

# **Proposed Responsible Parking (Scotland) Bill**



**A proposal for a Bill to enable freedom of movement for all pedestrians**

**Consultation by  
Joe FitzPatrick MSP  
Member for Dundee City West**

**28<sup>th</sup> March 2012**



# Contents

<b>4</b>	<b>Foreword by Joe FitzPatrick MSP</b>
<b>6</b>	<b>Case Studies</b>
6	Case Study 1
8	Case Study 2
<b>10</b>	<b>The Bill</b>
10	Aim of the proposed Bill
14	Charities backing the Bill
15	Benefits of the proposed Bill
18	The Regulatory and Statutory Framework
24	Conclusion
<b>22</b>	<b>How the consultation process works</b>
<b>24</b>	<b>How to respond to this consultation</b>
<b>27</b>	<b>Questions</b>

## Foreword



**Joe FitzPatrick MSP**

This Bill aims to allow all pedestrians to travel along the pavement and cross roads free from obstructions caused by parked vehicles, which in extreme cases can leave people trapped inside their homes.

This bill intends to build upon the good work undertaken by Ross Finnie who consulted on a Regulation of Dropped Kerbs and Pavement Parking (Scotland) Members Bill in session 3 which aimed to make pavements accessible for all pedestrians by restricting parking on the pavement and at dropped kerbs.

This new proposal adds double parking to the list of parking to be regulated as emergency services have reported problems, particularly in relation to double parking impeding their vehicles.

## Proposed Responsible Parking (Scotland) Bill

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The original proposal favoured Local Authorities using Transport Regulation Orders (TROs) to enforce the bill. The original consultation responses highlighted that though the aim of the bill was widely supported, Local Authorities had concerns over using the TRO system due to the associated time and cost implications.

Taking this on board and after consulting with user groups and Local Authorities, I have decided to proceed along the lines of a Scotland-wide ban similar to that which has been in operation in London since the seventies. The Bill would contain Scotland-wide restrictions on double parking, parking on pavements, parking at dropped kerbs, and parking at raised crossings, with exceptions on the face of the Bill (which may be taken from the Traffic Management Act 2004). For local exemptions, it is envisaged that Local Authorities will use TROs.

Introducing restrictions on parking at dropped kerbs and on pavements will be of benefit to all of the Scottish public and it will be especially beneficial to the most vulnerable in society, including the elderly, the disabled, those who are wheelchair users, and the increasing numbers of those who use powered mobility vehicles. It will also benefit all those with buggies and pushchairs.

I have developed this consultation in co-operation with Living Streets Scotland and Guide Dogs Scotland and would like to thank them for their assistance. I would also like to thank Transport Scotland for their support.



Joe FitzPatrick MSP

## Case Study 1



A Dundee resident who required a mobility scooter to get about found that due to parked vehicles he was unable to leave his home on occasion.

The gentleman would park his mobility scooter on the pavement just outside his door. Cars would park right on the corner over the dropped kerb and prevent him from getting down onto the road. Often they would leave him no turning room so that he couldn't even (or really struggled to) drive further down the pavement to get to the next dropped kerb.

On occasions where he was able to get past the cars he would often return home to find cars parked over the pavement and dropped kerb prohibiting him from gaining access to his property.

## Proposed Responsible Parking (Scotland) Bill

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After undergoing the necessary processes, Dundee City Council agreed to “sign and line” the corner (put down double yellow lines and a sign asking residents not to park), allowing the resident free movement. This process was further delayed as even the Local Authority found it difficult to get access to paint the lines as cars were consistently parked over the area.

If legislation was in place this could have been avoided, as the resident, and others like him, would not have had to endure over a year of being trapped at times in their own home. Signing and lining all of Scotland’s dropped kerbs is not a viable option. We need clear legislation that will protect the pavements for pedestrians and educate the public as to why this is necessary.

## Case Study 2



Independent mobility of a blind person was gravely limited due to congestion and parking on the pavement at a primary school and a nearby supermarket. A local resident of Dalgety Bay, who is blind, had to stop taking her youngest daughter to and from primary school, and from doing her shopping at the local supermarket.

