

DISABLED PERSONS' PARKING BADGES (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Disabled Persons' Parking Badges (Scotland) Bill introduced in the Scottish Parliament on 17 December 2013. It has been prepared by the Scottish Government on behalf of Dennis Robertson MSP, to satisfy Rule 9.3.3A of the Parliament's Standing Orders. The contents are entirely the responsibility of the member and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 44–EN.

POLICY OBJECTIVES OF THE BILL

2. The blue badge scheme provides concessions to disabled people who meet the scheme's prescribed eligibility criteria to park where restrictions may otherwise apply. The scheme plays an important part in helping disabled people access jobs, shops and community services. Without their blue badge, many would be confined to their home.

3. The proposals in the Bill follow a four year period of reform of the scheme and are primarily aimed at improving the ability of local authorities to tackle misuse of the blue badge, particularly by third parties, to obtain on-street parking concessions. Each time a blue badge is misused by a third party, blue badge holders are prevented from parking in that space. The Bill will improve the quality of life for many disabled people by tackling misuse to free up parking spaces for those who are entitled to the parking concessions and who need them most. The Bill aims to protect the rights of badge holders and strengthen the existing framework of the scheme.

4. The Bill will amend section 21 of the Chronically Sick and Disabled Persons Act 1970 ("the 1970 Act") in order to help tackle blue badge misuse. It will provide additional powers to local authorities and the police to enforce the blue badge scheme in Scotland. It will strengthen current enforcement powers, including the ability to cancel or confiscate a badge in certain circumstances and will provide for security features of the blue badge format to be approved administratively by the Scottish Ministers.

5. The Bill will also allow regulations to be made to ensure that people refused a blue badge on eligibility grounds are entitled to seek a review of the decision from the local authority.

6. The Bill contains six provisions as follows:

- **Section 1 - Form of badge** amends section 21(1A) of the 1970 Act to provide that the form of a blue badge must fulfil any requirements specified in regulations or set administratively by the Scottish Ministers.
- **Section 2 – Power to cancel badge** provides a power for local authorities to cancel badges which are no longer held by the person to whom they were issued (either because they have been lost or stolen or for other reasons).
- **Section 3 – Power to confiscate badge** extends the provision which currently allows a constable or other enforcement officer to examine a blue badge so as to also allow confiscation of the blue badge where it is apparent that the badge should have been returned to the local authority within the requirements of the regulations, or has been cancelled or misused or forged.
- **Section 4 - Offence of using cancelled badge** makes amendments of section 21(4BZA) of the 1970 Act and section 117(1ZA) of the Road Traffic Regulation Act 1984 Act (“the 1984 Act”). These provisions relate to the wrongful use of a blue badge while driving or parking a vehicle. It is made an offence to use a badge that should have been returned to the local authority as provided for in the regulations. The wrongful use of a badge that has been cancelled by the local authority will also be an offence. (A person committing one of these offences will be liable on summary conviction to a fine not exceeding level 3 on the standard scale.)
- **Section 5 – Enforcement officers** provides a power for local authorities to designate certain persons (other than parking attendants in uniform) to examine and retain badges in pursuance of matters relating to fraud or misuse of a blue badge. Unlike parking attendants, these officers would not be required to wear uniform, but would need to carry identification.
- **Section 6 – Review of local authority decision** allows the making of regulations to require local authorities to have review processes in place for applicants who have been refused a blue badge on grounds of eligibility.

BACKGROUND

7. The Disabled Persons’ Parking Badge scheme was introduced throughout the UK in 1971 (originally known as the orange badge scheme). The scheme is now commonly referred to as the blue badge scheme (“the scheme”) and the disabled persons’ blue badge is mutually recognised throughout the European Union. Local authorities are responsible for the administration of the scheme. The badge itself is produced and distributed through a central point and the design of the badge is the same for Scotland, England and Wales, incorporating security features to the same standard as those contained in a British passport.

8. In Scotland, the blue badge scheme provides parking concessions to enable badge holders to park without charge or time limit in otherwise restricted on-street environments (on-street parking meters, pay and display parking bays, designated disabled parking bays) and to park on single and double yellow lines, provided it can be done safely and with attention to loading or other local parking restrictions.

9. The scheme is open to disabled people who meet the eligibility requirements set in legislation. Blue badge holders must be present in the vehicle, irrespective of whether they are travelling as a driver or a passenger, for valid use of the badge. Badges are normally issued for a period of three years.

10. Having a blue badge allows people to be independent with their travel arrangements, enabling them to access jobs, shops and other services and to lead full and active lives. At 31 March 2012 there were 263,000 badges on issue in Scotland (around 3000 of these are issued to organisations which are responsible for the care and transport of persons who would qualify for a blue badge).

11. The blue badge scheme does not apply to off-street car parks, for example supermarkets and airports. However, many private car park owners permit badge holders to access disabled parking bays or to have free access to other facilities such as work place parking bays.

Existing legislation

12. The primary legislation for the scheme is contained in section 21 of the 1970 Act. This is supported by secondary legislation in the Disabled Persons' (Badges for Motor Vehicles) (Scotland) Regulations 2000 (S.S.I. 2000/59), as amended. The Regulations provide the operational requirements for the scheme, including:

- the form of badge;
- the description of disabled person to whom a badge may be issued (eligibility criteria);
- the circumstances and manner in which a badge may be displayed;
- the period of issue of a badge;
- the circumstances in which a badge must be returned;
- the cases in which an authority may refuse to issue badges;
- the fee which may be charged for the issue of a badge;
- the conditions (relating to the misuse of badges) which must be met if an authority is to refuse to issue a badge;
- the conditions (relating to the misuse of badges) which must be met if an authority is to require the return of a badge;
- the procedure for appeal where a local authority requires the return of a badge; and
- the badges issued outside Great Britain which may be recognised.

Blue Badge enforcement provision in current legislation

13. Subsections (4B), (4BA) and (4BB) of section 21 of the 1970 Act respectively make it an offence to drive a vehicle displaying a disabled persons' badge that is not issued under section 21 and displayed in accordance with regulations, provide "constables" (who include police officers, police traffic wardens and local authority parking attendants) with a power to inspect badges, and

make it an offence not to produce a badge for inspection when required to do so. Police officers also have powers under other legislation to confiscate a badge.

14. Section 115 of the 1984 Act makes it an offence to use, lend or allow use of a blue badge with intent to deceive or to make or have in one's possession anything so closely resembling a blue badge as to be calculated to deceive.

15. Section 117 of the 1984 Act makes it an offence to park a vehicle displaying a disabled persons' badge unless it has been issued under section 21 of the 1970 Act and is displayed in accordance with the regulations made under it.

Parking enforcement – current arrangements

16. The responsibility for on-street parking enforcement is for the police and local authorities. The police are responsible where parking remains criminalised and Police Scotland use police officers or police traffic wardens to enforce parking restrictions. At the time of writing this memorandum, Police Scotland has announced a review of the traffic warden service provision throughout Scotland.

17. Local authorities are responsible in areas where parking has been decriminalised and use uniformed parking attendants to impose Penalty Charge Notifications for parking infringements. (Local authorities might also contract out this service to private companies).

18. The Road Traffic Act 1991 introduced provisions enabling the decriminalisation of most non-endorsable parking offences and the relevant provisions of the 1991 Act were commenced in Scotland in June 1997. This allowed for significant change to be made to parking enforcement in a number of council areas and a change to the service provision by the then local police forces.

19. Currently 12 local authorities operate Decriminalised Parking Enforcement (“DPE”). These are Edinburgh City, Glasgow City, Aberdeen City, Perth and Kinross, South Lanarkshire, Dundee, Renfrewshire, East Ayrshire, South Ayrshire, Fife, East Renfrewshire and East Dunbartonshire. Inverclyde and Argyll and Bute have also applied to Transport Scotland to operate DPE and are currently going through the application process.

20. In off-street parking areas, responsibility for enforcement lies with the local authority where the local authority owns and operates the car park and with the relevant private operators in the case of private car parks.

21. The misuse of a blue badge is a criminal offence and the potential penalty is therefore more serious than that imposed for a parking infringement. The provisions of section 21 of the 1970 Act make it a criminal offence to display a blue badge that does not conform to the regulations. This offence can attract a fine of up to £1,000. Failure to allow examination of a blue badge by a police officer, traffic warden or parking attendant can also attract a fine of up to £1,000.

22. Misuse of a blue badge can range from inadvertent misuse, for example, by a family member who simply does not know the rules of the scheme or blatant and deliberate misuse by an individual who is not entitled to a blue badge to obtain free parking concessions for their own benefit. This prevents blue badge holders accessing these parking spaces.

23. Common forms of blue badge misuse have included:

- family members or carers using a badge, with or without the knowledge of the badge holder;
- family members using badges after the badge holder has died;
- applications being made using a deceased person's name and details;
- applications made by people using false identities or who misrepresent themselves or who make false statements about their disability;
- badges being copied and forged;
- badges being tampered with to alter the expiry date;
- badges being falsely reported as "lost", so that holders can be issued with replacements that are then used in more than one car or by family members; and
- badges being stolen from cars for illegal re-sale.

24. Police and local authorities work together to investigate and report cases of misuse and fraudulent use of a blue badge to the Procurator Fiscal who will decide what action to take in individual cases. For example, Glasgow City Council and the police carry out joint operations, targeting specific hot spot areas where the misuse of blue badges is a regular occurrence. These operations are resource intensive and have to be repeated at regular intervals. The blue badge can have a substantial financial value as it provides a concession to parking charges in areas where there is on street metered parking or in council run car parks. This can contribute to the incentive to abuse the scheme, particularly in urban areas where parking charges can be high.

Research

25. ODS Consulting was commissioned by Transport Scotland in 2012 to carry out research on "*The Use and Value of the Blue Badge Scheme*¹". The researchers carried out 819 telephone interviews with blue badge holders and the parents of children with badges. They found that for badge holders the "*greatest value of the badge was securing their independence and ability to get out and about allowing a certain quality of life*".

26. Abuse of the scheme reduces the number of on-street disabled parking bays and other on-street parking spaces available for use by genuine blue badge holders. This results in badge holders being unable to access services in the community. The research shows that the blue badge plays a vital role in enabling people with mobility problems to live their lives as fully as they can. In the telephone survey carried out by ODS Consulting, 76% (624 out of 819) said that

¹ Social Research, [The Use and Value of the Blue Badge Scheme \(October 2012, ISBN:978-1-908181-60-2\)](http://www.transportscotland.gov.uk/strategy-and-research/publications-and-consultations/j247081-00.htm)
<http://www.transportscotland.gov.uk/strategy-and-research/publications-and-consultations/j247081-00.htm>.

without their badge they would go out less often. Additionally, in focus groups some badge holders said that they would not be able to go out at all.

27. The research also found that 83% (679 out of 819) of blue badge holders in Scotland had experienced misuse of blue badges or disabled persons' parking spaces, and 52% (424 out of 819) regularly experienced misuse. Misuse is seen as a major problem by a majority of badge holders (52%), (425 out of 819).

28. Nearly half of badge holders surveyed (49%) considered that the blue badge scheme was not adequately enforced. In focus groups, badge holders expressed concerns about inadequate enforcement. They also held the view that traffic wardens and local authority parking attendants were not always clear on the rights and responsibilities of blue badge holders. No member of the focus groups had ever heard of anyone being prosecuted for misusing a blue badge. This may explain why half of them felt the scheme was not adequately enforced.

29. There are no statistics on the level of blue badge misuse in Scotland. However Department for Transport research in 2008² in English local authorities found that between 1% and 3% of badges were replacement badges for lost and stolen badges, many of which turned up being used by family members. Further Department for Transport research in 2010³, in local authorities in England, suggested fraud levels of between 2% and 4%. This estimated average includes highly pressurised cities such as London and it is assumed that the Scottish average will be less. A level of just over 1% would equate to around 2,500 forged or fraudulent badges in Scotland.

30. Although there are no definitive numbers for the whole of Scotland, there is evidence for the reality of the problem. As an illustration, the City of Edinburgh Council typically reports 20-30 of the more serious examples of blue badge fraud or misuse to the Procurator Fiscal each year. The costs to local authorities in terms of lost parking revenue can be significant. The cost to the Council of someone misusing a badge every day for a year in Edinburgh could be up to £6,000.

Programme of reforms

31. The Scottish Government has worked with the Department for Transport and the Welsh Government over the last four years to reform and modernise the blue badge scheme. The aim of the reform programme was to create a more consistent and unified scheme across the UK, to ensure that only those who meet the statutory criteria hold a blue badge and to ensure that the scheme is able to deal with future pressures and demands.

32. Reform of the scheme was informed by the Scottish Government's consultation on blue badge reform which took place in October 2010⁴. To support the reform process, the Scottish Government established a blue badge reform working group with representation from the

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 [Blue Badge Reform Consultation Document](#) and [Blue Badge Reform - Analysis of Consultation](#)

Convention of Scottish Local Authorities (“COSLA”), local authorities, the voluntary sector, health service, College of Occupational Therapists, the police and the Mobility and Access Committee for Scotland. The reform process was also assisted by the findings of the Department for Transport research “*Improving Blue Badge administration, assessment and enforcement: good practice review*” (July 2011).⁵

33. The reforms included:

- the introduction from 1 January 2012 of a central database of all new badges issued, with key information on badge holders;
- significant anti-fraud design improvements to the design of the new blue badge to prevent misuse and abuse;
- local authorities being able to refuse to issue a badge or withdraw badges following a single relevant conviction in relation to misuse of a badge by a badge holder (rather than three previous convictions); and
- the introduction from 1 September 2012 of Independent Mobility Assessments delivered by occupational therapists or physiotherapists who assess those applicants where there is uncertainty as to whether they meet the “*unable to walk or virtually unable to walk*” eligibility criterion. The aim was to provide greater consistency of practice and maximise efficiencies compared to assessment practice which in the past relied upon assessment by the applicant’s own GP.

34. As part of the 2010 consultation, the Scottish Government also signalled its intention to provide improved enforcement powers to local authorities and canvassed views on giving local authorities new or amended powers to tackle misuse of the blue badge scheme. It proposed to give powers to local authorities to confiscate badges that have been cancelled and/or are being misused by a third party for their own benefit. 450 respondents agreed that local authorities should have these powers, out of a total of 509 responses.

Consultation on this Bill

35. In recognition of this earlier support to tackle blue badge misuse, Dennis Robertson MSP submitted his draft proposal for the Disabled Persons’ Parking Badges (Scotland) Bill on 18 December 2012. This was accompanied by a consultation which made the case for amending the law in Scotland and covered six specific areas. The consultation document has been published on the Parliament’s website along with an analysis of the responses⁶. Copies of or links to it were sent to a wide range of stakeholders including local authorities, the police and voluntary sector organisations.

36. The consultation ran until 28 March 2013 and 81 responses were received, 43 from individuals and 38 from organisations. There was widespread support for the general aim of the Bill to provide better enforcement. Responses in relation to the specific proposals show that a

⁵ <http://www.dft.gov.uk/publications/blue-badge-good-practice-review/>

⁶ <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/57991.aspx>

majority of respondents support each of these. The responses to each question in the consultation are included in the narrative for each section in the Bill.

37. As part of the consultation process, Dennis Robertson MSP held meetings in Aberdeen, Edinburgh and Glasgow which were attended by the public, voluntary organisations and local authorities. All were keen to reduce the propensity for misusing a blue badge. He also met with SENSE Scotland, Inclusion Scotland and Capability Scotland. These meetings allowed detailed discussion of issues around protecting the rights of badge holders. These identified the need for:

- the timely return of confiscated blue badges to the holder in cases of misuse by a third party;
- assurance that the new powers would not be used to question a person's disability and right to a badge on eligibility grounds;
- specific guidance and training for enforcement staff;
- a public education programme outlining the rights and responsibilities of blue badge holders; and
- an appeals/review process which is transparent, accountable, consistent and easily accessed.

38. In addition, Scottish Government officials have established two working groups to consider how the Bill's proposals will operate in practice. The groups comprise membership from local authorities, Police Scotland, the College of Occupational Therapists, the Mobility and Access Committee for Scotland, Inclusion Scotland, Capability Scotland, Spinal Injuries Scotland, the Crown Office and COSLA.

39. One working group is looking at the confiscation process and the process for return of badges to badge holders. In addition, it will also progress the work identified in the research and the consultation to improve public awareness of the rights and responsibilities of badge holders. The second group is considering how local authority reviews of eligibility decisions can be applied more consistently across the country. The aim is to ensure that the Bill's provisions are fashioned into workable, effective processes.

Raising awareness

40. Consultation respondents felt strongly that there was a need to raise general awareness of the blue badge scheme and the rights and responsibilities of blue badge holders. Both individual respondents and organisations said that this was crucial, not only for those involved in enforcement of the scheme but also for blue badge holders themselves and the wider public.

41. The need to raise awareness has also been evidenced through the recent Transport Scotland commissioned research carried out by ODS Consulting with blue badge holders.⁷ This showed that their overall awareness of the rules and restrictions was high. The overwhelming majority (94%), (767 out of 819) support the current eligibility criteria. 76% (623 out of 819) of blue badge holders have or are aware of the blue badge *Rights and Responsibilities* booklet and

⁷ [The Use and Value of the Blue Badge Scheme](#)

92% (755 out of 819) think they have a good understanding of the restrictions. Focus group discussions however demonstrated some confusion about particular aspects of the scheme, despite badge holders claiming that they understood the regulations. This suggests that there may be some inadvertent misuse of blue badges, which highlights the importance of ensuring sensitive enforcement by local authorities.

42. It is not the intention to introduce the power to confiscate badges following inspection without ensuring that those who will exercise that power are trained to exercise it appropriately. The working group will provide updated guidance which the police and local authorities can incorporate into local training for enforcement staff.

England and Wales

43. Similar legislation on the enforcement of the scheme has been introduced in England and Wales through the Disabled Persons' Parking Badges Act 2013. England and Wales have not legislated for a review process against refusal of a blue badge on grounds of eligibility.

BILL PROPOSALS

Section 1 - Form of badge

Policy objective

44. Section 21 of the 1970 Act currently requires the Scottish Ministers to specify the form of the blue badge in regulations. The original purpose of this legislation goes back to 1970 and was to allow local authorities to produce badges in their own local authority area to a consistent national design. However, the recent reforms of the blue badge scheme and advances in technology have allowed for badge production to be centralised and this is now provided under contract by a specialist company on behalf of the UK, Welsh and Scottish Governments.

45. There is therefore no longer a requirement to provide the level of detail of the format of the badge in regulations. Additionally, the badge has been modernised and now contains a number of anti-fraud security measures in its design. Having the detailed specification of the badge in regulations therefore heightens the risk of forgery.

46. The policy objective is to amend the existing provision in the Act which requires the form of the badge to be set down in subordinate legislation so as to provide in future that some elements of the specification can be set down in this way and some can be set administratively by the Scottish Ministers.

47. The effect of this is to allow some of the security features which are required only by the company producing the badge (such as the type of plastic used) to be excluded from publication in regulations. This will reduce the possibility of badges being forged. This in turn meets the overall aim of the Bill to reduce the incidence of misuse and fraud, ensuring that badge holders have every opportunity to benefit from the blue badge parking concessions.

Alternative approaches considered

48. The UK Parliament has recently passed the Disabled Persons' Parking Badges Act 2013. In England and Wales, this has removed the requirement to specify in regulations the design of the blue badge. The original intention was to do the same in Scotland. As part of the consultation, Dennis Robertson MSP sought the view of Rosemary Agnew, Scottish Information Commissioner, on the basis that the amendment would be removing information that was currently freely available to the public, albeit that the original purpose was for use by local authorities. As a result of the Commissioner's advice and with the agreement of the Minister for Transport and Veterans, it was decided to drop the earlier proposal to remove the requirement to specify the design of the badge from the existing legislation in its entirety.

49. The proposal is now to retain some of the features of the badge in regulations. This meets the Scottish Government's principles of Freedom of Information and, as suggested by the Scottish Information Commissioner, it strikes a balance by retaining more general information in the public domain which means that the general public will have an idea of how the badge looks, while protecting the security features of the badge.

Consultation

50. Respondents to the consultation generally supported the proposal to remove the design format from regulations to safeguard the security features of the badge.

Section 2 and Section 4 - Power to cancel badge and offence of using cancelled badge

Policy objective

51. The policy objective of section 2 is to enable local authorities to cancel a badge which is no longer in the possession of the person to whom it was issued, for example, when the badge has been reported lost or stolen or the badge holder has died.

52. Section 4 of the Bill makes it an offence to display a badge which should have been returned to the local authority under the regulations or to display a cancelled badge.

Proposed approach

53. The Blue Badge Improvement Service ("BBIS") database was introduced in 2012 to provide local authorities across the UK with up to date information on the status of blue badges. On checking the database, enforcement officers would be alerted that a badge has been cancelled by a local authority and should no longer be displayed on a motor vehicle. In such circumstances the badge could be confiscated to prevent further misuse.

54. In cases where a blue badge is not reported as lost or stolen and is subsequently found and returned to a local authority, the local authority normally contacts the badge holder and returns the badge. This practice will continue.

55. Badge holders who comply with the rules of the scheme will be protected. Each badge issued contains a unique identifier and in those cases where a badge is reported lost or stolen by the badge holder, the issuing local authority can cancel the badge on the database and issue a

replacement badge with a different identifier. The database will alert enforcement officers (across the UK) that the badge has been cancelled and should no longer be displayed on a vehicle.

Consultation

56. A large majority of respondents were in agreement to the proposal to allow local authorities to cancel badges and that display of a cancelled badge should be an offence. A few respondents however were not convinced of the need to create a new offence in support of enforcement and thought that existing legislation might be sufficient.

57. Comments included:

- “The power to cancel would assist effective enforcement and provide a deterrent to misuse and abuse of blue badges, with the potential to reduce the black market value of a badge.”
- “The process would depend on an up-to-date, reliable and comprehensive database being available to all local authorities, clarifying the legality of any use of a badge that is lost or stolen and ensuring that replacement badges are issued quickly where appropriate.” The BBIS database mentioned above now provides up to date information on badge holders.

Alternative approaches

58. No alternative approach was considered.

Section 3 - Power to confiscate a badge

Policy objective

59. The policy objective is to allow relevant local authority or police officials in certain circumstances to confiscate a parking badge which is being misused.

60. This would include confiscation of a badge which, on examination, appears not to have been issued under the 1970 Act, has been cancelled, should have been returned to the local authority in the circumstances prescribed by regulations or is being misused.

61. Regulations will identify the circumstances under which badges confiscated from third parties will be returned by the issuing local authority to the badge holder to whom it was originally issued.

Proposed approach

62. Misuse of a blue badge ranges from deliberate intent to gain free parking concessions to inadvertent misuse of a badge by a carer or relative through a lack of knowledge of the rules. Regardless of the circumstances, each time a badge is misused many badge holders may be disadvantaged by being unable to park in that space, causing stress, frustration and depriving them of their independence.

63. Unique identifying features contained in a blue badge assist enforcement officers to determine whether the badge is valid within the terms of the scheme. If examination of the badge shows that it does not comply with the requirements of the scheme, an enforcement officer may request the individual to clarify the circumstance in which the badge is being used, for example, if the person using the badge is not the person in the photograph on the badge.

64. Enforcement officers have the power to examine a blue badge which they suspect is being misused but they do not have the specific power to confiscate a badge. Currently only police officers have that power in certain circumstances. This can lead to situations where a traffic warden or parking attendant has to return the badge to the person using it at the time, even though the badge may have been reported lost or stolen and subsequently cancelled, has expired, has been changed or forged or is being misused by a third party. In such circumstances, there is no guarantee that the badge will be returned by the individual to the badge holder.

65. The power to inspect badges was introduced by section 73 of the Transport (Scotland) Act 2001 to support the penalties for misuse of a blue badge which were seen to be less effective because of the inability of police or enforcement officers to inspect them. Although a proposal was made at that time to extend the power to confiscate to parking attendants and traffic wardens, it was dropped over fears that blue badge holders might be disadvantaged by having their badges confiscated indiscriminately.

66. Under the terms of this Bill, badges will only be confiscated where it is clear that the badge is being misused by a third party or is invalid because it has been cancelled, expired, or forged or should have been returned to the local authority under the terms of the regulations⁸. Badges are required to be returned on the death of the badge holder, when it has become so damaged or faded that it is illegible or in cases where a replacement badge has been issued by the local authority or another badge has been issued to the holder by another local authority. Only one badge can be held by an individual.

Consultation

67. ODS Consulting interviewed 819 badge holders in Scotland on the “*Use and value of the Blue Badge*” and found that 49% considered that the blue badge scheme was not adequately enforced. 83% had experienced misuse of badges or disabled persons’ parking spaces and misuse was seen as a problem by 52% of those interviewed.

68. The Scottish Government consultation in 2010⁹ on the reform of the blue badge scheme asked whether “local authorities should have the power to confiscate badges that have been cancelled, and/ or are being misused by a third party for their own benefit”. This proposal was supported by the majority of respondents.

69. Dennis Robertson MSP’s consultation in 2013 also asked if traffic wardens and local authority parking attendants should be allowed to confiscate a blue badge which they suspect is fraudulent or is being misused. The proposal was supported. A total of 41 respondents agreed, 25 unequivocally and 16 with some element of qualification, whilst 10 respondents disagreed.

⁹ [Blue Badge Reform - Analysis of Consultation](#)

70. In both consultations, concerns were raised around the detail as to how the powers will be implemented. For example, badge holders were fearful of being disadvantaged if their badges were confiscated due to unscrupulous misuse by a third party without their knowledge. Others were concerned that the parking attendant or traffic warden might question their disability and right to the blue badge, particularly in cases where their disability is not visible or apparent.

71. The Bill is intended to give relevant powers to local authority and police officials to reduce the propensity for misuse of the blue badge. Questioning an individual's eligibility to a badge is not the proper role of enforcement staff and their training on equality awareness should be quite clear on this. The role of enforcement staff is to ensure that the person who has been afforded the right to have a blue badge is the person who is actually using it, whether it is as a driver or a passenger in the vehicle.

Process of retention and return of badge to the badge holder

72. In view of the consultation responses and the discussions with representatives of agencies and voluntary organisations on the confiscation working group, it was recognised that it would be crucial to provide reassurance to badge holders that badges confiscated from third parties would be returned by the local authority to the original holder within a reasonable timescale. This was considered an important part of the process in order to prevent those persons with valid badges being disadvantaged through the actions of a third party. Returning confiscated badges would allow the badge holder to continue to use their badge.

73. Regulations will require local authorities to return valid badges to the badge holder following confiscation from a third party by enforcement staff. The return of the badge will be accompanied by a reminder of the holder's responsibility to ensure that they are the only person to use the badge.

74. In cases where a valid badge is required to be held as evidence in a court case against a third party, the badge can be cancelled by the local authority and a new badge issued with a different identifying number. This will avoid inconvenience to the badge holder.

75. Unfortunately, there are likely to be occasions when badge holders themselves do not comply with the requirements of the scheme and in such cases local authorities will, as they do now, take the circumstances of each case into account. Badges will be confiscated where a badge holder inadvertently displays an expired or damaged badge as the badge is no longer a valid document. In such cases, the badges will be destroyed and the badge holder will be advised to apply to the local authority for a new badge or, in the case of a damaged badge, a replacement.

76. Safeguards are now in place under the Blue Badge Improvement Service to reduce the risk of a person continuing to display an expired badge because they have forgotten to re-apply before the expiry date. Since January 2012, the blue badge application form asks the applicant if they wish to be reminded when their badge is nearing expiry, in order that they can re-apply in good time. Each person receiving a blue badge also receives an information booklet which explains their rights and responsibilities as a badge holder.

77. Disability organisations expressed concern that there is no right of appeal for a badge holder whose badge has been confiscated from a third party in their absence. This issue is now addressed by the intention to return all valid badges to the badge holder. Badges which have expired, have been cancelled, or are damaged are not valid.

78. A badge holder already has the right of appeal to a local authority if the authority issues a notice of withdrawal of a badge, where there is evidence of a previous conviction for misuse of a badge or that the badge holder has purported to transfer the badge to another person. In the minority of cases where a valid badge is confiscated from a third party and the local authority is satisfied that there has been a previous conviction for misuse or the badge holder has purported to transfer the badge to another person, it will be open to that authority when returning the badge to the holder to issue a notice of withdrawal. The badge holder will have the same right of appeal against withdrawal of their badge in those circumstances.

Timescale for return of badge to holder

79. Members of the working group agreed that a timescale for local authorities to return the badge to the holder should be included in regulations. Some considered that a defined timescale of days should be identified for the return of the badge, while others supported a less rigid approach of “as soon as practicable”, similar to that adopted in England. It was agreed that an approach which included both (e.g. as soon as practicable but no later than 14 working days) would be appropriate. This would be supported by a requirement on the local authority to explain in writing to the badge holder the reason for any delay beyond the period prescribed by the regulations.

80. The Bill is intended to allow local authorities to build on existing local practice. Strengthening the legislation to allow enforcement officers to confiscate badges and increasing public awareness of the blue badge scheme’s rules and regulations will also act as a long term deterrent to misuse. The Bill is not about what happens to the perpetrators of blue badge misuse or about increasing the number of individual prosecutions. Local authorities and the police will, as they do now, take into account the circumstances of each case.

Alternative approach

81. One voluntary sector organisation suggested that a warning system should be implemented instead of confiscation of the badge. This option has been discounted because handing back the badge to the third party with a warning would not guarantee that it is returned to the original badge holder. It would also allow the misuse to continue and the badge holder to be completely deprived of the use of their badge. Other blue badge holders would also be deprived of the use of a blue badge parking space. The blue badge is owned by the local authority and issued to a specific individual. If that badge is being misused by a third party it is reasonable and proportionate for the local authority to retain it and return it to the person to whom it was issued, ensuring that the person has access to the parking concessions provided by the scheme. Confiscating a badge also sends out a clear message to the perpetrator that misusing a blue badge is illegal.

Section 5 - Enforcement officers

Policy objective

82. The policy objective is to give local authorities an additional option, should they wish to use it, to authorise officers to exercise relevant powers. These officers (whether in uniform or not) will be required to carry identification.

83. It is recognised that this power may be more attractive to local authorities in urban areas where parking is at a premium and there is greater temptation to misuse a blue badge. However one local authority which responded to the consultation considered that it would also be helpful in large rural areas. Other authorities thought that joint working arrangements with neighbouring local authorities might be appropriate. It will be entirely at the discretion of each local authority as to whether it authorises individuals. The proposal will not impose any requirement on local authorities to have plain clothed enforcement officers.

84. Cases of suspected persistent fraud or misuse of a blue badge cannot always be investigated on the spot by parking attendants or traffic wardens who have wider enforcement duties to carry out. Such cases may need longer term surveillance and investigation. Blue badge misuse may also be identified through complaints from the public and further investigation may be required to gather the necessary supporting evidence.

85. The City of Edinburgh Council takes a proactive approach to blue badge misuse and uses a fraud investigation officer, who works alongside parking enforcement and administrative staff, to assist with gathering information and evidence of alleged abuse of the blue badge scheme.

Proposed approach

86. The Bill will introduce a new definition of “enforcement officer” which will mean a traffic warden, a parking attendant or an authorised person employed or contracted by a local authority (whether or not uniformed).

Alternative approaches considered.

87. No alternative approach was considered.

Consultation

88. Many more respondents agreed than disagreed that local authorities should have the power to appoint persons (other than parking attendants in uniform) to examine and/or confiscate blue badges as a result of their investigations. There was comment on the need for appropriate training, as well as careful selection criteria in appointing people to these positions. There were mixed opinions as to whether such persons should or should not be required to wear uniform.

89. The local authority representatives who attended the consultation events held by Dennis Robertson MSP in Aberdeen, Glasgow and Edinburgh indicated an interest in this proposal.

90. The Bill will allow local authorities to decide whether or not an enforcement officer should be in uniform. Regardless, they will still be required to carry identification.

Section 6 - Review of local authority decision

Background

91. Local authorities can issue a blue badge if a person meets the eligibility criteria prescribed in the Disabled Persons (Badges for Motor Vehicles (Scotland) Regulations 2000, as amended. At 31 March 2012 there were 263,000 badges on issue in Scotland. Around half were issued to those who qualify automatically and do not require assessment by the local authority. This is known as passporting.

92. Badges may be issued without assessment by the local authority if the applicant:

- receives the higher rate of the mobility component of Disability Living Allowance or Personal Independence Payment at the appropriate rate; or
- receives the War Pensioners' Mobility Supplement; or
- has received a lump sum benefit under article 15(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 at tariff levels 1-8 (inclusive); or
- is blind or registered blind.

93. Badges may also be issued following assessment by the local authority if the applicant:

- regularly drives a vehicle and has a severe disability in both arms and is unable to operate, or has considerable difficulty in operating, all or some types of parking meter; or
- has a permanent and substantial disability which causes the person to be unable to walk, or virtually unable to walk; or
- is unable to walk or virtually unable to walk by reason of a temporary but substantial disability which is likely to last for a period of at least 12 months beginning with the date on which the blue badge is issued; or
- is a child under three who is required to be accompanied by bulky medical equipment or kept near a motor vehicle so that they can be treated for their condition.

94. Applicants who are not in receipt of a passporting benefit can apply through the assessment route in their local authority. This is a standardised process across Scotland. Many of these applications will be determined through a desk based assessment using the information supplied by the applicant from verifiable sources, or information held by the local authority for example, through other services received as a result of their disability. In cases where a desk based assessment cannot determine eligibility, the local authority may refer the applicant for an Independent Mobility Assessment which is undertaken primarily to determine whether a person meets the specific definition in the scheme of being "unable to walk or virtually unable to walk". For many people, however, eligibility can be determined without the need for an Independent Mobility Assessment.

95. Independent Mobility Assessments were introduced from September 2012 and are carried out by occupational therapists. They replace the practice of an applicant's own GP providing a

medical assessment to inform a local authority decision on the award of a blue badge. This has shifted the emphasis on qualification for a blue badge from the applicant's medical condition to the effect of the applicant's medical condition on his or her ability to walk.

96. Whilst Independent Mobility Assessments are relatively new, work by a multi-agency working group to introduce them in Scotland was predicated on experience of their use in pilots in England. The findings of research undertaken by Integrated Transport Planning for the Department for Transport in 2011 "*Improving Blue badge administration, assessment and enforcement: good practice review*"¹⁰ (page 103) reported that focus group discussions with disabled people found that "Independent Mobility Assessments, conducted by a healthcare professional independent of the applicant's treatment, were perceived as the most robust approach overall to determining an applicant's eligibility against the blue badge criteria." Those who took part also thought it would reduce abuse of the scheme, which was widely identified as a problem, and praised the fact that the assessment and decision on awarding a blue badge was fully informed by a qualified healthcare professional.

Challenging the decision not to award a blue badge

97. In addition to this two tier process of desk based assessment and Independent Mobility Assessment, 20 local authorities advised Transport Scotland that they had followed the advice in the blue badge Code of Practice by having a review process in place to allow applicants who had been refused a blue badge to request a review of the decision. However some of these local authorities did not advise applicants of the process.

98. Information provided to Transport Scotland by local authorities covered a snapshot of the operation of the first two months of Independent Mobility Assessments. From 10,000 blue badge applications, 1456 required an Independent Mobility Assessment to determine their eligibility for a badge. 1150 were issued a badge following the assessment, 227 were refused a badge and did not request a review, 20 were refused and requested a review, 59 cancelled their appointment or did not attend. This represented only 20 requested reviews out of the original 10,000 applications following an Independent Mobility Assessment (0.2%).

Consultation

99. In 2010, respondents to the Scottish Government consultation on the reform of the blue badge scheme supported the introduction of an appeals process for those not awarded a blue badge on grounds of eligibility. The consultation on this Bill asked a similar question and also received some support, mainly from individuals and organisations, whilst local authorities were mainly against the proposal. 32 of a total of 81 respondents to the consultation agreed that there should be a statutory appeals process, nine disagreed (40 did not answer the question). 12 out of 16 disability organisations agreed (four did not answer the question). 13 out of 43 individuals agreed, four disagreed (26 did not answer the question). In terms of local authorities, of the 14 who responded, three agreed the need for a statutory appeals process and five disagreed (six did not answer the question).

100. There were varying views as to what such a process should look like, ranging from a local authority in-house review to the establishment of independent bodies, favoured by some

¹⁰ <http://www.dft.gov.uk/publications/blue-badge-good-practice-review/>

voluntary organisations, to undertake the task. COSLA and some local authorities expressed concerns about the need for a costly statutory appeals process, particularly given that the criteria for a blue badge are set in regulations with little scope for discretion and an applicant's eligibility for a blue badge could now be assessed by an Independent Mobility Assessor. It has also been acknowledged through discussion with stakeholders that any system set up should be proportionate and not overly bureaucratic given the potential small numbers applying for review. Respondents across the different groups, however, unanimously identified the need for consistency of process, along with transparency and accountability as important issues in any appeal/review process.

Policy objective

101. One of the aims of the blue badge scheme reforms has been to ensure that the criteria and assessment procedures for the award of a blue badge are tightly defined and strictly and consistently applied. Local authorities are required by the regulations to explain in writing the reasons for their refusal to issue a blue badge.

102. As mentioned above, 20 local authorities have reported having review processes in place. Given this incomplete and inconsistent adherence to the recommendation in the Code of Practice, it is considered that there should be a statutory requirement for local authorities to have a review process for applicants who have been refused a badge on eligibility grounds and to advise applicants what that review process is. This will also meet the need, identified by those who responded to the consultation, for consistency of process, along with transparency and accountability.

Proposed approach

103. The Bill will introduce a power to make regulations to require local authorities to have a review process in place which is standardised and publicised. The working group looking at the review process has identified a number of additional requirements for the operation of the review process to be included in the regulations.

104. The working group considered that to achieve consistency of process, reviews of blue badge eligibility decisions should follow a common set of principles and be completed within a reasonable period of time. These principles should include for example:

- a time limit for an applicant to request a review following receipt of a decision by a local authority not to award a blue badge, e.g. 28 days;
- a timescale for completion of the review by the local authority, e.g. 28 days;
- a requirement for the applicant to provide the reason a review is being requested;
- a requirement that the local authority review is undertaken by a person or persons who have not been involved in the previous decision; and
- a requirement for local authorities to give reasons for any delay in consideration of a review in writing to the applicant.

105. The review working group is also tasked with updating the existing blue badge Code of Practice guidance to local authorities on reviews.

Alternative approaches

106. One alternative approach was to do nothing and allow Independent Mobility Assessments time to bed in. Also as 20 local authorities already report having a review process in place, the remaining local authorities might in time implement a review process. However there is no guarantee that this would be the case and there would continue to be inconsistency of practice across Scotland.

107. Another option was to introduce an independent appeals process. The advantage of this would be the establishment or identification of a separate independent body to which unsuccessful applicants could apply. The appeal process would determine whether the local authority had correctly applied the eligibility and assessment criteria of the scheme and, where necessary, reassess the applicant in line with the scheme. This might provide reassurance to applicants that the system was fair and transparent.

108. The disadvantages of establishing an independent appeals process are that it would be costly to set up and run. In addition, it would be resource intensive for local authorities who would be required to submit relevant paperwork and in some cases attend the appeal hearing, which would take local authority staff or Independent Mobility Assessors away from the daily administration of the scheme, creating delay for other applicants.

109. On balance, taking the criteria within which the scheme is defined, the recent introduction of Independent Mobility Assessments and balancing the range of views expressed in the consultation, the primary aim is for all blue badge applicants to have a level playing field across the country. This could best be achieved at this present time through an internal local authority review process rather than an external independent appeal process which would also be bound to the eligibility and assessment criteria of the scheme and therefore unlikely to deliver different outcomes for applicants.

110. Findings from the Department for Transport report *“Improving Blue Badge administration, assessment and enforcement: good practice review”* (page 114), following qualitative feedback from local authorities which had previously adopted appeals panels or tribunals as a final stage of appeal, advised that they are overly bureaucratic, expensive to assemble and manage. They were also considered less satisfactory for managing appeals rather than the two stage review practices of an Independent Mobility Assessment and review by persons not previously involved in the case. The research also concluded that the introduction of an external process would not necessarily elicit a different outcome for the applicant.

111. COSLA also proposed another approach to achieving a consistent review process across the country. The suggestion was to do this through the development of national standards for a review process under the terms of the Regulatory Reform (Scotland) Bill¹¹ rather than through primary legislation.

112. This was subsequently discounted as the Regulatory Reform (Scotland) Bill was not considered appropriate for the purpose. It is aimed around the concept of making provision

¹¹ <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/61582.aspx>

about an “activity” (which broadly means a business activity). National standards can be set in connection with what local authorities do in regulating the carrying out of an “activity”. The blue badge scheme was not considered to fit with the concept of “activity” envisaged in part 1 of the Regulatory Reform (Scotland) Bill.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC

Equal opportunities

113. An Equality Impact Assessment (EQIA) has been carried out and the results will be published. Disability and age are the main protected characteristics impacted by blue badge policy and the Mobility and Access Committee for Scotland provided helpful input to the EQIA framing exercise. Responses to Dennis Robertson’s consultation, including those from disability organisations and badge holders, were also taken into account. The EQIA concluded that the proposals in the Bill will impact positively on disabled people who are blue badge holders. By strengthening enforcement powers, the valuable parking concessions provided by the blue badge scheme will be available to disabled people with the greatest mobility needs and allow them to park closer to their chosen destination.

Human rights

114. It is not considered that there is anything in the Bill which is incompatible with rights under the European Convention on Human Rights. Section 6 paves the way for a review process in relation to local authority decisions concerning eligibility for a blue badge. Since any review would essentially be carried out internally in a local authority, those dealing with the review would not constitute an independent and impartial tribunal for the purposes of Article 6 of the European Convention on Human Rights. It is, however, considered that the existence of judicial review makes the legislative regime compatible with Article 6.

Island communities

115. The Bill has no differential impact upon island or rural communities.

Local government

116. The Bill provides local authorities with additional enforcement powers, including cancellation and confiscation of blue badges in certain circumstances. It also requires them to put in place a process to enable applicants who are refused a blue badge on eligibility grounds to seek a review of the local authority decision. The impact of the Bill provisions is set out in detail in this Policy Memorandum and the financial impacts are considered in the accompanying Financial Memorandum.

Sustainable development

117. The Bill has no negative impact on sustainable development and will have a positive impact on those who hold blue badges.

This document relates 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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DISABLED PERSONS' PARKING BADGES (SCOTLAND) BILL

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