

SOUTH KESTEVEN DISTRICT COUNCIL
(OFF- STREET PARKING PLACES) (PAY AND DISPLAY) ORDER 2010

South Kesteven District Council (“the Council”) in exercise of their powers under Section 35 of the Road Traffic Regulation Act 1984 (as amended) (“the Act”) and of part IV of Schedule 9 of the Act and of all other enabling powers and with the consent of the Lincolnshire County Council given under Section 39 (3) of the Act and after consultation with the Chief Officer of Police in accordance with Part III of Schedule 9 of the Act and in compliance with regulations made under the Act hereby make the following Order:-

PART I – GENERAL

1. This Order is made on * and will come into effect on the *and may be cited as the South Kesteven District Council (Off-Street Parking Places) (Pay and Display) Order 2010
2. The South Kesteven District Council (Off-Street Parking Places) Order 2002 and all subsequent variations or amendments thereof are hereby revoked
3. (1) Any reference in this Order to a numbered Article is a reference to the Article bearing that number in this Order and any reference in this Order to “the Schedule” is a reference to the Schedule to this Order

(2) In this Order – except where the context otherwise requires – the following expressions shall have the meanings hereby respectively assigned to them:-

“charging hours” – means any period specified in column 5 of Part I of the Schedule on any day prescribed in column 4 of Part I of the Schedule as a day when charges are payable

“disabled persons badge” – has the same meaning as in the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 and shall include a badge issued under regulations having effect in Scotland or Wales under s21 of the Chronically Sick and Disabled Persons Act 1970

“disabled persons vehicle” – means a vehicle driven by a disabled person, or used at the time of parking for the carriage of a disabled person as defined in the above Regulations

“driver” – in relation to a vehicle left in a parking place means the person driving the vehicle at the time it was left in the parking place subject to the provisions of paragraphs (3) and (4) of this Article

“owner” – means the person by whom the vehicle is kept and for the purposes of this Order it shall be presumed that the owner was the person in whose name the vehicle was at the relevant time registered under the provisions of the Vehicle Excise and Registration Act 1994 and “registered keeper” shall be construed accordingly

“parking attendant” – means the officer appointed by or on behalf of the Council to supervise the parking places

“parking bay” – means the area of a parking place which is provided for the leaving of the vehicle and indicated by markings on the surface of the parking place

“parking place” – means any area of land specified in column 1 of Part I of the Schedule provided by the Council in pursuance of Section 32 (1) of the Act for use as a parking place

“parking ticket meter” and “ticket issuing machine” – means such apparatus or device as may from time to time be provided by the Council and situated in the parking place for the purpose of Article 5 hereof

- (3) Subject to paragraph (4) of this Article for the purposes of the institution of proceedings under Section 35(A) of the Act against the driver of the vehicle as the person(s) responsible for an alleged breach of the Order it shall be conclusively presumed that the registered keeper of the vehicle was the driver of that vehicle at the relevant time and accordingly that acts or omissions of the driver of the vehicle were the acts or omissions of the registered keeper PROVIDED THAT if the registered keeper is not an individual or company having independent legal identity and status or is otherwise a partnership or firm, it shall be conclusively presumed that any partner or promoter of such registered keeper was the driver of that vehicle at the relevant time
- (4) The presumption in paragraph (3) of this Article shall not apply if it is proved at the time of the alleged breach that the vehicle was in the possession of some other person or that the person against whom proceedings under Section 35(A) of the Act have been instituted was not the registered keeper or owner at the time of the alleged breach or was not a partner or a promoter of the registered keeper
- (5) The Interpretation Act 1978 shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament

PART II – USE OF PARKING PLACES

Use of land and parking places

4. (1) Each area of land specified by name in column 1 of Part I of the Schedule may only be used subject to the following provisions of this Order as a parking place for such class or classes of vehicles in such positions on such days and during such hours as are specified in relation to that area in Part I of the Schedule
- (2) (i) Where in Part I of the Schedule a parking place is described as available for vehicles of a specified class or in a specified position the driver of a vehicle shall not permit it to wait in that parking place unless it is of the class and in the position so specified
- (ii) Where within a parking place there is a sign or surface marking which indicates that a parking bay is available only for a disabled persons vehicle the driver of a vehicle shall not permit it to wait in that parking bay unless it is a disabled persons vehicle displaying a disabled persons badge
- (iii) Where within a parking place there is a surface marking of lines or hatching or some other marking indicating that waiting or parking is not permitted within or over such lines hatching or other marking the driver of a vehicle shall not permit it to wait or be parked on such markings but must ensure that it is left wholly within a parking bay so as not to obstruct access to and egress from the parking place or any part thereof for other users or to obstruct the free movement of vehicles using other parking bays within the parking place

- (3) Insofar as a vehicle is left in a parking place during the charging hours the driver thereof shall pay such charge or charges as are specified in the following provisions of this Order

Amount of initial charge at parking places

5. (1) This article applies to the parking places specified by name in column 1 of Part I of the Schedule
- (2) The initial charge for a vehicle parking in a parking place during the charging hours shall, subject as hereinafter provided, be in accordance with the Scale of Charges specified in column 7 of Part I of the Schedule
- (3) The initial charge referred to in the last preceding paragraph shall be payable at the time of arrival of the vehicle in the parking place by the insertion into the parking ticket meter relating to the parking place of a coin or coins amounting to the value of the initial charge
- (4) The owner of a vehicle may on application to the Council purchase a season ticket in respect of that vehicle for a charge ascertained by reference to the said Scale of Charges and that season ticket shall be valid in such parking places and at such times as may be determined by the Council during the period for which it is issued. The Council reserves the right to suspend the issue of season tickets without notice
- (5) The Council may, at its discretion, issue a parking permit to the driver of a vehicle and that parking permit shall be valid in such parking places and at such times as may be determined by the Council
- (6) The driver of a vehicle shall attach or cause to be attached any ticket or tickets issued on payment of the initial charge referred to

in this Article or any season ticket or parking permit issued under this Article in a conspicuous position on the vehicle in respect of which issued and shall cause the said ticket or tickets, season ticket or parking permit to be exhibited in that position at all times when the vehicle is parked in a parking place

Indication by parking ticket meter

6. (1) Payment of the initial charge for a vehicle left in a parking place shall be indicated by the issue of a ticket or tickets indicating that the charge has been paid on the day on which the vehicle is so left in respect of an initial period being of not more than the unexpired period of the charging hours on the day of payment
- (2) Any ticket of the type referred to in this Article shall be exhibited in the manner specified in Article 5(6) of this Order
- (3) Any ticket issued by a parking ticket meter shall be presumed unless the contrary is proved to have been issued on the date shown thereon and when the clock on the said parking ticket meter indicated the time to be that shown on the said ticket
- (4) No person shall exhibit on a vehicle left in a parking place during the charging hours any ticket or tickets issued by a parking ticket meter relating to that parking place other than the ticket or tickets issued by a parking ticket meter upon payment of the initial charge in respect of that vehicle

Amount of excess charge at parking places

7. (1) If a vehicle is left in a parking place during the charging hours for a longer period than that period for which payment was made, the amount shown in Part II of the Schedule (which amount is hereinafter referred to as the "Excess Charge") shall be payable

by the driver of that vehicle in accordance with Part II of the Schedule and Article 9 hereof

(2) If a vehicle is left in a parking place during the charging hours either:-

(i) without having paid the initial charge or

(ii) without a valid parking ticket season ticket or parking permit being displayed

the amount shown in Part III of the Schedule (which amount is hereinafter referred to as the "Excess Charge") shall be payable by the driver of that vehicle in accordance with Part III of the Schedule and Article 9 hereof

(3) If a vehicle is left in a parking place during the charging hours and fails to comply with Articles 4 (2), 15, 16, 21 or 23 of this Order the amount shown in Part II of the Schedule (which amount is hereinafter referred to as the "Excess Charge") shall be payable by the driver of that vehicle in accordance with Part II of the Schedule and Article 9 hereof

(4) In the case of a vehicle in respect of which an Excess Charge may have been incurred, it shall be the duty of a parking attendant to attach to the vehicle in a conspicuous position or, where the driver is present, to hand to the driver, a notice which shall include the following particulars:-

