Introduction

The intention of the proposed Bill is to encourage local authorities across Scotland to put in place “no parking” restrictions at dropped kerbs and on pavements and thus encourage the universal introduction of such measures. The consultation document accompanying the draft proposal for the Regulation of Dropped Kerbs and Pavement Parking (Scotland) Bill was issued on 1 October 2010 and was open for comment until 31 January 2011. A number of late submissions were received after the closing date. These were accepted and have been included in this analysis.

The consultation document was made available from a link on the Proposals for Members Bills webpage on the Scottish Parliament website: http://www.scottish.parliament.uk/business/bills/membersBills.htm
It was also issued to 205 organisations and individuals with an interest in the issue; recipients were encouraged to bring the consultation to the attention of anyone else they thought might have an interest in the subject matter.

The Member answered requests for up to another 23 copies to be sent out either electronically or in hard copy.

Additional activity

In addition to carrying out the public consultation, Ross Finnie MSP has taken part in a number of activities related to the subject of dropped kerb and pavement parking in order to inform the development of this policy. These include liaising closely with Living Streets Scotland and Inverclyde Council On Disability (ICOD) to develop the proposals, and giving a presentation to the Scottish Disability Equality Forum about the proposed Bill.

General

In total 123 responses were received. The responses were made up of the following groups—

- 54 individuals
- 28 non-governmental organisations
- 19 local authorities
- 6 community councils
- 8 access groups/panels
- 4 transport and parking organisations
- 2 other public authorities
- 1 police representative body
- 1 statement supported by no. of NGOs (counted as a single response)
The majority of respondents (83%) supported the proposals either in whole or in part. Some of the reasons given for supporting the proposal included—

- The proposal would ensure unobstructed and safe access to dropped kerbs and along pavements for everybody, but in particular for people with mobility issues, people who are visually impaired and people with pushchairs and prams;
- The proposal would redress the balance and ensure that pavements and dropped kerbs were used by pedestrians, as originally designed;
- The proposal would bring clarity to the law for motorists, the police, local authorities and pedestrians;
- The proposal would reduce damage to pavements and therefore repair costs.

The submission from Living Streets encapsulated many of the comments made by supporters of the proposal. It emphasised that—

Poorly parked vehicles can force pedestrians into the road. They can inhibit the independence of many vulnerable people and be particularly dangerous for older people, for families with pushchairs, and for those with visual or mobility impairments. Pavement parking can also damage pavements, creating trip hazards for pedestrians: costing local authorities, and therefore all of us, millions of pounds in maintenance and preventive measures.

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<thead>
<tr>
<th></th>
<th>Number</th>
<th>%</th>
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<tbody>
<tr>
<td>Support</td>
<td>102</td>
<td>83%</td>
</tr>
<tr>
<td>Against proposals</td>
<td>5</td>
<td>4%</td>
</tr>
<tr>
<td>Not clear</td>
<td>16</td>
<td>13%</td>
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<tr>
<td>Total</td>
<td>123</td>
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Less than 5% of respondents stated that they did not support the proposals. In 13% of the responses the position of the organisation or individual was unclear. A number of local authorities fell in this category by pointing out both benefits of and shortcomings with the Bill's proposals. Some of the reasons for not supporting the proposals included—

- Evidence of a widespread problem had not been identified;
- The Traffic Regulation Order (TRO) system was complex and protracted and would result in numerous signage and road markings contrary to Scottish Government policy to de-clutter streets;
- The proposal would result in congestion and displaced parking problems;
- A blanket ban would not allow local conditions to be taken into account;
- Given the number of pavements and dropped kerbs, a widespread ban would be unenforceable.

The consultation posed eight questions. Summaries of the responses to each question are outlined below.

