



Nuisance Parking Offences and Abandoned Vehicles

Guidance on Nuisance Parking
and Abandoned Vehicle Legislation

This guidance is part of a series on legislation and powers affected by the Clean Neighbourhoods and Environment Act 2005.

Guidance on the following topics is also available;

- Litter and Refuse
- Defacement Removal Notices
- Waste
- Noise
- Fixed Penalty Notices
- Abandoned Shopping and Luggage trolleys
- Statutory Nuisance from Insects and Artificial Light

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or alternatively further copies are available from:

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This is available from the following websites:

www.defra.gov.uk/environment/localenv/index.htm

www.cleanersafergreener.gov.uk

www.together.gov.uk

Overview

This document provides guidance on the nuisance parking provisions in sections 3 to 9 of the Clean Neighbourhoods and Environment Act 2005, and on abandoned vehicles legislation.

Nuisance Parking General Principles

For the purpose of this guidance, the term 'nuisance parking' covers only those vehicles involved in the offences described in sections 3 and 4 of the Clean Neighbourhoods and Environment Act 2005 and is not intended to cover other parking infringements.

1 Some garages and businesses place cars for sale, for an extended period, on the street. This can cause a significant nuisance to local residents and takes up valuable car parking spaces. The same is true with vehicles that are repaired on the street, which can also look unsightly, can lead to damage of the local environment (for example when oil is spilled or leaked) and may also present a danger to passers by.

2 The offence of selling vehicles on the road is intended to target those people who run a business selling motor vehicles and use the road as a mock showroom. This behaviour is unfair to local residents who are thereby deprived of using the road themselves to park vehicles and go about their daily lives.

It is not intended to target individual private sellers of single vehicles, but the nuisance that is caused by the presence of numbers of vehicles being offered for sale by the same person or business. This is why the offence may only be committed where there are two or more vehicles being offered for sale for the purposes of a business.



It is recognised that a private individual may at one time or another have more than one car to sell and decide to offer them by parking them close together on a road, but it is anticipated that this will only happen on rare occasions: a person who can demonstrate that he is acting in such a capacity, and not for the purposes of a business, is not liable for conviction for the nuisance parking offence.

3 The offence of repairing a vehicle is also aimed primarily at those that act irresponsibly as part of a business and which are attempting to use the road as a mock workshop.

It is not intended to target private individuals who are carrying out minor work to their vehicles (unless the repairs cause unreasonable annoyance to persons in the vicinity), or those who carry out necessary work to vehicles by the side of the road in order to get them moving again after a breakdown or accident (such as breakdown organisations and mobile mechanics), provided the work is completed within 72 hours. It replaces a similar provision that applied in London only.

Detailed Guidance

4 This part of the guidance gives a commentary on each relevant section and sub-section in the Clean Neighbourhoods and Environment Act.

Section 3 – Exposing vehicles for sale on a road

Section 3 (1) sets out the particulars of the offence: A person commits an offence if:

- a) he leaves two or more motor vehicles parked within 500m of each other on a road or roads where they are exposed or advertised for sale, or
- b) he causes two or more motor vehicles to be so left.

Section 3 (2) sets out a defence:

A person is not to be convicted of an offence under subsection (1) if he proves to the satisfaction of the court that he was not acting for the purposes of a business of selling motor vehicles.

Section 3 (3) sets out the penalty:

A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 (currently £2,500) on the standard scale.

Section 3 (4) sets out the definitions of 'motor vehicle' and 'road'

The definition of '**road**' is defined in section 142 of the Road Traffic Regulation Act 1984:

'[in England and Wales] any length of highway or of any other road to which the public has access, and includes bridges over which a road passes.'

5 This is a wide definition and includes not only public rights of way, but also ways to which the public has access by permission of the landowner, rather than by right. It therefore includes access roads through estates that are owned by organisations such as housing associations or by the residents who live there. It covers both the carriageway and the footpath, but a car park would not normally come within the definition of a road as its function is to enable people to leave their vehicle.