For a six month period, she was without a guide dog and was using a long, white cane. She was quite proficient in using a long cane, and for many years had managed quite well with this. Despite this being a very short and uncomplicated

## Proposed Responsible Parking (Scotland) Bill

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route, the numerous cars parking on the pavements on the routes near the primary school forced her to walk on the road - and thus in and amongst other moving vehicles - she felt that it was not safe to keep trying to take her daughter to and from school herself.

She also, at times felt that her 9 year old in fact had to 'look out' for her mum instead of the other way round. She relied on friends to accompany her daughter.

In addition to the above situation, she experienced difficulties with vehicles parking on pavements and at times blocking crossing points near to her local supermarket. Having been able to walk nearly all the way it was the final road crossing areas before the supermarket that posed the problem. With vehicles on the pavement or over the crossing area, finding a clear and safe space to cross where she could be seen by other road users was difficult and at times impossible. In addition, when crossing the road, it could not be guaranteed not to find another vehicle on the pavement on the other side, and then having to walk along the road to find space to get to the pavement.

These areas ended up becoming 'no go areas' for her to walk independently and to keep safe. The situation of having the skills and confidence to be able to walk safely and navigate along streets were not in this instance enough, and independent travel in these areas just stopped. This left the lady having to be accompanied at all times, or relying on friends and family to do her basic tasks, such as shopping.

## Aim of the proposed bill

In Scotland we currently have an issue with inconsiderate and obstructive parking that is impeding the free movement of pedestrians. In recent years we have seen an increased provision of dropped kerbs and raised crossings to help facilitate movement of pedestrians, however, vehicles still park over, and on, kerbs and pavements, obstructing routes.

Note on language: The word pavement is used in this document as the commonly used term for footways. References to dropped kerbs also refer to raised crossings. The Traffic Management Act (2004) provides the following useful definition of dropped kerbs:

*"[Where] the footway, cycle track or verge has been lowered to meet the level of the carriageway for the purpose of*

- i) assisting pedestrians crossing the carriageway,*
- ii) assisting cyclists entering or leaving the carriageway, or*
- iii) assisting vehicles entering or leaving the carriageway across the footway, cycle track or verge; or*

*(b) the carriageway has, for a purpose within paragraph (a)(i) to (iii), been raised to meet the level of the footway, cycle track or verge."*

As you can see in the picture overleaf, the parking of both vehicles is impeding the free movement of pedestrians but neither cars are technically parked illegally.

## Proposed Responsible Parking (Scotland) Bill

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The following photo shows the situation outside a school where pupils were forced to walk down the middle of the road. Again, the vehicles are not illegally parked as it is the process of driving on the kerb - not parking - that is prohibited, and thus the current legislation is insufficient to address the issue.



## Proposed Responsible Parking (Scotland) Bill

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The picture across Scotland is somewhat varied, in some cases dropped kerbs and pavements are protected by a Traffic Regulation Order (TRO) with the attendant signage and double yellow lines. In very many cases however, this is not the case. From the perspective of the disabled person or someone with a pushchair, whilst the existence of a TRO does not guarantee unrestricted access, the absence of a TRO exacerbates the situation and allows a selfish minority to assert if challenged, "it's not against the law".

On the face of it, the solution might appear to be to encourage local authorities to use their existing powers and make more TROs. One of the major difficulties however is that the current law requires a Local Authority to promote a separate TRO, for each individual dropped kerb or relevant part of the pavement. This places a major bureaucratic hurdle in the way of a Local Authority universally introducing enforcement procedures to assist the disabled and other users. The costs of lining and signing every dropped kerb and pavement would be prohibitive and the clutter would create additional barriers.

At present, any pedestrian whose path is blocked by a parked vehicle must telephone the police, show to a police officer that their path is obstructed and wait for the individual police officer to decide that action should be taken. The official police view has been characterised thus: while it is an offence for any person to drive on or to obstruct the pavement, to take enforcement action, the police require evidence of the vehicle being driven. This lack of clarity is unhelpful to police, drivers and affected pedestrians.

I have concluded that the position could be greatly improved by a simple change to the law that would prohibit parking on dropped kerbs and pavements across Scotland. Hence I am proposing a Members Bill in the Scottish Parliament: The Responsible Parking (Scotland) Bill.

