Proposed Regulation of Privately-Operated Car Parks (Scotland) Bill

A proposal for a Bill to regulate the provision of, and charging for, privately-operated car parking in Scotland

Consultation by

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8 December 2017
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FOREWORD

Being hit with a parking ticket is one of the frustrations of modern life. Whether we have underpaid to park our car, or infringed other reasonable rules, it’s annoying having to pay a penalty, but most of us accept it is fair that we do so.

Unfortunately, too many drivers in Scotland today are being hit with unfair penalty notices. Over the last three years I have had many hundreds of constituents approach me complaining about penalty notices received from one private car park operator in particular, but I know that this is also a national problem with more than one company involved.

In practice, charges are levied for short overstays of perhaps no more than fifteen minutes, where the driver has inadvertently entered the wrong number plate into the ticket machine, or for other minor infringements. Far from being reasonable charges, I am aware of many cases where debt collectors have sought to recover sums of up to £160, with threats of court proceedings should payment not be made. Unsurprisingly, many of the recipients of these notices, particularly the elderly and vulnerable, have felt intimidated into paying up even when notices are not justified.

Current Scottish law
There is a great deal of confusion over where the law in Scotland currently stands in relation to privately-operated car parks. It is something of an urban myth that private penalty notices are not enforceable. But, at the same time, it seems very unlikely that penalty notices of £160 would ever be held to be reasonable in a Scottish court. It is precisely because the current law is unclear and inconsistent that I believe there is a greater need for regulation of private car parking in Scotland, and, as a result, I am bringing forward this consultation on a proposed Bill.

The proposed Bill
The provision of car parking is a legitimate, indeed a desirable, business exercise. Our towns and cities need sufficient, accessible, and affordable car parking if they are to thrive as business and retail centres. As such, it is not my intention to make the operation of car parks a more difficult enterprise for private operators; but rather to strike a fair balance between the interests of the car park operator and those of their clients.

In light of this, I am proposing to clarify and adjust the current legal position of Scottish law to benefit both clients and operators. In order to do so, I wish to introduce balanced measures which will make the experience of using a private car park more straightforward and transparent for the individual, and more consistent for the car park
operators. In this Bill I plan to address the issues of excessive charges, the inconsistency of signage, the process for appealing imposed penalties, and the presentation of invoices. Also, to ensure that issues of fairness to operators are also considered, I want to examine the introduction of keeper liability, which would help operators to identify those who would become liable for penalties.

**Acknowledgement and thanks**

I would like to thank all the stakeholders who have helpfully engaged with me prior to the preparation of this consultation, and who have contributed to my thinking on the issue.

I would encourage all those with views on the issue in private car parking in Scotland to respond to the consultation, including car owners and drivers, representative groups, consumer advice bodies, business interests, and of course car park owners and operators. Hearing views from a wide range of stakeholders will aid the understanding of the issues, and the best way forward. This will inform a Member's Bill I hope to introduce in the Scottish Parliament in 2018.

I look forward to hearing your views.

Yours sincerely,


Murdo Fraser

8th December 2017
HOW THE CONSULTATION PROCESS WORKS

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member’s Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament’s Standing Orders which can be found on the Parliament’s website at:

http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member’s Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member’s Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament’s Non-Government Bills Unit (NGBU) and will therefore comply with the Unit’s good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at:

Murdo Fraser MSP, M2.07, Scottish Parliament, Edinburgh, EH99 1SP
Email: Murdo.Fraser.msp@parliament.scot; telephone: (0131) 348 5293.

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament’s website (www.parliament.scot) under Parliamentary Business/Bills/Proposals for Members’ Bills/Session 5 Proposals.
AIM OF THE PROPOSED BILL

Background

The provision of privately-operated car parks is an important business activity, vital to the survival and success of our towns and cities. Whilst many local authorities provide both on-street and off-street parking, in many places this is simply not sufficient to meet demand from people wishing to park vehicles. As a result, the private sector has helped fill the gap with the provision of privately-operated car parks. Drivers pay a reasonable charge for parking their vehicles, and in doing so agree to abide by the operator’s set terms and conditions.

Unfortunately, there are too many examples of car park operators not treating their customers in a reasonable fashion. Penalty notices are often issued when parking rules have not been made clear and some of the sums sought in penalties, up to £160 in many cases, are not reasonable in the context of the alleged infringement. Some car park operators employ debt recovery agents who use threatening language holding out the prospect of court proceedings and the loss of credit ratings if payment is not made. Unsurprisingly, many people feel they have no alternative but to pay up, rather than face potential legal action.

In the following sections, I will present evidence from professional trade bodies, constituent testimonies and, reports, to illustrate why we need legislation to improve private parking practices.

Privately-operated car park definition

For the basis of this consultation and the proposed Bill, a privately-operated car park is taken to mean any car park that is managed or operated as a business activity rather than by a local authority or other public sector body. So, for example, some health boards across Scotland own car parks but do not manage these facilities. Instead they contract the management to a private firm which operates the car park on their behalf. The scope of my proposed bill would include car parks run under these terms.