6 The definition of '**motor vehicle**' is the same as used in the Refuse Disposal (Amenity) Act 1978 (section 11(1)):

‘a mechanically propelled vehicle intended or adapted for use on roads, whether or not it is in a fit state for such use, and includes any trailer intended or adapted for use as an attachment to such a vehicle, any chassis or body, with or without wheels, appearing to have formed part of such a vehicle or trailer and anything attached to such a vehicle or trailer ’

7 This definition covers cars, motorcycles the chassis of a car or motorcycle, a trailer and a caravan.

Section 4 – Repairing vehicles on a road

Section 4 (1) sets out the offence:

A person who carries out restricted works on a motor vehicle on a road is guilty of an offence.

Section 4 (2) defines the term ‘restricted works’ used in subsection (1):

‘restricted works’ –

‘works for the repair, maintenance, servicing, improvement or dismantling of a motor vehicle or of any part of or accessory to a motor vehicle’

and

‘works for the installation, replacement or renewal of any such part or accessory.’

Section 4 (3) sets out the circumstances in which a person is not to be convicted of an offence:

A person is not to be convicted of an offence under this section in relation to any works if he proves to the satisfaction of the court that the works were not carried out –

- (a) in the course of, or for the purposes of, a business of carrying out restricted works; or
- (b) for gain or reward.

Section 4 (4) sets out circumstances in which the defence set out in subsection (3) does not apply:

[The defence] does not apply where the carrying out of the works gave reasonable cause for annoyance to persons in the vicinity.

8 There is no legal definition of ‘reasonable cause for annoyance’ and interpretation of this provision will be for the courts. However, the concept of ‘reasonableness’ is one that will be familiar to local authorities.

9 **Section 4 (5)** sets out an additional defence, *both* elements of which must be demonstrated:

A person is not to be convicted of an offence under this section in relation to any works if he proves to the satisfaction of the court that the works carried out were works of repair which –

- (a) arose from an accident or breakdown in circumstances where repairs on the spot or elsewhere on the road were necessary; and
- (b) were carried out within 72 hours of the accident or breakdown or were within that period authorised to be carried out at a later time by the local authority for the area.

10 **Section 4 (6)** sets out the penalty:

A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 (currently £2,500) on the standard scale.

11 **Section 4 (7)** sets out the definitions of ‘motor vehicle’, ‘road’ and ‘local authority’ used in section 4:

‘**motor vehicle**’ and ‘**road**’ – have the same definitions as used in section 3 (4)

– see page 5.

12 Local authorities can under this section authorise repairs to go on outside the initial 72 hour period. The definition of ‘local authority’ is as defined in section 9 as:

- (a) a district council in England;
- (b) a county council in England for an area for which there is no district council;
- (c) a London borough council
- (d) the Common Council of the City of London
- (e) the Council of the Isles of Scilly;
- (f) a county or county borough council in Wales

Section 5 – Liability of Directors

13 This section aims to ensure that directors and officers of companies (corporate bodies) and others who are in similar positions do not shirk the responsibilities of their business. It introduces personal liability for the offences for directors and officers and others acting or purporting to act in such a capacity. This is in addition to

the company being liable. It applies to both new offences set out in sections 3 and 4.

14 **Section 5 (1)** sets out the extent of their liability:

Where an offence under section 3 or 4 committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of –

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) a person who was purporting to act in such a capacity,

he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

15 **Section 5 (2)** offers further clarification in relation to personal liability in the case of a company that is managed by its members where those members (or some of them) are treated as if they were the directors:

Where the affairs of a body corporate are managed by its members, subsection

(1) applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body.

Sections 6 to 9 – Fixed Penalty Notices

These sections provide for fixed penalty notices to be issued when an authorised officer believes that a nuisance vehicle offence has been committed. The fixed penalty is set at £100, and an authorised officer must be an employee of a local authority authorised in writing by that authority to issue fixed penalty notices. Guidance on fixed penalty notices is available separately, and it is strongly recommended that this is consulted before the provisions in these sections are made use of.

Other Relevant Legislation

16 There is other legislation that local authorities can use to tackle nuisance vehicles. This part of the guidance sets out two examples.

