

**THE DISABLED PERSONS' PARKING PLACES (SCOTLAND) ACT 2009**

**IMPLEMENTATION GUIDANCE FOR LOCAL AUTHORITIES**



**SCOTS**

**MAY 2010**

This guidance was drawn up by the Scottish Government for the Society of Chief Officers of Transportation in Scotland (SCOTS). The guidance should be read in conjunction with the Disabled Persons' Parking Places (Scotland) Act 2009.

I am grateful for the valuable input provided by members of the DPPP Implementation Working Group. Thanks must also go to the Non-Executive Bills Unit at Parliament who drew up and published the Disabled Persons' Parking Places (Scotland) Bill's 'Explanatory Notes' and 'Policy Memorandum'.

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## **DISABLED PERSONS' PARKING PLACES (SCOTLAND) ACT 2009**

### **IMPLEMENTATION GUIDANCE FOR LOCAL AUTHORITIES**

1. This guidance was drawn up to assist local authorities to implement [The Disabled Persons' Parking Places \(Scotland\) Act 2009](#) which came into effect on 1 October 2009. The guidance uses information provided in the Bill's '[Explanatory Notes](#)' and '[Policy Memorandum](#)' which were drawn up for the Bill's passage through Parliament. I refer you particularly to paragraphs 56- 58 of the Memorandum, which gives suggested steps that authorities could take to discourage misuse of disabled persons' parking places.

#### **Section 1: Duty to promote proper use of parking places for disabled persons' vehicles**

2. Local Authorities have a duty to promote the proper use of disabled parking places. It is socially unacceptable to abuse disabled parking spaces and Local Authorities may want to liaise with major private car park owners, such as supermarkets, on local campaigns which re-iterate this message.

#### **Section 2: Limitation of local authorities' powers in relation to advisory parking places for disabled persons' vehicles**

3. Local Authorities can no longer designate on-road and off-road 'advisory' disabled parking spaces, except while undertaking the statutory process to promote an order is being undertaken.
4. An "advisory disabled street parking place" is defined in section 14 of the Act as one which is marked or sign-posted for use only by a disabled persons' vehicle and that is not subject to an order made under section 45 of the [Road Traffic Regulation Act 1984](#) (1984 Act). A "street parking place" is also defined in that section as a parking place that is on land that forms part of a road.
5. An "advisory disabled off-street parking place" is defined in section 14 as one to which the public have access, is marked or sign-posted for use only by a disabled persons' vehicle and is not subject to an order made under section 35 of the 1984 Act (see section 3). An "off-street parking place" is defined in that section as a parking place that is on land that does not form part of a road.
6. "Road" is given the same meaning as in the Roads (Scotland) Act 1984 (c.54) section 151.
7. All on-street disabled parking spaces must now be marked and sign-posted in accordance with sections 45 of the 1984 Act. Local Authorities should therefore instruct their staff that all new on-street disabled parking spaces must now be subject to an Order and that while undertaking the statutory process to promote an order a temporary space should be created. There are no specific requirements for sign-posting and marking of off-street spaces but information must be displayed to make people aware of the requirements of the order in accordance with the Road Traffic Regulation Act 1984.
8. Relevant extracts from the Road Traffic Regulation Act 1984 are provided in the Appendix.

### **Section 3: Certain orders under the 1984 Act**

9. Section 3 defines the types Orders that can be made under sections 45 and 35 of the 1984 Act to enable disabled parking spaces to be used only by disabled persons' vehicles. Local Authorities can not levy a charge for on-street parking but they can charge for parking off-street. Any off-street parking charge can not be higher than the charge payable for ordinary vehicles in the same premises. The making of these Orders triggers the current existing enforcement regime, including the level of fines and the appeals process. Where decriminalised parking enforcement is in place it is the authority that is responsible for enforcement. In the other authorities enforcement is the responsibility of the police and police traffic wardens.

