



Disabled Persons Parking (Scotland) Bill

Public Consultation

by

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FOREWORD

How often have you parked in a disabled persons parking bay because you only wanted to "nip in" to the supermarket or a high street shop just for a few seconds? After all, what harm can it do?

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.

The problem currently is that the majority of bays are not legally enforceable, in other words, you are not penalised for parking in them if you do not have a disability. The reason for this is often cited as being the long, complex and costly process which a Council has to go through to designate a legally enforceable disabled parking bay.

The purpose therefore of my proposed bill is to simplify the process and ensure that any disabled parking bay, whether it is on-street, in a private car park, or in a residential area, is capable of being enforced.

I am grateful to the members of the Reference Panel - the Disability Rights Commission, Cosla, Councillor Maceira, the Scottish Disability Equality Forum, Strathclyde Partnership for Transport and Inclusion Scotland - that have acted as a sounding board for the proposal and will continue to assist me in the bill's development.

And finally, 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 everyday experience of disabled people.

Best wishes

A handwritten signature in dark ink, appearing to read 'J Baillie', written over a faint circular line.

Jackie Baillie MSP

INTRODUCTION

1. I intend to prepare for introduction a Disabled Persons Parking (Scotland) Bill in the Scottish Parliament.
2. This Bill will seek to make all disabled persons parking bays legally enforceable. This would mean anyone caught abusing a disabled persons parking bay could be fined.
3. At present, disabled persons parking can be either advisory or enforceable. This difference creates a problem for disabled people as drivers who are not disabled or who do not have a disabled passenger frequently use advisory bays. Currently there is no way to stop this practice. My bill seeks to address this problem.
4. My bill has the potential to bring many positive changes to the lives of disabled people. More assurance of accessing a parking space both on a trip and when they return home will allow disabled people to participate in typical day to day activities such as shopping at the supermarket. I know that this will contribute to a better quality of life for disabled people.
5. This consultation paper sets out the background to the issue, makes the case for change and explains the way forward. After reading it, you are invited to respond to a series of questions to assist me in finalising the approach I will then take.

BACKGROUND

Disabled parking needs in Scotland

6. There are an estimated 1 million disabled adults resident in Scotland.¹ This is equivalent to about one in five of the population. Of this 1 million, 96,000 are NHS registered wheelchair users.²
7. The most accurate indicator of those needing access to disabled persons parking bays in Scotland is the number of registered Blue Badge holders. The most recent figures suggest there are 223,995 registered Blue Badge holders. This figure from 2004 is a 6.8% increase on the 2002 figure.

The Blue Badge Scheme

8. 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 either as drivers or as passengers. The concessions only apply to on-street parking and include free use of parking meters and pay-and-display bays. The Blue Badge scheme does not apply to off-street car parks, private roads or most airports.

¹ Disability in Scotland 2004 published by the DRC Scotland

² Disability in Scotland 2002 published by the DRC Scotland

Disabled persons parking bays

Advisory disabled persons parking bays

9. Advisory disabled persons parking bays are bays marked with white lines. They are most common in residential areas and private car parks. No penalty can be imposed on drivers of cars not displaying a Blue Badge who abuse them.



Enforceable disabled persons parking bays

10. Enforceable disabled persons parking bays are bays marked with a yellow box. These bays are for use only by Blue Badge holders. Fines, up to a maximum of £1000, can be imposed by the police, traffic wardens and parking attendants for misuse of these bays.

Traffic Regulation Orders (TRO)

11. Enforceable disabled persons parking bays are designated by Traffic Regulation Orders (TRO). The making of a TRO is a statutory process which begins with a public consultation period. Following this, the proposed TRO will be advertised in the local press for 21 days during which time formal objections can be raised. Any objections must be reported to and considered by the relevant local authority officials and elected members. If the TRO needs to be modified, further consultation may be needed. This process can take many months and the advertising and legal fees can be substantial. After considering any objections, authorisation can be given for the bay to be created.

Parking enforcement in Scotland

12. It is useful to understand the difference in parking enforcement in certain areas of Scotland. In 26 local authorities parking is enforced by police

traffic wardens or if required by the police themselves. The penalty for the misuse of a disabled persons parking bay carries a maximum fine of £1000 and is enforced through the court.

