STATUTORY INSTRUMENTS

1979 No. 119

ROAD TRAFFIC

The Control of Off-Street Parking (Scotland) Order 1979

Made - - - -	*6th February* 1979
Laid before Parliament	*14th February* 1979
Coming into Operation	*1st April* 1979

At the Court at Buckingham Palace, the 6th day of February 1979

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 11 of the Transport Act 1978**(a)**, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and commencement

1. This Order may be cited as the Control of Off-street Parking (Scotland) Order 1979, and shall come into operation on 1st April 1979.

Interpretation

2.—(1) In this Order, unless the context otherwise requires,

"the Act of 1967" means the Road Traffic Regulation Act 1967**(b)**;

"controlled area" means an area in the region or islands area in Scotland where the provision of off-street parking is controlled in accordance with the provisions of this Order;

"local authority" means a regional or islands council;

"licence" means a licence under this Order;

"long-term parking" and "short-term parking" mean parking for a continuous period exceeding, or, as the case may be, not exceeding, four hours or such longer period as may be prescribed;

"public off-street parking place" means a place, whether above or below ground and whether or not consisting of or including buildings, where parking space for motor vehicles off the highway is made available by any person to the public for payment; and references to operating, or to the operator of, such a parking place shall be construed as references to making or as the case may be to the person making, such parking space at the parking place so available;

"prescribed" means prescribed by regulations;

(a) 1978 c. 55. **(b)** 1967 c. 76.

"regulations" means regulations made by a local authority under this Order;

"urban road" means a road which—

(i) is a restricted road for the purposes of section 71 of the Act of 1967 (30 m.p.h. speed limit), or

(ii) is subject to an order under section 74 of that Act imposing a speed limit of not more than 40 m.p.h.

(2) Any reference in this Order to an enactment is a reference to that enactment as amended by any subsequent enactment.

Designation of controlled areas

3.—(1) The provisions of this Order shall have effect for enabling a regional or islands council by regulations to designate (subject to paragraph (2) below) any area within the region or islands area as a controlled area for the purposes of this Order and the provisions of this Order shall apply to any area so designated.

(2) No area may be designated as a controlled area unless it comprises only premises to which there is no road access otherwise than (directly or indirectly) from one or more urban roads.

Regulations of local authority for prescribing the nature and extent of the control

4.—(1) Regulations designating any area within a region or islands area as a controlled area may—

(*a*) include provision—

(i) as to the maximum number of parking spaces to be made available at licensed parking places for all, or for any respectively, of the descriptions of parking referred to in Article 7(*b*) of this Order in, or in any specified part of any controlled area;

(ii) requiring that, in the case of licensed parking places in a particular controlled area or part of a controlled area, all or any of the matters referred to in Article 7(*c*) of this Order shall or as the case may be shall not be the subject of conditions specified in the licence;

(iii) regulating the conditions which may be imposed with respect to any of the matters aforesaid;

(*b*) include such supplementary, incidental and consequential provision as appears to the local authority to be necessary for the purposes of this Order in relation to the region or islands area; and

(*c*) make different provision as respects like matters in different circumstances;

and the power to make such regulations shall include power to vary or revoke them.

(2) The provisions of Part I of the Schedule to this Order shall apply to the making of regulations for designating an area as a controlled area or for varying or revoking any such regulations previously made.

Requirement for licence

5. Subject to Article 16 of this Order, in a controlled area no person other than the local authority shall operate a public off-street parking place of a prescribed description except under and in accordance with the terms and conditions of a licence granted to that person by the local authority.

Permanent or limited licences

6. An applicant for a licence in respect of any premises may apply either for a permanent licence or for a licence for such limited period not exceeding five years as the applicant may specify, and any application to the local authority for a licence shall be accompanied by the prescribed fee appropriate to the type of licence applied for towards the administrative expenses of the local authority under this Order; and, subject to Article 4 of this Order, on any such application the local authority may at their discretion either grant the applicant a licence of the type applied for or refuse the application.

Terms and conditions of licences

7. Subject to Article 4 of this Order, every licence shall specify—

(*a*) the period of its duration, that is to say, whether it is a permanent licence or a licence for a limited period and, if for a limited period, the period for which it is granted;

(*b*) the maximum number of parking spaces to be provided at the licensed parking place for all, and, if the local authority think fit, for any respectively, of the following descriptions of parking, namely, short-term parking, long-term parking, casual parking and regular parking or any particular category of regular parking;

(*c*) any conditions in addition to those specified in Article 8 of this Order subject to which the licence is granted, being such conditions, if any, as the local authority may think fit with respect to all or any of the following matters, namely—

