

DISABLED PERSONS' PARKING BADGES (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Disabled Persons' Parking Badges (Scotland) Bill introduced in the Scottish Parliament on 17 December 2013:

- Explanatory Notes;
- a Financial Memorandum;
- Dennis Robertson's statement on legislative competence; and
- the Presiding Officer's statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 44–PM.

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by officials of the Scottish Government to support Dennis Robertson MSP, the member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a part of a section does not seem to require any explanation or comment, none is given.

THE BILL

3. The Bill includes amendments of section 21 of the Chronically Sick and Disabled Persons Act 1970 ("the 1970 Act") and is aimed at improving the ability of local authorities to tackle misuse of the blue badge to obtain on-street parking concessions. The Bill is aimed at protecting the rights of badge holders who use their badges responsibly within the terms of the scheme.

COMMENTARY ON SECTIONS

Section 1 - Form of badge

4. Paragraph (b) of section 21(1A) of the 1970 Act requires the Scottish Ministers to prescribe the form of the badge in regulations. The regulations must be published (see sections 27 and 41 of the Interpretation and Legislative Reform (Scotland) Act 2010), thus all of the details about what constitutes a badge in proper form are immediately put into the public domain.
5. Section 1 of the Bill substitutes a new paragraph (b) that will allow the Scottish Ministers to specify requirements about the form of a badge administratively, which means the requirements so specified need not be published. The new paragraph (b) continues to allow the Scottish Ministers to specify some, or all, of the requirements as to the form of a badge in regulations.

Section 2 - Power to cancel badge

6. Section 21(7AB) of the 1970 Act (inserted by the UK Disabled Persons' Parking Badges Act 2013 ("the 2013 Act")) is extended to Scotland to give local authorities the power to cancel a badge that is no longer held by the person to whom it was issued. If cancellation is effected other than where the badge has been reported lost or stolen, the cancellation will take effect only when the authority has given notice to the holder.

Section 3 - Power to confiscate badge

7. Section 21(4D) of the 1970 Act (inserted by the 2013 Act) is extended to Scotland and will give constables and enforcement officers the power to retain a badge that has been presented

to them for examination and which appears not to have been issued under the Act, has been cancelled, should have been returned to the local authority or is being misused.

8. Subsection (4E) of section 21 of the 1970 Act confers a power to make regulations to prescribe what is to be done with a badge which has been retained under subsection (4D). That power will be exercisable by the Scottish Ministers in relation to a badge that has been retained in Scotland.

Section 4 – Offence of using cancelled badge

9. Section 21(4BZA) of the 1970 Act (inserted by the 2013 Act) is extended to Scotland. The effect is that it will be a criminal offence for a person to drive a vehicle whilst displaying a badge which has been cancelled or should have been returned to the issuing authority.

10. Section 21(4C) of the 1970 Act (as amended by the 2013 Act) provides that an offence under section 21(4BZA) is a summary offence and can be punished with a fine up to level 3 on the standard scale. The standard scale is set out in section 225 of the Criminal Procedure (Scotland) Act 1995; as at the date of the Bill's introduction a level 3 fine is £1,000.

11. Subsection (1ZA) of section 117 (wrongful use of a disabled person's badge) of the Road Traffic Regulation Act 1984 (inserted by the 2013 Act) is extended to Scotland so as to make it an offence to display on a parked vehicle a badge which has been cancelled or should have been returned to the issuing local authority. An offence under section 117(1ZA) of the Road Traffic Regulation Act 1984 is also a summary offence that attracts a fine of up to level 3 on the standard scale (see Schedule 2 to the Road Traffic Offenders Act 1988).

Section 5 – Enforcement officers

12. At the time of the Bill's introduction, subsection (4BA) of section 21 of the 1970 Act confers on constables, traffic wardens and parking attendants the power to require a person to produce a badge for examination. Section 3 of the Bill will give them the additional power under subsection (4D) to retain a badge produced for examination in certain circumstances (see paragraph 7 of these Notes).

13. Section 5 of the Bill will confer the enforcement powers mentioned in the preceding paragraph on a new class of official, namely a person employed or engaged by a local authority to exercise those powers. Section 5 of the Bill achieves this by inserting a definition of "enforcement officer" as section 21(8A) of the 1970 Act. Enforcement officer is defined to mean traffic wardens and parking attendants as well as the new class of official. References to "enforcement officer" are then inserted into the relevant subsections of section 21 of the 1970 Act.

