

DISABLED PERSONS' PARKING PLACES (SCOTLAND) BILL

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The Disabled Persons' Parking (Scotland) Bill is a Members Bill, introduced by Jackie Baillie MSP on 2 June 2008.

The aim of the Bill is to make disabled persons' parking places legally enforceable, preventing the misuse of such parking places by those not entitled to use them.

This paper explains the current process for implementing disabled persons' parking places and discusses changes proposed by the Bill. It also provides background information on parliamentary activity, research on transport and disability, and existing duties on public authorities under disability discrimination legislation.

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CONTENTS

KEY POINTS	3
INTRODUCTION	4
BACKGROUND	4
TERMINOLOGY	4
DISABILITY DISCRIMINATION ACT	5
PARLIAMENTARY ACTIVITY	5
STATISTICS.....	5
RESEARCH ON TRANSPORT PROVISION FOR DISABLED PEOPLE	6
RESEARCH ON THE ABUSE OF OFF-STREET PARKING	7
BLUE BADGE SCHEME	7
MISUSE OF A BLUE BADGE	8
ON-STREET DISABLED PERSONS' PARKING PLACES	9
ADVISORY PARKING PLACES	9
ENFORCEABLE PARKING PLACES.....	9
<i>What is a designation Order?</i>	9
<i>Who can implement a designation Order?</i>	9
<i>When can an on-street parking related Designation Orders be implemented?</i>	10
<i>What effect can a designation Order have on pedestrian and vehicular access?</i>	10
<i>What must a local authority do prior to implementing a designation Order?</i>	10
<i>Who needs to be consulted before a designation Order is implemented?</i>	10
<i>Who may object to a proposed designation Order?</i>	10
<i>What is the role of Scottish Ministers?</i>	11
<i>What must be done once a designation Order is made?</i>	11
ENFORCEMENT	11
ON-STREET DISABLED PERSONS' PARKING PLACES: PROPOSALS IN THE BILL	12
OFF-STREET DISABLED PERSONS' PARKING PLACES	12
OFF-STREET DISABLED PERSONS' PARKING PLACES: PROPOSALS IN THE BILL.....	13
<i>Duties under the Disability Discrimination Act</i>	13
DUTY TO PROMOTE PROPER USE OF PARKING PLACES FOR DISABLED PERSONS' VEHICLES	14
<i>Disability Equality Duty</i>	14
REPORT ON ACTIONS	15
COSTS	15
DEVELOPMENT OF THE BILL AND RESPONSES TO THE CONSULTATION	16
SCOTTISH GOVERNMENT AND COSLA VIEW ON THE BILL	18
SOURCES	19

KEY POINTS

- The Bill aims to make disabled persons' parking places legally enforceable, whether on-street or off-street, helping to prevent misuse of these spaces by those not entitled to use them.
- The Bill does not change the system for designating enforceable parking places or the current parking enforcement system.
- The Bill requires every local authority to undertake a one-off audit of all disabled persons' parking places within their area.
- The Bill places a duty on every local authority to convert all appropriate advisory on-street disabled persons' parking places into enforceable parking places.
- The Bill places a duty on every local authority to enter into negotiations with the owners of existing off-street car parks containing disabled persons' parking places with a view to making them enforceable parking places and, where they cannot initially obtain such agreement, to continue to seek such agreement at least once every two years.
- The Bill requires local authorities to monitor developments granted planning permission which contain an element of disabled persons' parking, with a view to entering into negotiations to make these enforceable parking places.
- Disabled persons' parking places should only be used by Blue Badge holders.
- There are no official figures on the abuse of on-street disabled persons' parking places. However, the Baywatch Campaign reports that in 2007, one in five accessible bays in supermarket car parks were being used by people without Blue Badges.
- Disability Discrimination legislation requires services providers to make 'reasonable adjustments' to ensure disabled people can access their services, and requires public bodies to build disability equality into everything that they do.
- Disabled persons' parking places in private car parks tend to be advisory and are not legally enforceable, their availability depends on the courtesy and consideration of other drivers. However, it is possible for private owners to request a designation order to implement a disabled persons' parking place.
- It is difficult to predict the costs of implementing this Bill, but it is expected that the main costs will fall on local authorities.
- Research commissioned by the previous Scottish Executive highlights the necessity of available parking places for disabled people to be able carry out day-to-day activities.
- A consultation on proposals for a Disabled Persons' Parking (Scotland) Bill ran from 20 November 2006 to 26 February 2007. One hundred and seventy two responses were received and of these, 90% were in favour of the Bill's proposal 'to introduce a straightforward method to enforce parking and restrictions over disabled persons parking bays' (Baillie 2007a).