The bill would not target car parks or parking spaces that are owned and operated by local authorities, arm’s length external organisations (ALEOs) or other public sector bodies. A robust appeals process already exists as drivers using these facilities can typically appeal to the local authority and, if the appeal is rejected, can take their case to the Parking and Bus Lane Tribunal for Scotland. If a motorist is still unhappy with the decision, a review of the adjudicator’s decision is possible.
Professional bodies

Private car park operators have established accredited trade associations (ATAs) to represent, promote, and influence best practice in the private parking industry throughout the UK.

The British Parking Association (BPA) represents over 700 distinct parking companies across the UK and Europe.¹ In 2007, the BPA set up the Approved Operator Scheme (AOS) to represent those BPA members involved in managing and enforcing parking on private, unregulated land.

Members of the AOS are governed by a code of practice which was established to advocate ‘best practice’ for people and organisations who carry out parking control and enforcement on private land.² The code consists of rules for uniform signage, management, enforcement and parking charge notices, and the BPA/AOS monitors compliance with the law. To ensure that all members are following the code of practice (and relevant law), the AOS conducts yearly audits of all of its members.

Appeals against a parking charge notice issued by a car park operated by a BPA member can be considered by Parking on Private Lands Appeals (POPLA) in England and Wales. POPLA cannot consider appeals against parking charge notices in Scotland (or Northern Ireland). In Scotland, once an appeal has been rejected by the BPA member, there is no further appeals process but the matter can be contested in court. POPLA is administered by the Ombudsman Services.

The second trade body that works with operators is the International Parking Community (IPC).³ Similar to the BPA, the IPC requires adherence to its code of practice.⁴ The code is designed to enhance the conduct of its members, increase consumer confidence and improve industry wide standards.

Appeals against a parking charge notice issued by a car park operated by an IPC member can be considered by the Independent Appeals Service (IAS). The IPC’s code of practice includes appeals against parking charge notices issued by IPC-operated car parks in Scotland and Northern Ireland. Yearly data on appeal statistics has not yet been made available.

Relevant reports

The trade associations mentioned above are currently the only organisations that set guidelines for privately-operated car park operators and it is important to study their impact on the industry. As a result, I have consulted two reports: the descriptions of both are detailed below alongside links at the foot of this page.

Citizens Advice Scotland (CAS) – ‘It’s not fine’
CAS commissioned this report to research the privately-operated car parking industry in 2014. It was part of a campaign to investigate unfair charges for parking on private land and provided recommendations for future legislation.\(^5\)

Parking on Private Lands Appeals (POPLA) - Annual Report 2016
In 2016, POPLA commissioned a report detailing the necessity of maintaining an independent appeals process for contesting charges issued by private car park operators. The report also listed appeal statistics for the 2016 business year.\(^6\)

Constituent case studies

Over the past two years, I have been contacted by hundreds of constituents who have had negative experiences with one particular privately-operated car park operator in Perth. I believe the problems in Perth are the tip of the iceberg, and represent widespread poor practice in the industry. Detailing the experiences of ordinary drivers is important to underline why we need legislation to improve standards in the industry. The cases below recount some of the everyday issues the proposed bill would hope to alleviate.

**Case Study 1: £160 for 10p?**

Mr X, a widower, paid the sum of £5.20 for 4 hours and 15 minutes of parking, and was given a ticket by the machine that left him under the impression he was free to leave, having paid the appropriate amount. He found out later that he had made a mistake, after the car park operator wrote to him demanding a £60 charge for underpayment. The underpayment was to the sum of 10p. When Mr X did not pay immediately, the demand was passed to a debt recovery agent, who increased the sum to £160. Legal advice from Citizens Advice Scotland states that private car parks should issue charges proportional to losses incurred. Mr X wrote to the car park operator in question several times offering to pay the 10p but his appeal was not heard. There was no clear outcome from this dispute with no further action taken by the parking company or the motorist.

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This incident happened in my regional area, and was picked up by the national media. This is an obvious case in which the penalty was not proportionate and reasonable to the offence. A 10p underpayment should not lead to a penalty charge of £60, let alone £160. As CAS has recommended, car park operators should be consistent in issuing proportional charges to losses incurred.

**Case Study 2: Paid full amount but still penalised**

Mr Y, an elderly motorist, parked in a city centre car park, and took great care to pay the correct sum for his stay. Unfortunately, when entering his car registration number into the ticket machine, he inadvertently entered the number zero ‘0’ instead of the capital letter ‘O’. For this, he received a penalty notice of £60 rising to £160 with non-payment. Mr Y appealed against this to the car park operator, but this appeal was not heard. His subsequent correspondences to both the operator and the debt collection agency were either ignored or rebuffed. He was pursued for over a year by a debt recovery agency, until contacting my office. After my intervention, on his behalf, the notice was cancelled.

When a customer commits an honest error, such as inputting an incorrect car registration number (despite having paid the correct sum), the customer should have the right to an independent, third-party appeal that views each case fairly, compassionately and objectively. Relying on the intervention of an elected representative is not an efficient way for any system to function.

