

LEGISLATIVE CONSENT MEMORANDUM

PARKING (CODE OF PRACTICE) BILL

Background

1. This memorandum has been lodged by Fergus Ewing MSP, Cabinet Secretary for Rural Economy and Connectivity under Rule 9.B.3.1(b) of the Parliament's standing orders. The Parking (Code of Practice) Bill was introduced in the House of Commons on 19 July 2017 and had its second reading on 2 February 2018. The Bill can be found at:

<https://publications.parliament.uk/pa/bills/cbill/2017-2019/0017/18017.pdf>

Content of the UK Parking (Code of Practice) Bill

2. The Bill seeks to regulate the practices of the private parking industry via a single Code of Practice. Although it is a Private Member's Bill, it has the support of the UK Government as it aims to ensure fairer, more transparent and consistent industry regulation. The code will replace the system of industry self-regulation with more effective regulation that balances fairness to the motoring public with the rights of landowners to manage their land.

Provisions Which Relate to Scotland

3. As presently drafted all of the provisions within this Bill will extend to Scotland. Further detail and the reasons for seeking the legislative consent of the Scottish Parliament are set out below as regards the provisions falling within the legislative competence of the Scottish Parliament.

Clauses 1, 2, 3, 4 and 5(1) and (5) – Parking Code

4. The Bill includes a number of provisions that focus on the consultation, preparation, review, publication and effect of a single Code of Practice that aims to regulate the operation and management of private parking facilities.

5. The policy intention is to improve the operation and management of private parking companies by regulating how they enforce parking. The clauses define who should be consulted in the preparation of, and the review of, the Code. They also seek to provide 'good practice and guidance' on appeals against parking charges imposed by, or on behalf of, private parking companies.

6. Currently a private company can be a private car park operator and can charge for parking, but only those operators who are members of an Accredited Trade Association (ATA) can obtain vehicle keeper information from the DVLA for parking enforcement purposes. There are presently two ATAs - the British Parking Association (BPA) and the Independent Parking Community (IPC) - having such accreditation. They have approximately 200 members between them.

7. In theory, members of the BPA and IPC must adhere to the respective codes of practice in order to maintain their membership and, therefore, their access to

DVLA information. However, the UK and Scottish Governments currently do not have a say on how these Codes of Practice are developed or maintained. Furthermore, audits undertaken by the ATAs and the DVLA identified that there is clear evidence of inconsistent activities taking place by some parking operators who are seeking to take advantage of members of the public who may be less able to understand or comply with the contractual requirements set by parking operators. Very little appears to be done by the industry to tackle such issues.

8. If the provisions of the Bill are extended to Scotland that will ensure consistency and transparency for motorists across Scotland, England and Wales, particularly as many of the private parking companies that are based in England also operate many car parks in Scotland.

Clause 6 – Delegation of functions

9. Clause 6 makes provision which allows the Secretary of State to enter into an agreement with another public authority to perform any of the functions of altering the Code. The Scottish Government considers this clause to be an appropriate ancillary to clauses 1 to 5. It would potentially enable the Scottish Ministers, in agreement with the Secretary of State, to alter the Code if there were specific issues affecting Scotland that the Code had not already addressed, although consistency across Scotland, England and Wales is the fundamental policy aim.

Clause 7 – Levy for recovery of administrative and investigation costs

10. Clause 7 makes provision for a regulation making power to require ATAs to pay an annual levy which is funded by their members to cover the cost of administration and the investigation of potential breaches of the Code. This provision, if extended to Scotland, would ensure transparency and consistency of the operation of the Code across Scotland, England and Wales. As is noted later in this memorandum, one paragraph of this clause is outwith the legislative competence of the Scottish Parliament.

Clause 8 – Regulations

11. Clause 8 makes provision for the parliamentary procedure applicable to regulations made under the Bill. In addition, this clause makes provision for regulations under the Bill to make different provision for different purposes, to contain incidental, supplemental, consequential or transitional provision or savings, or to provide for a person to exercise discretion in dealing with any matter. This clause is technical in nature, relating to the operation of the regulation making power in clause 7.

Clause 9 – Interpretation

12. This clause makes technical provision as to the meaning of certain expressions in the Bill.

Clause 10 – Application to the Crown

13. This clause makes provision for the Bill to apply to the Crown and to Crown land.

Clause 11 – Commencement, extent and short title

14. This clause is technical in nature as it seeks to commence certain provisions of the Bill via secondary legislation and aims to extend the Bill across Scotland, England and Wales to ensure consistency and fairness for all motorists and landowners.

15. For the reasons set out above, the Scottish Government would support the extension of the Bill to Scotland. The relevant provisions triggering the need for an LCM are clauses 1 to 4, 5(1) and (5), 6, 7 (with the exception of clause 7(2)(g) and 8 to 11.

Provisions outwith the legislative competence of the Scottish Parliament

16. In addition to the provisions described above which are within the legislative competence of the Scottish Parliament, the Bill also contains provisions which are outwith that competence. Those are clauses 5(2) to (4) and clause 7(2)(g). Those provisions relate to the operation of the Secretary of State's discretion to release (through DVLA) vehicle keeper information to private car park operators in the event of failure to comply with the Code or to pay the levy. An LCM is not needed in connection with an extension of these provisions to Scotland. Extension of these provisions to Scotland would nonetheless support the effective, consistent and transparent operation of the code across Scotland, England and Wales.

Consultation

17. There has been no formal consultation on the Bill as a whole by the Scottish Government. However, the UK Government carried out informal public consultation in 2015 through its discussion paper (*Parking Reform – Tackling Unfair Practices*) into the practices of the industry across Great Britain. 80% of responses acknowledged that there were "significant problems in how the sector conducts its business". The paper also noted that, for many companies within the private parking industry, income from enforcement is their primary or only income stream and, as such, may be a factor in incentivising companies to issue parking charge notices at the expense of the motorist. The findings of the discussion paper also indicate that a significant section of the industry, including the BPA agrees that self-regulation has failed and that government regulation is now necessary to tackle bad practice.

Financial Implications

18. There may be some financial implications for the Scottish Administration anticipated as a consequence of taking forward an LCM. This is likely to be associated with the requirements of the proposed Code of Practice currently being developed.

Conclusion

19. It is the view of the Scottish Government that it is in the interests of the people of Scotland and of good governance that the relevant provisions be considered by the UK Parliament.

Draft Legislative Consent Motion

20. The draft motion, which will be lodged by the Cabinet Secretary for Rural Economy and Connectivity, is:

“That the Parliament agrees that the relevant provisions of the Parking (Code of Practice) Bill, introduced in the House of Commons on 19 July 2017, relating to private parking, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”.

21. The Scottish Parliament’s legislative competence and the executive competence of the Scottish Ministers are not altered by this Bill.

Scottish Government

March 2018

This Legislative Consent Memorandum relates to the Parking (Code of Practice) Bill (UK legislation) and was lodged with the Scottish Parliament on 5 March 2018

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