The Local Government (Miscellaneous Provisions) Act 1976

17 Section 7(1) of this Act gives a highway authority power to specify a highway, through a control order, whereupon any person is prohibited from 'selling' or 'offering to expose anything for sale' on the designated highway. This includes selling from a stall or vehicle. Breaking such an order can lead to a maximum of a level 3 fine (currently £1,000) and a £10 fine for each day a person convicted of the offence continues to sell, or offer or expose to sell, after the expiration of a seven-day period. Such a control order does not apply to a shop or petrol filling station or a market where a toll or rent is applicable. Stalls in a roadside lay-by offering refreshments are also exempted.

The Highways Act 1980

18 Section 137(1) makes it an offence to wilfully obstruct free passage along a highway. The penalty for such an offence is a maximum of a level 3 (currently £1,000) fine.

19 Section 147A(1) makes it an offence to use a stall, container or vehicle with the purpose of offering anything for sale. This does not include vehicles designed for itinerant trading with occupiers of premises, or if part of a market where tolls or rents are applicable (Level 3 fine).

20 Sections 148(c) and 149 make it an offence to deposit anything on the highway 'to the interruption of any user of the highway' (Level 3 fine). If such an offence occurs the owner of the object may be issued with a notice to remove within a set time. If this notice is not complied with the local authority may apply to a magistrate's court for a removal and disposal order. If the object is considered a danger to users of the highway, or ought to be removed immediately, then the authority can remove the object immediately and reclaim expenses.





‘We should not have to tolerate the anti-social behaviour that leads to abandoned, burnt out cars. A high quality environment not only reduces the fear of crime it contributes to our sense of well being.’

Margaret Beckett, Secretary of State for Environment, Food & Rural Affairs

Abandoned Vehicles

This part provides guidance on the following legislation, as amended by sections 10–17 of the Clean Neighbourhoods and Environment Act 2005:

- Refuse Disposal (Amenity) Act 1978
– Sections 2–5;
- Road Traffic Regulation Act 1984
– Sections 99–103;
- Removal and Disposal of Vehicles Regulations 1986 (SI 1986/183)

It is intended as a guide for local authorities to use when exercising their duties regarding abandoned vehicles. It is not a replacement for the legislation and should be read in conjunction with the legislation and explanatory notes – some of which is accessible through the following links.

- www.opsi.gov.uk/acts/acts2005/20050016.htm
- www.opsi.gov.uk/acts/en2005/2005en16.htm
- www.opsi.gov.uk/si/si1989/Uksi_19890744_en_1.htm

Legislation pre-dating 1988 should be ordered through Her Majesty's Stationary Office at www.hmso.gov.uk

This guidance is issued by the Secretary of State and under section 4A of the Refuse Disposal (Amenity) Act 1978 and section 103(4) and (5) of the Road Traffic Regulation Act 1984. Local authorities must have regard to it when exercising their functions under sections 3 or 4 of the Refuse Disposal (Amenity) Act 1978 and sections 99 to 102 of the Road Traffic Regulation Act 1984.

Sections 11–13 and 15–17 of the Clean Neighbourhoods and Environment Act 2005 on abandoned vehicles were introduced with effect from 18 October 2005 (see S.I. 2005/2896).

For ease of reference the legislation is covered under the following headings:

- 1) The offence of abandonment
- 2) The removal and custody of abandoned vehicles
- 3) The disposal of abandoned vehicles
- 4) Recovery of costs connected with removed vehicles
- 5) Powers of entry

1 The Offence of Abandonment

Section 2 of the Refuse Disposal (Amenity) Act 1978 (RDAA) makes it a criminal offence to abandon a motor vehicle¹ or anything that has formed part of a motor vehicle on any land in the open air or on any other land forming part of a highway. (It is also an offence to abandon anything else that has been brought on to land for the purposes of abandoning it).

23 A person found guilty of such an offence may be punished on summary conviction with a fine not exceeding level 4 on the standard scale (currently £2,500), or a term not exceeding three months imprisonment (possibly to be raised to 51 weeks), or both.

