

Appendix B: Extract from the DFT Consultation.

Option 1: to rely on improvements to the existing TRO system

Existing legislation allows local authorities to introduce TROs to manage traffic; the requirements of which must be conveyed to the motorist via prescribed or authorised traffic signs and road markings. Local authorities make TROs for many reasons, for example, to restrict traffic manoeuvres (one-way or banned turns) or to set speed limits. TROs also allow local authorities the freedom to decide if and how they wish to restrict or prohibit pavement parking in their local area. The combination of a TRO with the necessary traffic signs and road markings creates a pavement parking restriction, which local authorities with CPE powers can enforce against by issuing PCNs. Parking enforcement remains the responsibility of the police where a local authority does not have CPE powers.

However, because it had become clear that the process for making TROs can be time-consuming and burdensome for local authorities, the department announced in August 2019 that it would be reviewing the legislation associated with TROs. The first stage of this review involved the department developing proposals for legislative change in partnership with a broad range of stakeholders.

User research was carried out on behalf of the department into the current legal process for making TROs. This looked at 'pain points' experienced by those who interact with the TRO process (local authorities and applicants) and recommended changes to legislation. This review drew on the findings of the TRO Discovery report that encouraged the department to determine whether the legislation could be simplified. It made other recommendations for reform, including looking at how traditionally paper-based TRO data, which is a rich source of information, could be digitised to support the transport network of the future.

These recommendations will be subject to further consultation in 2020; and the scope of legislative change, and whether change will require primary and/or secondary legislation, will require careful consideration considering the consultation findings.

Option 2: to allow local authorities with CPE powers to enforce against 'Unnecessary obstruction of the pavement'

The offence of unnecessary obstruction of the highway, i.e. the road, verges, pavement, bridleways, and so on, already exists; although this is only enforceable by the police as a criminal matter.

Option 2 proposes to allow local authorities with CPE powers to enforce unnecessary obstruction as a civil matter, by issuing PCNs to vehicles found to be causing an 'unnecessary obstruction of the pavement'. This would enable CEOs to address instances of unnecessarily obstructive pavement parking as and when they find it, without the need to prohibit it nationally. The guidelines contained in the [Civil Enforcement of Parking Contraventions \(Guidelines on Levels of Charges\) \(England\) Order 2007](#) provide for the higher PCN charge level of £70 for pavement parking.

We do not, at this stage, propose full decriminalisation (meaning completely removing enforcement from the police) as there may be some circumstances where a particularly dangerous obstruction of the pavement is more appropriately dealt with by the police as a criminal matter. Under this option, unnecessary obstruction of the pavement could therefore be enforced by either the police service (via fixed penalty notices (FPNs) or by local authorities (via PCNs)), although we would expect police intervention to be the exception. In the unlikely event of 2 penalties being simultaneously issued to the same vehicle, a police officer FPN would take precedence over a PCN issued by a local authority which would be required to cancel the PCN and refund any payment. Unnecessary obstruction of the highway other than the pavement would remain a police matter.

Option 2 would be achieved by splitting the 'pavement' from 'road' in regulation 103 of the Road Vehicles (Construction and Use) Regulations 1986 - which makes unnecessary obstruction of the road an offence - and adding it to the list of contraventions subject to civil enforcement in schedule 7, paragraph 4(2) of the TMA, using the powers under paragraph 5 of that schedule.

This option would also include exceptions, for example, breakdown or emergency service vehicles; highway maintenance vehicles; utility maintenance vehicles; or where it can be proved that a vehicle had been used for loading and unloading goods (for up to 20 minutes, or longer if the authority permits it). A [proposed list is at Annex B](#).

However, while it is considered necessary to include exemptions for emergencies, and to maintain free-flowing traffic and sustainability for delivery firms, we do not propose to exempt Blue Badge holders, or any businesses not concerned with deliveries. The aim of the policy is to keep the pavement free of obstruction as far as possible; and we believe that other exemptions would defeat this objective.

It is acknowledged that the concept of 'unnecessary obstruction' is inherently vague. To help mitigate this, we could recommend in guidance to local authorities that their schemes provide for the use of warning notices on the first occasion an individual vehicle is identified as causing an obstruction.

Some advantages

This option would enable local authorities to issue PCNs to vehicles which are deemed to be causing an unnecessary obstruction of the pavement, without the need to prohibit pavement parking nationally.