**Case Study 3: Inadequate signage**

Mrs Z, a young mother, was charged twice by a car park operator and was pursued for £320 by debt collectors acting on their behalf. Mrs Z had parked on the 8th storey of a car park, and had taken longer than expected to assemble a buggy for her child. The process of driving through all levels of the car park looking for a space, unloading her child, assembling the buggy, and making it to the ground level to pay at the meter took around 15-20 minutes. She did not believe that she was liable to pay for this time, but her failure to pay on two occasions for the entire period between her vehicle entering the car park and then leaving led to her being in receipt of two penalty notices. Mrs Z’s appeal to the parking company was rejected, and there was no third party she could then appeal to. There was no clear outcome from this case.

Mrs Z was not given access to an appeals process. The lack of clear signage detailing the terms and conditions of entering this car park clearly resulted in Mrs Z making an error on payment. This example also shows that some industry practices negatively impact those who, for various reasons, take longer to get in or out of their car.
Conclusion

In evaluating evidence from drivers, my own personal experience, the POPLA and CAS reports, I have come to the conclusion that the Scottish Parliament has a role to play in regulating the privately-operated parking industry. Creating a system that is fair, equal and proportionate should be in the interest of both parking companies and drivers. I outline the detail of these changes in this document.

LAW AND CURRENT POSITION IN SCOTLAND

The law around car parking in Scotland is governed by the general law of contract. Using a car park is considered to be contractual in nature; when an individual drives their vehicle into a car park, they are deemed to be entering into a contract with the car park operator and agreeing to the rules set out on the signs inside the car park, providing these signs are legible and with reasonable terms. If the rules are broken, the contract is considered to be breached and the car park owner can take steps to enforce it.

At the time of this consultation, there is no legislation specifically designed to regulate the everyday activities of privately-operated parking companies in Scotland. Car park operators are not required to be members of an ATA and they do not need to have a licence to issue penalty notices.

After a careful review of the current legal position in Scotland, including any relevant case law, I have chosen to explore five areas – charges; signage; appearance of invoices; appeals process; and keeper liability – for possible future regulation.

Charges

It is standard practice for car park operators to issue a charge to a driver who breaches a contract entered into with a car park operator. Car parks operated by local authorities issue penalty charge notices and privately-operated car parks issue parking charge notices. Parking charge notices are not legally binding in the same way as penalty charge notices (more commonly referred to as parking tickets), although they often appear similar. In reality, a parking charge notice issued by a private car park is a charge indicating that the operator intends to raise proceedings against the offender in a civil court unless the fee is paid. Failure to pay a parking charge notice is not a criminal offence.

The legal position on what constitutes a reasonable charge, however, remains unclear. Penalty charge notices typically range from between £30 and £60 depending on how quickly paid, whilst parking charge notices range from between £60 and £160 depending on the operator.

There is relatively little case law in Scotland; most of the cases in which private parking firms have taken drivers to court have been in England. Citizens Advice Scotland commissioned legal advice on the enforceability of private parking charges in July
2015. This separate Scottish legal advice was the first of its kind and challenged private parking operators on the size of penalty charges and the clarity of signage inside car parks. However, several months after this advice was produced, a high-profile case on the proportionality of private parking tickets was settled in England in favour of the parking provider. This decision muddied the waters for parkers in Scotland despite this being settled on English law.

*ParkingEye Ltd v. Beavis* (2015), was a case in which Mr Beavis, the parker, challenged the operator, ParkingEye, over an £85 penalty for overstaying two hours of free parking. ParkingEye advanced two main arguments for their right to impose the penalty. Firstly, they argued that managing the parking space effectively for the use of the retailer that owned the car park meant that they had to prevent long term parking and its use by commuters; and secondly, that they had the right to generate income under the penalty charge scheme. Mr Beavis challenged the £85 charge on grounds of proportionality. The Supreme Court determined in favour of ParkingEye, deciding that the charge was part of its business model and not unreasonable. Whilst this case was determined on English law, the decision made by the Supreme Court is likely to be influential in any subsequent court proceedings in Scotland.

**Signage**
Scottish law affecting signage is currently administered by the governing law of contracts. Contract law stipulates that the terms and conditions of an exchange must be clearly set out and agreed to by consent.

In its 2014 report *It’s Not Fine*, CAS highlights Trading Standards Officers advice that signage must be prominent, clear, and not have misleading omissions. Trading Standards Officers undertook a project looking specifically at private car park signage displays across the North of Scotland. The project vetted 24 privately-operated car parks for the quality of the signage and found that 40% of these car parks had inadequate signage information in place.

**Appearance of invoices**
As stated earlier, parking charge notices issued by privately-operated car parks do not have the same status as penalty charge notices issued by the Police or a local authority. A notice issued by a private car park is an invoice for payment, and is not notice of a penalty already incurred. According to CAS, some firms are deliberately designing their invoices to resemble the appearance of a penalty noticed issued by the Police or a local authority.

For example, some firms label their invoices as ‘parking charge notices’ which is similar in title to the ‘penalty charge notices’ issued by the police or by local authorities. CAS is

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concerned that this is wilfully misleading drivers by using a similar abbreviation as those used by Police and local authorities. Not only are the parking charge notices similar in title but, in some cases, they also share the same “checked” appearance, which adds further confusion.

**Appeals process**
In Scotland, for the most part, appeals can only be made to the car parking companies themselves, creating a situation where the operators act as judge and jury, although those appealing a parking charge notice issued by a member of the IPC can appeal to the IAS.

