



# Transport (Scotland) Act 2019

## 2019 asp 17

PROSPECTIVE

### PART 8

#### RECOVERY OF UNPAID PARKING CHARGES

##### *Application*

#### **90 Application of Part**

- (1) This Part applies where—
- (a) the driver of a vehicle is required by virtue of a relevant obligation to pay parking charges in respect of the parking of the vehicle on relevant land, and
  - (b) those charges have not been paid in full.
- (2) It is immaterial for the purposes of this Part whether or not the vehicle was permitted to be parked (or to remain parked) on the land.

##### *Key concepts*

#### **91 Meaning of “relevant obligation”**

In this Part, “relevant obligation” means—

- (a) an obligation arising under the terms of a relevant contract, or
- (b) an obligation arising, in circumstances in which there is no relevant contract, as a result of a trespass or other delict committed by parking the vehicle on the relevant land.

#### **92 Meaning of “parking charge”**

- (1) In this Part, “parking charge” means—
- (a) in the case of a relevant obligation arising under the terms of a relevant contract, a sum in the nature of a fee or charge,

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- (b) in the case of a relevant obligation arising as a result of a trespass or other delict, a sum in the nature of damages, however the sum in question is described.
- (2) The reference to a sum in the nature of damages is to a sum of which adequate notice was given to drivers of vehicles (when the vehicle was parked on the relevant land).
- (3) For the purposes of subsection (2), “adequate notice” means notice given by—
  - (a) the display of one or more notices in accordance with any applicable requirements prescribed in regulations under section 103 for, or for purposes including, the purposes of subsection (2), or
  - (b) where no such requirements apply, the display of one or more notices which—
    - (i) specify the sum as the charge for unauthorised parking, and
    - (ii) are adequate to bring the charge to the notice of drivers who park vehicles on the relevant land.

### **93 Meaning of “relevant contract”**

In this Part, “relevant contract” means a contract (including a contract arising only when the vehicle was parked on the relevant land) between the driver and a person who is—

- (a) the owner or occupier of the land, or
- (b) authorised, under or by virtue of arrangements made by the owner or occupier of the land, to enter into a contract with the driver requiring the payment of parking charges in respect of the parking of the vehicle on the land.

### **94 Meaning of “relevant land”**

- (1) In this Part, “relevant land” means any land (including land above or below ground level) other than—
  - (a) a public road within the meaning of section 151(1) of the Roads (Scotland) Act 1984,
  - (b) a parking place which is provided or controlled by the Secretary of State, the Scottish Ministers or a local authority,
  - (c) any land, not falling within paragraph (a) or (b), on which the parking of a vehicle is subject to statutory control.
- (2) In subsection (1)(b), “parking place” has the meaning given by section 32(4)(b) of the Road Traffic Regulation Act 1984.
- (3) For the purposes of subsection (1)(c), the parking of a vehicle on land is “subject to statutory control” if any enactment imposes a liability (whether criminal or civil, and whether in the form of a fee or charge or a penalty of any kind) in respect of the parking on that land of vehicles generally or of vehicles of a description that includes the vehicle in question.

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### *Right to recover unpaid charges from keeper of vehicle*

#### **95 Right in certain circumstances to recover from keeper of vehicle**

- (1) The creditor has the right to recover any unpaid parking charges from the keeper of the vehicle.
- (2) The right under this section applies only if—
  - (a) the conditions specified in sections 96, 97, 102 and 103 (so far as applicable) are met, and
  - (b) the vehicle was not a stolen vehicle at the beginning of the period of parking to which the unpaid parking charges relate.
- (3) For the purposes of the condition in subsection (2)(b), the vehicle is to be presumed not to be a stolen vehicle at the material time, unless the contrary is proved.
- (4) The right under this section may only be exercised after the end of the period of 28 days beginning with the day on which the notice to keeper is given.
- (5) The Scottish Ministers may by regulations prescribe a description of an amount as the maximum that may be recovered from a keeper by virtue of the right conferred by this section.
- (6) Nothing in this section affects any other remedy the creditor may have against the keeper of the vehicle or any other person in respect of any unpaid parking charges (but this is not to be read as permitting double recovery).
- (7) The right under this section is subject to section 104 (which provides for the right not to apply in certain circumstances in the case of a hire vehicle).

#### **96 First condition: lack of knowledge of driver's name and address**

- (1) The first condition for the purposes of section 95 is that the creditor—
  - (a) has the right to enforce against the driver of the vehicle the requirement to pay the unpaid parking charges, but
  - (b) is unable to take steps to enforce that requirement against the driver because the creditor does not know both the name of the driver and an address at which the driver for the time being resides or can conveniently be contacted.
- (2) Subsection (1)(b) ceases to apply if, at any time after the end of the period of 28 days beginning with the day on which the notice to keeper is given, the creditor begins proceedings to recover the unpaid parking charges from the keeper.

