



AN BILLE UM THEANNTÁIL FEITHICLÍ, 2014
VEHICLE CLAMPING BILL 2014

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of the Bill

The Bill provides for the regulation of vehicle clamping and related matters. The principal provisions of the Bill include the:

- (a) regulation of clamping and related activities;
- (b) establishment of a two-tier appeals process to hear appeals against clamping or relocation;
- (c) provision of appropriate signage in places where clamping is operated;
- (d) setting of maximum clamp release and vehicle relocation charges;
- (e) establishment of a code of practice; and
- (f) provision of necessary enforcement and investigate powers to investigate and prosecute any alleged breaches of regulations made.

This Bill will have implications for the regulation of clamping activities wherever they are operated.

In this Memorandum, reference to: the “Minister” means the Minister for Transport, Tourism and Sport; the “NTA” means the National Transport Authority; a “parking controller” means the person or body responsible for the enforcement of parking laws or rules applicable to parking in a particular place and a “statutory clamping place” refers to places where clamping activities are permitted under an existing enactment.

Provisions of the Bill

The Bill is divided into six parts, the main provisions of which are summarised below.

PART 1

PRELIMINARY AND GENERAL

(Sections 1 to 5)

Part 1 deals with technical matters such as the short title and commencement, definitions of frequently used terms, laying of regulations and orders, matters relating to regulations made by the NTA and specification of statutory clamping places.

Section 1 provides for the short title of the Bill, commencement and collective citation of the Bill.

Section 2 provides for definitions of frequently used terms referred to in the Bill.

Section 3 provides for the laying of regulations or orders made under the Bill before each House of the Oireachtas.

Section 4 provides for technical matters relating to the making of regulations by the NTA.

Section 5 makes provision for the Minister to specify by order other places where clamping activities are permitted under law to be statutory clamping places.

PART 2

REGULATION OF CLAMPING ACTIVITIES IN CLAMPING PLACES

(Sections 6 to 16)

Part 2 introduces a number of provisions regulating clamping activities, as well as regulating for maximum clamp release and vehicle relocation charges. The NTA will be conferred with regulatory powers with respect to the physical administration of clamping, provision of appropriate signage in places where clamping is operated, and setting of maximum clamp release and vehicle relocation charges. The NTA may also establish a code of practice under this Part for the purposes of providing practical guidance in relation to clamping matters, as well as relating to standards of general behaviour, duties and conduct of clamping operators and those engaging them.

Section 6 outlines the functions of the NTA which are to regulate clamping activities in accordance with this Bill as well as certain matters relating to appeals against incidents of clamping and the relocation of vehicles.

Section 7 makes provision for the Minister to give policy directions to the NTA regarding its functions under the Bill.

Section 8 provides that where clamping activities are carried out they shall be carried out in accordance with the provisions and regulations made under this Bill.

Section 9 makes provision for the regulation of clamping activities by the NTA. The NTA may make regulations in relation to the: processes to be adhered to in relation to the clamping or relocation of vehicles; clamp release times after payment of the appropriate charge; means of identification of clamping operators and their vehicles; form of clamping notice to be affixed to clamped vehicles; manner in which payment of clamp release or vehicle relocation charges may be made; keeping of records and the provision of information to the NTA in relation to clamping activities; and where clamping information is provided electronically to the public the form and content of that information. In making such regulations the NTA may set different requirements and conditions in relation to different clamping places and different activities. A person who fails to comply with or contravenes a provision of clamping regulations, which is stated in regulations to be a penal provision, commits an offence and is liable on summary conviction to a class C fine.

Section 10 provides that a parking controller shall ensure that they provide signage which is prominently displayed, indicates that clamping activities are in operation, and details the relevant charges applying in relation to such activities. Apart from on the public road, the NTA may make signage regulations in relation to the location, informational content, dimensions and design, symbols displayed, and number of signs to be displayed in a place where clamping activities are in operation. In making such regulations the NTA may set different requirements and conditions in relation to different clamping places and different circumstances. Failure to comply with the obligation to provide signage in accordance with *subsection (1) (other than paragraph (c))* constitutes an offence which is liable on summary conviction to attract a class C fine. A parking controller or clamping operator who charges a clamp release or relocation charge greater than the charge displayed on a regulatory compliant sign commits an offence and is liable on summary conviction to a class B fine.