However, in the majority of cases that cross my desk, there is no independent appeals process to determine whether a notice was properly issued, or whether the sum charged is reasonable. The only alternative route for an operator to recover the sum due, or for it to be challenged by a recipient, is through the courts, which, given the costs involved, is an inefficient means of resolving disputes.

**Keeper liability**
Scotland opted out of the Protection of Freedoms Act 2012, which introduced keeper liability in England and Wales. Keeper liability makes the registered keeper of a vehicle liable for any unpaid parking charges on that vehicle if the amount cannot be recovered from the driver (for example, if the driver’s identity is not known). The Act allows the parking company to apply to the Driver and Vehicle Licensing Agency (DVLA) for the keeper’s name and address (although the DVLA’s practice is only to provide this information to parking companies that are members of either the BPA or IPC). A registered keeper is defined as the person whose name the vehicle is registered in. Since the 2012 Act does not apply in Scotland, the registered keeper of a vehicle cannot be held liable for unpaid parking charges. This means that if another driver was using the car at the time of the incurred penalty notice, the registered keeper cannot be compelled to pay the charge, or name the driver. This puts the burden on the car park operator to identify the driver, along with the car, in order to press for payment of charges.

**LAW IN ENGLAND AND WALES**
As in Scotland, the law around car parking in England and Wales is primarily contract law. In 2012, however, the Protection of Freedoms Act 2012 changed some of the rules regarding privately-operated car parking in England and Wales. This Act is particularly relevant for this proposed bill because schedule 4 (relating to the recovery of unpaid parking charges) affects the privately-operated car parking industry. Since Scotland did not adopt this law, there are noticeable differences in how privately-operated car park operators are regulated in England and Wales.

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**Charges**

In England and Wales, the Consumer Protection from Unfair Trading Regulations 2008 makes it an offence to give misleading prices to a customer for parking services. Besides these regulations, most private parking companies are members of an accredited trade body – typically the BPA or IPC. Under the BPA's current code of practice rules, a member is not expected to charge more than £100 for a parking penalty unless able to prove that the losses caused by a breach of contract amount to more than this. This is, however, simply a guideline that the members are expected to follow, and is not binding.

**Signage**

Schedule 4 of the Protection of Freedoms Act 2012 contains a reserve power for the Secretary of State to make regulations, if necessary, to prescribe signage requirements in privately-operated car parks. This means that the signage requirements for private parking companies are firstly administered by the ATA code of practice. If the UK Government decides that the code of practice requirements for signage are not sufficient, then it can intervene to prescribe signage through government regulation.  

**Appearance of invoices**

Schedule 4 of the Protection of Freedoms Act sets out what a penalty notice to the driver must say, namely: identify the vehicle and when and where it was parked; explain the circumstances resulting in payment being due; specify how much is due; explain any discount for prompt payment of the charge; how and to whom payment may be made; the time and date when the notice was issued; and what the arrangements are for the resolution of disputes or complaints - this includes any internal arrangements offered by the parking operator as well as any independent appeals process. However, the 2012 Act does not regulate the title, appearance, or overall presentation of invoices, so long as the above requirements are followed.

**Appeals process**

Under the Protection of Freedoms Act 2012, operators of privately-operated car parks are required to offer information about any “arrangements for the resolution of disputes or complaints that are available”. The rulings by an independent appeals service are binding for ATA members (according to their code of practice), but car drivers or owners can still take the matter to court if they wish. It is also important to note that, if a car owner or driver wins an appeal against an ATA member, the ATA member may not pursue the matter any further.

The appeals process in England and Wales operates as follows: firstly, the recipient of a charge informs the car park operator that they wish to dispute the charge through the firm’s internal appeals process. Secondly, following the outcome of this internal appeal,

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if the recipient of the charge is not satisfied, they can contact an independent appeals service to make a further appeal. Finally, if still not content, the individual in receipt of the penalty can then take the matter to court. In practice, nearly all cases are resolved before going to court.

POPLA, the independent appeals service used in England and Wales by BPA members, published the details of its most recent findings its annual report 2016.\textsuperscript{12} Up to 30 September 2016, it received 49,887 appeals and decided 32,621; it allowed 11,217 appeals (34.4%) and refused 21,404 appeals (65.6%). On a further 10,682 appeals, the parking operators withdrew from the process on receiving notice of the appeal from POPLA. An appeal that is withdrawn by an operator results in the parking operator cancelling the parking charge. This provides strong evidence that a high proportion of penalty notices have not been fairly issued.

\textbf{Keeper liability}
Under Schedule 4 of the Protection of Freedoms Act 2012, the registered keeper of a vehicle can be held liable for parking charges or a parking penalty in England and Wales even if they were not driving at the time the charges or penalty was incurred.

Car park operators could identify registered keepers of vehicles from car registration details (e.g. through number plate recognition technology), then by obtaining the necessary information from the DVLA. ATA members across the UK (Scotland included) are able to access DVLA information for a small fee.

\textbf{RECENT PARLIAMENTARY ACTIVITY}

\textbf{Scottish Parliament members’ debate}
On 22 September 2015, I led a members’ debate on private parking charges.\textsuperscript{13} During the debate, I found that I was not alone in experiencing issues with operators of privately-operated parking.

