

DISABLED PERSONS' PARKING PLACES (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Disabled Persons' Parking Places (Scotland) Bill introduced in the Scottish Parliament on 2 June 2008. It has been prepared by the Non-Executive Bills Unit on behalf of Jackie Baillie MSP, the member in charge of the Bill, to satisfy Rule 9.3.3A of the Parliament's Standing Orders. The contents are entirely the responsibility of the member and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 10-EN.

POLICY OBJECTIVES OF THE BILL

2. Currently the majority of parking places designated for use by disabled people are not legally enforceable and are frequently used by unauthorised drivers. The occupation of these parking places by non-disabled people prevents disabled people from being able to access them, which in turn can prevent them from being able to access essential services.

3. The main policy objective of the Bill is to prevent disabled persons' parking places being occupied by those that are not entitled to use them by seeking to ensure that enforcement action can be taken.

4. The Bill will make all permanent disabled street parking places¹ enforceable. It requires local authorities to identify all existing relevant unenforceable disabled street parking places and promote orders² for those still required. For those that are no longer required then the Bill requires the local authority to remove any road markings or sign posts. In relation to off-street parking the local authority will be required to promote an order for disabled persons' parking places in the public car parks it owns. The Bill also requires the local authority to contact owners or persons having an interest in private car parks including supermarkets and out of town retail centres to seek to negotiate an agreement which would enable the local authority to promote an order to make the disabled persons' parking places enforceable.

5. Once an order is in place action can be taken against anyone illegally occupying a disabled persons' parking place covered by it.

¹ Street and off-street parking is detailed at paragraph 10

² Please refer to paragraph 25

BACKGROUND

The importance of disabled persons' parking places

6. Disabled persons' parking places play a vital role in enabling disabled people to carry out day-to-day activities that non-disabled people can take for granted. Disabled people often have restricted mobility and designated parking places located in residential areas provide them with access to parking close to their homes. This increases accessibility generally and particularly when leaving home to access shops, services and facilities. The provision of such parking places helps towards enabling disabled people to lead autonomous and independent lives.

7. Disabled persons' parking places outwith residential areas are generally found close to shops, services and facilities, often in town centres or out of town retail parks. These parking places increase opportunities for disabled people to access shops, services and facilities such as medical practices and health centres. Access is more than just enabling them to do the same things as non-disabled people, it is often vital to their health and well being. For example evidence from Scottish Government research in 2007³ showed many disabled people missed medical appointments through being unable to access a suitable parking place.

8. The disabled person's parking places provided near to shops, services and facilities are generally located close to entrances. Many disabled people have difficulty walking and such proximity assists in reducing the required walking distance. Often the parking places are also located so that users don't have to cross roads or squeeze through rows of parked cars in busy car parks. This particularly assists those disabled people with restricted mobility and generally reduces the risk of accidents for all users. The parking place is also more likely to be located close to dropped kerbs, making it easier for wheelchair users to safely cross roads and access pavements.

9. In addition to location, the size of the parking place is important to disabled people. Many are wider than standard parking places providing more space between vehicles making it easier for disabled people to enter or leave vehicles. This is particularly important for those using wheelchairs or portable medical equipment.

Street and off-street parking

10. Street parking places are situated on public roads in town centres and residential areas. They are the responsibility of the local authority. Off-street parking places are generally in locations such as supermarkets, retail parks, libraries and community centres. They are provided for the use of customers and clients using the facilities and services and are the responsibility of the private owner or person having an interest in the car park or in some instances the local authority.

11. There are two types of parking places provided for disabled people, advisory and enforceable.

³ Transport Research Series: Tackling the Abuse of Off Street Parking for People with Disabilities in Scotland, Scottish Government, September 2007

Advisory disabled persons' parking places

12. Most advisory parking places are found in residential areas close to disabled people's homes. Local authorities respond to requests from disabled people for a parking place outside or close to their home. In order to qualify for such a parking place certain criteria must be met including the provision of convenient access between home and vehicle and the local authority must consider that there are no statutory impediments such as road safety concerns or traffic flow problems.

13. There is an inconsistent approach to the criteria for, and consideration of, advisory parking places in residential areas across Scotland.

14. The application process and criteria currently varies between local authorities. Most require the applicant to hold a Blue Badge (see paragraph 30 to 32 below); they also take into account the availability of local parking and the applicant's level of disability. Most carry out a site visit; some take into account the level of disability of the applicant and/or link provision to receipt of certain disability benefits. Some consider how far the applicant is able to walk while others require a medical assessment.

15. When the criteria are met a disabled person's parking place will be granted and the local authority makes arrangements for markings to be painted on the road. The approach to marking out an advisory parking place varies by local authority but generally consists of white or yellow markings being painted on the road. Examples are a wheelchair symbol, the words "disabled" or "keep clear".

