

Final Business and Regulatory Impact Assessment

Title of Proposal:

The Workplace Parking Licensing (Scotland) Regulations 2022.

1. Purpose and Intended Effect

Background

- 1.1 The Transport (Scotland) Act 2019 includes provisions introducing a discretionary power for local authorities to set up workplace parking licensing (WPL) schemes. 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.
- 1.2 Supporting regulations and guidance will be necessary to provide national consistency on key elements of the scheme but as much as possible it is intended to provide flexibility for local authorities to reflect their local circumstances.
- 1.3 Where a workplace parking licencing 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. 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).
- 1.4 Parking places provided for use by non-business customers would not be liable for the charge: for example, customer parking places at a supermarket or shopping centre would not need to be licenced.
- 1.5 The Transport (Scotland) Act 2019 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.
- 1.6 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 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.
- 1.7 Local Authorities may use WPL revenues only to cover the costs of the scheme and to support the policies in their Local Transport Strategy.

Objective

- 1.8 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 supporting objectives 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.

- 1.9 Providing local authorities with discretionary powers to implement a Workplace Parking Licensing 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 includes a commitment to take forward supporting regulations and guidance so that local authorities can, if they wish, choose to implement WPL schemes.
- 1.10 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 our 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.

Rationale for Government intervention

- 1.11 These regulations support the following National Performance Framework outcomes:
- value, enjoy, protect and enhance their environment,
 - live in communities that are inclusive, empowered, resilient and safe
- 1.12 Implementing regulations will support local authorities to use WPL as a discretionary tool alongside other tools to address climate change. The Carbon Account for Scotland finds that transport continues to be Scotland's biggest emitting sector, accounting for 35.6% of emissions in 2018, and cars account for 40% of Scotland's transport emissions.
- 1.13 WPL schemes will support local authorities to reduce traffic congestion in targeted areas, which may support climate change outcomes though there has been limited research on WPL to date. Poor air quality disproportionately impacts socioeconomically disadvantaged communities and will also be addressed through measures such as low emission zones. Congestion makes public transport alternatives such as bus use less attractive and WPL may be a tool to reduce congestion during rush hours, which in combination with investment of revenue in local transport strategies, could encourage the use of public/active travel in line with the sustainable travel hierarchy.
- 1.14 The Scottish Government is committed to delivering more powers, more funding, and more flexibility to local government. WPL regulations and guidance are part of a package of measures which will deliver the most significant empowerment of local authorities since devolution. We are carefully considering our duties under the European Charter of Local Self-Government Act in developing regulations and guidance to ensure that local authorities will be meaningfully engaged and agree that the regulations and guidance support them to deliver schemes that reflect their local circumstances.

1.15 As the Covid-19 pandemic continues to evolve, travel and working patterns have changed. The effects will not be clear for some time, but there may be an impact on WPL because the number of parking places requiring to be licenced is the maximum number of parking places in use at any one time. For example, if employees travel to their workplace for only part of the week and one parking place was used by different employees on different days of the week, then only one parking place would be licensed and charged.

2. Consultation

Within Government

- 2.1** As outlined above, WPL sits alongside a number of other transport and climate change policies in the NTS2 and CCPu. Policy officials within Transport Scotland have been consulted on similar or intersecting policies such as Low Emission Zones (LEZs), 20 minute communities, and parking prohibition regulations under the Act.
- 2.2** Wider Scottish Government officials within Local Government and Local Government Accounting have provided expertise on best practice in accounting and Scottish Ministers' obligations under the EU Charter of Local Self-Government Bill.
- 2.3** The Department of Planning and Environmental Appeals (DPEA) has been consulted on the proposed provisions on "examinations" within the regulations.
- 2.4** An enquiry was made to the Information Commissioners Office (ICO), in line with Article 36(4) of the General Data Protection Regulation (GDPR), and the ICO has confirmed that they do not wish to provide any further input at this time.
- 2.5** The Scottish Courts and Tribunals Service (SCTS) has been consulted on the relevant appeals processes: both to the sheriff under *Part 5 - Reviews and appeals of licensing decisions* and to the First-tier Tribunal and Upper Tribunal under *Part 6 - Penalty charges and enforcement*.

