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STATUTORY INSTRUMENTS

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**1999 No. 854 (S. 64)**

**POLICE**

**The Functions of Traffic Wardens (Scotland) Order 1999**

*Made* - - - - - *7th March 1999*

*Coming into force* - - - - - *21st March 1999*

Whereas a draft of this Order has been approved by resolution of each House of Parliament:  
Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by sections 95(5) and 96 of the Road Traffic Regulation Act 1984(1) and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Functions of Traffic Wardens (Scotland) Order 1999 and shall come into force on the fourteenth day after the date on which it is made.

(2) This order shall extend to Scotland only.

**Interpretation**

2. In this Order—

“the 1984 Act” means the Road Traffic Regulation Act 1984;

“the 1988 Act” means the Road Traffic Act 1988(2);

“street parking place” has the same meaning as in section 142(1) of the 1984 Act;

“street parking place order” means an order made under section 45 of the 1984 Act relating to a street parking place;

“traffic order” means an order made under section 1, 9, 10 or 37 of the 1984 Act.

**Prescribed functions of traffic wardens**

3.—(1) The functions set out in the Schedule to this Order are hereby prescribed as appropriate for discharge by traffic wardens.

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(1) 1984 c. 27; section 95(5) requires to be read with section 86(1) of the Road Traffic Offenders Act 1988 (c. 53) as amended by paragraph 106 of Schedule 4 to the Road Traffic Act 1991 (c. 40); section 96 was amended by paragraphs 25(6) and (7) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54) and by paragraph 31 of Schedule 4 to the Road Traffic Act 1991 (c. 40).  
(2) 1988 c. 52.

(2) For the purposes of the discharge by traffic wardens of such functions, references to a constable or police constable in the following enactments shall include references to a traffic warden—

- (a) in the 1984 Act—
  - (i) section 100(3) (interim disposal of vehicles removed under section 99 of that Act)(**3**);
  - (ii) section 104 (immobilisation of vehicles illegally parked)(**4**); and
  - (iii) section 105 (exemptions from section 104)(**5**); and
- (b) in the 1988 Act—
  - (i) section 35(1) (drivers to comply with traffic directions);
  - (ii) section 37 (directions to pedestrians); and
  - (iii) section 169 (pedestrian contravening constable’s direction to stop to give name and address).

(3) For the purposes of the discharge by traffic wardens of the functions set out in the Schedule to this Order, references in section 165(1) of the 1988 Act (power of constables to obtain names and addresses of drivers and others, and to require production of evidence of insurance or security and test certificate)(**6**) to a police constable shall, in so far as it applies to the furnishing of names and addresses, include references to a traffic warden if the traffic warden has reasonable cause to believe that there has been committed an offence—

- (a) in respect of a vehicle by its being left or parked on a road during the hours of darkness (as defined by the Road Vehicles Lighting Regulations 1989(**7**)) without the lights or reflectors required by law;
- (b) in respect of a vehicle by its obstructing a road, or waiting, or being left or parked or being loaded or unloaded, in a road;
- (c) in contravention of section 35(1) of the 1988 Act;
- (d) in contravention of section 33(1) of the Vehicles Excise and Registration Act 1994 (not exhibiting licence)(**8**);
- (e) created by section 47 of the 1984 Act (offences relating to designated parking places)(**9**).

(4) References in section 164(1) and (2) of the 1988 Act(**10**) (powers of constables to require production of driving licence and in certain cases statement of date of birth) to a constable or police constable shall include references to a traffic warden only where—

- (a) the traffic warden has reasonable cause to believe that there has been committed—
  - (i) an offence by causing a vehicle, or any part of it, to stop in contravention of regulations made under section 25 of the 1984 Act (pedestrian crossing regulations); or
  - (ii) an offence in contravention of section 22 of the 1988 Act (leaving vehicles in dangerous positions)(**11**); or

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(3) Section 99 was amended by the Road Traffic Act 1991 (c. 40), Schedule 4, paragraph 32.

(4) Section 104 was amended by the Road Traffic Act 1991 (c. 40), Schedule 4, paragraphs 34 and 35.

(5) Section 105 was amended by the Road Traffic Act 1991 (c. 40), Schedule 4, paragraph 36 and Schedule 7, paragraph 6.

(6) Section 165(1) was amended by the Road Traffic Act 1991 (c. 40), Schedule 4, paragraph 69(2).

(7) S.I. 1989/1796, amended by S.I. 1994/2280 and 1996/3016.

(8) 1994 c. 22.