During the debate, Elaine Smith, then Labour MSP for Coatbridge and Chryston, stated:

\begin{quote}
“It is an issue that is important to many people in Scotland, including hundreds of my constituents, who have sought my help with these unfair charges.”
\end{quote}

\begin{quote}
“I first became aware of this parking problem a number of years ago and since then I have lodged motions, written multiple letters and represented hundreds of constituents in relation to it.
\end{quote}


“I will continue to fight for the many constituents in Coatbridge and Chryston who are affected by private parking companies, but it really is about time that the practice [of unfair charges] was stopped.”

In the same debate, Derek Mackay, then Minister for Transport and Islands (currently Cabinet Secretary for Finance and the Constitution), agreed that, if the ATAs could not properly regulate their members, the government should step in to impose appropriate measures:

“Regarding Murdo Fraser’s plea to clarify the law and to raise awareness, of course I can commit to that, but that in itself will not be enough to solve the problem. It will need a stronger approach…”

“If the approach continues to be unsatisfactory, I may well have to regulate or to propose regulation—it may be that there is time to consider that in a future parliamentary session.”

“We could also make further progress on capping fines and charges. If we were to remove the bad practice of pretending that there are statutory penalties, that would address another issue. If we had better signage, that would address the contract issue. A range of things could be done voluntarily. My difficulty, as minister, is that if companies do not volunteer to do those things, we are left only with legislation and regulation. A fair approach to companies has not translated into companies taking a fair approach to their customers and to people with whom they have entered into contracts.”

“As minister, I want to send a strong message. We need clear signage and a fair and consistent approach that treats people reasonably. We need companies not to pretend that people have breached the law and for them therefore to face all sorts of penalties should they not comply. Fines should be capped at a reasonable level and the CAS guidance should be acknowledged. We will move forward to ensure that people are treated more fairly, which is the essence of the CAS campaign.”

Back in 2015, the Scottish Government shared my view that the private parking industry should be more closely monitored. Since this debate I have witnessed little progress from operators to voluntarily improve industry practices.
Scottish parliamentary questions

In May 2016, I submitted a series of written parliamentary questions to the Scottish Government, including one on whether the Scottish Government had plans to regulate the privately-operated car parking industry during the current parliamentary session.\textsuperscript{14} Humza Yousaf, the new (and current) Minister for Transport and the Islands, stated that the Government was working on how to improve industry practices in Scotland. This included investigations into standardised signage, improved transparency through the development of single code of practice, and exploring the potential for an independent appeals service.

On 14 November 2016, I asked a general oral question in the Scottish Parliament on when the Government last met industry and consumer stakeholders to discuss regulating privately-operated car parks.\textsuperscript{15} Humza Yousaf, said that there were plans to meet with stakeholders that month, and also agreed to meet with me to discuss this issue. Subsequent to this question, I met Mr Yousaf to discuss the Scottish Government’s current efforts to improve industry standards which include a unified code of practice. Mr Yousaf indicated that Transport Scotland was in discussions with trade bodies in relation to creating a single code of conduct.

UK Parliament private member’s bill

Sir Greg Knight MP presented a private member’s bill, the Parking (Code of Practice) Bill, to the House of Commons through the ballot procedure on Wednesday 19 July 2017.\textsuperscript{16} The Bill seeks to make provision for, and in connection with, a code of practice containing guidance about the operation and management of Private parking facilities; and for connected purposes. The Bill is expected to have its second reading debate on Friday 2 February 2018.

Since my meeting with the Minister for Transport and the Islands in November 2016, the Scottish Government has indicated it is looking closely at Sir Greg Knight MP’s private member’s bill into private parking, and whether this could be expanded to cover privately-operated car parks in Scotland.


DETAIL OF THE PROPOSED BILL

Contents of the Bill

My proposed Member’s Bill is intended to address the issues highlighted above by regulating privately-operated car parks in Scotland to ensure practices which are fair to both car park operators and parkers. There are five specific measures which are being proposed as a legislative package, which address the issues described above.

Charges
As there is already Scottish law regarding reasonable charges, the aim of this Bill would be to create a mechanism whereby a reasonable maximum sum, or a range of maximum sums, can be charged for the breach of parking rules by drivers in privately-operated car parks. This could be similar to the £100 maximum recommended by the BPA.

CAS noted that for decriminalised on-street parking, Scottish local authorities have set two levels of charging. This currently sits at £60 reduced to £30 if paid within a certain period - typically 14 days. I believe a similar charging regime would benefit both drivers and private parking operators.

Signage
As there is already Scottish law regarding appropriate signage for business contracts, the aim of this Bill would be to tailor this to all privately-operated car parks. This uniform signage would make clear to those entering a private car park in a vehicle that they are entering into a contract with the car park owner. It would clearly outline the terms and conditions, make clear the charges payable and the penalties for any breach. There would also be rules about the appearance and size of signs. Similarly, there would be guidelines for the placement of the signs to increase clarity. The European Commission may have to be notified of any changes to the regulations surrounding signage.

