

Mobility and Access Committee for
Scotland (MACS)
Area 2-D North
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Edinburgh
EH6 6QQ



Joe Fitzpatrick MSP
Room M5:12
Scottish Parliament
Edinburgh
EH99 1SP

27 June 2012

Dear Mr Fitzpatrick

Proposed Responsible Parking (Scotland) Bill

Please find enclosed a response from the Mobility and Access Committee for Scotland (MACS) to your consultation on the Proposed Responsible Parking (Scotland) Bill.

Yours sincerely

A handwritten signature in black ink, which appears to read 'Anne Maclean'. The signature is written in a cursive style with a long horizontal line extending to the right.

ANNE MACLEAN
Convener

P-P

Response to the consultation on the Proposed Responsible Parking (Scotland) Bill from the Mobility and Access Committee for Scotland (MACS)

Response to Specific Questions in the Consultation

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

Comments: We note that the proposals relate to three separate issues - a ban on double parking, a ban on parking at footway crossings and a ban on footway parking. The desirability of bans on double parking and on parking at footway crossings seems self-evident. We also agree with the principle of stopping parking on footways in the interests of disabled people and other pedestrians. However, we have concerns regarding the practicalities of the proposed measures as we have indicated in our responses to the subsequent questions. We also note there are references to a reluctance on the part of enforcing authorities to take action under existing powers. We believe that if this Bill were to proceed there is a need to introduce an obligation on enforcing authorities to take action if the proposed powers are to lead to any useful outcome.

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

Comments: We would support the principle of a ban on double parking but we note that within controlled parking zones, the Police or Local Authorities who operate decriminalised parking enforcement already have the powers to penalise drivers who double park. Are these powers not being used? If not, why not? However, it would seem reasonable to introduce powers to enable double parking to be penalised when it occurs on roads where there is no existing kerbside control or where the kerbside control is a permitted parking bay.

On page 15 of the consultation, reference is made to double parking impeding emergency services. Paradoxically, we believe that in many residential streets, vehicle owners park on the footway in order to leave room for the passage of emergency vehicles. There may therefore be contradictory evidence which should be borne in mind in progressing this Bill.

Regarding parking at dropped kerbs, we again agree in principle to discouraging this practice. However, we are concerned about the suggestion that there could be exemptions to any ban such as at crossings for vehicles at entries to properties. Firstly, the dropped kerbs at such crossings can be as essential for wheelchair users to gain access to footways as those at formal pedestrian crossing points. Secondly, how would drivers distinguish

between a crossing where parking was not permitted from one where parking was permitted "in certain circumstances." Any such exemptions would seem to go against the whole principle of the Bill.

We would also draw attention to our belief that local authorities do not currently make sufficient use of a measure which is readily available and which does not require the cost and time associated with the promotion of a traffic regulation order. This measure is the use of the I or H road marking which is white and which is painted on the road in accordance with Diagram 1026.1 of the Traffic Signs Regulations and General Directions 2002. The text accompanying the Directions points out that the purpose of this marking is specifically to draw attention to dropped footway and vehicular crossings and hence to discourage parking.

Regarding footway parking, it is unfortunate that successive UK governments have not seen fit to extend, to other parts of the UK, the powers to control this activity that have been available to the London boroughs since the 1970s. It is also unfortunate that the powers available to English local authorities under the Traffic Management Act 2004 do not also extend to Scotland. We agree therefore that there is a case to consider legislation by the Scottish Parliament to control footway parking in Scotland.

However, we are concerned to note the intention to continue to exempt heavy goods vehicles from any ban on parking on footways. This seems illogical given that, as is instanced in the consultation, much of the damage caused to footway surfaces is caused by heavy goods vehicles rather than by cars. Parking on footways for the purposes of loading and unloading is also very obstructive and a problem for those with sensory impairment, cognitive impairment, learning difficulties and, of course, wheelchair users. However, it is understood that the exemption given to heavy goods vehicles under the Road Traffic Act 1984 allowing them to park on footways and verges may be a matter reserved to the UK Parliament and this could be an issue regarding any legislation in the Scottish Parliament.

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

Comments: It would mean that disabled people, and others affected by irresponsible parking in Scotland would have increased opportunity for independent living and be better able contribute to society. The proposed responsible parking legislation would help to ensure that local authorities and other statutory bodies were encouraged to take positive action to promote the safety of all pedestrians currently prevented from making safe use of pedestrian footways. It would be of benefit to all of the Scottish public but it would be especially beneficial to the most vulnerable in society, including elderly and disabled people and those who are previously referred to in the

answer to question 2. It would benefit all those with buggies and pushchairs. It would also mean that people who live in Scotland would be able to enjoy some of the benefits that already exist in England in terms of controls over inconsiderate parking.

