

DISABLED PERSONS' PARKING PLACES (SCOTLAND) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Duty to promote proper use of parking places for disabled persons' vehicles

7. **Section 1** places a duty on local authorities to take steps to promote the proper use of parking places designated only for the use of disabled persons' vehicles. The Act does not prescribe what the local authority should do but it is expected that, for example the local authority would undertake public information campaigns and ensure its own staff were made aware of how to prevent abuse of disabled persons' parking places. More information on steps that local authorities could take is set out at paragraphs 56 to 58 of the Policy Memorandum.
8. **Section 14** defines a disabled persons' vehicle as one that is lawfully displaying a disabled persons' badge.
9. **Section 14** also provides a definition of a disabled persons' badge commonly known as a "blue badge". It is a badge that has either been issued by local authorities under section 21 of the **Chronically Sick and Disabled Persons Act 1970 (c.44)**; a badge issued under a similar provision under the law of Northern Ireland or a badge issued by any member State of the EU other than the United Kingdom. It is these badges, when displayed on any vehicle, that give access to disabled persons' parking places and this will continue under the provisions of this Act.

Section 2: Limitation of local authorities' powers in relation to advisory parking places for disabled persons' vehicles

10. At present local authorities, instead of using their powers under the 1984 Act to designate parking places for disabled persons' vehicles which are enforceable, will make an advisory street or off-street disabled parking place. Such places are not enforceable and any driver can park in them without sanctions at law being possible.
11. **Section 2(a)** prevents local authorities in future designating advisory disabled street parking places unless the designation is made in accordance with section 9 of the Act.
12. **Section 2(b)** similarly prevents local authorities from designating in future advisory disabled off-street parking places.
13. An "advisory disabled street parking place" is defined in section 14 as one which is marked or sign-posted for use only by a disabled persons' vehicle and that is not subject to an order made under section 45 of the 1984 Act (see section 3 below). A "street parking place" is also defined in that section as a parking place that is on land that forms part of a road.

These notes relate to the Disabled Persons' Parking Places (Scotland) Act 2009 (asp 3) which received Royal Assent on 1 April 2009

14. An “advisory disabled off-street parking place” is defined in section 14 as one to which the public have access, is marked or sign-posted for use only by a disabled persons’ vehicle and is not subject to an order made under section 35 of the 1984 Act (see section 3 below). An “off-street parking place” is defined in that section as a parking place that is on land that does not form part of a road.
15. “Road” is given the same meaning as in the [Roads \(Scotland\) Act 1984 \(c.54\)](#) section 151¹. (see section 14).

Section 3: Certain orders under the 1984 Act

16. [Section 3](#) sets out two kinds of order under the 1984 Act which a local authority must consider making in the circumstances set out by sections 4 to 8 of the Act. The 1984 Act provides local authorities with the power to make orders in relation to parking places.
17. Subsection (2) introduces the “disabled street parking order” made under section 45 of the 1984 Act. For the purposes of the Act such an order must specify that the parking places may only be used by a disabled persons’ vehicle and that no charge for parking in the places may be levied.
18. Subsection (3) introduces the “disabled off-street parking order” made under section 35 of the 1984 Act. For the purposes of the Act such an order must specify the parking places may only be used by a disabled persons’ vehicle and that any parking charge levied may not be higher than the charge payable for ordinary vehicles in the same premises.
19. The making of these orders triggers the relevant current road traffic enforcement provisions. The Act continues to utilise existing enforcement regimes, including existing levels of fines, issue of penalty notices and appeals processes.
20. In local authority areas where decriminalised parking enforcement² is in place enforcement remains the responsibility of the local authority. The local authority will continue to set the level of fines and issue penalty notices. Any appeals in regard to the issue of penalty notices will continue to be heard by the existing established appeals mechanism. The Parking Adjudicator exists statutorily to independently hear such appeals.
21. In other local authority areas enforcement will continue to be the responsibility of the Police and Police Traffic Wardens. Appeals against penalty notices issued by the Police or Police Traffic Wardens continue to be matters for the court system.