Appearance of invoices
The proposed Bill would create set standards for clear, consistent and distinct invoices in order to differentiate them from a legally enforceable penalty charge notice. A number of privately-operated car park operators distribute invoices with titles and appearances that closely resemble penalties issued from the Police or local authorities. This Bill would set standards to clearly differentiate private and legally enforceable penalties. As mentioned previously, any legislative changes that impact the appearance of invoices may have to be notified to the European Commission.

According to the CAS report, the BPA and IPC ban the use of any term on a parking charge notice that is seen to replicate or infer some similarity to the statutory penalty charge notice. However, there is no obligation for unaffiliated organisations to stop using these tactics. I believe it to be appropriate that all Scottish privately-operated car parks use terms that clearly differentiate their notices from penalty charge notices.
**Appeals process**
In the majority of cases, there is no independent appeals system in Scotland. As mentioned previously, the IPC has extended its independent appeals service to both Scotland and Northern Ireland. However, for most drivers, challenging the validity of a ticket can only be appealed directly to the operator or by taking them to court. In order to address this situation, the proposed Bill will establish a fully independent appeals system accessible to any motorist in dispute with a privately-operated car park in Scotland.

**Keeper liability**
The proposed Bill would introduce keeper liability in Scotland to reflect the position in England and Wales. If this change were to be implemented, car park operators could use data from the DVLA to identify the registered keeper who would then be liable for any unpaid penalty notice.

**Potential Impacts of the proposed Bill**

**Impacts on drivers**
The proposed Bill would aim to positively impact drivers’ experiences by providing greater consistency and transparency. Presenting terms and conditions clearly, ensuring there is a fully independent appeals body, and reasonable and proportional fines would benefit parkers. Elderly and vulnerable drivers, who are statistically more likely to get in touch with CAS to complain about privately-operated car parks, would notice a significant improvement in the customer experience.

The inclusion of keeper liability would substantially impact registered keepers. The registered keeper would be responsible for a penalty imposed on their vehicle, regardless of whether or not they were responsible for the infringement. Keeper liability works most effectively when robust regulations are in place to ensure the operator code of conduct is enforced and drivers have access to a fair appeals process. Anecdotal evidence from England and Wales would suggest that regulation isn’t working as well as intended and the balance has been tipped too far in the direction of the operator. As a result of this, Sir Greg Knight MP has introduced a Members bill at Westminster to address this apparent imbalance.

**Impact on operators of privately-operated car parks**
The Bill would impact privately-operated car parks by enforcing new standards that were not previously required. However, at the moment, ATAs like the BPA already uphold practices similar to those outlined in this Bill, so members of an accredited ATA would only be marginally affected.

The establishment of an appeals process would clearly impact operators, both in terms of providing an independent avenue for drivers to challenge parking charge notices and in funding the service.
**Impacts on public bodies and communities**

The impact on public bodies would be negligible. If an independent appeals body followed the model set in the rest of the UK, there would be no additional financial burden for the taxpayer.

An independent appeals service would reduce the – admittedly small – number of cases taken to civil court.

I have received many letters from frustrated drivers who have indicated they will not visit an area with a reputation for unfair and difficult to use privately-operated car parks. So, there is anecdotal evidence that improving regulations would remove the negativity surrounding several car parks and result in more people visiting areas previously affected by rogue car park operators.

**Financial impacts**

Some operators appear to be using penalty notices as a source of revenue. This is not in keeping with how this system should work. Car park operators should not be reliant on fine revenue to justify their business model - especially if a large proportion of fines are incorrectly issued.

A penalty typically exists to dissuade, or dis-incentivise, a particular type of behaviour, in this case drivers underpaying to use a car park. The aim of this bill would be to create a system where companies make fair profits and use penalties only where necessary.

Putting a reasonable ceiling on penalty charges would be beneficial to drivers and could also result in operators having a higher proportion of such charges paid. If charges were more reasonable, and an independent arbitrator existed, a higher proportion of charges might be paid. This could balance out the lower level of penalty charges that could be levied, meaning that operators would not necessarily see any reduction in income.

Standardised signage might result in operators having to replace or alter signs that don’t meet new regulations. However, the BPA has rules in place for standardised signage and some operators might already meet new standards. Operators who are not members of an ATA like BPA, however, would be faced with the additional costs that would result from standardisation of signage.

An independent appeals system would financially impact the car park operators, as all of the costs involved in implementing a system would be covered by them or through their trade association.

The BPA funds its own appeals service, POPLA, through two sources. Parking providers subject to an appeal pay a set fee to POPLA and any funding shortfall is bridged by BPA membership fees, with larger companies paying proportionately more. This system ensures that the parking company’s own internal appeals service operates fairly as the companies themselves are liable for the cost of any appeal taken to
POPLA. The IAS is administered by the IPC.\(^\text{17}\) Drivers lodging “non-standard” appeals through the IPC’s IAS are charged a non-refundable £15 fee. Asking drivers to contribute towards their appeal could result in fewer cases being heard. This is not a route I favour and not something I believe should be copied in Scotland.

Operators who are currently not members of a trade body would be impacted as fines issued from their car parks would not have the same legal standing. This would presumably compel operators to join a trade association, bringing new costs. Non-compliance with a code of practice or independent appeals system would result in operators being in breach of the law.