## Proposed Responsible Parking (Scotland) Bill

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The Bill proposes to introduce a Scotland-wide ban on parking at dropped kerbs, on the pavement and double parking. There will be exceptions on the face of the Bill such as where the road layout might require vehicles to park on part of the pavement, while maintaining space for all pedestrians to pass, where a vehicle is parked in front of a driveway dropped kerb with the permission of the driveway owner. Local Authorities will be able to make exemptions based on local circumstances.

We hope to also **raise driver awareness** - When drivers are asked why they were parking on the pavement the responses were usually either, 'I am only going to be a few minutes', or 'it's to allow other vehicles to pass me so the road isn't blocked'. By introducing the Bill it is hoped that awareness of the issue that the pavement is vital for all pedestrians will get across to the general public.

## Charities backing the Bill



*"Poorly parked vehicles can force pedestrians into the road and inhibit the independence of many vulnerable people including older people, for families with pushchairs and for those with visual or mobility impairments. This is a problem which cannot be ignored. We are keen to support Joe FitzPatrick and Local Authorities to deliver effective legislation which treats all road users fairly and enables all of us to get around safely and easily."*

**Keith Irving, Head of Living Streets Scotland**



*"The impact of parking across dropped kerbs, crossing points, and on pavements poses significant barriers to the mobility of blind and partially sighted people, older people, disabled people, as well as families with pushchairs. This inconsiderate parking can render our streets into being inaccessible and hazardous areas that restricts people from going about their daily activities. That is why we at Guide Dogs Scotland support this proposal as an effective means of bringing about responsible parking."*

**Jane Horsburgh, Policy Manager at Guide Dogs Scotland**

## Who will benefit?

- Those with disabilities, for example **wheelchair users** are particularly affected as they rely on access to dropped kerbs and cars parked on kerbs and pavements can, in extreme cases, leave people trapped inside their homes.
- **Emergency services** have reported problems in relation to double parking which can impede their vehicles. The Bill intends to build upon the good work undertaken by Ross Finnie and adds double parking to the list of parking to be regulated.



## Proposed Responsible Parking (Scotland) Bill

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- **Adults with pushchairs** can be obstructed and forced onto the road by vehicles parked on the pavement and they also often depend on dropped kerbs.



- There is also an issue with those who have **visual impairments** who, when the pavement is blocked, are forced to walk in the road and amongst moving vehicles trying to find a way back onto the pavement and to safety.

- **Older people**

- **Local Councils** and the **police** would also benefit from greater clarity in the law as regards the offence of parking on a pavement. *It is an offence for any person to drive on or obstruct the footpath. However, to take enforcement action the police require evidence of the vehicle being driven.*

## **It will save Council Tax payers' money**



Cars and especially, lorries, are one of the main contributing factors to damage caused to our pavements through mounting kerbs and parking. The weight of the vehicles either cracks paving or subsides the tarmac surface. Expenditure on damaged kerbs, pavements and public walkways, bollards to prevent inconsiderate parking and compensation payments made to pedestrians injured by damaged pavements are costing Local Authorities millions of pounds. For example, Edinburgh City Council's expenditure between 2006 and 2010 on pavement repair was £40 Million and £865,000 for compensation claims which have been settled so far.

If legislation is introduced to stop damage happening in the first place, not only will it reduce the cost to all of us from damage to pavements, but it will also prevent costly compensation claims from falls on damaged pavements.

# The Regulatory and Statutory Framework

In relation to dropped kerbs and pavements, the Highway Code clearly states at section 243, “[d]o not stop or park where the kerb has been lowered to help wheelchair users and powered mobility vehicles.”

In relation to pavements section 244 states: “You MUST NOT park partially or wholly on the pavement in London\*, and should not do so elsewhere unless signs permit it. Parking on the pavement can obstruct and seriously inconvenience pedestrians, people in wheelchairs or with visual impairment and people with prams or pushchairs.”

Section 145 clearly states: “You MUST NOT drive on or over a pavement, footpath or bridleway except to gain lawful access to property, or in the case of an emergency.”

\*This section of the Highway Code refers only to London, because there it is illegal to park on the pavement - unless signposts deem it acceptable.

Local Authorities have powers under the Road Traffic Regulation Act 1984 to restrict or prohibit, amongst other things, parking at a specified street or road or part of a street or road. The Council must set out the reasons and the likely effect of the proposed TRO advertising the proposal in the local press, publishing it on the Council website and making the draft order available for inspection at various Council offices.

