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MEMORANDUM RE VEHICLE CLAMPING

1. This Memorandum relates to vehicle clamping on private land. It has no application to vehicle clamping on public roads.

2.1 Driving and parking a vehicle on privately owned land without the owners permission is an act of trespass and the trespasser could be ordered to leave and could be sued for damages.

2.2 NB: Criminal offences can also arise.

2.2.1 It is not a criminal offence to drive a motor vehicle on land or roads where the driver and vehicle have no right to be provided the driver is within 15 yards of a road on which a motor vehicle may lawfully be driven and he is driving off that road only for the purpose of parking on the land or private road where the vehicle is.

2.2.2 It is a criminal offence to drive a motor vehicle on any land or road where the driver and vehicle have no right to be if the land or road in question is more than 15 yards from a road on which a motor vehicle may lawfully be driven. The only defence to a charge in these circumstances is that the driving in question was done for the purpose of saving life or extinguishing fire or meeting any other like emergency and the burden of proof in this respect is on the motorist.

2.2.3 It follows that it is surprisingly easy to commit a criminal offence by off-road parking unless the vehicle is very close to the public highway.

The penalty for the offence is up to Level 3 on the standard scale (£1,000) if prosecuted through the courts. It can be dealt with by the police as a fixed penalty offence.

3. It is a criminal offence for an occupier of land to clamp a vehicle trespassing on his land unless the occupier himself (if he is acting in person) or his servants, agents or contractors hold the necessary Licence from the Security Industry Authority.

4. A Licensed operator must:-

- wear the Licence where it can be seen at all times when working (unless it is in the possession of the SIA or it has been reported, lost or stolen).
- not deface or change the Licence in any way that prevents all parts of it being seen
- not wear a defaced or altered Licence.

5. A vehicle must not be clamped/blocked/towed if:-

- a valid Disabled Badge is displayed on the vehicle (and it is a criminal offence to abuse a Disabled Badge or to forge one)
- it is a marked emergency service vehicle which is in use as such.

6. Any licence holder who collects a release fee must provide a receipt which must include the following:-

- the location where the vehicle was clamped or towed
- the licence holder's own name and signature
- their licence number
- the date.

7. The simple act of trespassing on private land does not of itself authorise the landowner to clamp the trespasser's vehicle. The starting point is that clamping without warning would be a trespass against the property of the "clampee". However, if the "clampee" has impliedly or expressly consented to the risk of being clamped, then the clamping is legal provided the release fee and waiting time for release are not extortionate or oppressive.

8. Therefore it is the invariable practice to erect/post Notices at parking hot spots to say that parking is prohibited and that clamping is in operation and usually to indicate the amount of the fee and the contact phone number for arranging a release.

9. In practical terms arguing that the driver did not see the signs and therefore did not consent to the risk of clamping is unlikely to be very persuasive. There is a natural temptation for the more moronic car parkers to destroy/deface/remove any signs that warn of clamping activities. This would clearly be criminal activity on their part and cannot be condoned.

10. In practical terms (and assuming that the conditions in paragraphs 4-6 and 8 above are complied with) objecting to a release fee once clamped is unlikely to achieve very much. The clamper will almost certainly only get paid if he collects the fee and will almost certainly stick to his guns about charging the fee for the release. If the police are called they are likely to say that any allegation of trespass to property made by the "clampee" is a civil matter and one in which they cannot get involved. (After all, what is sauce for the goose in the context of paddlers going over riparian owners rivers and saying that trespass is a civil matter and the police would not get involved, is sauce for the gander in the context of their parking on private land and being clamped!).

    There could obviously be a risk of prosecution if an offence has been committed by the driver as described in 2.2 above.

11. If licensed clamping becomes a regular feature at places on private land where parking takes place there is not likely to be very much that can be done about it.

12. In theory it might be argued that a trespassing motorist could leave a prominent sign inside his own vehicle saying that he did not consent to his vehicle being clamped. If it was then clamped there would be the opportunity for a test case which would no doubt go at least to the County Court and possibly to The Court of Appeal to determine whether or not the clamping was lawful. In practical terms no ordinary paddler has the kind of money to take this kind of risk. It is not a practical proposition in my opinion.

13. Also in theory a clampee could pay under protest and then complain to the SIA adjudication panel or sue via the County Court on the basis that the release fee was extortionate. I am not aware of any clear guidance as to what would be extortionate.

14. The moral in my view is to look out for signs giving warning of clamping and if they are seen there is certainly a risk of being clamped. Even if no signs

exist the possibility still exists that the clamper will say the signs were there shortly before the "clampee" arrived and he assumes that the "clampee" must have removed them.

15. If the clamper does not have his licence call for a police officer and report the clamper.