(i) the scale of charges, or the minimum charges, or the maximum and minimum charges, to be made for the use of parking spaces at the licensed parking place for all, or for any respectively, of the descriptions of parking referred to in paragraph (*b*) of this Article;

(ii) the proportion of parking spaces to be available respectively for casual parking and for, or for any specified category of, regular parking;

(iii) the times of opening and closing of the licensed parking place for the reception of vehicles;

(iv) the manner in which users of the licensed parking place are to be informed of the effect of the terms and conditions of the licence;

(v) the keeping by the operator of the licensed parking place as respects all, or as respects any respectively, of the descriptions of parking referred to in the said paragraph (*b*) of records showing for each day the number of vehicles using parking spaces at the licensed parking place and the sums received by way of charges for the use of those parking spaces.

Inspection of parking places and production of records

8. It shall be a condition of every licence—

(*a*) that any person authorised in that behalf in writing by the local authority may, subject to production if requested of his authority, at all reasonable hours enter upon and inspect the licensed parking place; and

(*b*) that the holder of the licence shall, on being given reasonable notice for the purpose by any such person, produce to that person and permit him to examine and make copies of, or take extracts from, any records required by virtue of Article 7(*c*)(v) of this Order to be kept in connection with the operation of that parking place;

but if any such person discloses to any other person otherwise than in the performance of his duty any information with regard to the operation of that parking place or to any trade secret obtained by him at that parking place or from any such examination, or if any member or officer of the local authority to whom any such information is disclosed by reason of his official position discloses that information to any other person otherwise than in the performance of his duty, that person or, as the case may be, that member or officer shall be liable on conviction in a court of summary jurisdiction to a fine not exceeding £100.

Decisions of local authority—statement of reasons

9. Where the local authority decide in pursuance of Article 6 of this Order—

(*a*) to refuse an application for a licence; or

(*b*) to grant a licence subject to any conditions which they are not required by regulations under Article 4 of this Order to impose with respect to any of the matters referred to in Article 7(*c*)(i) to (v) of this Order,

they shall inform the applicant in writing of the reasons for their decision at the same time as they inform him of that decision.

Transfer, surrender, variation and revocation of licences

10. Where a licence has been granted—

(*a*) the local authority shall, if so requested by a successor in title to the business (so far as it consists of the operation of the licensed parking place) of the person to whom the licence was granted, transfer the licence to that successor in title, but a licence shall not otherwise be transferable;

(*b*) the holder of the licence may at any time surrender it by giving notice in writing for the purpose to the local authority which shall include a statement certifying either that the holder is the only person entitled to any interest in the licensed premises or that not less than twenty-one days before the date of the notice the holder has notified all other persons known to him to be so entitled of his intention to serve the notice;

(*c*) the local authority may at any time on the application or with the agreement of the holder of the licence vary any of the terms and conditions specified in the licence under Article 7(*b*) and (*c*) of this Order;

(*d*) in the case of a permanent licence, the local authority shall have the powers of revocation or variation of the licence conferred by Part II of the Schedule to this Order.

Appeals and compensation

11. The provisions of Parts III and IV of the Schedule to this Order shall have effect with respect to appeals and compensation in connection with certain decisions of a local authority under this Order; and the local authority shall comply with the prescribed requirements as to the giving to an applicant for a licence of information as to the rights conferred by the said Parts III and IV; and every person who applies for or is the holder of a licence in respect of any premises shall give to any other person known to him to be entitled to any interest in those premises information as soon as may be—

(*a*) of the making of the application; and

(*b*) of any decision of the local authority relating to the premises of which he is, or is deemed under paragraph 14(2) of the said Schedule to have been, notified by the local authority; and

(*c*) of the bringing, and of the determination or abandonment, of any appeal from any such decision brought by that person under the said Part III.

Contravention of terms or conditions of licence by the holder—penalties

12. Subject to Article 16 of this Order and to the provisions of Part V of the Schedule to this Order, any holder of a licence who contravenes or fails to comply with any of the terms and conditions of the licence and who does not show that the contravention or failure was due to an act or omission of a person not connected with the operation of the licensed parking place which the persons so connected could not reasonably have been expected to prevent shall be liable on conviction in a court of summary jurisdiction—

(*a*) in the case of a term imposed under Article 7(*b*) or a condition with respect to any of the matters referred to in Article 7(*c*)(i), (ii), (iii) or (v) of this Order, to a fine not exceeding £100;

(*b*) in any other case to a fine not exceeding £50;

and on the conviction of the holder of a licence of an offence under this Article the court before whom he is convicted may, if the court is satisfied that it is proper so to do by reason of the extent to which, or the period over which, or the frequency with which, the holder of the licence has contravened or failed to comply with the terms and conditions of the licence or by reason of the wilfulness of the offence, make an order for the revocation of the licence.