Public Consultation

- 2.6** As a matter of good practice, a public consultation has been held in advance of drafting of regulations to ensure that the final regulations and guidance have been informed by a wide range of relevant views. The consultation was published on Citizen Space and the Transport Scotland website, and was open for 12 weeks from 11 June to 6 September 2021. The consultation analysis was published on the [Transport Scotland website](#) on 7 December 2021. We received 62 consultation responses, of which 37 were from organisations and 25 from individuals, including 10 responses from business or employers. The organisations represented interests in accessibility, business/industry, environment/climate change, and transport, as well as local authorities, public bodies, regional transport partnerships, and trade unions.
- 2.7** To support effective and meaningful engagement, 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. Business representatives were invited to join this working group and kept apprised of working group developments.

Business

2.8 During the consultation period, Transport Scotland notified business groups of the opportunity to respond to the consultation and offered further conversations. Officials sought out further engagement with key business groups, including the opportunity to engage directly with member businesses, in line with the requirements of the Scottish Firms Impact Test as part of this BRIA. Business representatives consistently commented that these regulations, in and of themselves, were of limited interest to their member businesses. They expressed that their members had great interest in the merits of WPL generally and its inclusion in the Transport (Scotland) Act 2019 at the time the WPL amendments were introduced; and expected their members to have a strong interest in the detail of local proposals if schemes are taken forward by local authorities. However, having reviewed the consultation document and discussed further detail with officials, business representatives indicated that their member businesses did not have comments on the details set out in regulations and guidance or wish for further engagement on them.

Options

Option 1: Do nothing

Sectors and groups affected:

2.9 If WPL regulations are not introduced, then local authorities will not benefit from the further detail on implementing WPL schemes that support their local transport strategies, and WPL schemes would not have effective methods of enforcement (penalty charge). Liability for WPL would be solely on the occupier, rather than employers who had made arrangements with another party for workplace parking. Appeals and reviews processes for licensing decisions would not be implemented, raising a question of fairness in relation to any schemes being made without the ability to challenge decisions.

Benefits

2.10 The Do Nothing approach would maintain the status quo. It is unlikely that the policy benefits outlined above would be fully realised without the details and enforcement set out in regulations. Businesses and other liable organisations would therefore not be prompted to reconsider their parking arrangements. Commitments given by Scottish Ministers in the NTS2 and CCPu to bring forward this legislation would not be fulfilled.

Costs

2.11 Local authorities would be unlikely to undertake development of new WPL schemes, avoiding implementation costs, but would not realise any revenue from WPL charges to support their local transport strategies. The costs to business and employers associated with parking at workplaces would not change.

Option 2: Implement WPL regulations and guidance

2.12 The regulatory framework and guidance add further technical detail on processes when proposing, making, and operating a WPL scheme. This framework sits under the requirements set out in the Act and the regulations and guidance must be in place before local authorities can proceed with implementing WPL schemes locally. The purpose of these regulations is to make detailed technical provision in relation to:

- Consultation, report and publication
- Examinations
- Liability for charges
- Reviews and appeals of licensing decisions
- Penalty charges
- Accounts

Sectors and groups affected

2.13 Local authorities would be required to comply with these regulations when making, amending, or revoking a WPL scheme. The regulations also impact employers who may be liable under the Act, by adding regulations on liability for charge, an enforcement mechanism (penalty charge), and avenues for review and appeal of licensing decisions and penalty charges.

Benefits

2.14 Local authorities would be able to implement WPL schemes that suit their local circumstances and support the objectives in their local transport strategies. We expect these schemes to support national commitments in the NTS2 and CCPu. These regulations add further detail on the framework set out in the Act to support effective schemes, including effective enforcement by making provision that local authorities may include penalty charges in their schemes. The regulations also set out a procedure for examination of schemes by an independent reporter.

