POLICY NOTE

THE PARKING PROHIBITIONS (ENFORCEMENT AND ACCOUNTS) (SCOTLAND) REGULATIONS 2023

SSI 2023/373

The above instrument was made in exercise of the powers conferred by sections 58(4)(b) and (5), 59(1) and (4)(a) and 66 of the Transport (Scotland) Act 2019. The instrument is subject to affirmative procedure.

Summary Box

The purpose of the instrument is to make detailed provision for the process a local authority should follow when enforcing the new parking prohibitions created by the Transport (Scotland) Act 2019. The Act prohibits pavement parking, double parking and parking at dropped kerbs.

Policy Objectives

The instrument is required to make detailed provision for the process a local authority should follow when enforcing the parking prohibitions in relation to:

- the process of issuing and paying a Penalty Charge Notice (PCN) and Enforcement Notices,
- reviews and appeals of decisions in relation to Enforcement Notices,
- the manner in which a Notices may be enforced and the steps that may be taken following cancellation of a Notice,
- the amount that may be imposed as a penalty charge, and provision for discounts and charge certificates,
- the keeping and publication of accounts by local authorities.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Background

The Scottish Government has been working to improve parking legislation in Scotland in order to tackle the impact of inconsiderate and obstructive parking and ensure that our roads and pavements are accessible for all.

As part of this work, the Transport (Scotland) Act 2019 bans pavement parking, double parking and parking at dropped kerbs, and gives local authorities the relevant powers to enforce these new provisions. The Act also gives local authorities the power to exempt footways from the pavement parking prohibition in certain circumstances and in accordance with Ministerial directions. These powers give local authorities the tools they need to be able to tackle the issues of inconsiderate and obstructive parking. To support the new provisions, a suite of secondary legislation is required to bring the new legislation into force and to make detailed provision in relation to the procedure to be followed by local authorities.

The parking prohibitions contained in the Transport (Scotland) Act 2019 support the Scottish Government's longstanding aim of tackling inconsiderate and obstructive parking.

Inconsistent, obstructive or dangerous parking can and does cause serious problems for everyone, and puts the safety of pedestrians and other motorists in jeopardy. The parking prohibitions are aimed at promoting, supporting and advancing the rights of pedestrians to ensure that our pavements and roads are accessible for all.

The parking prohibitions will be a significant alteration from the current situation for the driving public and will be highlighted with additional road signs and markings. Prior to the implementation of the ban, the Scottish Government will undertake a nationwide publicity campaign in this regard to raise awareness to the driving public.

These Regulations and subsequent Parking Standards Guidance, which will go hand in hand with the Regulations, are needed to provide local authorities a procedure to follow when enforcing the parking prohibitions, and in line with the powers provided in the Act.

Section 58(1) of the Act provides that a Penalty Charge is payable in respect of a contravention of the pavement parking prohibition, the double parking prohibition or the dropped footway parking prohibition. Section 58(2) provides that where a Local Authority considers that a Penalty Charge is payable under the Act in respect of a contravention occurring in its area it may issue a PCN. These Regulations make provision in relation to the amount that may be imposed as a penalty charge.

Under the powers provided by Section 59 of the Act, these Regulations make provision in relation to the enforcement of the pavement parking prohibition, the double parking prohibition and the dropped footway parking prohibition.

Under Section 66 of the Act, these Regulations make provision in relation to the keeping and publication of accounts.

Penalty Charges and Enforcement

Part 2 of the Regulations makes provision about penalty charges, including the amount of the charge and the procedure for enforcement of the parking prohibitions.

Regulation 2 sets the amount of the charge and provides for discounts and increased charges in certain circumstances. The penalty charge payable for a contravention of the parking prohibitions is £100. If the penalty charge is paid within 14 days of receiving the initial PCN or an enforcement notice under regulation 5, the charge is reduced by 50%. Where a charge certificate is served, the penalty charge is increased by 50%.

Regulation 3 makes provision about the circumstances in which a penalty charge is payable by a person other than the registered keeper of a vehicle. This includes where the registered keeper sold or transferred the relevant vehicle before the time of the contravention, where the vehicle was hired to a person under a hiring agreement and where at the time of the contravention, the vehicle was kept or used by a vehicle trader.

Regulations 4, 5 and 6 make provision about the service of penalty charge and enforcement notices. This includes how an enforcement officer can serve a penalty charge, what to do if an enforcement officer was unable to serve the penalty charge and what enforcement notice can be issued where payment of the penalty charge has not happened. Paragraphs 2, 3 and 4 of the schedule detail the particulars which are to be included in notices served under regulations 4, 5 and 6.

