SCOTTISH STATUTORY INSTRUMENTS

2016 No. 407

ROAD TRAFFIC

The Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016

Made - - - -	*6th December 2016*
Laid before the Scottish Parliament	*8th December 2016*
Coming into force - -	*23rd January 2017*

The Scottish Ministers make the following Order in exercise of the powers conferred by paragraphs 1(1), 2(1) and 3(3) of schedule 3 of the Road Traffic Act 1991(**a**) and all other powers enabling them to do so.

In accordance with paragraphs 1(1)(d) and 2(1)(c) of that schedule they have received an application for this Order from East Lothian Council.

In accordance with paragraphs 1(3) and 2(3) of that schedule they have consulted the chief constable of the Police Service of Scotland.

Citation and commencement

1. This Order may be cited as the Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016 and comes into force on 23rd January 2017.

Interpretation

2. In this Order—

"the 1991 Act" means the Road Traffic Act 1991; and

"the parking area" means the area designated as a permitted parking area and a special parking area by article 3.

Designation as permitted parking area and special parking area

3. That part of the East Lothian local government area(**b**) specified in schedule 1 is designated as—

(a) a permitted parking area; and

(**a**) 1991 c.40; paragraphs 1(1) and 2(1) of schedule 3 were relevantly amended by the Local Government etc. (Scotland) Act 1994 c.39, schedule 13, paragraph 171. The functions of the Secretary of State under that schedule, so far as they are exercisable within devolved competence, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46).

(**b**) East Lothian local government area was established by section 1(2) and (4) and schedule 1 of the Local Government etc. (Scotland) Act 1994.

(b) a special parking area.

Modifications and application of Part II of the 1991 Act

4. Sections 66, 69 to 74, 79 and 82 and schedule 6 of the 1991 Act apply in relation to the parking area subject to the modifications specified in schedule 2.

Modifications of the Road Traffic Regulation Act 1984

5. The Road Traffic Regulation Act 1984(**a**) is modified in relation to the parking area as specified in schedule 3.

Consequential modification

6. In relation to a parking adjudicator appointed under section 73(3) of the 1991 Act by virtue of this Order, the reference in paragraph 40(b) of schedule 1 of the Tribunals and Inquiries Act 1992(**b**) to a parking adjudicator appointed under section 73(3)(a) of the 1991 Act shall be construed as if it were a reference to a parking adjudicator appointed under section 73(3) of that Act by virtue of this Order.

H YOUSAF
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
6th December 2016

(**a**) 1984 c.27.
(**b**) 1992 c.53.

SCHEDULE 1

Article 3

SPECIFICATION OF PARKING AREA

The East Lothian local government area, excluding the following trunk roads in so far as they fall within the East Lothian local government area—

(a) A1 Edinburgh - London trunk road in East Lothian from Old Craighall junction eastwards and then southeastwards to Dunglass Bridge at the Scottish Borders local government area boundary, a distance of 47.22 kilometres or thereby;

(b) A720 City of Edinburgh Bypass in East Lothian from Midlothian local government area boundary northwards to Old Craighall junction, a distance of 810 metres or thereby.

SCHEDULE 2

Article 4

MODIFICATIONS OF PROVISIONS OF PART II OF THE ROAD TRAFFIC ACT 1991

1.—(1) Section 66 is modified as follows.

(2) In subsection (1) omit "in a designated parking place".

(3) In subsection (2) omit—

(a) "For the purposes of this Part of the Act"; and

(b) paragraphs (a)(i), (b) and (c).

(4) In subsection (3)—

(a) in paragraph (d) for "the specified proportion" substitute "one half"; and

(b) in paragraph (e) for "London" substitute "parking".

(5) Omit subsection (4).

(6) For subsection (5)(b) substitute—

"(b) the parking authority.".

2.—(1) Section 69 is modified as follows.

(2) In subsection (1)—

(a) omit "in a designated parking place"; and

(b) for "specified in section 66(2)(a), (b) or (c) of this Act" substitute "in which a penalty charge is payable".

