

# Delegated Powers and Law Reform Committee

## 26<sup>th</sup> Meeting, 2023 (Session 6) Tuesday, 26 September 2023

### Instrument Responses

#### Road Traffic (Permitted Parking Area and Special Parking Area) (North Ayrshire Council) Designation Order 2023 (SSI 2023/249)

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.