13. The remaining 6 local authorities have used their powers to decriminalise parking and parking is enforced by parking attendants. This operates in Edinburgh, Glasgow, Perth and Kinross, Dundee, South Lanarkshire and Aberdeen.
14. Under decriminalised parking, local authorities can employ parking attendants to enforce the majority of parking restrictions such as pay and display meters and yellow lines. As enforceable disabled persons parking bays are marked with yellow boxes, parking attendants are able to issue Penalty Charge Notices (PCN) to anyone abusing these bays.
15. Local authorities retain the revenue from the PCNs.
16. The parking enforcement agency in each local authority has the right to decide on an appropriate fine up to a maximum of £1000. From my research, the normal parking fine for parking illegally in a disabled persons parking bay is £30 initially and £60 if unpaid for 21 days.³

Locations of disabled persons parking bays

On-street

17. Generally most on-street disabled persons parking bays are in town centres and are enforceable. This means that a Blue Badge must be displayed or an offence has been committed and this can result in enforcement of the bay with fines.
18. It is left to each local authority to determine by designating them through TROs which on-street disabled persons parking bays are enforceable.

Residential

19. Local authorities can respond to requests from disabled people for a parking bay outside their home. To qualify for a residential parking bay, disabled people must meet certain criteria set out by the local authority.
20. The resultant residential parking bays are more likely to be made advisory rather than enforceable, the reasons for which are expanded on in paragraph 39 below.

Private parking

21. The provision of disabled persons parking bays in private car parks differs from that of residential and on-street parking. In terms of provision, owners of private car parks are obliged under planning guidance to provide a

³ Dumfries and Galloway, Glasgow City, Aberdeen and Perth and Kinross have set the fine at £30. Scottish Borders has set their fine at £10 (and £20 if unpaid within the first 21 days).

certain quantity of disabled parking spaces.⁴ Disabled persons parking bays in these areas are generally advisory.

22. The Disability Discrimination Act 1995 suggests that disabled car parking facilities should be monitored.⁵ However, there are no definitive guidelines as to how strictly this parking must be monitored.



PROBLEMS ARISING WITH ADVISORY DISABLED PERSONS PARKING BAYS

Extent of the problem

23. Approximately 85% of current on-street and residential parking bays are advisory meaning that they can be used by anybody regardless of need or disability without enforcement action being possible.
24. Disability rights organisations Baywatch and Capability Scotland have highlighted abuse of disabled persons parking bays on privately owned and public land.
25. Since 2003, Baywatch has surveyed the parking facilities in the big four UK supermarkets. Volunteers check cars parked in disabled persons parking spaces to see if they are displaying a Blue Badge in the windscreen. If no Blue Badge is displayed, the car is counted as abusing the parking space.
26. Their 2005 survey, conducted across 600 car parks, showed that 1 in 5 (20%) of disabled persons parking bays were occupied by vehicles not

⁴ See SPP 17 at <http://www.scotland.gov.uk/Publications/2003/03/16618/19267#6>

⁵ See www.opsi.gov.uk for details of the Disability Discrimination Act 1995

displaying a valid Blue Badge. A high abuse rate can result in no disabled persons parking bays being free for disabled people.

27. In 2003, Capability Scotland conducted a 16 day experiment which saw disabled 'mystery shoppers' visit shopping and leisure facilities across Scotland.⁶ The 'Mystery Shoppers' had a range of disabilities: just over half (53%) were wheelchair users, 36% had a mobility problem and around one in ten had a hearing disability or learning difficulties.
28. These 'mystery shoppers' were asked to comment on the parking facilities of the shops. The results showed that one in five shoppers found no disabled parking within walking distance of the retailer/other outlet. Where parking facilities were available, vehicles not displaying a Blue Badge were using 44% of the spaces.

Inconsistencies

29. As it is left to each local authority to determine which disabled persons parking bays are advisory and which are enforceable it is inevitable that standards will vary between local authority areas and the rules for parking are not clear and consistent throughout Scotland. This lack of standardisation creates a situation where the numbers of advisory and enforceable bays vary substantially between local authorities.

What this means for disabled people

Confusion for drivers

30. Effectively the lack of standardisation across local authorities means that access to disabled persons parking bays relies on the differing enforcement policies of each local authority area. This leads to uncertainty for disabled people as to whether they will be able to park.
31. It also means as disabled parking restrictions and enforcement differ both between and within local authority areas that drivers who are not entitled to use disabled persons parking bays are more likely to do so as they know there is very little risk of them being penalised.