## Proposed Responsible Parking (Scotland) Bill

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The public has 21 days in which to lodge a formal objection. All objections must be considered by the relevant Local Authority. If the TRO needs to be modified further consultation may be required. The whole process can take many months and the advertising and legal fees can be substantial. After considering any objections, authorisation can be given for the TRO to be granted.

From 1<sup>st</sup> June 2009, as a result of regulations introduced under sections 84 and 86 of the Traffic Management Act 2004, all Councils in England and Wales which carry out parking enforcement have powers to introduce blanket Special Enforcement Areas covering vehicles that park on dropped kerbs or double park, without a requirement to provide specific traffic signs or road markings. These regulations do not apply to Scotland.

Section 129 (5) of the Roads (Scotland) Act 1984 states that it is illegal to drive on the pavement but the position is less clear with regards to casual or occasional parking on the pavements. The police have powers under Section 137 of the Highways Act 1986, which make it an offence wilfully to obstruct the free passage of the highway but the police appear reluctant to take enforcement action on cars parked on pavements. This lack of clarity in relation to the law on parking on pavements is unhelpful to pedestrians, drivers and the police.

As noted above, the situation is very different in London. Pavement parking is illegal under the Greater London Council Act 1974 and this is enforced through decriminalised parking regimes. Pavement parking is only allowed where a TRO expressly permits it.

## Proposed Responsible Parking (Scotland) Bill

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Under the Bill's proposals as laid out in Highway Code section 246, exceptions would continue to apply where parking on the verge or pavement is essential for temporary loading and unloading of heavy goods vehicles. It is important for reasons outlined elsewhere that HGVs can be increasingly encouraged to park without penalty on the highway rather than a default use being made of the pavement.

In regards to double parking at present within controlled parking zones (yellow lines or kerbside control), where Local Authorities operate decriminalised parking enforcement (DPE), they have the powers to penalise drivers who double park and in non DPE areas it would be a matter for the police to deal with.

However there are no powers at present which would enable double parking to be penalised when it occurs on roads where there is no kerbside control or where the kerbside control is a permitted parking bay.

## Conclusions

The blocking of dropped kerbs, along with pavement and double parking, can greatly affect the movement of pedestrians. The proposed Bill aims to improve the Freedom of Movement for all people on dropped kerbs and pavements by introducing national parking restrictions.

A national approach of parking restrictions would not only provide instant clarity around keeping dropped kerbs and pavements clear but would leave Local Authorities with the powers to make exemptions depending on local circumstances.

Thank you for taking the time to read this consultation and I hope you have been convinced that there is a strong need to clarify restrictions on parking on dropped kerbs and pavements and double parking in Scotland.

## How the consultation process works

This consultation is being launched in connection with a draft proposal which I have lodged as the first stage in the process of introducing a Member's Bill. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders and can be found on the Parliament's website at:

<http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/StandingOrdersv4.1.pdf>

A minimum 12 week consultation period is required, following which responses will be analysed. Thereafter, a final proposal is lodged in the Parliament along with a summary of the consultation responses. Subject to securing the required level of support for the proposal from other MSPs and political parties, and the Scottish Government not indicating that it intends to legislate in the area in question, I will then have the right to introduce a Bill which will follow the legislative process: generally, scrutiny at Stages 1 and 2 by a Parliamentary Committee and at Stage 3 by the whole Parliament.

At this stage, therefore, there is as yet not a Bill, only a draft proposal for the legislation.

The role of this consultation in the development of my Bill is to provide a range of views on the subject matter of the Bill, highlighting potential problems with the proposals, identifying equalities issues, suggesting improvements, raising any financial implications which may not previously have been obvious and, in general, to assist in ensuring that the resulting legislation is fit for purpose.

Details on how to respond to this consultation are provided at the end of the document.

## Proposed Responsible Parking (Scotland) Bill

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**Additional copies** of the paper can be requested by contacting me on 0131 348 6273. Alternative formats may also be requested by contacting me. An on-line copy is available on the Scottish Parliament's website, or from my own website at <http://joefitzpatrick.net/parkingbill>

## How to respond to this consultation

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Responses, should be submitted by **30<sup>th</sup> June 2012** and sent to:

Joe FitzPatrick  
Room M5:12  
Scottish Parliament  
Edinburgh  
EH99 1SP

Tel: 0131 348 6273

Fax: 0131 348 6998

E-mail: [parking@joefitzpatrick.net](mailto:parking@joefitzpatrick.net)

Please make it clear whether you are responding as an individual or on behalf of an organisation.

