

**TRANSPORT (SCOTLAND) ACT 2019 - PAVEMENT, DOUBLE & DROPPED KERB
PARKING STANDARDS - UPDATE REPORT**

1.0 EXECUTIVE SUMMARY

- 1.1 The Environment, Development and Infrastructure Committee at its meeting held on 21 March 2024 considered a report which provided Members with an update regarding pavement, double and dropped kerb parking under the Transport (Scotland) Act 2019. Members at that meeting requested additional information which this further report provides.
- 1.2 The key aim of the Transport (Scotland) Act 2019 is to improve accessibility, particularly for the most vulnerable road users (pedestrians, cyclists and children). The prohibitions on pavement parking and parking at dropped footways are intended to ensure access for walkers and wheelers without being impeded by parked vehicles and to prevent these groups of more vulnerable road users from being forced to traverse amongst vehicular traffic within the live carriageway.

RECOMMENDATIONS

- i. It is recommended that Members agree the introduction of the enforcement of the prohibitions set out in the Transport (Scotland) Act 2019, in relation to pavement parking, parking at dropped kerbs and double parking, to commence once the associated back-office system is upgraded, before the end of 2024.
- ii. It is recommended that Members agree to the creation of two new warden posts; one based in Mid Argyll, Kintyre and the Islands, and one based in Helensburgh and Lomond, to support both the enforcement of the new prohibitions but also to enhance the capacity to enforce restrictions under the DPE regime.

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2.0 INTRODUCTION

2.1 This report provides Members with an update report as requested at the Environment, Development and Infrastructure Committee at its meeting held on 21 March 2024 in relation to changes resulting from the Transport (Scotland) Act 2019.

3.0 RECOMMENDATIONS

3.1 It is recommended that Members agree that enforcement of the prohibitions set out in the Transport (Scotland) Act 2019, in relation to pavement parking, parking at dropped kerbs and double parking, can commence once the associated back-office system is upgraded.

3.2 Further, it is recommended that Members agree to the creation of two new warden posts; one based in Mid Argyll, Kintyre and the Islands, and one based in Helensburgh and Lomond, to support both the enforcement of the new prohibitions but also to enhance the capacity to enforce restrictions under the DPE regime.

4.0 DETAIL

4.1 A report on the pavement, double and dropped kerb parking prohibition, as legislated under the Transport (Scotland) Act 2019, was presented to the Environment, Development and Infrastructure Committee at its meeting held on 21 March 2024 [Transport \(Scotland\) Act 2019 - Pavement, Double and Dropped Kerb Parking Standards - March 2024](#). The Committee noted the changes in legislation and requested that a subsequent report would be provided to the Committee with further information (including legislative framework and enforcement options), also outlining any additional resource which may be required to discharge the new powers. This report provides an update on this subject.

Prohibitions and Exceptions

- 4.2 For ease of reference, the legislation provides power to roads/traffic authorities to carry out enforcement on the following (note, the legislation provides the **Power** to enforce but does not impose a **Duty** on local authorities):
- i. Pavement parking prohibition (s50 of the Act)
 - a. A “pavement” in the Act is a footway or footpath as defined within the Roads (Scotland) Act 1984, s151(2).
 - b. A motor vehicle is parked on a pavement if:
 - i. It is stationary and one or more of its wheels (or any part) is on any part of the pavement.
 - ii. A stationary vehicle is considered parked whether the driver is in attendance and whether or not the engine is running.
 - ii. Double parking prohibition (s54 of the Act)
 - a. A parked vehicle is double parked where no part of the vehicle is within 500mm of the edge of the carriageway.
 - b. A stationary vehicle will be double parked whether or not the driver is in attendance and whether or not the engine is running but not if this is due to traffic or other circumstances beyond the driver’s control.
 - iii. Dropped footway parking prohibition (s56 of the Act)
 - a. Dropped footway is where the kerbs have been lowered to meet the level of carriageway or the carriageway has been raised to meet the level of the footway; where this has been done to facilitate pedestrians or cyclists to cross the carriageway.
 - b. This does not apply to dropped kerbs which form the access to driveway or garage (whether for commercial or residential properties).
- 4.3 The Act and the associated guidance documents (principally the *Pavement, Double & Dropped Kerb Parking Standards Guidance – Enforcement Chapters*, appended to the report) also sets out exceptions to the prohibitions.
- 4.4 In the case of footway parking and double parking, the same exceptions apply and are detailed within Chapter 2 of the Enforcement Chapters. Broadly, the exceptions include emergency services, road or public utility maintenance, and delivery services. The Committee should note that there are no exceptions applied to Blue Badge holders under the new provisions.
- 4.5 The exceptions for the dropped footway parking prohibition are more limited than the above. However, broadly, the prohibition does not apply where the footway has been dropped for the purpose of vehicle access or in the case of emergency response.