16. Local authorities tend to opt for advisory parking places, particularly in residential areas because they can often be created quickly and are easier to remove should the person move house or the space no longer be required. From information provided in 2006⁴ local authorities indicated that an advisory parking place could be provided and put in place in timescales ranging from 28 days to 6 months. The local authority also avoids the expense of promoting an order (see paragraphs 25 to 27 below).

17. Most disabled persons' parking places found in private off-street car parks such as supermarkets, out of town retail parks, leisure facilities and medical centres are advisory ones. The importance of these parking places to disabled people is set out in paragraphs 6 to 9 above. These are parking places generally owned either by the company or organisation that owns the land or by the owner of the shop or service. In the cases of community halls, libraries and leisure facilities the owner can be the local authority. Provision of these parking spaces amounts to a reasonable adjustment in its own right under the Disability Discrimination Act 1995 c.50 (DDA). Failure to provide accessible parking facilities has been found to be a breach of the DDA.

18. There are no sanctions that can be imposed against the many "illegal" users of advisory parking places (see paragraphs 34 to 46 for the extent of abuse)

⁴ Information provided to Member by 26 Local Authorities. February 2006

Enforceable disabled persons' parking places

19. Most enforceable disabled persons' parking places are found in street parking areas. They are enforceable because local authorities have used their powers⁵ to promote an order. If the outcome of the order making process is successful then the parking places are marked⁶ with yellow paint and display signs indicating that they are only for use by disabled people.

20. It is illegal to park in one of these disabled persons' parking places without displaying a Blue Badge (or one issued under a similar scheme in Northern Ireland or a Member State of the European Community). They are enforceable by police or by the local authority where they operate a decriminalised parking system.

Parking enforcement in Scotland

Decriminalised parking areas

21. In 1991⁷ provisions were introduced that enabled the decriminalisation of most street parking offences in London and permitted similar arrangements to be introduced elsewhere. The relevant provisions were commenced in Scotland in 1997⁸. It enabled local authorities to apply to the Scottish Ministers for an order to designate either permitted or special parking areas⁹ within which most parking offences would be decriminalised.

22. In Scotland 6 local authorities operate a decriminalised parking enforcement (DPE) system. These are Edinburgh, Glasgow, Aberdeen, Dundee, South Lanarkshire and Perth and Kinross.

23. When a decriminalisation order is made parking rules are enforceable by parking attendants employed either directly by or contracted to the local authority. The local authority sets the level of the fine which on average is around £30 rising to £60 if not paid within 21 days.¹⁰ The attendants issue fixed penalty notices for parking offences, enforceable directly by the local authority without recourse to court. Appeals against the issue of these fixed penalty notices are heard by an independent Parking Adjudicator.

Other areas

24. In the remaining local authority areas enforcement is carried out by police and police traffic wardens. Parking offences are enforceable through the courts. Fines for street parking offences attract up to a level 3 summary fine on the standard scale (currently maximum of £1000) and off-street parking offences attract up to a level 2 (currently maximum of £500).

⁵ Road Traffic Regulation Act 1984

⁶ Signage for enforceable disabled persons parking places is set out in Traffic Signs Regulations and General Directions 2002 (No 3113)

⁷ The Road Traffic Act 1991 c.40

⁸ The Road Traffic Act 1991 (Commencement No.13) (Scotland) Order 1997 (No. 1580 (C.65) (S.121))

⁹ These areas are usually the whole of the local authority

¹⁰ Glasgow, Aberdeen and Perth and Kinross have set the fine at £30.

Parking place orders

25. Under the Road Traffic Regulation Act 1984 (c.27) (RTRA) local authorities have power to make orders in relation to parking places. The making of an order brings enforcement powers to the parking places it covers. Local authorities can determine whether or not to start the order making process themselves or they can be directed to do so by the Scottish Ministers. The RTRA also gives the Scottish Ministers powers to directly make orders.¹¹

26. The procedure for the making of these orders is set out in The Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999¹². The time taken to promote an order, including advertising and any hearing necessary, ranges from 3 to 24 months.¹³ Some local authorities promote orders for individual parking places and others promote them in batches depending on their priorities. The cost of promoting an order varies greatly. Estimated figures¹⁴ from local authorities indicate that it can cost £300,000 to make 2500 individual disabled persons' parking places enforceable while the cost of one block order covering 410 parking places cost £5000.

27. In answer to a Parliamentary Question¹⁵ the Scottish Government indicated that they were not aware of any significant problems with the current procedures for making orders and they had no plans to review the regulations. They added that the effectiveness of the regulations will be kept under review and if it was found that they were not working as intended then appropriate action would be taken to remedy the situation. Given the disparity in time taken, procedures and costs there is clearly merit in the Scottish Ministers reviewing the order making procedure to allow all local authorities to put in place a process that would enable them to promote orders quickly and at the lowest possible cost.