14. Constables, traffic wardens and parking attendants will be in uniform when exercising their enforcement powers under section 21 of the 1970 Act. The new class of official which section 5 will create need not be uniformed. To ensure that the public can know that a person not in uniform who is requesting the production of a badge is entitled to make that demand, section 5 of the Bill will insert a new section 21(4BC) into the 1970 Act. The new subsection

provides that it is not an offence to fail to present a badge for examination in response to a request from someone other than a constable, traffic warden or parking attendant, unless the person making the request produces evidence of the person's authorisation to make it.

Section 6 – Review of local authority decision

15. 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 under section 21(2) of the 1970 Act. The current description of an eligible person is given by the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000 (S.S.I. 2000/59).

16. It is intended that the regulations which will be made under section 6 will specify who may apply for a review, the manner in which an application for a review is to be made and the procedure to be followed by the local authority when conducting and disposing of a review. The regulations will be subject to the negative procedure (as defined by section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Disabled Persons' Parking Badges (Scotland) Bill introduced in the Scottish Parliament on 17 December 2013. To satisfy Rule 9.3.2 of the Parliament's Standing Orders, it has been prepared by officials of the Scottish Government to support Dennis Robertson MSP, the member in charge of the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The figures provided within this memorandum are the best current estimates for the costs expected as a result of the Bill.

BACKGROUND

3. The blue badge scheme provides concessions to disabled people to park where restrictions may otherwise apply. The scheme plays an important part in helping severely disabled people access jobs, shops and community services. Without their blue badge, many would be confined to their home. Further background information about the blue badge scheme is provided in the Policy Memorandum.

4. The Bill:

- aims to strengthen enforcement of the blue badge scheme by providing the power to cancel and retain badges in certain circumstances and by allowing local authorities to appoint a new type of enforcement officer (sections 2 to 5)
- will allow elements of the form of the blue badge to be set administratively by the Scottish Ministers (section 1)
- will allow the Scottish Ministers to make regulations ensuring that people refused a blue badge on eligibility grounds will be able to seek a review of that decision (section 6).

COSTS FOR THE SCOTTISH ADMINISTRATION

5. No costs are expected for the Scottish Administration as a result of the Bill as they are not responsible for the administration and enforcement of the blue badge scheme.

6. Responsibility for blue badge enforcement lies with local authorities and Police Scotland. As set out in the following parts of this memorandum, the Bill is expected to have only limited cost implications for those bodies. The Scottish Government does not expect there will be any need to make additional resources available to them as a consequence of the Bill.

COSTS FOR LOCAL AUTHORITIES

Background

7. Local authorities are responsible for issuing blue badges to people in their areas and some local authorities are responsible for tackling blue badge misuse within their areas.

8. Local authority parking attendants enforce the blue badge scheme where parking enforcement has been decriminalised. Decriminalised Parking Enforcement (DPE) is a regime which enables local authorities to administer their own parking penalty scheme and to retain the penalties collected to finance their parking enforcement procedure. At present 12 local authorities have implemented DPE with a further two moving through the application process.

9. In those local authority areas where DPE has not been implemented, Police Scotland is responsible for parking enforcement. In those areas the blue badge scheme is currently enforced by police traffic wardens. Police Scotland is currently reviewing this service.

Section 5 (enforcement officers)

10. Section 5 of the Bill will enable local authorities to appoint people, other than parking attendants, to act as enforcement officers. At present the power only matters for those local authorities which operate DPE and it is likely that they will only appoint where it makes financial sense to do so (in other words, where the cost of appointing someone would not be disproportionate in view of what blue badge misuse is estimated to cost the authority in terms of lost parking revenue — which, for some authorities, can be very significant sums each year).

11. Assuming a local authority took on a new member of staff to act as an enforcement officer at the same wage as a parking attendant, the estimated cost per annum would be £26,000 inclusive of overtime, employers' pension contribution and national insurance. Additionally there may be some training and development costs and one-off office and equipment costs estimated at £3,000-£4,000.

12. Of course section 5 of the Bill merely provides greater flexibility for local authorities, by allowing them to authorise people other than parking attendants to act as enforcement officers. It will be for each authority to decide whether it wants to take on additional staff, or contract with a third party, in order to have this new type of enforcement officer operating in its area. There is potential for the new enforcement officers to make efficiencies in enforcing the blue badge scheme by freeing up parking attendants' time to deal with other parking violations. The cost of recruiting a new enforcement officer could be reduced if the appointment is made as a shared resource between neighbouring local authorities.

Section 6 (local authority reviews)

13. Regulations to be made under section 6 will require every local authority to have a review process in place to review its decisions to refuse an application for a blue badge on eligibility grounds. The Bill does not provide for a fee to be charged for reviews, so it is expected the costs of reviews will be borne by local authorities.

14. The cost of providing a review process will not be entirely new for all local authorities as 20 out of the 32 already do so.