Access to services and facilities

32. In practice disabled people often have difficulties accessing shops and facilities in or around town centres as the disabled persons parking bays that are provided are often advisory, likewise so are the disabled persons parking bays provided in out of town car parks at retail parks and leisure facilities. The advisory bays are open to abuse by able bodied people, while disabled people are left to cope with walking a considerable distance to get to the shops and facilities and the same distance to return carrying their shopping. This can prohibit or even prevent disabled people from accessing facilities and services and participating in day to day activities that others take for granted.

⁶ A total of 118 mystery shops were completed between 23rd August - 8th September 2003.

33. Abuse of advisory disabled persons parking bays on private land is not enforced by the police, police traffic wardens or parking attendants, enforcement is left to the owner of the car park. Should a disabled person complain to for example, a supermarket that a vehicle not displaying a Blue Badge has been parked in a disabled bay, an employee of the store could only ask the driver to move their car from the disabled bay, they will not be in a position to legally insist on it.⁷ In some instances the owners of the private car park are reluctant to take action against people abusing disabled persons parking bays as shown in the case study below.

Case Study A

Mrs. A went to her local supermarket where there are at least 8 disabled bays. All were occupied by non-disabled drivers. She drove around for 30 minutes before she could park in a disabled bay and when she reported this to supermarket staff she was told that they did not want to challenge customers to park elsewhere in case they lost their business.

Parking at home

34. Disabled people with access to a residential disabled persons parking bay near their home can be put off leaving home unless it is absolutely necessary in case an unauthorised vehicle is parked in the bay. Not being able to access a parking bay close to their home could leave them struggling to their front door from some distance. Subsequently after having been forced to park some distance from their home they will also struggle to venture out again. They may want to ensure their car is parked close to home should they need it in an emergency and subsequently due to the risk of illegal parking only leave when it is absolutely necessary.

Case Study B

Mr. B did not have access to his disabled parking bay outside his home for three weeks when a neighbour parked in his disabled parking bay and went on holiday. He was virtually housebound as he did not want to run the risk of not being able to get an alternative parking spot in a busy residential street.

Case Study C

Mrs. C has osteoarthritis in both knees, hips and feet. She walks slowly and painfully with the aid of two sticks. She has been allocated a courtesy disabled parking bay many years ago by the Council because she is a Blue Badge holder. A new neighbour moved in almost 4 years ago and has consistently parked in her disabled persons parking bay. Despite the intervention of the Local Authority and the Police, her neighbour carried on parking as the bay could not be legally enforced. Mrs. C is "at her wits end".

35. Concerns and uncertainties over disabled parking facilities both near their home and at their destination prevent disabled people from leading normal lives. They face serious restrictions in day to day activities such as

⁷ [The Blue Badge parking scheme : Directgov - Disabled people](#)

shopping or visiting friends and family. At a more serious level it can cause difficulties in attending medical appointments.



What's currently preventing local authorities tackling the problem?

36. The main issue preventing local authorities tackling the problem is the process to make disabled persons parking bays enforceable is both lengthy and costly.
37. As outlined in paragraph 11 above the making of a TRO is a statutory process containing statutory periods of advertisement and consultation. On average it can take between 9 and 12 months from design of a TRO to its actual implementation. Research has shown that it can take up to 2 years to complete the process of enforcing a disabled persons parking bay under a TRO.⁸ This is a long time for a disabled person to have to wait for a designated parking bay.
38. Therefore most residential disabled persons parking bays are made advisory because this can be done relatively quickly, usually in a matter of

⁸ Information provided by Argyll and Bute Council

weeks. The downside is that these bays are not enforceable and abused with impunity.

39. In addition by having residential disabled persons parking bays as advisory greater flexibility is provided. For example, people often move house and advisory disabled persons parking bays can easily be removed and recreated at the new address. If the residential parking bay was an enforceable one then the existing TRO would require to be revoked and the application process for a TRO at the new address set in motion. The disabled person and local authority would again face the lengthy and costly process of implementing a new TRO.
40. Information provided by local authorities show a range of costs for implementing TRO's. Estimated figures received from local authorities indicate it can cost from £300,000 to make around 2500 bays enforceable while the cost of one block TRO to make 410 bays enforceable costs £5000. Unless the local authority concerned has decriminalised parking then all monies raised from enforcing these bays goes directly to the Treasury. Essentially there is no real incentive for local authorities to make disabled persons parking bays enforceable.

DETAILS OF PROPOSAL

41. My proposal for a Bill would introduce a straightforward method to enable local authorities to make all disabled persons parking bays enforceable. In practice this would mean that anyone parking in a disabled persons parking bay without the proper authorisation would be liable to receive a penalty. The new enforcement regime proposed would be more effective and less time consuming.