24 The Clean Neighbourhoods and Environment Act 2005 inserts a new section 2A into the RDAA, which allows an authorised officer of a local authority to issue a fixed penalty notice as an alternative to prosecution for the offence. The fixed penalty is set at £200, and an

authorised officer must be an employee of a local authority authorised in writing by that authority to issue fixed penalty notices. *Guidance on fixed penalty notices is available separately, and it is strongly recommended that this is consulted before the provisions in these sections are made use of.*

2 Removal and custody of abandoned vehicles

25 This covers section 3 of the RDAA, section 99 of the Road Traffic Regulation Act 1984 and Part II of the Removal and Disposal of Vehicles Regulations 1986.

Note: As well as dealing with abandoned vehicles, the Road Traffic Regulations Act 1984 sets out powers to remove vehicles that are broken down or causing an obstruction. However, local authorities have powers to remove abandoned vehicles only. Those that are broken down or causing an obstruction should be removed by the Police (or – following the Traffic Management Act 2004 – by designated Traffic Officers).

¹In this Act, 'motor vehicle' means – 'a mechanically propelled vehicle intended or adapted for use on roads, whether or not it is in a fit state for such use, and includes any trailer intended or adapted for use as an attachment to such a vehicle, any chassis or body, with or without wheels, appearing to have formed part of such a vehicle or trailer and anything attached to such a vehicle or trailer' (s.11(1)). (Note: This includes Caravans).

The Duty

26 Where it appears to a local authority that a vehicle in its area is abandoned, it will be its duty to remove the vehicle.

This duty applies to all land in the open air or any land forming part of a highway. However, in respect of such vehicles that are not on the carriageway, this duty does not apply where the costs of removing them to the nearest convenient carriageway is unreasonably high.

Best Value Performance Indicator 218 has required local authorities to record, since April 2005, the number of abandoned vehicles investigated within 24 hours of their being reported, and the number removed within 24 hours of the authority being legally entitled to do so. The changes to the abandoned vehicle legislation will mean that this indicator will be modified slightly to reflect the removal of the 24 hour notice. Revised guidance for this indicator can be found using the link: www.odpm.gov.uk/index.asp?id=1136106

Definition of 'abandoned'

27 There is no legal definition of 'abandoned' and this guidance does not seek to create one. Local authority officers have the freedom to use their discretion when making decisions on abandonment.

28 However, the following characteristics are generally common to abandoned vehicles and one or a combination of the following could assist a local authority officer in making a decision on abandonment.

- (a) Untaxed, with
- (b) No current vehicle keeper on the Driver and Vehicle Licensing Agency's (DVLA) record
- (c) Stationary for a significant amount of time
- (d) Significantly damaged, run down or unroadworthy
- (e) Burned out
- (f) Lacking one or more of its number plates
- (g) Containing waste

Category (d) could include vehicles with flat tyres, wheels removed or broken windows.

This is not an exhaustive list and a vehicle would not have to be displaying the full list to be considered abandoned.

29 However, a vehicle should not be considered abandoned solely on the grounds that it is not displaying a valid tax disc. Local authorities should use the DVLA's free on-line link to check keepership details and vehicle taxation status prior to taking action. This is available 24 hours-a-day, 365 days-a-year. DVLA can check vehicle details using either the registration number or the vehicle identity number (VIN).

The exception to the duty

30 A local authority shall not be required to remove an abandoned vehicle if the cost of removal to the nearest 'carriageway'² would be unreasonably high.

31 It is for the local authority to decide – on a case by case basis – whether the

costs of removing a vehicle to the nearest carriageway (not to its final destination) are unreasonably high. In such cases the duty to remove the vehicle ceases to apply and the local authority is not required to take any further action. However, such circumstances should rarely occur and only when a vehicle has been abandoned on remote or hard to access areas, or where special and/or additional machinery is needed to aid removal. Local authorities have no power to charge for the costs they incur in exercising their duty, and occupiers should not therefore be charged for the removal of vehicles abandoned, for example, on hard surfaced residential areas (or associated grass verges) without their permission.

32 Local authorities may, of course, remove abandoned vehicles at the request of the occupier in circumstances where the duty does not apply; in such cases they are free to make arrangements with the occupier to recover their costs.

²'carriageway' means a way constituting or comprised in a highway, being a way (other than a cycle track) over which the public have a right of way for the passage of vehicles (Highways Act 1980, s.329(1)).