Orders in private car parks

28. Guidance issued by the Scottish Government in Scottish Planning Policy SPP 17 – Planning for Transport (SPP 17) explains how local authorities can make disabled person's parking places in private car parks enforceable:

“Local authorities have powers under The Road Traffic Regulation Act 1984 to designate by an order under The Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999 spaces for parking for disabled people on private land with the agreement of the land owner. Such designation allows Blue Badge parking for disabled people to be enforced by police, traffic wardens, or in areas with decriminalised parking, parking attendants. Local authorities should consider designation, especially where there is a history of abuse of parking provision for disabled people for example in retail, leisure and recreation developments in the area.”¹⁶

¹¹ To date Scottish Ministers have made no orders

¹² The Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999 No. 614 (S. 38).

¹³ Information provided to Member by 26 Local Authorities. February 2006

¹⁴ Ibid

¹⁵ Parliamentary Question S3W - 11113

¹⁶ Scottish Planning Policy SPP17 – Planning for Transport. August 2005 (paragraph 63)

29. To date, despite extensive evidence of widespread abuse¹⁷ of disabled persons' parking places no such arrangements have been made¹⁸. The main reason given being that local authorities have not been approached by any car park owners or person having an interest in the car park to come to an arrangement. It appears that local authorities are not proactively using their existing powers and approaching car park owners to seek such agreements.

The Blue Badge scheme

30. The Blue Badge scheme is a United Kingdom wide local authority administered scheme which provides a range of parking benefits for disabled people who travel in vehicles either as drivers or passengers. These benefits only apply to street parking and include free use of parking meters and pay-and-display bays. In Scotland Blue Badge holders are also able to legally park on single and double yellow lines provided they are not causing an obstruction.

31. The Blue Badge scheme does not apply in off-street car parks, private roads or at most airports. However, many of these places provide parking spaces for disabled people. For example in a private off-street car park disabled persons' parking places may be provided close to exits and lifts although the disabled person will not generally be entitled to park without charge. However these disabled persons parking places are not enforceable and rely on the courtesy of other drivers not to use them.

32. Blue Badges are issued by the local authority to applicants who meet the eligibility criteria. Provision was made in 2000 on the issue and display of Blue Badges¹⁹. Following consultation this was amended²⁰ in 2007 to widen the eligibility criteria for the Blue Badge Scheme by amending the description of those disabled persons' who are eligible for a Blue Badge.

33. The Bill makes no changes to the Blue Badge Scheme.

Abuse of disabled persons' parking places

34. Surveys consistently highlight a high level of abuse of disabled person's parking places often resulting in there being no available places for genuine users.

35. While advisory disabled persons' parking places can be created quicker than enforceable ones, they are not enforceable. Any driver can park in them without the possibility of legal sanctions. They cannot be required to move nor can they be penalised for parking.

36. Advisory bays rely *entirely* upon the good will and courtesy of other drivers. In residential areas they are often abused by neighbours.

¹⁷ See paragraphs 34 to 55

¹⁸ Information provided to Member by 26 Local Authorities. February 2006

¹⁹ Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000 No 59 as amended by SSI 2000 No.170.

²⁰ The Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2007 No 162.

37. Anecdotal evidence and responses to the consultation document²¹ indicate the high level of abuse of advisory disabled persons' parking places by people who do not hold a Blue Badge. Many are neighbours or their visitors, people using the space to pop to the local shops for a few minutes or to use neighbouring facilities. The consultation provided the example of Mrs C, a disabled person to whom the local authority had provided an advisory disabled persons' parking place. When a new neighbour moved in 4 years ago they consistently parked in the parking place. No action could be taken given the absence of any enforcement powers.

38. Studies by Baywatch, a disability rights organisation with the objective of ending the abuse of disabled persons' parking places, and the Scottish Government show that abuse of advisory parking places is also a problem in retail parks. More detail on these studies is set out in the following paragraphs.

Studies by disability rights organisations of abuse

39. Baywatch aim to change public attitudes through high profile campaigns such as surveys on the parking facilities in the big four UK supermarkets. Volunteers check to see if cars parked in disabled persons' parking places are displaying a Blue Badge.

40. Their 2005²² survey conducted across 600 car parks showed that 1 in 5 (20%) of disabled persons' parking bays were occupied by vehicles not displaying a Blue Badge. In 2006 the survey once again found that 20% of disabled persons' parking bays were being abused. Only one of the main 4 supermarkets had improved dropping from 19% of disabled persons' parking places being abused to just less than 13%. However in the car parks of 2 of the main supermarkets the situation deteriorated, with an increase in abuse of the disabled persons' parking places from 21% to 23%.

41. The 2006²³ survey also found that in over a third (33.3%) of car parks there were no accessible parking places available for disabled shoppers because of abuse, a rise from 28% in 2005.