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that the normal practice is to make responses public – by posting them on my website [joefitzpatrick.net/parkingbill](http://joefitzpatrick.net/parkingbill) and in hard copy in the Scottish Parliament's Information Centre (SPICe).

Therefore, if you wish your response, or any part of it, to be treated as **anonymous**, please state this clearly along with the reasons for this. If I accept the reasons, I will publish it as "anonymous response". If I do not accept the reasons, I will let you know and give you the option of withdrawing it or submitting it on the normal attributable basis. If your response is accepted as anonymous, it is your responsibility to ensure that the content does not allow you to be identified.

## Proposed Responsible Parking (Scotland) Bill

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If you wish your response, or any part of it, to be treated as **confidential**, please state this clearly and give reasons. If I accept the reasons, I will not publish it (or publish only the non-confidential parts). However, I am obliged to provide a (full) copy of the response to the Parliament's Non-Executive Bills Unit when lodging my final proposal. As the Parliament is subject to the Freedom of Information (Scotland) Act (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.

There are a few situations where not all responses will be published. This may be for practical reasons: for example, where the number of submissions we receive does not make this possible or where a large number of submissions are in very similar terms. In the latter case, only a list of the names of people and one response who have submitted such responses would normally be published.

In addition, there may be a few situations where I may not choose to publish your evidence or have to edit it before publication for legal reasons. This will include any submission which contains defamatory statements or material. If I think your response potentially contains such material, usually, this will be returned to you with an invitation to substantiate the comments or remove them. In these circumstances, if the response is returned to me and it still contains material which I consider may be defamatory, it may not be considered and it may have to be destroyed.

### *Data Protection Act 1998*

As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. Normally I will publish all the information you provide (including your name) in line with Parliamentary practice unless you indicate otherwise. However, I will not publish your signature or personal contact information (including, for example, your home telephone number and home address details, or any other information which could identify you and be defined as personal data).

## Proposed Responsible Parking (Scotland) Bill

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I may also edit any information which I think could identify any third parties unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.

Further information about the Data Protection Act can be found at:

[www.ico.gov.uk](http://www.ico.gov.uk)

### *Freedom of Information (Scotland) Act 2002*

As indicated above, once your response is received or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the Freedom of Information (Scotland) Act 2002 (FOISA). So if the information you send me is requested by third parties the Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, even if I have agreed to treat all or part of the information in confidence and to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI.

Further information about Freedom of Information can be found at:

[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

## Questions

Name:

Address:

0.1 Do you represent a group?

- Yes       No

If yes, please state which:

0.2 Can we share your answers with the public?

- Yes       No

0.3 Can we share your name with the public?

- Yes       No

0.4 Can we share your address with the public?

- Yes       No

0.5 Can we get in touch with you again if we want to talk to you about your answers?

- Yes       No

## Proposed Responsible Parking (Scotland) Bill

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1. Do you support the general aim of the proposed Bill?

Yes       No       Undecided

Comments:

2. Do you agree that legislation is a necessary and appropriate means of addressing the issues identified?

Yes       No       Undecided

Comments:

3. What are the main advantages of the proposed legislation?

Comments:

4. Are there any disadvantages of the proposed legislation?

Yes       No       Undecided

Comments:

## Proposed Responsible Parking (Scotland) Bill

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5a. What is your assessment of the likely financial implications (if any) of the proposed Bill to you or your organisation?

Comments:

5b. What (if any) other significant financial implications are likely to arise?

Comments:

6a. Is the proposed Bill likely to have any substantial positive or negative implications for equality?

Yes       No       Undecided

Comments:

6b. If it is likely to have a substantial negative implication, how might this be minimised or avoided?

Comments:

## Proposed Responsible Parking (Scotland) Bill

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7. Would you want to see an education strategy as part of the Bill Process?

Yes       No       Undecided

Comments:

8. Who do you think should be responsible for enforcing the proposed legislation?

Comments:

9. What penalties do you think should be imposed on those failing to comply with the proposed legislation?

Comments:

10. Do you have any other comments on or suggestions relevant to the proposal?

Comments: