1. This submission is made on behalf of the Proprietors of the East Parkside Development and may be made public without redaction or restriction.

2. The East Parkside Proprietors welcome the proposal to amend the Transport (Scotland) Bill to extend ‘registered keeper liability’ to privately-operated parking on private land in Scotland as this will close a longstanding loophole in the parking legislation in Scotland. The East Parkside Proprietors strongly support Amendments 260 – 280, standing in the name of Murdo Fraser MSP.

The East Parkside Development
3. The East Parkside Development is a factored, residential development in Edinburgh comprising 146 dwellings (137 flats, 9 townhouses) arranged around a cul-de-sac. Under the East Parkside Deed of Conditions the 146 proprietors own jointly several common areas within the Development, including 74 off-street parking spaces for private motor cars which are arranged in 14 parking bays. These parking spaces are on private land and are for the use of residents and their visitors. All the parking spaces in the common area are owned in common - there are no allocated parking spaces. On-street parking in East Parkside is prohibited during the working day (8:30 am to 5:30 pm), Monday to Friday (mostly single yellow lines).

4. From the time the East Parkside Development was first occupied (1985), parking by intruders has been a major problem. East Parkside is adjacent to Holyrood Park and as there is only very limited public parking provision nearby, some visitors to the Park make illegal use of the East Parkside private parking bays. East Parkside is not far from the Royal Commonwealth Pool (RCP) and when the RCP car parks are full, some visitors to the RCP make illegal use of the private parking bays within the East Parkside development. In addition, immediately south of the East Parkside Development is the Scottish Widows office complex (now part of Lloyds Banking Group plc) where some 2,300 staff work. There is only very limited on-site car parking and from time to time some Scottish Widows staff also make illegal use of the East Parkside private parking bays, despite the “good neighbour” policy of the local senior management with whom the East Parkside Proprietors have good relations.
5. The pressure for parking by visitors to the attractions near East Parkside is certain to increase significantly when the City of Edinburgh Council goes ahead with the planned and approved installation of a segregated cycleway on the east-most lane of Holyrood Park Road, with which East Parkside has its junction. This will involve the reduction of the present four-lane dual carriageway to a two-lane plus one-lane dual carriageway. The installation of the cycleway will result in the loss of the only parking spaces (11 spaces) that are available when on-street parking is controlled, i.e. from 8:30 am to 5:30 pm on Monday to Friday. The installation of the cycleway will have an even greater impact on Saturdays and Sundays when on-street parking is currently permitted along most of the length of Holyrood Park Road, accommodating typically 58 cars. No provision has been made for the cars that will be displaced.

6. Over the years different approaches have been tried to dissuade potential intruders from parking within the East Parkside Development, with limited success. In 2005 the Proprietors instituted the present East Parkside Car Parking Scheme under which each eligible dwelling is allocated two East Parkside Parking Permits: one for a resident’s car and one for a visitor’s car. The Scheme is operated on behalf of the Proprietors by a contractor member of the International Parking Community engaged by the Factor. The car parking contractor provides legally-compliant signage, regular patrols and issues Parking Charge Notices for vehicles parked without valid East Parkside Parking Permits. The contractor is responsible for recovery of the parking charges.

7. It is the driver at the time of parking who enters into any contract that may be in place for parking on private property. It is thus the driver’s responsibility for complying with any relevant regulations, and hence it is the driver who is responsible for paying any parking charge incurred as a result of failing to comply with the relevant regulations (e.g. parking without displaying a valid Parking Permit). However, the driver is not “registered” and so cannot be identified directly from any information about the vehicle that has been parked without permission (no valid parking permit) on the private property.

8. When a parking operator decides to pursue an unpaid parking charge notice they obtain details of the registered keeper from DVLA. But if the registered keeper replies to say “I did not park that car in that location at that time on that date” there is nothing more the parking operator can do in Scotland unless the parking operator has incontrovertible evidence that the registered keeper was in fact the driver who parked the car for which the parking charge notice was issued. Without incontrovertible evidence of identity court action to recover any unpaid parking charge is impossible.

9. In England and Wales the law is different because ‘registered keeper liability’ was created by Schedule 4 of the Protection of Freedoms Act 2012. So if the registered keeper says “I did not park that car there at that time on that date” and also says (as the law permits) “And I am not going to tell who was driving that car
on that occasion”, the car parking operator can invoke ‘registered keeper liability’ and the outstanding parking charge become a liability of the (known) registered keeper. Enforcement is relatively easy and becomes an effective deterrent. It is then a private matter for the registered keeper to recover the parking charge from the driver who parked the car without permission, if the offending driver was indeed a different person.

10. The East Parkside Proprietors have had persistent problems with some illegal parkers who blatantly exploit the lack of ‘registered keeper liability’ in Scotland and ignore the Parking Charge Notices that are issued every time they park here without a valid East Parkside Parking Permit. Between June 2015 and June 2016 the contracted car parking operator issued 300 parking charge notices for vehicles parked without a permit in the private car parking spaces within the East Parkside Development. Of these 300 parking charge notices, 100 were cancelled for a variety of valid reasons. Of the remaining 200 parking charge notices, only 20 were paid, i.e. only 10%. This should be no surprise given the number of organisations that advise offending drivers simply to ignore parking charge notices as “they cannot be enforced”. Without ‘registered keeper liability’ that is all too true.

11. With respect to this proposed extension of ‘registered keeper liability’ to parking on private land in Scotland, it should be noted that the East Parkside Proprietors welcomed the Parking (Code of Practice) Act 2019 which will provide a uniform regulatory regime for the operational aspects of privately-operated parking on private land in Scotland as well as in England, Wales. That will include any operational aspects of the use of ‘registered keeper liability’ that are not prescribed in legislation, thus ensuring adherence to ‘best practice’.

12. ‘Registered keeper liability’ is required to remedy a major deficiency in the law relating to parking on private property in Scotland. The East Parkside Proprietors have been pressing for some time for the provisions of Schedule 4 of the Protections of Freedoms Act 2012 to be extended to Scotland as soon as possible. Amendments 260 – 280 to the Transport (Scotland) Bill would make the required changes to the law in Scotland by a more direct route.

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