EXPLANATORY MEMORANDUM TO

THE PROTECTION OF FREEDOMS ACT 2012 (DEFINITION OF RELEVANT LAND) (AMENDMENT) ORDER 2025

2025 No. 1256

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Lord Peter Hendy of Richmond Hill, Minister of State for Rail, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

2.2 Lydia Roberts, Deputy Director for Passenger Experience, at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Matthew Barker at the Department for Transport can be contacted by email at the following address with any queries regarding the instrument: matthew.barker@dft.gov.uk. Alternatively, the department can be contacted by telephone: 0300 330 3000.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The order makes provision for the amendment of the definition of “relevant land” in Schedule 4 to the Protection of Freedoms Act 2012 (POFA). Schedule 4 governs the recovery of unpaid parking charges on relevant land. The definition of 'relevant land' currently excludes railway car parks due to such land being subject to the Railway Byelaws (being byelaws made under section 219 of the Transport Act 2000 by the Strategic Rail Authority, confirmed under Schedule 20 of the Transport Act 2000 and preserved by section 46(4) of the Railways Act 2005).

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 Not all railway operators currently rely on the Railway Byelaws to recover unpaid parking charges. Some are now working with agents who rely on contractual agreements with motorists to enforce the recovery of unpaid parking charges.

5.2 Schedule 4 to POFA facilitates the recovery of unpaid car parking charges from the keeper or hirer of a vehicle parked in private car parks and sets out detailed requirements regarding the provision of notices and the appeals process, but railway car parks are currently excluded from this regime.

5.3 This order will extend the application of the regime set out in Schedule 4 to POFA so that it will apply to the recovery of unpaid car parking charges from the keeper of a vehicle parked in station car parks. This will make the mechanisms applying to the recovery of unpaid car parking charges in station car parks consistent with those generally applying to private car parks with a view to aiding the understanding of the applicable rules by both users and managers of station car parks.

5.4 To support this order, changes to the Railway Byelaws will be made.

5.5 An industry consultation evidenced that there is support for amending the Railway Byelaws to remove any criminal liability for breaches of parking restrictions that are covered by a contractual parking scheme and to apply the enforcement regime set out in Schedule 4 to POFA to the recovery of unpaid parking charges in railway car parks.

What was the previous policy, how is this different?

5.6 As noted above, Schedule 4 to POFA sets out a statutory regime for the recovery of unpaid parking charges. The regime applies only to car parks on "relevant land", the definition of which excludes land subject to "statutory control" including land subject to byelaws.

5.7 Therefore, as drafted, the legislation does not permit Train Operating Companies to use the regime in Schedule 4 to POFA to recover unpaid parking charges from the keeper of the vehicle when the person driving the vehicle cannot be identified. Further, the requirements of the POFA regime regarding the content of notices and the appeals procedure do not currently automatically apply to station car parks.

5.8 When the order comes into force, railway operators, or their agents, will be able to recover unpaid parking charges through a civil enforcement route that is familiar to car park operators and users, namely the POFA parking regime.

6. Legislative and Legal Context

How has the law changed?

6.1 Schedule 4 to POFA currently applies to "relevant land", defined in paragraph 3(1) of that schedule as any land other than, amongst other things, land which is subject to "statutory control". Paragraph 3(3) of Schedule 4 to POFA provides that land is subject to "statutory control" if any "statutory provision" imposes a liability in respect of parking and paragraph 3(4) provides that "statutory provision" means any "subordinate legislation" which includes byelaws. As railway land is subject to the Railway Byelaws, Schedule 4 to POFA does not currently apply to such land.

6.2 This order extends the definition of "relevant land" by amending paragraph 3(4) in Schedule 4 to POFA to exclude Railway Byelaws from the definition of "statutory

control". The legal effect of this order is to implement a small amendment to POFA so that the Schedule 4 regime applies to parking on land which is subject to the Railway Byelaws.

6.3 The Secretary of State for Transport will make this order in exercise of powers conferred by paragraph 16(1)(a) of Schedule 4 to POFA.

6.4 This instrument is laid before Parliament in accordance with paragraph 17(2) of Schedule 4 to POFA and must be approved by a resolution of each House of Parliament before it is made.

6.5 As noted above, complementary changes will also be made to the Railway Byelaws using powers under section 46(5) of the Railways Act 2005, to decriminalise contraventions of a contractual parking regime (which will be covered solely by the regime under Schedule 4 to POFA). The Railway Byelaws will maintain the powers to criminally enforce for breaches of parking infringements that fall outside the contractual scheme (e.g. parking in unauthorised areas or obstruction of access to the railway) as well as providing for the removal of vehicles in certain scenarios, for example where emergency access is required to the railway.

Why was this approach taken to change the law?

6.6 The aim of this order is to bring the recovery of unpaid parking charges in railway car parks into the scope of POFA. Railway car parks will be treated like most other private car parks (although it should be noted that land subject to other forms of statutory control will remain excluded). As well as setting out rules for notices and the appeals procedure to be followed when enforcing parking changes, POFA also prohibits clamping or removal of vehicles as a means of enforcement.