This option would require secondary legislation and could be implemented relatively quickly. Pavement parking would not become an offence in all cases, so local authorities would not need to carry out costly and time-consuming audits of their road networks; nor would it be necessary to place traffic signs and bay markings to indicate where pavement parking would need still to be permitted. This is particularly relevant in rural areas where pavement parking is less likely to be a problem, and where placing signs to permit it would be disproportionate.

Enforcement against this offence would be more targeted than a general prohibition of pavement parking. Local authorities would be able to penalise pavement parking where the pavement has clearly been blocked unnecessarily.

Some disadvantages

Parking offences currently subject to local authority civil enforcement are violations of clearly defined restrictions indicated by traffic signs and road markings, for example, yellow lines or white bay markings. By contrast, 'unnecessary obstruction' is more difficult to define, vulnerable to misinterpretation and would require detailed assessment in each case.

Unlike most other parking offences, there would be no traffic signs or bay markings informing motorists of local regulations: 'obstruction' is a general offence that may occur anywhere, so it cannot be indicated by traffic signs or bay markings. If this option was pursued, secondary legislation and/or guidance would be needed to clarify the definition of an 'unnecessary obstruction of the pavement' to prevent inappropriate and inconsistent enforcement.

Defining 'Unnecessary obstruction'

'Unnecessary obstruction' does not lend itself to a simple definition that works in all circumstances. It would be almost impossible to anticipate all the possible real-world circumstances and to prescribe them in regulations. This would almost certainly result in situation overload, with a list that appears exhaustive but with unforeseen situations still being overlooked. Instead, we would propose to define the scenarios where pavement parking would, and would not, be deemed appropriate in updated statutory guidance. The benefit of this approach is that statutory guidance would be more responsive to any necessary changes, avoiding the time-consuming process of updating regulations.

However, it may still not be possible to comprehensively define what we mean by unnecessary obstruction in guidance. It may be relatively easy to define a pavement obstruction but not so easy to define when it is necessary. For example, 'Obstruction' could be determined by whether the pavement width between the vehicle and the backline of the pavement is sufficiently wide so as not to obstruct the passage of a wheelchair user or person with a pram or buggy. Leaving a minimum width of 1.5m between the parked vehicle and the back edge of the pavement could be deemed to be not causing an obstruction of the pavement. This width is derived from Section 3 of the DfT's [inclusive mobility guidance](#); it is the absolute minimum required for a wheelchair user and a person on foot to pass one another.

The more difficult question, if the space left by the vehicle was less than 1.5m and so causing an 'obstruction', is how to determine whether this was 'unnecessary'.

One approach could be to establish that a vehicle is parked unnecessarily on the pavement where it could otherwise be parked fully on the carriageway without blocking either one-way or two-way traffic (allowing that two-way traffic may have to give way to vehicles approaching in the opposite direction). However, this wouldn't work in all scenarios. It might be reasonable for traffic to give way on quiet residential roads, but it could cause significant congestion on heavily trafficked roads of the same size, so there may be a case for vehicles being on the pavement.

Furthermore, the following sequence of events could occur which might give the wrong impression of unnecessary pavement parking:

- Event 1 - Vehicle A is already parked fully on the carriageway
- Event 2 - Vehicle B arrives and parks directly opposite on the pavement so as not to block traffic
- Event 3 - Vehicle A drives off
- Event 4 - Vehicle B is left appearing to a CEO to be unnecessarily pavement parked

Another way might be to say that two-way traffic must be able to freely pass without giving way. However, this would result in pavement parking on many roads as it would mean allowing pavement parking on all roads where the carriageway is less than (say) the width of at least 4.5 vehicle widths (to allow for vehicles to park on both sides of the carriageway and two-way traffic to pass freely between them).

Thus, we begin to see that a precise definition of 'unnecessary obstruction' may be difficult to achieve. We may only be able to issue scenario-based guidance to local authorities, which still might not cover all situations that could arise.

Option 3: a national pavement parking prohibition

Option 3 would in effect extend the existing London-wide pavement parking prohibition. This option would require changes to primary legislation to prohibit pavement parking by default, except at locations where local authorities decide to allow it. This could be done as a general default prohibition across England or defined in certain circumstances (for example urban areas), as informed by this consultation.