Suspension of revocation or variation of licence pending an appeal

13. Save as provided by Article 12 of this Order, or Part II of the Schedule to this Order, a licence shall not be revoked; and the revocation or variation of a licence under the said Part II shall not take effect—

(*a*) before the expiration of the period for giving notice of appeal under Part III of that Schedule from the local authority's decision to revoke or, as the case may be, vary the licence; or

(*b*) if such a notice of appeal is duly given, until the effectiveness or otherwise of the local authority's decision is finally determined in accordance with the relevant procedure.

Operation of parking place without a licence—penalties

14. Subject to Article 16 of this Order and to the provisions of Part V of the Schedule to this Order, any person who, in contravention of Article 5 of this Order operates a public off-street parking place without holding a licence for the purpose shall be liable on conviction in a court of summary jurisdiction—

(*a*) to a fine not exceeding £200; or

(*b*) in the case of a second or subsequent conviction of an offence under this Article, to a fine not exceeding £400.

Application of principles of the control to the local authority's own parking places

15. The local authority for a controlled area shall have regard to any regulations for the time being in force under this Order when exercising in that area any of their respective functions under sections 28 to 32 of the Act of 1967; and where a public off-street parking place is provided in a controlled area by the local authority under the said section 28, any such regulations shall apply to the operation of that parking place with such modifications as may be prescribed for the purpose, being modifications appearing to the local authority to be necessary to ensure that the parking place is operated by or on behalf of the local authority with suitable provision as to the matters referred to in Article 7(*b*) and (*c*)(i) to (iv) of this Order in like manner as if it were being operated under a licence granted by the local authority.

Suspension of control in an emergency

16.—(1) Subject to the provisions of this Article, the Secretary of State may at any time, if it appears to him expedient so to do by reason of any emergency which appears to him to have arisen or to be likely to arise, by order in a statutory instrument which shall be laid before Parliament after being made, provide that this Article shall apply in relation to—

(*a*) some or all of the areas for the time being designated as controlled areas in one or more region or islands area specified in the order, or

(*b*) such part or parts of any one or more of those areas as may be specified in the order, or

(*c*) all areas for the time being designated as controlled areas in all regions or islands areas.

(2) During the period while any order under paragraph (1) of this Article is in force in relation to any controlled area or part thereof—

(*a*) any public off-street parking place in that area or part may be operated as if that area or part were not, or, as the case may be, were not comprised in, a controlled area; and

(*b*) nothing in Article 12 or 14 of this Order shall apply to anything done at any such parking place during that period.

(3) Except where the order will relate to all areas for the time being designated as controlled areas in all regions or islands areas, the Secretary of State shall, before making an order under paragraph (1) of this Article, consult with the local authority concerned.

(4) The power of the Secretary of State to make an order under paragraph (1) of this Article shall include power, exerciseable in the same manner and subject to the same conditions, to vary or revoke any previous order under that paragraph.

N. E. Leigh,
Clerk of the Privy Council.

SCHEDULE

CONTROL OF OFF-STREET PARKING

PART I

Provisions as to making of regulations

1.—(1) Before deciding to propose the making of regulations under this Order with respect to any matter, the local authority shall consult with such representative organisations as they think fit and, if after such consultation they decide to make such a proposal, they shall cause to be published in the Edinburgh Gazette and in one or more local newspapers circulating in the area to which the regulations will relate a notice stating that they propose to make such regulations, giving a summary of their effect, and specifying—

(*a*) a place at which provisional draft regulations may be inspected at all reasonable hours and from which a copy of those draft regulations may be obtained on request; and

(*b*) a date (not being earlier than six weeks after the date of publication of the notice) by which representations with respect to the draft regulations, which should include the grounds for any objection thereto, must be sent in writing to the local authority;

and on causing such a notice to be published the local authority shall send a copy of the notice and of the draft regulations to the Secretary of State and shall not make any regulations in pursuance of the proposal to which the notice relates before the expiration of the period of twelve weeks beginning with the date when the notice is published.

(2) Before deciding to propose the designation of a controlled area under this Order, the local authority shall consult organisations representative of the disabled.

2.—(1) As soon as may be after the date specified by the notice aforesaid for the making of representations with respect to the draft regulations, the local authority shall send to the Secretary of State copies of all representations received by them by that date or, if no representations have been so received, shall inform the Secretary of State in writing of that fact.

(2) If representations are received by the local authority from organisations representative of the disabled about the proposal to designate a controlled area, the local authority shall send to the Secretary of State (together with copies of the other representations (if any) received as mentioned in subparagraph (1) of this paragraph) a statement of how parking requirements of the disabled arising from implementation of the proposal are met by existing facilities or, if in the opinion of the local authority they are not already so met, how it is intended to meet them.