INTRODUCTION

The Disabled Persons' Parking (Scotland) Bill ('the Bill') is a Members Bill, introduced by Jackie Baillie MSP on 2 June 2008. The aim of the Bill is to make disabled persons' parking places legally enforceable, preventing the misuse of such parking places by those not entitled to use them.

This paper explains the current process for implementing disabled persons' parking places and discusses changes proposed by the Bill. It also provides background information on parliamentary activity, research on transport and disability, and existing duties on public authorities under disability discrimination legislation.

The Bill has received support from the Equality and Human Rights Commission, Inclusion Scotland, COSLA, the Scottish Disability Equality Forum, and Strathclyde Partnership for Transport (Equality and Human Rights Commission 2008).

BACKGROUND

Disabled persons' parking places enable disabled people to carry out day to day activities and maintain independence. They allow people to park near their own homes and to access services and facilities essential for daily living and life fulfilment.

'Many disabled people cannot access their local supermarket, health centre, leisure/sports centre, library, swimming pool or shopping centre due to non disabled drivers parking in disabled persons parking bays. This further adds to the isolation and exclusion that many disabled people face from their local community and society in general.' (Leonard Cheshire consultation response Baillie 2007b)

TERMINOLOGY

The box below provides brief details of some of the key terms used throughout the briefing and how they affect disabled persons' parking.

- **Blue Badge Scheme:** The UK wide Blue Badge scheme provides a range of parking concessions for people with severe mobility problems, e.g. they can park in metered spaces for free.
- **On-street parking:** Any parking place on a road is considered to be an on-street parking place.
- **Off-street parking:** Any parking place which is not on a road, e.g. supermarket car park, is considered an off-street parking place.
- **Disabled persons' parking place:** Disabled persons' parking places can be designated by local authorities on street spaces, or by landowners in off-street car parks. Disabled persons' parking places should only be used by blue badge holders. They can either be:
 - **Enforceable parking places:** Parking tickets or fines for the misuse of parking places can only be issued if the parking place is the subject of a "designation Order". Such spaces are known as enforceable parking places.
 - **Advisory Parking places:** All parking places that are not enforceable are advisory parking places, i.e. there is no sanction against their misuse.
- **Designation Order:** A legislative mechanism used by local authorities to create enforceable parking places.

DISABILITY DISCRIMINATION ACT

The Disability Discrimination Act 1995 (c50) aimed to end the discrimination faced by many disabled people. It has given disabled people rights in employment, education, buying or renting land or property, access to goods and services, and transport. Part III of the 1995 Act requires service providers to make 'reasonable adjustments' to ensure disabled people can access their services. Owners of private car parks tend to be service providers and are subject to this duty.

The 1995 Act was extended by the Disability Discrimination Act 2005, which broadened the definition of disability and introduced the disability equality duty aimed at ensuring public bodies build disability equality into everything that they do.

The Disability Discrimination Act is referred to in relevant sections below.

PARLIAMENTARY ACTIVITY

The abuse and misuse of disabled persons' parking places is well recognised. There has been one [parliamentary debate](#) (Scottish Parliament 2004) and several public petitions on the subject ([PE1149](#); [PE1007](#); [PE1038](#); [PE908](#) and [PE909](#)). In addition the Equal Opportunities Committee referred to accessible parking in the report on their Disability Inquiry (Scottish Parliament Equal Opportunities 2006). The committee recommended 'a suitable process to ensure the provision of adequate accessible parking for disabled people' and that:

'..the Scottish Executive develop and promote suitable mechanisms for the effective enforcement of proper use of accessible parking for disabled people wherever it exists including encouraging local authorities to make full use of Traffic Regulation Orders.'

STATISTICS

According to the 2001 Scottish Census, 20% of Scotland's population report having a long-term illness, health problem or disability. A review of NHS wheelchair services in Scotland reported that there are approximately 96,000 registered users of the service (Scottish Executive 2006). It is unlikely that a fifth of the population will require the use of parking places for disabled people, but certainly a significant proportion will. In addition, the prevalence of disability increases with age, and therefore as the population continues to age, the incidence of disability will continue to grow (Scottish Executive 2007). Stewart Stevenson, Minister for Transport, Infrastructure and Climate Change, in answer to a parliamentary question reported that approximately 4.5% of the Scottish population holds a Blue Badge parking permit (Scottish Parliament 2007b). Using population estimates as at June 2006 (GROS 2007), this translates as over 230,000 people in Scotland.

The most recent survey (2007) from the [Baywatch Campaign](#), which aims to put an end to parking abuse, indicates that one in five accessible bays in supermarket car parks were being used by people without Blue Badges. This is at the same level as the last survey in 2005. In total, more than a third of car parks were found to have no accessible bays free for disabled shoppers because of abuse.

There are no official figures on the abuse of on-street disabled persons' parking places.