The existing London pavement parking prohibition allows for London councils to introduce exemptions by passing administrative resolutions (for example for narrow streets where pavement parking is essential to ensure traffic flows and to prevent vehicle displacement where there is nowhere else to park). New legislation prohibiting pavement parking in Scotland requires that the exemption of streets must be by the making of an order by the local authority in much the same way that English authorities currently make TROs. We would propose basing the regime on the London model, as recommended by the Transport Committee.

Local authorities would be expected to decide where pavement parking remained necessary and to introduce the necessary exemptions and to place traffic signs and bay markings to indicate where pavement parking is permitted. The bay could be placed completely on the pavement where there is enough width, or ['part on / part off' as shown in Figure 1].

The legislation for both London and Scotland also includes exceptions to the prohibition for certain vehicles including, for example, breakdown or emergency service vehicles; highway maintenance vehicles; utility maintenance vehicles; or where it can be proved that a vehicle had been used for loading and unloading goods (for up to 20 minutes, or longer if the authority permits it). Our [proposal for exceptions is at Annex B](#).

However, while it is considered necessary to include exemptions for emergencies, and to maintain free-flowing traffic and sustainability for delivery firms, we do not propose to exempt Blue Badge holders, or any businesses not concerned with deliveries. The aim of the policy is to keep the pavement free of obstruction as far as possible, and we believe that other exemptions would defeat this objective.

Figure 1. A residential London street with an exemption from the London-wide pavement parking prohibition. Upright traffic signs show the start and end of permitted pavement parking, and white bay markings show how much of the pavement drivers may occupy.



Some advantages

This option would establish a general rule against pavement parking except where there is specific permission for it. We propose this would mirror the London pavement prohibition; with exemptions in place at many locations.

Motorists would benefit from a consistent rule: 'you must not park on a pavement except where signs permit'. Traffic signs and bay markings would show drivers where pavement parking was still allowed.

Local authorities could introduce exemptions to permit pavement parking by the simpler means of administrative resolution¹ instead of promoting TROs to prohibit pavement parking. This is because the default position is an enforceable pavement parking prohibition whereas the exemption is a simple 'permission' that requires signing but no enforcement.

This approach would foster active management of pavement space. It would require local authorities to decide where vehicles should have priority over pedestrians and vice versa.

Some disadvantages

A national pavement parking prohibition would be the most significant change to English parking law in several decades, and local authorities would need to undertake a substantial amount of work to prepare for it.

In many areas pavement parking is essential, so it is important that it should continue to be allowed where this is the case. Each local authority would need to survey their road network, identify areas where pavement parking is routine, determine where it remains necessary, pass resolutions to permit it, and place traffic signs and bay markings to inform drivers where pavement parking is still permitted.

It is likely that the introduction of a national prohibition would need a significant implementation period. This process of identifying and implementing exemptions could be time consuming and expensive. Local authorities have indicated that the scale of this task should not be underestimated. It is not known how many streets would need to be exempted from a national prohibition, nor how many streets may need to be exempted in any single town or city. One authority has estimated the cost at around £670,000. Some authorities we talked to stated that they depend on pavement parking to preserve traffic flow in terraced areas and believe they would need to exempt large residential areas from the prohibition.

Currently, pavement parking is partly self-regulating and fluctuates in response to spikes of parking demand, such as community events, local festivals, etc. By restricting pavement parking only to those areas indicated by traffic signs and bay markings, this option would fix the provision of pavement parking at a relatively static level. The local authority may authorise enough pavement parking bays for residents, but not enough to accommodate an unknown level of visitors.

A national prohibition might be inappropriate in rural areas, such as country roads where pavement parking may be safer. It would be difficult to comprehensively assess all rural settings and may be disproportionate to direct resources to place

traffic signs on quiet country roads. There is also a greater dependence on private transport in rural areas. Suburban areas may also face specific challenges.

The implementation of a national prohibition would also be particularly difficult in environmentally sensitive areas, such as historic towns and villages, where there is likely to be strong resistance to placing of traffic signs and bay markings to indicate where parking is permitted. Moreover, reducing traffic sign clutter was a key aim of the DfT's traffic signs policy review, and a major update to the regulations² governing the appearance and use of traffic signs included a number of changes to facilitate this.

London is more conducive to a pavement parking prohibition, with much lower levels of car ownership per household and higher mode shares for public transport. Elsewhere car ownership per household tends to be higher and consequently, the demand for parking is greater.

What will happen next?

A summary of responses will be published within 3 months of the consultation closing. Paper copies are available on request.

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