

NOT PROTECTIVELY MARKED

17 February 2010

Your Ref:

Our Ref: 0088/2010

John Anderson [request-28502-
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Dear Mr Anderson

FREEDOM OF INFORMATION REQUEST REFERENCE NUMBER 008/2010

I refer to your request for information dated 7 February 2010, which was received by Strathclyde Police on the same date.

Strathclyde Police can only provide what it feels is **relevant recorded information** in relation to requests for information. We cannot provide legal guidance or opinion.

Under the Road Traffic Regulation Act of 1984, car park operators are given powers to enforce parking restrictions by setting tariffs and issuing fines where users fail to adhere to the displayed terms and conditions. In this case I feel the matter relates to a civil position involving (private) land owners and their customers, as such the conditions governing the provision of such parking facilities and any penalties for perceived abuse of these facilities. Accordingly, the relevant land owner will be in a better position to explain such restrictions.

Section 151, Roads (Scotland) Act 1984, as amended, provides the definition of a road; *"road" means, subject to subsection (3) (footpaths), any way (other than a waterway) over which there is a public right of passage (by whatever means and whether subject to a toll or not) and includes the road's verge, and any bridge (whether permanent or temporary) over which, or tunnel through which, the road passes; and any reference to a road includes a part thereof;*

Your request has now been considered and on 17 February 2010, a decision was made to grant your request in full in relation to information relating to the penalty for parking in designated parking places. This is outlined below:

Under the Road Traffic Regulation Act 1984, Part IV, Section 35A

(1) In the event of any contravention of, or non-compliance with, a provision of an order under Section 35 (1) above, the person responsible shall be guilty of an offence.

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(2) A person who, with intent to defraud -

(a) interferes with any such apparatus or device mentioned in Section 35 (3) above as is by an order under Section 35 (1) above to be used for the collection of charges at an off-street parking place, or operates or attempts to operate it by the insertion of objects other than current coins or bank notes of the appropriate denomination, or the appropriate credit or debit cards, or

(b) interferes with any such apparatus as is mentioned in Section 35 (3A) (d) above or with a parking device, or operates or attempts to operate any such apparatus or any parking device otherwise than in the manner prescribed, or

(c) displays a parking device otherwise than in the manner prescribed,
shall be guilty of an offence.

(3) An order under Section 35 (1) above may include provision

(a) for determining the person responsible for any contravention of or non-compliance with the order;

(b) for treating -

(i) the indications given by any such apparatus or device as is mentioned in Section 35 (3) above used in pursuance of the order, or

(ii) the indications given by any such apparatus as is mentioned in Section 35 (3A) (d) above used in pursuance of the order, or any tickets issued by it, or the absence of any such ticket from a vehicle left in a parking place,
as evidence (and, in Scotland, as sufficient evidence) of such facts and for such purposes as may be provided by the order;

(c) for applying with any appropriate adaptations any of the provisions of subsections (4) to (6) of Section 47 of this Act.

(4) The reference in subsection (5) of Section 47 of this Act to apparatus provided for the purposes of a parking place and operated by the insertion of coins or bank notes or by means of credit or debit cards shall, where that subsection is applied by virtue of subsection (3) (c) above, include references to -

(a) any such apparatus as is referred to in Section 35 (3A) (d) above, and

(b) any such device as is referred to in Section 35 (3B) above;
and the said subsection (5) of Section 47 of this Act (as modified by this subsection) shall apply to an offence under subsection (2) (b) or (c) above as it applies to an offence under that section.

(5) While a vehicle is within a parking place, it shall not be lawful for the driver or conductor of the vehicle, or for any person employed in connection with it, to ply for hire or accept

passengers for hire; and if a person acts in contravention of this subsection he shall be guilty of an offence.

(6) In this section -

"credit card" means a card or similar thing issued by any person, use of which enables the holder to defer the payment by him of the charge for parking a vehicle; and

"debit card" means a card or similar thing issued by any person, use of which by the holder causes the charge for parking a vehicle to be paid by the electronic transfer of funds from any current account of his at a bank or other institution providing banking services. (**Section 35A**, as inserted by Parking Act, 1989).

Notes:

(a) For meaning of "parking device", see Section 142.

