Dear Ms Johnston

Footway Parking and Double Parking (Scotland) Bill

I refer to your call for evidence relevant to the consideration by the Committee of the above bill. I am replying on behalf of the Society of Chief Officials of Transportation in Scotland (SCOTS) and would ask the Committee to take account of the following comments.

Overall, the Society would give a cautious welcome to the bill. However, in considering its likely effectiveness were it to become law, it would be worth noting that neither councils nor the police have the resources for any significant increase in enforcement activity and both are under pressure to make savings.

It is suggested that a study on the effectiveness or otherwise of the similar long-standing legislation in London would be very helpful in deciding on the strength of the case for introducing new legislation in Scotland. Areas within the former Greater London Council area should be compared with similar adjacent areas outwith its boundary.

The investigation should determine whether there appears to be any measurable benefit in a lower incidence of obstructive parking on footways and whether there may be any adverse side effects, for example on the viability of commercial centres. This proof of effectiveness would be vital as there is already a great deal of road traffic legislation and any addition should have demonstrable benefit.
Although the intention and overall structure of the bill should be workable for local authorities, there are a number of points of detail in the current draft with potential for not achieving the desired effect or for unintended consequences. I have highlighted these as comments in the attached annotated draft. By and large, the proposals relating to dropped kerbs and double parking are sound as they are copied from existing legislation that has already been scrutinised by the UK parliament. However, the proposals on footway parking and the definitions have not previously been subject to scrutiny and most of the comments relate to these. The most significant points are as follows:

- It would appear that the intention may have been that the new restrictions should apply to roads with a speed limit of 30 mph or less and this would make sense as it could be readily understood. However, the proposals as drafted would exclude private roads and most A and B class roads in built-up areas. It is doubtful that it was intended that A and B class roads should be excluded and it is difficult to see why private roads should be excluded as the relevant provisions in relation to rights of passage, obstruction and traffic regulation apply equally to public and private roads.

- The proposals as drafted could in some cases criminalise people for parking in a parking place designated by a traffic authority and properly signed as such in accordance with the Traffic Signs Regulations and General Directions. It is difficult to believe that this would be the intention of the Scottish Parliament.

- The proposals as drafted would still permit parking on a cycle track or footpath. A number of former footways have been re-designated for joint use by pedestrians and cyclists. These will now be “cycle tracks” and it would appear doubtful that it was the intention that they should be excluded. In any case, parking on remote footpaths or cycle tracks will cause just as much obstruction as parking on footways, so there is no obvious reason why either should be omitted from the proposed restrictions.

- The proposals as drafted have no exemption for vehicles necessarily parked on a footway in order to undertake works. Roads authorities must maintain footways, utility companies must maintain their apparatus in footways and buildings fronting onto footways must be maintained. The proposed legislation will not be workable unless this issue is addressed.

Detailed comments on the drafting of the bill as introduced with relevant extracts in italics followed by comments and suggested remedies are as follows:

1 Extent

This Act applies to all public roads in built-up areas in Scotland with the exception of special roads.

It is suggested that “public roads” should be replaced with “roads”. The relevant parts of the Roads (Scotland) Act 1984 concerning rights of passage and obstruction and of the Road Traffic Regulation Act 1984 (the 1984 Act) concerning traffic regulation apply to all roads, not just to public roads, so it would be logical for this measure to apply on the same basis.
It is suggested that consideration should be given as to whether the proposed measure needs to be limited to built-up areas. The precedents in UK law do include a limitation to urban areas, but these precedents include a restriction on parking on verges as well as on footways. The proposals before the Scottish Parliament do not seek to restrict parking on verges there is no obvious reason why footway parking should be permitted in the relatively rare locations where footways are provided in rural areas.

2 Prohibition of parking on footways

Subject to the exceptions specified in subsection (2), a vehicle must not be parked on a footway.

It is suggested that consideration should be given to replacing “on” with “so that one or more of its wheels is resting on”. This would be in line with the existing provision relating to the former Greater London area and would reduce the potential for disputes in interpretation.

It is suggested that consideration should be given to replacing “footway” with “footway, footpath or cycle track”. Obstructing a footpath or a cycle track, which would include joint use facilities for pedestrians and cyclists, will cause at least as much inconvenience to as obstructing a footway. If this change were made, it would need to be duplicated in some other references to footways.

(2) The exceptions are—

(a) where the vehicle is being used for fire brigade, ambulance or police purposes,
(b) where the vehicle is parked wholly within a designated disabled parking place which forms part of the footway where parking is specifically authorised,
(c) where the vehicle is parked within an Exempt Area as described in section 6.

