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Transport (Scotland) Bill: Pavement Parking and Double Parking

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This briefing provides an overview of current restrictions on pavement parking and double parking in Scotland and sets out how the Transport (Scotland) Bill would prohibit pavement parking and double parking, subject to a number of exemptions.



30 October 2018
SB 18-70

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Executive Summary

Currently, it is an offence to:

1. Drive on the pavement - Roads (Scotland) Act 1984, Section 129(5)
2. Place or deposit anything on a road that causes an obstruction - Roads (Scotland) Act 1984, Section 129(2)
3. Leave a vehicle in such a way as to cause an obstruction to other people - Road Traffic Regulation Act 1984, Section 99
4. Park a heavy commercial vehicle, defined as a goods vehicle with an operating weight exceeding 7.5 tonnes, on a pavement - Road Traffic Act 1988, Section 19
5. Leave a vehicle, or trailer, parked on a road (which includes the pavement) in a position that may cause a danger to other road users - Road Traffic Act 1988, Section 22

However, parking on the pavement or double parking are not specific offences. Part 4 of the Transport (Scotland) Bill would:

1. Prohibit parking on the pavement, subject to a number of exemptions
2. Prohibit double parking, subject to a number of exemptions
3. Allow local authorities to exempt certain streets/part of streets from the prohibition on pavement parking
4. Create a system for the enforcement of the pavement parking and double parking prohibitions. This would be a local authority duty, similar to that used where enforcement of parking restrictions has been decriminalised
5. Allow for vehicles parked in contravention of a prohibition on pavement or double parking to be moved, removed and eventually disposed of, subject to a number of safeguards

Introduction

The Transport (Scotland) Bill ("the Bill") was introduced to the Scottish Parliament by Derek Mackay MSP, Cabinet Secretary for Finance and the Constitution, on 8 June 2018. Part 4 of the Bill deals with pavement parking and double parking.

This briefing summarises:

- Current restrictions on pavement parking and double parking in Scotland
- Current restrictions on pavement and double parking elsewhere in the UK
- How parking offences are currently enforced in Scotland
- Previous attempts to legislate on this topic
- The proposals set out in "Part 4: Pavement Parking and Double Parking" of the Bill
- Financial implications of the Bill
- Consultation on pavement parking and double parking undertaken by the Scottish Government prior to the introduction of the Bill

Current restrictions on pavement parking and double parking in Scotland

Generally, it is not an offence to double park or park on the footway (the technical term for pavement) in Scotland.

However, pavement parking and double parking may constitute an offence under the following legislation. 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 when 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 officers 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.

It is also an offence to leave a vehicle, or trailer, parked on a road (which includes the pavement) in a position that may cause a danger to other road users, under the provisions of the Road Traffic Act 1988, Section 22.

Legislation and regulations governing footway and double parking in other parts of Great Britain

Parking on the footway, in front of dropped kerbs and double parking are specifically 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, public service, delivery and construction/road maintenance 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. There are a number of exemptions to these prohibitions for emergency service, public service, delivery and construction/road maintenance vehicles.

Parking enforcement in Scotland

The enforcement of on-street parking restrictions is either the responsibility of the local authority or Police Scotland, as explained below:

Local Authority: 20 Scottish local authorities - Aberdeen City, Angus, Argyll & Bute, City of Edinburgh, Dundee City, East Ayrshire, East Dunbartonshire, East Lothian, East Renfrewshire, Fife, Glasgow City, Highland, Inverclyde, Midlothian, North Lanarkshire, Perth & Kinross, Renfrewshire, South Ayrshire, South Lanarkshire and Stirling - 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 Police Scotland. 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 penalty charge notices (PCN) for parking offences, which are enforceable by the local authority without recourse to the courts. Appeals against PCN's are heard by an Independent Parking Adjudicator. The level of any PCN is set by the Scottish Government through guidance.

Police Scotland: Outside of the 20 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.

Previous attempts to legislate on footway, double and dropped kerb parking

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.