Costs

2.15 These regulations would add costs for local authorities by requiring them to comply with requirements on publication of notice and consultation. Local authorities choosing to implement a WPL scheme would pay for the set up and ongoing operating costs. Revenue from the scheme may only be used to support costs associated with operating the scheme and objectives set out in the Local Transport Strategy. The charge per parking place, any exemptions, and the number of spaces below which a licence was not required would all impact the cost to business. Occupiers could reduce or eliminate their WPL cost by reducing their workplace parking provision. The regulations also provide an avenue for appeal against licensing decisions, and the power for the sheriff to make an order in relation to expenses.

3. Scottish Firms Impact Test

3.1 Further engagement with business including virtual face to face discussions was sought during the consultation period, as outlined above under paragraph 2.8. The representative groups agreed to seek expressions of interest from individual businesses in participating in conversations as outlined in the Scottish Firms Impact Test guidance. One large business group included it in their newsletter to members to seek wider interest. Officials received no expressions of interest in participating in a virtual face to face discussion.

Competition Assessment

3.2 The answers to the Competition and Markets Authority Filter questions indicate that these regulations could have an impact on competition as WPL could present a cost to some businesses and not others depending on implementation in different areas. This

was reflected in responses to the public consultation, which identified a range of possible impacts to different business sectors..

- 3.3 As local authorities are empowered to create WPL schemes that reflect their local circumstances, much of the impact on competition will depend on the local design of WPL schemes. For example, the area in which a WPL scheme applies, variation in days the scheme is in force, and the premises which are liable will affect the impact of WPL schemes on competition.
- 3.4 The impact on liable occupiers will also depend on their response to implementation of a WPL scheme. Organisations can reduce or eliminate their liability for charges under WPL schemes by reducing their parking provision and encouraging employees to use alternative, more sustainable forms of transport to commute to work. This was reflected in consultation responses, which identified these actions that businesses could take in response to WPL. Evidence from Nottingham suggests that the number of workplace parking spaces in Nottingham is around 75% of its pre-WPL level. Consultation respondents considered this a positive impact, if space was released for more productive purposes, but could present the risk that parking was displaced into neighbouring areas.
- 3.5 Consultation responses also identified that businesses may pass on the costs associated with WPL to their employees, and that there would be administrative costs associated with doing so. In Nottingham, 53% of the charges associated with workplace parking spaces were passed on to employees in 2016. These regulations will not impact whether charges are passed on to employees.
- 3.6 A small number of respondents felt that businesses may shift away from office work or relocate outside of the WPL area. The evidence from Nottingham City Council does not support this view: there is strong evidence that the WPL is having no significant negative impact on economic growth and in fact, some evidence that businesses are moving into city centre locations due to good public transport accessibility in part to remove the need for the provision of parking and improve accessibility.¹
- 3.7 Depending on the form of local schemes, certain businesses and organisations could find it more difficult to reduce their liability for WPL charges. Additionally, the number of parking places may not necessarily correlate to the revenue of the business so some small and medium sized enterprises could face disproportionately larger WPL costs. Local authorities will have a duty to consult and undertake impact assessments on the impact of their locally designed scheme, including consulting those who are likely to be directly impacted by the proposed scheme.
- 3.8 We expect that WPL schemes will primarily be implemented in urban areas. The evidence for how this could impact the overall competitiveness of firms is mixed: while WPL could result in increased costs for occupiers, it could also have positive impacts on the competitiveness of firms located in the scheme boundaries by making the local area more pleasant to visit. This was the conclusion of the independent Review of the Town Centre Action plan, which was commissioned by the Cabinet Secretary for Communities and Local Government and published on 3 February 2021. The report noted that “the operating costs in town centres are higher than in competing channels such as out-of-

¹ [Submission from Nottingham City Council to REC Committee 2019](#)

town sites and the internet. [...] Town centres are often choked by an over-reliance on car-borne traffic and an under-emphasis on people access and movement.”