(3) In subsection (8) for the words from "London" to the end substitute "parking authority".

3.—(1) Section 71 is modified as follows.

(2) In subsection (1) for "a London" substitute "the parking".

(3) For subsection (4) substitute—

"(4) The grounds are—

(a) that there were no reasonable grounds for the parking attendant concerned to believe that the vehicle had been permitted to remain at rest in the parking area in circumstances in which a penalty charge was payable;

(b) that the vehicle had been permitted to remain at rest in the place where it was by a person who was in control of the vehicle without the consent of the owner;

(c) that the place where the vehicle was at rest was not in the parking area;

(d) in a case within subsection (1)(d) above, that, by virtue of an exemption given by section 70 of this Act, section 69 of this Act did not apply to the vehicle in question at the time in question; or

(e) that the penalty or other charge in question exceeded the amount applicable in the circumstances of the case.".

(4) In subsection (8)(b) for "costs" substitute "expenses".

4.—(1) Section 73 is modified as follows.

(2) Omit subsections (1), (1A) and (2).

(3) For subsection (3) substitute—

"(3) The traffic commissioner must, with the consent of the Lord Advocate, appoint persons to act as parking adjudicators.".

(4) After subsection (3) insert—

"(3A) A parking adjudicator appointed by virtue of this section is authorised to act as a parking adjudicator in relation to the parking area.

(3B) The parking authority, after consultation with the traffic commissioner—

(a) must—

(i) provide, or enter into arrangements for the provision of, accommodation and administrative staff for the parking adjudicators acting in relation to the parking area; and

(ii) determine the places at which such parking adjudicators are to sit; and

(b) may enter into arrangements for the remuneration of such parking adjudicators.".

(5) In subsection (4) for the words from "have" to the end substitute "be an advocate or solicitor of at least five years' standing".

(6) In subsection (5) for "appointing authorities" substitute "traffic commissioner".

(7) For subsections (8) to (10) substitute—

"(8) The reasonable expenses of the traffic commissioner incurred in connection with the discharge of the duties imposed on him by this section, shall be met by the parking authority.".

(8) In subsection (11) for "The Secretary of State" substitute "The Scottish Ministers".

(9) In subsection (12)—

(a) in each of paragraphs (i) and (j) for "costs" substitute "expenses"; and

(b) in paragraph (j) for "county" substitute "sheriff".

(10) In subsection (15) for the words from "if a" to the end substitute "be recoverable by the person to whom the amount is payable as if it were payable under an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court for any sheriffdom in Scotland".

(11) In subsection (17) for "Joint Committee", in each place where it occurs, substitute "parking authority".

(12) In subsection (18)—

(a) for "Joint Committee" substitute "parking authority"; and

(b) for "the Secretary of State" substitute "the Scottish Ministers".

5. For section 74 substitute—

"**Fixing of certain parking and other charges for parking area**

74.—(1) It shall be the duty of the parking authority to set the levels of additional parking charges to apply in the parking area.

(2) Different levels may be set for different parts of the parking area.

(3) The levels of additional parking charges set by the parking authority under this section shall accord with any guidance given by the Scottish Ministers whether such guidance is given specifically to the parking authority or to local authorities generally.

(4) Any guidance given by the Scottish Ministers under subsection (3) above may be varied at any time by them.

(5) The parking authority must publish, in such manner as the Scottish Ministers may determine, the levels of additional parking charges which have been set under this section.

(6) In this section "additional parking charges" means penalty charges, charges made by the parking authority for the removal, storage and disposal of vehicles and charges for the release of vehicles from immobilisation devices fixed under section 69 of this Act.".

6.—(1) Section 82 is modified as follows.