RESEARCH ON TRANSPORT PROVISION FOR DISABLED PEOPLE

The previous Scottish Executive commissioned research on the transport provision for disabled people in Scotland (Reid Howie Associates Ltd 2004). Survey results from the research indicated that availability of suitable car parking as a problem:

'A small number of respondents did suggest that one of the most significant improvements in recent years has been the increase in numbers of marked spaces, particularly at railway stations and airports, but it is fair to suggest that many disabled people, whether in the postal survey or during interviews, were very negative about car parking. The impact of the availability of parking can be considerable.' (Reid Howie Associates Ltd 2004)

Several people responding to the survey reported that they only go out at certain times and to places where they are confident parking will be available. There were additional concerns about the lack of enforcement of parking spaces. Another matter raised was that for some disabled people, using a car is the only practical option for getting around, either because they cannot reach or use mainstream public transport, or because of limitations on the use of some forms of transport.

A key priority identified by respondents was the need for better enforcement of a wide range of issues, which included designated parking places.

Further research was commissioned by the Scottish Executive to explore and assess a range of potential improvements to public transport for disabled people (Scottish Executive 2006). It examined the different travel experiences of disabled and non-disabled travellers, findings included:

- A non-disabled adult is 50% more likely to make any kind of trip on a day than is a disabled adult.
- Essential journeys, such as shopping or visiting a doctor, were much more common among disabled adults than social visits.
- A key reason for disabled people not undertaking journeys is difficulty travelling – almost three-quarters of disabled people or those with a long term illness experience at least occasional difficulty travelling.
- Around 40% of respondents cannot undertake, or have difficulty undertaking, the most commonly made journey; almost two thirds cannot undertake a more complex or longer journey such as a weekend away.
- Seven in ten respondents would like to travel more than they currently did.

The researchers found that around a fifth of respondents believe they would travel a lot more if there were more provision and stricter enforcement of disabled persons' parking, and identify this as one in a range of solutions of improving transport for disabled people. However, there was also the view that the Blue Badge Scheme was not working well, and that additional parking provision would not be necessary if the current system was adequately enforced.

The researchers recommended further research and analysis, in terms of adequate provision and enforcement of parking places for disabled people, particularly at local level as demand and availability varies across Scotland. However, it is recognised that there will be difficulties with off-street car parking as these tend to be advisory. In addition they note that it is unclear to what extent the issue of misuse of parking for disabled people relates to use by those without Blue Badges or misuse by Blue Badge holders (Scottish Executive 2006b).

RESEARCH ON THE ABUSE OF OFF-STREET PARKING

The previous Scottish Executive commissioned research on the abuse of off-street parking in Scotland, with the aim of reviewing measures to combat the abuse of parking bays for disabled people and to put forward best practice guidance (Transport & Travel Research Ltd 2007a). The research explored the factors that influence people to misuse reserved parking, these included:

- Social factors - seeing people used reserved parking who do not appear to have a disability
- Reduced mobility – people who may not qualify for a Blue Badge, for example those with temporary physical impairments or permanent medical conditions
- Journey purpose – journeys with increased pressure to park somewhere, such as hospital visits, or travelling with young children
- Bay design – their location close to facilities can make them convenient and attractive, for example, when collecting heavy shopping or getting children safely in and out of the vehicle
- Cost of parking – free parking for disabled people has been shown to increase abuse
- Lack of enforcement – lack of visible interventions

The research also considered the behavioural characteristics of those who misuse parking places for disabled people and identified five different types of abuser.

- In denial – those who misuse reserved places but deny their actions.
- Reluctant – those who may use reserved places once or twice, but are reluctant to re-offend.
- Justified – those who feel they either parked in a reserved place unknowingly, or because they are entitled because, for example, they have young children, or because they have a temporary physical impairment, but are not entitled to a Blue Badge.
- Persistent – those who use reserved places on a regular basis.
- Misusers and fraudulent users of the Blue Badge.

As a result of the research, guidance was published for providers of off-street and private car parks in Scotland, it also provides examples of good practice (Transport & Travel Research Ltd 2007b).

BLUE BADGE SCHEME

The Bill makes no change to the Blue Badge Scheme. This section briefly describes the scheme, because in order to be entitled to park in a disabled persons' parking place, an individual must hold a Blue Badge.

The Blue Badge Scheme is UK wide, and a partnership in most European countries. It provides parking concessions for disabled people with mobility problems who travel either as drivers or passengers. The scheme is designed to help disabled people travel independently and allow them to park close to their destination. The scheme is administered by local authorities, and eligibility for a blue badge is at their discretion. Appeals against the decision of eligibility must be made only to the local authority concerned. Local authorities also have the option of making a charge to cover administration costs (Scottish Executive 2007b).