15. Two local authorities which currently have review processes estimated the cost of conducting a review. One estimated £8.25 and the other £9.25 per review. To the cost of the review itself approximately £10 can be added for associated administrative costs. Taking the higher estimated cost for conducting a review and adding £10 in administrative costs gives a total cost per review of £19.25.

16. There are significant margins of uncertainty around the likely annual numbers of reviews and inevitably numbers will vary from one local authority to another. The responses from 27 local authorities to a questionnaire issued in March 2013 provide some basis for an estimate. The responses reveal that over a two month period 20 applicants requested a review following an Independent Mobility Assessment. This would equate to 120 requests per annum across 27 local authorities. Extrapolating from this snapshot, a generous estimate for 32 local authorities might be something in the order of 200 review requests each year.

17. The cost of 200 reviews each year at £19.25 per review would be £3,850. Allowing for the significant uncertainty around the number of reviews per year, if the number were trebled (i.e. 600) the estimated annual cost would amount to £11,550.

COSTS FOR OTHER BODIES, INDIVIDUALS AND BUSINESSES

18. The only provision in the Bill expected to give rise to costs under this heading is section 4, which creates new offences associated with blue badge misuse.

19. Individuals convicted of the new offences will bear a cost in the form of any fine imposed on them.

20. There will also be costs for the various parts of the justice system. The costs are uncertain since it cannot be known how many prosecutions there will be for the new offences. It is unlikely the costs will be significant and should be readily absorbed within existing budgets.

21. The cost of section 4 depends on how often the new offences are committed, how often the crime is detected and how many of the crimes detected proceed to prosecution or some other formal disposal.

22. The blue badge table in the Scottish Transport Statistics Bulletin¹ shows that there were 263,045 badges on issue in Scotland as at 31 March 2012. The vast majority of them are not misused and of those which are misused fewer still will be misused in the ways that section 4 of the Bill will make an offence.

¹ <http://www.transportscotland.gov.uk/analysis/statistics/publications/scottish-transport-statistics-previous-editions>

23. As to the proportion of misused badges, research in 2008 by the Department for Transport in London² (conducted in England only) found that between 1% and 3% of badges were replacement badges for lost and stolen badges, many of which were being used by family members. Further Department for Transport research in 2010³, again in local authorities in England only, suggested fraud levels of between 2% and 4%. Research conducted in England is not an altogether reliable guide to the Scottish position, given that England has more, and larger, cities where parking is at a premium. It seems reasonable to assume the level of misuse in Scotland will be at the lower end of the ranges indicated by the DfT research. If 1% of the badges on issue in Scotland were being misused it would equate to around 2,500 badges being misused. Allowing for the facts that a minority of cases of badge misuse will be one of the new offences, that not all occurrences of the new offences will be detected and that not all of those will be prosecuted, a way of making a reasonable estimate of the number of cases that will be prosecuted might be found by taking 1% of the estimated 2,500 cases of misuse (25).

24. The cost to the Scottish Court Service of a prosecution in a justice of the peace court is estimated at £169 and the estimated cost of a case in the sheriff court is £334. So the cost of 25 cases per year to the Scottish Court Service can be estimated as falling somewhere between £4,225 and £8,350. In practice the cost is likely to be at the lower end of the scale as it seems reasonable to expect many of the cases will be prosecuted in JP courts and a number will be brought to a swift conclusion by a guilty plea.

25. Average prosecution costs per case are £335, which gives an annual cost of £8,375 (25 x £335).

26. The average legal assistance cost is estimated at £329 per case, which would fall upon the Scottish Legal Aid Board were legal aid made available in the 25 estimated cases per year, resulting in an estimated annual cost around £8,225. These average unit costs are taken from the Scottish Government publication on the costs to Criminal Justice System 2011-2012.⁴

²<http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/transportforyou/access/bluebadge/reform/reformstrategy/bbreformstrategy.pdf>

³<http://assets.dft.gov.uk/publications/blue-badge-reform-enforcement-evidence-base/blue-badge-reform-enforcement-evidence-base.pdf>

⁴<http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/Publications/costcrimjustcot>

These documents relate to the Disabled Persons' Parking Badges (Scotland) Bill (SP Bill 44) as introduced in the Scottish Parliament on 17 December 2013

MEMBER'S STATEMENT ON LEGISLATIVE COMPETENCE

On 17 December 2013, the member in charge of the Bill (Dennis Robertson MSP) made the following statement:

“In my view, the provisions of the Disabled Persons' Parking Badges (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE COMPETENCE

On 17 December 2013, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Disabled Persons' Parking Badges (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Disabled Persons' Parking Badges (Scotland) Bill (SP Bill 44) as introduced in the Scottish Parliament on 17 December 2013

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