42. In 2003, Capability Scotland conducted a mystery shopper survey²⁴ visiting 118 stores between 23 August and 8 September. They found that 44% of disabled persons' parking places were occupied by vehicles not displaying a Blue Badge.

Research by the Scottish Government

43. In September 2007 the Scottish Government published the results of its research into abuse of off-street parking for people with disabilities.²⁵ The purpose of the research was to provide advice and assistance to those responsible for the provision of off-street parking in adhering to the guidelines set out in the DDA.

²¹ Disabled Persons Parking (Scotland) Bill: Public Consultation, Jackie Baillie, November 2006

²² <http://www.baywatchcampaign.org/PastSurveys.asp>

²³ <http://www.baywatchcampaign.org/LatestNews.asp?ItemId=24>

²⁴ Mystery Shopper Survey: Are you being served? Capability Scotland, September 2003

²⁵ Transport Research Series: Tackling the Abuse of Off Street Parking for People with Disabilities in Scotland, Scottish Government, September 2007

44. The introduction to the report states:

“One of the most common mobility problems faced by disabled people is the lack of availability of parking spaces in off-street car parks that are located near to their destination, and which have been designated for their use. This is often because they are occupied by cars of drivers for whom they were not intended”.

Who are the abusers?

45. The research identified different groups of people who abuse disabled persons' parking places along with possible reasons for the abuse. Some abusers are in denial that they abuse the parking places even after initially admitting they have abused them. Whilst others are termed “reluctant abusers” in that they have used disabled persons' parking places when no others were available, for example, to attend medical appointments or collect heavy goods. Other abusers were categorised as being “justified abusers” using the parking place because the signage was unclear and they were unaware of its purpose. Others abused because they felt they had a need or should be entitled to park there, some because they had a temporary disability or reduced mobility but did not actually qualify for or possess a Blue Badge.

46. Persistent abusers accounted for the majority of abusers, regularly parking in disabled persons' parking places because the location is convenient or they believe their vehicle will be safer there. The final type of abuser identified were those abusing the Blue Badge Scheme itself.

Factors used to justify abuse

47. Also identified were factors that abuse of disabled persons' parking places could be attributed to such as social factors, for example seeing others without a disability using the parking places and following their behaviour. The cost of parking was found to make free parking for disabled persons more open to abuse. A further factor behind abuse was lack of enforcement, many of the participants in the research generally did not expect to be penalised for parking in a disabled persons' parking place, particularly in off-street car parks.

48. Abuse of disabled persons' parking places occurs more often in heavily used car parks such as at supermarket and retail parks. These are places where demand for use by disabled people is highest. Non-disabled drivers often believe that there are more disabled persons' parking places than there are disabled people needing them.

Actions by supermarkets and out of town retail centres to tackle abuse

49. Supermarkets are now recognising that abuse of disabled persons' parking places is a problem for them as well as for disabled customers. Towards the end of 2007 Asda introduced a trial period of enforcing disabled persons' parking places in their car parks using a private enforcement company. After 3 months the results showed a 60% increase in the number of parking places available for use by disabled persons'. On 10 January 2008 Asda announced²⁶ it was to roll out the scheme nationwide in recognition of the success of the trial.

²⁶ ASDA Press Release – Asda Gets Tough on Parking Space Abuse – 10 January 2008

50. Braehead Shopping Centre and Retail Park from 31 March 2008 is now levying a financial penalty against people who park in any of its 387 disabled persons' parking places without displaying a valid Blue Badge. Last year Braehead had over 20 million customers and is one of the largest shopping and retail parks in Scotland.

51. Leonard Cheshire (Scotland)²⁷ highlighted that "disabled people in Scotland have an annual spending power of over £5 billion.....therefore it would be in the organisations' interests to help cater for their customers needs by ensuring that accessible parking is fully enforced."

52. It is hoped that owners or persons having an interest in private car parks will give serious consideration to the benefits the Bill will provide both to them in meeting their obligations under the DDA and in looking after their customers.

Equal Opportunities Committee inquiry in the Scottish Parliament

53. In Session 2 of the Scottish Parliament, the Equal Opportunities Committee undertook an inquiry into disability issues²⁸. Part of the inquiry covered the abuse and enforcement of accessible parking spaces for the use of disabled people. The Committee recognised:

"both the difficulties caused for disabled drivers through the abuse of accessible parking by non-disabled drivers and also the complexities involved in the enforcement of accessible parking²⁹".

54. The Committee recommended 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".

55. This Bill delivers the Committee's recommendation.

How the Bill will work

Duty to discourage misuse of disabled persons' parking places

56. The Bill requires local authorities to promote the proper use of disabled persons' parking places for persons holding Blue Badges.