Consultation on the making of disabled persons parking bays

42. I believe that in residential areas input should be sought from neighbours prior to an enforceable disabled persons parking bay being created. Disabled people will continue to apply to the local authority for the creation of residential bays; if the application meets the required local authority criteria then the local authority will issue notification of the proposed bay to immediate neighbours. The notification will give the neighbours a set period of time to object to the creation of bay. I would suggest the period for objection is 21 days; this will help ensure any neighbours who are away on holiday etc will have time to consider the matter and submit an objection if they wished to do so.

Q1 I have suggested the period for objections should be 21 days, do you have any views on this time scale?

Offence

43. Under the proposal it would be an offence to park in a disabled persons parking bay without displaying the appropriate authorisation, currently the

Blue Badge. Where an offence has been committed the offender will be given the option of paying a fixed sum of money in the form of a fixed penalty notice as an alternative to prosecution through the criminal courts.

Scope

44. To ensure consistency throughout Scotland I believe that the provisions in the Bill should also apply to disabled persons parking bays in private car parks. I am interested in hearing views on this and any potential areas of concern that may arise.

Q2. What are your views on disabled persons parking bays in private car parks, such as supermarkets, being made enforceable?

Enforcement

45. Under my proposal the police and police traffic wardens will retain their existing powers. It is intended that local authorities will also be given powers to enforce the disabled persons parking bays; they will be able to do this using their own employees, including existing employees such as neighbourhood wardens, or private contractors.

46. The proposal would give enforcement powers to the local authorities. This would enable local authorities who have not decriminalised parking to take enforcement action themselves without having to rely on the police or police traffic wardens

47. In residential, rural and out of town parking areas enforcement is likely to be reactive, if a problem occurred it could be reported to the enforcing authority and dealt with on a case by case basis.

Q3. What are your views on enforcement issues, do you have any alternatives to the enforcement method proposed?

Q4. Where do you think the costs of enforcement lie and what might they be?

Penalties

48. Research and guidance from the Scottish Executive has indicated that the most appropriate form of penalty is an on the spot fine.⁹

49. Currently the average fine for parking illegally in an enforceable disabled persons parking bay is £30 this can rise to a maximum of £1000.

Q5 What would you suggest is a suitable level of fine and why?

Local authorities retaining monies

50. I propose that all the monies raised by the fines issued by local authorities are retained by the local authority, Monies raised would enable local

⁹ *Guidance on the inspection and enforcement of blue badges for police, traffic wardens, local authority parking attendants and issuing authorities*, The Scottish Executive

authorities to access extra resources to help the reactive enforcement of rural, residential and out of town disabled persons parking bays. Indeed local authorities will save resources as they will be utilising a less complex process of designation for disabled persons parking bays.

51. Alternatively if the police or police traffic wardens enforce disabled persons parking bays then any revenue collected from fines will be returned to the Treasury.

Q6 Do you have any other comments or views on the issue of making all disabled persons parking bays enforceable?



CONCLUSIONS AND HOW TO RESPOND

52. Thank you for reading this consultation paper. I hope you have been persuaded that there is a powerful and clear argument for ensuring all disabled persons parking bays are enforced and that it is done with the interests of all of those involved.
53. You are now invited to respond to this consultation paper by answering the questions which are repeated below and making any other comments that you consider appropriate.
54. Responses, which should be submitted by **Monday 26 February 2007** should be sent to:

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55. Please make it clear whether you are responding as an individual or on behalf of an organisation.
56. If you wish your response to be confidential, please say so. Otherwise it will be available for public inspection, in accordance with the principles of transparency and freedom of information. Confidential responses will be included in any summary or statistical analysis but this will not reveal the identity of any respondent who has requested confidentiality.
57. 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 [The Scottish Parliament: - Bills - Proposals for Members' Bills](#).

QUESTIONS

- Q1 I have suggested the period for objections should be 21 days; do you have any views on this time scale?
- Q2. What are your views on disabled persons parking spaces in private car parks, such as supermarkets, being enforceable?
- Q3. What are your views on enforcement issues or do you have any alternatives to the enforcement method proposed?
- Q4. Where do you think the costs of enforcement lie and what might they be?
- Q5 What would you suggest is a suitable level of fine and why?
- Q6 Do you have any other comments or views on the issue of making all disabled persons parking bays enforceable?