

## POLICY NOTE

### THE WORKPLACE PARKING LICENSING (SCOTLAND) REGULATIONS 2022

#### SSI 2022/4

The above instrument was made in exercise of the powers conferred by sections 74, 75(6), 76(5), 80(1)(b), 82(1) and 83(1) of the Transport (Scotland) Act 2019 (“the Act”), which came into force on 10 January 2022. This instrument is subject to negative procedure.

#### **Purpose of the instrument**

The purpose of the instrument is to make detailed provision in relation to:

- The consultation, report and publication requirements on workplace parking licensing (WPL) proposals as set out in the Act
- The process for examination of WPL proposals
- The circumstances in which persons other than the occupier of premises will be liable to obtain a WPL licence and pay the licence charge
- The process for reviews and appeals of licensing decisions
- The ability for schemes to provide for penalty charges and enforcement and appeals in that connection
- Accounts

#### **Background**

The Act includes provisions introducing a discretionary power available to local authorities to make workplace parking licensing (WPL) schemes in their area. It will be for local authorities to decide whether they wish to use that power and, if so, to shape proposals to suit local circumstances.

Where a workplace parking licensing scheme is in place, persons may be required to obtain a licence from the local authority for each workplace parking place made available for use by employees and certain visitors to premises covered by the Act. A charge may be levied for such a licence on the basis of the number of places specified in the licence. Obtaining a WPL and paying any levies would be the responsibility of the occupier of the premises, i.e. the employer or business. Individual employees or business visitors would not be liable for the licence or charge. However, there is nothing to stop individual businesses from charging employees or certain visitors a fee to park on their premises (by way of private contractual arrangements, as is currently possible).

Parking places provided for use by non-business visitors would not be liable for the charge: for example, customer parking places at a supermarket or shopping centre would not need to be licenced.

The Act provides for certain national exemptions from WPL levies, although these workplace parking places may still be required to be licenced. These exemptions include parking places reserved for Blue Badge holders, certain parking places at qualifying NHS premises, and parking places at hospices.

The intention of the Scottish Government is for local authorities to be empowered to create WPL schemes that reflect their local circumstances. For example, WPL schemes can be designed to apply only to certain parts of the local authority boundary or to apply only at certain times of day. Local authorities will have the discretion to make local exemptions that support their local objectives and circumstances (beyond the fixed national exemptions), but are not required to do so. For example, a local authority could exempt premises with fewer than a specified number of parking places, parking places for use by certain types of vehicles or

for specified uses, or specific types of premises. Two or more local authorities can choose to jointly implement a WPL scheme.

Local Authorities may use WPL revenues only to cover the costs of the scheme and to support the policies in their Local Transport Strategy.

### **Policy Objectives**

As a measure addressing demand management of travel, progressing the delivery of the WPL regulations and guidance supports existing Scottish Government policy commitments. WPL has the potential to encourage the use of more sustainable travel. As the net revenue generated by WPL schemes must be committed to support policies in Local Transport Strategies, this policy is also intended to raise revenue that will be used to improve public and sustainable transport in line with the sustainable travel hierarchy, making it more attractive and thus encouraging individuals to use public transport instead of driving.

Providing local authorities with discretionary powers to implement a WPL scheme supports National Transportation Strategy (NTS2) outcomes of reducing congestion and tackling climate/air emissions. These powers provide a tool for local authorities to influence travel behaviour in a way that disincentivises private car use and encourages the use of public and sustainable transport. The [NTS2 Delivery Plan](#) 2020-2022 commits Ministers to taking forward supporting regulations and guidance so that local authorities can choose to implement WPL schemes.

Implementing regulations and guidance so that local authorities can move forward with WPL schemes also progresses Scotland's commitment to reach net-zero by 2045. The Climate Change Plan update (CCPu) was laid in Parliament in December 2020. As part of Ministers' commitment to reduce car kilometres by 20% by 2030, the [CCPu committed](#) to take forward policy consultation in advance of drafting regulations and guidance to enable local authorities to implement WPL schemes that suit their local requirements.