57. Proactive local authorities already seek to avoid abuse of disabled persons' parking places in car parks that they own and manage. They do this for example by training staff to make them aware of the issue and providing additional signage. The promotion requirement will necessitate proactive approaches by all. Although the methods are not specified in the Bill this could be achieved perhaps by undertaking advertising or poster campaigns.

²⁷ Response to Disabled Persons Parking (Scotland) Bill: Public Consultation, Jackie Baillie November 2006)

²⁸ Equal Opportunities Committee, 2nd Report 2006: Removing Barriers and Creating Opportunities

²⁹ Ibid paragraph 1259

58. An inexpensive approach could see local authorities encourage people to report instances of abuse and providing contact numbers for those responsible for carrying out local enforcement. Targeting such action to areas where abuse is recurrent could also be encouraged.

Advisory disabled street parking places

59. The Bill places initial, one off duties, on local authorities with regard to advisory disabled street parking places. It requires local authorities to identify all advisory disabled street parking places in their area. Once identified the local authority must assess if the parking place is still required having regard to whether there is convenient access to the address of a person or organisation which holds a disabled badge and its existing duties under the 1984 Act.

60. If the parking place is still required, the local authority must commence the existing statutory procedure to make an order making the parking place enforceable.

61. Local authorities must have identified those parking places that are still required and started the procedure to make an order in respect of them within 12 months of the Act coming into force.

62. If an advisory disabled street parking place is no longer required, or the order is unsuccessful then the markings or sign posts must be removed. This will lead to all disabled street parking places becoming enforceable.

Applications for disabled street parking places

63. The Bill also provides standard criteria which applicants must meet when applying to local authorities for disabled street parking places. This will ensure a consistency of approach throughout Scotland. The application should be made by the person (or an organisation) holding a Blue Badge or by someone such as a carer or social worker on behalf of the Blue Badge holder. If the person is an individual, the person's address must be the same as the registered address of the registered keeper of a vehicle suitable for the carriage of the person. If the applicant is an organisation, the organisation's address in respect of which the application is made must be the same as the registered address of the registered keeper of a vehicle used by or on behalf of the organisation to carry disabled persons. The local authority has to decide whether it is possible to identify a suitable street parking place in its area which would provide convenient access to the person's or organisation's address.

64. If the criteria are met, and having regard to the local authority's duties under the 1984 Act it considers that it is empowered to do so the local authority identifies a suitable parking place. The local authority is then required to commence the statutory procedure to make an order to make the parking place enforceable and so available for use by any Blue Badge holder. While the procedure to make the order is being processed, the local authority must designate a temporary disabled street parking place which would also be available for use by any Blue Badge holder.

65. If the criteria are not met, then the applicant has to be given the reasons why a disabled street parking place is not being provided.

66. Where a person has more than one home either in the same or a different local authority area, the application criteria could not be met for more than one address under this Bill unless a suitable vehicle were to be registered at each address. However, there would be nothing to stop the local authority considering a situation where there was no vehicle registered at a person's address on a case by case basis and (if they wished to) provide an enforceable space at such an address using their existing powers under the 1984 Act. The Bill does not prevent them doing this although it does stop them creating an advisory one.

Off-street car parks

67. Disabled parking places are found in many off-street car parks in compliance with current planning guidance as well as duties and obligations under the DDA.

68. Where the parking place(s) have been provided either by the local authority or under arrangements made under section 33(4), the local authority, where it considers it has power to do so, must start the statutory procedure to make an order. In so doing they must also take account of their duties under section 122 of the 1984 Act. The local authority has 12 months from the Act coming into force in which to start the statutory process.

69. The local authority also has 12 months from the Act coming into force to identify advisory off-street parking place(s) not provided under arrangements made under section 33(4) of the 1984 Act. The local authority must decide if it would have power to make an order if arrangements could be put in place.

70. For each that it decides that it would have the power they must contact the owners or persons having an interest in the parking place to discuss making arrangements under section 33(4). If arrangements are made the local authority must promote an order to make the disabled persons' off-street parking place enforceable.

71. SPP 17 sets out guidance on the making of these arrangements. The detail of the arrangements, such as costs and duration are not prescribed in the Bill and are left to parties to agree upon.

72. For off-street disabled parking places provided by the local authority, such as those for libraries or leisure centres, the local authority is required to initiate the statutory procedure to make an order to make any disabled persons' parking places enforceable.

Off-street parking within new developments

73. The Bill also covers new developments that are to have car parks to which the public will have access. Where a local authority has granted planning permission for a development or learns of a development for which planning permission has been granted under a development order, the authority is required to seek to make arrangements under section 33(4) with the developer. Thus enabling them to promote an order to make the disabled persons' parking places within the new development enforceable.

74. The Bill requires the local authority to decide if it has the power to make a disabled off-street parking order in respect of the parking place(s) within 3 months of planning permission being granted or, in the case of an approval granted by virtue of a general or special development order, within 3 months of the local authority learning of such a development. If the local authority decides that it does have the necessary power, it must begin to seek to make such arrangements within the same period of three months.

75. If arrangements are made between the parties then the local authority will be required to promote an order. It is hoped that local authorities would aim to have the order in place by the time the development is open for use by the public.

Ongoing duties in respect of disabled off-street parking

76. Every two years from the date the local authority concluded it was unable to make arrangements with a car park owner or person having an interest in the car park, the local authority has 3 months to consider whether, having regard to its other duties under the 1984 Act, it would have power to make an order. If it considers that it would have, then the local authority must, within that period of 3 months, start seeking to make arrangements to make an order.

General duty to review disabled street parking

77. Local authorities have a duty to keep under review the provision of enforceable disabled street parking places in their areas.

Reporting

78. Local authorities will be required to provide, in annual reports to the Scottish Ministers, specific information (sometimes with reasons) about how they have implemented their duties under the Bill.

79. The Scottish Ministers must in turn report to the Parliament on the actions taken by local authorities by local authority area. Reporting to the Parliament in this way will ensure that local authorities are accountable to the Parliament through the Scottish Ministers and the transparency of this approach will allow best practices to be highlighted for other authorities to follow.

Who will be able to use these disabled persons' parking places?

80. Entitlement to use disabled persons' parking places remains unchanged from the existing position. Holders of valid Blue Badges issued by local authorities in the United Kingdom, Northern Ireland or a comparable badge issued by any other member State of the European Union will continue to be permitted to use a disabled persons' parking place.

Enforcement and offences

81. The Bill seeks to make all disabled persons' parking places enforceable so that abuse can be effectively tackled, although its success depends, in part, upon co-operation by private providers of car parks. By increasing awareness that disabled persons' parking places are enforceable, abusers will be more aware that they will be penalised leading to a reduction in abuse.

82. The Bill continues to utilise existing enforcement regimes, including existing levels of fines, issue of penalty notices and appeals processes. It is hoped that local authorities will encourage the public to report abuse allowing effective enforcement to be targeted.

83. In local authority areas where decriminalised parking enforcement (see paragraphs 21 to 23) is in place, enforcement remains the responsibility of the local authority. The local authority will continue to set the level of fines and issue penalty notices. Any appeals in regard to the issue of penalty notices will continue to be heard by the existing established appeals mechanism. The Parking Adjudicator exists statutorily to independently hear appeals.

84. In other local authority areas enforcement will continue to be the responsibility of the Police and Police Traffic Wardens. Appeals against penalty notices issued by the Police or Police Traffic Wardens continue to be matters for the court system.

Revenue from enforcement

85. In local authority areas where DPE is in place, local authorities retain the money collected from the issue of parking notices.

86. In areas where enforcement is carried out by the Police and Police Traffic Wardens money collected from the issue of the penalty notices will continue to be paid to the Treasury subject to a small deduction for administration charges.

CONSULTATION

87. Jackie Baillie prepared a consultation paper³⁰ on her policy objectives which ran from 20 November 2006 until 26 February 2007. Late submissions were accepted and considered.

88. The consultation was issued to 120 interested organisations and individuals. Recipients were encouraged to bring the consultation to the attention of others who they thought might have an interest.

89. A further 80 copies were requested and issued. In addition one copy was supplied in audio format.³¹

90. The consultation document sought information in support of making all disabled persons' parking places enforceable. A total of 172 responses were received of which 90.1% (155) supported this policy objective.

³⁰ Disabled Persons Parking (Scotland) Bill: Public Consultation, Jackie Baillie November 2006

³¹ The Member wishes to record thanks to Cue and Review Recording Service, Glasgow

Breakdown of responses

From	Numbers
Local Authorities	21
Individuals	118
Organisations	32
MSP	1
Total	172

91. In addition the Transport Working Group (TWG) from Fair Deal³² organised a petition in support of the principles of the proposal and collected over 3000 signatures.

92. Of the 82 respondents who answered the question “*what are your views on disabled persons' parking spaces in private car parks, such as supermarkets, being enforceable?*” 91.5% agreed that they should be made enforceable. Many indicated that it was essential that these spaces be included. One respondent concluded that enforcement in these areas is a “*key aspect of accessibility*”.

93. There was a varied response to the question “*What are your views on enforcement issues or do you have any alternatives to the enforcement method proposed?*” with 35.3% of those answering supporting the proposed option. Further examination of existing enforcement methods shows that where actively promoted by the police and wardens they work well. These include established tried and tested ticketing procedures and appeal processes.

94. Responses received to other consultation questions show the majority agreeing that local residents must be afforded an opportunity to object to enforceable parking proposals that could affect them. There was a varied response about the appropriate fine level with the majority who indicated a figure suggesting £30 or £60 reducing to £30 for early payment, much in line with existing fine levels. The Bill makes no changes to the current level of fines.

