

**THE COUNTY COUNCIL OF DURHAM
(WHARTON PARK) (OFF-STREET PARKING PLACES)
ORDER 2015 (AMENDMENT NO. 1) ORDER 2016**

The County Council of Durham (hereinafter called "the Council") in exercise of its powers under Sections 1, 2, 32, 33, 34, 35, 35A, 35B, 35C and 38 of the Road Traffic Regulation Act 1984, as amended, Part 6 of the Traffic Management Act 2004, as amended, and of all other enabling powers and after consultation with the Chief Officer of Police in accordance with Part III of Schedule 9 to the 1984 Act hereby makes the following Order:

**PART I
GENERAL**

Commencement and Citation

1. This Order may be cited as the County Council of Durham (Wharton Park) (Off-Street Parking Places) Order 2015 (Amendment No. 1) Order 2016 and shall come into operation on the 20th day of June 2016.

Interpretation

2. In this Order, except where the context otherwise requires, the following expressions have the meanings respectively assigned to them:

"civil enforcement officer" means a person authorised by or on behalf of the Council pursuant to the provisions of Section 76 of the Traffic management Act 2004;

"council" means The County Council of Durham;

"disabled person's badge" means a badge issued by any Local Authority in accordance with the provisions of the Local Authorities' Traffic Orders (Exemptions for Disabled Persons (England) Regulations 2000) or a badge having effect under those regulations as if it were a Disabled Person's Badge;

"driver" in relation to a parking place means the person driving the vehicle at the time it was left in the Parking Place;

"enforcement authority" means The County Council of Durham;

"enforcement officer" means anyone duly authorised by the council to carry out enforcement duties;

"expiry time" is the time indicated on the pay and display ticket and is the time by which the vehicle must leave the parking place;

"motor car" has the same meaning as assigned by the Act;

"motorcycle" refers to a solo motorcycle only and excludes any motorcycle which has a side-car or trailer, or which has more than two wheels;

"off street car park" means the locations as described in Column 2 of Schedule 1 to this Order;

"owner" in relation to a vehicle means the person who is recorded as the registered keeper by the Driver and Vehicle Licensing Agency on the date on which the vehicle was left in the parking place in question;

"parking bay" means an area of a parking place, which is provided for the leaving of a vehicle of a class specified and indicated by markings on the surface of the parking place or signed or otherwise indicated by signs in the parking place;

"parking charge" means the charge specified in Column 7 of the schedule to this order with respect to the period of parking required;

"parking contravention" has the same meaning assigned to it by Section 73 and Part 1 of Schedule 7 to the Traffic Management Act 2004;

"parking place" means the areas of the off street car parks as designated as specified in the maps attached at Schedule 2 to this order;

"pay and display" means a type of parking place where upon parking the vehicle in a parking bay and prior to leaving the parking place a pay and display ticket must be purchased at the level of charge and for the required period in accordance with the scale of charges advertised at that parking place;

"pay and display ticket" means a ticket issued by a ticket machine located in the parking place in which the vehicle has been left or a ticket issued by a person nominated by the council on payment of a charge and valid for a parking period as advertised at that parking place in accordance with Article 23 of this Order. The pay and display ticket must be displayed prominently on the vehicle, where appropriate, in accordance with Article 20 of this Order;

"penalty charge" means a charge made pursuant to the provisions of Section 77 of the Traffic Management Act 2004;

"penalty charge notice" means a notice issued by a civil enforcement officer pursuant to the provisions of Section 78 of the Traffic Management Act 2004;

"permitted vehicle" means any vehicle listed in column 4 of the schedule or such other vehicles authorised by the Council;

"relevant position" means:

(a) in respect of a vehicle displaying a valid Disabled Person's Badge -

(i) in the case of a vehicle fitted with a dashboard or fascia panel, the badge is exhibited thereon so that Part 1 (the front of the badge), is legible from outside the vehicle; or

(ii) in the case of a vehicle not fitted with a dashboard or fascia panel, the badge is exhibited in a conspicuous position on the vehicle so that part 1 of the badge is legible from outside the vehicle;

(b) in respect of a vehicle displaying a pay and display ticket -

(i) the ticket or permit is exhibited on the inside surface of the windscreen or in a clearly visible position so that it is facing forwards and can be easily seen and read from the front or side of the vehicle; or

- (ii) in the case of a vehicle that is not fitted with a transparent windscreen, the ticket or permit is exhibited on the front of the vehicle facing forwards and clearly visible.

"scale of charges" means the charge referred to in Column 7 of Schedule 1 to this Order with respect to the period of parking required.

