

SPICe Briefing

Footway Parking and Double Parking (Scotland) Bill

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The Footway Parking and Double Parking (Scotland) Bill was introduced in the Scottish Parliament by Sandra White MSP on 20 May 2015. The Bill would prohibit vehicles using public roads in built-up areas from:

- parking on the footway (normally referred to as ‘the pavement’)
- parking in front of a dropped kerb
- double parking

The Bill would provide exemptions to these provisions for emergency service vehicles, certain public service vehicles, to facilitate deliveries and allow vehicle passengers to board and alight. The Bill would also allow local authorities to designate “exempt areas”, where the provisions in the Bill would not apply.



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INTRODUCTION

This briefing outlines the provisions set out in the Footway Parking and Double Parking (Scotland) Bill (“the Bill”). It goes on to set out the development of the proposals in the Bill and previous consultation on this issue. It also outlines legislation and regulations governing parking enforcement and footway, dropped kerb and double parking regulation in other parts of the UK.

PROVISIONS OF THE FOOTWAY PARKING AND DOUBLE PARKING (SCOTLAND) BILL

Section 1 states that the provisions of the Bill would apply to all Scottish public roads in built up areas. The provisions would not apply to special roads, which are normally trunk roads and the responsibility of Transport Scotland. “Built up area” covers all restricted roads, which are defined in the Road Traffic Regulation Act 1984. Restricted roads are those that are automatically subject to the default 30mph limit, including roads where the limit has been reduced to 20mph.

Section 2 would introduce a prohibition on parking or waiting on the footway. There are three specific exemptions to this prohibition:

1. where the vehicle is being used for fire brigade, police or ambulance purposes
2. the vehicle is parked on a disabled persons’ parking place which forms part of the footway
3. within an “exempt area” designated by a local authority under the provisions of Section 6 of the Bill

In addition, vehicles would be allowed to stop on a footway to avoid obstructing a vehicle being used for fire brigade, police or ambulance purposes where circumstances beyond the driver’s control require it or to avoid an accident.

Section 3 would introduce a prohibition on parking or waiting in front of a dropped kerb. The Bill sets out the following exemptions to this prohibition:

- where the vehicle is parked in a designated parking place or any other part of the carriageway where parking is allowed
- where the vehicle is parked outside residential premises by, or with the consent – but not consent for reward, of the occupier of the premises
- where the vehicle is being used for fire brigade, ambulance or police purposes
- where the vehicle is being used to deliver or collect goods from any premises, or is being loaded from or unloaded to any premises, and
 - the delivery, collection, loading or unloading cannot reasonably be carried out in relation to those premises without the vehicle being parked in front of a dropped kerb
 - the vehicle is so parked for no longer than is necessary and for no more than 20 minutes

- the vehicle is being used in connection with the following activities, and is parked for no longer than necessary:
 - any building operation, demolition or excavation
 - local authority waste collection
 - removing an obstruction to traffic
 - road works
 - utility works

In addition, vehicles would be allowed to stop in front of a dropped kerb to avoid obstructing a vehicle being used for fire brigade, police or ambulance purposes; where circumstances beyond the driver's control require it; or to avoid an accident or to allow passengers to board or alight.

Section 4 would introduce a prohibition on double parking or waiting whilst double parked. Double parking is defined as a vehicle being parked more than 50cm from the edge of the carriageway. The Bill sets out the following exemptions to this prohibition:

- where the vehicle is parked in a designated parking place or any other part of the carriageway where parking is allowed
- where the vehicle is being used for fire brigade, ambulance or police purposes
- where the vehicle is being used to deliver or collect goods from any premises, or is being loaded from or unloaded to any premises, and
 - the delivery, collection, loading or unloading cannot reasonably be carried out in relation to those premises without the vehicle being parked on the footway
 - the vehicle is so parked for no longer than is necessary and for no more than 20 minute
- the vehicle is being used in connection with and of the following, and is parked for no longer than necessary:
 - any building operation, demolition or excavation
 - local authority waste collection
 - removing an obstruction to traffic
 - road works
 - utility works

In addition, vehicles would be allowed to stop more than 50cm from the edge of the carriageway where circumstances beyond the driver's control require it; to avoid an accident or to allow passengers to board or alight.