4. Are there any disadvantages of the proposed legislation?

Comments: Yes - it does not go far enough. Much of existing legislation and official government guidance to local roads authorities relating to roads and road traffic predates the Disability Discrimination Act of 1995 far less the 2005 Act or the Equality Act of 2010 and there is much more that needs to be updated to reflect the new responsibilities on public bodies.

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

Comments: There are no financial implications for our organisation but we recognise that there would be implications for those responsible for implementing and enforcing any measures resulting from the legislation - ie local roads authorities (which would also include the Scottish Government in the case of trunk roads).

Where the problem of parking on footways is associated with a lack of off street parking there will be pressures for suitable alternative provision. This could result in costs for the local roads authorities and/or householders and other parties.

There could be costs associated with promoting traffic regulation orders, with implementing and maintaining signing and lining of any restrictions and with paying for the time of enforcement officers (bearing in mind that many of the problems with double parking in residential areas occur outwith normal working hours - in the evening and at weekends).

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

Comments: There could be financial benefits for society where there is a reduced incidence of falls and accidents resulting from negotiating round inconsiderately parked vehicles. There is also a benefit for those individuals (particularly disabled people) who are subsequently able to play a more fulfilling part in society free from anxiety about being able to use footways.

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

Comments: Protecting footway crossings from inconsiderate parking and banning footway parking would obviously have positive benefits for the

interests of disabled people and hence for equality. However, as we have indicated in our response to question 4 above, much of existing legislation relating to roads and road traffic predates the Disability Discrimination Act of 1995 far less the Equality Act 2010 and there is a need to review all legislation relating to the road and traffic management to ensure that it reflects the new responsibilities on local authorities and public bodies.

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

As indicated above, there may be costs for local roads authorities and motorists in terms of making alternative parking provision and it is difficult to see how this can be avoided. However, we believe that if any proposed legislation is to be truly effective, it has to be radical and there should be few if any exemptions from the measures. In that way, we believe the benefits for society will be seen to outweigh the disbenefits.

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

Comments: Education is an essential part of the process and the Scottish Government should do more to publicise the existing situation far less any changes which might result were the Bill to become law. The Highway Code also needs to be updated and enhanced to cover the areas not presently covered in the Code but it is understood this may be a matter reserved to Westminster.

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

Comments: This would seem to be a natural duty for the local roads authority but it would depend upon all of them adopting civil enforcement powers regarding the control of on street parking. Currently only a small minority of local authorities in Scotland have sought and adopted these powers.

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

Comment: Penalties should be as per parking offences which is a matter on which we note the Scottish Government has recently consulted.

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

Comment: There are other abuses of the footway which cause concern for disabled people such as the increasing incidence of cycling on footways. The current legal position and the associated guidance on cycling is confused and confusing. This is highlighted in the briefing on cycling published by the Scottish Parliament Information Centre on 28 March 2012. This confirms that

"generally, anyone cycling on a footway or footpath in Scotland is committing an offence under the provisions of Section 129(5) of the Roads (Scotland) Act 1984." The briefing note however also points out that the issue is complicated by access rights granted to cyclists under Section 1 of the Land Reform (Scotland) Act 2003. The 2003 Act allows cycling on most land unless access is controlled by or under another enactment. This means cycling is permitted on any footpath where access has not been restricted by a Traffic Regulation Order or through other legal means. To further complicate matters, Section 7(1) of the 2003 Act states that where land has been designated as a "core path" under the provisions of the 2003 Act, cyclists may be able to cycle on a footpath, or even a footway, that is designated as a core path without committing an offence.

The Highway Code meantime which is the only official guidance on the use of roads and footways that is readily available to members of the public gives confusing advice on the matter. On the one hand in Section 62, it says that cyclists should use cycle tracks which may occasionally be found alongside footpaths or pavements (sic) and which may be such that cyclists and pedestrians are segregated or they may share the same space (unsegregated). The law referring to this provision is stated as being Section 72 of the Highways Act of 1835. This does not apply in Scotland.

Meanwhile Section 64 of the Code makes the bald statement that "You MUST NOT cycle on a pavement" and refers to Section 129 of the Roads (Scotland) Act 1984.

It is unlikely that any enforcement officer could readily determine whether cycling was or was not permitted on any particular section of footway or footpath. It follows therefore that it would be even more difficult for a member of the public to know the legal position.

There are also other traffic management measures which have benefits for disabled people and which apply in England but which have no equivalent legal position in Scotland.