### ***Consultation, report and publication requirements***

The Act sets out requirements for local authorities to consult the persons they consider to be appropriate, including persons that the authority has identified as likely to be affected by the proposal. Regulation 2 sets out where the local authority must publish their proposal, including in a local newspaper and on the local authorities website. The local authority must also send a copy of the proposal documents to Scottish Ministers and make a copy available at their office for inspection, as well as take any other steps the local authority considers reasonable to publicise proposals to those who might be affected by the proposed WPL scheme. Regulation 3 allows the people consulted under the Act to respond in writing to the consultation, and sets out what information the local authority must provide to them, such as how to respond to the consultation.

Under the Act, after the consultation is completed, the local authority must complete a report on the consultation responses. Regulation 4 requires that this report must be published on the local authority's website and sent to the people who were consulted, and to Scottish Ministers.

Under Regulation 5, once the local authority has made a scheme, they must take a series of steps within 14 days: they must provide written notice to the people who were consulted, make a copy of the relevant documents available for inspection at the local authority offices, publish notice in a newspaper and on the local authority's website, and take other steps they consider appropriate to ensure adequate publicity about the scheme.

## ***Examination***

Section 75 of the Act enables local authorities or the Scottish Ministers to appoint a reporter to conduct an examination into a WPL scheme proposal. Part 3 of the instrument outlines the detail necessary for an examination to be conducted in a consistent manner.

Under regulation 6 the party initiating the examination must give written notice of this intention to:

- Scottish Ministers, if the initiating party is the local authority proposing to make the scheme,
- the local authority, if the initiating party is the Scottish Ministers,
- any person who responded to the consultation under section 73(1)(b) of the Act.

The written notice must include a statement setting out the scope of the examination, what procedure the initiating party considers the examination should be carried out under the options provided by the Act, documents and evidence including the proposal, consultation report, and other documents required to be published under section 73(1)(a) and 73(1)(c) of the Act, and a list of persons who the initiating party wishes to provide further evidence.

If the initiating party is Scottish Ministers, then the local authority must provide the written notice to the persons consulted under section 73(1)(b) of the Act. This is because Scottish Ministers may not have the details of those persons, since they are determined by the local authority.

### Appointment of reporter

The reporter must be a member of the 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 Government's Planning and Environmental Appeals Division (DPEA).

### Responses to notice of intention to cause an examination to be held

Under regulation 8 the persons who have been given notice of the examination may respond in writing to the initiating party's examination notice. Any response include: (1) details which they believe should be taken into account by the reporter in examining the proposal, (2) their views on the procedure for the examination, that is by way of written representations only, a hearing or inquiry, (3) details of any documentation, materials or evidence upon which the person intends to rely, including listing those already provided by the initiating party, and (4) where a hearing or inquiry is sought a list of persons who will provide a written statement (in the case of hearings), or a list of witnesses (for inquiries).

### Scope of the examination

Regulation 9 makes provision in relation to the scope of an examination. The scope is to be set by the local authority proposing the WPL, or by Scottish Ministers, depending on which of them initiated the examination. Further matters can be included in the scope of the examination only on agreement between the local authority and the Scottish Ministers. Matters which are out of scope of the examination must be disregarded by the reporter.

### Procedures and timetable for examination

Section 75(3) of the Act outlines the procedures for conducting an examination, either by way of written representations only, holding a hearing, or holding an inquiry. Regulation 10 provides that the procedure and timetable for an examination is to be determined by the reporter. The reporter must give notice of the scope,

procedure and timetable of the examination to the parties that were notified when the examination was initiated (ie Scottish Ministers, the local authority, and persons consulted under section 73(1)(b) of the Act.

