

Proposed Regulation of Dropped Kerbs and Pavement Parking (Scotland) Bill



Ross Finnie MSP

Consultation Paper

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Regulation of Dropped Kerbs and Pavement Parking (Scotland) Bill

Foreword

Unfortunately, cars parked across a dropped kerb or on a pavement are a common sight across Scotland. Far too many people just don't realise the difficulty they cause people with mobility issues, especially wheelchair users and parents with pushchairs.

Many constituents have told me first hand of their frustration at not being able either to travel along the pavement freely due to a parked car or, in the case of wheelchair users, of their dismay at being unable to get off or on a pavement at a dropped kerb due to a parked car. For many an inappropriately parked car can be an irritation but for those who are wheelchair users, have mobility issues and have young children in pushchairs the situation is an unnecessary difficulty.

Part of the problem is that "no parking" restrictions at the majority of dropped kerbs and on pavements have not been put in place. Amongst the reasons for this lack of enforcement is that whilst some dropped kerbs form part of an area of wider parking restrictions many do not.

The purpose of my proposed Bill therefore, is to require local authorities to bring forward measures to assess and, where appropriate, enforce dropped kerbs or pavements within their jurisdiction.

I am grateful to Living Streets and Inverclyde Council on Disability who have assisted in the drafting of this proposal and who will continue to be involved closely in the Bill's development.

I commend my proposal to you. Your input will be extremely valuable so that we can, together, shape a Bill that will help to transform the regulation and enforcement of dropped kerbs and pavements across Scotland.



Ross Finnie MSP



Introduction

This is the consultation paper on a proposed Regulation of Dropped Kerbs and Pavement Parking (Scotland) Bill. This Bill will seek to encourage local authorities across Scotland to put in place “no parking” restrictions at dropped kerbs or on pavements and thus encourage the universal introduction of such measures.



Last year a local campaign group, Inverclyde Council on Disability (ICOD), raised with me the issue of the increasing incidence of motor vehicles being parked either across a dropped kerb or on the pavement. This problem was of most concern to the wheelchair users in the group who found their mobility unnecessarily restricted. Another campaign group, Living Streets, also reported similar problems experienced by its members and since then I have been researching the extent of the problem.

The regulation of dropped kerbs and pavement parking across Scotland is varied. In some areas, dropped kerbs and pavements, are protected by a Traffic Regulation Order (TRO) with the attendant signage and double yellow lines. The effect of a TRO is to make it illegal to park on or over a dropped kerb or pavement with the driver subject to a fixed penalty notice. In most areas in Scotland, however, this is not the case with the vast majority of dropped kerbs and pavements not protected by TROs. While the existence of a TRO does not guarantee pedestrians unrestricted access to a dropped kerb or pavement the absence of a TRO exacerbates the situation and allows selfish drivers to assert, if challenged, “It’s not against the law”.

My Bill will seek to address this problem and allow everyone easier access to travel down the street.

This consultation paper sets out the background to the issue, making the case for change and explaining the way forward. After reading this you are invited to respond to a series of questions to assist me in finalising the approach I will then propose.

The Highway Code and the Regulatory and Statutory Framework

The following paragraphs give a brief summary of the guidance within the Highway Code and regulatory and statutory provisions as they apply to parking over dropped kerbs and on pavements.

In relation to dropped kerbs, the Highway Code clearly states at rule 243: “Do not stop or park where the kerb has been lowered to help wheelchair users and powered mobility vehicles.”

In relation to pavements rule 244 states:

“you must not park partially or wholly on the pavement in London, and should not do so elsewhere unless signs permit it. Parking on the pavement can obstruct and seriously inconvenience pedestrians, people in wheelchairs or with visual impairment and people with prams or pushchairs.”

This rule of the Highway Code refers to London because there it is illegal to park on the pavement, unless signposts indicate it is permissible.