Notice requirements

33 Where a vehicle, which is deemed to be abandoned is on land that is occupied, the local authority must give the occupier 15 days notice that they propose to remove the vehicle. The local authority is not entitled to remove the vehicle if the occupier objects to the proposal within that period. However, if the occupier gives the local authority permission to remove the vehicle (e.g. if the vehicle was abandoned without their consent), the 15-day notice automatically lapses and the vehicle can be removed immediately.

34 The legislation does not define the term 'occupier'. The general rule is that if a term is not defined in the statute in which it is used, it is given its natural meaning. This will ultimately be for the local authority officer to decide. However the term 'occupier' has been previously defined as:

- (i) The tenant or licensee.
- (ii) Anyone who has legal possession of and control over the premises.

Full details of how this notice should be served and how a person can object can be found in regulations 8 and 9 of, and Schedule 2 to, the Removal and Disposal of Vehicles Regulations 1986. The regulations do not require the notice to be affixed to the vehicle and doing so can often lead to anti-social behaviour and arson.

35 Under a change introduced by the Clean Neighbourhoods and Environment Act, a 15-day notice is not required where a vehicle is abandoned on a 'road' (within the meaning of section 142 the Road Traffic Regulation Act 1984³).

Section 142 defines a road as (in England and Wales) **'any length of highway or of any other road to which the public has access, and includes bridges over which a road passes.'**

This is a wide definition, and includes not only public rights of way, but also ways to which the public has access by permission of the landowner, rather than by right. It therefore includes access roads through estates that are owned by organisations such as housing associations or by the residents who live there.

It covers both the carriageway and the footpath, but a car park would not normally come within the definition of a road as its function is to enable people to leave their vehicle.

36 The Clean Neighbourhoods and Environment Act 2005 has removed the requirement to affix a 24-hour notice to a vehicle that is deemed fit for destruction. All such abandoned vehicles can now be removed immediately.

Manner and period during which occupier of land may object.

37 The period with which the occupier can object is 15 days from the day in which a notice is served on him.

Custody procedures

38 Local authorities can remove vehicles by towing, driving or by any other means necessary. A local authority authorised officer can also take any measures he may think necessary to enable him to remove or move it.

39 Local authorities shall deliver abandoned vehicles to the relevant disposal authorities in accordance with arrangements as may be agreed between the two and where vehicles are in the custody of a local authority, and should take all steps that are reasonably necessary for the safe custody of that vehicle.

40 No action can be taken against a local authority for damage resulting from not carrying out its abandoned vehicle duties. However, if the Secretary of State, after holding a local inquiry, is satisfied that the local authority has failed to carry out the duty, he may require the authority to take steps to carry that duty out.

3 Disposal of abandoned vehicles

41 This covers section 4 of the RDAA, sections 100 and 101 of the Road Traffic Regulations Act 1984 and part III of the Removal and Disposal of Vehicles Regulations 1986, as amended, and includes steps required to trace the owner of vehicles.

42 For certain types of abandoned vehicles, local authorities will be bound to take steps to trace the owner of a vehicle and, if successful, give them **7 days written** notice that the authority intends to dispose of the vehicle if it is not collected within that time. If the owner is traced, the local authority has the option of serving a fixed penalty as an alternative to prosecution.

43 On satisfying the local authority of ownership, the owner of a vehicle can remove the vehicle from custody after paying sums relating to removal and storage owed to the authority. Up to a year after a vehicle is sold by a local authority the owner can reclaim the sum of the proceeds of sale minus any removal, storage and disposal costs that may have accrued.

44 Local authorities have the power to dispose of abandoned vehicles that they have removed and are in their custody. **The local authority may dispose of an abandoned vehicle in ‘such a manner as they think fit’.**

End of life vehicles should only be destroyed at one of the network of Authorised Treatment Facilities.

Disposal can only take place in accordance with the following timescales:

- a) In the case of a vehicle which in the opinion of the authority is **in such a condition that it ought to be destroyed**, at any time after its removal;
- b) In the case of a vehicle, not falling within paragraph (a), which –
 - i) does not display a licence (i.e. tax disc) (whether current or otherwise and whether or not the vehicle is required to display a licence)
 - and**
 - ii) does not display any registration mark (i.e. number plate) (whether indicating registration within or outside the United Kingdom).