#### **97 Second condition: giving of notices to driver and keeper**

- (1) The second condition for the purposes of section 95 is that the creditor (or a person acting for or on behalf of the creditor)—
  - (a) has given a notice to driver in accordance with section 98, followed by a notice to keeper in accordance with section 99, or
  - (b) has given a notice to keeper in accordance with section 100.
- (2) If a notice to driver has been given, any subsequent notice to keeper must be given in accordance with section 99.

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## **98 Giving of notice to driver**

- (1) A notice which is to be relied on as a notice to driver for the purposes of section 97(1) (a) is given in accordance with this section if the following requirements are met.
- (2) The notice contains such information as the Scottish Ministers may by regulations prescribe.
- (3) The notice relates only to a single period of parking (but this does not prevent the giving of separate notices each specifying different parts of a single period of parking).
- (4) The notice is given—
  - (a) before the vehicle is removed from the relevant land after the end of the period of parking to which the notice relates, and
  - (b) while the vehicle is stationary,by affixing it to the vehicle or by handing it to the person appearing to be in charge of the vehicle.

## **99 Giving of notice to keeper following giving notice to driver**

- (1) A notice which is to be relied on as a notice to keeper for the purposes of section 97(1) (a) is given in accordance with this section if the following requirements are met.
- (2) The notice contains such information as the Scottish Ministers may by regulations prescribe.
- (3) The notice relates only to a single period of parking (but this does not prevent the giving of separate notices each specifying different parts of a single period of parking).
- (4) The notice is given to the keeper, by such means as the Scottish Ministers may by regulations prescribe, within the period of 28 days following the period of 28 days beginning with the day after that on which the notice to driver was given.
- (5) When it is given, the notice is accompanied by any evidence prescribed under section 101.

## **100 Giving of notice to keeper without giving notice to driver**

- (1) A notice which is to be relied on as a notice to keeper for the purposes of section 97(1) (b) is given in accordance with this section if the following requirements are met.
- (2) The notice contains such information as the Scottish Ministers may by regulations prescribe.
- (3) The notice relates only to a single period of parking (but this does not prevent the giving of separate notices each specifying different parts of a single period of parking).
- (4) The notice is given to the keeper, by such means as the Scottish Ministers may by regulations prescribe, within the period of 14 days beginning with the day after that on which the period of parking to which the notice relates ended.
- (5) When it is given, the notice is accompanied by any evidence prescribed under section 101.

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### **101 Notices to keeper: accompanying evidence**

- (1) The Scottish Ministers may by regulations prescribe evidence which must accompany a notice which is to be relied on as a notice to keeper for the purposes of section 97(1)(a) or section 97(1)(b) (as the case may be).
- (2) The regulations may, in particular, make provision as to—
  - (a) the means by which any prescribed evidence is to be generated or otherwise produced (which may include a requirement to use equipment of a kind approved for the purpose by a person specified in the regulations), or
  - (b) the circumstances in which any evidence is, or is not, required to accompany a notice to keeper.

### **102 Third condition: keeper's details obtained from Secretary of State**

- (1) The third condition for the purposes of section 95 is that—
  - (a) the creditor (or a person acting for or on behalf of the creditor) has made an application for the keeper's details in relation to the period of parking to which the unpaid parking charges relate,
  - (b) the application was made during the period mentioned in section 99(4) (where notice to the driver has been given) or 100(4) (where no notice to the driver has been given), and
  - (c) the information sought by the application is provided by the Secretary of State to the applicant.
- (2) The third condition applies only if the vehicle is a registered vehicle.
- (3) In subsection (1)(a), “application for the keeper's details” means an application for the following information to be provided to the applicant by virtue of regulations made under section 22(1)(c) of the Vehicle Excise and Registration Act 1994—
  - (a) the name of the registered keeper of the vehicle during the period of parking to which the unpaid parking charges relate, and
  - (b) the address of that person as it appears on the register (or, if that person has ceased to be the registered keeper, as it last appeared on the register).

### **103 Fourth condition: display of notices on relevant land**

- (1) The fourth condition for the purposes of section 95 is that any applicable requirements prescribed under this section were met as regards the relevant land at the beginning of the period of parking to which the unpaid parking charges relate.
- (2) The Scottish Ministers may by regulations prescribe requirements as to the display of notices in relevant land where parking charges may be incurred in respect of the parking of vehicles on the land.
- (3) The provision made under subsection (2) may, in particular, include provision—
  - (a) requiring notices of more than one kind to be displayed on relevant land,
  - (b) as to the content or form of any notices required to be displayed,
  - (c) as to the location of the notices required to be displayed.