Section 4: Disabled street parking orders: local authorities’ initial duties

22. [Section 4](#) places requirements on local authorities in relation to existing advisory disabled street parking places. Subsection (7) provides that these requirements must be completed within 12 months of commencement of the Act. The duties under this section are one off duties, which once completed do not recur.
23. Subsection (1) requires the local authority to identify every advisory disabled street parking place in its area. Subsection (2) requires the local authority to determine if each parking place provides convenient access to the address of a person who holds a disabled persons’ badge. If it does provide convenient access then subsection (3) applies.
24. Subsection (3)(a) requires the local authority to determine whether or not it has the power to make a disabled street parking order in respect of the parking place. To do that they must consider their duties under sections 45(3) and 122 of the 1984 Act. These are:

¹ Any way over which there is a public right of passage

² Decriminalised parking enforcement is explained in paragraphs 21 to 23 of the Policy Memorandum

- (3) ~~14.5~~ Determining what parking places are to be designated under this section the authority concerned shall consider both the interests of traffic and those of the owners and occupiers of adjoining property, and in particular the matters to which that authority shall have regard include:
- (a) the need for maintaining the free movement of traffic;
 - (b) the need for maintaining reasonable access to premises; and
 - (c) the extent to which off-street parking accommodation, whether in the open or under cover, is available in the neighbourhood or the provision of such parking accommodation is likely to be encouraged there by the designation of parking places under this section.
- and
- (1) ~~11.2~~ It shall be the duty of every local authority upon whom functions are conferred by or under this Act, so to exercise the functions conferred on them by this Act as (so far as practicable having regard to the matters specified in subsection (2) below) to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway or, in Scotland the road.
- (2) The matters referred to in subsection (1) above as being specified in this subsection are—
- (a) the desirability of securing and maintaining reasonable access to premises;
 - (b) the effect on the amenities of any locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the areas through which the roads run;
 - (bb) the strategy prepared under section 80 of the Environment Act 1995 (national air quality strategy);
 - (c) the importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and
 - (d) any other matters appearing to the local authority to be relevant.
25. If the local authority determines that it has power to make a disabled street parking order it is required by subsection (3)(b) to start the statutory procedure. If the outcome of this procedure is that no order is made then subsection (6) requires that the local authority removes any road markings or sign-posts for the advisory disabled street parking place. Subsections (4) and (5) require the local authority to publish reasons whenever it determines that there is no person who holds a disabled persons' badge with convenient access to an existing advisory disabled street parking place, under subsection (2). The same requirement also applies when the local authority decides that it has no power to make an order under subsection (3)(a). The local authority must also, in these circumstances, remove any road markings or sign-posts for the advisory disabled street parking place.

Section 5: Disabled street parking orders: requests by qualifying persons

26. Individuals or organisations holding a disabled persons' badge can apply to the local authority for a disabled persons' street parking place. Section 5 sets out the local authority's duties in this respect and provides the process to be followed.
27. Subsection (1) sets out that a qualifying person can apply to a local authority for such a parking place from which there is convenient access to their address. For those living close to local authority boundaries the subsection permits application to any authority in whose area there is a space with convenient access to the applicants address.
28. "Qualifying person" is defined in subsection (8) as one who holds a disabled persons' badge and has a suitable vehicle registered at their address. Subsection (7) provides that

a request may be made through another person who is acting on behalf of the qualifying person. This is to cover circumstances when the disabled badge holder is unable to make the request themselves. Subsection (8)(b) provides that when an application is received from an organisation, they must also have a vehicle registered at their address and that the vehicle should be suitable for use by disabled people. Subsection (9) links the registered keeper to the vehicles' registration with the Driver and Vehicle Licensing Agency (DVLA) and their registered address.

29. Once satisfied that the person making the application is a qualifying person subsection (2)(a) requires the local authority to decide whether it is possible to identify in their area a suitable street parking place providing convenient access to the address. The conformity of a parking place with any current specifications prescribed in regulations³ is expected to be one of the factors taken into account by the local authority in determining where a space is "suitable". If they decide that it is possible then (2)(b) requires them to identify such a parking place.
30. Subsection (3)(a) requires the local authority to determine whether or not it has the power to make a disabled street parking order in respect of the parking place. To do that they must consider their duties under sections 43(5) and 122 of the 1984 Act (see paragraph 25 above).
31. Subsection (4) sets out the circumstances when subsection (5) applies. Subsection (5) applies when the local authority is not satisfied the applicant is a qualifying person, that it is not possible to identify a suitable street parking place that provides convenient access to the address or if the local authority believes it has no power to make such an order.
32. Subsection (5) requires the local authority to provide the person making the application with the reasons for its decision not to proceed with the application under subsections (4)(a), (b) or (c).
33. It is for the local authority to determine the form and manner in which a request under this section should be made unless under subsection (6)(a) the Scottish Ministers prescribe these details. Section 13 makes provision for the making of regulations and section 13(2) requires that any made in respect of section 5(6)(a) are subject to negative resolution procedure.