**Question 1**

*What would the benefits be of having parking enforced at dropped kerbs and on pavements?*
<table>
<thead>
<tr>
<th>Benefits</th>
<th>Number</th>
<th>%</th>
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<tbody>
<tr>
<td>Benefits</td>
<td>75</td>
<td>61%</td>
</tr>
<tr>
<td>Benefits with qualification or disadvantages</td>
<td>12</td>
<td>10%</td>
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<td>35</td>
<td>28%</td>
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<tr>
<td>Total</td>
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In response to this question 61% of those consulted solely outlined the specific benefits of the proposal. 10% of respondents outlined benefits whilst also highlighting problems or disadvantages. Thirty-five responses were assessed as not answering the question and one person’s answer contradicted the rest of the response and was therefore unclear.

The main benefits outlined by consultees can be categorised as follows—

- Better quality of life for pedestrians because movement, access and safety would be improved;
- Increase driver awareness of the difficulties for pedestrians when cars block dropped kerbs and/or pavements;
- Clarification of the law;
- Less maintenance costs for pavements.

Many respondents stated that drivers would become more aware of the difficulties for pedestrians, particularly the difficulties for wheelchair users and their carers, those with sight impairment or those pushing prams when cars block dropped kerbs and/or pavements. Respondents highlighted easier access to pavements for all pedestrians and increased confidence as a benefit. Reference was made to a necessary change in culture and awareness, with some calling for a publicity campaign to support the proposed legislation.

While recognising the benefits for pedestrians in general, a number of organisations highlighted the specific issues for particular groups. For example, Age Concern noted that—

Falls are the biggest cause of accidental death in the UK – bigger than road accidents and fires. Legislation to regulate Dropped Kerbs and Pavement Parking will help reduce the numbers of falls older people [have] while also reducing A&E admission and pressure on residential care provision.

Capability Scotland pointed to the benefits for visually impaired users by quoting the comments from one service user—

As a guide dog owner, I can be confident that my dog will make every effort to get me safely round any obstacle – but where our way is restricted by a parked vehicle this can create considerable delays and stress for both of us".

3
While ECAS noted the particular problems for wheelchair users—

Although some power chairs are designed to go up and down kerbs, and some people are strong enough to assist a wheelchair up and down a kerb, there are many instances when a wheelchair user cannot get up and down a kerb.”

Local authority responses
Of the 19 local authorities which responded to the consultation, seven set out the benefits alone, 10 set out benefits alongside considerable drawbacks or barriers and two did not answer question 1 directly. Local authorities’ concerns related primarily to the following—

- Costs relating to implementation and enforcement;
- Lack of evidence of the problem;
- Increased congestion;
- Access for emergency services and for delivery purposes;
- The difficulties of enforcement.

The response from East Ayrshire Council reflected the views of a number of local authorities. It acknowledged that the proposal would improve access for all and pedestrian safety, but noted that “there would be a number of disadvantages for other uses of the road, including resident parking, servicing premises and access for emergency vehicles, where road space is limited.”

Question 2

My proposed Bill would mean widespread restrictions on parking at or on dropped kerbs and on pavements in Scotland. What are your views on this?

<table>
<thead>
<tr>
<th>Number</th>
<th>%</th>
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<tbody>
<tr>
<td>Wholly support</td>
<td>49</td>
</tr>
<tr>
<td>Partially support</td>
<td>10</td>
</tr>
<tr>
<td>Against proposals</td>
<td>12</td>
</tr>
<tr>
<td>Unclear</td>
<td>11</td>
</tr>
<tr>
<td>Not answered</td>
<td>41</td>
</tr>
<tr>
<td>Total</td>
<td>123</td>
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Excluding those who did not answer this question, the majority of respondents supported widespread restrictions on parking at dropped kerbs and on pavements either wholly (60%) or partially (12%). The main reasons given were that—

- Widespread restrictions were necessary because parking on dropped kerbs and pavements is obstructive, dangerous and inconvenient to people with mobility issues, visual impairments, pushchairs and small children;
- It would provide legal clarity;
- Local authorities were in breach of their equality duties by allowing pavement parking;
- The proposal would give statutory force to the existing provisions in the Highway Code.
ENABLE Scotland pointed to the benefits of a consistent approach—

At present regulation is varied across Scotland. We believe that consistent Scotland-wide regulation would enforce the view that this practice is unacceptable and that motorists will be discouraged across the country rather than in certain areas.