95. A quarter of those who answered the question “*Do you have any other comments or views on the issue of making all disabled persons' parking bays enforceable?*” agreed that all bays should be enforceable. Others also agreed, making suggestions about record keeping by local authorities and road markings.

96. Finally, several respondents including local authorities and ACPOS expressed the view that should the Bill become law a high profile public education campaign would be necessary. The campaign should:

- inform the public of changes to the law; and
- highlight the problems caused for disabled people and their carers when there are no available car parking spaces close to amenities.

³² The TWG aims to improve transport for adults and children with disabilities in Glasgow. [Fair Deal : Transport Working Group](http://www.fair-deal.org/default.aspx?id=257&n=223&cid=0&rid=0), <http://www.fair-deal.org/default.aspx?id=257&n=223&cid=0&rid=0>

97. As work to develop the Bill has progressed it has become evident that the principal issues in relation to disabled persons' parking places are:

- Enforcement of advisory spaces
- Places in private car parks such as supermarkets
- A proactive approach to disabled persons parking places by authorities.

98. Having considered the consultation evidence and the existing enforcement mechanisms the Member determined that these are the main areas requiring action in the Bill.

Abuse of the Blue Badge Scheme

99. The responses to the consultation document on the proposal for this Bill indicated that there is a strong perception that the Blue Badge Scheme is abused. In particular that it is abused in three main ways; the first by people who have misrepresented their disability to obtain a Blue Badge. Secondly there is the perception of abuse around people who legitimately have a Blue Badge but allow others to use it. Finally abuse in relation to the "market" for fake Blue Badges using stolen or copied ones.

100. The Bill does not seek to make any changes to the administration or enforcement of the Blue Badge scheme, such an approach being outwith the scope of the Member's proposal. It is recognised that such issues require to be addressed and the following paragraphs set out existing provisions and actions to combat abuse of the Blue Badge Scheme.

101. There are existing powers in place allowing for the inspection of Blue Badges by the Police, Traffic Wardens and Parking Attendants to combat abuse of the Blue Badge Scheme.³³ Existing offences are available to deal with the general misuse of Blue Badges³⁴.

102. A review of the Blue Badge Scheme is being carried out by the Department for Transport³⁵ in England and Wales. This review is looking at eligibility, concessions, administration and enforcement as well as making public transport more accessible to disabled people giving them an alternative to the car. In respect of administration and enforcement the review is looking at ways of improving the scheme and reducing opportunities for abuse, in particular the use of lost, stolen, duplicated or forged badges, and the misuse of Blue Badges by relatives and friends.

103. It is anticipated that when the result of the consultation by the Department of Transport is published Scottish Ministers will take cognisance of the outcomes. Action taken may address some of the concerns raised in responses to the consultation on the Bill.

³³ Section 73 of the Transport (Scotland) Act 2001 (asp 2) which amends the Chronically Sick and Disabled Persons Act 1970 (c.44).

³⁴ section 117 of the Road Traffic Regulation Act 1984 (c.27) as amended by section 35 of the Road Traffic Act 1991 (c.40).

³⁵ Consultation on Developing a Comprehensive Blue Badge (Disabled Parking) Reform Strategy Department of Transport, (24 January 2008)

ALTERNATIVE APPROACHES

104. There were two alternative approaches considered following the results of consultation.

Approach set out in the consultation

105. The consultation suggested simplifying the process by which orders were made and, as a result of which, disabled persons' parking places were capable of being enforced.

106. Any new statutory process for the creation of parking places would, in order to meet ECHR requirements, inevitably take a similar time to making an order. It would also mean that there would be two separate processes for making parking spaces enforceable, a new one for disabled persons' parking places and existing orders for other parking places. This would likely cause confusion. By using the existing order making process the Bill is harnessing existing legislation.

107. The responses to the consultation indicated a high level of support for making all disabled persons' parking places enforceable and the Bill seeks to do this, where the necessary agreements with private providers can be secured. Utilising existing powers and processes that local authorities already have in place provides consequential savings of both time and money.

Retain the status quo

108. The second option was to retain the status quo. Such an approach would be contrary to the wishes of the majority of consultation respondents. All of this evidence set out in paragraphs 34 to 38 on the abuse of disabled persons' parking places which demonstrates that action to address abuse is urgently required.

109. Existing discretionary powers are available to local authorities through the provisions of the RTRA. The RTRA gives powers to local authorities to promote orders to provide both street and off-street parking places. Where local authorities fail to promote orders, the Scottish Ministers have the powers to make the order themselves.

110. The consultation responses suggest that the discretionary use of RTRA powers are not working. Anecdotal evidence reinforces that impression and there are no official statistics or information that suggest otherwise.³⁶

111. Given the inaction to date it is clear that abuse of disabled persons' parking places has not been seen as a priority for action by some local authorities or the Scottish Ministers, despite there being ample existing powers.