(9) Section 47 was amended by the Local Government Act 1985 (c. 51), Schedule 17, by the Road Traffic (Consequential Provisions) Act 1988 (c. 54), Schedule 1, by the Parking Act 1989 (c. 16), Schedule, paragraph 3, by the Road Traffic Act 1991 (c. 40), section 65(1) and by S.I. 1996/1553, article 2 and Schedule.

(10) Section 164(1) was amended by S.I. 1990/144, Schedule 1 and by the Road Traffic Act 1991 (c. 40), Schedule 4, paragraph 68(2); section 164(2) was amended by the Road Traffic Act 1991 (c. 40), Schedule 4, paragraph 68(3).

(11) Section 22 was amended by the Road Traffic Act 1991 (c. 40), Schedule 4, paragraph 48.

- (b) the traffic warden is employed to perform functions in connection with the custody of vehicles removed from a road or land in the open air in pursuance of regulations made under section 99 of the 1984 Act (removal of vehicles illegally, obstructively or dangerously parked, or abandoned or broken down) or from a parking place in pursuance of a street parking place order, and he has reasonable cause to believe that there has been committed an offence in respect of a vehicle by its obstructing a road or waiting, or being left or parked, or being loaded or unloaded, in a road.

### **Revocation**

4. The Functions of Traffic Wardens (Scotland) Order 1971(12) is hereby revoked.

St Andrew's House,  
Edinburgh  
7th March 1999

*Henry B McLeish*  
Minister of State, Scottish Office

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## SCHEDULE

Article 3

## FUNCTIONS OF TRAFFIC WARDENS

- 1.—(1) Traffic wardens may be employed to enforce the law with respect to an offence—
- (a) committed in respect of a vehicle by its being left or parked on a road during the hours of darkness (as defined by the Road Vehicles Lighting Regulations 1989) without the lights or reflectors required by law;
  - (b) committed in respect of a vehicle by its obstructing a road, or waiting, or being left or parked, or being loaded or unloaded, in a road or other public place;
  - (c) committed in contravention of section 33(1) of the Vehicles Excise and Registration Act 1994;
  - (d) created by section 47 of the 1984 Act (offences relating to designated parking places); or
  - (e) committed by causing a vehicle, or any part of it, to stop in contravention of regulations made under section 25 of the 1984 Act (pedestrian crossing regulations).

(2) For the purposes of the enforcement of the law with respect to such of the offences described in sub-paragraph (1) of this paragraph as are fixed penalty offences within the meaning of section 51 of the Road Traffic Offenders Act 1988<sup>(13)</sup>, traffic wardens may exercise the functions conferred on constables by Part III of the Road Traffic Offenders Act 1988.

2.—(1) Traffic wardens may, under arrangements made with a local authority or the Secretary of State, be employed to act as parking attendants at street parking places provided or controlled by a local authority or the Secretary of State.

(2) A traffic warden may exercise functions conferred on a traffic warden by a traffic order or a street parking place order.

3. Without prejudice to the generality of paragraph 1 above, traffic wardens may be employed in connection with obtaining information under—

- (a) section 112 of the 1984 Act (information as to identity of driver or rider)<sup>(14)</sup>; and
- (b) section 172 of the 1988 Act (duty to give information as to identity of driver, etc., in certain cases).

4. Traffic wardens may be employed to perform functions in connection with the custody of vehicles removed from a road or land in the open air in pursuance of regulations under section 99 of the 1984 Act or from a parking place in pursuance of a street parking place order.

5. Where a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(15)</sup> provides school crossing patrols under section 26 of the 1984 Act (arrangements for patrolling school crossings)<sup>(16)</sup> traffic wardens appointed by or on behalf of the council may be employed to act as school crossing patrols.

6.—(1) Subject to the foregoing paragraphs, traffic wardens may be employed in the control and regulation of traffic (including foot passengers) or vehicles whether on a road or not and to discharge any other functions normally undertaken by the police in connection with the control and regulation of traffic (including foot passengers) or vehicles.

<sup>(13)</sup> 1988 c. 53.

<sup>(14)</sup> Section 112 was amended by the Parking Act 1989 (c. 16), Schedule, paragraph 6.

<sup>(15)</sup> 1994 c. 39.

<sup>(16)</sup> Section 26 was amended by the Local Government Act 1985 (c. 51), Schedule 5, paragraph 4(10), by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 134(3) and Schedule 14 and by S.I. 1996/323, article 4 and Schedule 2.

