

# STATES OF JERSEY



## WHEEL CLAMPING: INTRODUCTION OF LEGISLATION (P.119/2009) – COMMENTS

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Presented to the States on 5th October 2009  
by the Minister for Home Affairs

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STATES GREFFE

## COMMENTS

### Introduction

I welcome this Proposition which has been brought with the assistance of the Home Affairs Department.

The Home Affairs Department has been considering this area and went out to consultation thereon on 31st July, 2008. It appears that this issue remains the responsibility of the Home Affairs Department because it extends to wheel clamping on private land.

### The existing Law

I have already publicly expressed the view that the practice of wheel clamping is unlawful, as constituting an unlawful intervention with the rights of the owner or user of the motor vehicle concerned.

That view is supported by the case of *Gosselin v. Attorney General* [1990 JLR102]. That case arose from the conviction in the Magistrate's Court of a wheel clumper for an offence of tampering with a motor vehicle contrary to Article 29(2) of the Road Traffic (Jersey) Law 1956, as amended. Although the conviction was overturned on appeal, that was solely upon the basis that the vehicle was not in a road, public place or place provided for the parking of vehicles within the terms of Article 29. The Royal Court took the view that a private car park was not covered by the terms of Article 29. However, the Royal Court had already found that the accused had prima facie committed the offence of tampering contrary to Article 29 since he had touched the wheel either himself or with the immobilization device and had therefore "tampered" with "part of the mechanism of the vehicle". Moreover, the act had not been done with lawful authority, since the appellant was under no legal duty to resort to the self-help remedy of wheel clamping, nor, since it was potentially tortious, with reasonable cause.

When a person parks his car without permission on land occupied by another he commits the tort of trespass. Trespass is a civil wrong which is actionable in itself and entitles the occupier of the land to damages. The wheel clamping service amounts to a suggestion that the occupier or his agent may take the law into their own hands and exact damages of their choosing from the trespasser.

The position in Scotland is that by virtue of the case of *Black v. Carmichael* [1992] SCCR 709 wheel clamping was ruled to be theft and extortion. The reasoning behind this appears to be that in Scottish Law there is a Common Law definition of theft which does not require the mens rea of 'intention to permanently deprive'. It is my understanding that the Jersey Common Law definition of theft similarly does not require an intention to permanently deprive. Accordingly, in addition to the *Gosselin* case, the *Black v. Carmichael* case would be persuasive authority for a Jersey court as to the unlawfulness of wheel clamping.

### Practical issues

There are also very real difficulties in relation to the operation of wheel clamping. There are currently no effective safeguards in relation to the amount to be claimed and no guideline cases from Jersey courts as to the appropriate measure of damages for

trespass by parking in the wrong place. Even in England and Wales, where wheel clamping is lawful, there are severe difficulties with the system being operated fairly. I have attached to these comments the recent criticisms of the AA.

During my period as Magistrate, the Petty Debts Court upon the suggestion of one of the Relief Magistrates, stopped giving judgment to a business which issued civil penalties on behalf of the occupier of land, pending a trial of such a case. It was clear to me that the businesses which issued civil penalties did not want there to be a trial because whenever such a claim was resisted, the claim was dropped by them.

### **My preferred option**

If wheel clamping were to become a criminal offence as suggested by this Proposition, then the occupiers of land could still use agents to issue civil penalty notices making a claim for damages for the trespass. There could then be a trial before the Petty Debts Court, which could be subject to appeal to the Royal Court, and the principles of Law together with the appropriate level of damages to be claimed could thus be clarified.

Furthermore, it would be possible for the Minister for Home Affairs, after consultation with judges, to issue a Code of Practice for people issuing civil penalties which would provide some regulation thereof. In particular, any business which failed to comply with the Code of Practice could be denied access to the registration details of motor vehicles, thus making their task impossible.

The alternative is a new piece of legislation in relation to the regulation of the whole area. This will prove to be surprisingly complicated and controversial and I have already indicated to my Scrutiny Panel that I have no specific law drafting time for this and would be unlikely to be able to properly consider this before 2011.

### **The other options**

If wheel clamping is not banned then, unless other options are followed, the present situation of free for all will continue.

The other option would be for legislation to be passed making wheel clamping lawful subject to appropriate safeguards. The concerns of the AA in relation to this will need to be dealt with and such legislation will be complicated.

The route taken in Guernsey which is described in the report to Deputy Tadier's amendment is another form of civil penalty system. The Law specifies the standard level of penalty. However, it requires an application to be made to the Guernsey Royal Court in relation to each piece of land.

### **Summary**

I support this Proposition and believe that, after wheel clamping has been banned, a Code of Practice regulating the issuing of civil penalty notices will be the appropriate way forward.

However, if this proposition is defeated then I will take that as an indication that the States wish wheel clamping to continue to be allowed and a new piece of legislation, which will also be complicated, will be required in order to provide appropriate safeguards along the English model.