It is suggested that consideration should be given to replacing “designated disabled parking place which forms part of the footway where parking is specifically authorised” with “designated parking place or other part of the footway where parking is specifically authorised”. It is difficult to imagine that it would be the intention of the Scottish Parliament to criminalise parking of any kind in a location where it is specifically authorised. The current wording would also be in conflict with section 32(1)(b) of the 1984 Act which specifies that local authorities may by order authorise the use as a parking place of any part of a road within their area. The definition of “road” in the 1984 Act is the same as in the Roads (Scotland) Act 1984 and includes carriageways, footways and cycle tracks.

It is also suggested that consideration should be given to an additional exception to allow essential works to take place. Roads authorities must maintain footways, utility companies must maintain their apparatus in footways and properties fronting the footway must be maintained. For simplicity and consistency, it is recommended that this exception should be the same as those in 3(e) and 4(d).
3 Prohibition of parking at dropped footways etc.

(2) The exceptions are— …

(b) where the vehicle is parked outside residential premises by or with the consent (but not consent given for reward) of the occupier of the premises,

It is suggested that the exemption should only apply to vehicles parked outside “a vehicular access to residential premises”. No harm is caused by residents obstructing their own accesses but the exemption should not extend to allowing residents to obstruct or permit obstruction of pedestrian or cycle crossing points that happen to be outside their property.

7 Interpretation

In this Act—

“the 1984 Act” means the Road Traffic Regulation Act 1984,

“carriageway”, “cycle track”, “footway”, “public road” and “special road” have the meanings given by section 151 of the Roads (Scotland) Act 1984,

“designated parking place” means a parking place designated by order under section 1, 9, 32(1)(b) or 45 of the 1984 Act,

“public roads in built-up areas” means a restricted road, as defined in section 82 of the 1984 Act, where “in Scotland, there is provided on it a system of carriageway lighting furnished by means of lamps placed not more than 185 metres apart and the road is of a classification or type specified for the purposes of this subsection in regulations made by the Secretary of State” or where a non-restricted road has become a restricted road under section 82 of the same Act,

“motor vehicle” has the meaning given by section 136 of the 1984 Act,

“traffic regulation order” means a regulation governed by the Local Authorities’ Traffic Orders (Procedure) (Scotland) Regulations 1999.

The UK government is currently consulting on a new version of the Traffic Signs Regulations and General Directions that would allow traffic authorities to mark out parking spaces where there were no specific restrictions of use without the need for a traffic order and it would need to be clear that the exemptions included such spaces. It is suggested that this could be achieved by including an additional definition as follows: “part of the carriageway where parking is specifically authorised” and “part of the footway where parking is specifically authorised” include any parking place set out as such with traffic signs and/or road markings in accordance with regulations made under section 65 of the 1984 Act.

The definition of “public roads in built-up areas” will have the (presumably) unintended consequence of excluding most A and B class roads in built up areas from the new legislation. The Restricted Roads (Classification or Type) (Scotland) Regulations 1985 specify that Class C or unclassified roads are restricted roads. Although traffic authorities would have the power to direct that sections of A or B class roads were
restricted roads, it is the policy of the Scottish Government that this power should not be used and that where speed limits are required on A or B class roads in built up areas they should be made by order under section 84 of the 1984 Act. This problem could be remedied by adding a reference to “roads subject to an order under section 82 of the 1984 Act imposing a speed limit not exceeding 30 mph”

The term “motor vehicle” does not appear in the bill except in this definition, so the definition as it stands is redundant. I think the intention might have been that the term “vehicle” as used in this bill should have the same meaning as the term “motor vehicle” as defined in section 136 of the 1984 Act.

It is suggested that consideration should be given to deleting the definition of “traffic regulation order”. It is redundant as the full term used is “Traffic regulation order under section 1 of the 1984 Act” and section 1 of the 1984 Act indicates clearly what is meant by the term “traffic regulation order”. It is also misleading for the following reasons: i) the term means an order and not a regulation; ii) the regulations govern the procedure to be used when making an order rather than the order once made and iii) the 1999 regulations are likely to be superseded during the currency of the proposed new Act.

I hope these comments are of assistance to the Committee in their consideration of the bill.

Should you have any queries regarding the above, please contact David Armitage on 01467 628483 or email david.armitage@aberdeenshire.gov.uk

Yours sincerely

Bill Barker
Chair of SCOTS