### **Section 4 Disabled street parking orders: local authorities' initial duties:**

10. Section 4 requires local authorities to identify every 'advisory' disabled on-street parking place. Local Authorities may wish to consider the setting up of a national database to plot each disabled parking place.
11. Once an 'advisory' space has been identified the local authority must decide if it should be retained. The local authority must determine if the space provides convenient access to the address of a person who holds a disabled persons' badge (Blue Badge). If the space meets that condition the local authority then has to decide with regard to section 45(3) and section 122 of the 1984 Act whether or not it has the power to make a disabled parking order.
12. If the local authority determines that it has the power to make a disabled street parking order it is required to start the statutory procedure for the making of such an order.
13. If the local authority determines that it does not have the power to make a disabled street parking order, or determines that a bay does not provide convenient access to the residence of a person holding a Blue Badge, it is required to remove any road markings or sign-posts for the advisory disabled street parking place.
14. It must also publish, in its Annual Report (see section 11), the reason why the space has been removed – e.g. there is no-one who holds a disabled persons' badge with convenient access to the existing advisory disabled street parking place.
15. The local authorities must complete the work in this section by 30 September 2010. It should be noted that where an Order is required the statutory process must have commenced by 30 September 2010.
16. For efficiency purposes it may be best to batch orders. Local authorities may wish to consult with legal officers, in their authority or in COSLA, regarding the terms of a batch order.

### **Section 5: Disabled street parking orders: requests by qualifying persons**

17. If there is an individual who holds a disabled persons' badge and there is a suitable vehicle registered at that address the Blue Badge holder can apply to the local authority for a disabled persons' street parking place from which there is convenient access to their address. A request may be made through another person who is acting on behalf of the qualifying person. This is to cover situations when the disabled badge holder is unable to make the request themselves. Please note as the disabled parking space is for the general use of any Blue Badge holder, the applicant should not be charged for the creation of the bay. The DPPP Implementation Working Group will consider if a national application form should be created.

18. An organisation which holds a Blue Badge may also apply for a disabled person' street parking place. When a local authority receives an application from an organisation they must check that the vehicle is registered at the organisation's address and that the vehicle should be suitable for use by disabled people.
19. The 'Explanatory Note' states that where the individual or organisation's address is close to local authority boundaries the individual or organisation can apply to any authority in whose area there is a space with convenient access to the applicants address.
20. The registered keeper of a vehicle is the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994. The registered address of the registered keeper is the address held by the DVLA.

### **Section 6: Disabled off-street parking orders: local authorities' initial duties**

21. Local Authorities must identify all 'advisory' disabled off-street parking places in their area. Local authorities should start the order making procedure for all eligible parking places that it has identified unless it decides, having regard to its duties under section 122 of the 1984 Act that it has no powers to make the order.
22. "Eligible parking places" are defined as those provided by the local authority under section 32(1)(a) of the 1984 Act or provided under arrangements the local authority has made under section 33(4) of that Act.
23. Under section 32 of the 1984 Act a local authority has power to provide off-street parking places for the purpose of relieving or preventing congestion of traffic. Disabled parking places could be provided within such an off-street area. Section 33(4) of that Act allows a local authority to make arrangements with a private owner for the provision of parking places on such terms as it sees fit.
24. Local authority must decide by no later than 30 September 2010 whether it would have the power to make a disabled off-street parking order should an arrangement under section 33(4) of 1984 Act be in place. When making its decision under this subsection, the local authority also has regard to its duties under section 122 of the 1984 Act. It will also need to decide whether the arrangement would come within the scope of its powers under section 32(1) of the Act to provide places where necessary for the purpose of relieving or preventing congested traffic.
25. When a local authority decides that it would have power under section 33(4) of the 1984 Act to make an arrangement then the local authority should try to reach an arrangement with the owner, or person having an interest in the car park. The local authority should start the order making process whenever it has been successful in making such an arrangement.
26. Local authorities must carry out their duties by 30 September 2010.

