

Draft Regulations laid before the Scottish Parliament under section 128(2) of the Transport (Scotland) Act 2019, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

TRANSPORT

The Pavement Parking Prohibition (Exemption Orders Procedure) (Scotland) Regulations 2022

Made - - - - 2022
Coming into force - - 9th December 2022

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 52(1) of the Transport (Scotland) Act 2019⁽¹⁾ and all other powers enabling them to do so. In accordance with section 128(2) of that Act, a draft of these Regulations has been laid before, and approved by resolution of, the Scottish Parliament.

PART 1

Preliminary

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pavement Parking Prohibition (Exemption Orders Procedure) (Scotland) Regulations 2022 and come into force on 9 December 2022.

(2) In these Regulations—

“the Act” means the Transport (Scotland) Act 2019,

“writing” and “written” include electronic communications within the meaning of section 15 (general interpretation) of the Electronic Communications Act 2000⁽²⁾.

(1) 2019 asp 17.

(2) 2000 c. 7. Section 15 was relevantly amended by paragraph 158 of schedule 17 of the Communications Act 2003 (c. 17).

PART 2

Consultation, publication and representations

Publication of proposals and consultation

- 2.—(1) Before making an exemption order under section 51 of the Act, a local authority must—
- (a) publish on the local authority’s website a notice containing the information specified in Part 1 of schedule 1 (a “notice of proposals”),
 - (b) publish on the local authority’s website an outline of the proposed exemption order, including the information required under regulation 11(a) and (b) (a “proposal”),
 - (c) publish on the local authority’s website a statement setting out the reasons why the proposed exemption order should be made,
 - (d) make a copy of the information mentioned in sub-paragraphs (a) to (c) available for inspection at their offices during normal office hours, and (if the local authority thinks fit) at such other places within its area and during such times at those places as it may determine,
 - (e) display notices containing the information set out in Part 1 of schedule 1, displayed in accordance with paragraphs 1 and 2 of schedule 2, in any footway to which the proposal relates,
 - (f) consult the persons specified in paragraph (3),
 - (g) take such other steps as it considers appropriate for ensuring that adequate publicity about the proposed exemption order is given to persons likely to be affected by it.
- (2) When consulting the persons specified in paragraph (3) a local authority must provide those persons with the information mentioned in paragraph (1)(a) to (c).
- (3) The persons to be consulted are—
- (a) the chief constable of the Police Service of Scotland,
 - (b) any Transport Partnership, established by order under section 1 of the Transport (Scotland) Act 2005(3), to whose region the proposal relates,
 - (c) the appropriate Crown Authority where the proposal relates to a Crown Road,
 - (d) any Health Board, constituted by order under section 2 of the National Health Service (Scotland) Act 1978(4), to whose area the proposal relates,
 - (e) the Scottish Fire and Rescue Service, where it appears to the local authority that the proposal is likely to affect the passage of fire fighting vehicles on any road or place,
 - (f) the traffic authority, where the proposal relates to a road for which the local authority is not the traffic authority,
 - (g) such other persons as the local authority considers appropriate.
- (4) In this regulation, “Crown road” and “appropriate Crown Authority” have the meanings given in section 131(7) of the Road Traffic Regulation Act 1984(5).

(3) 2005 asp 12.

(4) 1978 c. 29; section 2 was relevantly amended by paragraph 1 of schedule 7 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 28(a)(i) and (ii), (b) and (c) of the National Health Service and Community Care Act 1990 (c. 19), paragraph 1(2)(a) and (b) of schedule 1 of the National Health Service Reform (Scotland) Act 2004 (asp 7), and paragraph 2(2) of schedule 2 of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13).

(5) 1984 c. 27. Section 131(7) was amended by paragraph 75(3) of schedule 8 of the New Roads and Street Works Act 1991 (c. 22) and by S.I. 2017/524.

Representations

3.—(1) Before the end of the period specified in accordance with paragraph 5 of Part 1 of schedule 1, any person may make representations in writing in relation to the proposed exemption order.

(2) Representations under paragraph (1) must—

- (a) contain a statement of the grounds on which the representations are made, and
- (b) be intimated to the local authority as set out in the notice published under regulation 2(1) (a) and paragraph 5 of Part 1 of schedule 1.