(a) the registration mark of the vehicle or, where the vehicle is being used under a trade licence, the number of the trade plate carried by the vehicle;

- (b) the name of the parking place in which the vehicle is left, the date, the time at which the offence was noticed and the time at which the notice was issued;
 - (c)
 - a record of the details provided on any ticket displayed on the vehicle or alternatively a statement to the effect that no valid parking ticket was displayed or
 - a statement of the regulation which has not been complied with under this Order
 - (d) a statement of the Excess Charge which is required to be paid in accordance with paragraph 7(1), 7(2) or 7(3) of this article and the amount of the Excess Charge;
 - (e) the manner in which and the time within which and the office of the Council at which the Excess Charge should be paid; and
 - (f) a statement that it is an offence under Section 35(A) of the Act for the driver of a vehicle who has left the vehicle in a parking place to fail to pay the Excess Charge due
- (5) The provision of Section 47(6) of the Act in respect of proceedings for an offence of failing to pay an Excess Charge shall apply to this Order

Restriction on removal of notices

8. When a notice has been attached to a vehicle in accordance with any of the foregoing provisions of this Order no person other than a person authorised by the Council in that behalf or the driver or a person authorised by the driver in that behalf shall remove the notice from the vehicle

Manner of payment of Excess Charge

9. The Excess Charge shall be paid to the Council either by cheque or postal order which shall be delivered or sent by post so as to reach the Council at the office designated in the notice referred to in Article 7(3) hereof not later than 10.00 a.m. on the seventh day following the day on which the Excess Charge was incurred (but excluding days on which the office is closed) or in cash in person at the said office not later than as aforesaid and if applicable not later than 10.00 a.m. on the date specified in Part II or Part III of the Schedule

Legal Proceedings

10. The particulars given in the notice attached to a vehicle or handed to the driver in accordance with the provisions of this Order shall be treated as evidence in any proceedings for an offence of failing to pay an Excess Charge
11. The provision contained in Section 47(4) of the Act shall apply to proceedings brought under Section 35(A) of the Act for non-compliance with Article 9 of this Order namely failure to pay an excess charge as if the parking place concerned was a designated parking place
12. No information shall be laid before the Magistrates' Court in relation to proceedings brought under the provisions of this Order for failure to pay an Excess Charge sooner than the expiry of 14 days following the day on which it was incurred (but excluding days on which the Council offices or office are closed)

Removal of vehicle from parking place

13. (1) If a vehicle is left in a parking place in a position other than in accordance with the provisions of Article 4, a person authorised by

the Council in that behalf may alter or cause to be altered the position of the vehicle so that its position is in accordance with the said provisions

- (2) If a vehicle is left in a parking place in contravention of any of the provisions of this Order a person authorised by the Council in that behalf may remove the vehicle from that parking place or arrange for such removal
- (3) For the purpose of meeting the requirements of any emergency, a person authorised in that behalf by the Council or a police constable in uniform may alter or cause to be altered the position of a vehicle in a parking place or remove or arrange for the removal of a vehicle from a parking place
- (4) The Council may for the purpose of altering or causing to be altered the position of any such vehicle or for the purpose of removing or arranging removal of such vehicle gain access by the use of reasonable force if necessary to such vehicle
- (5) Any person altering, or causing the alteration of, the position of a vehicle by virtue of paragraph (1) of this Article, or removing, or causing the removal of, a vehicle by virtue of paragraph (2) or (3) of this Article, may do so by towing or driving the vehicle or in such other manner as he may think reasonably necessary to enable the position of the vehicle to be altered or the vehicle to be removed
- (6) Any person removing or arranging for the removal of a vehicle by virtue of paragraph (2) or (3) of this Article shall make such arrangements as he considers reasonably necessary for the safety of the vehicle in the place to which it is removed

- (7) The Council or other person shall not be liable for any cost claim demand or liability arising from the exercise of their powers under this Article