Local authorities have powers under the Road Traffic Regulation Act 1984 to make TROs to restrict or prohibit, amongst other things, parking at a specified street or road or part of a street or road. The local authority must set out the reasons and the likely effect of the proposed TRO, advertising the proposal in the local press, publishing it on its website and making the draft order available for inspection at various local authority offices. The public has 21 days in which to lodge a formal objection. All objections must be considered by the relevant local authority. If the TRO needs to be modified further consultation may be required. The whole process can take many months and the advertising and legal fees can be substantial. After considering any objections, authorisation can be given for the TRO to be granted.

From 1 June 2009, as a result of Regulations made under the Traffic Management Act 2004, all councils in England and Wales have powers to introduce blanket Special Enforcement Areas covering vehicles that park on dropped kerbs or double-park without a requirement to provide specific traffic signs or road markings. These Regulations do not apply to Scotland regulations.

Under section 129(5) of the Roads (Scotland) Act 1984, it is illegal to drive on the pavement but the position is less clear with regards to casual or occasional parking on the pavements. Police have powers under section 137 of the Highways Act 1980 which makes it an offence to wilfully obstruct the free passage of the highway but from anecdotal evidence, the police rarely take enforcement action on cars parked on pavements. This lack of clarity in relation to the law on parking on pavements is unhelpful to pedestrians, drivers and the police.

As noted above, the situation is very different in London. Pavement parking is illegal under the Greater London Council Act 1974 and this is enforced through a decriminalised parking regime. Pavement parking is only allowed where a TRO expressly permits it.

Extent of the Problem

The research conducted preparatory to issuing this consultation revealed considerable public frustration at the current situation and the following quotations illustrate the main points of concern—

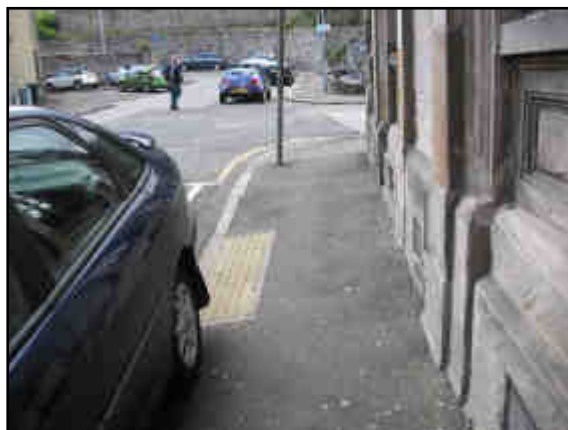
“Dropped Kerbs are a necessary life line for members of our community who have mobility and visual impairments, the elderly and people using pushchairs. Blocking these dropped kerbs causes major difficulties for those who rely on the provision of dropped kerbs. Dropped kerbs are in place for the more vulnerable members of our community and when these are blocked, those who use these feel extremely vulnerable, unsafe and frustrated. It is extremely important that we ensure that appropriate actions are taken to ensure that these dropped kerbs are maintained and kept free from obstacles and hazards and can be used for their intended purpose. We believe that everyone should have the freedom and choice to access services and engage with their community effectively. We feel that it is a waste of resources if dropped kerbs are going to be obstructed and are unable to be used for their intended purpose.”

Inverclyde Council on Disability Vice Chairperson, Johanna Stewart.

“Blocking pavements and dropped kerbs causes major difficulties to more vulnerable members of society including the elderly, those with mobility or visual impairments, those who require wheelchairs and people pushing prams. Parking on the pavement damages the surface, leading to more trip hazards and costing us all more money in repairs and maintenance. With an increasingly elderly population, more cars on the road and less money for maintenance, it is essential we take practical steps to tackle this parking practice and ensure our streets can be used by the whole population.”

Keith Irving, Living Streets Scotland

Charles Lacaille, Blairgowrie: “When I lived in Comrie near Crieff in Perthshire, it was quite common to find the pavement was completely or almost completely blocked by a vehicle. These were frequently a delivery van or a trades van. Women with prams were having to leave the comparative safety of the pavement to get round the obstacle. The drivers seemed to be quite oblivious to the danger their behaviour was causing.”



