

# **DISABLED PERSONS' PARKING PLACES (SCOTLAND) BILL**

---

## **DELEGATED POWERS MEMORANDUM**

### **PURPOSE**

1. This memorandum has been prepared by Jackie Baillie MSP, the Member in charge of the Bill. It has been provided to assist the Subordinate Legislation Committee with their consideration, in accordance with Rule 9.6.2 of the Parliament's Standing Orders, of provisions in the Disabled Persons' Parking Places (Scotland) Bill conferring powers to make subordinate legislation. It describes the purpose of each such provision, explains why the matter is to be left to subordinate legislation and explains the choice of procedure.

### **POLICY CONTEXT**

2. The Bill imposes duties on local authorities which will increase the number of enforceable street parking places for disabled persons and provides a mechanism by which it aims to increase the number of enforceable off-street parking places for disabled persons.

3. The Bill's key objectives are to—

- Prevent illegal occupation of disabled parking places by those not entitled to use them; and
- Make such parking places enforceable to allow action to be taken against illegal use.

### **CONTENT OF THE BILL**

4. The Bill—

- Places a duty on local authorities to promote the proper use of parking places designated for use by disabled persons' vehicles;
- Requires local authorities to identify every advisory disabled persons' parking place in its area and, if it meets certain criteria, start the Order making procedure to make such parking places enforceable;
- Provides the process for individuals or organisations holding a disabled persons' badge to apply for a disabled persons' parking place that will provide convenient access to their address;

- Requires local authorities, in respect of new applications for an enforceable parking place, to create a temporary parking place for disabled persons' where an Order is to be processed;
- Requires local authorities to identify all advisory disabled off-street parking places in their area and either start the Order making procedure for such spaces in their own car parks or seek agreement to start the Order making procedure for other eligible parking places;
- Requires local authorities to initiate discussion with developers regarding making disabled parking places within a new development enforceable;
- Places a requirement on local authorities to review any disabled persons' parking places made by Order;
- Requires local authorities to publish an annual report on their performance;
- Requires the Scottish Ministers to publish an annual report on local authorities' performance and lay a copy before the Scottish Parliament;
- Provides power to the Scottish Ministers to make regulations.

### **Delegated Powers**

5. The Bill confers a total of three powers to make subordinate legislation on the Scottish Ministers. All of the powers are new and no existing powers are being amended or repealed. The powers are explained in detail in the following paragraphs. By virtue of section 13(1) all of the delegated powers under the Bill are exercisable by regulations made by statutory instrument.

### **Section 5(6) - Requests for disabled street parking orders**

<b>Powers conferred on:</b>	<b>Scottish Ministers</b>
<b>Powers exercised by:</b>	<b>Regulations made by statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Negative resolution of the Scottish Parliament</b>

6. Section 5(1) permits a qualifying person to request a local authority to make a disabled street parking order.

### *Reason for taking power*

7. Section 5(6) relates to the form and manner of requests. The regulation making power contained in this section gives power to the Scottish Ministers to prescribe the form and manner of a request. It is submitted that this is an appropriate matter for subordinate legislation as it allows the Scottish Ministers to prescribe the way in which requests are made to local authorities. If regulations are not made, a local authority may accept requests in whatever form or manner it decides. This could lead to inconsistencies across authorities, therefore Scottish Ministers should have the power to standardise how requests are made to local authorities in light of their experience. It is not thought to be appropriate to prescribe this level of administrative detail in the Bill.

*This document relates to the Disabled Persons' Parking Places (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 2 June 2008*

*Choice of procedure*

8. Given that such an order will be uncontroversial and administrative in nature, negative resolution procedure is therefore considered appropriate and allows for the proper use of Parliamentary time for something of this nature.

**Section 11(3) - Changes to local authorities' annual reports**

**Power conferred on: Scottish Ministers**  
**Power exercised by: Regulation made by statutory instrument**  
**Parliamentary procedure: Affirmative resolution of the Scottish Parliament**

9. Section 11 provides for each local authority to submit to the Scottish Ministers an annual report describing how the powers and duties provided for in the Bill have been exercised. The regulation making powers given to the Scottish Ministers by section 11(3) allow them to modify the information to be contained in the annual report. Regulations could be used either to add to the information currently required under Part 1 of the Schedule or to remove any information which Scottish Ministers consider appropriate. This enables Scottish Ministers to vary the information reported by local authorities to meet their needs. This may be particularly important when the legislation has been in operation for a number of years and the resultant increased awareness and changed behaviour to disabled parking may require a less stringent reporting regime for some matters or different types of information for others.

*Reason for taking power*

10. It is submitted that this is an appropriate matter for subordinate legislation because the administrative nature of any changes to the detailed information to be collated should not occupy valuable Parliamentary time. Primary legislation is not and should not be used to effect such variations.

*Choice of procedure*

11. It is considered that this is an appropriate matter for affirmative resolution procedure as any regulations made under the power in 11(3) will amend the reporting requirements provided for in the Bill and could materially affect the level of local authority accountability currently afforded.

**Section 12(3) - Changes to the Scottish Ministers' annual report**

**Power conferred on: Scottish Ministers**  
**Power exercised by: Regulations made by statutory instrument**  
**Parliamentary procedure: Affirmative resolution of the Scottish Parliament**

12. Section 12 requires the Scottish Ministers to publish an annual report on the performance of local authorities in exercise of their duties and powers under the Bill.

*Reason for taking power*

13. The regulation making powers given to the Scottish Ministers by section 12(3) allows Ministers to modify the information to be contained in their annual report. It is necessary to make this consequential change should the information to be included in local authority reports change.

*Choice of procedure*

14. It is submitted that this is an appropriate matter for subordinate legislation, for the same reasons given in respect of the power contained in section 11(3), namely that the administrative nature of any changes to the information to be collated should not occupy valuable Parliamentary time. The annual report is the mechanism by which local authorities are held accountable for their performance under the Bill. Therefore the information to be reported should not be altered without the agreement of the Scottish Parliament. Primary legislation is not and should not be used to effect such administrative variations. However, it is considered that this is an appropriate matter for affirmative resolution procedure.



*This document relates to the Disabled Persons' Parking Places (Scotland) Bill (SP Bill 10) as introduced in the Scottish Parliament on 2 June 2008*

# **DISABLED PERSONS' PARKING PLACES (SCOTLAND) BILL**

## **DELEGATED POWERS MEMORANDUM**