3. In the case of any proposal to make regulations under this Order, the Secretary of State may at any time before the expiration of the period of twelve weeks aforesaid give to the local authority a direction in writing that, except with the consent of the Secretary of State, regulations shall not be made in pursuance of that proposal—

(*a*) with respect to all, or with respect to such as may be specified, of the matters to which the proposal relates; or

(*b*) in relation to, or to a specified part of, any specified area which has been or is proposed to be designated as a controlled area;

and on any such direction being given the Secretary of State shall cause notice thereof to be published in the Edinburgh Gazette and the local authority shall comply with that direction.

4.—(1) Where in the case of any such proposal as aforesaid to make regulations the Secretary of State has given such a direction as aforesaid, he shall as soon thereafter as he is in a position to do so notify the local authority in writing with respect to each of the matters or areas to which the direction relates either—

(*a*) that he consents to the making of regulations with respect to that matter or in relation to that area in pursuance of that proposal; or

(*b*) that he is not prepared in any circumstances to consent to the making of such regulations in pursuance of that proposal; or

(*c*) that subject to sub-paragraph (2) of this paragraph he is prepared to consider consenting to the making of such regulations in pursuance of that proposal if a revised draft is submitted to him for the purpose incorporating modifications of a specified nature or in other specified circumstances;

and before deciding the notification to be given to the local authority under this paragraph with respect to any matter or in relation to any area the Secretary of State may if he thinks fit appoint a person to hold an inquiry in connection with that matter or area, and subsections (4) to (8) of section 210 of the Local Government (Scotland) Act 1973**(a)** shall apply to any such inquiry.

(2) The Secretary of State shall not consider any such revised draft as is referred to in sub-paragraph (1)(*c*) of this paragraph unless he is satisfied that the local authority—

(*a*) have taken appropriate steps to inform any persons affected by the modifications incorporated in the revised draft of the nature of those modifications and have afforded those persons a reasonable opportunity to make representations with respect to the revised draft regulations; and

(*b*) have supplied the Secretary of State with copies of any such representations made.

5.—(1) In the case of any such proposal as aforesaid to make regulations the local authority may if they think fit at any time after the expiration of the period of twelve weeks aforesaid make regulations in pursuance of that proposal with respect to any matter or in relation to any area which is not the subject of a direction under paragraph 3, or which is the subject of a consent under paragraph 4(1)(*a*), of this Schedule, being regulations either—

(*a*) in the form of the provisional draft with any modifications necessary in consequence of any such direction with respect to any other matter or area; or

(*b*) subject to sub-paragraph (2) of this paragraph, in the form of that draft modified in such manner as the local authority think fit, whether as a result of any representations to which paragraph 2 of this Schedule applies or otherwise.

(2) The local authority shall not make any regulations by virtue of sub-paragraph (1)(*b*) of this paragraph unless a draft of the regulations in the form in which they are to be made has been submitted to the Secretary of State and the Secretary of State has given his consent to their being made.

(a) 1973 c. 65.

6. In deciding in the case of any such proposal as aforesaid whether or not to make any regulations in pursuance thereof by virtue of paragraph 5 of this Schedule the local authority shall have regard to any representations to which paragraph 2 of this Schedule applies; and in deciding whether or not to give any consent under this Part of this Schedule to the making of regulations by the local authority in pursuance of any such proposal, the Secretary of State shall have regard to any such representations, to the report of any person appointed to hold an inquiry under paragraph 4 of this Schedule in connection with the proposal in question, and to any such representations as are referred to in sub-paragraph (2) of the said paragraph 4; and the Secretary of State shall cause notice of the giving by him of any consent under this Part of this Schedule to be published in the Edinburgh Gazette.

PART II

Revocation or variation of permanent licence

7. Subject to the provisions of Parts III and IV of this Schedule with respect to appeals and compensation, the provisions of this Part of this Schedule shall apply in relation to any permanent licence granted by the local authority.

8. If at any time it appears to the local authority expedient to do so in the interests of the proper planning of transport in their area they may by not less than twelve months notice in writing to the holder of the licence either—

(*a*) revoke the licence; or

(*b*) vary the terms and conditions thereof specified under Article 7(*b*) and (*c*) of this Order.

9. If at any time it appears to the local authority that the holder of a licence (whether the person for the time being holding that licence or a previous holder thereof) has discontinued making parking spaces available to the public at the licensed parking place and that the discontinuance has lasted for a period of not less than two years, then, subject to paragraph 13 of this Schedule, they may by notice in writing to the holder of the licence revoke it.