ICOD Member 3 “I am a manual wheelchair user and have been experiencing the problem with dropped kerbs being blocked by parked cars for many years. Services have spent a huge amount of time planning, and money installing dropped kerbs to make communities accessible for disabled people and unfortunately our communities and services are still inaccessible due to cars being parked over these dropped kerbs. These issues cause a lot of frustration and inconvenience for disabled people. I think that it should be an offence and drivers should be fined for parking over dropped kerbs that services have spent all this time and money installing and these fines should be put towards installing more dropped kerbs. Communities should be accessible for all who live within the community not just those who are able bodied.”

Joe Allan, East Kilbride: “I object when motorists use of the pavement for parking prevents me making use of it. It is a particular inconvenience to the disabled. There are many cases where vulnerable groups do not object because they are afraid of “retaliation” by the motorist.”

ICOD Member 8: “I am a powerchair user and on several occasions I have been able to get onto pavements via dropped kerbs however I have then been unable to dismount the pavement due to dropped kerbs being blocked, this has resulted in me having to cancel my prior engagements or make a round about trip on many occasions and also travel on the road. I think that it’s ridiculous that dropped kerbs are installed to improve the quality of life and independence for disabled people however it is being taken away by drivers parking their cars over dropped kerbs.”

Lynne Harrower, Bilston, Midlothian: “As a mum I sometimes can’t get past with the buggy and have to go on the road which is not safe for the child. People in wheelchairs have to double back as they can’t get off the kerb in that area.

ICOD Member 11: “I am a manual wheelchair user and also a member of a social planning group for disabled people in Inverclyde. We organise social outings locally such as scooter/wheelchair rambles where members can use mobility equipment and visit places within Inverclyde, we plan the routes around dropped kerb access routes. The groups look forward to these outings however we always face the barrier on the day of the events that these dropped kerbs are blocked by inconsiderate drivers. On several occasions we have had to re-route the ramble and have had to cancel where we were intending on visiting. Our groups get very frustrated and disappointed that we are unable to access the same premises as other members of the community due to this issue that could be easily rectified by making it an offence to park over dropped kerbs. Our groups have also experienced great frustration due to blocked dropped kerbs when trying to attend local events such as The Pipe Band Championships, Fireworks Display and other locally organised events. It is extremely frustrating that disabled people experience great difficulties accessing local areas and local events due to blocked dropped kerbs. We feel that it is our right to be able to have the ability to engage with our community as effectively and as stress free as possible.”

Mrs Cook, Edinburgh: “We regularly come across cars completely blocking our access along the pavements outside our house, forcing us right out into the road to get past and into the path of fast moving traffic including trucks. It is really frightening and dangerous, especially with a tiny baby or for parents with toddlers too, an accident just waiting to happen-yet nobody seems able to help. The police just pass you on to the council and the council say they cannot do anything.”

The expressions of frustration I have heard reflect five broad problem areas:

- (1) A lack of respect on the part of motorists for the problems caused especially to wheelchair users, mobility scooter drivers and those with pushchairs by parking across a dropped kerb or on a pavement.
- (2) The fact that many dropped kerbs and pavements are not controlled by a TRO and therefore pedestrian access cannot be enforced.
- (3) Inconsistencies both within a local authority area and between different local authorities. Some have TROs on several dropped kerbs and pavements and other local authorities have almost none. This leads to confusion on the part of both drivers and the public: drivers are unclear as to whether or not they are committing an offence and pedestrians are confused as to whether or not they can seek the assistance of the law to enforce access.

(4) A lack of clarity as to the enforceability of the law in relation to parking on pavements under section 137 of the Highways Act 1980 causes Police forces across Scotland not to enforce parking on pavements.

(5) The current process for putting in place enforceable no parking restrictions at dropped kerbs and on pavements is time consuming and costly and is burdensome when applied to individual dropped kerbs and pavements. Creating a TRO entails the initial designation and design, statutory periods of advertisement and consultation and the provision of road marking and street signage. On average it can take between 9 and 12 months from design of a TRO to its actual implementation.