Ten respondents were considered to partially support this proposal on the basis that, while they supported the principle of widespread restrictions, they considered that there should be exceptions to a widespread ban. Such exceptions included:

- to take account of local conditions;
- Where streets were very narrow and pavement parking was necessary to prevent congestion;
- Where the pavement was sufficiently wide to accommodate a vehicle and provide wheelchair and pushchair access;
- to allow access to emergency services;
- to allow deliveries to businesses.

For example, West Lothian Council reflected the views of a number of respondents when it advised that—

The council would support a universal prohibition on footway parking and dropped kerb obstruction except where parking is explicitly permitted by local regulation. If this universal ban was introduced, local authorities should be able to designate areas where footway parking is permitted and signpost these areas accordingly.

In 11 cases, the position of the respondent was unclear either because they put forward arguments both for and against widespread restrictions or because they considered that greater clarification was required on whether widespread restrictions were necessary.

12 respondents were against widespread restrictions.

Reservations expressed regarding a widespread ban included—

- Blanket restrictions are inflexible and take no account of local conditions;
- A number of local authorities considered that the number of dropped kerbs within one locality would make a widespread ban unenforceable;
- A widespread ban would result in creating (or exacerbating) parking and congestion problems.

For example, a SCOTS response forwarded by several local authorities reported that “The use of blanket orders would be essential to minimise workload…and even with blanket orders a detailed schedule for every drop kerb location to which any TRO applied would be required."

Several respondents considered that there was a need to ascertain the scale of the problem before introducing widespread restrictions.

**Question 3**

*What, if any, difficulties do you envisage in using the existing TRO system to cover wide areas?*
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<thead>
<tr>
<th></th>
<th>Number</th>
<th>%</th>
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<tbody>
<tr>
<td>Difficulties identified</td>
<td>49</td>
<td>40%</td>
</tr>
<tr>
<td>No problems or minor problems only</td>
<td>11</td>
<td>9%</td>
</tr>
<tr>
<td>Difficulties raised but not associated with TRO procedure</td>
<td>4</td>
<td>3%</td>
</tr>
<tr>
<td>Not answered</td>
<td>52</td>
<td>42%</td>
</tr>
<tr>
<td>Unclassified</td>
<td>7</td>
<td>6%</td>
</tr>
<tr>
<td>Total</td>
<td>123</td>
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49 of those who responded to this question identified difficulties with using the existing TRO system to cover wide areas. Eleven respondents considered that there would no or minor problems with using the TRO system. Four respondents raised difficulties, but not associated with the TRO procedure.

The main concerns in relation to the TRO were—

- The costs and time involved in implementing a TRO;
- The current financial position of local authorities;
- Problems with consistency;
- Definition of a dropped kerb;
- Excess signage/street clutter;
- The potential need to evaluate each street;
- Enforcement;
- Lack of consistency across Scotland.

Where a TRO was supported, it was felt that a wider TRO should be used to cover larger areas.

For example, East Lothian Council stated that—

The use of blanket orders would be essential to minimise workload. Otherwise it would be impossibly complex to implement individual orders. …Unless a means of reducing signing requirements is part of the Act then there will be a tremendous amount of additional street clutter.

Fife Council considered that, “In principle there should be no difficulty in using current traffic order procedures to promote a wide area TRO.” However, it suggested that it would perhaps be more appropriate for primary legislation to be amended as the background framework; that is, setting out the widespread ban, while allowing local authorities to promote a TRO to permit exceptions.

**Question 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?*
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<tr>
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<th>Number</th>
<th>%</th>
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<tbody>
<tr>
<td>Support</td>
<td>75</td>
<td>61%</td>
</tr>
<tr>
<td>Against</td>
<td>2</td>
<td>2%</td>
</tr>
<tr>
<td>Unclear</td>
<td>4</td>
<td>3%</td>
</tr>
<tr>
<td>Not answered</td>
<td>42</td>
<td>34%</td>
</tr>
<tr>
<td>Total</td>
<td>123</td>
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The overwhelming majority of those who answered this question supported the use of fixed penalty fines (almost 93%), although several respondents indicated that fixed penalty notices could only be used in decriminalised parking areas.