Regulation 7 makes it an offence to remove, or interfere with, a penalty charge notice. Regulation 7 also details that a person guilty of this offence is liable to a fine not exceeding level 2 on the standard scale.

Regulation 8 provides for the circumstances in which a penalty charge is not payable, or is to be refunded. These circumstances include where the contravention is subject to criminal proceedings or where a Fixed Penalty Notice (FPN) has been issued by the Police.

Regulation 9 provides that a 'charge certificate' imposing an increased charge may be served where an enforcement notice is served on a person and the penalty charge to which it relates is not paid before the end of the relevant period. Regulation 9 provides for what the 'relevant period' means in different circumstances, such as where a notice of rejection has been served following the making of representations but no appeal has been made, where there has been an unsuccessful appeal to the First-tier or Upper Tribunal, where an appeal has been withdrawn or where no representations were made within the payment period.

Representations and Appeals

Part 3 of the Regulations makes provision about representations and appeals against enforcement notices.

Regulation 10 makes provision about how the recipient of an enforcement notice may make representations to the local authority against the decision to serve the notice and specifies the grounds on which such representations can be made. These grounds include that the alleged contravention did not occur, that the penalty charge exceeds the amount payable, that the penalty charge is payable by a person other than the registered keeper and that the recipient was never the registered keeper or became registered keeper after the alleged contravention.

The grounds also include that the relevant vehicle was in the control of a person who did not have the consent of the registered keeper, that the conduct when issuing the penalty charge is subject to proceedings, that the enforcement notice should not have been served, where an enforcement officer had not begun to prepare a PCN when the relevant vehicle was driven away and not including the above, there are compelling reasons why a local authority should cancel the PCN.

Regulation 11 makes provision about how a local authority is to respond to representations made. This includes considering any supporting evidence provided and what to do if a local authority accepts that at least one of the grounds is established.

Regulation 12 makes provision for an appeal to the First-tier Tribunal against the decision of a local authority to serve an enforcement notice.

Financial Provisions

Part 4 of the Regulations sets out financial provisions.

Regulation 13 makes provision about accounts and the application of surplus on accounts. The provision about accounts includes preparing a statement of account, publishing the statement and sending a copy to Scottish Ministers. Regulation 13 also makes provision about a local authority surplus which can only be used for the purposes of facilitating the local authority's local transport strategy and for works specified in section 55(4)(b) to (d) of the Road Traffic Regulation Act 1984.

Consultation

Transport Scotland undertook a consultation on the proposed content of the Enforcement Regulations. The consultation ran for 8 weeks from 2 June 2023 and closed on 29 July 2023. The consultation was designed to gather the views of stakeholders and individuals to help inform the Scottish Government's policy in relation to the Enforcement Regulations.

Thirteen questions were posed in total. The questions focused on the process of issuing and paying a PCN, reviews and appeals, the manner in which a PCN may be enforced and the steps that may be taken following cancellation of a PCN. The questions also sought views on the amount that may be imposed as a penalty charge, and provision for discounts and charge certificates as well as the keeping and publication of accounts by local authorities.

Some 462 responses were received via Citizen Space, the Scottish Government's consultation website. Of these, 16 were submitted by local authorities and 3 by Community Councils. 14 other respondents also identified their organisation, and 429 were listed as individuals. The analysis report was published on 19 September 2023.

All feedback received relating to the process of enforcing the parking prohibitions helped inform the content of The Parking Prohibitions (Enforcement and Accounts) (Scotland) Regulations 2023.

Additionally, throughout the development of these Regulations and the public consultation we engaged with key stakeholders from our Parking Standards Group. The group has a range of stakeholders, including representatives from all 32 local authorities, Living Streets Scotland, COSLA, SCOTS, members of the parking industry, Guide Dogs Scotland, local authorities, Regional Transport Partnerships, Cycling Scotland and the Federation of Small Businesses.

Transport Scotland also consulted with the Courts & Tribunals team within the Scottish Government's Directorate for Justice on the proposed content of the Enforcement Regulations. This consultation was required due to a section of the Regulations giving those who have received a penalty charge for one of the new prohibitions the right to an appeal to the First-tier Tribunal. The Courts & Tribunals team are responsible for the changes required to the powers of the First-tier Tribunal in connection with the new parking prohibitions.

Impact Assessments

A Child Rights and Wellbeing Impact Assessment (CRWIA), Equality Impact Assessment (EQIA), Fairer Scotland Duty Assessment, Island Community Impact Assessment (ICIA) and

Strategic Environmental Impact Assessment has been completed on the Regulations and are attached.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. These Regulations are not envisaged to have an impact on businesses.

Transport Scotland
Roads Directorate

September 2023