

**CYNGOR CAERDYDD
CARDIFF COUNCIL**

ENVIRONMENTAL SCRUTINY COMMITTEE

6 NOVEMBER 2018

**CLAMPING AND REMOVAL OF NUISANCE VEHICLES FROM HIGHWAY
AND PUBLIC LAND**

Reason for the Report

1. To consider the introduction of a new policy for the clamping and removal of the following nuisance vehicles:
 - (i) Vehicles owned by persistent offenders and evaders of parking and traffic tickets;
 - (ii) Vehicles causing an immediate obstruction and /or parked contrary to parking regulations;
 - (iii) Vehicles with no registered keeper on DVLA records;
 - (iv) Vehicles that are not taxed in accordance with the Vehicle Excise and Registration Act 1994.
2. Points (i) to (iii) shall be referred to as “illegally parked vehicles” and (iv) shall be referred to as “untaxed vehicles”.

Background

- **Illegally Parked Vehicles**
3. The Council is committed to the objective of ‘Keeping Cardiff Moving’. Since 2010 and 2014 respectively, Cardiff has undertaken parking and moving traffic offence enforcement in accordance with the Traffic Management Act 2004.

4. Illegally parked vehicles can cause an obstruction and create a danger for pedestrians and other road users. There are instances where enforcement action is either not possible or not a significant deterrent to owners of vehicles.
5. Vehicles not registered with the DVLA are very difficult to enforce against, for example, it is difficult to take action against foreign vehicles as no details are held against which to issue the penalty notice. In some circumstances, such vehicles can create a parking nuisance and the only practical option available to address the problem is removal.
6. Some people regularly or deliberately contravene parking and traffic regulations and fail to settle the debts they incur. These are known as “persistent evaders”. The Welsh Ministers in guidance released to Local Authorities suggest the *‘strongest possible enforcement action following the issue of a PCN and confirmation of persistent evader status’*. There are currently 9,183 PCNS that have been issued against persistent evaders - this equates to a potential loss of £381,397.67.

- **Untaxed Vehicles**

7. The DVLA partnership initiative, although related to Street Scene Enforcement, is separate from Civil Parking Enforcement.
8. There is a public perception of the existence of a link between untaxed vehicles, crime and anti-social behaviour in general. This means that there is often a synergy in undertaking proactive enforcement against untaxed vehicles. Untaxed vehicles can also cause safety issues for other highway users.
9. The adoption of devolved powers from the DVLA will allow the Council to take action against vehicles that are untaxed, abandoned or creating a nuisance.
10. In 2017, the Council received over 1000 reports of abandoned vehicles on the highway or Council-owned land from members of the public, the police and other agencies. In such cases, officers investigate the report by visiting the location, assessing the vehicle and carrying out background checks. Only 28

vehicles, representing 2.8% of those reported were removed as abandoned vehicles.

11. By having the DVLA devolved powers, the Council will be able to remove untaxed vehicles from the public highway. It is anticipated that the powers will help to reduce the number of abandoned vehicles, incidents of crime, vandalism and uninsured drivers. It is hoped that overall they will help improve highway and community safety.
12. There are cases where vehicles are reported by residents as untaxed rather than abandoned. Under existing powers the Council cannot take action against such vehicles. By receiving the powers devolved by the DVLA, the Council will be able to deal with both abandoned and untaxed vehicles, thereby dealing with a large number of complaints and providing a unified service.
13. Other local authorities who have adopted the devolved powers have witnessed a reduction in vehicle licence evasion and in the number of vehicles reported as abandoned.
14. Currently officers report untaxed vehicles direct to the DVLA; this is then passed to a third party to follow up individual reports. In many cases, the vehicles remain on the highway causing a nuisance, waiting on the DVLA to take the necessary enforcement action in relation to tax evasion. This results in repeat enquiries leading to frustration of local councillors and residents of Cardiff.
15. The DVLA can authorise a local authority to enforce against untaxed vehicles under devolved powers to use the Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997. This allows the Council to monitor, report and with the permission of the DVLA, either to clamp or/and remove untaxed vehicles from the highway, Council-owned land or public land such as car parks.
16. There are 37.9 million licensed vehicles in the UK. Vehicle Excise Duty evasion has risen from 0.6% to 1.8% in a 6-year period and equates to a potential loss of £107 million to the Exchequer representing over 700,000 untaxed vehicles. The DVLA have been actively seeking partnerships with Local Authorities since 2014 when they moved to digital road tax and car owners no longer had to display a physical tax disc.