3.9 This view was also supported by the public consultation on WPL regulations: a few respondents noted that long-term benefits to businesses might include healthier and / or more motivated staff, and making WPL areas more pleasant to visit. Other more general suggestions of potential positive impacts included: more reliable public transport and / or better public transport systems, less congestion, safer travel, encouraging behaviour change in the forms of more active or sustainable travel.

3.10 The Scottish Government Consumer and Competition Policy Unit have confirmed that the competition and consumer angles have been more than considered and they have nothing further to add to this assessment.

Consumer Assessment

3.11 These regulations may have an indirect impact on consumers. Non-business customer parking does not fall under these regulations and will not require to be licensed under WPL. The regulations may affect the quality, availability or price of any goods or services in a market if businesses passed on WPL cost to consumers or if WPL was a factor in their decision making about location. As outlined above under the competition assessment, this will largely depend on the details of local authorities' individual schemes.

Test run of business forms

3.12 Local authorities who implement WPL schemes may introduce application forms for liable businesses: this will be a decision for local authorities.

Digital Impact Test

3.13 At this stage we do not anticipate these regulations having an impact on digital technologies or markets and has no applicability in either an offline or online context. No evidence or suggestion otherwise was raised in public consultation.

4. Legal Aid Impact Test

4.1 The Access to Justice team have confirmed they are content that there will be little to no impact on the level of use that an individual makes to access justice through legal aid or on the possible expenditure from the legal aid fund.

5. Enforcement, sanctions and monitoring

5.1 Local authorities will be responsible for the enforcement of licences within their local WPL schemes. These regulations will provide a level of consistency and tools for enforcement including the process to issue and appeal penalty charges. Failure to apply for a licence or failure to license the correct number of spaces would result in the occupier of liable premises being issued with a penalty charge. The regulations will establish a clear process for reviews and appeals in connection with the issuing of penalty charge notices which are contested by recipients.

6. Implementation and delivery plan

6.1 Following public consultation, regulations will be laid in Parliament and are expected to come into force by the end of financial year 2021/22.

Post-implementation review

6.2 New WPL schemes implemented by local authorities may in certain circumstances be examined by an independent reporter, who is expected to be appointed from within the Department of Environmental and Planning Appeals (DPEA). Examinations may be initiated by Scottish Ministers or by the local authority making the proposal.

6.3 A post-implementation review should take place 10 years after these regulations come into force. This will assess the extent to which the regulations support local authorities to implement WPL schemes that support the objectives in their local transport strategies.

7. Summary and recommendation

7.1 We recommend option 2: implement WPL regulations and guidance.

8. Summary costs and benefits table

| Option | Total benefit per annum: - economic, environmental, social | Total cost per annum: - economic, environmental, social - policy and administrative |
|--------|---|--|
| 1 | <ul style="list-style-type: none"> • Realisation of policy benefits unlikely to be fully realised. • Businesses and other liable organisations not prompted to reconsider their parking arrangements. • Commitments given by Scottish Ministers in the NTS2 and CCPu to bring forward this legislation would not be fulfilled. | <ul style="list-style-type: none"> • Local authorities would be unlikely to undertake the development of new WPL schemes, avoiding implementation costs, but would not realise any revenue from WPL charges to support their local transport strategies. • Costs to business associated with parking at workplaces would not change. |
| 2 | <ul style="list-style-type: none"> • Local authorities would be able to implement effective and transparent WPL schemes that suit their local circumstances and support the objectives in their local transport strategies • Support national commitments in the NTS2 and CCPu. | <ul style="list-style-type: none"> • Set up and ongoing operating costs for local authorities, which could then be paid for by the revenue from the scheme. • Revenue from the scheme to support objectives set out in the local transport strategy. • Businesses and other liable occupiers would be liable for WPL charges, which would vary based on the form of the local scheme. |

9. Declaration and publication

- Sign-off for Final BRIA:

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Graeme Dey
Date: 10 January 2022

Graeme Dey
Minister for Transport

Scottish Government Contact point: Elizabeth Hawley