



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

24th Report, 2014 (Session 4)

Disabled Persons' Parking Badges (Scotland) Bill

Published by the Scottish Parliament on 19 March 2014

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Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
 - (a) any—
 - (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
 - (ii) [deleted]
 - (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
 - (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
 - (c) general questions relating to powers to make subordinate legislation;
 - (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
 - (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
 - (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
 - (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
 - (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

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Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
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24th Report, 2014 (Session 4)

Disabled Persons' Parking Badges (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meetings on 25 February and 18 March 2014 the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Disabled Persons' Parking Badges (Scotland) Bill at stage 1 ("the Bill").¹ The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.
2. The Member in charge provided the Parliament with a memorandum on the delegated powers provisions in the Bill ("the DPM").²

OVERVIEW OF BILL

3. The Bill was introduced in the Scottish Parliament on 17 December 2013. The Bill is a Member's Bill, introduced by Dennis Robertson MSP.
4. The disabled persons' parking badges scheme, or the 'blue badge scheme', permits disabled people who meet the scheme's prescribed eligibility criteria to park in areas where restrictions may otherwise apply. The Bill is being introduced to strengthen the enforcement powers of local authorities to deal with misuse of badges and to require that local authorities have a review process in place for applicants who have been refused a badge on grounds of eligibility.

¹ Disabled Persons' Parking Badges (Scotland) Bill [as introduced] available here: http://www.scottish.parliament.uk/S4_Bills/DisabledPersonsParkingBadges/b44s4introd.pdf

² Disabled Persons' Parking Badges (Scotland) Bill (Scotland) Bill Delegated Powers Memorandum available here: http://www.scottish.parliament.uk/S4_Bills/Disabled_Persons_Parking_Badges_DPM.pdf

5. The primary legislation for the blue badge scheme is contained in section 21 of the Chronically Sick and Disabled Persons Act 1970 (“the 1970 Act”). The Bill will amend section 21 of that Act along with provisions in the Road Traffic Regulation Act 1984 to extend powers relating to the enforcement of the blue badge scheme, already in force in England and Wales, to local authorities and police in Scotland.

6. Currently, the power to inspect badges can only be exercised by police officers, traffic wardens and local authority parking attendants. The Bill will extend these inspection powers to “enforcement officers” who will include traffic wardens and parking attendants as well as a new class of official. Police constables and enforcement officers will be given the power to confiscate a badge if, on examination, it appears not to have been issued under the 1970 Act, has been cancelled, should have been returned to the local authority, or is being misused.

7. The Bill will give local authorities the power to cancel a badge that is no longer held by the person to whom it was issued, and make it an offence to use a badge which has been cancelled or should have been returned to the local authority. The Bill will also require local authorities to review decisions not to award a badge on the grounds that a person is not eligible for one.

8. Many of the changes made bring the position in Scotland into line with that in England and Wales where changes were recently made by the Disabled Persons’ Parking Badges Act 2013.

DELEGATED POWERS PROVISIONS

1. The Committee considered each of the delegated powers in the Bill. At its first consideration of the Bill, the Committee determined that it did not need to draw the attention of the Parliament to the following delegated powers:

- Section 3 (power to confiscate badge)
- Section 7 (commencement)

2. At its meeting of 25 February, the Committee agreed to write to Dennis Robertson MSP to raise questions on the remaining delegated powers in the Bill. This correspondence is reproduced at the **Annex**.

3. In light of the written responses received by the Committee, it agreed that it did not need to draw the Parliament’s attention to the following delegated powers:

- Section 1 (form of badge)
- Section 6 (review of local authority decisions)

4. The Committee therefore reports that it is content with the delegated powers provisions contained in the Bill as introduced

ANNEX

Correspondence with the Member in charge of the Bill

On 25 February, the Committee wrote to Dennis Robertson MSP as follows:

Section 1 (form of badge)

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

1. Section 1 of the Bill amends section 21(1A)(b) of the Chronically Sick and Disabled Persons Act 1970 to provide that the form of a blue badge issued by a local authority in Scotland must fulfil any requirements specified in regulations or administratively by the Scottish Ministers. This will allow some elements of the specification to be published in subordinate legislation and some to be set administratively.

2. The power is broad enough to allow the Scottish Ministers to specify the requirements of the badge entirely administratively, without publishing any details as to the form of the badge in regulations.

3. The Committee asks the member on charge:

- **Why he has decided not to draw this power more narrowly so as to specify generally what requirements are to continue to be prescribed in regulations and what features may be set administratively; and**
- **Given that the policy intention is explained in the delegated powers memorandum as including that non-sensitive features of the badge should be published in regulations, why the power is drawn broadly to enable the whole specification of the badge requirements administratively, if desired?**

Section 6 (review of local authority decisions)

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

4. Section 6 allows the Scottish Ministers to make regulations requiring local authorities to review on request a decision not to award a badge on the grounds that a person is not eligible for one. Eligibility depends on being a disabled person of a description prescribed in regulations.

5. Under section 6(3), regulations may provide that the review requirement does not apply to a decision that a person is not a disabled person (of a description

prescribed under the Chronically Sick and Disabled Persons Act 1970 and specified in the regulations). The power to exclude certain decisions from review is a wide power that cuts across all decisions on eligibility, yet the Delegated Powers Memorandum does not explain what this power will be used for.

6. The Committee therefore asks the member in charge to explain what the power in section 6(3) of the Bill is intended to achieve and if the power could be used to impose further eligibility criteria for applicants, why is this considered proportionate?

On 28 February, Dennis Robertson MSP responded as follows:

Section 1 (form of badge)

The reasoning behind the approach taken in this section is laid out in the Delegated Powers Memorandum. The proposed amendment to section 21(1A) of the 1970 Act will give Ministers flexibility in exactly how they set down the requirements as to form which a blue badge must meet. I don't think that it would be easy to be prescriptive as to what elements should be capable of being included in regulations and which should have to be set down administratively and it doesn't seem to me that there is any particularly good case for attempting to do this.

Section 6 (review of local authority decisions)

Section 6 of my Bill would allow Ministers to make regulations which would require a local authority to have in place a review procedure in relation to any decision by the authority that an applicant for a blue badge is not entitled to one because he or she is not a "disabled" person. A person is not disabled for these purposes if he or she does not fall within one of the descriptions prescribed by regulations. The presently prescribed descriptions are set out in regulation 4 of the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000 (SSI 2000/59).

All that section 6(3) of the Bill is doing is to give Ministers the power to set out that there could be exceptions to a general right of review. Such exceptions would be framed by reference to a particular prescribed description of disabled person. So, for example, it would be possible to prescribe that there should be no right of review in a case where a person has claimed eligibility for a blue badge by virtue of receiving a mobility supplement under article 26A of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (article 4(2)(d) of SSI 2000/59) and the authority has found that such a supplement is not in payment.

There may be thought to be less need of a review procedure in such a case than there would be in a case where the eligibility decision has been taken following an assessment of the applicant by an independent mobility assessor.

It would be for Ministers to decide whether to make use of the power in section 6(3) and it may well be that they would consider there to be no need to utilise it at the outset of any review regime. But I think that the subsection could prove useful if it transpired that local authorities were being required to conduct a large number of reviews in relation to decisions arrived at by reference to whether certain

benefits are as a matter of fact being received by applicants. Section 6(3) does not in any way allow the imposition of further eligibility criteria for applicants.

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Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by APS Group Scotland

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ISBN 978-1-78457-058-3