

POLICY NOTE

THE PAVEMENT PARKING PROHIBITION (EXEMPTION ORDERS PROCEDURE) (SCOTLAND) REGULATIONS 2022

SSI 2022/360

The above instrument was made in exercise of the powers conferred by section 52 of the Transport (Scotland) Act 2019 (“the Act”). This instrument is subject to the affirmative procedure.

Purpose of the instrument

The purpose of the instrument is to make detailed provision for the process a local authority should follow when promoting an Exemption Order in relation to:

- The publication of proposals and consultation
- The handling of representations
- The power for local authorities to appoint a ‘reporter’ to hold a hearing (if necessary)
- The making of an Exemption Order, including the consideration of representations and report following a hearing (if necessary), the making and form of an Exemption Order, the notice of making an Exemption Order and the amendment and revocation of Exemption Orders.

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.

Policy Objectives

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. In addition, it is envisaged that significant awareness-raising work will be needed to foster the necessary behaviour change. Therefore, 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 to move forward with putting in place Exemption Orders where appropriate, and in line with the powers provided in the Act.

Section 51 of the Act allows a local authority to make an exemption order providing that the prohibition is not to apply to a footway within its area, where that footway has characteristics specified in a direction made by the Scottish Ministers. Under Section 52 of the Act, these Regulations make provision in relation to the procedure to be followed by a local authority when making, amending or revoking an exemption order.

Consultation, Publication and Representations

Part 2 of the Regulations makes provision about the consultation, publication and representations procedure relating to proposals to make exemption orders.

Regulation 2 specifies the steps which are to be taken by a local authority in relation to the publication of proposals to make exemption orders. These steps include publishing on the local authority's website: a notice of the proposal, an outline of the proposed Exemption Order and a statement of reasons for the proposed Exemption Order. Local authorities will also need to make a copy of the above information available for inspection at their offices, display notices in any footway to which the proposal relates, consult the relevant stakeholders detailed below and consider taking any other steps to ensure adequate publicity about the proposed Exemption Order is given to persons likely to be affected by it.

Regulation 2 also makes provision about who is to be consulted by a local authority and the information which is to be provided to consultees. These consultees include the Chief Constable of Police Scotland, any Transport Partnership in the region where the Order will operate, the appropriate Crown authority if the proposal relates to a Crown Road, any Health Board to whose area the proposal relates, the Scottish Fire and Rescue Service, the relevant traffic authority and any other persons the local authority considers appropriate.

Regulation 3 sets out the procedure for making representations in relation to a proposal. The procedure for making representations include submitting a statement of the grounds for making the representation to the local authority within a minimum period of 28 days beginning with the date on which the notice of proposals is published. Schedule 1 details associated provision with regard to information which is to be included in the notices of proposals (Part 1) and the making of exemption orders (Part 2).

Hearings

Part 3 of the Regulations sets out the process for the holding of hearings in relation to proposed exemption orders.

Regulation 4 provides that, before making an exemption order, a local authority may appoint a reporter to conduct a hearing in relation to the proposal or any aspect of it. If a reporter is to be appointed, they must be a member of staff of the Scottish Ministers or selected from a panel provided by the Scottish Ministers. In practice, the reporter is likely to be from the Scottish Governments Planning and Environmental Appeals Division (DPEA).

Regulation 5 sets out the notice requirements in connection with the hearing and the reporter's obligation to establish the timetable. These requirements include giving notice to each person the local authority consulted, each person who made a representation and any other person the reporter wishes to hear from in relation to specified matter at the hearing.

Regulation 6 details who can appear at a hearing, being those persons who have informed the reporter of their intention to appear in response to a notice. Regulation 7 provides that the reporter must fix the date and time for the holding of the hearing and set out the manner in which the hearing will be conducted.

Regulation 8 makes provision about the procedure at hearings. The procedure at a hearing is as the reporter determines and the reporter is to state at the commencement of the hearing the procedure they propose to adopt. Any person who is entitled to appear at the hearing may do so on their own behalf or be represented by another person, and where there are two or more persons having a similar interest in the issues being considered, the reporter may allow one or more person to appear on behalf of some or all of those persons. A hearing is to take the form of a discussion led by the reporter and cross-examination is not permitted. The reporter may from time to time adjourn the hearing.

Making an Exemption Order

Part 4 sets out further procedure in relation to the modification of proposals, making and notice of making of exemption orders.

