act 2014*) shall ensure that the prescribed charge (if paid) and any additional charges are refunded without delay to the person who paid the charge or charges. 20
- (7) A notice affixed to a vehicle under this section shall not be removed or interfered with by a person other than the owner of the vehicle or a person authorised by such owner to use the vehicle and a person who contravenes this subsection commits an offence. 25
- (8) A person who is not a clamping officer or a person acting under the direction of a clamping officer who fixes an immobilisation device to a vehicle on a public road commits an offence. 30
- (9) A person who—
- (a) obstructs or impedes a clamping officer, or a person acting under his or her direction, in the performance of his or her functions under this section, or
- (b) without being authorised to do so under this section, removes or attempts to remove from a vehicle an immobilisation device fixed to it under this section, 35
- commits an offence.”.

Exemptions from certain provisions of Road Traffic Acts 1961 to 2014 for clamping operations 40

31. (1) Requirements under regulations made under section 35 or bye-laws made under section 36 or 36A of the Road Traffic Act 1994 relating to the parking of a vehicle or

the entry of a vehicle to a road do not apply to a vehicle being used by a clamping operator or under the direction of a clamping operator in the course of clamping activities in respect of unlawful parking in a public place, where such use does not endanger the safety of or impede road users.

- (2) Where a member of the Garda Síochána considers that a clamping operator or a person acting under the operator's direction has parked a vehicle in the course of clamping activities in a public place which endangers the safety of or impedes road users, the member may require him or her to move the vehicle to such location as the member directs to carry out such activities. 5
- (3) A person who fails to comply with a requirement made of him or her by a member of the Garda Síochána under *subsection (2)* commits an offence and is liable on summary conviction to a class C fine. 10
- (4) In this section "clamping operator" means a clamping officer (within the meaning of section 101B). 10

PART 6

15

CIÉ PROPERTY, FISHERY HARBOUR CENTRES AND HARBOURS

CIÉ property

32. The Transport Act 1950 is amended—

(a) in section 2(1), by inserting the following:

“ ‘immobilisation device’ means a device or appliance designed or adapted for fixing to a vehicle for the purpose of preventing it from being driven or otherwise put in motion;”, 20

(b) in section 20(1)—

(i) by substituting for paragraph (bb) (inserted by section 128(a) of the Act of 2005) the following: 25

“(bb) the provision of parking facilities for vehicles on land belonging to or occupied by the Board,”,

(ii) by inserting after subsection (2) the following:

“(2A) The Board may fix charges for the removal of an immobilisation device fixed to a vehicle and for the removal, detention, storage, release and disposal of a vehicle under bye-laws made under section 22(1)(ee)(ii).”, 30

and

(c) in section 22(1)(ee) (inserted by section 128(b) of the Act of 2005) by substituting for subparagraph (ii) the following: 35

“(ii) the making of provision for—

(I) the fixing of an immobilisation device to a vehicle which

has been parked contrary to such bye-laws or parked without payment of the charge fixed for its parking in any place on such land,

(II) the removal of such an immobilisation device,

(III) the removal, detention, storage and release of a vehicle so parked, and 5

(IV) the disposal of a vehicle detained.”.

Fishery harbour centres

33. Section 4 of the Fishery Harbour Centres Act 1968 is amended—

(a) in subsection (2), by inserting after paragraph (a) the following: 10

“(aa) make bye-laws for matters relating to the use and parking of vehicles at the centre, including—

(i) the regulation of traffic generally, including parking restrictions, direction of traffic and the maximum speed of traffic at the centre, and 15

(ii) the making of provision for—

(I) the fixing of an immobilisation device to a vehicle which has been parked contrary to such bye-laws or parked without payment of the charge imposed for its parking in any place at the centre, 20

(II) the removal of such an immobilisation device,

(III) the removal, detention, storage and release of a vehicle so parked, and

(IV) the disposal of a vehicle detained.”,

(b) in subsection (2), by inserting after paragraph (b) the following: 25

“(bb) make bye-laws fixing the charges for parking a vehicle at the centre, for the removal of an immobilisation device fixed to a vehicle and for the removal, detention, storage, release and disposal of a vehicle, under this section.”,

(c) in subsection (6), by substituting for paragraph (a) (inserted by section 54 of the Maritime Safety Act 2005) the following: 30

“(6) (a) A person who contravenes or fails to comply with a bye-law (other than a bye-law made under subsection (4)(bb)) or an order made under this section commits an offence and is liable on summary conviction to a class C fine.”, 35

and

(d) by inserting after subsection (9) the following:

“(10) In this section ‘immobilisation device’ means a device or appliance

designed or adapted for fixing to a vehicle for the purpose of preventing it from being driven or otherwise put in motion.”.