The Scottish Executive published guidance on the Blue Badge Scheme in 2007, it indicates where badge holders can park:

- Badge holders may park free of charge and without time limit at parking meters on-street and 'pay-and-display' on-street parking.
- Badge holders may be exempt from time limits imposed on other users.
- Badge holders may usually park on single or double yellow lines in Scotland without any time limit. In England and Northern Ireland, there is a time limit of up to 3 hours.

A person can get a blue badge if:

- they receive the higher rate of the mobility component of the **Disability Living Allowance**
- they receive a **War Pensioners' Mobility Supplement**
- they use a motor vehicle supplied for people with disabilities by the Scottish Executive or the Department of Social Security
- they have a severe disability in both upper limbs, regularly drive a motor vehicle but cannot turn the steering wheel of a motor vehicle by hand
- they have a permanent and substantial disability which means you are unable to walk or have very considerable difficulty in walking. In this case, you may be asked some questions to help your Local Authority decide if you are entitled to a badge
- they are registered blind
- they are unable to walk or have considerable difficulty in walking because of a temporary but substantial disability which is likely to last for a period of at least 12 months but less than 3 years
- children under 2 whose medical needs require that he or she is accompanied by bulky medical equipment which includes in particular any of the following:
 - i) ventilators;
 - ii) suction machines;
 - iii) feed pumps;
 - iv) parenteral equipment;
 - v) syringe drivers;
 - vi) oxygen administration equipment; and
 - vii) continual oxygen saturation equipment.

People with a psychological disorder will not normally qualify unless their impairment causes very considerable, and not intermittent, difficulty in walking. ([Scottish Executive 2007b](#))

MISUSE OF A BLUE BADGE

The power to inspect Blue Badges was introduced in Scotland on 1 January 2004, it was designed to protect the rights of legitimate badge holders ([Scottish Executive 2007b](#)).

Misuse of a Blue Badge can be split into two categories:

- The holder inadvertently or through lack of knowledge, parking inappropriately
 - The holder or other person deliberately misusing the badge
- ([Scottish Executive 2004](#))

Although the Bill does not address the misuse of blue badges, the matter was raised by a number of respondents to the consultation ([Baillie 2007a](#)). Jackie Baillie has also asked a series of Parliamentary Questions on the Blue Badge Scheme. In response to questions (S3W-13741-13742) regarding action the Scottish Government will take to tackle any abuse of the Blue Badge scheme, and any future plans to amend the scheme to cut down on abuse, Stewart Stevenson stated that powers exist under the Road Traffic Regulation Act 1984 'to make all disabled parking bays legally enforceable' ([Scottish Parliament 2008](#)).

In response to a question (S3W-13743) about incidents of abuse of the Blue Badge scheme, Stewart Stevenson stated that this information is not held centrally, but did indicate that Audit Scotland had published details of possible fraud on the Blue Badge scheme (Scottish Parliament 2008). In their report on the National Fraud Initiative 2006/07, a counter-fraud exercise undertaken every two years as part of the statutory audits on public bodies, it states that '969 Blue Badges were cancelled after NFI helped identify that the holder was deceased' (Audit Scotland 2008).

ON-STREET DISABLED PERSONS' PARKING PLACES

On-street parking places fall into two distinct categories, advisory and enforceable, both of which are examined in more detail below.

ADVISORY PARKING PLACES

Traffic authorities can designate advisory parking places for disabled people without having to go through any formal approval process. The authority simply creates a space by erecting signs and/or painting a clearly defined disabled parking space on the road. However, due to their informal nature there is no sanction against the use of advisory parking places by non-blue badge holders, rather they rely on the goodwill of drivers not to park in the designated space. The Department for Transport and the Scottish Government do not recommend the use of advisory parking places (Department for Transport 1995).

ENFORCEABLE PARKING PLACES

Enforceable parking places are those which have been formally designated through a designation Order. Designation Orders are often referred to as Traffic Regulation Orders (TROs) as they share the same authorisation process as a TRO, promoted by the local authority. These parking places will be marked with yellow paint and display signs indicating that they are for the sole use of disabled people. The following section looks at the process of obtaining a Designation Order in more detail.

What is a designation Order?

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

Who can implement a designation Order?

Designation Orders can only be implemented by a local authority. However, Scottish Ministers can give directions to local authorities to make a designation Order. Where an authority makes an Order at the direction of Scottish Ministers the powers granted to that authority by the Order are also exercisable by Scottish Ministers. Designation Orders can extend to cover trunk roads, for which Scottish Ministers are responsible, with the agreement of Ministers.

When can an on-street parking related Designation Orders be implemented?

Section 45 of the Road Traffic Regulation Act 1984 states “A local authority may by order designate parking places on highways or, in Scotland, roads in their area for vehicles or vehicles of any class specified in the order; and the authority may make charges (of such amount as may be prescribed under section 46 below) for vehicles left in a parking place so designated.”

What effect can a designation Order have on pedestrian and vehicular access?