One local authority did not support the use of penalty fines suggesting, instead, that the existing legislation relating to the obstruction of pavements by motorists should be firmed up and that penalty system applied. Another respondent considered that double yellow lines/signage alone would suffice.

Several respondents suggested that the fines should be on a sliding scale basis, with the lowest fine applied for early payment. It was also suggested that the fine should be increased for repeat offenders. Other respondents suggested that offenders should receive a warning prior to the application of a fine.

A number of respondents suggested other forms of penalties, but these were suggested, in almost all cases, in combination with fixed penalty fines rather than as an alternative. For example, it was suggested that fixed penalty fines should be combined with—

- Penalty points on the driver’s licence;
- The owner’s vehicle being towed away and crushed

Of these alternatives, there was strongest support for fines to be combined with penalty points on the driver’s licence (nine respondents). Another suggestion was that the system of penalty fines should be combined with a public awareness and educational campaign (seven respondents).

One respondent pointed to research undertaken in East Sussex and suggested that creative ways of enforcing a dropped kerb and pavement parking ban should be investigated.

Finally, some respondents sought re-assurance that Blue Badge holders would be excluded from penalty notice schemes.

**Question 5**

*What would you suggest is a suitable level of fine and why?*
The majority of those who answered this question (52%) suggested that the level of fine should be similar to existing penalty fines for parking offences. A small number of respondents (11%) suggested further action in addition to the usual fixed penalty fine. Such action included—

- Adding penalty points to the driver’s licence;
- Increased level of fines for repeat offenders;

A significant number of respondents to this question (29%) came forward with an alternative level of fine to the existing level for parking offences. The level varied from £5 to £150. Several respondents suggested the fines currently applied in England and Wales (£70) and in London (£120), respectively. Other respondents suggested a fine of £30 and several respondents suggested that this should increase to £60 for a repeat offence.

For example, while supporting the use of the existing fixed penalty fine system, Inclusion Scotland considered that—

……we feel that stronger measures may be necessary in some cases and consideration should be given to treating parking at dropped kerbs in the same way as parking in designated disabled parking bays, with higher maximum fines for repeat or persistent offenders.

A small number of respondents (7%) did not suggest a specific level of fine but commented generally on its objective; for example, that it should properly inconvenience drivers and that it should be meaningful.

Question 6

*What costs will arise as a consequence of this proposal?*

<table>
<thead>
<tr>
<th>Number</th>
<th>%</th>
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<tbody>
<tr>
<td>Respondents who identified costs</td>
<td>64</td>
</tr>
<tr>
<td>No costs or minor costs</td>
<td>6</td>
</tr>
<tr>
<td>Could not estimate costs</td>
<td>9</td>
</tr>
<tr>
<td>Not answered</td>
<td>44</td>
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<tr>
<td>Total</td>
<td>123</td>
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79 respondents answered this question, 64 of which identified specific areas where costs would arise. The principle areas identified were—

- The application of the TRO system, including promoting, consulting on and the implementation of the order/s (24 respondents);
- Introducing appropriate signage and road markings (27 respondents);
- Enforcement and the administration of fines (34 respondents).

A number of respondents also identified costs arising from the following—

- Personnel costs associated with the implementation and administration of the system;
- Parking places provision as a result of displaced parking;
- Publicity and awareness-raising activities.

A small number of respondents (5%) considered that there would be little or no costs arising from the proposal. In several cases, this was based on the belief that the proposed Bill would simply enforce the current system effectively or, at least, use the existing enforcement system.

Others accepted that the proposal would incur costs, but considered that such costs would be recouped through the imposition of fines. However, this view was challenged by a number of local authorities which considered that only minimal costs would be recouped through fines. Several local authorities considered that, given the potential significant costs arising from this proposal, funding should be provided by the Scottish Government for its implementation.