10. If at any time it appears to the local authority that for a period of not less than two years the person, or each of the persons, who was for the time being during that period the holder of a licence in respect of a licensed parking place has made available to the public at that parking place a substantially lower number of parking spaces than that authorised by the licence, then, subject to paragraph 13 of this Schedule, they may by notice in writing to the holder of the licence vary the terms and conditions of the licence specified under the said Article 7(*b*) and (*c*) so as to authorise the provision at the licensed parking place of only that number of parking spaces which it appears to the local authority was being provided at the date of the notice.

11. If in the case of a licensed parking place which was ready for operation at the date of the grant of the licence the local authority are satisfied at any time that for a period of not less than two years beginning with that date the person, or each of the persons, who was for the time being during that period the holder of the licence has not made any significant number of parking spaces available to the public at the licensed parking place, then, subject to paragraph 13 of this Schedule, they may by notice in writing to the holder of the licence revoke it.

12.—(1) Where at the date when the licence was granted the development as a public off-street parking place of the premises in respect of which the licence was granted had not been begun or had not been completed then, subject to paragraph 13 of this Schedule—

(*a*) if there has been a period of not less than three years since that date without that development being begun, or

(*b*) if there has been a period of not less than seven years since that date without that development being completed, or

(*c*) if for a period of not less than two years beginning with the date of the completion of that development the person, or each of the persons, who was for the time being during that period the holder of the licence has not made any significant number of parking spaces available to the public at the licensed parking place,

the local authority may by notice in writing to the holder of the licence revoke it.

(2) For the purposes of the foregoing sub-paragraph, the development there referred to shall be taken to begin at the earliest date on which any specified operation within the meaning of section 40(2) of the Town and Country Planning (Scotland) Act 1972(a) comprised in that development begins to be carried out.

13. Where notice under paragraph 9, 10, 11 or 12(1) of this Schedule is given after the expiration of the relevant period referred to in the paragraph in question the notice shall be of no effect if it is given more than three months after the expiration of that period.

PART III

Rights of appeal

14.—(1) If a person who is, or who proposes to become, the operator of a public off-street parking place in a controlled area or any other person entitled to an interest in the premises used or proposed to be used for the purposes of that parking place is aggrieved by a decision of the local authority—

(*a*) to refuse an application for the grant of a licence in respect of those premises; or

(*b*) as to the terms and conditions to be specified under Article 7(*b*) and (*c*) of this Order in a licence granted in respect of those premises; or

(*c*) to refuse an application for a variation of the terms and conditions so specified in a permanent licence granted in respect of those premises; or

(*d*) to revoke a licence granted in respect of those premises; or

(*e*) to vary under Part II of this Schedule any of the terms and conditions specified under the said Article 7(*b*) and (*c*) in a permanent licence granted in respect of those premises,

he may by notice served within such time (not being less than twenty-eight days from the date of notification of the decision to which it relates) and in such manner as the Secretary of State may by regulations under paragraph 17 of this Schedule direct, appeal to the Secretary of State from that decision.

(2) If in a case where—

(*a*) a person makes an application to the local authority for a licence in respect of premises in respect of which a licence is not for the time being in force; or;

(*b*) the person who is the holder of a permanent licence in respect of any premises duly makes an application to the local authority for a specified variation of the terms and conditions of the licence specified under the said Article 7(*b*) and (*c*),

the local authority have not notified that person of their decision on his application by the expiration of the period of two months beginning with the date when they received the application or such longer period beginning with that date as may have been agreed for the purpose between that person and the local authority, the local authority shall be deemed for the purposes of this Schedule to have notified that person at the date of the expiration of that period that they have decided to refuse the application.

(a) 1972 c. 52.

15. The Secretary of State shall not be required to entertain an appeal under this Part of this Schedule from any decision of a local authority if or to the extent that it appears to him that the decision was necessary in order to comply with the requirements of this Order or with any regulations made by the local authority by virtue of Article 4 of this Order which are for the time being in force.

16.—(1) Subject to sub-paragraph (2) of this paragraph, before determining an appeal under this Part of this Schedule the Secretay of State shall, if either the appellant or the local authority so request, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(2) If the Secretary of State thinks fit in any case where such a request as aforesaid is made, he may, instead of complying with that request, appoint a person to hold an inquiry in connection with the appeal, and subsections (4) to (8) of section 210 of the Local Government (Scotland) Act 1973 shall apply to any such inquiry.

17.—(1) The Secretary of State may by regulations make provision as to the procedure to be followed in connection with appeals under this Part of this Schedule, including the procedure in connection with matters preparatory to, or subsequent to, the consideration of the appeal.