- 4.6 The key aim of the Act overall is to improve accessibility, particularly for the most vulnerable road users (pedestrians, cyclists and children). The prohibitions on pavement parking and parking at dropped footways are intended to ensure access for walkers and wheelers without being impeded by parked vehicles and to prevent this group of road users from being forced to traverse amongst vehicular traffic within the live carriageway.
- 4.7 The aim set out above is expected to improve the road safety for our most vulnerable road users, but it should also be noted that footways are not typically constructed to the same standards as carriageways (for example, generally recently constructed carriageways have a construction depth of 350-450mm whereas footways have a construction depth of 210mm – many older carriageways and footways will have significantly less construction thickness, with many footways having insignificant strength to withstand vehicle overrun).
- 4.8 Vehicles parked on footways can lead to the deformation of the footway and the formation of defects; both of which affect the "ride quality" for the user and potentially increase liability to the Council should trips or falls occur. In addition to this, vehicle loading on footways can increase the burden on already pressured budgets due to the increase in maintenance requirement (for example, kerb damage, rutting, potholes). In some situations permitted footway parking, where sufficiently constructed footways exist, can provide a useful shared resource as detailed in the photo in Appendix 1 attached).

Enforcement

- 4.9 Enforcement of breaches would be carried out in a similar manner to the enforcement regime in respect to Decriminalised Parking Enforcement (DPE). The Council currently has a team of six Amenity Wardens ("parking wardens") who enforce the restrictions under DPE as permitted under the Road Traffic Act 1991. The remit of the warden team would extend to include the restrictions outlined earlier but under the powers outlined in Section 59 of the Transport (Scotland) Act 2019. The Amenity Wardens are based in local areas where they carry out their main duties, however are often deployed where demands are greatest.
- 4.10 The Transport (Scotland) Act 2019 provides additional powers, beyond that permitted under the 1991 Act. This includes the following:
- i. If a vehicle drives away before a warden can affix a Penalty Charge Notice (PCN), then the PCN can be issued via post.
 - ii. If a PCN is interfered with or removed (other than by the local authority or the registered keeper/person in charge of the vehicle) then the person doing so is guilty of an offence.
 - iii. Enforcement on private roads where there is a public right of passage, and the footway or footpath is compliant with the definition under s151 of the Roads (Scotland) Act 1984.
 - iv. Enforcement of parking on verges but only where the verge is between a footway and a carriageway.

- 4.11 A PCN may only be issued under one of the Acts, not both. For example, if a vehicle parked on a footway but also on a double yellow line then only one PCN could be issued. In this example, it is recommended that the PCN would be issued under the 1991 Act (i.e. for parking in contravention of the double yellow markings).
- 4.12 Further to the above, the 2019 Act provides for circumstances where the PCN is not payable or is to be refunded. This includes the example set out above but also contains other circumstances including where the keeper of the vehicle is subject to criminal proceedings, or a fixed penalty notice under the Road Traffic Offenders Act 1988.
- 4.13 The Parking Prohibitions (Enforcement and Accounts) (Scotland) Regulations 2023 sets out the amount of the penalty charge. This has mirrored the charge for PCNs under the 1991 Act and are as set out in Table 1 below.

Table 1

Paid within 14 Days (50% discount)	Paid between 15 days and service of Notice to Owner	Paid between issue of Notice to Owner and service of charge certificate	Paid after service of charge certificate (50% uplift)
£50	£100	£100	£150

- 4.14 The appeals process broadly mirrors the DPE regime. The following provides a brief overview of the process but further detail can be found under Chapter 9 of the Enforcement Chapters.
- i. First appeal may be submitted to the local authority within the payment period. This must include any available evidence in support of the appeal.
 - ii. The local authority must consider the appeal against the specified grounds. It may then waive the PCN or issue a notice of rejection. The notice of rejection must set out the reasons for the same and advise that the appellant may, if they so wish, appeal to the First-Tier Tribunal for Scotland or otherwise pay the penalty charge.
- 4.15 The Councils back-office parking system provider, Imperial Parking Enforcement Solutions, are currently upgrading their software to allow PCNs to be issued under the 2019 Act. Once the upgrade is complete, and subject to Member agreement, breaches in the new prohibitions can be enforced by the Council's warden team.