Miscellaneous

14. The driver of a motor vehicle using a parking place shall stop the engine as soon as the vehicle is in position in the parking place, and shall not start the engine except when about to change the position of the vehicle in or to depart from the parking place
15. (1) No person shall use a vehicle, while it is in a parking place, in connection with the sale of any article to persons in or near the parking place or in connection with the selling or offering or advertising for hire of his skill or service
- (2) No person shall use any part of a parking place or any vehicle left in a parking place:
- (a) for sleeping or camping or cooking; or
 - (b) For the purpose of servicing or washing any vehicle or part thereof other than is reasonably necessary to enable that vehicle to depart from the parking place
16. The driver of a vehicle using a parking place shall not sound any horn or other similar instrument except when about to change the position of the vehicle in or to depart from the parking place
17. No person shall in a parking place wantonly shout or otherwise make a loud noise to the disturbance or annoyance of users of the parking place or residents of premises in the neighbourhood

18. No person shall in a parking place use any threatening, abusive or insulting language, gesture or conduct with intent to put any person in fear or so as to occasion a breach of the peace and whereby a breach of the peace is likely to be occasioned

19. Where in a parking place signs are erected or surface markings are laid for the purpose of:-

- (a) indicating the entrance to or exit from the parking place, or
- (b) indicating that a vehicle using the parking place shall proceed in a specified direction within the parking place;

no person shall drive or permit to be driven any vehicle (i) so that it enters the parking place otherwise than by an entrance, or leaves the parking place otherwise than by an exit, so indicated, or (ii) in a direction other than so specified

20. No person shall, except with the permission of a person authorised by the Council in that behalf, drive or permit to be driven any vehicle in a parking place or any part of any car park to which this Order relates for any purpose other than the purpose of leaving that vehicle in the parking place in accordance with the provisions of this Order or for the purpose of departing from the parking place

21. In a parking place no person shall:-

- (a) erect or permit to be erected any tent, booth, stand, building or other structure without the written consent of the Council;
- (b) light or cause or permit to be lit any fire

22. Save as provided in Article 23 of this Order, no person shall cause or permit any vehicle to wait at any time on any carriageway giving access to or egress from a parking place
23. Nothing in Article 22 of this Order shall prevent a person from causing or permitting a vehicle to wait on any such carriageway as is mentioned therein for as long as may be necessary:-
- (a) if the vehicle is waiting, owing to the driving being prevented from proceeding by circumstances beyond his control or such waiting as is necessary to prevent an accident;
 - (b) if the vehicle is a fire engine or ambulance or any vehicle in the service of the local authority or police force being used in either case in pursuance of statutory powers or duties
24. Any vehicle using or remaining in the parking place shall be at the owner's or driver's risk and the Council, or its agents, officers or employees shall not be liable for loss or damage to it or its contents or accessories howsoever arising
25. The Council may at its complete discretion and without prior notice having been given, suspend the use of any parking place covered by this Order

PART III – EXEMPTION

26. (1) The driver of a disabled persons vehicle which displays in the relevant position a disabled person's badge shall be exempt from any limitation of time specified in Article 4 and from any payment specified in Articles 5 and 6. A driver who is neither disabled nor carrying a disabled person at the time of parking is not exempt from the provisions of Articles 4, 5, and 6

- (2) For the purpose of this Order a vehicle shall be regarded as displaying a disabled person's badge in the relevant position when :-
- (i) in the case of a vehicle fitted with a front windscreen, the badge is exhibited thereon with the obverse side facing forwards on the near side of and immediately behind the windscreen, and
 - (ii) in the case of a vehicle not fitted with a front windscreen, the badge is exhibited in a conspicuous position on the front or nearside of the vehicle

PART IV – DISPOSAL OF VEHICLES ABANDONED IN A PARKING PLACE

27. The Council may as respects a vehicle which has been, or could at any time be, removed from a parking place in pursuance of Article 13 of this Order, if it appears to them to have been abandoned, sell or otherwise dispose of the vehicle. Provided that the power of disposal conferred by this Article shall not be exercisable in the case of a vehicle unless there have been taken by the Council such of the following steps as are applicable to the vehicle and there has elapsed a period of six weeks beginning with the taking of the first of those steps
28. (1) Subject to the provisions of Article 34 of this Order, where a vehicle carries a registration mark issued under the Vehicle Excise and Registration Act 1994 the Council shall apply in writing to the Driver and Vehicle Licensing Agency enquiring who it appears may be the owner of the vehicle and the address of that person
- (2) Where the Council act under this Article the first step for the purposes of the last and next succeeding Article shall be taken to be the sending of the notice mentioned in Article 29