17. The DVLA only allow enforcement action against vehicles on which the tax has expired for more than two months and one day. As with the police, the Council can undertake DVLA checks via its Web Enabled Enquiry (WEE) System, ensuring any enforcement action carried out, is effective, appropriate and correct.
18. As an exercise to establish the scale of the untaxed vehicle problem the Council worked with the DVLA to undertake a one day sample audit across the city using a vehicle with Automatic Number Plate Recognition and the WEE system. The audit focused on principal routes, where vehicles are parked on the highway. The sample audit identified the following numbers of untaxed vehicles in Cardiff:
 - **CF3** – 1,365 untaxed vehicles;
 - **CF5** – 1,445 untaxed vehicles;
 - **CF10** – 470 untaxed vehicles;
 - **CF11** – 1,403 untaxed vehicles;
 - **CF14** – 1,141 untaxed vehicles;
 - **CF15** – 382 untaxed vehicles;
 - **CF23** – 871 untaxed vehicles;
 - **CF24** – 1,449 untaxed vehicles;
 - **Total** – 8,526 untaxed vehicles.
19. Adopting the DVLA powers will enable the Council to remove untaxed vehicles from the public highway and improve highway / community safety. The devolved powers would also provide the Council with the ability to resolve many of the complaints that they receive relating to nuisance vehicles.
20. Untaxed vehicles would initially be clamped. If the keeper/driver did not pay for removal of the clamp and the surety fee of £160 within 24 hours the vehicle would then be removed from the highway and placed into storage (impounded). If the owner wanted to reclaim the vehicle, a removal and storage fee plus the surety fee would need to be paid. The Council would be entitled to retain all revenue from DVLA impounded vehicles. Once a vehicle is impounded the DVLA will contact the registered keeper and ultimately authorise disposal if the vehicle is not claimed.

Issues

21. The Council has the powers designated to it to clamp and remove illegally parked vehicles under the Traffic Management Act 2004 and the Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013. However, currently there is no policy to utilise these powers in Cardiff.
22. The devolved powers to use The Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997 would provide the Council with the ability to resolve complaints relating to nuisance and/or untaxed vehicles.
23. Enforcement actions could lead to adverse publicity. However, full training for all officers would be provided by the relevant departments - including the DVLA. A robust policy would be put in place for the public to understand the processes and rational behind the scheme. A copy of the draft 'Clamping & Removals Policy' due to be presented to Cabinet is attached to this report as **Appendix A**.
24. Registered disabled vehicles and those displaying a valid disabled badge will be treated as indicated in the DVLA Code of Practice and will not be clamped. Vehicle removal will only take place if the vehicle is causing a health and safety concern as indicated in Cardiff Council for clamping and removal of nuisance vehicles from highway and public land.
25. The service area will monitor and review complaints and compliments and the associated impact upon local communities.
27. A recent fundamental service review of Civil Parking Enforcement identified opportunities for improvements in efficiency and effectiveness of service delivery. By working in partnership with the DVLA there is an opportunity to improve effectiveness and efficiency of the service within current resourcing levels.
26. The financial support to deliver the new policy would come from the financial revenue generated from managing untaxed vehicles. Therefore, the service would need to enforce untaxed vehicles to support the cost of the operation.
27. The adoption of devolved powers involves the Council signing a Public Service Agreement with the DVLA and enforcement will be in accordance with the

regulations set out in the Vehicles & Excise Duty (Immobilisation, Removal & Disposal of Vehicles) Regulations 1997 (as amended). A code of practice produced by DVLA defines the responsibilities of both parties. The letter of agreement between DVLA and Cardiff Council (Devolved Powers Partner) for the purpose of identifying Vehicle Excise Duty (VED) offences for enforcement of untaxed vehicles will need to be approved and signed prior to commencing. A copy of this unsigned letter is attached to this report as **Appendix B**.

28. Support for a new policy would increase expectations around dealing with nuisance / untaxed vehicles and increase officer workload. The Council's existing enforcement vehicles have Automatic Number Plate Recognition and, therefore, could be used to support the identification of untaxed vehicles by using the DVLA WEE software.
29. The Council could use an external contractor to undertake the work on its behalf as has been done in Redcorn, London. This model allows local authorities to receive £20 for each untaxed vehicle processed while having no direct involvement in the process. Manchester uses a model that employs a third party contractor to enforce on their behalf with the Council retaining all the fees. The funding is used to provide the facilities for the service and to pay a contractor an hourly rate.
30. The Council has an existing agreement with a company to remove abandoned vehicles, however, due to the low number of vehicles they deal with the charge is relatively high. The Council is proposing to tender the facility to obtain a more competitive price. A successful bidder would need to fulfil a set specification based on a number of factors including accessibility, ability to take payments and security.
31. Due to the potential value of the income generation from this arrangement, procurement advice has been requested. A waiver would be needed to allow a one-year pilot with a six-month review to consider the pilot's effectiveness. Only once this period is completed would the full procurement exercise begin.
32. The key risk associated with this service has been identified as the Council's contractor and / or officers not operating the service in accordance with the requirements of the devolved powers. To mitigate this risk, the DVLA Code of Practice will form a part of the specification and the contract for the removal

contractor. In addition, an induction course and full training will be provided by DVLA to all officers and contractors before commencement of the use of the powers.