(2) Any such regulations shall include provision for the giving of notice to the local authority of any appeal under this Part of this Schedule and of any request made under paragraph 16(1) thereof, and for enabling the local authority to make representations with respect to the matter in question and to appear before and be heard by any person appointed by the Secretary of State for the purposes of sub-paragraph (1) or (2) of the said paragraph 16.

(3) Any regulations under this paragraph shall be made by statutory instrument and be subject to annulment in pursuance of a resolution of either House of Parliament.

18.—(1) On an appeal being brought under this Part of this Schedule from a decision of the local authority, the Secretary of State may either dismiss the appeal or substitute for that decision such other decision, as he thinks fit; and, subject to sub-paragraph (2) of this paragraph, the decision of the Secretary of State on the appeal shall be final and shall be binding both on the appellant and on the local authority, and the local authority shall take such steps as may be necessary to give effect to any such substituted decision.

(2) Subsection (1) read with subsection (6) of section 13 of the Tribunals and Inquiries Act 1971**(a)** (which relates to appeals on points of law from decisions of certain tribunals) shall apply to a decision of the Secretary of State on an appeal under this Part of this Schedule as it applies to a decision of any of the tribunals mentioned in that subsection, but as if the reference to any party to proceedings before such a tribunal were a reference to the local authority or any person who had, or if aggrieved would have had, a right to appeal to the Secretary of State under this Part of this Schedule, whether or not he has exercised that right; and accordingly references in subsections (1) and (3) of that section to a tribunal shall be construed in relation to such an appeal as references to the Secretary of State.

PART IV

Right to compensation in certain circumstances

19. Where a person who, at the date when an area is first designated as a controlled area by regulations of the local authority under this Order, is the operator of a public off-street parking place at premises in that area which have at that date been used as

(a) 1971 c. 62.

such a parking place for a continuous period of not less than six months duly makes an application to the local authority for a licence in respect of those premises before the expiration of the period prescribed for such applications in respect of parking places in operation at that date, and the local authority decide either—

(*a*) to refuse the application; or

(*b*) to grant the applicant a licence on terms and conditions specified under Article 7(*b*) and (*c*) of this Order such that under the licence the applicant will not be able to operate the premises as a parking place to such advantage or potential advantage as immediately before he made his application,

paragraph 22 of this Schedule shall apply to that decision of the local authority.

20. Where—

(*a*) at the date when notice of a proposal to make regulations under this Order designating an area as a controlled area is published by the local authority under paragraph 1 of this Schedule—

(i) planning permission has been granted for a development which consists of or includes the provision at any premises in that area of a public off-street parking place; and

(ii) that development involves substantial building or engineering operations within the meaning of section 275(1) of the Town and Country Planning (Scotland) Act 1972; and

(iii) either one or more specified operations within the meaning of section 40(2) of the said Act of 1972 comprised in that development have begun to be carried out or a contract (other than a lease) has been entered into with a person carrying on a business consisting wholly or mainly of the execution of building operations or of building operations and engineering operations whereby that person has undertaken to erect in the course of that business at the said premises a building or structure as a place for the provision of parking spaces for motor vehicles; and

(*b*) at the date when the area is designated as a controlled area in pursuance of that proposal those premises have not been in use as such a parking place to the full extent provided for by the planning permission for a continuous period of not less than six months; and

(*c*) the person operating or proposing to operate those premises as such a parking place duly makes application to the local authority for a licence in respect of those premises before the expiration of the period prescribed for such applications in respect of parking places in operation at the date referred to in sub-paragraph (*b*) of this paragraph; and

(*d*) the local authority decide either—

(i) to refuse the application; or

(ii) to grant the applicant a licence

on terms and conditions specified under Article 7(*b*) and (*c*) of this Order such that under the licence the applicant will not be able to operate the premises as such a parking place to such advantage or potential advantage as if the area had not been designated as a controlled area,

paragraph 22 of this Schedule shall apply to that decision of the local authority.

21. Paragraph 22 of this Schedule shall apply to any decision of the local authority—

(*a*) to revoke a permanent licence under paragraph 8 of this Schedule; or

(*b*) to vary under the said paragraph 8 any of the terms and conditions specified in a permanent licence under the said Article 7(*b*) and (*c*) in such manner that the holder of the licence will not be able to operate the licensed parking place to such advantage or potential advantage as if the variation had not been made; or

(*c*) to refuse an application by the holder of a permanent licence for a specified variation of the terms and conditions specified under the said Article 7(*b*) and (*c*) in a case where—

(i) by reason of a happening beyond the control of the holder of the licence he cannot continue to operate the licensed parking place in accordance with the licence as for the time being in force to such advantage or potential advantage as before that happening; and

(ii) the making of that variation would wholly or partly mitigate the adverse effects of that happening without enabling the holder of the licence to operate the licensed parking place to greater advantage or potential advantage than before that happening.