Harbours

34. The Harbours Act 1996 is amended—

- (a) in section 2(1), by inserting the following: 5
- “ ‘immobilisation device’ means a device or appliance designed or adapted for fixing to a vehicle, for the purpose of preventing it from being driven or otherwise put in motion;”,
- (b) in section 6, by substituting for subsection (2) (inserted by section 58 of the Maritime Safety Act 2005) the following: 10
- “(2) A person who commits an offence under this Act (other than section 42, 46, 50, 52, 53, 60 or 70) is liable on summary conviction to a class A fine.”,
- (c) in section 42 (as amended by section 8 of the Harbours (Amendment) Act 2000)— 15
- (i) by inserting after subsection (1) the following:
- “(1A) A company may make bye-laws for matters relating to the use and parking of vehicles at its harbour, including—
- (a) the regulation of traffic generally, including parking restrictions, direction of traffic and the maximum speed of traffic at its harbour, and 20
- (b) the making of provision for—
- (i) the fixing of an immobilisation device to a vehicle which has been parked contrary to such bye-laws or parked without payment of the charge imposed for its parking in any place at the harbour, 25
- (ii) the removal of such an immobilisation device,
- (iii) the removal, detention, storage and release of a vehicle so parked, and
- (iv) the disposal of a vehicle detained.”, 30
- and
- (ii) by inserting after subsection (2) the following:
- “(2A) A person guilty of an offence under subsection (2) in respect of a contravention of a provision of a bye-law—
- (a) made under subsection (1) is liable on summary conviction to a class A fine, or 35
- (b) made under subsection (1A) is liable on summary conviction to a class C fine.”,

and

(d) by inserting after section 42 the following:

“Parking charges, etc.

42A. A company may fix charges in respect of the parking of vehicles at its harbour and for the removal of an immobilisation device fixed to a vehicle or a vehicle removed, detained, stored, released or disposed of under bye-laws under section 42(1A).” 5

Light railways

35. The Transport (Railway Infrastructure) Act 2001 is amended—

(a) in section 66(1) (inserted by section 134 of the Act of 2005) after subparagraph (vi) by inserting the following: 10

“(via) the detention, storage, release and disposal of vehicles,”

(b) in section 66A(1) (inserted by section 134 of the Act of 2005) by inserting after paragraph (a) the following:

“(aa) is parked without payment of the charge imposed for its parking in a parking facility provided by the Agency,” 15

and

(c) by inserting after section 66C the following:

“Parking charges

66D. The Agency may provide parking facilities on land adjacent to a railway and fix charges in respect of the parking of vehicles on such land.” 20

An Bille um Theanntáil Feithiclí, 2014

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do dhéanamh socrú maidir le doghluaisteacht feithiclí agus gníomhaíochtaí gaolmhara in áiteanna áirithe a rialáil agus, i ndáil leis sin, do thabhairt feidhmeanna don Údarás Náisiúnta Iompair agus do leasú an Achta Iompair, 1950, alt 101B den Acht um Thrácht ar Bhóithre, 1961, an Achta um Lárionaid Chuanta Iascaigh, 1968, an Achta Cuanta, 1996 agus an Achta Iompair (Bonneagar Iarnróid), 2001 agus do dhéanamh socrú i dtaobh nithe gaolmhara.

An Seanadóir Muiris Ó Cuimín a thíolaic thar ceann an Aire Iompair, Turasóireachta agus Spóirt,

5 Meitheamh, 2014

Vehicle Clamping Bill 2014

BILL

(as initiated)

entitled

An Act to provide for the regulation of the immobilisation of vehicles and related activities in certain places and in this regard to confer functions on the National Transport Authority and to amend the Transport Act 1950, section 101B of the Road Traffic Act 1961, the Fishery Harbour Centres Act 1968, the Harbours Act 1996 and the Transport (Railway Infrastructure) Act 2001 and to provide for related matters.

Presented by Senator Maurice Cummins on behalf of the Minister for Transport, Tourism and Sport,

5th June, 2014

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