(3) A local authority may consider whether it is appropriate to take account of representations made under this regulation which are received by it after the end of the period specified in the notice of proposals.

PART 3

Hearings

Hearing

4.—(1) Before making an exemption order, a local authority may appoint a person (a “reporter”) to conduct a hearing in relation to the proposed exemption order or any aspect of it.

(2) A reporter appointed under this regulation must be—

- (a) a member of the staff of the Scottish Ministers, or
- (b) selected from a panel provided by the Scottish Ministers.

(3) A hearing must be held in public.

Notice of hearing

5.—(1) Where a hearing is to be held the reporter must give notice in writing to that effect to—

- (a) each person consulted under regulation 2(3),
- (b) each person who made representations under regulation 3(1),
- (c) any other person from whom the reporter wishes to hear in relation to specified matters at the hearing.

(2) Within 14 days of the date of receiving a notice under paragraph (1) anyone intending to appear at the hearing must inform the reporter of that intention in writing.

(3) A notice sent under paragraph (1) must include confirmation that if those persons do not reply to the reporter in terms of paragraph (2) they will not be entitled to appear at the hearing.

Appearances at hearing

6. The persons entitled to appear at a hearing are those who have informed the reporter of their intention to appear under regulation 5(2).

Date and notification of hearing

7.—(1) The reporter must fix the date and time for the holding of the hearing and the manner in which the hearing will be conducted, including its location (if appropriate), all or any of which may subsequently be varied by the reporter.

(2) The reporter must give those persons entitled to appear at the hearing written notice of—

- (a) the date and time fixed for the holding of the hearing,
- (b) the manner of the holding of the hearing, including its location, if appropriate,
- (c) any subsequent variation of the details mentioned in sub-paragraphs (a) and (b).

Procedure at hearing

8.—(1) Except as otherwise provided in this Part, the procedure at a hearing is as the reporter determines.

(2) The reporter is, having considered any submission by the persons entitled to appear at the hearing, to state at the commencement of the hearing the procedure the reporter proposes to adopt.

(3) Any person entitled to appear at the hearing may do so on their own behalf or be represented by another person.

(4) Where there are two or more persons having a similar interest in the issues being considered at the hearing, the reporter may allow one or more person to appear on behalf of some or all of those persons.

(5) A hearing is to take the form of a discussion led by the reporter and cross-examination is not permitted.

(6) The reporter may from time to time adjourn the hearing and, if the date, time and place of the adjourned hearing are announced before the adjournment, no further notice is required, otherwise regulation 7 applies as it applies to the variation of the date, time or place at which a hearing session is to be held.

PART 4

Making of an exemption order

Consideration of representations and report following hearing

9. Before making an exemption order, a local authority must consider—

- (a) any representations made in accordance with regulation 3(1),
- (b) in a case where a hearing has been held, the report and recommendations (if any) of the reporter.

Making of an exemption order

10.—(1) A local authority may—

- (a) make an exemption order which gives effect to a proposal without modification,
- (b) make an exemption order which gives effect to a proposal with modifications,
- (c) decide not to make an exemption order.

(2) Where a local authority proposes to make an exemption order giving effect, with modifications, to the proposal, being modifications which in its opinion make a substantial change to the proposal, they are—

- (a) to notify any person who appears to the local authority to be likely to be affected by the change,
- (b) to give that person an opportunity to make representations about the modifications within such period as may be specified in the notification, and

- (c) before making the order, to consider any representations made to the local authority by that person.

(3) A local authority may consider whether it is appropriate to take account of representations made under this regulation which are received by it after the end of the period specified in accordance with paragraph (2)(b).

Form of exemption order

11. An exemption order must—

- (a) specify the footway (or part of a footway) to which it relates,
- (b) be accompanied by a map which indicates the footway (or part of a footway) to which the order relates,
- (c) specify the date on which the order comes into effect.

Notice of making of an exemption order

12. Within 14 days of making an exemption order under section 51 of the Act a local authority must—

- (a) give notice in writing of the making of the exemption order to the chief constable of the Police Service of Scotland,
- (b) give notice in writing to each person consulted under regulation 2(3), and to each person who made representations under regulation 3(1), of the local authority's reasons for making the exemption order,
- (c) publish on the local authority's website a notice of the making of the exemption order containing the information specified in Part 2 of schedule 1,
- (d) publish the exemption order and accompanying map and, where applicable, the report following the holding of a hearing under regulation 4, on the local authority's website,
- (e) make a copy of everything mentioned in sub-paragraphs (a) to (d) available for inspection at their offices during normal office hours, and (if the local authority thinks fit) at such other places within its area and during such times at those places as it may determine,
- (f) display notices containing the information set out in Part 2 of schedule 1, displayed in accordance with paragraphs 1 and 3 of schedule 2, in any footway to which the exemption order relates,
- (g) take such other steps as it considers appropriate for ensuring that adequate publicity about the making of the exemption order is given to persons likely to be affected by it.

Amending and revoking exemption orders

13. The requirements of regulations 2 to 12 apply to proposals to amend or revoke an exemption order as they do to proposals to make an exemption order.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulations 2, 3, and 12

PART 1

PARTICULARS TO BE INCLUDED IN THE NOTICE OF PROPOSALS

1. The name of the local authority.
2. A description of the proposed exemption order.
3. Each address at which a copy of—
 - (a) the proposal referred to in regulation 2(1)(b),
 - (b) the statement referred to in regulation 2(1)(c),

can be inspected, and the times when inspection can take place at each such address.

4. The fact that the information referred to in regulation 2(1)(b) and (c) is available on the local authority's website.
5. The period within which representations may be made in relation to the proposed exemption order, being a period of at least 28 days beginning with the date on which the notice of proposals is published under regulation 2(1)(a).
6. The address at which representations relating to the proposed exemption order can be lodged, and a statement that all representations must be made in writing and must specify the grounds on which they are made.

PART 2

INFORMATION TO BE INCLUDED IN THE NOTICE OF MAKING OF AN EXEMPTION ORDER

7. The name of the local authority.
8. A description of the exemption order.
9. The date of the making of the order and the date on which it comes into effect.
10. Each address at which a copy of the exemption order and accompanying map and, where applicable, the report following the holding of a hearing under regulation 4, can be inspected, and the times when inspection can take place at each such address.
11. The fact that a copy of the exemption order and accompanying map is available on the local authority's website.

SCHEDULE 2

Regulations 2 and 12

REQUIREMENTS AS TO THE DISPLAY OF NOTICES IN A FOOTWAY TO WHICH A PROPOSAL OR EXEMPTION ORDER RELATES

1. The notice must be displayed in a prominent position at or near each end of the footway to which the exemption order relates and in such other positions as the local authority thinks necessary for securing that adequate information about the subject matter of the notice is given to persons using the footway.

2. The notice must be displayed at the same time as the corresponding notice is published in accordance with regulation 2(1)(a), 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.
3. The notice must be displayed at the same time as the corresponding notice is published in accordance with regulation 12(c).

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 50 of the of the Transport (Scotland) Act 2019 (“the Act”) introduces a national prohibition on pavement parking. Section 51 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. These Regulations make provision in relation to the procedure to be followed by a local authority when making, amending or revoking an exemption order.

Part 2 of the Regulations makes provision about consultation, publication and representations 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. It also makes provision about who is to be consulted by a local authority and the information which is to be provided to consultees. Regulation 3 sets out the procedure for making representations in relation to a proposal. Schedule 1 contains 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).

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. Regulation 5 sets out the notice requirements in connection with the hearing and the reporter’s obligation to establish the timetable. Regulation 6 deals with 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.

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

Regulation 9 provides 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. Regulation 11 deals with the form of an exemption order, and provides that an order is to be accompanied by a map showing the location of footways covered by the order. The exemption order is to state the date on which it is to come into effect. Regulation

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Pavement Parking Prohibition (Exemption Orders Procedure) (Scotland) Regulations 2022 No. 360*

12 specifies the procedure to be followed in relation to giving notice of the making of an exemption order. 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.

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

Impact assessments have been prepared in relation to these Regulations, copies of which can be obtained from the offices of Transport Scotland, Glasgow or online at www.transport.gov.scot.