



HM Revenue  
& Customs

Mike Revis  
Chair – CIPFA VAT Committee  
CIPFA  
77 Mansell Street  
London  
E1 8AN

**Customs & Indirect Tax  
Directorate**

Public Bodies  
Area 3/35  
100 Parliament Street  
London  
SW1A 2BQ

**Tel** 03000 593922

**Email** david.smith7@hmrc.gov.uk

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Dear Mike

**Provision of car parking in country parks**

I refer to the original briefing submitted by Jo Buckmaster, on the above subject, in February 2016, and your subsequent correspondence. Thank you for providing us with further information on how country parks are administered and copies of certain byelaws.

As you are aware, the issue is whether local authorities are, for VAT purposes, engaging as public authorities when they provide car parking in country parks. In order to be engaging as a public authority, a local authority must be supplying goods or services pursuant to a “special legal regime” (SLR). This happens when the legislation governing the activity of the local authority (that is, how it is carried out) is different from the legislation governing the same activity undertaken by non-public bodies.

The Countryside Act 1968 (CA68) empowers local authorities to establish and care for country parks. It also allows local authorities to provide facilities for the public within their country parks. We do not doubt that the activity of making available to the public a country park, for public use, is an activity in which a local authority engages as a public authority. The local authority is charged with establishing and caring for that country park. This may, of course, be academic if access to the country park is without payment. However, we are unable to identify within the CA68 a special legal regime which governs the provision of parking in return for consideration. As mentioned, a SLR is legislation which governs how the activity is carried out.

At the meeting of the VAT Committee on March 2019, we agreed with the general premise that byelaws are regulatory and thus they are capable of creating a SLR. The question here is what do the relevant byelaws regulate? Do local authorities operate car parks in country parks any differently, in terms of legal requirements and restrictions, from private sector car park operators?

In respect of byelaws created under the Road Traffic Regulations Act 1984 (RTRA), section 22 brings country parks within the scope of that legislation, and sections 32 and 33 give local authorities the powers to provide off-street parking. Where local authorities do provide such parking, section 35 gives them the powers to make Orders (byelaws) that govern the use of the car parks.

You have helpfully showed us three examples of car parks operated under section 35 of the RTRA. These impose a substantial number of conditions and requirements upon motorists,

with certain powers available to the local authority including the power to prosecute for contraventions. We accept that in these circumstances there is a SLR.

However, of the other sample byelaws we have seen that were not made under section 35 of the RTRA, none appear to create a SLR in relation to the car parks. Instead, they regulate parking generally within the area of the country park, and enable local authorities to control and govern the proper use of the parks.

It is therefore HMRC's view that local authorities engage as public authorities when they operate car parks within country parks pursuant to byelaws made under section 35 of the RTRA, and therefore this is a non-business activity. Otherwise, the supply of parking within country parks is a business activity which is taxed at the standard rate of VAT.

Yours sincerely

**David Smith**  
**Senior Policy Advisor**