Section 11 provides that the NTA may establish a code of practice for the purposes of establishing standards and providing practical guidance to clamping operators in carrying out their duties; as well as establishing standards for those supervising the activities of clamping operators. The NTA shall be obliged to consult with the Minister when either preparing a code of practice or proposing to amend and established draft. Where it is shown in any proceedings for an offence under this Bill, that an act or omission was a failure to observe a relevant code of practice that was in effect at the time of the commission of the alleged offence, or alternatively where such act or omission was in compliance with that code of practice, the aforementioned failure or compliance will be admissible in evidence.

Section 12 obliges clamping operators or persons fixing a clamp to a vehicle to affix a clamping notice in accordance with the informational requirements set out in this section. This section does not apply to the fixing of an immobilisation device to an illegally parked vehicle on the public road, which is dealt with separately in *section 30*.

Section 13 provides an exemption for an ambulance, fire brigade vehicle or any vehicle being used by a member of An Garda Síochána or the Defence Forces, in the performance of their duties from being clamped or relocated. A vehicle displaying a disabled person's permit shall be exempted from being clamped in statutory clamping places.

Section 14 makes provision for the NTA to specify by regulation the maximum clamp release and vehicle relocation charge that may be charged in places where clamping is not currently carried out under an existing enactment, referred to in the Bill as non-statutory clamping places. In making such regulations the NTA may specify different maximum charges for different circumstances and different non-statutory clamping places. A person charging or attempting to charge a clamp release or vehicle relocation charge greater than the maximum charge prescribed under *subsections (1) or (2)* commits an offence and is liable on summary conviction to a class B fine. Where no charge stands specified by regulations the maximum clamp release charge that may be charged will be €100, while the maximum vehicle relocation charge will be €50.

Section 15 relates to clamp release and vehicle relocation charges currently being charged or proposed to be charged by a statutory body such as an airport, Coras Iompair Éirean, the Railway Procurement Agency, a harbour or a fishery harbour centre or any other body established under statute. After the commencement of this section any such body proposing to fix such charges will be obliged to consult with the NTA and to have regard to any recommendation made by them before fixing such charges. Where a statutory body is already charging clamp release and relocation charges prior to the commencement of this section, the NTA may make recommendations in relation to such charges and the body concerned shall have regard to any such recommendations.

Section 16 specifies requirements in relation to the time period within which a clamp shall be removed from a vehicle after payment of a clamp release charge or its waiver, as well as the time period, for the release of a relocated vehicle to which an owner cannot gain access to. Where a clamp is not removed, or a relocated vehicle released, otherwise than in accordance with the subsection concerned or the time period specified in clamping regulations, or where no such period has been specified, as soon as is reasonably practicable, the relevant charge and any additional charges shall be refunded without delay. Where the owner of a clamped or relocated vehicle can demonstrate to the satisfaction of a parking controller, or clamping operator that their vehicle was parked while being used by another person, without their authorisation, the parking controller or clamping operator shall waive the relevant charge and remove the clamp from the vehicle. This section does not apply to a vehicle which is immobilised on the public road, which is dealt with separately in *section 30*.

PART 3

COMPLAINTS AND APPEALS

(Sections 17 to 21)

Part 3 makes provision for a complaints procedure, as well as providing for a two-tier appeals process to hear appeals against incidents of clamping or vehicle relocation.

Section 17 provides for a complaints procedure to consider complaints from members of the public regarding the discharge of parking controllers' responsibilities as well as the conduct and identification of clamping operators.

Section 18 provides for the making of a first-stage appeal to the parking controller in relation to a vehicle which has been clamped or relocated, and where a person is not satisfied with the determination of this appeal, the making of a second-stage appeal to an independent clamping appeals officer.

Section 19 obliges the parking controller to have procedures in place to enable a person to appeal against the clamping or relocation of their vehicle. The NTA may make regulations in relation to the processing of such appeals. 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.

Section 20 provides for the designation of one or more independent clamping appeals officer by the NTA.

Section 21 provides for the time periods for the lodging of a second-stage appeal to a clamping appeals officer and for the determination of such an appeal, as well as other matters relating to the processing of such appeals. The NTA may prescribe procedures for hearing and determining appeals under this section.

PART 4

ENFORCEMENT AND PROCEEDINGS

(Sections 22 to 29)

Part 4 makes provision for the appointment of authorised persons by the NTA as well as their powers under the Bill. It also provides for the issuing of directions by the NTA to parking controllers and clamping operators in respect of their compliance with provisions of the Bill as well as for the taking of proceedings in relation to the commission of an offence under the Bill.