A designation Order must not prevent pedestrian access at any time, or prevent vehicular access to roadside premises for more than eight hours in 24. However, this restriction does not apply if the local authority state in the order that they require vehicular access to be limited for more than eight hours in 24. In these cases the agreement of Scottish Ministers is usually required.

What must a local authority do prior to implementing a designation Order?

Local Authorities must take the following actions prior to making a designation Order:

- Publish a notice of the proposals in a local newspaper;
- allow potential objectors 21 days to make representations;
- take any other steps it considers appropriate for ensuring adequate publicity is given to persons likely to be affected by any provision in the order, which may include roadside notices and delivery of letters to premises; and
- hold a hearing if the designation Order would prohibit loading or unloading of vehicles (i) at all times, (ii) before 07.00 hours, (iii) between 10.00 and 16.00; or (iv) after 19.00, or if the passage of public service vehicles would be restricted or create one-way streets. The authority may opt to hold a public inquiry in other circumstances. The local authority is required to consider the Inquiry Reporter’s recommendations.

Who needs to be consulted before a designation Order is implemented?

The relevant police force, Freight Transport Association and Road Haulage Association must be consulted before a Designation Order can be implemented and, where appropriate, the relevant fire authority, NHS trust and passenger transport authority. In addition the traffic authority must consult the relevant roads authority if the designation Order will apply to a road under their jurisdiction, e.g. Scottish Ministers for a trunk road.

Who may object to a proposed designation Order?

Any person may object to a proposed designation Order. The traffic authority is obliged to consider such objections (and, if a public inquiry is held, the Inquiry Reporter's recommendations) before deciding whether or not to make the Order.

What is the role of Scottish Ministers?

A traffic authority is required to get the consent of Scottish Ministers prior to making a designation Order if:

- The designation Order would restrict access to a road for more than eight hours in any period of 24 hours
- The designation Order applies to a trunk road
- The designation Order would impose a speed limit of less than 30mph
- They intend to vary or revoke a designation Order made within the last 12 months following a direction given by Scottish Ministers
- The designation Order applies to a stretch of road where a similar designation Order was varied or revoked within the last 12 months

What must be done once a designation Order is made?

Once a designation Order is made, the regulations require (amongst other things) that:

- a notice to that effect be published in a local newspaper
- that objectors be notified in writing of the decision (and, where the objections have not been acceded-to, the reasons for it)
- other publicity steps be taken as the authority considers appropriate
- the requisite traffic signs are placed on or near the road and maintained for as long as the designation Order remains in force.

ENFORCEMENT

The enforcement of the use of these parking places is either the responsibility of the local authority or the police, as explained below:

Local Authority: Six Scottish local authorities, i.e. Aberdeen, Dundee, Edinburgh, Glasgow, Perth & Kinross and South Lanarkshire, operate decriminalised on-street parking enforcement. This means that, under the provisions of the Road Traffic Act 1991 (c. 40) 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, some examples of the charges levied include:

- Edinburgh Council charges £60, reduced to £30 if it is paid within 14 days
- Glasgow Council charges £60, reduced to £30 if paid within 14 days
- Perth and Kinross Council charges £60, reduced to £30 if paid within 14 days
- South Lanarkshire Council charges £60, reduced to £30 if paid within 14 days

Police: Outside of the six decriminalised parking enforcement areas parking offences are still enforced by the police, although the enforcement is normally carried out by traffic wardens

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employed by the police. Traffic wardens 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.

ON-STREET DISABLED PERSONS' PARKING PLACES: PROPOSALS IN THE BILL

The key proposals in the Bill regarding on-street disabled persons' parking places are:

- removal of local authorities' right to designate permanent advisory disabled persons' parking places
- a requirement for each local authority to conduct a one-off audit of existing on-street disabled persons' parking places, within 12 months from the date of enactment, to establish whether they are all necessary
- following the audit those advisory parking places deemed unnecessary would be removed
- following the audit the local authority would begin the process of obtaining a designation Order for all the spaces deemed necessary, with the aim of making them all into enforceable parking places
- following the initial designation of enforceable parking places any blue badge holder owning a suitable vehicle registered at their home address who does not benefit from an enforceable parking place can apply to the relevant local authority for a new on-street disabled persons' parking place. The local authority would then be required to:
 - establish whether the applicant qualifies for a disabled persons' parking place and, if so identify whether there is a suitable space for the creation of an on-street parking place for that applicant
 - if there is a suitable space then the local authority must apply for a designation Order to designate that space as an enforceable parking place, in the mean time the authority can designate the space as an advisory parking place until the designation Order is obtained

It is important to remember that the proposals in the Bill would not change the system for establishing a designation Order or for enforcing on-street parking offences as described in the previous section.