22.—(1) If, on a claim made to the local authority in writing within the period of six months or such longer period as may be allowed under sub-paragraph (2) of this paragraph beginning with the date when the person who is, or who proposes to become, the operator of a public off-street parking place is, or is deemed under paragraph 14(2) of this Schedule to have been, notified of a decision of the local authority under the provision of this Order relating to that parking place, that person or any other person entitled to an interest in the premises used or proposed to be used for the purposes of that parking place shows that the decision is one to which, under paragraph 19, 20 or 21 of this Schedule, this paragraph is to apply and that the claimant has suffered damage in consequence of that decision by depreciation of the value of his interest in those premises, or by being disturbed in his enjoyment of those premises, the local authority shall pay the claimant compensation in respect of that damage.

(2) If within the period of six months referred to in sub-paragraph (1) of this paragraph any such person as is referred to in that sub-paragraph has made an application to the Secretary of State for that purpose and has given notice to the local authority of the making of that application, the Secretary of State may, if he thinks fit in the circumstances of the case, direct that the said sub-paragraph (1) shall apply in relation to the decision in question as if for the reference in that sub-paragraph to six months there were substituted a reference to such longer period as the Secretary of State thinks fit.

(3) For the purpose of determining whether or not a claimant has suffered such damage as aforesaid, there shall be taken into account any alternative use to which the premises aforesaid could reasonably be put, being a use in the case of which the local authority show either—

(*a*) that any necessary planning permission, whether conditional or unconditional, for that use has already been granted; or

(*b*) that the local planning authority have given an undertaking that if planning permission for that use is applied for it will be granted either unconditionally or subject to specified conditions;

and in a case where this paragraph applies by virtue of paragraph 21(*c*) of this Schedule there shall also be taken into account any alternative variation to that applied for by the holder of the licence in question which the local authority have undertaken to grant on an application being made for that purpose.

(4) Section 167 of the Town and Country Planning (Scotland) Act 1972 shall apply to any compensation payable under sub-paragraph (1) of this paragraph in respect of depreciation of the value of a claimant's interest in the premises aforesaid; and any question as to the right to, or the amount of, compensation under the said sub-paragraph (1) shall be referred to and determined by the Lands Tribunal, and in relation to the determination of any such question the provisions of sections 9 and 11 of the Land Compensation (Scotland) Act 1963**(a)** shall apply subject to any necessary modifications.

(a) 1963 c. 51.

(5) Where compensation has become payable under sub-paragraph (1) of this paragraph in respect of an interest in any premises and subsequently an order with respect to the use of those premises as a parking place is made under section 42 or section 49 of the said Act of 1972, the amount of that compensation shall be taken into account in assessing any compensation on a claim by reason of expenditure, loss of damage in consequence of that order made in respect of that interest under section 153 or, as the case may be, section 159 of that Act.

(6) Where any expenses are incurred by a local authority in the payment of compensation under sub-paragraph (1) of this paragraph in consequence of a decision of theirs, then, if or to any extent to which it appears to the Secretary of State that the decision was attributable to regulations made by the local authority under Article 4 of this Order, the Secretary of State may, if it appears to him to be expedient to do so, require the local authority to contribute towards those expenses such sum as appears to him to be reasonable.

23. Where notice of appeal from any such decision of the local authority as is referred to in paragraph 19, 20 or 21 of this Schedule has been duly given under Part III of this Schedule—

(*a*) paragraph 22 of this Schedule shall not have effect in relation to that decision until that appeal is determined or abandoned;

(*b*) the person who is, or who proposes to become, the operator of a public off-street parking place at the premises to which the decision relates shall be deemed for the purposes of the said paragraph 22 to have been notified of the local authority's decision on the date when the appeal is determined or abandoned; and

(*c*) if on that appeal the Secretary of State substitutes a different decision for that of the local authority, the local authority shall be deemed for the purposes of the said paragraph 22 to have made that substituted decision and not their original decision.

24. Where, in the case of a decision of the local authority relating to any premises, paragraph 22 of this Schedule applies to that decision both by virtue of paragraph 19 and by virtue of paragraph 20 of this Schedule, then—

(*a*) upon the person who is, or who proposes to become, the operator of a public off-street parking place at those premises making a claim in respect of that decision under the said paragraph 22 by virtue of either of the said paragraphs 19 and 20, any subsequent claim in respect thereof by that person by virtue of the other of those paragraphs, and any claim in respect thereof made whether before or after that person's claim by any other person by virtue of the other of those paragraphs, shall be of no effect; and

(*b*) subject to the foregoing sub-paragraph, if a claim in respect of that decision is made under the said paragraph 22 by any person by virtue of either of the said paragraphs 19 and 20 any subsequent claim in respect thereof by virtue of the other of those paragraphs shall be of no effect.