Subsequently, Sandra White MSP introduced the [Footway Parking and Double Parking \(Scotland\) Bill](#) in the Scottish Parliament on 20 May 2015. The Local Government and Regeneration Committee was appointed as lead committee for Stage 1, publishing its [Stage 1 report](#) on 8 February 2016. The report recommended that the general principles of the Bill be agreed to by the Parliament. However, it also raised concerns as to whether the provisions of the Bill were within the legislative competence of the Scottish Parliament. During Stage 1 oral evidence, the Scottish Government confirmed it was in discussion with the UK Government on how to resolve these concerns. Subsequently, the Scotland Bill (now Scotland Act 2016) was amended to specifically devolve competence over on-street parking to the Scottish Parliament. The Bill fell on 23 March 2016, following dissolution of Session 4 of the Scottish Parliament.

Pavement parking and double parking provisions set out in the Bill

Pavement parking prohibition: The Bill would prohibit the parking of motor vehicles on a pavement, which means a footpath or footway - which are defined as follows:

- **Footway:** Commonly known as “the pavement”, a footway is a way, which is associated with a carriageway, where right of passage is limited to foot.
- **Footpath:** A way, which is not associated with a carriageway, where right of passage is limited to foot.

The prohibition would apply to any stationary vehicle with one, or more of its wheels (or part of them) on the pavement. A vehicle is considered to parked even if the engine is running and/or the driver is in attendance at the vehicle.

Pavement parking exemption orders: a local authority would be able to exempt footway(s) from the prohibition on pavement parking through an exemption order. An exemption order could apply to all, or part of a footway and must apply at all times and to all vehicles. The local authority would be required to erect road signs indicating that a footway was the subject of an exemption order. The form of an exemption order and the procedure for its adoption will be set out in regulations to be made by Scottish Ministers.

Double parking prohibition: The Bill would introduce a prohibition on double parking, which is defined as a vehicle being parked more than 50cm from the edge of the carriageway. The prohibition would apply to any stationary vehicle, even if the engine is running and/or the driver is in attendance at the vehicle. However, it would not apply to any vehicle stationary due to the necessities of traffic or as a result of circumstances beyond the control of the driver.

Exceptions to the prohibitions on pavement parking and double parking:

- The vehicle is being used for operational purposes by the police, ambulance service, Scottish fire and rescue service, HM Coastguard, naval, military or air force purposes and the achievement of those purposes would be hindered were the vehicles(s) not parked on the pavement or double parked
- The vehicle is being used for undertaking road works, removing obstructions to traffic, collecting waste on behalf of a local authority or providing postal services and cannot be so used without parking on the pavement or double parking, subject to the vehicle being parked for no longer than necessary for that use
- The vehicle is being used by a registered medical practitioner, nurse or midwife in connection with the provision of urgent or emergency medical care and the provision of that care would be hindered were the vehicles(s) not parked on the pavement or double parked, subject to the vehicle being parked for no longer than necessary to provide that care
- The vehicle is being used, in the course of business, for the delivery or collection of goods from any premises or being loaded or unloaded to any premises and these actions cannot reasonably be carried out without the vehicle(s) being parked on the

pavement or double parked, subject to the vehicle being parked for no longer than necessary and in any event for no more than a continuous 20 minute period

- The vehicle is parked wholly within a designated parking place
- The vehicle is parked in accordance with permission given by a police officer
- The person has parked the vehicle for the purpose saving a life or responding to a similar emergency and the achievement of those purposes would be hindered were the vehicles(s) not parked on the pavement or double parked, subject to the vehicle being parked for no longer than necessary for that purpose
- The person has parked the vehicle for the purpose of providing assistance at an accident or breakdown and that assistance could not safely or reasonably be provided were the vehicles(s) not parked on the pavement or double parked, subject to the vehicle being parked for no longer than necessary for that purpose

Scottish Ministers may, by regulations, modify this list of exemptions from the prohibitions on pavement parking and double parking.

Enforcement of the prohibitions on pavement parking and double parking

The enforcement of the prohibitions on pavement parking and double parking would rest solely with local authorities, which they can use existing staff, share services with a neighbouring authority or enter into contracts with third-parties to undertake enforcement work. The Bill would give local authorities the power to levy a penalty charge on the registered keeper of a vehicle where it has been parked in contravention of the pavement parking or double parking prohibition.