(2) For subsection (1) substitute—

"(1) In this section and sections 66, 69 to 74 and 79 of, and schedule 6 of, this Act(**a**)—

"hiring agreement" and "vehicle-hire firm" have the same meanings as in section 66 of the Road Traffic Offenders Act 1988(**b**);

"immobilisation device" has the same meaning as in section 104(9) of the Road Traffic Regulation Act 1984(**c**);

"parking area" means the area designated as a permitted parking area and a special parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016(**d**);

"parking attendant" has the same meaning as in section 63A(**e**) of the Road Traffic Regulation Act 1984;

"parking authority" means—

(a) in relation to a parking place which was provided or authorised under section 32(1) of the Road Traffic Regulation Act 1984, the local authority as defined by section 32(4)(a) of that Act in relation to the parking place;

(b) in any other case, the traffic authority (other than the Scottish Ministers) as defined by section 121A(**f**) of that Act;

"penalty charge" means a penalty charge which is payable by virtue of paragraph 3(1) and (2) of schedule 3 of this Act;

"prescribed" means prescribed by regulations made by the Scottish Ministers; and

"traffic commissioner" means the traffic commissioner appointed for the Scottish Traffic Area under section 4 of the Public Passenger Vehicles Act 1981(**g**).".

(3) In subsection (5) for "London authority concerned" substitute "parking authority".

(4) In subsection (6) for "a Minister of the Crown" substitute "the Scottish Ministers".

(5) In subsection (7) for "either House of Parliament" substitute "the Scottish Parliament".

7.—(1) Schedule 6 is modified as follows.

(2) In paragraph 1(1) for "London authority concerned" substitute "parking authority".

(3) In paragraph 2—

(a) in subparagraph (1) for the words from "London" to the end substitute "parking authority";

(b) in subparagraph (2) for the words from "such" to the end substitute "writing";

(c) in subparagraph (3) after "The", where it first occurs, insert "parking";

(d) in subparagraph (4)(c) for "place" substitute "area"; and

(e) in subparagraph (7) for "an authority to whom representations are duly made" substitute "the parking authority when representations are duly made to it".

(4) In paragraph 3(1) and (2) for "London authority concerned" in each place where it occurs substitute "parking authority".

(5) In paragraph 4—

(a) For "London authority concerned" substitute "parking authority";

(b) in subparagraph (b), for "costs" substitute "expenses"; and

(c) for "authority consider appropriate" substitute "parking authority considers appropriate".

(**a**) Road Traffic Act 1991 (c.40).
(**b**) 1988 c.53.
(**c**) 1984 c.27.
(**d**) S.S.I. 2016/407.
(**e**) Section 63A was inserted by the 1991 Act, section 44(1).
(**f**) Section 121A was inserted by the New Roads and Street Works Act 1991 (c.22), schedule 8, paragraph 70.
(**g**) 1981 c.14.

(6) In paragraph 5—

(a) in subparagraph (1)—

(i) for "an authority" substitute "the parking authority"; and

(ii) for "authority's decision" substitute "parking authority's decision";

(b) in subparagraph (2) for "London authority concerned" substitute "parking authority"; and

(c) in subparagraph (3) for the words from "any" to the end substitute "the parking authority to comply with any direction given to it under subparagraph (2) above".

(7) In paragraph 6—

(a) in subparagraph (1) for "authority serving the notice" substitute "parking authority"; and

(b) in subparagraph (2)(b)(ii) for "authority concerned" substitute "parking authority".

(8) In paragraph 7 for the words from "authority concerned" to the end substitute "parking authority may recover the increased charge as if the charge certificate were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court in any sheriffdom in Scotland".

(9) Omit paragraph 8.

SCHEDULE 3

Article 5

MODIFICATIONS OF THE ROAD TRAFFIC REGULATION ACT 1984

1. In section 46(1A)(**a**) for "Greater London" substitute "the parking area".

2.—(1) Section 55 is modified as follows.

(2) For subsection (1) substitute—

"(1) A local authority must keep an account—

(a) of their income and expenditure in respect of designated parking places for which they are the local authority and which are in the permitted parking area; and

(b) of their income from additional parking charges (as defined in section 74(6) of the Road Traffic Act 1991) received by them in respect of vehicles found within the special parking area and the expenditure incurred by them in relation to that area by virtue of any provision of Part II of the Road Traffic Act 1991 as it applies in relation to that area.