29. The Council shall, where they are by virtue of the last preceding Article aware of the name and address of a person who it appears may be the owner of the vehicle, send a notice to that person at that address stating that it is the intention of the Council to sell or otherwise dispose of the vehicle (which shall be sufficiently described in the notice) on or after a specified date (which shall not be less than two weeks from the date of the notice and in any event not earlier than six weeks from the date of the first step taken by the Council under this part of this Order) unless it is in the meantime removed by or on behalf of that person from such place as is specified by the Council in the said notice, or from such place as may be subsequently notified in writing by the Council to that person
30. If any person to whom a notice is sent in accordance with the last preceding Article informs the Council of the name and address of some other person whom he alleges may be the owner of the vehicle a notice stating the particulars mentioned in the last preceding Article shall be sent to that other person and to any further person who the Council may in consequence of the sending of the notice to the said other person be led to believe may be the owner of the vehicle
31. Subject to the provisions of Article 34 of this Order, where a vehicle does not carry a registration mark issued under the Vehicle Excise and Registration Act 1994, the first step to be taken by the Council shall be to apply in writing to the Chief Officer of the Police in whose area the parking place is from which the vehicle has been, or could at any time be, removed in pursuance of this Order inquiring who that officer considers is the owner of the vehicle and the address of that person
32. If, after steps have been taken under the foregoing provisions of this Part of this Order, a vehicle is not claimed, the Council shall make further enquiries (if any) as they consider reasonable as to who may be the owner of the vehicle and the address of that person

33. Where by virtue of Article 31 or 32 of this Order, the Council are informed of the name and address of a person who it is considered may be the owner of the vehicle, Articles 29 and 30 of this Order as respects the sending of notices shall apply in relation to that person at that address as they apply in relation to the person mentioned in the said Article 29.
34. Nothing in the foregoing provisions of this part of this Order shall require the Council to take any such steps as are therein mentioned for the purpose of inquiring who is the owner of a vehicle to which Article 27 of this Order applies, if they have found a person who satisfies them that he is in fact the owner of that vehicle and they have sent him at his address a notice containing the particulars specified in Article 29 of this Order
35. Upon the sale of a vehicle by the Council, the Council shall apply the proceeds of sale in or towards the satisfaction of any costs incurred by them in connection with the disposal thereof and of any charge or payment to which they are entitled as regards the vehicle under Section 102 of the Act.
36. In the event of any such costs incurred by them in connection with the disposal of the vehicle not being satisfied by virtue of the last preceding Article, the Council may recoup those costs so far as not satisfied from the person who was the last owner of the vehicle before it was removed from the parking place in pursuance of Article 13 of this Order, if that person was sent by the Council a notice under the foregoing provisions of this part of this Order stating the particulars mentioned in Article 29 of this Order
37. Any sum received by the Council on a sale of the vehicle, after deducting any sum applied there out by virtue of Article 35 of this Order, shall be payable within a period of one year from the date of the sale of the vehicle to any person whom, but for such sale the vehicle would have belonged, and insofar as any such sums are not claimed within the said period they shall be paid into the general fund of the Council

38. If the owner of a vehicle which has been or which could at any time have been removed from a parking place in pursuance of Article 13 of this Order, reclaims the vehicle before the Council sells or otherwise disposes of it as provided for by Article 27 of this Order then the Council shall be entitled to recover from such owner any charge or payment to which they are entitled as regards the vehicle under Section 102 of the Act
39. Where under the foregoing provisions of this Part of this Order a notice is required to be, or may be, sent to a person the notice shall be sent by registered post or by the recorded delivery service

Executed as a Deed by SOUTH)
KESTEVEN DISTRICT COUNCIL)
having caused its common seal)
to be affixed hereto)

In the presence of)