Objective of proposed Bill

The objective of the proposed Bill is to enforce parking restrictions across dropped kerbs and on pavements in such a way as will support the introduction of such measures universally across Scotland.



It is envisaged that under the proposed Bill each local authority would seek to introduce widespread bans on parking at or on existing dropped kerbs and pavements and decide whether it wished to exempt certain dropped kerbs and/or pavements or, for example, make exceptions for temporary loading and unloading of goods vehicles. Having decided on its exceptions, the Bill would require a local authority to seek to introduce a TRO in respect of all other dropped kerbs and pavements under its jurisdiction. This would allow the parking restrictions to be enforced using fixed penalty notices.

Facilitating the prohibition of parking at dropped kerbs and on pavements will be of benefit to all of the Scottish public, it will be especially beneficial to elderly people and wheelchair users and the increasing numbers of those who use powered mobility vehicles, and it will also benefit all those with prams and pushchairs.

Local authorities will benefit from the clarification the Bill would bring in relation to parking on dropped kerbs and pavements. There should be savings for local authorities in reduced costs of repairs to dropped kerbs and pavements damaged by cars parking on them. Local authorities and the police would also benefit from greater clarity in the law as regards the offence of parking on a pavement.

Conclusion

The blocking of dropped kerbs and pavements parking can greatly affect the mobility of all people but especially those in self-propelled wheelchairs or with young children in a pushchair. The proposed Bill aims to improve the situation for these people using a straightforward method to enable local authorities to make all dropped kerbs and pavement parking enforceable. It aims to make the situation more consistent across Scotland and clearer for both pedestrians and drivers.

Thank you for taking the time to read this consultation and I hope you have been convinced that there is a strong need to prohibit parking on dropped kerbs and pavements in Scotland. I would now ask you to please respond to this consultation paper by answering the questions below and making any other comments that you consider appropriate.

Questions

1. What would the benefits be of having parking enforced at dropped kerbs and on pavements?
2. My proposed Bill would mean widespread restrictions on parking at or on dropped kerbs and on pavements in Scotland. What are your views in this?
3. What, if any, difficulties do you envisage in using the existing TRO system to cover wide areas?
4. The proposed Bill would suggest Fixed Penalty Fines along the lines of existing parking fines to be used to enforce restrictions. Do you have any alternative approaches?
5. What would you suggest is a suitable level of fine and why?
6. What costs will arise as a consequence of this proposal?
7. What equality issues arise from this proposal?
8. Please make any other comments or suggestions that you consider relevant to this proposal.

Responding

You are invited to respond to this consultation by answering the questions as well as making any other comments you consider to be relevant.

Responses which should be submitted by 31 January 2011 should be sent to:

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Email: ross.finnie.msp@scottish.parliament.uk

If responding via email please ensure you mark the subject title as “response to consultation.”

Please also make it clear if you are responding as an individual or on behalf of an organisation.

To help inform debate on the matters covered by this paper and in the interests of openness it is intended all the responses submitted on this consultation document will be made public. You should therefore be aware that by submitting this response you are indicating consent to the publication of all the material contained in your response. Unless you indicate otherwise this will include your name and address and any other biographical information you have provided about yourself. You should note that personal data referring to third parties included in the response cannot be accepted without explicit written consent from the third party. This consent should be provided with your response. I am not entitled to process your personal data by publication without your consent. If therefore you want parts of your response to remain confidential please indicate which parts are not for publication. Similarly, if you wish all of the contents of your response to be treated in confidence and not made public then please indicate so.

All responses will be included in any summary or statistical analysis. However, if you have asked for your response to be treated in confidence, I will not identify you individually in any summary or analysis.

You may also wish to note that your response may be analysed and summarised by the Non-Executive Bills Unit at the Scottish Parliament and therefore the information you have provided may be subject to requests made under the Freedom of Information (Scotland) Act 2002.

Additional copies of the paper or alternative formats can be requested using the contact details above and calls via Typetalk are welcome. An on-line copy is available on the Scottish Parliament website www.scottish.parliament.uk

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