

DISABLED PERSONS' PARKING BADGES (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by Dennis Robertson MSP with the assistance of the Scottish Government. It describes the purpose of the subordinate legislation provisions in the Disabled Persons' Parking Badges (Scotland) Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.
2. The contents of this Memorandum are the responsibility of Dennis Robertson MSP and have not been endorsed by the Scottish Parliament.
3. The delegated powers memorandum applies to the Bill's provisions listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of parliamentary procedure has been considered appropriate.

RATIONALE FOR SUBORDINATE LEGISLATION

4. Section 1 (form of badge), section 3 (power to confiscate a badge), section 6 (review of local authority decision) and section 7 (commencement) either confer delegated powers on the Scottish Ministers or affect existing delegated powers. Careful consideration has been given to whether what is to be delivered by way of these provisions necessitated subordinate legislation or could have been spelt out on the face of the Bill.

DELEGATED POWERS

Section 1 (form of badge)

Power conferred on: **The Scottish Ministers**
Power exercisable by: **Regulations**
Parliamentary procedure: **Negative procedure**

Provision

5. Section 1 (form of badge) amends section 21(1A) of the Chronically Sick and Disabled Persons Act 1970 ("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.

6. The recent reforms of the blue badge scheme mean that local authorities no longer produce their own badges. These are now produced centrally under contract on behalf of the UK, Welsh and Scottish Governments. There is therefore no longer a requirement to provide the level of detail of the format of the badge for local authorities in regulations. Additionally, the badge has been modernised and now contains a number of anti-fraud security measures in its design.

Reason for taking power

7. The policy objective is to amend the existing provision in the 1970 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 Scottish Ministers. The effect of this is to allow some of the security features to be excluded from publication in regulations. This will reduce the possibility of badges being forged.

Choice of procedure

8. Negative procedure applies at present to regulations under section 21(1A)(b) of the 1970 Act and the amendment made by the Bill is not thought to justify any change to that.

Section 3 (power to confiscate badge)

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Negative procedure

Provision

9. Section 3 (power to confiscate badge) extends section 21(4D) of the 1970 Act to Scotland and will give constables or 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. This section will also bring subsection (4E) of section 21 of the 1970 Act into practical effect in Scotland, thus allowing regulations to prescribe what is to be done with a badge which has been retained under subsection (4D).

Reason for taking power

10. Because of the form in which the 1970 Act presently stands, specific provision would have been required if there had been a wish to disapply to Scotland the existing power in section 21(4E) to prescribe what is to be done with a retained badge. The power is, however, thought to be useful. Subordinate legislation will allow flexibility to respond to changing circumstances and to make changes to administrative processes quickly under the scrutiny of the Parliament but without the need for primary legislation. This will allow the detailed administrative arrangements to be kept up to date.

Choice of procedure

11. Negative procedure applies at present to regulations under section 21(4E) of the 1970 Act, although that provision does not have any practical application in Scotland. That procedure

is considered appropriate for the setting out of administrative arrangements on the handling of retained badges.

Section 6 (review of local authority decision)

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Negative procedure

Provision

12. Section 6 (review of local authority decision) confers on the Scottish Ministers the power to make regulations requiring local authorities to review a decision they have made in relation to a person's eligibility for a blue badge. The regulations may specify who may apply for a review and the manner in which the application is to be made. The regulations may also provide for the procedure that an authority is to follow when conducting a review.

Reason for taking power

13. The Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000 contain the operational criteria for the blue badge scheme. These Regulations already require a local authority to provide reasons for its decision to refuse a blue badge on eligibility grounds. It is reasonable to set down in subordinate legislation any new provisions allowing applicants to request a review of a relevant local authority decision and setting out the procedure applicants are to follow, rather than setting out this detail on the face of the Bill.

Choice of procedure

14. Negative procedure is considered appropriate as the delegated powers are being used to set out the detail of how an independent review process within local authorities will work in practice e.g. who may apply for a review, the application process, timescales etc. The scrutiny provided by negative procedure is considered proportionate to the scope of the regulations.

Section 7 (commencement)

Power conferred on: The Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Laid before Parliament only

15. Sections 6, 7 and 8 of the Bill will come into force on the day after Royal Assent. The remaining sections are to come into force on such day as the Scottish Ministers may by order appoint. It is standard practice for Bill provisions to be commenced by order (where the definite date of commencement is not known at the time of enactment of a Bill) and for such an order not to be subject to any Parliamentary procedure.

*This document relates to the Disabled Persons' Parking Badges (Scotland) Bill (Bill (SP Bill 44)
as introduced in the Scottish Parliament on 17 December 2013*

The Disabled Persons' Parking Badges (Scotland) Bill

DELEGATED POWERS MEMORANDUM