"ticket machine" means an apparatus of a type and design approved by the appropriate Minister for the purpose of this order, being apparatus designed to indicate the time by a clock and to issue parking tickets which show that a payment has been made of an amount or for a period specified thereon and which specify the date and, either the time of such payment, or the time at which the vehicle must leave the parking place;

"vehicle" means any motor car, motor cycle or other mechanically propelled automobile.

- 3. Any reference in this Order to any enactment shall be construed as a reference to that enactment as amended, applied, consolidated, re-enacted by or as having effect by virtue of any subsequent enactment. Unless the context otherwise requires words denoting the singular shall include the plural and vice versa and words denoting persons shall include either gender, bodies corporate, unincorporated associations and partnerships.
- 4. The Interpretation Act 1978 shall apply for the interpretation of this Order.

PART II

Parking: Mon-Sun 8am-6pm Pay at Machine - Display Ticket

- 5. Save as provided in Article 48 no person shall, except upon the direction of with the permission of an enforcement officer or a civil enforcement officer, cause or permit any vehicle, other than a class of vehicle so authorised under column 4 of Schedule 1 to this order, to wait or park within the area outlined in red on the plan appended at Schedule 2 unless they are parked in an allocated parking bay:
 - (a) highlighted in green numbered 1-27 – motor cars & motor cycles only; or
 - (b) highlighted in black numbered D1-D3 – disabled vehicles only.

Designation

- 6. Each parking place specified in column 2 of Schedule 1 to this Order may only be used, subject to the provisions of this Order, as a place to leave vehicles of such classes as specified in column 4 of Schedule 1 to this Order.
- 7. The number and situation of parking bays in each parking place may be determined by the Council and the limits of each parking place shall be indicated by the Council on the surface by appropriate road markings and traffic signs.
- 8. The Council may:-
 - (a) install, in such positions on or in the vicinity of a parking place or parking bay, as they may think fit, such ticket machines as are required by this Order for the purposes of that parking place or parking bay; and
 - (b) carry out such other work as is authorised by this Order or is reasonably required for the purposes of the satisfactory operation of a parking place.

Class and position of Vehicle

9. (1) no person shall cause or permit any vehicle, other than the permitted vehicles of such class, specified in column 4 of Schedule 1 to this order to use the parking places specified in column 2 of Schedule 1 to this order;
- (2) every vehicle left in a parking place, specified in Article 5 of this Order, shall stand so that every part of the vehicle is wholly within the limits of the parking place or any parking bay within a parking place;
- (3) where in Schedule 1 to this Order a parking bay is described as available for vehicles of a specific class the driver of a vehicle shall not, unless authorised in writing by the Council, permit it to wait or park in the parking bay unless it is of the class so specified.
- (4) no person shall cause or permit a vehicle to wait or park in a parking bay marked for disabled persons unless the vehicle displays a valid disabled person's badge in the relevant position and unless the vehicle has been or is about to be used by the person(s) in respect of whom the disabled person's badge has been issued either immediately before or immediately after the act of parking. Where required the vehicle shall also display the disabled person's badge clock in accordance with local regulations;

Power to close or suspend Parking Places

10. Nothing in this Order shall prevent the Council by notice, sign or barrier displayed in a parking place or parking bay from:
 - (i) temporarily closing or suspending the use of a parking place for any class of vehicle for any period for the purpose of preventing obstruction of the highway or maintaining public order therein;
 - (ii) closing/suspending the use of a parking place or parking bay.
11. Any person closing or suspending the use of a parking place or any part thereof in accordance with the provisions of Article 10(ii) shall thereupon place or cause to be placed in or adjacent to that parking place or that part thereof a notice or sign indicating that the use of that parking place or that part thereof is closed or suspended and that parking by vehicles is prohibited.
12. No person shall cause or permit a vehicle to be left in a parking place or any part thereof during such periods that the use of that parking place or that part thereof is closed or suspended or during such period as there is in or adjacent thereto a notice or sign placed by or on behalf of the Council in pursuance of Article 11.

Use of Parking Place

13. (1) No person shall use any part of a parking place or use any vehicle in a parking place:
 - (i) to carry out any work of construction overhauling cleaning or repair in respect of the vehicle except as may be necessary to enable the vehicle to be moved from the parking place;

- (ii) for sleeping, camping or cooking;
 - (iii) for the playing or taking part of any sport;
 - (iv) to engage in any unlawful activity;
 - (iv) to congregate with others with or without vehicles;
 - (v) to erect or cause to be erected any tent, booth, stand, building or other structure;
 - (vi) to light or cause to be lit any fire;
 - (vii) to shout or otherwise make a loud noise to the disturbance or annoyance of users of the parking place or residents or occupiers of premises in the neighbourhood;
 - (viii) to use any threatening, abusive or insulting language, gesture or conduct likely to cause a breach of the peace;
 - (viii) to play music or other recorded sound to the disturbance or annoyance of users of the parking place or residents or occupiers of premises in the neighbourhood
 - (viii) to engage in any activity which causes disturbance or annoyance to users of the parking place or residents or occupants of neighbouring premises or passers-by.
- (2) No person shall, except with the express written authority of the Council affix or cause to be affixed any advertising material to any vehicle left in a parking place.
 - (3) Nothing in these terms and conditions shall apply to anything so approved by an authorised officer of the Council.
 - (4) 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 for hire of his or another person's skills or services in any capacity, unless with the express written permission of the Council.
 - (5) No person shall except with the permission of an authorised officer of the Council drive any vehicle in a parking place other than for the purpose of leaving that vehicle in the parking place or for the purpose of departing from the parking place in accordance with the provisions of this Order.
 - (6) No person shall leave an engine running except for the sole purpose of entering, departing or manoeuvring the vehicle in the parking place.
 - (7) No person shall be permitted to use a parking place for the purpose of offering a vehicle for sale.

Maximum Period of Stay

14. Where a parking place is described by the appropriate sign as being available for use on specified days during specified hours or as being available for use for a maximum period of stay no person shall be permitted to stay a period longer than that specified.

Parked causing an obstruction

15. The driver of a vehicle using a parking place shall not park the vehicle in such a manner or place where it causes an obstruction to any other users of the parking place.

PART IV

CHARGES FOR PARKING

Payment

16. The driver of a vehicle using a parking place shall upon parking the vehicle in the parking place pay the appropriate charge (where applicable) in accordance with the scale of charges as advertised on site.
17. Changes to the scale of charges as detailed in Schedule 1 to this Order shall be published in a newspaper circulating in the area, as set out in Section 35(c) of the Road Traffic Regulations Act 1984.

Pay and Display Parking Places

18. The driver of a vehicle using a parking place, or any parking bay within the parking place shall upon parking the vehicle in a parking bay purchase a pay and display ticket at the level of charge and for the period required in accordance with the scale of charges as advertised at that parking place.

Means of payment

19. The charges referred to in Articles 16, 17 and 18 shall be payable in the manner as advertised at that parking place or by payment to a person nominated by the Council.

Display of ticket

20. Once a vehicle has been parked within a parking place the driver of the vehicle shall:
 - (i) ensure that a valid pay and display ticket has been obtained and is displayed at all times the vehicle is parked in accordance with paragraph (ii) of this Article, to cover the entire period that the vehicle is parked in the parking place, and
 - (ii) display the pay and display ticket issued at that parking place in the relevant position on the vehicle in respect of which it was issued so that:
 - (a) the time and date of issue of the ticket is clearly visible; or
 - (b) the date of expiry and the expiry of time shown on the front of the said ticket is clearly visible.

21. If at any time while a vehicle is left in a parking place during the charging hours no ticket is exhibited on that vehicle it shall be presumed, unless the contrary is proved, that the parking charge has not been duly paid.
22. Where a ticket issued by a ticket machine indicates that the parking charge has expired then that indication shall be evidence that the vehicle was parked after the expiry of paid for time.

Validity of Pay and Display Tickets

23. A pay and display ticket is not transferable from one vehicle to another and on transfer the ticket ceases to be valid.
24. A pay and display ticket is valid only in the parking place in which it was issued. This is defined by the reference code of the ticket machine located in that parking place printed on the pay and display ticket.

Expiry of parking period

25. The expiry of the period for which a charge for the use of a parking place has been paid (as advertised at the parking place) shall be indicated when there is exhibited on the vehicle a pay and display ticket and the expiry date and time printed on the pay and display ticket is earlier than the date and time displayed on the clock of the issuing ticket machine.

No Pay and Display Ticket displayed

26. If at the time when a vehicle is left during the charging hours in a pay and display parking place and on the nearest ticket machine in that parking place there is an indication that the said ticket machine is out of order then a ticket shall be obtained from another ticket machine within the same parking place (where another ticket machine is so provided) or obtained from a person nominated by the Council to issue such tickets. Otherwise Article 27 shall prevail where there is no ticket machine or all ticket machines are out of order, whether signed as such or not, or where no person has been so nominated by the council.
27. Where no valid pay and display ticket can be obtained and displayed pursuant to the circumstances described in Article 26, vehicles may be left in a parking place but may not be left for longer than the maximum period of parking as advertised at that parking place.

Restriction on removal

28. When a pay and display ticket has been exhibited on a vehicle in the relevant position no person shall remove the pay and display ticket from the vehicle until the vehicle is removed from the parking place.

PART V

EXEMPTIONS FROM DAILY CHARGES

Absence of ticket machine

29. If at the time when a vehicle is left in a parking place during the charging hours there is no ticket machine or person nominated by the Council to issue such tickets at the parking place, or all the ticket machines at that parking place carry notices placed upon them by a person duly authorised by the Council indicating that they are out of order, the driver of that vehicle shall be exempt from purchasing a pay and display ticket. Otherwise Article 27 shall prevail where there is no ticket machine or all ticket machines are out of order whether signed as such or not.

PART VI

RELOCATION AND REMOVAL OF VEHICLES AND OTHER EQUIPMENT

30. (1) If a vehicle is left within a parking place in a position other than in accordance with the provisions of this Order the Council may alter or cause to be altered the position of that vehicle so that it is accordance with those provisions.
- (2) The terms and conditions shall apply equally to any other equipment deposited in the parking place which in the opinion of a person authorised by the Council constitutes a contravention of the provisions of this Order and these provisions are extended to include for the disposal of the equipment where it is deemed appropriate by the Council.
- (3) If a vehicle is left in a parking place in contravention of any of the provisions of the Order a person authorised by the Council in that respect may remove the vehicle from the parking place or arrange for such removal.
- (4) If an emergency occurs, the Council or a police officer 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.
- (5) Any person altering or causing the alteration of the position of a vehicle or removing or causing the removal of a vehicle may do so by towing, lifting or driving the vehicle or using 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.

Emergencies

31. A person authorised by the Council or a police officer in uniform may, using such measures as are appropriate, move or cause to be moved in the case of an emergency to any place he thinks fit, any vehicle left in a parking place.

Safe keeping

32. Any person removing a vehicle from a parking place under Article 31 shall make such arrangements as may be reasonably necessary to provide for the safe keeping of the vehicle.

PART VII

LIABILITIES/PENALTIES

Liability

33. The Council accepts no liability for the loss or damage to vehicles or other property left in any of the parking places to which this Order applies.

Wilful damage

34. Any person who with intent to defraud interferes with the ticket machine or operates or attempts to operate it by the insertion of objects other than undamaged and unaltered coins of legal tender and of the appropriate denomination, or other approved method of payment, shall be liable to prosecution.

PART VIII

CONTRAVENTION AND PENALTY CHARGE NOTICES

Contravention & Penalty Charge Notices

35. (1) A person who contravenes this Order, or who uses a vehicle, or causes or permits a vehicle to be used in contravention of this Order, shall be guilty of an offence under Section 35 of the Road Traffic Regulation Act 1984.
- (2) A penalty charge may become payable in the event of a vehicle failing to comply with the provisions of this Order.
- (3) Where a penalty charge is payable an Enforcement Officer shall attach to the vehicle in respect of which the penalty charge has been incurred in a conspicuous position a notice to be called the "Penalty Charge Notice". This notice shall include the following particulars:
- (i) 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;
 - (ii) the time at which the enforcement officer first noticed the parking ticket issued by the pay and display ticket machine indicated that the period for which payment was made had expired;
 - (iii) a statement that the penalty charge is required to be paid and indicating the procedure for its payment; and
 - (iv) a statement that it is an offence under the Act for the driver of a vehicle who has left the vehicle in a parking place to fail duty to pay the penalty charge.
- (4) The penalty charge notice referred to in paragraph 3 of this Article shall be written and issued by hand or by the use of a hand-held data capture device and printer as approved by the Council.
- (5) The penalty charge shall be paid to the Council in accordance with the instructions contained in the Penalty Charge Notice.

Restriction on removal of notices

36. A Penalty Charge Notice attached to a vehicle in accordance with Article 35 shall not be removed or interfered with except by or under the authority of:
- (i) the Owner or person in charge of the Vehicle;
 - (ii) the Council for the parking place in which the Vehicle in question was found.

Retrieval of Data

37. The particulars referred to in paragraph 3 of Article 35 (3)(i) may be stored electronically via the hand-held data capture devices referred to in paragraph 4 of Article 35 on a central database as approved by the Council. This information may be retrieved at a later date from the central database and produced as a facsimile of the original penalty charge notice. As such information so produced may be used as evidence that a penalty charge was so incurred and may be used in any proceedings taken under the Act.

PART IX

DISPOSAL OF VEHICLES

Disposal of Vehicles abandoned in Parking Places

38. The Council may sell or otherwise dispose of a vehicle which has been removed from a parking place pursuant to Article 32 if the vehicle appears to have been abandoned, provided that this power of disposal shall not be exercisable unless the Council has taken such of the following steps as are applicable to the vehicle in question, and there has elapsed a period of six weeks beginning with the taking of the first of those steps.
39. Where the vehicle carries a registration mark the Council shall ascertain from the appropriate body the name and address of the person who is the Registered Keeper of the vehicle pursuant to the Vehicles (Excise) Act 1971, unless the Council is satisfied that the true owner of the vehicle has identified himself to them.
40. The Council shall, where by virtue of Articles 39, 41 and 42, it is 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.
41. If any person to whom a notice is sent in accordance with Article 40 informs the Council of the name and address of some other person who he/she 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.

42. Where a vehicle does not carry a registration mark the first step to be taken by the Council shall be to apply in writing to the Chief Officer of Police in whose area the parking place is situated enquiring whom that officer considers is the owner of the vehicle and the address of that person.
43. The Council shall then make such further enquiries as to ownership as it thinks fit.
44. 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 it in connection with the disposal thereof and of any charge or payment to which it is entitled.
45. In the event that any such costs incurred by the Council in connection with the disposal of the vehicle are not satisfied by virtue of the last preceding Article, the Council may recover those costs from the person who was the owner of the vehicle immediately before it was removed from the parking place, provided that that person was sent by the Council a notice under Article 40.
46. Any sums received by the Council on the sale of a vehicle shall, after deducting any sum applied by virtue of Article 44, be payable within a period of one year from receipt hereof to any person to 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 Rate Fund of the Council.
47. Where under the foregoing provisions of this Order a notice is required to be or may be sent to a person the notice shall be sent by recorded delivery post.

Exemptions

48. (1) Nothing in Article 5 of this Order shall render it unlawful to cause or permit any vehicle to wait on any of the lengths of roads or sides of lengths of roads referred to therein, for so long as may be necessary to enable;
 - (a) the vehicle, if it cannot conveniently be used for such purpose in any other road, to be used in connection with any of the following:-
 - (i) building or demolition;
 - (ii) the removal of any obstruction to traffic;
 - (iii) the maintenance, improvement or re-construction of the said roads;
 - (iv) the laying, erection, alteration or maintenance in or in land adjacent to the said lengths of roads of any sewer, main, pipe or apparatus for the supply of gas, water or electricity or any telecommunications apparatus as defined in the Telecommunications Act 1984;
 - (b) the vehicle if it cannot conveniently be used for such purpose in any other road to be used in the service of a local authority or water authority in pursuance of statutory duties;

- (2) Nothing in Article 5 of this Order shall apply to any liveried vehicle being used for police, fire & rescue service or ambulance purposes in pursuance of statutory duties.
- (4) Nothing in Article 5 of this Order shall render it unlawful to cause or permit any other class of motor vehicle to wait in the area highlighted in red appended at Appendix 2 for the purposes of picking up or setting down of passengers only.

PART X

Contravention & Enforcement

- 49. If a vehicle is in contravention of a provision of this Order a penalty charge shall be payable.
- 50. In the case of a vehicle in respect of which a penalty charge is payable, a penalty charge notice may then be issued by a Civil Enforcement Officer in accordance with the requirements of Section 78 of the Traffic Management Act 2004, as amended.

Saving

- 51. In so far as any provision of this Order conflicts with any provision which is contained in an Order made or having effect as if made under the Act or by or under any other enactment then the provisions of THIS Order shall prevail.
- 52. The prohibitions and restrictions imposed by this Order shall be in addition to and not in derogation from any restriction or requirement imposed by any regulations made or having effect as if made under the Act or by or under any other enactment.

GIVEN UNDER THE COMMON SEAL OF THE COUNTY COUNCIL OF DURHAM ON THE 16th DAY JUNE OF 2016

.....
N. Carter
Authorised signatory



Schedule 1

1 Item No	2 Name of Parking place	3 Position in which vehicle may wait/park	4 Class of Vehicle	5 Days of operation of Car Park	6 Charging Hours	7 Scale of Charges
1	Wharthon Park Durham	Wholly within a parking bay (bays marked in green numbered 1 to 27 referred to in Schedule 2 to this Order)	Motorcars Motorcycles	All	8am - 6pm	50p per ½ hour
2	Wharthon Park Durham	Wholly within a parking bay (bays marked in black numbered D1, D2 & D3 referred to in Schedule 2 to this Order)	Disabled Vehicles displaying a Disabled Person's Badge	All	8am-6pm	Maximum stay 3 hours 50p per ½ hour Maximum stay 3 hours