OFF-STREET DISABLED PERSONS' PARKING PLACES

Disabled persons' parking places in private car parks tend to be advisory and are not legally enforceable, their availability depends on the courtesy and consideration of other drivers. In privately owned car parks, use of disabled persons' parking places is a contractual matter between the provider and user, and the conditions of use and charges must be clearly displayed (Transport and Travel Research Ltd 2007a).

The Local Authorities' Traffic Regulation Orders (Procedure) (Scotland) Regulations 1999/614 allows local authorities to promote TROs in private car parks at the request of and in agreement with the landowner. This allows for the creation of enforceable parking places within private car parks, including disabled persons' parking places.

OFF-STREET DISABLED PERSONS' PARKING PLACES: PROPOSALS IN THE BILL

The Bill would place three distinct duties on local authorities with regards off-street disabled persons' parking places, these are:

1. Each local authority would be required to identify every advisory off-street disabled persons' parking place within its area which existed at the date the provisions of the Act come into force. Where such spaces were provided directly by the authority or in car parks managed/provided for the authority by a third party then they would be required to begin the designation Order process within 12 months of the Act coming into force. If the parking places are within a private car park then the local authority would be required to attempt to enter into an agreement with the owner to allow for the creation of enforceable disabled persons' parking places within the car park. If the owner agrees then the local authority must begin the designation Order process.

The only exception to these requirements apply when the authority considers that obtaining a designation Order would be detrimental to issues such as traffic flow, vehicle access etc. as set out in Section 122 of the Road Traffic Regulation Act 1984.

2. Each local authority would be required to begin the designation Order process for any disabled parking places to be created in new developments within their area. The designation Order process should be started within three months of the date that the development is granted planning permission, or three months from the date the authority become aware of a development if it is permitted through a development order rather than through the direct grant of planning permission. The only exception to this requirement applies when the authority considers that obtaining a designation Order would be detrimental to issues such as traffic flow, vehicle access etc. as set out in Section 122 of the Road Traffic Regulation Act.

Local authorities would be required to monitor development within their area so they can make timely contact with the developer/owner with a view to seeing agreement to the initiation of the designation Order process to secure enforceable disabled persons' parking places in all new developments where appropriate.

3. Where local authorities have failed to secure agreement to pursue designation Orders for new and existing advisory off-street parking places they must, at least every two years, make another attempt to secure agreement to create enforceable parking places for those sites. Again, this duty is dependent on the enforceable parking places not interfering with the issues raised in Section 122 of the 1984 Act.

Duties under the Disability Discrimination Act

Owners of car parks, whether public authorities or private owners, tend to be service providers, for example the car park may be for a supermarket, public library or hospital. Service providers have duties under Part III of the Disability Discrimination Act 1995 (as amended) to make 'reasonable adjustments' to ensure that disabled people can access services. Since 1 October 2004, where a physical feature makes it impossible or unreasonably difficult for disabled people to make use of services, service providers have to take reasonable steps to:

- remove the feature; or
- alter it so that it no longer has that effect; or
- provide a reasonable means of avoiding it; or
- provide a reasonable alternative method of making the services available

If a service provider does not comply with the duty to make reasonable adjustments, and it cannot be justified, it will be committing an act of unlawful discrimination. This means a disabled person will be able to make a claim under the Act by bringing civil proceedings through the Sheriff Court. Court action must be brought within six months of the alleged discrimination. (DRC 2006a)

DUTY TO PROMOTE PROPER USE OF PARKING PLACES FOR DISABLED PERSONS' VEHICLES

Section 1 of the Draft Bill proposes that:

“A local authority must promote proper use of parking places in its area that are designated for use only by disabled persons’ vehicles.”

The Policy Memorandum states that this duty will require proactive approaches by local authorities to discourage the misuse of disabled persons’ parking places. The Bill does not specify how local authorities should carry out this duty, but there are some examples in the Policy Memorandum. These include: training staff to make them aware of the issue; additional signage; advertising or poster campaigns; encouraging people to report instances of abuse and providing contact numbers for law enforcement; and, targeting areas where abuse of disabled persons’ parking places is most common.

Disability Equality Duty

Public bodies in Scotland are also subject to the Disability Equality Duty, which came into effect on 4 December 2006, as a result of the Disability Discrimination Act 2005. The general duty requires all public authorities to actively look at ways of ensuring disabled people are treated equally. Most public authorities are also subject to specific duties which requires them to publish a disability equality scheme and set out how they are going to carry out the general duty.

The duty requires that every public authority shall, in carrying out its functions, have due regard to the need to:

- promote equality of opportunity between disabled persons and other persons
- eliminate discrimination that is unlawful under the Act
- eliminate harassment of disabled persons that is related to their disabilities
- promote positive attitudes towards disabled persons
- encourage participation by disabled persons in public life; and
- take steps to take account of disabled persons’ disabilities, even where that involves treating disabled persons more favourably than other persons.