### **Section 7: Disabled off-street parking orders: new development**

27. Where a local authority, in its capacity as planning authority, has granted planning permission to a developer and learns that the developer has included 'advisory' parking places in its development, it should decide whether it has the power to make a disabled off-street parking order in respect of the parking place.

28. This only applies when advisory disabled off-street parking places are included within the development. It is anticipated that such spaces will be included in every development receiving planning permission which includes provision for public parking.
29. Where a local authority learns that planning permission has been granted by way of a development order it should decide whether it has the power to make a disabled off-street parking order in respect of the parking place. Planning permission and development orders are defined as having the same meaning as under the Town and Country Planning (Scotland) Act 1997 (c.8).
30. If the authority decides that it has the powers it must seek to make an arrangement with the owner or person having an interest in the land under section 33(4) of the 1984 Act. If the authority is successful in making such arrangements, it must then start the statutory procedure for making an order. It must make contact with the owner or person and seek to make such arrangements within 3 months beginning with the date on which the authority grants planning permission or from the date on which the authority learns of the development.

### **Section 8: Disabled off-street parking places: ongoing duties**

31. Where a local authority sought unsuccessfully to make arrangements for the provision of a disabled off-street parking place it must make further attempts to reach agreements and make orders every two years.
32. Following the initial requests under Section 6 the local authorities will have records of the date on which it initially wrote to each organisation. The two year period is two years beginning with the date on which the authority concluded that it was unable to make a disabled off-street parking Order.
33. The local authority has three months to decide whether it has the powers to make a disabled off-street parking Order for each off-street parking space. Where it feels it has the power it must approach the private land owner. The local authority should update its records accordingly.
34. If the authority is now able to proceed it should start the statutory process for making an Order. If it is unable to proceed it should start the process again at the end of a two year period.

### **Section 9: Designation of a temporary parking place where a request has been made under section 5**

35. Where a qualified person makes an application under section 5 the local authority should designate the parking place as one that is for use only by a disabled persons' vehicle. This designation is advisory and as such is unenforceable against use by vehicles other than disabled persons' vehicles. This designation is created on a temporary basis to provide for disabled persons' while the statutory procedure is being undertaken. The local authority must carry out this duty as soon as is reasonably practicable.
36. When the statutory process ends the local authority must either install signage marked in accordance with the relevant diagram/s as per [TSRGD 2002](#) or, where the order has not been made, remove any markings and signage.
37. Although there is no timescale in the Act for the length of time taken by local authorities to process an Order it will have to report such information in its annual report.

## **Section 10: Duty to keep disabled street parking orders under review**

38. Local Authorities have a duty to keep the provision of all disabled parking orders under review. This will mean that the local authorities must audit the spaces to ensure the spaces are still being used by the original applicant or by other Blue Badge holders. In instances where the Blue Badge holder moves away or dies the local authority has the discretion to retain the space.
39. The local authority may wish to hold such data on a database and at the very least ensure that it has some method of tracking the Blue Badge holders in its area.

## **Section 11: Annual reports by local authorities**

40. Local Authorities are required to publish an annual report on their performance in relation to parking places for disabled persons' vehicles. A copy also requires to be sent to the Scottish Ministers.
41. Local Authorities have to publish their annual reports within 3 months of the end of the reporting period. The first report will cover the period from 01 October 2009 to 31 March 2011. Subsequent annual reports will be on a financial year basis.
42. Further guidance on the content of the Annual Reports will be drawn up issued in the next few months.

## **Section 12: Annual report by the Scottish Ministers**

43. For each reporting period the Scottish Government must prepare a report on the performance of local authorities in relation to parking places for disabled persons' vehicles. The report will be published and laid before the Scottish Parliament no later than six months after each reporting period.
44. To allow the Scottish Government to prepare its report they intend to draw up further guidelines on the content of the local authority annual reports in line with Part 1 of the Schedule to the Act. It will be important that the data is reported consistently across all authorities to enable national data to be compiled.