Section 22 provides for the appointment of authorised persons by the NTA for the purposes of ensuring compliance with this Bill, as well as setting out the powers of inspection and means of identification of such persons.

Section 23 makes provision for an authorised person to make an application to a judge of the District Court to obtain a search warrant to search for evidence relating to the commission or intended commission of an offence under this Bill.

Section 24 provides for an offence of obstructing or impeding an authorised person from exercising their functions; failure to comply with a requirement of an authorised person; or knowingly giving false or misleading information to such a person which is liable on summary conviction to a class A fine.

Section 25 makes provision for the NTA to direct parking controllers and clamping operators to give it information in relation to their compliance with the Bill. Where it is considered that a parking controller or clamping operator is not complying with the provisions of the Bill, clamping regulations or a code of practice the NTA may direct such individuals to comply in accordance with any direction issued by them. Where the NTA having considered representations made to it by a parking controller or clamping operator, considers that the information required has not been given to it, or compliance with a provision of the Bill, any regulation under the Bill or a code of practice has not been made in accordance with directions, it may apply to the Circuit Court for an order directing such compliance.

Section 26 provides for the service of directions and notices under this Bill.

Section 27 provides for the taking of proceedings for offences committed under this Bill and the summary prosecution of any such offences by the NTA.

Section 28 provides for the payment of costs and expenses incurred by the prosecuting authority by a person convicted of an offence under this Bill.

Section 29 provides for an offence committed under this Bill by a body corporate.

PART 5

CLAMPING ON PUBLIC ROADS

(Sections 30 to 31)

Part 5 provides for the substitution of section 101B (*inserted by section 9 of the Dublin Transport Authority (Dissolution) Act 1987 of the Road Traffic Act 1961*), as well as for an exemption from certain traffic and parking regulations and bye-laws for clamping vehicles operating on the public road in the course of carrying out clamping activities.

Section 30 provides for the substitution of section 101B (*inserted by section 9 of the Dublin Transport Authority (Dissolution) Act 1987 of the Road Traffic Act 1961*). This section provides for the immobilisation and removal of illegally parked vehicles on the public road, as well as the prescribing of charges in relation to the removal of an immobilisation device from such vehicles. In addition to pre-existing statutory provisions, this section provides that where an immobilisation device is fixed to a vehicle in accordance with this section, a fixed charge notice need not be served in respect of a parking contravention unless it is contemplated that proceedings for an offence in relation to the contravention might be brought. This section also amends the informational requirements of the notice to be affixed to immobilised vehicles, particularly in relation to giving details of the appeals process. In accordance with any regulations made under *section 9* of the Bill this section also provides for the time period within which an immobilisation device shall be removed from a vehicle after payment of the prescribed release charge or its waiver, and prohibits the immobilisation of a vehicle on the public road by any person other than a clamping officer or a person acting under the direction of such a person.

Section 31 provides an exemption for a vehicle being used by a clamping operator in the course of their duties in a public place from regulations made under section 35, or bye-laws made under section 36 or 36A of the Road Traffic Act 1994 relating to the parking or entry of a vehicle to a road. However, where a member of An Garda Síochána considers that such a vehicle endangers the safety of or impedes other road users that member may require the clamping operator to move the vehicle to another location.

PART 6

CIE PROPERTY, FISHERY HARBOUR CENTRES AND HARBOURS

(Sections 32 to 35)

Part 6 provides for the amendment of various existing statutory provisions relating to the immobilisation of unlawfully parked vehicles.

Section 32 provides for the amendment of *sections 2, 20 and 22 of the Transport Act 1950*.

Section 33 provides for the amendment of *section 4 of the Fishery Harbour Centres Act 1968*.

Section 34 provides for the amendment of *sections 2, 6 and 42 of the Harbours Act 1996*.

Section 35 provides for the amendment of sections 66(1), and 66A(1) of the Transport (Railway Infrastructure) Act 2001 and the insertion of a new section 66D after section 66C.

Financial Implications

Any “up-front” and on-going funding required by the NTA in its role as regulator of clamping activities will be provided from within the Department’s Vote and no additional Exchequer funding will arise. The Bill will not involve any additional expenditure on the part of the Minister, nor does it include any measures which will directly impact on revenues.

*Department of Transport, Tourism and Sport,
June, 2014.*