Resources

33. It is important to note that there will be very little cost to the Council in taking on the devolved powers, plus the service will potentially provide an additional income stream.
34. **Purchase of Wheel Clamps** – A minimum of twenty Home Office approved wheel clamps (including high security padlock and keys), would be needed to start a clamping trial. The cost of a single clamp is £90.
35. **Impounding Vehicles 24hrs After Clamping** – Case studies suggest that over 60% of clamped vehicles are claimed and have the clamp removed within the first 24 hours. However, a contract will be required for a provider to remove vehicles upon request (after the 24hr period has elapsed) without any damage, and then to provide a secure storage facility.
36. Estimates provided by local companies and other councils show that once the contractor has claimed their removal fee, the Council would receive £80 income for each untaxed vehicle removed and a surety fee of £160. The contractor will also claim the daily storage fee, dependent on the type and size of the vehicle.
37. To release a clamped illegally parked vehicle the driver will be required to pay to the Council:
 - A £40 release fee;
 - The total of the outstanding fine of either £25 or £35.
38. If an illegally parked vehicle has been removed (placed into storage or ‘impounded’) then the registered keeper will be required to pay to the Council:
 - A £105 release fee;
 - The total of outstanding fines of either £25 or £35, plus £12 storage per day (after 24hrs of being clamped and / or after impounded).

39. To release an untaxed vehicle, the registered keeper will be required to pay to the Council:
- £100 plus the surety fee or provide evidence of the paid vehicle tax (within 24hrs of vehicle being clamped);
 - £200 plus the surety fee or provide evidence of the paid vehicle tax, plus £21 storage per day (after 24hrs of being clamped or after impounded).
40. The surety (release in lieu of licensing) of £160 applies to light passenger vehicles, light goods and motorcycles. For buses, haulage and goods vehicles, the surety increases to £330. The offender can claim back the surety fee with the first 15 days on production of evidence of paid vehicle tax.
41. The Council is entitled to keep all revenue from DVLA impounded vehicles, including:
- Any fees paid to release the vehicle including the surety fee if not reclaimed;
 - The vehicle scrap value if its 'book' value is less than £500;
 - The auction if its value if it is greater than £500.
 - Conversations with the DVLA to lower the £500 threshold have been successful in other local authorities and could be a potential future consideration.
42. It is proposed that the identification of vehicles and clamping will be undertaken by three Civil Enforcement Officers. This will be done alongside their current workload utilising an enforcement and support vehicle. The DVLA will provide the Civil Parking Enforcement Officers with full training. A copy of the DVLA '*Code of practice and guidance notes for those authorised by DVLA to deal with vehicles that are not taxed*' is attached to this report as **Appendix C**.
43. Under the Vehicle Excise Duty Regulations 1997, officers will sometimes be required to contact the DVLA to request authorisation to remove a vehicle.
44. There is an expectation of an increase in workload; however, this rise will be supported by the use of technology within the service. There is currently no intention to increase number of officers within the Civil Enforcement Team, but it is anticipated that the additional workload will help preserve the current number of Civil Parking

Enforcement Officers. Monthly monitoring and scrutiny of the service will help support informed decision-making.

45. There is no right of appeal under The Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997. Any enquiries or complaints will be covered by the current back office staff utilising existing resources.

Cabinet Report Recommendations

46. The recommendations contained within the report due to be received by Cabinet on the 15 November are anticipated to be:
 - To approve a new policy for the clamping and removal of nuisance vehicles relating to illegally parked vehicles and untaxed vehicles.
 - To approve accepting devolved powers relating to use the Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997.
 - To delegate authority to the Assistant Director Street Scene to sign the letter of agreement between DVLA and Cardiff Council (Devolved Powers Partner).

Way Forward

47. This item will be supported by officers from the Planning, Transport & Environment Directorate.

Legal Implications

48. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and

properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Financial Implications

49. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

RECOMMENDATION

The Committee is recommended to:

- i. Note the contents of the report; and,
- ii. To consider future actions in relation to future scrutiny of this item.

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31 October 2018