## Extracts from the Road Traffic Regulation Act 1984 (As Amended)

45.

*Designation of paying parking places on highways.*

(1) A local authority may by order designate parking places on highways or, in Scotland, roads in their area for vehicles or vehicles of any class specified in the order; and the authority may make charges (of such amount as may be prescribed under section 46 below) for vehicles left in a parking place so designated. The exercise of this power by a local authority in relation to a highway or road for which they are not the traffic authority is subject to obtaining the consent of the traffic authority.

(1A) Transport for London may not by virtue of subsection (1) above designate parking places on any highway which is not a GLA road.

(2) An order under this section may designate a parking place for use (either at all times or at times specified in the order) only by such persons or vehicles, or such persons or vehicles of a class specified in the order, as may be authorised for the purpose by a permit from the authority operating the parking place or both by such persons or vehicles or classes of persons or vehicles and also, with or without charge and subject to such conditions as to duration of parking or times at which parking is authorised, by such other persons or vehicles, or persons or vehicles of such other class, as may be specified; and

(a) in the case of any particular parking place and any particular vehicle, or any vehicle of a particular class, the authority operating the parking place may issue a permit for that vehicle to be left in the parking place while the permit remains in force, either at all times or at such times as may be specified in the permit, and

(b) except in the case of a public service vehicle, may make such charge in connection with the issue or use of the permit, of such amount and payable in such manner, as the authority by whom the designation order was made may by order prescribe.

(3) In determining what parking places are to be designated under this section the authority concerned shall consider both the interests of traffic and those of the owners and occupiers of adjoining property, and in particular the matters to which that authority shall have regard include—

(a) the need for maintaining the free movement of traffic;

(b) the need for maintaining reasonable access to premises; and

(c) the extent to which off-street parking accommodation, whether in the open or under cover, is available in the neighbourhood or the provision of such parking accommodation is likely to be encouraged there by the designation of parking places under this section.



(4) The exercise by an authority of functions under this section shall not render the authority subject to any liability in respect of the loss of or damage to any vehicle in a parking place or the contents or fittings of any such vehicle.

(5) Nothing in this section shall affect the operation of section 6 or 32 of this Act.

(6) Subject to Parts I to III of Schedule 9 to this Act, where it appears to the authority concerned to be expedient to do so having regard to any objections duly made in respect of proposals made by that authority for a designation order they may, if they think fit, make an interim order pursuant to the proposals or application in respect of any one or more of the sites affected, or in respect of any part of any of those sites, and postpone for further consideration the making of any further order in pursuance of the proposals or application.

(7) In this section and in sections 46 to 55 of this Act, “local authority”—

(a) in England, means the council of a county, metropolitan district or London borough or the Common Council of the City of London or Transport for London;

(b) in Wales, means the council of a county or a county borough; and

(c) in Scotland, means the council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 and “the local authority”, in relation to a parking place or proposed parking place on any site, means the local authority (as defined above) in whose area the site is unless the site is in Greater London, in which case—

(i) if the site is on a GLA road and the parking place is, or is proposed to be, designated by Transport for London, “the local authority” means Transport for London;

(ii) if the site is on a GLA road and the parking place is, or is proposed to be, designated by the London local authority in whose area the site is, “the local authority” means that London local authority; and

(iii) if the site is on a highway which is not a GLA road, “the local authority” means the London local authority in whose area the site is.

(8) In this section “London local authority” means the council of a London borough or the Common Council of the City of London.

**35.**

***Provisions as to use of parking places provided under s. 32 or 33.***

(1) As respects any parking place—

(a) provided by a local authority under section 32 of this Act, or

(b) provided under any letting or arrangements made by a local authority under section 33(4) of this Act, the local authority, subject to Parts I to III of Schedule 9 to this Act, may by order make provision as to—

(i) the use of the parking place, and in particular the vehicles or class of vehicles which may be entitled to use it,

(ii) the conditions on which it may be used,

(iii) the charges to be paid in connection with its use (where it is an off-street one), and

(iv) the removal from it of a vehicle left there in contravention of the order and the safe custody of the vehicle and the power under paragraph (iii) to make provision as to the payment of charges shall include power to make provision requiring those charges, or any part of them, to be paid by means of the hire or purchase in advance, or the use, of parking devices in accordance with the order.

(2) Where under section 34 of this Act a means of access to any premises has been provided by a local authority through an off-street parking place, then, subject to Parts I to III of Schedule 9 to this Act and to the provisions of any agreement made by the local authority under subsection (3) of section 34 and to any rights granted by them under that subsection, the authority may by an order under subsection (1) above make provision as to the use of the parking place as the means of access and, in particular, as to the vehicles or class of vehicles which may be entitled to use the means of access and as to the conditions on which the means of access may be used.

(3) An order under subsection (1) above may provide for a specified apparatus or device to be used—

(a) as a means to indicate—

(i) the time at which a vehicle arrived at, and the time at which it ought to leave, a parking place, or one or other of those times, or

(ii) the charges paid or payable in respect of a vehicle in an off-street parking place; or

(b) as a means to collect any such charges,

and may make provision regulating the use of any such apparatus or device;.

(3A) An order under subsection (1) above may also provide—

(a) for regulating the issue, use and surrender of parking devices;

(b) for requiring vehicles to display parking devices when left in any parking place in respect of which the parking devices may be used;

(c) without prejudice to the generality of paragraph (b) above, for regulating the manner in which parking devices are to be displayed or operated;

(d) for prescribing the use, and the manner of use, of apparatus, designed to be used in connection with parking devices;

(e) for treating—

(i) the indications given by a parking device, or

(ii) the display or the failure to display a parking device on or in any vehicle left in any parking place, as evidence (and, in Scotland, as sufficient evidence) of such facts as may be provided by the order;

(f) for the refund, in such circumstances and in such manner as may be prescribed in the order, of the whole or part of the amount of any charge paid in advance in respect of a parking device;

(g) for the payment of a deposit in respect of the issue of a parking device and for the repayment of the whole or any part of any such deposit.

(3B) In this section and in section 35A below “parking device” means either a card, disc, token, meter, permit, stamp or other similar device, whether used in a vehicle or not, which, being used either by itself, or in conjunction with any such apparatus as is referred to in subsection (3A)(d) above—

(a) indicates, or causes to be indicated, the payment of a charge, and—

(i) the period in respect of which it has been paid and the time of the beginning or end of the period, or

(ii) whether or not the period for which it has been paid or any further period has elapsed, or

(iii) the period for which the vehicle in relation to which the parking device is used is permitted to park in the parking place, and the time of the beginning or end of the period, or

(iv) whether or not the period for which the vehicle in relation to which the parking device is used is permitted to park in the parking place or any further period has elapsed; or

(b) operates apparatus controlling the entry of vehicles to or their exit from the parking place, or enables that apparatus to be operated;

or any other device of any such description as may from time to time be prescribed for the purposes of this section and section 35A below by order made by the Secretary of State,

(3C) An order under subsection (3B) above which revokes or amends a previous order under that subsection may make such savings and transitional provision as appears to the Secretary of State to be necessary or expedient.

(3D) The power to make orders under subsection (3B) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**122:**

***Exercise of functions by local authorities.***

(1) It shall be the duty of every local authority upon whom functions are conferred by or under this Act, so to exercise the functions conferred on them by this Act as (so far as practicable having regard to the matters specified in subsection (2) below) to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway or, in Scotland the road.

(2) The matters referred to in subsection (1) above as being specified in this subsection are—

- (a) the desirability of securing and maintaining reasonable access to premises;
- (b) the effect on the amenities of any locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the areas through which the roads run;
- (bb) the strategy prepared under section 80 of the Environment Act 1995 (national air quality strategy);
- (c) the importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and
- (d) any other matters appearing to the local authority to be relevant.