Regulation 9 details that, before making an exemption order, a local authority is to consider the report and recommendations (if any) of the reporter, as well as any representations made in accordance with the procedure set out in these Regulations. Regulation 10 provides that a local authority may decide to proceed with making an order giving effect to a proposal with or without modifications, and describes the procedure to be followed where such modifications are considered to make substantial changes to a proposal. This procedure includes notifying any person who appears to be affected by the change, to give that person an opportunity to make representations about the modifications and then to consider any representations made by that person.

Regulation 11 deals with the form of an exemption order, and details that an order must specify the footway to which it relates, be accompanied by a map showing the location of footways covered and to state the date on which it is to come into effect.

Regulation 12 specifies the procedure to be followed in relation to giving notice of the making of an exemption order. Within 14 days of making an exemption order, a local authority must give notice of the making of the order to the Chief Constable of Police Scotland, each person they consulted and to each person who made representations, publish a notice on their website along with the exemption order and accompanying map and, where applicable, the report following the holding of a hearing, make a copy of everything mentioned above available for inspection at their offices, display notices in any footway to which the exemption order relates and consider any other steps to ensure adequate publicity about the making of the order is given to persons likely to be affected by it.

Schedule 2 contains associated provision with regard to the display of notices of proposals and making of orders in footways to which the order relates. Any notice of proposals must be

displayed in a prominent position at or near each end of the footway to which the proposed exemption order relates and in such other positions as the local authority thinks necessary for securing that adequate information is given to persons using the footway. The notice must be displayed at the same time as the corresponding notice for the proposal is published on the local authority's website, and the local authority must take all reasonable steps to ensure that it remains in a legible condition and continues to be displayed until the end of the representation period. Lastly, in the case of the making of an exemption order, the notice must be displayed at the same time as the corresponding notice is published on the local authority's website.

Regulation 13 extends the application of the requirements set out in Regulations 2 to 12 to proposals to amend or revoke an exemption order.

Consultation

Transport Scotland undertook a consultation on the proposed content of the Exemption Order Procedure Regulations. The consultation ran for 12 weeks from 17 December 2021 and closed on 11 March 2022. The consultation was designed to gather the views of stakeholders and individuals to help inform the Scottish Government's policy in relation to the Exemption Order Procedure Regulations.

Twenty six questions were posed in total. One question was in relation to the Ministerial Directions and twenty five questions were in relation to the Exemption Order process. Some 626 responses were received via Citizen Space, the Scottish Government's consultation website. Of these, 20 were submitted by local authorities and 3 by Community Councils. 15 other respondents also identified their organisation, and 589 were listed as individuals. The analysis report was published on 8 June 2022.

All feedback received relating to the form and process of an Exemption Order helped inform the content of The Pavement Parking Prohibition (Exemption Order Procedure) (Scotland) Regulations 2022.

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 Planning and Environmental Appeals Division (DPEA) on the proposed content of the Exemption Order Procedure Regulations. This consultation was required due to a section in the Regulations giving a local authority the power to refer a proposed Exemption Order to a reporter for a Hearing.

Impact Assessments

An Equalities Impact Assessment (EQIA) was undertaken and the results have been published on the Transport Scotland website. The EQIA found no evidence that these regulations will have an impact on inequalities. The Regulations provide a procedure for local authorities to follow to make, amend or revoke an order to exempt a section of footway (which has characteristics set out in a ministerial direction) from the national pavement parking ban. However the parking prohibitions as a whole aim to tackle the impact of

inconsiderate and obstructive parking and ensure that our roads and pavements are accessible for all.

A Strategic Environmental Assessment (SEA) screening has been undertaken. This established that any environmental impact the policy will have will unlikely to be significant and that under section 5(4) of the Environmental Assessment (Scotland) Act 2005, no further assessment is required.

A Fairer Scotland assessment was undertaken and found no evidence that these Regulations will have an impact on inequalities for disadvantaged groups. Research has shown that socio-economic factors can be impacted with a change in parking arrangements to certain streets. However, to ensure that the Fairer Scotland Duty is considered we propose that all local authorities ensure they assess equality when promoting and making any exemption to the pavement parking ban or change to parking arrangements.

As these Regulations are not expected to have an impact on children and young people, they have been exempted from the Child Rights and Wellbeing Impact Assessment (CRWIA) through Screening.

An Island Communities Impact Assessment (ICIA) was not required for this instrument, as a screening determined that the provisions within the Regulations do not raise island specific issues or concerns. In addition, the Regulations are not likely to have a particular effect on an Island community which is significantly different from its effect on other communities, including other island communities.

Following consideration of the screening questions and early engagement with the Information Commissioners' Office, it was determined that a data protection impact assessment (DPIA) is not required for these Regulations.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been prepared in relation to these Regulations and a copy is attached.

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