Any change to the appearance of parking charge notices would also impose new costs, as operators would have to adhere to new standards set forth by this bill. These costs could involve commissioning new designs.

Keeper liability would result in potentially reduced costs for operators with an increase in the number of fines being paid. When keeper liability was introduced elsewhere in the UK, an impact assessment anticipated it would result in a reduction in the number of complaints/appeals and would also result in an increase in the number of tickets being paid.\(^\text{18}\)

If increased regulation resulted in less revenue from penalty charges, this could potentially increase hourly parking costs for customers. However, it must be noted that the evidence in England and Wales does not demonstrate increased costs as a result of greater regulation.

**Equalities**

The Bill would have a positive impact on certain groups protected by equalities legislation.

**Age** — Some elderly people may find it harder to access, read and/or understand any signage outlining the terms and conditions of the car park, and may also be more likely to find themselves in situations where they are not able to return and move their vehicle within allotted times (for example for health reasons; or taking longer to complete their activities). CAS statistics show that elderly drivers are some of the most likely to be negatively affected by incorrectly issued fines, as demonstrated by one of the case studies above. Access to an independent appeals body would help in this regard. Furthermore, the regulation of signage and the appearance of invoices would help prevent confusion for some older drivers.


**Disability** —CAS statistics show that a significant proportion of drivers contacting it about privately-operated car parking issues had a disability. These measures should reduce inequality by making it easier for people with disabilities to access, read and/or understand terms and conditions and also appeal any excess charges in circumstances where their disability was the reason for breaking the terms and conditions.

**Race** – There could be potential benefits for those with limited or no English language use, especially in terms of consistent clear signage and appearance of notices.

**Gender (including transgender, maternity and pregnancy)** – The proposal could also benefit pregnant drivers and those with young children who may be more likely to find themselves in situations where they are not able to return and move their vehicle within allotted times (for example for health reasons; or taking longer to complete their activities).

**Sustainability**

The proposal should improve many of the factors connected to sustainable development issues, such as wellbeing and equity. The proposal will address the issue of unjust, unfair and unreasonable parking charges. By ensuring private parking conditions are fair it could help to reduce financial difficulties (through unreasonable or unfair fines) and also any resulting stress. By establishing an independent appeals system the proposal could also improve decision-making processes and institutions.

It should also be acknowledged that the proposal may reduce the profits of some private parking companies, and so reduce the incomes of their owners, directors and staff. However, as stated above, no private parking company should have a business model which seeks to base sustainability on revenues from penalty charges.
QUESTIONS

SECTION 1 - ABOUT YOU

1. Are you responding as:

☐ an individual – in which case go to Q2A
☐ on behalf of an organisation? – in which case go to Q2B

2A. Which of the following best describes you? (If you are a professional or academic whose experience or expertise is not relevant to the proposal, please choose “Member of the public”)

☐ Politician (MSP/MP/Peer/MEP/Councillor)
☐ Professional with experience in a relevant subject
☐ Academic with expertise in a relevant subject
☐ Member of the public

2B. Please select the category which best describes your organisation:

☐ Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)
☐ Commercial organisation (company, business)
☐ Representative organisation (trade union, professional association)
☐ Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
☐ Other (e.g. club, local group, group of individuals, etc.)

3. Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.

☐ I am content for this response to be attributed to me or my organisation
☐ I would like this response to be anonymous (the response may be published, but no name)
☐ I would like this response to be confidential (no part of the response to be published)

Name/organisation:

4. Please provide details of a way in which we can contact you if there are queries regarding your response. (Email is preferred but you can also provide a postal address or phone number. We will not publish these details.)

Contact details:
YOUR VIEWS ON THE PROPOSAL

Aim and approach

1. Do you think legislation is needed to govern the operation of privately-operated car parks in Scotland?

☐ Strongly agree
☐ Partially agree
☐ Neither agree nor disagree
☐ Partially disagree
☐ Strongly disagree
☐ Unsure

Please explain the reasons for your response.

Detail of the proposal

2. Which of the following best expresses your view of providing for a maximum charge (or charges) for breaching the rules of parking in a privately-operated car park?

☐ Fully supportive
☐ Partially supportive
☐ Neutral
☐ Partially opposed
☐ Fully opposed
☐ Unsure

Please explain the reasons for your response.

3. Which of the following best expresses your view on introducing uniform signage tailored for privately-operated car parks?

☐ Fully supportive
☐ Partially supportive
☐ Neutral
☐ Partially opposed
☐ Fully opposed
☐ Unsure

Please explain the reasons for your response.
4. Which of the following best expresses your view of regulating the appearance of parking charge notices (in particular, to differentiate them from penalty charge notices issued by local authorities)?

☐ Fully supportive
☐ Partially supportive
☐ Neutral
☐ Partially opposed
☐ Fully opposed
☐ Unsure

Please explain the reasons for your response.

5. Which of the following best expresses your view of establishing an independent appeals system for parking charge notices issued in privately-operated car parks?

☐ Fully supportive
☐ Partially supportive
☐ Neutral
☐ Partially opposed
☐ Fully opposed
☐ Unsure

Please explain the reasons for your response.