Disability Equality Schemes must include:

- A statement of how they involve disabled people in developing their schemes
- An action plan setting out the steps they will take to promote equality and meet the general duty
- Arrangements for gathering information about their performance on disability equality
- Arrangements for assessing the impact of their policies on disability equality and ways to improve these when necessary
- Details of how they are using the information gathered, in particular in reviewing the effectiveness of their action plan and preparing subsequent schemes.

(DRC 2006b)

REPORT ON ACTIONS

Section 11 of the Bill proposes that each local authority reports annually on their performance, providing details of their actions under the provisions of the Bill, to Scottish Ministers. Part 1 of the Schedule lists the information to be contained in the report. It includes:

- action taken to fulfil the duty to promote proper use of parking places for disabled persons' vehicles
- the number of parking places designated as being for use only by a disabled persons' vehicle
- information on applications from disabled people for an on-street parking place, including the number which led to a designation Order being implemented.

Section 12 of the Bill proposes that Scottish Ministers must prepare a report on the performance of local authorities with regard to disabled persons' parking places, and lay a copy of the report before the Scottish Parliament. Part 2 of the Schedule lists the information to be contained in the report. This report must include the detail of each category of information provided by local authorities, to allow for comparison.

COSTS

It is expected that the main costs will fall on local authorities. They will face set up costs in the first year of the Bill as they will be required to identify all existing advisory parking places for disabled people. The cost of this will vary depending on the number of parking places identified. Local authorities will face ongoing costs to meet the requirements of the Bill, this will include implementing designation Orders and altering road markings and signage. There may also be minimal costs falling on the Scottish Government and the Police.

The costs of implementing this Bill are difficult to calculate for two main reasons:

- There are no official figures available on the number of existing advisory parking places on-street and off-street. It is therefore not known how many places may require a designation Order, or how many advisory places may be removed.
- The cost of implementing a designation Order varies between local authorities and there are differences in approach, either implementing individual Orders or implementing Orders in batches. The Financial Memorandum reports estimates from Fife Council at around £119 per parking place, and from West Dunbartonshire Council at around £12.20 per parking place.

It is estimated that the total national cost of implementing designation Orders for all existing advisory parking places on-street is £1.7 million. This is based on an estimate that there are currently 14,000 advisory parking places on-street, and that an average cost per place might be £125. The Financial Memorandum suggests savings could be made if local authorities promote TROs in batches, rather than individually.

In terms of applications for new on-street parking places, costs are difficult to predict. However, 'these are not new costs as the local authorities would have been required to undertake broadly the same process to consider applications for advisory disabled persons' parking places.' Additionally there will be ongoing costs with enforcement, but it is anticipated that enforcement will be 'primarily reactive' (Financial Memorandum 2008).

For off-street car parks, where local authorities seek arrangements with owners to implement designation Orders, costs may be covered as part of the negotiation.

DEVELOPMENT OF THE BILL AND RESPONSES TO THE CONSULTATION

Jackie Baillie MSP lodged a proposal for a Disabled Persons' Parking (Scotland) Bill on 16 May 2007. The aim of the Bill is to make disabled persons' parking places legally enforceable and prevent misuse. Jackie Baillie wrote in her consultation on the proposed Bill:

'As someone put it to me quite starkly "if you want my disabled parking space, then please have my disability too."

The consequence of our actions in unthinkingly occupying a disabled parking space can be very distressing for a disabled person with acute mobility problems. I know from disabled constituents the frustration that they experience when they are unable to park near enough to the shops or their own home. In many cases, because they are unable to walk any distance, they end up driving round and round until a disabled parking space becomes free.' (Baillie 2006)

A consultation on proposals for a Disabled Persons' Parking (Scotland) Bill ran from 20 November 2006 to 26 February 2007 (Baillie 2006). The consultation sought responses on the detail of how the proposed system of enforcement might operate, including views on parking places in private car parks, and the level of fines for misuse of parking places. One hundred and seventy two responses were received and of these, 90% were in favour of the Bill's proposal 'to introduce a straightforward method to enforce parking and restrictions over disabled persons parking bays' (Baillie 2007a). The Transport Working Group from Fair Deal¹ organised a petition in support of the principles of the proposals and collected over 3000 signatures (Policy Memorandum 2008).

Those not in support of the proposal cited reasons such as: more enforceable parking places would increase the benefits to those already abusing the system or, it could discriminate against non-disabled motorists. A number of responses were ambiguous in their view (Baillie 2007a).

Below is a sample of comments from the consultation.

Abuse of disabled persons' parking places

'I have a Disabled Parking Bay outside my house which I had to request for and then produce documentation to entitle me to have it. After the discrimination and justification to have a Disabled Bay outside my home, anyone can park in it. I have had to ask my neighbour in the past if they would remove their vehicle from the Bay which luckily they did'. (Individual consultation response Baillie 2007c).