PART V

Permissible periods of unlicensed operation of parking place

25. Where, at the date when any area first becomes a controlled area, a person is operating a public off-street parking place in that area, he shall not be guilty of an offence under Article 14 of this Order by reason of continuing to operate the parking place after that date without a licence—

(*a*) at any time before the expiration of the period prescribed for the making of applications for licences in respect of parking places in operation at that date; or

(*b*) if during that period he duly makes an application for a licence in respect of the parking place, at any time after the expiration of that period but before the local authority notify him either that he has been granted a licence or that his application is refused; or

(*c*) if the local authority notify him that his application is refused, at any time thereafter before the expiration of the time for giving notice of appeal from that decision under Part III of this Schedule; or

(*d*) if such a notice of appeal is duly given, at any time thereafter until either the local authority's decision becomes finally effective under the procedure provided for by the said Part III or the licence is granted.

26. Where in pursuance of the application referred to in sub-paragraph (*b*) of paragraph 25 of this Schedule the person referred to in that paragraph is granted a licence, he shall not be guilty of an offence under Article 12 of this Order by reason of contravening or failing to comply with any of the terms and conditions specified in the licence under Article 7(*b*) and (*c*) of this Order—

(*a*) at any time before the expiration of the time for giving notice of appeal under Part III of this Schedule from the decision of the local authority as to those terms and conditions; or

(*b*) if such a notice of appeal is duly given, at any time thereafter until either the local authority's decision becomes finally effective under the procedure provided for by the said Part III or the terms and conditions specified as aforesaid in the licence are varied as a result of that procedure.

27. Where the operator of a public off-street parking place who is the holder of a licence in respect of that parking place granted for a limited period duly makes an application to the local authority before the date of expiry of that licence for a new licence (whether permanent or for a limited period) authorising the operation of that parking place for a further period after that dated, then, if and for so long as he continues to operate that parking place after that date in accordance with the terms and conditions of the expired licence (other than the provision as to its date of expiry)—

(*a*) he shall not be guilty of an offence under the said Article 14 by reason of operating the parking place after the date aforesaid without a licence—

(i) at any time before the local authority notify him either that he has been granted a new licence in respect of the parking place or that his application is refused; or

(ii) if the local authority notify him that his application is refused, at any time thereafter before the expiration of the period for giving notice of appeal from that decision under Part III of this Schedule; or

(iii) if such a notice of appeal is duly given, at any time thereafter until either the local authority's decision becomes finally effective under the procedure provided for by the said Part III or a new licence is granted;

(*b*) where he is granted a new licence in pursuance of the application aforesaid, he shall not be guilty of an offence under Article 12 of this Order by reason of contravening or failing to comply with any of the terms and conditions specified in that new licence under Article 7(*b*) and (*c*) of this Order—

(i) at any time before the expiration of the time for giving notice of appeal under Part III of this Schedule from the decision of the local authority as to those terms and conditions; or

(ii) if such a notice of appeal is duly given, at any time thereafter until either the local authority's decision becomes finally effective under the procedure provided for by the said Part III or the terms and conditions specified as aforesaid in the new licence are varied as a result of that procedure.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order applies, with appropriate modifications, the provisions of Section 36 of, and Schedule 5 to, the Transport (London) Act 1969 (c. 35) to Scotland. These provisions deal with the control of public off-street parking.

The text of the Order follows closely the wording of the 1969 Act but incorporates the changes required or permitted by Section 11 of the Transport Act 1978.

Articles 3 and 4 of the Order enable regional and islands councils by regulations to designate controlled areas in which under Article 5 the provision of public off-street parking places will require a licence. The procedure for such designation is set out in Part I of the Schedule.

Articles 6 and 7 provide for permanent or limited licences and for the terms and conditions of licences.

Inspection of parking places is provided for in Article 8. Local authorities are required by Article 9 to give reasons for their decisions.

Article 10 and Part II of the Schedule deal with the transfer, surrender, variation and revocation of licences.

Provisions for appeals against decisions with respect to licences and for compensation in certain cases is made in Article 11 and 13 and in Parts III and IV of the Schedule.

Contravention by the holder of a licence of its terms and conditions is an offence (Article 12) as also is the operation of a public off-street parking place without a licence (Article 14).

Regional and islands councils are required by Article 15 to apply the principles of the control to their own public off-street parking places situated in a controlled area.

Article 16 gives the Secretary of State power to suspend the control in an emergency.

Part V of the Schedule provides for permissible periods of unlicensed operation of public off-street parking places in certain cases.

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