At any time after its removal.



Note: The Clean Neighbourhoods and Environment Act 2005 has amended legislation relating to disposal of vehicles that do not display a current licence or registration mark, enabling them to be destroyed immediately after removal. A vehicle must satisfy both criteria in paragraph (b) in order to be disposed of immediately. There is no obligation to trace or inform the owner when a vehicle can be disposed of immediately under paragraphs (a) or (b).

- c) In any other case, at any time after the local authority have taken such steps as may be prescribed to find a person appearing to them to be the owner⁴ of the vehicle and either –
- i) they have failed to find such a person; or
 - ii) he has failed to comply with a notice served on him in the prescribed manner by the local authority requiring him to remove the vehicle within the prescribed period from their custody.

Steps to be taken to find the owners of certain vehicles

45 This is covered in detail in regulation 12 of the 1986 Regulations.

46 If the vehicle carries a GB registration mark (number plate) the local authority should find and send a written notice to the owner (having found the details from the DVLA database) declaring that their vehicle has been removed and is being held in their custody and that should they wish to reclaim it they should do so within **7 days** (in England) of the notice being served otherwise the vehicle will be disposed of.

47 The owner of a vehicle in custody can remove the vehicle after satisfying the local authority that he is the owner and paying any charges that are due.

Charges are set out in the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations 1989 (SI 1989/744), as amended. These can be viewed at: www.opsi.gov.uk

⁴The owner of a vehicle is taken to also include the registered keeper as per the national record maintained by the Driver and Vehicle Licensing Agency (DVLA).

48 The owner of a vehicle, up to one year after the vehicle is sold by a local authority, can reclaim the value of the sale minus any charges that may be owed to the authority.

49 If more than one owner claims a vehicle that is in custody, or the proceeds of a sale of that vehicle, the local authority shall choose the one they 'think fit' and treat him as the owner for the purposes of enabling him to remove the vehicle from custody or to reclaim the costs of a sale.

50 Local authorities are empowered to provide plant and apparatus for the purpose of disposing of vehicles. Under the 'End of Life Vehicle Directive' vehicles will have to be de-polluted and disposed of at an Authorised Treatment Facility.

51 It is a legal requirement that information relating to the vehicle, ascertained through a DVLA check be given to the following relevant authorities following the disposal of a vehicle:

- a) If the vehicle bore a GB registration mark, to the Secretary of State (i.e. DVLA), the chief officer of the police in whose area the vehicle was found and Hire Purchase Information Limited (HPI Ltd).
- b) The appropriate police chief and Secretary of State where the vehicle bore a Northern Ireland registration mark.
- c) The appropriate police chief of the local authority in which the vehicle was found, the Secretary of State, and HPI Ltd in the case of a Republic of Ireland registration mark.
- d) The appropriate police chief in the case of a Channel Islands, Isle of Man, or other country not previously specified, registration mark.
- e) The appropriate police chief and the local authority in whose area the vehicle was apparently abandoned (if it is not the local authority which did the disposing) if no registration mark is found or the vehicle has a foreign number plate.

f) Any person who appears to the local authority to be the owner of the vehicle immediately before it was disposed of.

4 Recovery of costs connected with removed vehicles

52 Before surrendering a vehicle to the owner, the local authority is entitled to charge the owner for removal and storage as prescribed in the **Removal, Storage, and Disposal of Vehicles (Prescribed Sums and Charges etc) Regulations 1989 as amended**):

www.opsi.gov.uk

53 These sums are different in London. London local authorities should refer to Section 4 of the London Local Authorities Act 2004.

www.opsi.gov.uk/acts/locact04/40001--c.htm#4

54 Any sum recoverable by virtue of this section shall be recoverable as a simple contract debt in any court or competent jurisdiction.

55 If a person is convicted of an offence under Section 2(1), the court may order him to pay any costs to the local authority for the removal, storage and disposal of the vehicle to which they are entitled.