Finally, a small number of respondents (7%) indicated that it was not possible to estimate the costs arising from this proposal.

**Question 7**

*What equality issues arise from this proposal?*

A high number of correspondents mentioned equality issues when responding on the considered general benefits of the proposal (question 1). Responses to question 7 fell into the following categories—

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<thead>
<tr>
<th>Category</th>
<th>Number</th>
<th>%</th>
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<tbody>
<tr>
<td>Equality for disabled people and other groups</td>
<td>49</td>
<td>40%</td>
</tr>
<tr>
<td>General positive impact</td>
<td>3</td>
<td>2%</td>
</tr>
<tr>
<td>No issues or not aware of any</td>
<td>15</td>
<td>12%</td>
</tr>
<tr>
<td>Other</td>
<td>5</td>
<td>4%</td>
</tr>
<tr>
<td>Not answered</td>
<td>51</td>
<td>41%</td>
</tr>
<tr>
<td>Total</td>
<td>123</td>
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</table>

49 respondents outlined the potential for the proposal to support disabled people and other groups, such as older people and people with young children. Respondents outlined their support not only in relation to improvements for disabled people, but also for pedestrians in general being able to access areas more easily and redress the balance between motorists and pedestrians. Four respondents
considered that the proposals would be in line with current public sector equality duties and two others mentioned its accordance with the Equality Act 2010.

Sustrans emphasised that—

The equality issues that arise from this proposal are a potential huge improvement to the quality of life of some of Scotland’s most vulnerable people including those whose mobility is impaired and the young, who are dependent on their parents/carers to get about.

While Inclusion Scotland noted that—

Non-disabled people generally are able to cross a kerb at any point. Wheelchair users, visually impaired people and other disabled people rely on dropped kerbs to affect a safe crossing.

Six outlined reservations that included—

- the proposal not achieving the benefits aimed for within the proposed approach;
- disabled people being required to travel further from their cars due to parking restrictions;
- the benefits being at the expense of motorists due to reduced parking provision;
- the potential for traffic congestion.

15 respondents considered that the proposal did not raise any equality issues or they were not aware of any equality issues.

**Question 8**

*Please make any other comments or suggestions that you consider relevant to this proposal?*

<table>
<thead>
<tr>
<th></th>
<th>Number</th>
<th>%</th>
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<tbody>
<tr>
<td>Answered</td>
<td>74</td>
<td>60%</td>
</tr>
<tr>
<td>Not answered</td>
<td>49</td>
<td>40%</td>
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<tr>
<td>Total</td>
<td>123</td>
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Given the range of questions that had already been raised, a smaller proportion of responses (60%) was received in relation to question 8. A number of common themes could be identified from the responses. These included:

- Popular support for some form of awareness-raising and public education campaign, both to highlight the problems caused by pavement and dropped kerb parking and to provide information about the new legislation;
- A number of respondents considered that there should be greater clarity in and enforcement of the existing law regarding the obstruction of pavements by motorists, rather than proposing new legislation;
- Several respondents reiterated concerns regarding enforcement of the current law and considered that there must be effective enforcement of any new legislation if it was to achieve its objective;
- Others considered that the proposed Bill should address all blockages on pavements not just vehicular, such as wheelie bins and building materials;
Some respondents felt that consideration should be given to the issue of parking provision in general, the shortage of which sometimes resulted in people using pavements for parking. Some respondents indicated that the proposed Bill would exacerbate availability of parking places;

A number of respondents, while supporting the principle of the proposed Bill, considered that there should be exceptions to the pavement parking ban;

Some respondents felt that clarification was needed in relation to the term “dropped kerb”, emphasising that dropped kerbs provided both pedestrian and vehicular access;

Several local authorities argued that they were not resourced to tackle the problem of dropped kerb and pavement parking;

Finally, it was suggested that Scotland should implement the Traffic Management Act 2004, which would bring it in line with England and Wales.

**Conclusion**

The responses to the consultation have provided a number of ideas that the Member will consider and use to further develop the policy before completing the drafting of the Bill.

Non-Executive Bills Unit
March 2011