(1A) As soon as reasonably practicable after the end of each financial year, the local authority must send to the Scottish Ministers a copy of the account for that year.".

(3) Omit subsections (3A) and (3B)(**b**).

3. In section 63A(4)(**c**)—

(a) for "Greater London", where it first occurs, substitute "the parking area"; and

(b) for "Greater London Authority" substitute "Scottish Ministers".

4.—(1) Section 101 is modified as follows.

(2) Omit subsection (4).

(3) In subsection (4A)(**d**) for "Greater London" substitute "the parking area".

(4) Omit subsection (5).

(5) In subsection (5A)(**e**) for "Greater London" substitute "the parking area".

5.—(1) Section 102 is modified as follows.

(2) For subsection (1) substitute—

"(1) If a vehicle is removed by the local authority in circumstances in which an offence would have been committed but for the provisions of paragraph 1(4) or 2(4) of schedule 3 to the Road Traffic Act 1991, the local authority will be entitled to recover from any persons responsible such charges in respect of the removal, storage and disposal of the vehicle as they may require.".

(3) Omit subsections (2) and (3).

(4) For subsection (4) substitute—

"(4) Without prejudice to subsection (1) above, where any sum is recoverable in respect of a vehicle by a local authority in whose custody the vehicle is, the local authority shall be entitled to retain custody of it until that sum has been paid.".

(5) In subsection (5) for "an authority" substitute "the local authority".

(**a**) Section 46(1A) was inserted by the Road Traffic Act 1991 ("the 1991 Act"), section 64(2).
(**b**) Sections 55 (3A) and (3B) were inserted by the 1991 Act, schedule 7, paragraph 5.
(**c**) Section 63A was inserted by the Road Traffic Act 1991 ("the 1991 Act"), section 44(1).
(**d**) Section 101(4A) was inserted by the 1991 Act, section 67(4).
(**e**) Section 101(5A) was inserted by the 1991 Act, section 67(6).

(6) Omit subsections (6) and (7).

(7) In subsection (8) in paragraph (b) of the definition of "appropriate authority", for the words "outside Greater London" substitute "within the parking area".

6. In section 134 for the references to "the Secretary of State" substitute references to "the Scottish Ministers" and for the references to "each House of Parliament" substitute references to "the Scottish Parliament".

7. In section 142(1)—

(a) after the definition of "owner" insert—

""parking area" means the area designated as a permitted parking area and a special parking area by the Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016; and "permitted parking area" and "special parking area" are to be read accordingly;"; and

(b) in the definition of "prescribed" for "the Secretary of State" substitute "the Scottish Ministers".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends, to the area of East Lothian Council, arrangements for enforcing parking controls already available in London and certain other areas in England and in Edinburgh, Glasgow, Perth and Kinross, Aberdeen, Dundee, South Lanarkshire, Renfrewshire, East Renfrewshire, East Ayrshire, South Ayrshire, Fife, East Dunbartonshire, Argyll and Bute, Inverclyde and the Highland Council area.

The Order designates East Lothian local government area (with certain specified exceptions) as a permitted parking area and as a special parking area in accordance with schedule 3 of the Road Traffic Act 1991 ("the 1991 Act"). The Order applies, to the designated area, various provisions of the 1991 Act and modifies them where necessary. It also makes consequential modifications to certain provisions of the Road Traffic Regulation Act 1984 ("the 1984 Act") dealing with parking and related matters.

While the Order is in force, certain specified offences will be decriminalised: for example, in the case of the permitted parking area, breaches of orders relating to free on-street parking places and, in the case of the special parking area, orders prohibiting or restricting waiting, loading and unloading.

Enforcement will be carried out by parking attendants provided under section 63A of the 1984 Act. A system of parking adjudicators will deal with disputes.

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