112. Exceptions include West Dunbartonshire Council and Inverclyde Council³⁷ who took steps to make all advisory disabled persons' parking places enforceable. West Dunbartonshire

³⁶ Government answers to the Member - PQ's stating that no information is held centrally (S3W-4992 to SW3-4996)

³⁷ Anecdotal evidence provided to the Member by Inverclyde Council

Council indicated in 2006³⁸ that they had undertaken work to promote orders for all known advisory parking places in residential areas, learning from an approach adopted by Inverclyde Council.

113. Some consultees expressed a concern that if parking places in private off-street car parks were made enforceable owners or operators would remove them. To do so would in all probability breach planning conditions and disability laws. Recent developments also suggest the opposite approach. More and more supermarkets and owners or operators of private car parks are recognising that the abuse of disabled persons' parking places is a problem and one they must address. Asda are taking steps to enforce their car parks and more off-street parking providers are considering following suite and introducing enforcement carried out through private companies.

114. The action of these supermarkets and other private owners and operators is to be applauded. However it is not without difficulties and while such action will raise awareness and help prevent abuse of disabled persons' parking places the enforcement system they are using has neither statutory regulation nor an independent appeals process. The Bill utilises an existing system of regulation used throughout Scotland and other parts of the United Kingdom and in doing so ensures that appeals are heard by either the Courts or statutorily appointed independent adjudicators.

115. The approach taken in the Bill will ensure that disabled persons' parking places are given increased priority and the needs of disabled people prioritised.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

The disability equality duty

116. The overriding purpose of the Bill is to encourage the observance of equality of opportunity between disabled and non-disabled users of motor vehicles in relation to parking. To a great extent, it requires local authorities to use the existing powers they already have to secure that. Its purpose is not to provide further regulation or prohibition of discrimination by imposing additional duties on service providers to make particular adjustments for disabled people.

117. Regulations made under the DDA require the Scottish Government and all local authorities to demonstrate how they are meeting their duties under the DDA. In effect the DDA's general duty sets out what authorities have to do; while its specific duty sets out how they do it and what they need to record as evidence of what they have done.

118. The Bill compliments the requirements on local authorities (and Scottish Ministers) under the DDA particularly in relation to promoting disability equality, eliminating discrimination and encouraging disabled people's participation in public life. The reporting, reviewing and revision

³⁸ Information provided to Member by 26 Local Authorities. February 2006

requirements on local authorities' Disability Equality Schemes will support the Bill's provisions. The Scottish Parliament will be able to monitor progress and identify best practices through reporting requirements.

119. Local authorities should be able to refer to the work being undertaken as part of their Disability Equality Schemes in relation to these requirements.

Human rights

120. The Bill makes provision for matters relating to promoting the proper use of disabled parking places and the regulation of car parking for disabled badge holders. In doing this the Bill neither confers nor removes any rights to the provision of parking spaces for any individual and thus makes no provision that interferes with any person's rights.

121. The Bill does provide for the removal of existing "advisory" parking places but no person has a "right" to such a parking place. They are currently provided at the discretion of local authorities but the making of a parking place does not confer any rights on the individual who may have applied for it.

122. Consideration was initially given to requiring all off-street parking places under private ownership to be made enforceable. As this would be a deprivation of property the alternative approach set out in the Bill requiring local authorities to seek to make (voluntary) arrangements with private owners was adopted.

Island communities

123. There may be less immediate impact on the Western Isles as they have stated³⁹ that they have no residential advisory bays because there is no current demand for them due to availability of parking.

Local government

124. Local authorities will be required to draw together information on all street and off-street disabled persons' parking places although most of this information should be held within departments, as should information on planning applications. The efficient use and sharing of the information they hold is the key to keeping impact down.

125. Local authorities will also be required to seek to make arrangements with owners or persons having an interest in private car parks, this would enable them to make orders in respect of disabled persons' parking place within these car parks.

126. There will be an impact on local authorities in relation to the number of Orders they are required to promote. However it is noted that West Dunbartonshire Council in 2006 began to make all street disabled persons' parking places enforceable within existing budgets using

³⁹ Information provided to Member by 26 Local Authorities. February 2006

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existing resources. Again it is important that local authorities evaluate/identify the most efficient means of using the order making process and carrying out the installation work.

127. As set out in paragraphs 116 to 119 above compliance with the provisions of the Bill will contribute to the work undertaken by the local authority under their Disability Equality Schemes.

Sustainable development

128. The Bill will help towards building a sustainable community working towards ensuring that the community is well served and that it has public, private, community and voluntary services that are appropriate to people's needs and are accessible to all.

129. In conclusion the Member believes that any impacts of the Bill on all of the above areas are outweighed by the effect it will have on the lives of disabled people.

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

POLICY MEMORANDUM

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