(2) Nothing in this paragraph shall permit the functions described in sub-paragraph (1) to be exercised by a traffic warden who is in a moving vehicle.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order revokes and replaces the Functions of Traffic Wardens (Scotland) Order 1971 relating to the functions of traffic wardens in Scotland.

Article 3 and the Schedule prescribe the functions which are appropriate for discharge by traffic wardens.

Article 3(2) provides that for the purposes of the discharge of the functions of traffic wardens, references in specified enactments to a constable or police constable shall include references to a traffic warden.

The specified enactments are—

- (a) section 100(3) of the Road Traffic Regulation Act 1984 (“the 1984 Act”). Section 100(3) deals with disposal of a vehicle removed under Regulations made under section 99 of that Act. The Removal and Disposal of Vehicles (Scotland) Amendment Regulations 1999 (S.I.1999/490), which come into force on 24th March 1999, empower a traffic warden to remove vehicles;
- (b) sections 104 and 105 of the 1984 Act. This enables traffic wardens, in carrying out their functions, to exercise the powers conferred on constables by sections 104 and 105 of the 1984 Act. Sections 104 and 105 relate to the power to immobilise vehicles;
- (c) section 35(1) of the Road Traffic Act 1988 (“the 1988 Act”) which requires drivers to comply with traffic directions given by the police constables;
- (d) section 37 of the 1988 Act which requires pedestrians to comply with directions given by constables who are regulating vehicular traffic in a road;
- (e) section 169 of the 1988 Act which empowers a constable to require a person committing an offence under section 37 of that Act to give his name and address.

Article 3(3) provides that the power of a constable for the purposes of section 165(1) of the 1988 Act, in relation to the furnishing of names and addresses, shall be exercisable by a traffic warden if the warden has reasonable cause to believe there has been committed any of the offences specified.

Article 3(4) enables traffic wardens to exercise the powers conferred on constables by section 164(1) and (2) of the 1988 Act (power to require production of driving licence and in certain cases statement of date of birth) where they have reasonable cause to believe an offence has been committed by stopping a vehicle on a pedestrian crossing in breach of pedestrian crossing regulations or by leaving a vehicle in a dangerous position. Such powers can also be exercised where a traffic warden is performing custodial functions in respect of vehicles removed under regulations made under section 99 of the 1984 Act or from a parking place pursuant to a street parking order and he has reasonable cause to believe that an offence of obstructing a road, or certain other offences, has been committed in respect of the vehicle.

Paragraph 1 of the Schedule to the order specifies various offences in relation to vehicles left or parked on a road which may be enforced by traffic wardens.

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Paragraph 2(1) authorises traffic wardens to be employed as parking attendants at street parking places.

Paragraph 2(2) provides for the exercise of functions conferred on traffic wardens by traffic orders or street parking place orders.

Paragraph 3 authorises traffic wardens to be employed in obtaining information as to the identity of drivers under section 112 of the 1984 Act or section 172 of the 1988 Act.

Paragraph 4 enables traffic wardens to be employed to perform functions in connection with the custody of vehicles removed from a road or land in the open air in pursuance of regulations under section 99 of the 1984 Act or from a parking place in pursuance of a street parking place order.

Paragraph 5 permits traffic wardens to be employed to act as school crossing patrols.

Paragraph 6 permits traffic wardens to be employed in the control and regulation of traffic.

The Order essentially re-enacts the 1971 Order but makes the following substantive amendments.

The provisions of article 3(4) represent an extension of powers previously available to traffic wardens in Scotland. This provision allows wardens to require production of a driving licence and in certain cases statement of date of birth where they have reasonable cause to believe an offence has been committed by stopping a vehicle on a pedestrian crossing in breach of pedestrian regulations or by leaving a vehicle in a dangerous position. It also allows the warden to require information in relation to removal of vehicles.

The prescribed functions in the Schedule also reflect these changes by providing that traffic wardens may enforce offences committed by a vehicle stopping in contravention of pedestrian crossing regulations (paragraph 1(1)(e) of the Schedule) and may be employed to perform functions in connection with the custody of vehicles removed in pursuance of regulations under section 99 of the 1984 Act or from a parking place in pursuance of a street parking place order (paragraph 4 of the Schedule).

Paragraph 1(2) of the Schedule also extends the powers of traffic wardens by providing that they may exercise the functions of constables under the fixed penalty scheme under the Road Traffic Offenders Act 1988 in respect of the offences of obstruction of the highway, where the offence is committed in respect of a vehicle, and leaving a vehicle in a dangerous position.