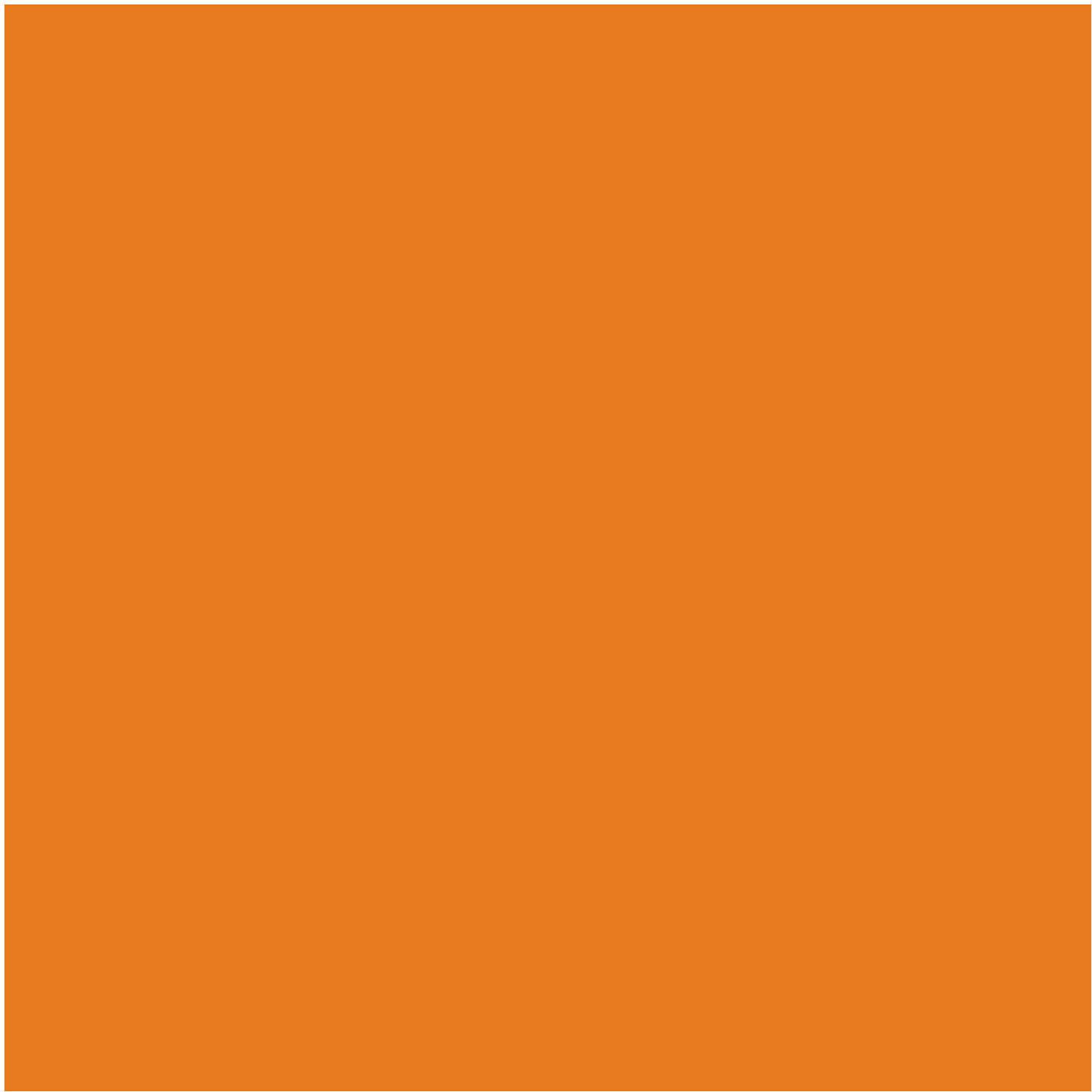
5 Powers of Entry

56 This is covered under section 8 of the RDAA

57 Any person authorised in writing by the Secretary of State or a local authority may at any reasonable time enter any land for the purposes of investigating the need to carry out their removal of abandoned vehicle functions.

**'Abandoning a motor vehicle
is a serious criminal offence,
punishable with imprisonment.'**





Department for Environment,
Food and Rural Affairs

Nobel House
17 Smith Square
London SW1P 3JR

Telephone 020 7238 6000
Website: www.defra.gov.uk
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