6.7 Parallel changes to the Railway Byelaws will remove criminal liability for breach of contractual car parking arrangements. This order is required because simply decriminalising contraventions of a contractual parking regime under the Railway Byelaws would not achieve the desired legal effect of applying Schedule 4 to POFA to railway land.

6.8 Additionally, the amendment brings greater statutory rights to motorists. Under POFA, motorists can access an appeals service if they believe that a parking charge was issued incorrectly. A similar appeals service currently exists for the enforcement of the Railway Byelaws in railway car parks because of a voluntary agreement by the rail parking industry, but there is no obligation for the service to be provided.

6.9 The change would reduce the number of different car parking regimes because this amendment makes it clear that in all scenarios the recovery of unpaid car parking charges on private land including railway car parks should be pursued using the civil regime set out in POFA.

7. Consultation

Summary of consultation outcome and methodology

7.1 A consultation was not required by statute. However, the Department for Transport consulted the devolved governments in Scotland and Wales, train operators, passenger rights groups, car parking industry trade groups and other interested stakeholders in 2020. The consultation was launched in August of 2020 and lasted six weeks. The consultation outlined our proposed changes to car parking rules on railway land and asked for comments and views. 17 responses were received.

7.2 The overall view by consultees was supportive. The two main concerns expressed by consultees related to the cost of replacing signage, given the imminent introduction of the Car Parking Code of Practice by the Ministry of Housing, Communities and Local Government (MHCLG) and the effectiveness of the enforcement of unpaid parking charges under POFA, compared to Byelaw 14. We have made provisions in budgets to cover the costs of signage updates.

7.3 The Welsh Government was included in the consultation with Wales and was supportive of the proposed change. The Scottish Government was also included in the consultation, and it was made clear that there would not be any changes to railway car parking enforcement in Scotland. This is due to the extent of POFA being England and Wales.

7.4 As an informal industry consultation was undertaken with a small number of responses, this will not be published.

8. Applicable Guidance

8.1 The Department for Transport does not intend to produce guidance (whether statutory or non-statutory) in connection with this order as the POFA regime in combination with the parking codes set out by the parking associations sets out the requirement of how car parks should be managed. However, the Department will write to car parking trade groups and train operators in parallel when the Instrument has been laid to alert them to the changes. Further, the Car Parking Code of Practice, which is currently being revised in anticipation of being re-issued will apply to all car parks within the scope of the parking regime in Schedule 4 to POFA, including, following the coming into force of this order, station car parks. This is being led by the MHCLG.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact anticipated on businesses. Instead, an internal assessment has been undertaken to measure the impact of the changes made to Train Operating Companies. The change is expected to lead to a total first year cost, including one-off costs, of between £1.13m and £3.25m and in subsequent years an annual net direct cost of between £0.49m and £1.1m at 2023 prices.

9.2 The Department considers that bringing station car parks within the remit of the POFA regime that already applies to other private car parks will have a de-regulatory effect by reducing the number of different car parking regimes being used. A small business wishing to enter the car parking industry would benefit from having one set of rules to follow for railway station car parks and car parks on other private land. The impact of this legislative change therefore reduces barriers to entry into the railway car parking market.

Impact on businesses, charities and voluntary bodies

9.3 The impact on business, charities or voluntary bodies is minimal. There will be a one-off cost to update car park signage and other information material, the cost of which will be covered by the Department for Transport through the Train Operating Company budgets. There may be a long-term impact in terms of the revenue recovered through enforcement action against motorists because of the different legal regimes. This has been estimated and shared with His Majesty's Treasury. A Justice

Impact Test has been completed to assess the impact that this order will have on the courts.

9.4 The legislation does not impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector because the change will only have a very small impact on Train Operating Companies.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the number of unpaid parking charges issued using the civil enforcement route will be monitored versus the criminal enforcement route to assess the impact this is having on the courts.

10.2 The instrument does not include a statutory review clause. In accordance with sections 28(2)(b) and 29(2)(a) of the Small Business, Enterprise and Employment Act 2015, Lord Peter Hendy of Richmond Hill, Minister of State for Rail has made the following statement:

"I have determined under section 28(2)(b) of the Small Business, Enterprise and Employment Act 2015 that it is not appropriate to make provision for review of the POFA (Definition of Relevant Land) (Amendment) Order 2025 on the grounds that a review would be disproportionate taking into account the economic impact of the regulatory provision on the qualifying activity as defined in section 29(2) of that Act."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This order, when made, will be accompanied by a complementary order amending the Railway Byelaws. That order, the Railways Byelaws Amendment Order 2025, will be made under the power in section 46(5) of the Railways Act 2005 and will not be subject to any Parliamentary procedure. The JCSI has been informed in a letter of the purpose and effect of the draft order.

12. European Convention on Human Rights

12.1 The Minister of State for Rail has made the following statement regarding Human Rights:
"The Order amends primary legislation and engages Article 6 of the European Convention on Human Rights (ECHR) since it will apply the civil appeals procedure set out in Schedule 4 to POFA to car parks that were previously not within the scope of that schedule. The parking regime set out in Schedule 4, and the appeals procedure comprised in it, was considered certified as being compliant with the ECHR when POFA was enacted, and the Secretary of State does not consider that there is any reason why the application of the regime to station car parks should not be equally compliant with the ECHR."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").