Accounts

- 4.16 Income raised from the issue of PCNs under the 2019 Act are retained within the local authority. The Act requires that any surplus derived from this can only be used to fund a restricted list of activities, mirroring broadly the requirements for on-street parking surplus income as outlined within s55 of the Road Traffic Regulation Act 1984 (RTRA84). These activities include the following (ii to iv are derived from the s55(4) b-d of the RTRA84):

- i. of facilitating the local authority's local transport strategy
- ii. meeting all or any part of the cost of the provision and maintenance by the local authority of off-street parking accommodation, whether in the open or under cover
- iii. the making to other local authorities, . . . or to other persons of contributions towards the cost of the provision and maintenance by them, in the area of the local authority or elsewhere, of off-street parking accommodation, whether in the open or under cover
- iv. if it appears to the local authority that the provision in their area of further off-street parking accommodation is unnecessary or undesirable, the following purposes:
 - a. meeting costs incurred, whether by the local authority or by some other person, in the provision or operation of, or of facilities for, public passenger transport services, and
 - b. the purposes of a road improvement project in the local authority's area

4.17 The local authority is required to prepare a statement each financial year showing income and expenditure and how any surplus budget in the account has been applied. It should be noted that this is also done each year for off and on street parking and PCN income under the 1991 Act.

Resource

4.18 Decriminalised Parking Enforcement (DPE) was introduced in Argyll and Bute in June 2014. The application to the Scottish Government for authorisation to operate DPE within Argyll and Bute noted that the enforcement staff would include one Parking Manager and eight f.t.e. wardens. Of the eight wardens, six were new posts wholly focussed on DPE and two equated to ~20% of the nine existing Environmental Wardens time for parking duties. In practice the level of parking enforcement carried out by the 9 Environmental Wardens was well below 20% of their duties due to other demands, the 20% being a figure used in the initial scoping of DPE.

4.19 The reduction in the Environmental Warden staff from nine to four has removed the theoretical capacity for the two wardens (f.t.e) in delivery of the parking enforcement regime. At present the parking team is comprised of wardens as below:

- 2 x OLI wardens – based out of JQ, Oban
- 2 x H&L wardens – based out of Blackhill Depot, Helensburgh
- 1 x B&C warden – based out of Victoria Road, Dunoon
- 1 x MAKI warden – based out of JQ, Oban

- 4.20 Since the implementation of DPE in 2014, there has been a year-on-year increase in demand for a warden presence across Argyll and Bute, focussed on “hot-spots” such as Ganavan Sands, Oban generally, Campbeltown, Helensburgh town centre, Luss and Arrochar, and Dunoon and Rothesay. The demand comes from numerous sources including Elected Members, members of the public, Police Scotland and other organisations (for example bus companies where parking is obstructing junctions or corners and causing difficulties for buses to gain access). The demand driven by places such as Luss means that due to the current level of staffing, other areas are at times deprived of a regular warden presence (in the case of Luss, Helensburgh and the Rosneath peninsula are unable to be enforced. Campbeltown, partly due to the travel time from warden bases, also has limited enforcement.
- 4.21 As the number of on-street restrictions are increased and as more car parks are brought under a control order, it can be more challenging to meet this demand within the current resource levels. The impact of enforcing the prohibitions set out within the 2019 Act are difficult to predict but members of the public have submitted requests and queries regarding this already. It is clear there will be an additional demand, however, and this will be difficult to meet within current resource levels.
- 4.22 As part of the ongoing RIS review a number of efficiencies have been identified in terms of operating the Parking Wardens and these efficiencies are anticipated to create capacity within the parking team allowing a more comprehensive parking enforcement regime across the council area. However, in order to provide more resilience, extend the times of enforcement to meet the demand, cover weekends and public holidays and increase the ability to deal with more complex parking matters such as abandoned boats, trailers etc. from car parks and occasionally on street it is proposed that a further 2 wardens are recruited on a cost neutral basis as set out below:
- 4.23 Based on pre-COVID-19 levels, there was, on average 6,500 PCNs issued per annum. This equated to approximately 1,100 PCNs per warden per annum. It should be noted that Parking Wardens are not set targets and their primary focus is to help to keep traffic free flowing safely rather than generate income.
- 4.24 Prior to April 2023, the charge of for PCNs had not increased for 20 years. The previous charge levels were £60 per PCN, reducing to £30 if paid within 14 days. The majority of PCNs were paid at the lower rate and this equated to an average PCN payment of £30.05. From 2023, however, the Scottish Government agreed to increase the level of PCNs to the figures outlined in Table 1. The increase provides the lower payment (if paid within 14 days) at £50 per PCN. Based on the average number of PCNs per annum and the difference between the lower new figure and the previous average payment, this alone could generate as much as £129,675 per annum. With the current financial issues facing families and communities such as fuel costs etc, it is expected that the increased charge will encourage drivers to think carefully about where they park and not to incur the costly PCN charge, officers are of the opinion this will impact the number of PCNs issued with some drivers being more compliant and, as such, the £129,675 per annum is at the high end on estimated income, however; even with a 30% decrease in the number