(b) "Parking place" means a place where vehicles, or vehicles of any class, may wait. (Section 32 (4) (b)).

(c) (Section 35 (1) authorises a local authority to make provision by order as to the use of a parking place, the conditions on which it may be used, charges to be paid and the removal of vehicles left there in contravention of an order. Subsections (3), (3A) (d) and (3B) of Section 35 have not been reproduced.

(d) Sections 32 to 34, which have not been reproduced, give local authorities powers to provide parking places.

(e) For penalties, see Schedule 2, Road Traffic Offenders Act, 1988.

Under Section 47:

(1) A person who -

(a) being the driver of a vehicle, leaves the vehicle in a designated parking place otherwise than as authorised by or under an order relating to the parking place, or leaves the vehicle in a designated parking place for longer after the excess charge has been incurred than the time so authorised, or fails duly to pay any charge payable under Regulation 45 of this Act, or contravenes or fails to comply with any provision of an order relating to the parking place as to the manner in which vehicles shall stand in, or be driven into or out of, the parking place, or

(b) whether being the driver of a vehicle or not, otherwise contravenes or fails to comply with any order relating to designated parking places, shall, subject to Regulation 48 of this Act, be guilty of an offence; but this subsection does not apply in relation to any designated parking place in Greater London.

(2) In relation to an offence under paragraph (a) of subsection (1) above of leaving a vehicle for longer after the excess charge has been incurred than the time authorised by an order relating to the parking place, of failing duly to pay any charge payable under Regulation 45 of this Act, the reference in that paragraph to the driver of a vehicle shall be construed as a reference to the person driving the vehicle at the time when it was left in the parking place.

(3) A person who, with intent to defraud, interferes with a parking meter, or operates or attempts to operate a parking meter by the insertion of objects other than current coins or bank notes of the appropriate denomination or the appropriate credit or debit cards, shall be guilty of an offence.

(4) Where, in any proceedings in England or Wales for an offence under this section of failing to pay any charge, it is proved that the amount which has become due, or any part of that amount, has not been duly paid, the court shall order the payment of the sum not paid; and any sum ordered to be paid by virtue of this subsection shall be recoverable as a penalty.

(5) In any proceedings for an offence under this section it shall be assumed, unless the contrary is shown, that any apparatus provided for the purposes of a parking place and operated by the insertion of coins or bank notes or by means of credit or debit cards is of a type and design approved by the Secretary of State.

(6) Where in any proceedings for an offence under this section of failing to pay an excess charge it is not proved that the excess charge had become due, but it is proved that an initial charge has not been paid, the defendant may be convicted of an offence under this section of failing to pay an initial charge. (**Section 47**, as amended by the Schedule, Parking Act, 1989 and Road Traffic Act, 1991).

Notes:

(a) For meanings of "designated parking place", "credit card", "debit card", "excess charge", "initial charge" and "parking meter", see Section 142.

(b) "Parking place" means a place where vehicles, or vehicles of any class, may wait. (Section 32 (4)(b)).

(c) Sections 45 and 46, which have not been reproduced, give local authorities powers to designate and regulate parking places on roads and prescribe any charges to be paid.

(d) For acceptance of payment as bar to proceedings under Section 47, see Section 48 which has not been reproduced

(e) For penalties, see Schedule 2, Road Traffic Offenders Act, 1988.

(f) For the purposes of this section, only those London boroughs within Greater London for which there is in force an Order made under Section 76 of the Road Traffic Act, 1991, are considered to be in Greater London.

Relevant legislation can be found on the government legislation website at: www.opsi.gov.uk

I hope this information is helpful, however, if you are not satisfied with the way in which your request has been dealt with, you are entitled in the first instance to request a review of the decision made by the Force. Should you wish to request such a review, please write to Mrs Sheena Brennan, Disclosure Manager at the above address within 40 working days of receiving this letter.

Once informed of the Review Panel's decision, if you are still not satisfied, then you are entitled to apply to the Scottish Information Commissioner within six months for a decision. Contact details are; Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS, telephone 01334 464610.

I would like to take this opportunity to thank you for your interest in Strathclyde Police. Should you require any further assistance concerning this matter please contact me directly on 0141 435 1205 quoting the reference number given.

Yours sincerely

Inspector Graeme Cuthbertson
Force Disclosure Unit