Section 6: Disabled off-street parking orders: local authorities' initial duties

34. **Section 6** makes provision for disabled off-street parking orders. Subsection (1) requires local authorities to identify all advisory disabled off-street parking places in their area.
35. For those parking places identified under subsection (1) which are eligible parking places subsection (2) applies. "Eligible parking places" are defined in subsection (8) as those provided by the local authority under section 32(1)(a) of the 1984 Act or provided under arrangements the local authority has made under section 33(4) of that Act.
36. Under section 32 of the 1984 Act a local authority has power to provide off-street parking places for the purpose of relieving or preventing congestion of traffic. Disabled parking places could be provided within such an off-street area. Section 33(4) of that Act allows a local authority to make arrangements with a private owner for the provision of parking places on such terms as it sees fit.
37. **Section 6(2)** requires local authorities to start the order making procedure for all eligible parking places that it has identified unless it decides, having regard to its duties under section 122 of the 1984 Act that it has no powers to make the order. Subsection (9) also requires that this duty is started within 12 months of the Act coming into force.

³ Current regulations are the [Traffic Signs Regulations and General Directions 2002 \(No 3113\)](#)

38. Subsections (3) to (7) set out the procedure for advisory disabled off-street parking places which are not eligible parking places. Subsection (4) requires the local authority within 12 months (as per subsection (9)) to decide whether it would have the power to make a disabled off-street parking order should an arrangement under section 33(4) of 1984 Act be in place. Subsection (5) requires that when making its decision under subsection (4) the local authority also has regard to its duties under section 122 of the 1984 Act (see paragraph 25 above).
39. When a local authority decides under subsection (4) that it would have power under section 33(4) of the 1984 Act to make an arrangement then subsection (6) requires the local authority to try to reach such an arrangement with the owner, or person having an interest in the car park. Subsection (7) requires the local authority to start the order making process whenever it has been successful in making such an arrangement.
40. Subsection (9) gives the local authority 12 months from the Act coming into force to start seeking arrangements with private providers.

Section 7: Disabled off-street parking orders: new development

41. **Section 7** applies whenever planning permission is granted for the construction of premises which include an advisory disabled persons parking place or the creation of such parking places within existing premises. These are referred to in the section as a “relevant development” and are defined in section 14. Section 14 also defines “premises” to include any land or building.
42. This section only applies when advisory disabled off-street parking places are included within the development. It is anticipated that, given local authorities and developers duties under other statutes and planning guidance,⁴ such spaces will be included in every development receiving planning permission which includes provision for public parking.
43. Subsection (1) applies the section to local authorities under certain circumstances. Subsection (1)(a) applies when the local authority as a planning authority grants planning permission in respect of a relevant development; while subsection (1)(b) applies when the local authority learns that planning permission has been granted by way of a development order. Planning permission and development orders are defined in section 14 as having the same meaning as under the [Town and Country Planning \(Scotland\) Act 1997 \(c.8\)](#).
44. Subsection (3) is applied by subsection (2) to all relevant developments and requires the local authority to decide within three months (see subsection (7) and paragraph 47 below) whether or not it would have the power to make a disabled off-street parking order if arrangements under section 33(4) of the 1984 Act were in place. Subsection (4) ensures that when making its decision under subsection (3) the local authority has regard to its duties under section 122 of the 1984 Act (see paragraph 25).
45. Subsection (5) applies when the local authority decides it would have the power to make an order. The local authority is required to seek to make an arrangement with the owner or person having an interest in the land under section 33(4) of the 1984 Act. Subsection (6) provides that if such arrangements are made then the local authority must start the order making procedure.
46. Subsections (7) and (8) set out and define the timescales within which the local authority must perform its duties under subsections (3) and (5). The decision under (3) must be made within the relevant period of three months and under subsection (5) it must *start* to seek to make arrangements within the same period. Subsection (8) defines the relevant period as 3 months from the local authority either granting the planning permission or learning that planning permission has been granted by a development order.

⁴ Chronically Sick and Disabled Persons Act 1970, [Disability Discrimination Act 1995 c 50](#) and Scottish Planning Policy SPP17 – Planning for Transport. August 2005

47. Subsection (9) requires local authorities to monitor developments in their areas to ensure they are aware of relevant developments granted planning permission by way of development orders.

Section 8: Disabled off-street parking places: ongoing duties

48. **Section 8** applies when local authorities have failed to make arrangements under section 33(4) of the 1984 Act in the circumstances set out in sections 6(6), 7(5) and 8(4). The section requires that further attempts to reach agreements and make orders are made every two years.
49. Subsection (7) sets the “relevant period” at two years from the date the local authority last concluded that it could not make an agreement under the above sections. Subsection (6)(a) gives the local authority three months to decide under subsection (2) whether it would have the power to make a disabled off-street parking order if the parking place was provided under agreements made under section 33(4) of the 1984 Act.
50. Subsection (3) repeats the earlier requirements on local authorities when considering if they would have power to make an order, to have regard to their duties under section 122 of the 1984 Act. (see paragraph 25).
51. If the local authority decides it continues to have the power to make an order then subsection (4) requires it to seek to make an arrangement under section 33(4) of the 1984 Act. If the local authority is successful in making such an agreement then subsection (5) requires it to start the statutory order making procedure.

Section 9: Designation of a temporary parking place where a request has been made under section 5

52. **Section 2** limits the powers of local authorities to create advisory disabled street parking places except in accordance with the provisions of section 9. Section 9 allows temporary advisory disabled street parking places to be created while the statutory process to promote an order is being undertaken.
53. Subsection (1) applies when a local authority is required by section 5(3)(b) to start the statutory procedure to promote a disabled street parking order. The local authority must, as soon as is reasonably practicable, designate the parking place in question as one that is for use only by a disabled persons' vehicle. This designation is advisory and as such is unenforceable against use by vehicles other than disabled persons' vehicles. This designation is created on a temporary basis to provide for disabled persons' while the statutory procedure is being undertaken.
54. Subsection (2) provides an end date to the temporary designation. When the statutory procedure for making an order ends the designation of the advisory parking place is automatically revoked. If the outcome of the statutory procedure is that no order is made subsection (3) applies. The local authority must remove any road markings or signposts placed by the local authority to indicate that the parking place is for use only by a disabled persons' vehicle.

Section 10: Duty to keep disabled street parking orders under review

55. **Section 10** places a general duty on local authorities who have made orders in respect of disabled street parking places to keep the provision of those parking places under continual review.
56. The continuing need for a parking place need not be linked to an original applicant, as any disabled badge holder is able to use any designated parking place. The local authority in exercising this continuing duty will be able to use their discretion, perhaps linked to overall usage, when considering whether or not to vary or revoke the order.

Section 11: Annual reports by local authorities

57. **Section 11** requires local authorities to publish an annual report on their performance in relation to parking places for disabled persons' vehicles. A copy also requires to be sent to the Scottish Ministers.
58. Subsection (2) introduces Part 1 of the schedule to the Act which specifies what information must be contained in a local authority's report.
59. Subsection (3) gives power to the Scottish Ministers to make regulations to modify Part 1 of the schedule. Regulations modifying the schedule can include the addition or deletion of information provided the Scottish Ministers consider that the change is necessary or expedient. Any order is subject to affirmative resolution procedure (see section 13(3)).
60. Subsection (4) requires the local authority to perform its duties under subsection (1) within 3 months of the end of the reporting period.
61. The "reporting period" is defined in section 14 as initially being the period between the Act coming into force and the second succeeding 31 March and then subsequently being each successive financial year.

Section 12: Annual report by the Scottish Ministers

62. **Section 12** details the reporting requirements applying to the Scottish Ministers under the Act. Subsection (1) requires that for each reporting period the Scottish Ministers prepare a report on the performance of local authorities in relation to parking places for disabled persons' vehicles. The Scottish Ministers must publish this report and lay a copy before the Scottish Parliament. Subsection (4) requires the Scottish Ministers to perform these duties within 6 months of the end of the reporting period.
63. Subsection (2) introduces Part 2 of the schedule to the Act which specifies what information must be contained in the report prepared by the Scottish Ministers.
64. Subsection (3) gives power to the Scottish Ministers to modify Part 2 of the schedule. Regulations modifying the schedule can include the addition or deletion of information provided the Scottish Ministers consider that the change is necessary or expedient. Any order is subject to affirmative resolution procedure (see section 13(3)).