of PCNs issues, the new higher charge would still increase income by £32,175.

- 4.25 The salary grade for the Amenity Wardens is LGE5. At the top of the grade (3 years in post) the cost to the Council (including Employers National Insurance and Superannuation contributions) is £30,824. There are other costs associated with the service, for example, vehicles and fuel, back-office system and staff and enforcement equipment but to cover the cost of a warden post, a warden need only issue 645 PCNs per annum; this is only 58% of the average annual PCNs issued per warden and takes no account of the potential increase in PCNs should Members agree that the new prohibitions are enforced.
- 4.26 In addition to the increased income expected, as detailed in para 4.23, it is anticipated that any new warden(s) would also issue ~1,100 PCNs per annum and should, in theory, generate a net surplus to the Council. Taking this alongside the potential increase highlighted in para. 4.23 and considering that the new prohibitions will create a level of enforcement demand; Officers are of the view that the increase in resource should be a neutral cost to the Council.
- 4.27 To ensure a cost-effective and broad cover over the Argyll and Bute area, Officers recommend that the following arrangements are progressed:
- i. The warden covering MAKI (based in Jackson Quarry, Oban) is relocated to cover OLI.
 - ii. A new post is created based within MAKI to allow regular presence in Inveraray, Lochgilphead, Tarbert and Campbeltown as well as covering Islay as appropriate.
 - iii. A new post is created within H&L, primarily focussed on enforcement along the loch-sides of Loch Lomond and Loch Long (at present primarily Luss and Glen Loin 2, Arrochar).
 - iv. The new posts will include arrangements to ensure coverage on public holidays and re-deployment, as practicable, to provide warden cover in other areas.
 - v. The arrangements will be reviewed following a full 12 months of enforcement with a view to considering any further expansion in the warden resource.

5.0 CONCLUSION

- 5.1 This report provides Members with an update report as requested at the Environment, Development and Infrastructure Committee at its meeting held on 21 March 2024.
- 5.2 It is recommended that Members agree to the introduction of the enforcement of the parking prohibitions under the Transport (Scotland) Act 2019 before the end of 2024.
- 5.3 It is recommended that Member agree to the creation of two new warden posts, one based in MAKI the second based in H&L.

6.0 IMPLICATIONS

- 6.1 Policy – May require process documents to be drafted but the Enforcement Chapters provide a good baseline for doing so, including several process flows.
- 6.2 Financial – Cost of upgrading the back office system and two additional posts, but should be cost neutral overall.
- 6.3 Legal – Transport (Scotland) Act 2019 provides local authorities the Power to enforce the prohibition but does not impose a Duty.
- 6.4 HR – Potential increase in resource, expected to be cost neutral.
- 6.5 Fairer Scotland Duty:
 - 6.5.1 Equalities - protected characteristics – may provide better protection for those with mobility issues.
 - 6.5.2 Socio-economic Duty – n/a.
 - 6.5.3 Islands - n/a.
- 6.6 Climate Change – n/a.
- 6.7 Risk – Not implementing the prohibition within Argyll and Bute may cause reputational damage to the Council.
- 6.8 Customer Service – The prohibitions may drive requests for service.
- 5.9 The Rights of the Child (UNCRC) – May provide increased safety for children.

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APPENDICES

Appendix 1 - Photo showing regulated footway parking

Appendix 2 – Pavement, Double and Dropped Kerb Parking Standards Guidance - Enforcement Chapters

Appendix 1 - Photo showing regulated footway parking

Example of permitted parking where a Traffic Regulation Order is in place allowing parking with one wheel 'on the kerb'. Note this is an example of parking arrangements outside of Argyll and Bute