6. Which of the following best expresses your view of introducing keeper liability in Scotland?

☐ Fully supportive
☐ Partially supportive
☐ Neutral
☐ Partially opposed
☐ Fully opposed
☐ Unsure

Please explain the reasons for your response.
Financial impact

7. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

(a) Private parking operators

☐ Significant increase in cost
☐ Some increase in cost
☐ Broadly cost-neutral
☐ Some reduction in cost
☐ Significant reduction in cost
☐ Unsure

(b) Private parking customers

☐ Significant increase in cost
☐ Some increase in cost
☐ Broadly cost-neutral
☐ Some reduction in cost
☐ Significant reduction in cost
☐ Unsure

(c) Government and public sector

☐ Significant increase in cost
☐ Some increase in cost
☐ Broadly cost-neutral
☐ Some reduction in cost
☐ Significant reduction in cost
☐ Unsure

Please explain the reasons for your responses.
Equalities

8. What overall impact is the proposed Bill likely to have for the following protected groups (under the Equality Act): race, disability, sex, gender re-assignment, age, religion and belief, sexual orientation, marriage and civil partnership, pregnancy and maternity)?

☐ Positive
☐ Slightly positive
☐ Neutral (neither positive nor negative)
☐ Slightly negative
☐ Negative
☐ Unsure

Please explain the reasons for your response.

9. In what ways could any negative impact of the Bill on equality be minimised or avoided?

Sustainability

10. Do you believe that the proposed bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

☐ Yes
☐ No
☐ Unsure

Please explain the reasons for your response.

General

11. Do you have any other comments or suggestions on the proposal?
HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey
To respond via Smart Survey, please follow this link:

http://www.smartsurvey.co.uk/s/PrivateParkingCompanies/

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the Data Protection Act 1998. Any information you send in response to this consultation (including personal data and sensitive personal data) will be seen by the MSP progressing the Bill and by specified staff in NGBU, and may be added manually to Smart Survey.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or directly from this link:

https://www.smartsurvey.co.uk/privacy-policy

Electronic or hard copy submissions
If possible, please submit your response electronically – preferably in MS Word document. Please keep formatting of this document to a minimum, and avoid including any personal data other than your name (or the name of the group or organisation on whose behalf you are responding).

Any additional personal data (e.g. contact details) should be provided in the covering e-mail (or a covering letter).

Please make clear whether you are responding as an individual (in a personal capacity) or on behalf of a group or organisation. If you are responding as an individual, you may wish to explain briefly what relevant expertise or experience you have. If you are responding on behalf of an organisation, you may wish to explain the role of that organisation and how the view expressed in the response was arrived at (for example, whether it reflects an established policy or was voted on by members).
Where to send responses

Responses prepared electronically should be sent by e-mail to:

Murdo.Fraser.msp@parliament.scot

Responses prepared in hard copy should be sent by post to:

Murdo Fraser MSP
M2.07
Scottish Parliament
Edinburgh EH99 1SP

You may also contact Murdo’s office by telephone on (0131) 348 5293.

Deadline for responses

All responses should be received no later than 2 March 2018.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received on my website: http://www.murdofraser.com/.

As published, responses will normally include the name of the respondent, but other personal data (signatures, addresses and contact details) will not be included.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). NGBU will treat responses in accordance with the Data Protection Act 1998. The summary may cite, or quote from, your response and may name you as a respondent to the consultation – unless your response is to be anonymous or confidential (see below).

I am also obliged to provide copies of all responses to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses (other than confidential responses) available to MSPs or staff on request.

Requests for anonymity or confidentiality

If you wish your response, or any part of it, to be treated as anonymous, please state this clearly. You still need to supply your name, but any response treated as anonymous
will be published without the name (attributed only to “Anonymous”), and only the anonymised version will be provided to SPICe. If you request anonymity, it is your responsibility to ensure that the content of your response does not allow you to be identified.

If you wish your response, or any part of it, to be treated as confidential, please state this clearly. If the response is treated as confidential (in whole or in part), it (or the relevant part) will not be published. However, I would still be obliged to provide a complete copy of the response to NGBU, and a copy of any non-confidential parts (i.e. a redacted copy) to SPICe when lodging my final proposal. As the Scottish Parliament is subject to the Freedom of Information (Scotland) Act 2002 (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Scottish Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.

In summarising the results of this consultation, NGBU will aim to reflect the general content of any confidential response in that summary, but in such a way as to preserve the confidentiality involved. You should also note that members of the committee which considers the proposal and subsequent Bill may have access to the full text of your response even if it has not been published (or published only in part).

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory statements or material. If I think your response contains such material, it may be returned to you with an invitation to provide a justification for the comments or remove them. If the issue is not resolved to my satisfaction, I may then disregard the response and destroy it.

Data Protection Act 1998

As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or confidentiality. I will not publish your signature or personal contact information, or any other information which could identify you and be defined as personal data.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you specifically wish me to
publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.
Further information about the Data Protection Act can be found at: www.ico.gov.uk.

**Freedom of Information (Scotland) Act 2002**

As indicated above, once your response is received by NGBU or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the FOISA. So if the information you send me is requested by third parties the Scottish Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, potentially even if I have agreed to treat all or part of the information in confidence or to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI.

Further information about Freedom of Information can be found at: www.itsspublicknowledge.info.