'Try challenging those who have used the space and you receive a torrent of abuse, along the lines of what's it got to do with you....More recently we have had a number of driving instructors using our disabled bay outside the house for their pupils practicing reverse parking'. (Individual consultation response Baillie 2007d).

'I have recently had a brief confrontation with the driver of a car who was parked in a clearly marked disabled parking space in the local council car park as I asked him to allow a disabled person to park her car in the space he was occupying. He asked me did I have a problem and was actually verbally abusive. He only drove off when I threatened to phone the police due to his aggressive nature'. (Individual consultation response Baillie 2007e).

¹ Fair Deal provide support to adults with learning disabilities.

Context of Disability Equality Duty

'The proposed Member's Bill is particularly relevant to the DED, as it would clarify the law around the demarcation and enforcement of disabled parking bays in a way which speaks directly to the six elements of the Duty. It could be a very useful tool for local authorities in directly promoting disability equality, eliminating discrimination and encouraging disabled people's participation in public life'. (Disability Rights Commission consultation response Baillie 2007f)

'The continuing frustration experienced by disabled people caused by the abuse of disabled persons' parking spaces has been raised with the Council through the recent consultation in conjunction with the development of its Disability Equality Scheme.'
(North Ayrshire Council consultation response Baillie 2007g)

Private car parks

'It is the lack of enforcement by supermarkets, in particular, that has led to the current problems with the disabled persons parking spaces in many areas.' (Lothian Centre for Integrated Living consultation response Baillie 2007h)

'If disabled persons bays are enforceable then private car park operators and supermarkets will either limit or remove their disabled persons bays to avoid customers having to pay fine as this may lead to customers taking their business elsewhere.'
(Clackmannanshire council consultation response Baillie 2007i)

'...disabled people in Scotland have an annual spending power of over £5billion. Therefore it would be in organisations financial interest to help cater to their customers/patron's needs by ensuring that accessibility parking are fully enforced.'
(Leonard Cheshire consultation response Baillie 2007b)

Resources

'The difficulty is of course how this can be made a reality within existing frameworks and without overstressing resources that are already under pressure.' (Fife Council consultation response Baillie 2007j)

'The Bill would be strengthened if it was recognised that the scheme cannot be both self – financing and effective.' (West Lothian council consultation response Baillie 2007k)

'The increase in provision or residential spaces decreases the parking provision available for non disabled drivers. Councils must balance the needs of whole communities and the needs of disabled people. The Bill process should make provision for the Scottish Executive to identify best practice and issue guidance to authorities'. (West Lothian council consultation response Baillie 2007k)

'The proper use of Disabled Parking Bays is very important in rural areas where long distance travel on twisted roads leaves the disabled person heavily reliant on Disabled Parking provision, to gain access to vital services such as toilets and food.' (Individual consultation response Baillie 2007l)

Enforcement

*“The practice of having non-enforceable parking spaces apparently reserved for disabled persons only leads to irritation and annoyance when other able-bodied persons as well as disabled people see the disabled parking spaces abused. It is **essential** that all disabled parking spaces are not only enforceable but strictly policed.”* (Association of British Drivers in Scotland consultation response Baillie 2007m).

‘Enforcement on private land is likely to be problematic and the main issues with this suggestion are likely to be; who is going to enforce the bays and how is legislation going to be put in place to allow this to happen?’ (Perth and Kinross Council consultation response Baillie 2007o).

‘it is likely that legalising the bays would raise unrealistically high expectations that enforcement would instantly be carried out.’ (Perth and Kinross Council consultation response Baillie 2007o).

SCOTTISH GOVERNMENT AND COSLA VIEW ON THE BILL

In a Parliamentary Question (Scottish Parliament 2007a) Jackie Baillie asked the Scottish Government whether it would support the proposed Bill. Stewart Stevenson, the Minister for Transport, Infrastructure and Climate Change said:

‘I think we can say without ambiguity that we certainly support what Ms Baillie’s proposed bill seeks to achieve. However, we need to see whether the material in the bill delivers.

In the meantime, we are engaged on this subject. I have written to Councillor Pat Watters of the Convention of Scottish Local Authorities to remind him of local authority powers to promote orders to protect the parking spaces in question, and I await his reply. We are as committed as Ms Baillie is to supporting people with blue badges and ensuring that they are able to park wherever they require.’

COSLA and the Scottish Government held a meeting at Victoria Quay on 14 January 2008 to discuss the disabled persons’ parking bill. The general COSLA view was that while there were some ‘hot-spots’ where disabled parking bays were being abused, the motoring public generally respected disabled persons’ parking bays whether advisory or enforceable. However, it was agreed to monitor the situation (Scottish Government Official 2008).

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