A penalty charge notice could only be issued on the basis of conduct observed by a uniformed authorised enforcement officer, that is someone employed by the local authority in connection with the enforcement of the pavement parking and double parking prohibitions or contracted to provide such a service, or a record produced by a device approved in accordance with regulations issued by Scottish Ministers on the enforcement of these prohibitions.

Scottish Ministers would have the power to make regulations governing:

- The enforcement of the pavement parking and double parking prohibitions, e.g. approval of enforcement devices, content of notices, timing and manner of payment, reviews and appeals and the creation of criminal offences that are triable summarily and punishable with a fine not exceeding level 5 on the standard scale
- The removal of vehicles parked contrary to the parking prohibitions
- Moving vehicles parked contrary to the parking prohibitions
- Disposal of removed vehicles
- The keeping of accounts and the uses of any surpluses produced by the enforcement of the prohibitions on pavement parking and double parking

Scottish Ministers would be able to issue directions to all, some or individual local authorities in connection with their use of the powers relating to pavement parking and double parking. They could also issue guidance on the exercise of these functions, which local authorities would be required to "have regard" to.

Financial implications of the Bill

The Financial Memorandum which accompanies the Bill estimates the following costs arising from the implementation of the prohibition on pavement parking and double parking:

Scottish Government: While the Bill would impose little ongoing financial burden on the Scottish Government, it is anticipated that the new prohibitions would be the subject of a national advertising campaign - with an estimated budget of £500,000.

Local authorities: The Financial Memorandum summarises possible costs to local authorities under three headings:

- **Assessment and implementation:** The average cost per local authority of auditing streets to identify the need for possible exemptions is assumed to be £25,000 - although this could be less if it only requires a desktop study.
- **Signage and road marking:** No likely average cost per local authority for new signage and road markings is provided, although the financial memorandum highlights that "Whilst detailed costs across City of Edinburgh Council's entire network are not currently available, the local authority does not envisage full implementation costs for these measures to exceed £150,000."
- **Enforcement:** Start-up costs associated with enforcement will vary, dependent on whether an authority already has decriminalised parking enforcement powers, while ongoing costs will be dependent on staff numbers. In addition to costs, enforcement activity will also generate income, although the amounts generated will vary based on location and the intensity of enforcement activity. The financial memorandum highlights that "In relation to off-setting any implementation and enforcement costs, City of Edinburgh Council has indicated that any signage and marking costs will be met by the revenue generated by its decriminalised parking enforcement regime."

Other bodies/individuals and businesses: The financial memorandum outlined that there would be no cost implications for other bodies, individuals and businesses.

Consultation on pavement parking and double parking undertaken by the Scottish Government prior to the introduction of the Bill

The Scottish Government ran a consultation [Improving Parking in Scotland](#)¹, which was open for comment between 31 March 2017 and 30 June 2017. The consultation posed 25 questions under the headings:

- General
- Legislation
- Implementation and Enforcement
- Traffic Regulation Orders
- Displacement of Vehicles
- Town Centre Regeneration
- Disabled Parking Bays
- Vehicle Emissions
- Assessing Impact

The Scottish Government published [Improving Parking in Scotland Consultation Analysis Report](#)² in May 2018. A total of 663 responses were received, 574 were from individuals, 28 by local authorities and regional transport partnerships and a further 61 from other organisations.

The analysis summarises the key themes emerging from the responses as follows:

The majority of the respondents (81%) agreed that parking is a problem, and that most (461) encountered this problem on a daily basis. A substantial number of respondents (73%) agreed that any new legislation should cover all roads and footways, including private roads. While there was general support for new legislation a number of respondents 62% (392) disagreed with the proposal that local authorities should carry out exemptions to specific streets or areas from the proposed national restrictions for pavement parking.

Furthermore, 85% (548) respondents believed that parking enforcement should be applied consistently across Scotland. Interestingly, of those that agreed consistency in enforcement of parking is needed there was a split in how this should be achieved, with 48% of those supporting the roll-out of Decriminalised Parking Enforcement (DPE) across the country. However, 23% believe it should be for Police Scotland to enforce, while the remaining respondents presented alternative proposals.

Bibliography

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