Section 5 states that "The prohibitions in sections 2, 3 and 4 are enforceable as if imposed by a traffic regulation order made under section 1 of the 1984 Act."

A Traffic Regulation Order (TRO) is the legal instrument used by local authorities to give effect to traffic management measures on roads within their area, e.g. yellow lines. A TRO may take effect at all times or during specified periods, and certain classes of traffic may be exempted from a TRO. The Road Traffic Regulation Act 1984 provides the legislative basis for TROs, while the procedures to be followed in obtaining a TRO are set out in the Local Authorities' Traffic Regulation Order (Procedures) (Scotland) Regulations 1999, as amended.

Section 6 would give local authorities the power to designate "exempt areas", where any or all of the provisions set out in sections 2 to 4 would not apply. An exempt area would be designated under the TRO procedures, which are briefly described above.

Sections 7, 8 and 9 covers interpretation of terms used in the Bill, establishes the commencement date as 12 months after the date of Royal Assent and defines the short title.

CURRENT POWERS AND PARKING ENFORCEMENT

CURRENT POWERS

Currently, it is not an offence to park on the footway in Scotland, although it is an offence to drive on a footway under Section 129(5) of the Roads (Scotland) Act 1984 (“the 1984 Act). It is also an offence under Section 129(2) of the 1984 Act for a person “...without lawful authority or reasonable excuse, places or deposits anything in a road so as to obstruct the passage of, or to endanger, road users”.

It is an offence to leave a vehicle in such a way as to cause an obstruction to other people. Section 99 of the Road Traffic Regulation Act 1984 and the Removal and Disposal of Vehicles Regulations 1986 (as amended) grant police constables powers to require the owner, driver or person in charge of a vehicle which is causing an obstruction to other people (which includes pedestrians) to move that vehicle. A police constable can also arrange for such a vehicle to be removed if the person responsible will not move it or cannot be found, a charge will be made to the vehicle owner if the vehicle is removed.

There is no statutory definition of what constitutes an obstruction. The decision on whether any particular vehicle is causing an obstruction would be a matter for the police officer dealing with the incident.

It is an offence to park a heavy commercial vehicle, defined as a goods vehicle with an operating weight exceeding 7.5 tonnes, on a footway under Section 19 of the Road Traffic Act 1988. It is not an offence to park a heavy commercial vehicle on the footway where:

- It is parked in accordance with permission given by a police officer
- It is parked on the footway for the purpose of saving life, extinguishing a fire or meeting any other similar emergency
- For the purposes of loading and unloading, where the following conditions are met:
 - The loading or unloading could not be carried out satisfactorily had the vehicle not been parked on the footway
 - The vehicle is not left unattended while parked.

PARKING ENFORCEMENT

Parking enforcement is either the responsibility of the local authority or Police Scotland, as explained below:

Local Authority: 14 Scottish local authorities - Aberdeen City, Argyll & Bute, City of Edinburgh, Dundee City, East Ayrshire, East Dunbartonshire, East Renfrewshire, Fife, Glasgow City, Inverclyde, North Lanarkshire, Perth & Kinross, South Ayrshire and South Lanarkshire - operate decriminalised on-street parking enforcement. This means that, under the provisions of the Road Traffic Act 1991, the local authority has assumed control of the enforcement of parking offences within their areas from the police.

In these areas enforcement is carried out by parking attendants employed by the local authority, or a contractor appointed to undertake this task by the authority. Parking attendants can issue fixed penalty notices for parking offences, which are enforceable by the local authority without

recourse to the courts. Appeals against fixed penalty notices are heard by an Independent Parking Adjudicator.

The level of any fixed penalty is set by the local authority concerned.

Police Scotland: Outside of the 14 decriminalised parking enforcement areas parking offences are still enforced by Police Scotland. Until February 2014 police parking enforcement was normally carried out by police traffic wardens. However, Police Scotland has withdrawn traffic wardens from most parts of Scotland. Police officers normally deal with parking offences through the issue of fixed penalty notices. However, in areas where police are responsible for parking enforcement, offences can be enforced through the courts, normally only after an offender chooses not to pay a fixed penalty notice, and can on conviction be the subject of fines up to level 3 on the summary fine standard scale, i.e. up to £1000.

DEVELOPMENT OF PROPOSALS IN THE BILL AND CONSULTATION

Proposals for a members' Bill on footway parking have been lodged on three occasions, as set out below:

Ross Finnie MSP lodged a proposal for a [Regulation of Dropped Kerbs and Pavement Parking \(Scotland\) Bill](#) on 1 October 2010. A consultation on the proposal ran from 1 October 2010 until 31 January 2011, to which 123 responses were received. 83% of respondents supported the proposals in full or part. The final proposal was lodged on 8 March 2011. The proposal had received sufficient support from MSPs to be introduced as a Bill. However, the proposal fell on dissolution of the Scottish Parliament on 22 March 2011.

Joe Fitzpatrick MSP lodged a proposal for a [Responsible Parking \(Scotland\) Bill](#) on 28 March 2012. A consultation on the proposal ran from 28 March 2012 until 30 June 2012. The proposal was withdrawn on 26 September 2012, following Joe Fitzpatrick MSP becoming a Minister of the Scottish Government. A total of 414 responses were received to the consultation, with 95% supporting the proposals in full or part.

Sandra White MSP lodged a proposal for a [Responsible Parking \(Scotland\) Bill \(2\)](#) on 13 December 2012. The Infrastructure and Capital Investment Committee indicated at its meeting of 23 January 2013 that they were satisfied that no further consultation on the proposal was necessary, given previous consultation by Joe Fitzpatrick MSP. The final proposal was lodged on 24 January 2013 and had received sufficient cross-party support one month from the date it was lodged to give the Member the right to introduce the Bill.

LEGISLATION AND REGULATIONS GOVERNING FOOTWAY, DROPPED KERB AND DOUBLE PARKING IN OTHER PARTS OF THE UK

Parking on the footway, in front of dropped kerbs and double parking are prohibited in some parts of England, under the following legislation.

It is an offence to park on the footway of any urban road in London under the provisions of Section 15 of the Greater London Council (General Powers) Act 1974. There are a number of exemptions from this prohibition for emergency service and public service vehicles.

Section 84 and Schedule 10 of the Traffic Management Act 2004 (“the 2004 Act”) allows certain categories of English local authority to apply to the UK Secretary of State for Transport to designate an area as a “special enforcement area”. Section 85 of the 2004 Act prohibits double parking within a special enforcement area and Section 86 prohibits parking at dropped kerbs within a special enforcement area. It is worth noting that sections 3 and 4 of the Bill are almost word-for-word copies of sections 85 and 86 of the 2004 Act.

LEGISLATIVE COMPETENCE

The Presiding Officer’s statement of legislative competence, which accompanies the [explanatory notes](#), states:

“On 20 May 2015, the Presiding Officer (Rt. Hon Tricia Marwick MSP) made the following statement:

“In terms of section 31(2) of the Scotland Act 1998, I am required, prior to the introduction of the Footway Parking and Double Parking (Scotland) Bill, to make a statement on whether the provisions of that Bill would, in my view, be within the legislative competence of the Parliament.

In my view, the Footway Parking and Double Parking (Scotland) Bill would not be within the legislative competence of the Parliament. The reason for this view is that I consider that the Bill makes provision which relates to a reserved matter, namely the subject matter of Part 1 of the Road Traffic Act 1988 (insofar as not excepted).”

The member’s statement on legislative competence, which also accompanies the explanatory notes reach a different view, stating:

“On 19 May 2015, the member who introduced the Bill (Sandra White MSP) made the following statement:

“In my view, the provisions of the Footway Parking and Double Parking (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

Previously, Mark Lazarowicz MP introduced the [Responsible Parking \(Scotland\) Bill](#) in the UK Parliament during session 2014-15. The purpose of this Bill was to amend the Scotland Act 1998 to put the ability of the Scottish Parliament to legislate in this area beyond doubt. This Bill fell on the dissolution of the UK Parliament. However, Mark Lazarowicz MP had secured a [written commitment](#) from David Mundell MP, then Parliamentary Under-Secretary of State at the Scotland Office, to devolve powers over on-street parking to the Scottish Parliament if this was requested by the Scottish Government.

The issue of parking on the footway, in front of dropped kerbs and double parking did not feature in the [Report of the Smith Commission for further devolution of powers to the Scottish Parliament](#) (Smith Commission 2014).

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