

Net Zero, Energy and Transport Committee

28th Meeting, 2023 (Session 6)

Tuesday, 3 October 2023

Cover note: Subordinate legislation

Background

1. The Committee is due to consider two pieces of subordinate legislation subject to the negative procedure—

- [The Parking Attendants \(Wearing of Uniforms\) \(North Ayrshire Council\) Regulations 2023](#) (2023/248); and
- [The Road Traffic \(Permitted Parking Area and Special Parking Area\) \(North Ayrshire Council\) Designation Order 2023](#) (2023/249)

2. The instruments concern parking regimes in the North Ayrshire Council area. The policy note for both instruments is provided in **Annexe A**.

Procedure for Negative Instruments

3. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

4. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument. At present no motion to annul has been laid for these instruments.

5. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument.

6. If no motion to annul has been laid then, at the conclusion of consideration of the instrument, the Committee will be invited that agree to make no recommendation in relation to the instrument.

Title of instrument: [The Parking Attendants \(Wearing of Uniforms\) \(North Ayrshire Council\) Regulations 2023 \(2023/248\)](#)

Type of Instrument:	Negative
Laid Date:	8 September 2023
Circulated to Members:	8 September 2023
Meeting Date:	3 October 2023
Minister to attend meeting:	No
Motion for annulment lodged:	No
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	No
Reporting deadline:	30 October 2023
Purpose:	The purpose of this SSI, in conjunction with SSI 2023/249 (below), is to introduce a decriminalised parking regime within the North Ayrshire Council area.

7. An electronic copy of the Regulations is available at:
<https://www.legislation.gov.uk/ssi/2023/248/contents/made> ([legislation.gov.uk](https://www.legislation.gov.uk)).

8. The explanatory note for SSI 2023/248 is provided in **Annexe B**.

Delegated Powers and Law Reform Committee consideration

9. At its meeting on 19 September 2023, the DPLR Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

- [Read the Official Report – 19 September 2023 \(Scottish Parliament\)](#)
- [Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 19 September 2023 \(53rd Report, 2023\)](#)

Title of Instrument: [The Road Traffic \(Permitted Parking Area and Special Parking Area\) \(North Ayrshire Council\) Designation Order 2023 \(2023/249\)](#)

Type of Instrument:	Negative
Laid Date:	8 September 2023
Circulated to Members:	8 September 2023
Meeting Date:	3 October 2023
Minister to attend meeting:	No
Motion for annulment lodged:	No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	No
Reporting deadline:	30 October 2023
Purpose:	The purpose of this SSI, in conjunction with SSI 2023/248 (above), is to introduce a decriminalised parking regime within the North Ayrshire Council area.

10. An electronic copy of the Order is available at:
[https://www.legislation.gov.uk/ssi/2023/249/contents/made \(legislation.gov.uk\)](https://www.legislation.gov.uk/ssi/2023/249/contents/made (legislation.gov.uk)).

11. The explanatory note for SSI 2023/249 is provided in **Annexe C**.

Delegated Powers and Law Reform Committee consideration

12. At its meeting on 26 September 2023, the DPLR Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

- [Read the Official Report – 26 September 2023 \(Scottish Parliament\)](#)
- [Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 26 September 2023 \(54th Report, 2023\)](#)

13. The Committee wrote to the Scottish Government on 14 September 2023. The correspondence (extracted from the DPLR Committee report) is provided in **Annexe D**.

Recommendation

14. The Committee is invited to consider any issues which it wishes to raise on these instruments.

Clerks
 Net Zero, Energy and Transport Committee

Annexe A: Policy note (2023/248; 2023/249)

POLICY NOTE

THE PARKING ATTENDANTS (WEARING OF UNIFORMS) (NORTH AYRSHIRE COUNCIL) REGULATIONS 2023 SSI 2023/248

THE ROAD TRAFFIC (PERMITTED PARKING AREA AND SPECIAL PARKING AREA) (NORTH AYRSHIRE COUNCIL) DESIGNATION ORDER 2023 SSI 2023/249

The above instrument was made in exercise of the powers conferred by Schedule 3 of the Road Traffic Act 1991, and section 63A of the Road Traffic Regulation Act 1984 respectively. The instruments are subject to negative resolution procedures before the Scottish Parliament.

Summary box

The purpose of the two Scottish Statutory Instruments is to introduce a decriminalised parking regime within the North Ayrshire Council area.

Policy Objectives

The Road Traffic Act 1991 introduced provisions enabling the decriminalisation of most non-endorsable parking offences in London and permitted similar arrangements to be introduced elsewhere in the UK. Decriminalised Parking Enforcement (DPE) is a regime which enables a local authority to administer its own parking penalty schemes, including the issuing of Penalty Charge Notices (PCNs) to motorists breaching parking controls in specific areas. DPE seeks to ensure compliance with parking controls through transparent, effective enforcement aimed at dissuading motorists from breaching parking controls and achieving 100% compliance with such controls.

To date, 21 Scottish local authorities have now introduced DPE within their areas. Under these arrangements, local authorities are allowed to retain the penalties collected. However, section 55 of the Road Traffic Regulations Act 1984 requires that any surplus accrued by local authorities from their DPE regimes should be ring-fenced and may only be used for certain transport-related provisions, including the provision and maintenance of off-street parking, the provision or operation of (or facilities for) public passenger transport services or for road improvement projects in the local authority area.

Under DPE, enforcement powers no longer rest with the Police but are implemented by parking attendants employed either directly by, or under contract to, the local authority. As such, a breach of parking rules within an area where DPE is in force requires payment to the local authority of a penalty charge.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

To comply with the requirements of the Road Traffic Regulation Act 1984, we consulted with neighbouring local authorities, Police Scotland, the Scottish Courts and Tribunals Service and the Traffic Commissioner for Scotland.

As a result of that consultation there were no changes made to the draft SSIs.

Impact Assessments

As the draft regulations relate to the enforcement of existing parking restrictions and do not therefore constitute an additional burden on business a Business and Regulatory Impact Assessment is not required. The enforcement costs incurred by North Ayrshire Council are expected to be absorbed by income from parking penalties.

Financial Effects

The Minister for Transport confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Transport Scotland
Roads Directorate

September 2023

Annexe B: The Parking Attendants (Wearing of Uniforms) (North Ayrshire Council) Regulations 2023 (2023/248)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe functions during the exercise of which a parking attendant must wear such uniform as the Scottish Ministers may determine (regulation 2).

The requirement to wear a uniform is contained in section 63A(4) of the Road Traffic Regulation Act 1984. Section 63A itself applies to Greater London only but by virtue of the Road Traffic (Permitted Parking Area and Special Parking Area) (North Ayrshire Council) Designation Order 2023 that section is modified so as to apply to the parking area designated by that Order. Accordingly, parking attendants exercising the prescribed functions within that parking area are required to wear a uniform when doing so.

Annexe C: The Road Traffic (Permitted Parking Area and Special Parking Area) (North Ayrshire Council) Designation Order 2023 (2023/249)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies, to the North Ayrshire local government area, arrangements for enforcing parking controls already available in London and certain other areas in England and in Edinburgh, Glasgow, Perth and Kinross, Aberdeen, Dundee, South Lanarkshire, Renfrewshire, East Ayrshire, South Ayrshire, East Renfrewshire, Fife, East Dunbartonshire, Argyll and Bute, Inverclyde, Highland, East Lothian, Angus, Stirling, North Lanarkshire, Midlothian and Falkirk local government areas.

The Order designates North Ayrshire local government area (with specified exceptions) as a permitted parking area and as a special parking area in accordance with schedule 3 of the Road Traffic Act 1991 (“the 1991 Act”).

The Order applies, to the designated area, various provisions of the 1991 Act and modifies them where necessary. It also makes consequential modifications to certain provisions of the Road Traffic Regulation Act 1984 (“the 1984 Act”) dealing with parking and related matters.

While the Order is in force, certain specified offences will be decriminalised: for example, in the case of the permitted parking area, breaches of orders relating to on-street parking places and, in the case of the special parking area, orders prohibiting or restricting waiting, loading and unloading.

Enforcement will be carried out by parking attendants provided under section 63A of the 1984 Act. The First-tier Tribunal will hear disputes against decisions by the parking authority.

Annexe D: The Road Traffic (Permitted Parking Area and Special Parking Area) (North Ayrshire Council) Designation Order 2023 (2023/249)

Correspondence with Scottish Government (Extract from Delegated Powers and Law Reform Committee - [54th Report, 2023](#))

On 14 September 2023, the Committee asked the Scottish Government:

Article 4 of the instrument applies provisions of the Road Traffic Act 1991, subject to the modifications that are listed in schedule 2.

Paragraph 4 of schedule 2 modifies section 72 of the 1991 Act, with paragraph 4(3) omitting sub-sections (2) and (3). Paragraph 5 modifies section 73 of the 1991 Act, with paragraph 5(2) omitting (among others) sub-section (3).

Paragraph 5(3) of schedule 2 then inserts sub-section (3A) into section 73 of the 1991 Act after sub-section (3). The modified section 73(3A)(b) refers to sections 72(2) and 73(3), but both of these have been omitted as explained above. Are these references to sections 72(2) and 73(3) intentional? Please confirm whether any corrective action is proposed, and if so, what action and when.

On 19 September 2023, the Scottish Government responded:

The references to sections 72(2) and 73(3) of the Road Traffic Act 1991 (“the 1991 Act”) are intentional and, that being so, no corrective action is needed.

Prior to 1 April 2020, under the 1991 Act, appeals on decisions by local authorities in respect of decriminalised parking regimes were heard by parking adjudicators. Adjudicators were appointed by the traffic commissioner, with the consent of the Lord Advocate.

In 2014, section 27(1) of the Tribunals (Scotland) Act 2014 gave effect to Part 1 of schedule 1 of that Act which listed tribunals from which the functions and members were to be transferred to the Scottish Tribunals by way of regulations made under section 28 (transfer-in of functions) and section 29 (transfer-in of members). The parking adjudicators are a listed tribunal.

The functions exercisable by a parking adjudicator (sections 72(2), 73(3) and paragraph 5(2) of schedule 6 of the 1991 Act) were transferred to the First-tier Tribunal for Scotland by the First-tier Tribunal for Scotland (Transfer of Functions of Parking Adjudicators) Regulations 2020/95 (“the 2020 Regulations”). Section 72(2) provided for how parking adjudicators should determine appeals and section 73(3) provided for the appointment of parking adjudicators. Following their transfer to the First-tier Tribunal, these functions under the 1991 Act no longer require to be applied and modified for individual decriminalised parking areas because the relevant functions are subsumed into the general statutory framework regulating that Tribunal (see, for example, the amendments made by paragraph 1(3)(c)(i) of schedule 2 of the 2020 Regulations).

However, provision is required to ensure that the Council in a decriminalised parking area (in this case North Ayrshire Council) is responsible for the costs incurred by the Scottish Courts and Tribunals Service in carrying out the functions of the First-tier Tribunal which were transferred under the 2020 Regulations. This is achieved by section 73(3A) of the 1991 Act which in effect provides that North Ayrshire Council are responsible for meeting the costs to the Scottish Courts and Tribunals Service of exercising those transferred functions.