Section 13: Regulations

65. **Section 13** provides that any regulations made by the Scottish Ministers under the Act are to be made by statutory instrument.
66. Subsection (2) provides that any statutory instruments made in respect of the form and manner of applications for disabled street parking orders (section 5(6)(a)) are subject to negative resolution.
67. Subsection (3) provides that any statutory instruments made in respect of the content of annual reports by the local authorities (section 11(3)) or the Scottish Ministers (section 12(3)) are subject to affirmative resolution procedures and may not be laid before a draft has been laid, and approved by, the Scottish Parliament.

Section 14: Interpretation

68. **Section 14** contains definitions of terms used throughout the Act. Most have been referred to earlier in these notes where a reference to their meaning was needed.

Schedule

69. The schedule makes detailed provision concerning the matters which must be contained in the reports required by sections 11 and 12 of the Act.

Part 1: Content of annual reports by local authorities

70. **Part 1** of the schedule specifies the requirement on local authorities. Paragraph 1 contains the detail of the information that is required for each reporting period. Paragraph 2 enables the local authority to provide in the report any other information about the performance of its functions in relation to disabled persons parking places it considers appropriate.
71. **Paragraph 1(a)** requires details of the action taken by the local authority to meet its duty in section 1 of promoting the proper use of disabled persons' parking places. Paragraph 1(b) requires the total number of enforceable parking places designated for the use of disabled people under the provisions of the Act to be provided
72. **Paragraph 1(c)** contains requirements that only apply in the first report prepared by each local authority. They are required to state the number of existing advisory disabled street parking places identified under section 4(1); any reasons for decisions made by the local authority under section 4(2) (whether these parking places provided convenient access to the address of a person holding a disabled persons badge) and under section 4(3) (why it believed it had no power to make an order). This paragraph also requires the local authority to provide the number of parking places for which it began the statutory procedure to promote an order.
73. **Paragraph 1(d)** requires information on applications from disabled persons for disabled street parking (section 5(1)). Information has to be provided on the number of requests that have been received and of these requests how many parking places the local authority identified as being suitable and providing convenient access to the persons address (section 5(2)(b)). If the local authority decides that it has no power to promote an order then its reasons for deciding this must be provided (section 5(3)(a)).
74. The local authority is also required to provide information on how many requests led to the statutory procedure (section 5(3)(b)) to make an order being started and the period of time between identifying each parking place and starting the statutory procedure.
75. **Paragraphs 1(e)** and (f) require information in relation to disabled off-street parking orders under sections 6 and 7. Local authorities must provide information on how many parking places it has identified (if any) or learned of (sections 6(1) and 7(1)) and reasons for any decision that it doesn't have the power to make an order (sections 6(2)(a) and 7(3)). They must also provide the number of section 33(4) arrangements sought to be put in place and the reasons any were unsuccessful. For existing disabled off-street parking places the local authority also must provide the number for which it started the statutory procedure (sections 6(7) and 7(6)). The dates by which each duty is performed under section 6 are also required.
76. **Paragraph 1(g)** relates to section 8 where local authorities are required to seek to make section 33(4) arrangements with car park owners. Information must be provided on any reasons the local authority have for believing that it has no power to make an order (section 8(2)), the number of premises it has further sought to make a section 33(4) agreement in respect of (section 8(4)) and if it has been unsuccessful in doing so the reasons why. It must also provide the number of parking places for which it has started the statutory procedure.
77. **Paragraph 1(h)** seeks general information on the total number of orders in relation to both disabled street and off-street parking places under the provisions of the Act. The number of actual parking places may be much higher than the total number of orders if the local authority chooses to promote them in batches, for example one order could cover 100 individual spaces. As well as requiring the total number of orders made the total number of enforceable parking places designated for use by a disabled persons' vehicle and the time taken to make orders is required. Where an order is not granted reasons are required in the annual report.

Part 2: Content of the annual report by the Scottish Ministers

78. **Part 2** of the schedule specifies the reporting requirements on the Scottish Ministers under section 12. The report must contain details covering each category of information provided by the local authorities under part 1 of the schedule. This will enable the performance of local authorities to be compared.
79. **Paragraph 4** enables the Scottish Ministers to provide in their report any other information about the performance, functions and duties of local authorities in relation to disabled persons' parking places that they consider appropriate.