### Opt-in procedure

Regulation 11 allows the reporter to invite the parties that were notified when the examination was initiated to 'opt-in' to participate in the examination, giving at least 14 days for a reply. If those persons do not respond to this invitation indicating that they wish to participate they lose the opportunity to take any further part in the examination. Further submissions and information In terms of regulation 12 the reporter may seek further written submissions within the scope of the examination. If so, they would need to publish a 'procedure notice' outlining the matters on which additional representations or information is requested and by which date. This information would be sought within 14 days of the request for further information.

### Pre-examination meetings

Regulation 13 makes provision for pre-examination meetings to look at the manner in which the examination is to be conducted in order to ensure that the examination is conducted as quickly and efficiently as possible.

### Determination without further procedure

Regulation 14 allows the reporter, if they are content that they have the necessary information (and thus do not need to hold either a hearing or inquiry), to carry out the examination and prepare a report on it without further procedure.

### Conclusion on further procedure

Where the reporter does not carry out the examination via a 'written-only' format, regulation 15 provides that the reporter must determine whether to carry out the examination by either a hearing or inquiry, and then inform the relevant parties in writing of that determination.

### Inspections

Regulation 16 allows the reporter to carry out inspections of the licensing area to which a proposal for a WPL relates.

### Hearings and inquiries procedures

Regulation 17 and schedules 2 and 3 make provision for the procedure at hearings and inquiries, respectively. The reporter will determine the procedure to adopt for both hearings and inquiries, within the parameters set out in regulation such as giving notification. A hearing will take the form of a discussion, with no cross-examination, while an inquiry allows parties to call evidence, cross-examine persons giving evidence, and to make closing statements.

### Expenses

Regulation 18 allows the reporter to make orders as to the expenses incurred by the parties to the examination.

## Report

Regulation 19 states that the reporter must provide parties with a copy of their report into the examination, and publish the report on the Scottish Ministers' websites.

### ***Liability to pay licence charge***

Under the Act, the occupier of the premises providing the parking places will be responsible for acquiring and paying for the licence. Regulation 21 specifies that in circumstances where the occupier of any premises has entered into arrangements with an employer for the provision of parking places, the employer would be liable for WPL charges rather than the occupier. This would only apply if satisfactory evidence of this arrangement is provided by the occupier, to address concerns raised in consultation that liability for the WPL charge could become unclear.

### ***Reviews and appeals of licensing decisions***

Regulation 22 requires local authorities to include a mechanism for reviewing licensing decisions when they create local schemes, for example if an employer who has applied for a WPL licence does not agree with any conditions which have been placed on the licence. The review process must allow 28 days for a written application for review to be made after the licensing decision has been served onto the licence holder or applicant, and local authorities have discretion on accepting applications for review after 28 days. If a review is sought, then the licensing decision in question does not take effect until the review has been completed and a decision made. The local authority must consider the application for review, and advise the licence holder of its decision to confirm or revise the decision by serving a "notice of determination", which must state the reasons for the local authority's decision, and advise how the determination may be appealed to the sheriff.

Regulation 24 sets out that an appeal against the local authority's determination may be made by summary application to the sheriff. This is a standard procedure which allows the sheriff to decide the appeal. If the sheriff allows the appeal, they must remit the decision back to the local authority to reconsider their decision. The sheriff can make a determination on expenses. Any licensing decision being appealed does not take effect until the appeals process has been fully completed.

### ***Penalty charges and enforcement***

The policy intention is to allow local authorities to enforce WPL schemes by providing a framework for penalty charges to be issued and appealed. Under Regulation 25, schemes may set out that a penalty charge can be issued where a parking place that should be licensed is not licensed, or if a condition in a licence has been breached. Schemes which include penalty charges must set out the period within which a penalty charge must be paid, and this period must be at least 28 days. The scheme must also state the amount of the penalty charge, and if the amount will be reduced if paid within a certain period of time. The penalty charge must be paid by the occupier of the premises, except in situations where another arrangement has been made, as set out under the heading 'liability for charge', above.

When a local authority decides to issue a penalty charge, they must send a penalty charge notice to the person liable to pay the charge, and the notice must include information on the amount of the charge, why the penalty charge was issued, how to pay the penalty charge, and information on how to appeal the penalty charge. If a penalty charge is not paid or appealed within the period of time set by the local authority in the scheme, then the authority can issue a charge certificate: this means that an increased charge is payable.

The recipient of a penalty charge may seek a review of the penalty charge, under Regulation 30, on the grounds that the penalty charge is incorrect, or the amount of the penalty charge is too high for the circumstances set out in the penalty charge notice, or that the penalty is payable by someone else. Regulation 31 requires local authorities to consider the review and serve either a notice cancelling the penalty charge, or a “notice of rejection”. If the recipient receives a notice of rejection, an appeal can be made to the First-tier Tribunal. We expect that the [Rules](#) applying to bus lane and parking appeals to the First-tier Tribunal will be amended so that the procedure set out in those rules will also apply to WPL appeals.

### ***General***

The Act requires revenue from WPL schemes to be spent in support of the objectives set out in the Local Transport Strategy. Regulation 24 requires that accounts are prepared and published in line with other local authority accounting practices, showing the net proceeds of a WPL scheme and how they have been applied.

These regulations apply to proposals to amend or revoke a WPL scheme, as well as proposals to make a new WPL scheme.

### **Consultation**

A 12-week consultation on the WPL regulations and guidance was published in June and closed on 6 September 2021. The consultation asked 17 questions on the technical elements and potential impacts of the regulations and guidance. In total, there were 62 responses to the consultation, of which 37 were from organisations and 25 from individuals. A number of key themes were evident across consultation questions as well as across respondent groups. A number of these were outwith the scope of the consultation and were general comments on WPL and, as such, more appropriate for local authorities to consider when actually implementing any WPL schemes. Key themes include the importance of transparency and accountability in WPL schemes: while some respondents felt that there are already robust processes in place for local authorities to follow when introducing WPL schemes, other respondents felt that clear and consistent national guidance would be important. Respondents expressed concerns about lack of alternative modes of transport, especially that WPL schemes will disproportionately impact low paid and shift workers who lack access to alternative modes of transport. Some concerns were also raised about the impact on city centre businesses. Some respondents noted their dislike of WPL throughout their responses to different questions. The analysis report has been published on the [Transport Scotland website](#).

Additionally, a technical working group was convened with representatives of local authorities who are considering implementing a scheme, Regional Transport Partnerships (RTPs), and representative organisations such as COSLA and SCOTS. The purpose of the working group has been to provide expertise to inform the development of the regulations including technical aspects relating to the delivery of WPL schemes by local authorities. The key responsibilities of the working group have been to provide advice on the scope of regulations and guidance framework, advise on complexities which should be considered further in the consultation, and provide technical advice such as identifying similar regulations or schemes to serve as models for WPL regulations and guidance. The working group met regularly throughout the policy development of these regulations.

Policy officials within Transport Scotland, across Scottish Government, and other public sector organisations such as the Information Commissioners’ Office, Department of Planning and Environmental Appeals, and the Scottish Courts and Tribunals Service, were engaged on technical elements such as the penalty charge appeals process and appeals against licensing decisions, examinations process, and accounting practices. This engagement has informed the regulations and the associated impact assessments.

## **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. Any impacts from WPL schemes will arise from decisions made by local authorities. While these decisions are not for Scottish Ministers, this EQIA sets out some of the evidence that local authorities may wish to consider when implementing local schemes.

A Strategic Environmental Assessment (SEA) screening has been undertaken. This established that the policy will result in 'no or minimum environmental effects' and that under section 7 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, but emphasised the importance of local authorities' consultation and impact assessment work that is required in the Act to ensure that the positive impacts expected from WPL materialise and any potential negative impacts are mitigated.

As these regulations are not expected to have an impact on children and young people, they can therefore be 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 instrument is not considered likely to have an effect on an island community which is significantly different from its effect on other 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.

Scottish Government  
Transport Scotland

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