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### *Hire vehicles*

#### **104 No right to recover from vehicle-hire firm**

- (1) This section applies in the case of parking charges incurred in respect of the parking of a vehicle on relevant land if—
  - (a) the vehicle was at the time of parking hired to any person under a hire agreement with a vehicle-hire firm, and
  - (b) the keeper has been given a notice to keeper within the period mentioned in section 99(4) or 100(4) (as the case may be).
- (2) The creditor may not exercise the right under section 95 to recover from the keeper any unpaid parking charges specified in the notice to keeper if, within the period of 28 days beginning with the day after that on which that notice was given, the creditor is given—
  - (a) a statement signed by or on behalf of the vehicle-hire firm to the effect that at the material time the vehicle was hired to a named person under a hire agreement,
  - (b) a copy of the hire agreement, and
  - (c) a copy of a statement of liability signed by the hirer under that hire agreement.
- (3) The statement of liability required by subsection (2)(c) must—
  - (a) contain a statement by the hirer to the effect that the hirer acknowledges responsibility for any parking charges that may be incurred with respect to the vehicle while it is hired to the hirer,
  - (b) include an address given by the hirer (whether a residential, business or other address) as one at which documents may be given to the hirer,

(and it is immaterial whether the statement mentioned in paragraph (a) relates also to other charges or penalties of any kind).
- (4) A statement required by subsection (2)(a) or (c) must be in such form as the Scottish Ministers may by regulations prescribe.
- (5) The giving of documents referred to in subsection (2) must be by such means as the Scottish Ministers may by regulations prescribe.
- (6) In this section—
  - (a) “hire agreement” means an agreement which—
    - (i) provides for a vehicle to be let to a person (“the hirer”) for a period of any duration (whether or not the period is capable of extension by agreement between the parties), and
    - (ii) is not a hire-purchase agreement within the meaning of the Consumer Credit Act 1974,
  - (b) any reference to the currency of a hire agreement includes a reference to any period during which, with the consent of the vehicle-hire firm, the hirer continues in possession of the vehicle as hirer, after the expiry of any period specified in the agreement but otherwise on terms and conditions specified in it, and
  - (c) “vehicle-hire firm” means any person engaged in the hiring of vehicles in the course of a business.

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## **105 Right to recover from hirer**

- (1) If—
- (a) the creditor is by virtue of section 104(2) unable to exercise the right to recover from the keeper any unpaid parking charges mentioned in the notice to keeper, and
  - (b) the conditions mentioned in subsection (2) are met,
- the creditor may recover those charges (so far as they remain unpaid) from the hirer.
- (2) The conditions are that—
- (a) the creditor has within the relevant period given the hirer a notice in accordance with subsection (5) (a “notice to hirer”), together with a copy of the documents mentioned in section 104(2) and the notice to keeper,
  - (b) a period of 21 days beginning with the day on which the notice to hirer was given has elapsed, and
  - (c) the vehicle was not a stolen vehicle at the beginning of the period of parking to which the unpaid parking charges relate.
- (3) In subsection (2)(a), “the relevant period” is the period of 21 days beginning with the day after that on which the documents required by section 104(2) are given to the creditor.
- (4) For the purposes of subsection (2)(c) a vehicle is presumed not to be a stolen vehicle at the material time, unless the contrary is proved.
- (5) The notice to hirer must contain such information as the Scottish Ministers may by regulations prescribe.
- (6) The giving of documents referred to in subsection (2)(a) must be by such means as the Scottish Ministers may by regulations prescribe.
- (7) In this section, “the hirer” means the person who is the hirer in relation to the vehicle as referred to in section 104.

### *Military vehicles*

## **106 Military vehicles**

This Part does not apply in relation to a vehicle that—

- (a) at the relevant time is used or appropriated for use for naval, military or air force purposes, or
- (b) belongs to any visiting forces (within the meaning of the Visiting Forces Act 1952) or is at the relevant time used or appropriated for use by such forces.

### *General*

## **107 Power to modify Part**

- (1) The Scottish Ministers may by regulations modify this Part for the purpose of—
- (a) amending the definition of “relevant land” in section 94,
  - (b) adding to, removing or amending any of the conditions to which the right conferred by section 95 is for the time being subject.

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- (2) The power to modify this Part for the purpose mentioned in subsection (1)(b) includes, in particular, power to add to, remove or amend—
- (a) any provisions that are applicable for the purposes of a condition, and
  - (b) any powers of the Scottish Ministers to prescribe anything for the purposes of a condition by regulations.

## **108 Interpretation of Part**

In this Part—

“the creditor” means the person who is for the time being entitled to recover unpaid parking charges from the driver of the vehicle,

“driver” includes, where more than one person is engaged in the driving of the vehicle, any person so engaged,

“keeper” means the person by whom the vehicle is kept at the time the vehicle was parked, which in the case of a registered vehicle is to be presumed, unless the contrary is proved, to be the registered keeper,

“notice to driver” means a notice given in accordance with section 98,

“notice to keeper” means a notice given in accordance with section 99 or 100 (as the case may be),

“registered address” means, in relation to the keeper of a registered vehicle, the address described in section 102(3)(b) (as provided by the Secretary of State in response to the application for the keeper's details required by section 102),

“registered keeper”, in relation to a registered vehicle, means the person in whose name the vehicle is registered,

“registered vehicle” means a vehicle which is for the time being registered under the Vehicle Excise and Registration Act 1994,

“vehicle” means a mechanically-propelled vehicle or a vehicle designed or adapted for towing by a mechanically-propelled vehicle.



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